

Op. Ltr. 89-08, Certified Payroll Records on Public Works Contracts

Section 92F-12(a)(9), the statute at issue in this opinion, was amended in 2005 and 2007, which may materially affect the conclusion reached in similar future opinions.

November 20, 1989

Mr. Walter Oda, President
IRC, Inc.
Century Center, Suite 3-262
1750 Kalakaua Avenue
Honolulu, Hawaii 96826

Dear Mr. Oda:

Re: Status of Certified Payroll Records on Public Works
Contracts

This is in reply to your letter dated August 11, 1989 requesting an advisory opinion from the Office of Information Practices concerning the status of certified payroll records on public works contracts under the Uniform Information Practices Act (Modified) ("UIPA"), Chapter 92F, Hawaii Revised Statutes.

ISSUE PRESENTED

Whether certified payroll records maintained by an agency contracting for the construction of any public work must make such records available for public inspection and duplication under the UIPA, without sanitizing information contained therein.

BRIEF ANSWER

Yes. Under the UIPA, any government agency contracting for the construction of any public work must make the certified payroll records required by Section 104-3, Hawaii Revised Statutes available for public inspection and duplication in their entirety, without sanitizing information contained therein.

FACTS

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Under every contract for construction¹ of a public work, the person or entity contracting with a government agency is required to submit "a certified copy of all payrolls" to the contracting government agency on a weekly basis. See, Section 104-3(a), Hawaii Revised Statutes. Recently, you requested copies of the certified weekly payroll from the Department of Accounting and General Services ("DAGS") pertaining to the painting of Campbell High School. The weekly payroll record maintained by DAGS contained the name, address and social security number of the contractor's employees, the name and address of the contractor and of the public works project. Additionally, it contained the hourly wages paid to the contractor's employees and an itemization of deductions made from their total wages. In response to your records request, DAGS deleted the home addresses of the employees listed in the weekly payroll submitted to their Department.

DISCUSSION

The UIPA, effective July 1, 1989, is the State's new open records law. The UIPA provides generally that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1988). As part of the UIPA, the Legislature also enumerated certain records (or categories of records) which as a matter of public policy shall be available for public inspection. See, S. Conf. Comm. Rep. No. 235, 14th Leg., Reg. Sess. Haw. S.J. 689, 690 (1988). These records are set forth at Section 92F-12(a), Hawaii Revised Statutes.

Section 92F-12(a)(9), Hawaii Revised Statutes provides in pertinent part:

- (a) Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:

. . . .

- (9) Certified payroll record on public

¹"Construction" under Haw. Rev. Stat. § 104-1(2) (1995) "includes alteration, repair, painting and decorating."

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works contracts; [Emphasis added.]

As stated above, DAGS provided part of the payroll records you requested under the UIPA. Section 92F-13, Hawaii Revised Statutes sets forth several exceptions to the general requirement under the UIPA that all government records be open to public inspection. We must infer that the addresses of the employees identified in the certified payroll records were withheld by DAGS under Section 92F-13(1), Hawaii Revised Statutes, which permits an agency to withhold disclosure of "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy."

However, a review of the inter-relationship between Sections 92F-12(a) and 92F-13, Hawaii Revised Statutes, reveals that DAGS improperly sanitized information from the certified payroll records under Section 92F-13. Specifically, the plain language of Section 92F-12(a), "any provision to the contrary notwithstanding....", suggests that the categories of records set forth thereafter are not subject to the exceptions provided under Section 92F-13. A review of UIPA's legislative history further compels this conclusion:

[T]he bill will provide, in section -12, a list of records (or categories of records) which the Legislature declares, as a matter of public policy, shall be disclosed. As to these records, the exceptions such as for personal privacy and frustration of legitimate government purpose are inapplicable This list merely addresses some particular cases by unambiguously requiring disclosure.

S. Conf. Comm. Rep. No. 235, 14th Leg. Reg. Sess., Haw. S.J. 689, 690 (1988) (emphasis added).

This construction of Section 92F-12(a), Hawaii Revised Statutes is buttressed by the Report of the Governor's Committee on Public Records and Privacy Vol. I (1987) ("Report") which addresses public access to certified payroll records. Specifically, the Report notes both the existence of possible personal privacy concerns in disclosure of certified payroll records and the significant public interest in public works

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contracts. Id. at 112-113. To resolve these competing concerns, the committee suggested that:

[T]he new records law could contain a good balancing mechanism and that the public interest could be held to outweigh privacy rights in this instance. Alternatively, however, the law could simply specify that these records would be public.

Id. at 113.

It appears from the unambiguous language of Section 92F-12(a), Hawaii Revised Statutes and the legislative history, that the Legislature adopted the Committee's later suggestion over the former, holding certified payroll records not subject to a balancing of interests.

In addition, federal case law under the Freedom of Information Act, 5 U.S.C. § 552(b), also suggests that the disclosure of the names and addresses of laborers as contained within certified payroll records, is not a "clearly unwarranted invasion of personal privacy" under 5 U.S.C. § 552(b)(6). See International Brotherhood of Electrical Workers Local 41 v. U.S. Department of Housing & Urb. Dev., 593 F. Supp. 542 affirmed, 763 F.2d 435 (1984); Painting and Drywall Work Preservation Fund, Inc. v. U.S. Department of Housing & Urb. Dev., No. 86-2431 (D.D.C. 1987).

Lastly, we express no opinion concerning what items of information must be contained within a certified payroll record under Chapter 104, Hawaii Revised Statutes. Whether such records must contain the address and social security numbers of the contractors' employees is not within the scope of this opinion. Rather, we merely conclude that the payroll record submitted to DAGS in this case is a "government record" which must be made available in its entirety pursuant to Section 92F-12(a)(9), Hawaii Revised Statutes.

CONCLUSION

Under the UIPA, certified payroll records maintained by a governmental contracting agency must be made available for public inspection and duplication without deletion of information or data set forth in such records. As to these records, the Legislature concluded that the exception set forth at Section

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92F-13(1), Hawaii Revised Statutes is inapplicable. Thus, the
UIPA unambiguously requires disclosure of certified payroll
records in their entirety.

Hugh R. Jones
Staff Attorney

cc: The Honorable Russel S. Nagata, Comptroller
Department of Accounting and General Services

APPROVED:

Kathleen A. Callaghan
Director