

Op. Ltr. 03-03 Judicial Selection Commission List of Nominees

Rule 5, section Two, part A of the Judicial Selection Commission Rules was amended on November 15, 2011, and further amended on February 13, 2013, January 24, 2014, and March 16, 2022, which may materially affect the conclusion reached in similar future opinions.

April 1, 2003

Mr. Jack F. Schweigert

Re: Judicial Selection Commission List of Nominees

Dear Mr. Schweigert:

This is in response to your request to the Office of Information Practices (“OIP”) for an opinion on the above-referenced matter.

ISSUE PRESENTED

Whether the Governor and the Chief Justice¹ are required to make public the list of six nominees selected by the Judicial Selection Commission (“JSC”) to fill judicial vacancies (“List of Nominees”) after the list is delivered to them.

BRIEF ANSWER

No. The Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”), which governs, among other things, an

¹ The Governor and the Chief Justice are referred to herein individually and collectively as the “appointing authority.”

agency's² obligations with respect to the disclosure of its records, contains certain exceptions to the general rule that government records are open to the public.

In analyzing the applicable exceptions to disclosure, the OIP opines that, while a nominee has a significant privacy interest in being nominated under section 92F-14(b)(4), Hawaii Revised Statutes, when weighed against the importance of a judicial appointment, the public interest in opening up the workings of government is greater, and disclosure would not be a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes.

However, the importance of the judicial appointment compels the OIP to conclude that the appointing authority may withhold disclosure of the List of Nominees before the Senate confirms appointment of an individual from the List of Nominees. In reaching this conclusion, the OIP finds that, if a List of Nominees is made public before the appointing authority makes his or her selection, the possibility that interested groups will "lobby" the appointing authority, either in favor of or against a nominee, and that the selection process will be manipulated to circumvent the appointing authority's appointment power is sufficiently serious. Such conduct would frustrate a legitimate government function. For this reason, the appointing authority may withhold disclosure of the List of Nominees to the public under section 92F-13(3), Hawaii Revised Statutes.

FACTS

The JSC was created by section 4, article VI of the State Constitution. To fill a judicial vacancy, the JSC evaluates applications and selects at least six nominees for each vacancy. See Rule 11 of the Rules of the Judicial Selection Commission ("JSC Rules"). The List of Nominees is hand-delivered to the appointing authority in alphabetical order. See JSC Rule 13. From the List of Nominees, the Governor fills judicial vacancies in the office of the

² "Agency" means "any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State." Haw. Rev. Stat. § 92F-3 (1993).

Chief Justice, the Supreme Court, the Intermediate Court of Appeals, and the circuit courts, subject to approval from the Senate. Haw. Const. art. VI, § 3. If the Governor does not make an appointment within thirty days of receipt of the List of Nominees, or within ten days of the Senate's rejection of an appointment, the JSC shall make the appointment from the same List of Nominees, with the "consent" of the Senate. Id.

Similarly, the Chief Justice fills judicial vacancies in the district courts by appointing a person from the List of Nominees. Haw. Const. art. VI, § 3. If the Chief Justice fails to make a selection within thirty days, the JSC shall make the appointment. Id. According to Judiciary news releases, the Chief Justice's selections are also subject to approval by the Senate.

Presently, the Chief Justice makes the List of Nominees for district court vacancies public via Judiciary news releases and postings on the Judiciary web site. Most recently, in a news release dated March 18, 2003, the Judiciary announced the List of Nominees for a vacancy in the District Court of the First Circuit. This news release also invited the public to comment about the character and qualification of the nominees to the Chief Justice before he made his selection.

The Governor has also chosen to make public the List of Nominees for her appointment to the Hawaii Supreme Court and to the Circuit Court for the First Circuit. Through a press release issued by the Governor on March 28, 2003, the Governor indicated that the disclosure, which is generally contrary to the practice of prior Governors, is an effort "to maintain openness[.]"

DISCUSSION

I. JSC RULE REQUIRING CONFIDENTIALITY DOES NOT APPLY TO THE GOVERNOR OR TO THE CHIEF JUSTICE

The State Constitution is silent as to whether the List of Nominees is public information. The Constitution does require that deliberations of the JSC³ be confidential. Haw. Const. art. VI § 3. The JSC Rules, which have

³ In addition, members of the JSC are required to act in a nonpartisan manner and cannot run for nor hold office while on the JSC, nor shall they take an active part in political management or campaigns. Haw. Const. art. VI § 4. JSC Commissioners serve without compensation. Id.

the force and effect of law, specifically require that the List of Nominees be confidential. In pertinent part, the JSC Rules state:

A. Under the Constitution of the State of Hawai'i, the commission's proceedings must be confidential. Therefore, all commission records, proceedings and business, including the names of all proposed nominees and the names of nominees forwarded to the appointing authority, shall be confidential and may not be discussed outside commission meetings, except among commission members, or as made necessary by Rule 9 or Rule 12, or pursuant to Rule 13.

