



Senate Committee on Government Operations
Honorable Angus L.K. McKelvey, Chair
Honorable Mike Gabbard, Vice Chair

RE: Testimony with comments on S.B. 1255, Relating to Government Records
Hearing: February 4, 2025 at 3:05 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency.

Thank you for the opportunity to submit testimony with **comments** on S.B. 1255. We support the intent to clarify that records created under government contracts are government records subject to the Uniform Information Practices Act (UIPA). We respectfully **recommend amendments** to simplify the bill and increase its effectiveness.

S.B. 1255 would require government contractors to respond to requests for public records under UIPA. This, however, would force requesters who are wrongfully denied access to government records to seek redress from—and potentially sue—government contractors. That creates more obstacles for access than it solves. A more practical approach would be to simply require government contractors to disclose records, upon request, to the agency with which it has a contractual relationship.

S.B. 1255 would also impose State recordkeeping requirements on government contractors and require the Office of Information Practices (OIP) to police compliance with those requirements. But OIP already struggles to timely discharge its existing statutory duties. For example, although OIP was intended to be a quicker alternative to the courts for resolving UIPA and Sunshine Law disputes, it currently takes *years* on average to resolve an appeal.

Accordingly, we recommend the Committee **delete sections 2, 3, and 4** and **adopt the amendments to chapter 92F provided on the following page.**

Thank you again for the opportunity to testify with comments on S.B. 1255.



1. **Add and amend chapter 92F definitions, consistent with the definitions proposed at page 4, lines 10 - 18, to clarify that records used in the performance of a government function are "government records" subject to UIPA.**

§ 92F-3. General definitions. [. . .]

"Government function" means a service, program, or activity that an agency is authorized or required by law to perform.

"Government record" means [~~information maintained by an agency in written, auditory, visual, electronic, or other physical form~~] any information in written, auditory, visual, electronic, or other physical form that is maintained by an agency or used in performance of a government function.

[. . .]

"Trade secret" has the same meaning as defined in section 482B-2.

2. **Add new section to chapter 92F, consistent with the obligations proposed at page 2, lines 5 - 15, to provide recordkeeping and access requirements for contractors performing a government function.**

§ 92F- . Government function contracts; records retention and access requirement. Each contract with an agency to perform a government function shall expressly require the contractor to retain records in accordance with the agency's retention schedules and to provide the agency with access to all records subject to this chapter.

3. **Add new subsection to section 92F-11, consistent with the language at page 3, lines 11 - 14, to clarify that protected proprietary information of a government contractor is not subject to disclosure under UIPA.**

§ 92F-11. Affirmative agency disclosure responsibilities. (a) All government records are open to public inspection unless access is restricted or closed by law.

(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours;

(c) Notwithstanding section 92F-13(3), an agency shall not deny a request for access to records of a contractor used in the performance of a government function on the basis of trade secret or other proprietary information except where specifically protected by law.

[. . .]