

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

House Committee on Judiciary
Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair

RE: Testimony in Support of H.R. 104
Hearing: April 3, 2019 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **supporting H.R. 104**.

Please note that the Senate has moved forward alternative resolutions to this version (S.C.R. 107 / S.R. 81) that the Law Center would prefer. We would ask that the Committee amend H.R. 104 to follow S.R. 81. The Senate version is preferable because it requires a more timely, transparent, and concrete process.

- *Timely:* The Senate version requires a preliminary inclination within six weeks of an appeal, rather than two weeks of the agency's "final response" – which response is frequently delayed because agencies fail to respond, the Office of Information Practices (OIP) grants extensions, or OIP asks for additional information because the agency's response is deficient.
- *Transparent:* The Senate version requires OIP to provide the requester with a copy of the agency's response to the appeal – which the requester does not receive in the ordinary course under OIP's rules – and requires OIP to post its preliminary inclinations on the Internet so that the public can monitor the proposed process.
- *Concrete:* The Senate version requires OIP to process at least 10 appeals using the proposed methodology during the five-month period between July 1 and December 1, 2019. In testimony, OIP contemplated applying a "random" method of 1 in every 5 appeals, but based on last year's filings, that would result in only a sample size of 4 appeals.¹

¹ Random sampling is unnecessary. OIP should be using its judgment to expedite appeals. The Law Center has no basis to conclude that OIP would unfairly discriminate against certain requesters or otherwise abuse the proposed process in a manner that would require random sampling.

The Committee also might consider amending the resolution to request a longer timeframe for the experiment with interim reporting in OIP's annual reports to the Legislature. Following a different process for six months will provide little meaningful comparison to OIP's current process that typically takes 2-3 years.

Nevertheless, even if the Committee does not amend this resolution, any effort that encourages OIP to re-examine its internal processes and seek out more efficient methods for resolving complaints would be greatly appreciated. H.R. 104 requests that OIP experiment with a random sample of public complaints in the search for a way to reduce the time needed to resolve those complaints. This bill reinforces the legislative intent that OIP's review be "*expeditious, informal, and at no cost to the public.*"

OIP is not resolving complaints in an expeditious manner. Reviewing data from OIP, the Law Center discovered in 2017 that time taken to resolve complaints has quadrupled in recent years, fewer complaints on average are being resolved each year, and OIP's backlog is trending upward despite a downward trend in new filings. Successive reports have not shown improvement. The Law Center's three years of reports are posted at www.civilbeatlawcenter.org/resources.

When we advise members of the public regarding options for resolving UIPA or Sunshine disputes, the Law Center must explain that an appeal to OIP will take at least a year, but closer to two years or more. Some give up. Others who move forward with OIP often complain later that the information they sought is no longer useful when OIP orders disclosure. Timely access is critical.

Thank you again for the opportunity to testify in **support** of H.R. 104.