Rule 5 § 2 of the Rules of Judicial Selection Commission.

The OIP previously opined that, based upon the express requirement in the JSC Rules that the names of all nominees forwarded to the appointing authority are confidential, a List of Nominees continued to be confidential once delivered to the Governor and was protected from disclosure by section 92F-13(4), Hawaii Revised Statutes. OIP Op. Ltr. No. 92-3 at 3-4 (Mar. 19, 1992). That conclusion, however, was materially affected by the Hawaii Supreme Court's opinion in Pray v. Judicial Selection Commission of the State of Hawai'i, 75 Haw. 333, 861 P. 2d 723 (1993) ("Pray").

In Pray, the appellant sought from the JSC, the names of nominees that had been submitted to the appointing authorities to fill judicial vacancies. Pray 75 Haw. at 339. The Supreme Court noted that it had been the consistent practice of the JSC and the appointing authorities to withhold public disclosure of the names of all judicial nominees except those actually appointed to judicial office by the appointing authorities. Id. The Supreme Court held, *inter alia*, that the JSC Rule requiring confidentiality did not apply to the Governor and Chief Justice, as appointing authorities, after the JSC has submitted the List of Nominees for consideration. Id. at 355. The Supreme Court also held that "it is within the sole discretion of the appointing authorities whether to make public disclosure of the JSC's lists of judicial nominees." Id. at 355.

In light of Pray, the OIP Opinion Letter Number 92-3 is overruled insofar as it opined that the JSC Rules prohibited the Governor from disclosing the List of Nominees.

II. THE UNIFORM INFORMATION PRACTICES ACT

The UIPA governs public access to the records⁴ of all State and county agencies. Haw. Rev. Stat. § 92F-3 (1993). The UIPA operates on the presumption that all government records are public unless an exception to disclosure applies. Haw. Rev. Stat. § 92F-11 (1993). The List of Nominees is a government record under the UIPA, as it is written information maintained by the appointing authorities. OIP Op. Ltr. No. 92-3 (Mar. 19, 1992); see also Haw. Rev. Stat. § 92F-3 (1993). Accordingly, a List of Nominees must be made available to the public unless there is an applicable exception which justifies withholding disclosure. Haw. Rev. Stat. § 92F-11(a) (1993). In examining the UIPA's exceptions to the general rule of disclosure, the OIP finds that only two of the exceptions arguably apply here and merit discussion. These two exceptions are discussed below.

A. Whether Disclosure Would Constitute a Clearly Warranted Invasion of Person Privacy

The UIPA does "not require disclosure of . . . [g]overnment records which if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-13(1) (1993).⁵ To determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy, the agency maintaining a requested record must balance the public interest in disclosure against any personal privacy interests therein. Haw. Rev. Stat. § 92F-14(a) (Supp. 2002). In balancing those interests, the public interest in disclosure to be considered is that which sheds light upon the workings of government. See OIP Op. Ltr. No. 97-10 at 5 (Dec. 30, 1997).

The UIPA lists examples of the types of information in which individuals have significant privacy interests. Specifically, section 92F-14, Hawaii Revised Statutes, provides in pertinent part:

(b) The following are examples of information in which the individual has a significant privacy interest:

⁴ "Government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (1993).

⁵ Section 92F-13, Hawaii Revised Statutes, is not a confidentiality statute that prohibits disclosure of records and information. Rather, it allows agencies to choose to withhold records and information that fall into any of the five categories listed therein.

. . .

(4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position . . .

Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2002) (emphasis added).

