

Op. Ltr. 91-26 Information Concerning Honolulu Police Department Officers

OIP Op. Ltr. No. 05-03 partially overrules this opinion to the extent that it states or implies that the UIPA's privacy exception in section 92F-13(1), HRS, either prohibits public disclosure or mandates confidentiality.

December 13, 1991

Mr. Bradley Hara
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Dear Mr. Hara:

Re: Information Concerning Honolulu Police
Department Officers

This is in reply to your request for an advisory opinion regarding public access to certain information concerning a police officer employed by the Honolulu Police Department.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes, ("UIPA"), information concerning a county-employed police officer's salary range, period of "credited service" as a county employee, accumulated sick leave or vacation leave credit, average salary for the officer's highest earning years, and age must be made available for public inspection and copying.

BRIEF ANSWER

Under section 92F-12(a)(14), Hawaii Revised Statutes, except for those individuals employed by a law enforcement agency in an undercover capacity, the salary range of an agency employee subject to chapters 76, 77, 298 or 304, Hawaii Revised Statutes, is information which as a matter of public policy, must be made available for public inspection and copying under the UIPA.

Additionally, we conclude that information concerning an agency employee's period of "credited service" must be publicly

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accessible, because the disclosure of this information would not constitute a clearly unwarranted invasion of personal privacy under sections 92F-13(1) and 92F-14(a), Hawaii Revised Statutes. In our opinion, the public interest in the disclosure of information concerning a public employee's length or period of public employment, outweighs any privacy interest the employee may have in this item of information. This overriding public interest is evidenced in section 92F-12(a)(14), Hawaii Revised Statutes, which requires the disclosure of similar information, specifically, a present or former agency employee's "first and last dates of employment" and "service computation date."

Further, based upon a previous Office of Information Practices' ("OIP") advisory opinion, information relating to a present or former agency employee's accumulated sick leave and vacation leave credits should also, upon request, be made available for public inspection by an agency under the UIPA. Specifically, in OIP Opinion Letter No. 90-17 (April 24, 1990), we concluded that the public interest in the disclosure of information concerning a present or former agency employee's use of vacation or sick leave outweighed any significant privacy interest that an employee may have in this data.

On the contrary, based upon previous OIP opinion letters, we believe that the disclosure of a present or former agency employee's date of birth or age, when individually identifiable, would constitute a "clearly unwarranted invasion of personal privacy" under the UIPA, and should not be publicly disclosed by an agency.

Lastly, we conclude that with respect to present or former agency employees subject to chapters 76, 77, 297, or 304, Hawaii Revised Statutes (including present or former HPD officers), their "average salary in their three highest earning years" should not be disclosed under the UIPA. Specifically, with respect to information concerning the compensation paid to employees covered by chapters 76, 77, 297 or 304, Hawaii Revised Statutes, section 92F-12(a)(14), Hawaii Revised Statutes, provides that "only" salary range information should be publicly accessible.

While the legislative history of this UIPA provision casts doubt upon whether exact salary information concerning non-exempt or included employees may be publicly accessible in a given case under the UIPA's public interest balancing test, we conclude that absent legislative clarification, agencies should only provide

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salary range information concerning employees covered by chapters 76, 77, 297 or 304, Hawaii Revised Statutes, when compensation information is requested by the public in individually identifiable form.

FACTS

You have requested an advisory opinion from the OIP concerning access to certain information relating to a specific police officer employed by the Honolulu Police Department ("HPD"). Specifically, you have asked the OIP whether you have the right to inspect the following information concerning an HPD officer identified in your letter to the OIP: 1) salary range (SR) rating; 2) total years of "credited service" as a member of the HPD, including accumulated sick leave credit and vacation leave credit; 3) average earnings for the highest three earning years; and 4) age.

DISCUSSION

A. INTRODUCTION AND SALARY RANGE

The UIPA contains several provisions which relate to public access to information concerning current or former officers or employees of State and county agencies which must be examined to resolve the questions presented. First, in section 92F-12(a), Hawaii Revised Statutes, the Legislature set forth a list of government records, or information therein, which must be made available for public inspection "[a]ny provision to the contrary notwithstanding,"¹ including:

- (14) The name, compensation (but only the salary range for employees covered by chapters 76, 77, 297 or 304), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency

¹As to these records or categories of records, the Legislature determined that they should be disclosed "as a matter of public policy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

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name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency, provided that this provision shall not require the creation of a roster of employees; except that this provision shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;

Haw. Rev. Stat. § 92F-12(a)(14) (Supp. 1990) (emphases added).

