

May 8, 1995

The Honorable Goro Hokama
Chair, County Council
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

The Honorable J.P. Schmidt
Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Mssrs. Hokama and Schmidt:

Re: Filing Dates of Maui County Board and Commission
Members' Financial Disclosure Statements

This is in response to Chairperson Goro Hokama's requests to the Office of Information Practices dated November 13, 1993 and December 20, 1993 concerning the public's right to know which Maui County board and commission members have filed their financial disclosure statements with the Maui County Board of Ethics ("Ethics Board") and the dates of these filings. This letter also responds to former Corporation Counsel Guy A. Haywood's request dated February 4, 1994 concerning whether a roster of Maui County board and commission members' names and financial disclosure filing dates, if such a roster is created by the Ethics Board, would be publicly accessible under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

ISSUES PRESENTED

I. Whether, under the UIPA, the first page of the financial disclosure statements filed with the Ethics Board by Maui County board and commission members, segregated of all information except for the name of the board or commission members and the date of the filing, must be made available for public inspection and copying upon request.

II. Whether, under the UIPA, if the Ethics Board creates a roster listing the names of Maui County board and commission members and the dates they have filed their financial disclosure statements, such roster must be made available for public inspection and copying upon request.

OIP Op. Ltr. No. 95-14

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BRIEF ANSWERS

I. Yes. Although there is a provision of the Charter of the County of Maui ("County Charter") that makes confidential the financial disclosure statements of Maui board and commission members, the County Charter is not a "state law" for purposes of section 92F-13(4), Hawaii Revised Statutes. However, based upon our examination of article XIV of the Constitution of the State of Hawaii, which is a "state law" under section 92F-13(4), Hawaii Revised Statutes, and the Proceedings of the Constitutional Convention of the State of Hawaii 1978, we believe that the delegates intended the financial information of some public officials and employees to be publicly disclosed, while the financial information of other public officials and employees would be kept confidential. In order to determine whether the names of those individuals required to file confidential financial disclosures and their filing dates must also be kept confidential, we examined the UIPA's personal privacy exception, section 92F-13(1), Hawaii Revised Statutes.

Because the individuals required to file confidential financial disclosures are specified by State and county laws, and because all of these individuals are also required to file such disclosures annually, we do not believe that they have a strong privacy interest in their name or the date on which they filed their disclosure. On the other hand, there is a strong public interest in knowing whether these individuals have complied with the State or county laws requiring them to file their financial disclosures. Accordingly, in our opinion, the disclosure of the names of those individuals who have filed and the dates of such filings would not constitute a "clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes.

II. Yes. If the Ethics Board creates a roster of the names of the Maui board and commission members who have filed financial disclosure statements and the dates of such filings, this roster would not be protected by any of the UIPA exceptions to disclosure and, therefore, must be made available for public inspection and copying upon request.

FACTS

Section 10-3 of the Charter of the County of Maui (1993) ("County Charter") provides that:

All members of boards and commissions established

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under this charter, and such appointed officers or other employees as shall be designated by the council by ordinance as having significant discretionary or fiscal powers shall file with the board of ethics confidential financial disclosures in a form or forms to be prescribed by the board of ethics which disclosures shall not be open to public inspection.¹

County Charter § 10-3(2) (1993).

Section 10-3(3) of the County Charter sets forth the specific requirements concerning the filing of a financial disclosure statement and its contents:

All persons required herein to make financial disclosures shall file such disclosures within fifteen days of taking office or within fifteen days of filing nomination papers as a candidate for an elected county office. The disclosure shall be sworn to under oath and shall include, but not be limited to, sources and amount of income, business ownership, office and director positions, ownership of or interest in real property, debts, creditor interests in insolvent businesses, the names of persons represented before government agencies, and such other information as shall be prescribed by the board of ethics.

County Charter § 10-3(3) (1993).