The OIP previously considered whether, under the UIPA, the privacy interests of nominees for appointment to various State boards and commissions outweighed the public interest in disclosure of information about the nominees. In the OIP Opinion Letter Number 91-8, noting that section 92F-14(b)(4), Hawaii Revised Statutes, recognized an individual's significant privacy interest in "nominations . . . for public employment or appointment to a governmental position," the OIP opined that unsuccessful nominees for appointment by the Governor to State boards and commissions had a significant privacy interest in individually identifiable application information. Id. at 4. The OIP further found that there was no countervailing public interest in such information about unsuccessful nominees because disclosure was "unnecessary for the public to evaluate the competence of people who were appointed." Id. (citation omitted). Balancing the unsuccessful nominees' privacy interest against the public interest in disclosure, the OIP concluded that information about the unsuccessful nominees was protected from disclosure because disclosure would constitute a clearly unwarranted invasion of personal privacy. Id.⁶

In another Opinion, the OIP found that the UIPA's exceptions to disclosure at section 92F-13, Hawaii Revised Statutes, would not permit the Judicial Council to withhold the list of nominees to fill Ethics Commission vacancies from public access. OIP Op. Ltr. No. 93-13 (Sep. 17, 1993). The Judicial Council nominates two individuals for appointment by the Governor, and unlike appointment to boards and commissions discussed in the OIP

⁶ The OIP further opined that, unlike information about unsuccessful nominees, there was a strong public interest in certain information about persons selected by the Governor to serve as board and commission members. Id. at 5. In reaching that conclusion, the OIP determined that "certain information about a Governor's nomination would shed light upon the operations of government boards and commissions, and also upon the Governor's and the Senate's role in selecting board and commission members on the public's behalf." Id. The OIP subsequently stated that "public interest would be furthered by the disclosure of a [successful] nominee's identity." Id.

Opinion Letter Number 91-8, this appointment is not subject to legislative approval. Id. at 4. The OIP opined that, although an individual has a significant privacy interest in nominations for appointment to a government position under section 92F-14(b)(4), Hawaii Revised Statutes, disclosure of the Ethics Commission nominees' identities would shed significant light upon the end product of an advisory agency's deliberations and, thus, would open up the "decisions and action[s] of government agencies" in accordance with the general principles of the UIPA. Id. at 2 (citation omitted). Also, the OIP found that "disclosure of the nominees' identities before the Governor's final appointment would permit members of the public to evaluate the two individuals nominated" and "would shed light upon the actions of the judicial and executive branches of government and the entire selection process, and would ensure that the nominees have been selected and appointed in accordance with the mandate of article XIV of the Hawaii Constitution." Id. (citation omitted). Therefore, the OIP found that the public interest in disclosure outweighed the privacy interests of the nominees, and the disclosure of the nominees' identities did not result in a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. Id. at 10.⁷

Turning to your request, as with the nominees in the Opinion Letters discussed above, the JSC's nominees to fill judicial vacancies have a significant privacy interest in the fact that they were nominated; as section 92F-14(b)(4), Hawaii Revised Statutes, specifically includes "nominations" for appointment to a government position in the list of information in which the Legislature determined that an individual has significant privacy interest.

The OIP's conclusion that the JSC's nominees have a significant privacy interest in individually identifiable information about their nomination, including the fact that they are nominated, however, is not determinative of whether the List of Nominees can be withheld from public disclosure. As discussed above, the nominees' significant privacy interests must be balanced against the public interest in disclosure, as required by section 92F-14(a), Hawaii Revised Statutes. Because the nominees' privacy

⁷ The OIP also found that, while some applicants may have been orally informed that their names would be confidential unless they were appointed by the Governor, to the extent that such oral assurances were made, they must yield to the public policy that, except as provided in section 92F-13, Hawaii Revised Statutes, each agency shall make government records available for inspection and copying by the public. OIP Op. Ltr. No. 93-22 at 2-3 (Nov. 4, 1993). Oral assurances of confidentiality must also yield to the UIPA policy requiring the balancing of an individual's privacy interest and the public interest in disclosure, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy. Id. at 3.

interests are significant, disclosure of the List of Nominees would be warranted only if there is a substantial public interest that would tip the balance in favor of disclosure.

Looking to the public interest in disclosure, the UIPA expressly notes that one of its purposes is to ensure that the decisions and actions of government agencies are conducted as openly as possible. See Haw. Rev. Stat. § 92F-1 (1993). Moreover, “[o]pening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public’s interest.” Id. In similar circumstances, the OIP previously opined that there was no public interest in information about the individuals not selected to serve on boards and commissions. OIP Op. Ltr. No. 91-8 at 4 (June 24, 1991). Considering the issue raised by the present request, however, the OIP declines to adopt that conclusion. While appointments to boards and commissions are important, appointments to judicial office have far greater impact on the public. It is an indisputable fact that rulings rendered by the judges appointed by the Governor and the Chief Justice have the power to affect the lives of each and every State resident.