A civil service employee's "SR rating" describes an employee's "salary range" classification. The term salary range "means the group of steps, from minimum to maximum, to which a class may be assigned." Haw. Rev. Stat. § 77-1 (1985). Essentially, an employee's salary range classification will allow the identification of the range of pay, from a minimum to a maximum, to which that employee is entitled under pertinent civil service laws.

We conclude that under the express provisions of section 92F-12(a)(14), Hawaii Revised Statutes, the HPD must disclose the salary range or "SR rating" of present or former HPD officers, upon request, because such officers are civil service employees, unless such officers are or were engaged in an undercover law enforcement capacity.

On the contrary, with regard to the disclosure of information concerning an agency employee's period of "credited service," accumulated sick and vacation leave, and age, section 92F-12(a)(14), Hawaii Revised Statutes, does not expressly require the disclosure of this information. Nevertheless, under section 92F-11(b), Hawaii Revised Statutes, this information must still be publicly accessible, unless one of the exceptions set forth at section 92F-13, Hawaii Revised Statutes, authorizes an agency to deny access to the same.

In reviewing the UIPA's statutory exceptions to required agency disclosure, in our opinion, the only exception that would permit an agency to deny access to this information would be that which does not require an agency to disclose "[g]overnment records, which if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-13(1) (Supp. 1990). Under the UIPA, the "[d]isclosure of a government record shall not constitute a clearly unwarranted

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invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. § 92F-14(a) (Supp. 1990).

Under this balancing test, "if a privacy interest is not 'significant,' a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988); S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw S.J. 689, 690 (1988). Indeed, the legislative history of the UIPA's privacy exception indicates this exception only applies if an individual's privacy interest in a government record is "significant." See *id.* ("[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure").

In section 92F-14(b), Hawaii Revised Statutes, the Legislature set forth examples of information in which an individual has a "significant" privacy interest. Among other things, in section 92F-14(b), Hawaii Revised Statutes, the Legislature declared that individuals have a significant privacy interest in "[i]nformation in an agency's personnel file," and "[i]nformation describing an individual's finances [and] income." Haw. Rev. Stat. § 92F-14(b)(4) and (6) (Supp. 1990). We shall now address whether information concerning an HPD officer's accumulated sick and vacation leave, period of credited service, average earnings in the officer's highest three earning years, and age, is protected from disclosure by the UIPA's personal privacy exception.

B. ACCUMULATED VACATION AND SICK LEAVE CREDIT

In OIP Opinion Letter No. 90-17 (April 24, 1990), we concluded that the disclosure of information concerning an agency employee's use of sick leave and vacation leave would not constitute a clearly unwarranted invasion of personal privacy, because of the overriding public interest in the disclosure of information concerning an agency employee's presence or absence from the employee's agency workplace. We did, however, in that opinion conclude that details relating to an agency employee's medical condition, treatment, or diagnosis should be deleted from sick leave records before public disclosure of the sick leave records.

In part, we based our conclusion upon court decisions interpreting privacy provisions of the public records laws of

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other states, which were similar to the UIPA's personal privacy exception. Since the date of our issuance of this opinion letter, yet another state court has concluded that a public employee's privacy interest in their use of sick or vacation leave is subordinate to the overriding public interest in the disclosure of this information. See Hatfield v. Bush, 572 So. 2d 588 (La. Ct. App. 1990). Therefore, we conclude that information concerning an HPD officer's accumulated sick leave and vacation leave must be disclosed under the UIPA.

C. PERIOD OF CREDITED SERVICE

An employee's "credited service" is that employee's "prior service plus membership service" for purposes of the State of Hawaii Employees' Retirement System. Haw. Rev. Stat. § 88-21 (1985). A person's "membership service" is "all service rendered by a member for which the member had made the required contributions to the system." Haw. Rev. Stat. § 88-21 (1985). For purposes of the Employees' Retirement System, we are informed that a person's "service" is calculated by taking the first and last dates of employment and subtracting any period of leave without pay.

Even assuming that information concerning an agency employee's "credited service" is found in an agency's personnel file, we also believe that under the UIPA's balancing test set forth at section 92F-14(a), Hawaii Revised Statutes, the public interest in disclosure of this information outweighs an agency employee's significant privacy interest in the same.

First, information concerning an agency employee's "credited service" is not information of a highly intimate or sensitive nature. Additionally, by providing in section 92F-12(a)(14), Hawaii Revised Statutes, that an agency employee's first and last dates of employment and service computation date must be publicly accessible, the Legislature acknowledged the significant public interest in the disclosure of information concerning an agency employee's length or period of public employment.