On September 7, 1993, Chairperson Hokama requested from the Ethics Board a "list of the latest financial disclosure filing dates for all individuals required to file" including "elected officials, directors and deputies, and board and commission members." In a letter dated October 28, 1993, the Ethics Board provided Chairperson Hokama with a draft list of the names of the elected county officers, and executive and legislative directors

¹Section 10-3(1) of the County Charter also requires "[a]ll elected county officers, all candidates for elective county office and such appointed officers or other employees as the council shall designate by ordinance" to file financial disclosure statements with the Board. However, these individuals' financial disclosure statements "shall be open to public inspection." Id.

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and first deputies who filed their most recent financial disclosure submissions and the dates of their filings, as well as the dates on which these submissions were reviewed by the Ethics Board. However, because the Ethics Board did not maintain such a list for board and commission members, and because the requested information would have to be obtained by examining the financial disclosure statements which, according to section 10-3(2) of the County Charter, must be kept confidential, the Ethics Board denied Chairperson Hokama's request for the names and filing dates of those board and commission members who have filed their financial disclosure statements.

Chairperson Hokama subsequently wrote a letter to the OIP dated November 15, 1993 requesting an advisory opinion concerning public access to the names of County board and commission members who have filed their financial disclosures and the dates of such filings. In his letter to the OIP, Chairperson Hokama reiterated that he is only interested in learning which County board and commission members have filed and the dates, and he is not requesting access to any other information contained on the financial disclosure statements.

In a letter to the OIP dated February 4, 1994, the Maui Corporation Counsel requested an OIP advisory opinion concerning whether a roster, if created by the Ethics Board, which contains the names of board and commission members who have filed their financial disclosure statements and the filing dates would be public under the UIPA.

DISCUSSION

I. INTRODUCTION

Under the UIPA, "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1992). The UIPA also explains that "[e]xcept 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." Haw. Rev. Stat. § 92F-11(b) (Supp. 1992).

Although the information requested by Chairperson Hokama would be contained in the proposed roster which the Ethics Board may decide to create in the future, the requested information currently is available only in the financial disclosure statements. In Chairperson Hokama's letter dated November 15, 1993 to the OIP requesting this advisory opinion, he asked the

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OIP whether the public may inspect only the name and the filing date contained in the financial disclosure statement, with all other information segregated. Accordingly, we will primarily address whether the financial disclosure statements filed by board and commission members with the Ethics Board may be publicly disclosed if all information, except for the name of the individual filing the financial disclosure statement and the date of such filing, is segregated from the record before it is disclosed. Our answer to this issue will also answer the secondary issue concerning whether, if the Ethics Board does decide to create a roster containing this same information, such a roster must be made publicly available under the UIPA.

Section 92F-13, Hawaii Revised Statutes, sets forth five exceptions to required agency disclosure. Based upon the facts presented here, we need only examine two of the five UIPA exceptions, section 92F-13(4), Hawaii Revised Statutes, and section 92F-13(1), Hawaii Revised Statutes. We will address these two UIPA exceptions separately.

II. RECORDS PROTECTED FROM DISCLOSURE BY STATE OR FEDERAL LAW

Section 92F-13(4), Hawaii Revised Statutes, provides that agencies are not required to disclose "[g]overnment records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure." Turning to examine whether the confidentiality provisions of the County Charter constitute "state law" under this UIPA exception, we first note that the UIPA exceptions are to be construed narrowly. See OIP Op. Ltr. No. 94-11 at 5 (June 24, 1994); OIP Op. Ltr. No. 93-10 at 2 n.1 (Sept. 2, 1993). In addition, as we have stated in previous OIP advisory opinions, general rules of statutory construction require us to give the plain and obvious meaning to a statute when its language is plain and unambiguous. See OIP Op. Ltr. No. 94-11 at 10 (June 24, 1994); OIP Op. Ltr. No. 94-10 at 6 (June 8, 1994).²

Section 92F-13(4), Hawaii Revised Statutes, states clearly that there must be a "state or federal law" or "an order of any state or federal court" protecting the record from disclosure before the agency is permitted to withhold public access under

²Section 1-14, Hawaii Revised Statutes, provides that "[t]he words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning."