Because of the importance of the judicial selection process, the OIP finds the conclusion and rationale set forth in the Opinion Letter Number 93-13 to be more compelling here.⁸ More specifically, the OIP is of the opinion that there is a strong public interest in the disclosure of the JSC’s nominees’ identities. Once a List of Nominees is received by the Governor or the Chief Justice, there is a compelling public interest in knowing who has been nominated to fill judicial vacancies and in knowing how the appointing authority reached his or her decision in selecting a judge from the List of Nominees. Disclosure of the List of Nominees would ensure the openness of the judicial appointment process and would permit the public to scrutinize the Governor’s and the Chief Justice’s appointment power. See Haw. Rev. Stat. § 92F-1 (1993).

⁸ The OIP acknowledges the distinction between the present case and the situation involving the disclosure of the identities of the State Ethics Commission nominees discussed in the OIP Opinion Letter Number 93-13. In that case, the Ethics Commission nominees, unlike the Governor’s selection from the List of Nominees, were not subject to legislative approval. Accordingly, in that situation, disclosure of the identities of the Ethics Commission nominees prior to the Governor’s selection is the public’s only opportunity to scrutinize and to comment on the nominees, including the person who will be ultimately appointed to the Ethics Commission. With the List of Nominees, once an individual is selected by the appointing authority, the public will have an opportunity to consider and comment on the nominee’s qualifications for office before the Senate.

In summary, after balancing the nominees' significant privacy interests against the public's interest in disclosure, the OIP is of the opinion that, due to importance of judicial appointments, the public interest in disclosure of the List of Nominees once delivered to the appointing authorities is the greater interest. Therefore, the OIP finds that disclosure of the List of Nominees would not be a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes.

B. Whether Disclosure Would Cause the Frustration of a Legitimate Government Function

The UIPA provides an exception to the general rule that government records are open to the public when disclosure would cause the frustration of a legitimate government function. Haw. Rev. Stat. § 92F-13(3) (1993).

1. Attorneys Will Not be Deterred from Applying for Judicial Office if List of Nominees is Disclosed

In the OIP Opinion Letter Number 91-8, in addition to concluding that disclosure of information about the unsuccessful nominees to State boards and commissions was not required because disclosure would be a clearly unwarranted invasion of personal privacy, the OIP also opined that such information fell under the "frustration" exception. OIP Op. Ltr. No. 91-8 at 5 (June 24, 1991). The OIP found that disclosure would "frustrate the appointment process because it may embarrass or cause harm to the personal or business life of applicants who were not selected and, therefore, may discourage other qualified individuals from applying to government boards and commissions." Id.

In a subsequent opinion on Ethics Commission nominees, however, the OIP concluded differently, finding "no evidence to suggest that revealing the identities of the two nominees would deter qualified individuals from applying for vacancies" and, thus, no applicable "frustration" exception to justify withholding from disclosure the names of the nominees. OIP Op. Ltr. No. 93-13 at 13 (Sept. 17, 1993). Similarly, in holding that the JSC Rules do not bar the appointing authority from disclosing the List of Nominees, the Pray Court stated:

in our view, no stigma would attach to any judicial nominee not eventually appointed to office inasmuch as all nominees are by definition deemed by the JSC to be qualified for appointment.

Pray 75 Haw. at 353. The Pray Court determined that any fear of a negative stigma attaching to judicial nominees who are not ultimately selected by the Governor or the Chief Justice is unwarranted. Id. This statement by the Supreme Court in effect, negates an argument that disclosure of the List of Nominees would result in “frustration” on the basis that qualified applicants would be deterred from applying.

With respect to the List of Nominees, the OIP concurs with the reasoning set forth in the OIP Opinion Letter No. 93-13, and as articulated by the Pray Court. The OIP does not believe that disclosure of the List of Nominees would deter qualified attorneys from applying for judicial appointments. The OIP’s discussion about the Ethics Commission nominees is equally applicable to the present issue:

[A] strong argument can be made that the fact that an individual has been selected as one of the two nominees to the Commission would be construed by most individuals and the general community as an honor, and would not operate as a deterrent to qualified applicants.

OIP Op. Ltr. No. 93-13 at 13 (Sept. 17, 1993). Accordingly, any argument that disclosure of the List of Nominees prior to the appointing authority’s selection would frustrate a legitimate government function by reducing or weakening the pool of qualified judicial candidates is not compelling and is rejected.

2. Disclosure of List of Nominees Prior to Senate Confirmation Could Prompt Inappropriate Outside Influences

The above notwithstanding, it is the OIP’s conclusion that disclosure of the List of Nominees prior to the appointing authority’s selection raises the potential for injecting partisan politics into the selection process and for manipulation of the appointment system, such that disclosure of the List of Nominees could frustrate the appointing authority’s legitimate government function of making a judicial appointment.