Moreover, as we stated in OIP Opinion Letter No. 90-17 (April 24, 1990), there is a significant public interest in the disclosure of information concerning an agency employee's presence or absence from the employee's agency workplace. Lastly, because an agency employee's first and last dates of employment is public information, see section 92F-12(a)(14), Hawaii Revised Statutes, as is information concerning the

employee's use of leave, see OIP Opinion Letter No. 90-17, it follows that an agency employee's period of credited service can probably be calculated independently based upon this publicly accessible information.

Because information concerning an agency employee's "credited service" is similar to information which expressly was designated "public" under section 92F-12(a)(14), Hawaii Revised Statutes, and because we believe that the public interest in disclosure of information concerning an agency employee's presence or absence from the employee's workplace outweighs any privacy interest the employee may have in this information, we conclude that the disclosure of an agency employee's period of "credited service" would not constitute a clearly unwarranted invasion of personal privacy under the UIPA, and must be made available for inspection and copying by the public.

D. DATE OF BIRTH

While section 92F-14(b), Hawaii Revised Statutes, does not specify an individual's age or date of birth as the type of information in which an individual has a significant privacy interest, the examples set forth in this subsection do not purport to be an exhaustive listing. We have previously considered whether the disclosure of an individual's birthdate would constitute "a clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes. See OIP Op. Ltr. Nos. 90-7 (Feb. 9, 1990), 90-10 (Feb. 26, 1990), 90-25 (July 12, 1990). In these opinions, we concluded that individuals have a significant privacy interest in information concerning their birthdate, one that was not outweighed by the public interest in disclosure under the UIPA's balancing test.

Consistent with the opinions noted above, we conclude that the HPD is not required to publicly disclose an officer's birthdate or age under the UIPA. However, if the HPD maintains aggregate data concerning the ages of officers employed by the HPD which does not reveal the officers' identities, such data should be made publicly accessible because the disclosure of non-individually identifiable data does not implicate a privacy interest.

E. AVERAGE EARNINGS IN HIGHEST THREE EARNING YEARS

Section 92F-12(a)(14), Hawaii Revised Statutes, provides that agencies shall disclose the compensation paid to present or

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former agency employees, "but only the salary range of employees covered by chapter 76, 77, 297 or 304," Hawaii Revised Statutes. [Emphasis added.] We are informed that HPD officers are employees covered by chapter 76, Hawaii Revised Statutes. As such, a literal application of section 92F-12f(a)(14), Hawaii Revised Statutes, would indicate that the only information concerning the compensation paid to HPD officers or other civil service employees that is "public" is their salary ranges.

However, the UIPA's legislative history indicates that the provisions of section 92F-12, Hawaii Revised Statutes, were not intended to serve as either limitations or restrictions on the disclosure of government records. Rather, the UIPA's legislative history indicates that this listing was only intended to unambiguously provide for the disclosure of certain government records:

As to these records, the exceptions such as for personal privacy and for frustration of legitimate government function are inapplicable. This list should not be misconstrued to be an exhaustive list of the records which will be disclosed. Nor should any limiting language in this list be deemed to imply a legislative intent that such limitation be applied in any other circumstances. This list merely addresses some particular cases by unambiguously requiring 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, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988) (emphasis added).

The clear legislative intent expressed in the above legislative committee report casts doubt upon whether the Legislature intended section 92F-12(a)(14), Hawaii Revised Statutes, to always restrict the disclosure of compensation information concerning non-exempt or included employees to only salary range information. Specifically, in light of the above legislative committee report, it is unclear whether in a given case, the exact salary paid to a civil service employee may be publicly available under the UIPA's balancing test set forth at section 92F-14(a), Hawaii Revised Statutes, notwithstanding the provisions of section 92F-12(a)(14), Hawaii Revised Statutes.

Accordingly, we believe it is necessary to examine the legislative history of section 92F-12(a)(14), Hawaii Revised

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Statutes, in order to determine whether the exact or average salaries of identifiable civil service employees are always confidential, or whether in certain cases, a civil service employee's exact salary should be considered public information under the UIPA's balancing test set forth at section 92F-14(a), Hawaii Revised Statutes.

As originally enacted by the Legislature in 1988, section 92F-12(a)(14), Hawaii Revised Statutes, read in pertinent part as follows:

§92F-12 Disclosure Required. (a) Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:

. . . .