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this UIPA exception. The Uniform Information Practices Code, which was drafted by the National Conference of Commissioners on Uniform State Laws (1980) ("Model Code"), and upon which the Legislature modeled the UIPA, contains a nearly identical exception to disclosure for "information that is expressly made non-disclosable under federal or state law or protected by the rules of evidence." Model Code § 2-103(a)(11) (1980). The commentary to this Model Code provision explains that

Subsection (a)(11) is a catch-all provision which assimilates into this Article any federal law, state statute or rule of evidence that expressly requires the withholding of information from the general public. The purpose of requiring an express withholding policy is to put a burden on the legislative and judicial branches to make an affirmative judgment respecting the need for confidentiality.

Model Code commentary at 18 (emphases added).

In our opinion, a county charter provision, although enacted through the county council's legislative procedures, is a "county" law and cannot be construed as a "state" law for purposes of section 92F-13(4), Hawaii Revised Statutes. State laws are enacted by the State Legislature and have statewide application whereas county charter provisions and county ordinances apply only to the particular county.

In addition, permitting county governments to create exceptions to disclosure through the enactment of county charter provisions or ordinances would create a substantial possibility that records accessible in one county may be inaccessible in others. We note that the UIPA was intended by the Legislature to have uniform application throughout the State and counties.³ Consequently, we believe that a county charter provision in and of itself is not a "State" law which permits agencies to withhold public access to records under section 92F-13(4), Hawaii Revised Statutes. However, there is a provision within the Hawaii

³The Legislature declared, in the legislative history of the UIPA, that "the current confusion and conflict which surround the existing records laws are plainly unacceptable." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817 (1988).

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Constitution concerning confidential financial disclosures which requires closer examination.

Article XIV of the Constitution of the State of Hawaii, entitled "Code of Ethics," provides that:

The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government. To keep faith with this belief, the legislature, each political subdivision and the constitutional convention shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of the boards, commissions and other bodies.

Each code of ethics shall be administered by a separate ethics commission. . . .

Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, use of position, contracts with government agencies, post-employment, financial disclosure and lobbyist registration and restriction. The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

Haw. Const. art. XIV (emphasis added).

Although this constitutional provision establishes that certain government officials are required to file "confidential financial disclosures," it is not clear whether the name of the

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individual filing and the date of such filing must also be kept confidential. Because this provision subsequently sets forth the types of financial information that must be disclosed in the financial disclosures and also because the term "financial" is preceded by "confidential," it can be argued that this provision intended to make the financial information contained in the financial disclosure statements confidential, not the name of the individual filing and the date of such filing.

The Hawaii Supreme Court has stated that, when faced with constitutional ambiguity, "'the fundamental principle in construing a constitutional provision is to give effect to the intention of the framers and the people adopting it.'" Pray v. Judicial Selection Commission, 861 P.2d 723, 728 (Hawaii 1993), quoting Cobb v. State, 68 Haw. 564, 565 (1986). In State v. Kahlbaun, 64 Haw. 197 (1981) the Court also decided that when resolving constitutional ambiguity, the Court may "look to the object sought to be accomplished and the evils sought to be remedied by the amendment." Kahlbaun at 202.

Among its changes to the ethics provision in the Hawaii Constitution, the delegates to the 1978 Hawaii Constitutional Convention added the provisions requiring public financial disclosures for certain government officials and confidential financial disclosures for other government officials. The proceedings of the 1978 Constitutional Convention do not contain any information which would shed light upon whether article XIV makes only the financial information confidential or if every item of information on the financial disclosure statement, such as the individual's name and date of filing, must also be confidential. However, the basic purpose of the ethics code and the financial disclosure requirement can be gleaned from the Standing Committee Report:

It is your Committee's belief that the subject of ethics in government is one of great importance which warrants such revision. Because the Constitution organizes the powers and procedures of government, "governing those who govern," your Committee believes that it is logical and essential that the Constitution contain some basic guidelines as to the form of ethics regulation that shall apply to those who govern.

Hawaii established what is generally considered to be the first comprehensive state ethics code in the nation in 1967. The 1968

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Constitutional Convention of Hawaii sanctioned this new development in Article XIV, Section 5. Since then public concern about ethical conduct in government has markedly increased, and, in response, there have been many developments in the area of codes of conduct and disclosure requirements for government officials in Hawaii and across the nation. Your Committee on Ethics notes this public concern, draws upon the past decade of experience with ethics reform, and puts forth a proposal which it believes will strengthen, broaden and protect the system of ethics regulation in government in Hawaii.