(14) The name, compensation (or salary range for employees covered by chapters 76 and 77)
. . . ;

Act 262, 1988 Haw. Sess. Laws 475 (emphasis added).

Thus, as originally enacted by the Legislature the words "but only" did not appear within the parentheses in section 92F-12 (a)(14), Hawaii Revised Statutes.

Based upon our research, it appears that the provisions relating to the disclosure of salary range information for employees covered by chapters 76, and 77, Hawaii Revised Statutes, had their origin in the Report of the Governor's Committee on Public Records and Privacy (1987) ("Governor's Committee Report").² Specifically, the 1987 Governor's Committee Report to the Governor and the Legislature examined the question of what information about public employees' compensation should be publicly available:

The information which attracted the most attention was the salaries and compensation of public employees. There was strong sentiment that more

²The UIPA's legislative history acknowledges the "Herculean efforts" of the Governor's Committee on Public Records and Privacy, and the important role that its report played in shaping the provisions of the UIPA. See S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988).

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information in this area should be available. . .
[als expressed by one Committee member, the public
has a right to know what public employees are making,
at least in part, to judge whether it is worth it.

One way to handle this would simply be to
provide that the salary or compensation paid to an
employee is public. There are, however,
alternatives. If the focus is the salaries of
appointed or higher level positions, and that
appeared to be the case from much of the testimony
and comment, then perhaps the formula should allow
the specific salaries of most employees to be
confidential while providing the information which is
more important. For example, providing the actual
salaries of "exempt and/or excluded employees" would
mean that the salaries of all appointed positions and
all managerial positions would be public. That could
be supplemented by providing the "salary ranges" for
all other employees. For example, a Clerk-Typist II
is in Salary Range 8 and, therefore, has under the
current contract a salary of \$13,260 to \$20,040 a
year depending upon seniority.

Vol. I Governor's Committee Report 109 (1987) (boldface in
original, emphasis added).

An examination of the Governor's Committee Report would lead
one to conclude that the Legislature intended that only the
salary ranges of employees covered by chapters 76 and 77, Hawaii
Revised Statutes, would be publicly accessible under the UIPA.

Finally, section 92F-12(a)(14), Hawaii Revised Statutes, was
amended by the Legislature in 1989, by deleting the word "or"
within the parentheses and replacing it with the words "but
only," and by providing for the disclosure of the salary ranges
of employees covered by chapters 297 and 304, Hawaii Revised
Statutes. See An Act Effective July 1, 1989, ch. 160, 1989 Haw.
Sess. Laws. 297. This language was added by the House Committee
on Judiciary in response to the initiative of the University of
Hawaii.

While the question of whether information concerning the
exact or "average" compensation paid to employees covered by
chapters 76, 77, 297 or 304, Hawaii Revised Statutes, should

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be subject to the UIPA's public interest balancing test is debatable, we believe that the limiting language in section 92F-12(a)(14), Hawaii Revised Statutes, "but only the salary range" was intended to implement the recommendations of the Governor's Committee Report, such that only the exact salaries of exempt or non-included employees would be publicly available.

While the public records laws of some other states provide for the disclosure of the exact compensation paid to all public employees,³ whether they be included or non-exempt employees, we conclude that the Legislature of the State of Hawaii intended to restrict the disclosure of compensation information concerning employees covered by chapters 76, 77, 297, or 304, Hawaii Revised Statutes to only salary range information. Therefore, absent any further legislative clarification of section 92F-12(a)(14), Hawaii Revised Statutes, we must conclude that the the HPD should not disclose, in an individually identifiable format, an officer's "average salary" in an officer's highest three earning years.

CONCLUSION

Under the UIPA, with the exception of only those individuals employed in an undercover capacity by a law enforcement agency, each agency is required to disclose government records which set forth the SR rating of agency employees.

With regard to information concerning an HPD officer's period of credited service and accumulated sick leave and vacation leave, we conclude that the disclosure of this information would not constitute a clearly unwarranted invasion personal privacy, and must be made available for inspection and copying upon request, if contained in government records maintained by an agency.

On the contrary, for the reasons set forth above, we conclude that the HPD is not required by the UIPA to disclose an HPD officer's date of birth or age, or an officer's average salary in the officer's highest three earning years.

Very truly yours,

³See, e.g., Ind. Stat. § 5-14-3-4(b)(8) (Supp. 1990); Minn. Stat. Ann. § 13.43 (Supp. 1990); N.Y. Pub. Off. Law § 87(3)(b) (McKinney 1988).

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