1 Proceedings of the Constitutional Convention of Hawaii of 1978 at 565 (1980) (emphasis added).

Based upon the examination of the text of article XIV of the Constitution of the State of Hawaii and the committee reports of the Proceedings of the Constitutional Convention of the State of Hawaii 1978, we believe that the delegates to the 1978 Hawaii Constitutional Convention determined that two classes of public officials and employees must disclose their personal financial information.

As to the first class (elected officers, candidates, and such appointed officials as determined by law), their duties were such that it was intended that their personal financial information must be publicly disclosed despite the existence of a privacy interest in this information.⁴ As to the second class (other public officials with significant discretionary or fiscal powers), the delegates determined that these individuals must still disclose their financial interests; however, such financial interests would remain confidential.

Furthermore, it is our opinion that the delegates to the 1978 Constitutional Convention could not have intended that the names of individuals who must file, or who have filed, confidential financial disclosures would remain confidential

⁴We believe the delegates balanced the individual's right to privacy against the public interest in disclosure and determined that for elected officials, candidates, and other employees as provided by law, the public interest in disclosure outweighed the privacy interests of these individuals. See, e.g., Haw. Rev. Stat. §§ 92F-2(5) and 92F-14(a) (Supp. 1992).

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because the State or county laws, promulgated under the Hawaii Constitution, clearly establish who must file public financial disclosures and who must file confidential financial disclosures.

Because, in our opinion, the Hawaii Constitution makes confidential only the financial information disclosed by those making confidential financial disclosures, we now turn to examine whether the names of individuals filing confidential disclosures and the date of such filings would be protected under the UIPA.

III. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

Section 92F-13(1), Hawaii Revised Statutes, protects from disclosure "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." In order to determine whether this exception applies to a particular record, we look next to the UIPA's balancing test which provides that "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. § 92F-14(a) (Supp. 1992).

The legislative history of this UIPA exception explains that "[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988).⁵ In previous advisory opinions, the OIP has concluded that the "public interest" to be considered under the UIPA's balancing test is "the public interest in the disclosure of official information that sheds light on an agency's performance of its statutory purpose and in information that sheds light upon the conduct of government officials." OIP Op. Ltr. No. 93-20 at 7 (Oct. 21, 1993).

Because State and county laws clearly establish who must file public financial disclosures and who must file confidential financial disclosures, we do not believe that these individuals

⁵The Legislature also stated that "[i]f the privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988).

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have a significant privacy interest in their name or in the date on which they filed their financial disclosure. On the other hand, we believe that there is a strong public interest in the disclosure of the names of the individuals who have filed and the dates of such filings because this would show whether they are complying with the filing requirements and whether the agency responsible for monitoring their compliance is performing this duty. Thus, we conclude that the public interest in this information outweighs the privacy interests of these individuals, and the limited disclosure of the individual's name and filing date on a financial disclosure statement, or disclosure of a roster containing this information, as contemplated by the Board, would not result in a "clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes.⁶

CONCLUSION

None of the UIPA's exceptions to required agency disclosure in section 92F-13, Hawaii Revised Statutes, apply to protect the names of the individuals filing confidential financial disclosures or the dates of such filings. Specifically, we do not believe that article XIV of the Hawaii Constitution prohibits the disclosure of this information under section 92F-13(4), Hawaii Revised Statutes. We also do not believe that the disclosure of this information would constitute a "clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes.

Accordingly, the name of the individual filing a confidential financial disclosure statement and the filing date must be made available for public inspection and copying under the UIPA. Similarly, under the UIPA, a roster containing the names of those individuals who have filed their confidential financial disclosures and their filing dates, if such a roster is created by the Ethics Board, must also be made available for public inspection and copying.

Very truly yours,

⁶Because Chairperson Hokama has only requested access to the name of the individuals who have filed confidential financial disclosures and the dates of such filings, we need not address whether other information contained in the financial disclosure must be disclosed under the UIPA.

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