In creating the JSC, the Standing Committee on the Judiciary of the 1978 Hawaii Constitutional Convention (“Constitutional Convention”) emphasized its intent to remove the “consideration or influence of partisan politics” from the judicial selection process. Stand. Comm. Rep. No. 52, reprinted in 1 Proceedings of the Constitutional Convention of Hawaii of

1978 (“Proceedings”) at 620. While the Constitutional Convention’s focus was limited to the confidentiality of the List of Nominees while maintained by the JSC, its expressed intent to exclude politics from the selection process provides significant guidance in analyzing the issue presented by your letter.

The Hawaii Supreme Court likewise has recognized the potential for outside political influences being brought to bear in the selection of a judge if the public knew the identities of the judicial nominees. Pray 75 Haw. at 333. More specifically, after discussing the policy considerations behind the confidentiality provision contained in the JSC Rules, the Court stated:

It is also clear that public disclosure of the names of judicial nominees prior to appointment inevitably increases the “partisan” or “political” pressures brought to bear on the process.

...

Judges are, of course, powerful officials of the judiciary branch of government, which is coequal to the executive and legislative branches; judicial office is thus a position that is coveted by -- and on behalf of -- many persons. Over a century ago, one of our country’s preeminent political theorists recognized that “so long as government exists, the possession of its control, as the means of directing its action and dispensing its honors and emoluments, will be an object of desire.” Every aspirant to judicial office must, of necessity, have his or her supporters, detractors, and competitors. While “lobbying” of the appointing authorities by public and private citizens alike, both for an [sic] against suspected judicial nominees, might already be occurring, public disclosure of the lists of actual nominees could only intensify such partisan pressure.

Id. at 347-48 (emphasis added).

In addition to the concern that disclosing the List of Nominees would heighten the “lobbying” for or against the nominees, the Court further raised the possibility that the appointment power conveyed on the appointing authority by the Hawaii Constitution could be manipulated by the Legislature. Under the Hawaii Constitution, the person selected by the appointing authority must be confirmed by the Senate, and where a nominee is rejected by the Senate, the appointing authority makes another

appointment from the List of Nominees. Haw. Const. art. VI, § 3. The Pray Court noted:

Conceivably, if the senate were to have foreknowledge of the names of all judicial nominees on a list, it could simply “hold out” until the governor had no choice but to appoint its preferred candidate. Such a state of affairs would certainly further politicize the judicial selection process in contravention of the clearly articulated “major reasons” supporting the establishment of the JSC.

Id. at 349 (citation omitted).

The OIP agrees with the concerns expressed by the Pray Court and believes that those concerns are equally applicable, and perhaps even more important, with respect to disclosure of the List of Nominees by the appointing authorities. The judicial selection process must be as free from political maneuvering and manipulation as possible. While the likelihood of massive lobbying campaigns or Senate manipulation of the appointment process may be small, because of the power and prestige enjoyed by Hawaii judges, any potential undue influence in or tampering with the selection process must be given considerable weight. Accordingly, the OIP concludes that the possibility that the judicial appointment process would be frustrated is great and weighs in favor of permitting the appointing authorities to withhold the List of Nominees from public disclosure prior to Senate confirmation.

The OIP finds further support for its conclusion in the fact that the nominee selected by the appointing authority is subject to consent by the Senate. As discussed above, the Standing Committee on the Judiciary articulated that the establishment of the JSC was intended to, *inter alia*, “remov[e] the selection of judges from the political consideration of one person [i.e., the appointing authority]” and to maximize the consideration of “qualified candidates who might otherwise be overlooked.” Stand. Comm. Rep. No. 52, reprinted in 1 Proceedings at 620. It is apparent from the Standing Committee Report and the resulting formation of the JSC that the Constitutional Convention intended to reduce, not totally eliminate, the appointing authority’s power of judicial appointment. The appointing authority continues to have the power to select, in his or her sole discretion, any one of the nominees submitted by the JSC. For that reason, the Pray Court concluded that the Senate’s duties in the confirmation process would

not be affected by withholding disclosure of the List of Nominees until after Senate confirmation. Specifically, the Court noted:

Article VI, section 3 [of the State Constitution] expressly limits the senate's role to consenting to or rejecting judicial appointments made by the governor. . . . Because the senate does not have the express constitutional authority to "compare and contrast" the respective nominees, failure to disclose their names in the course of the senate's deliberations cannot unlawfully encroach upon the senate's duties.

Pray 75 Haw. at 354. Because the appointing authority's selection is subject to consent by the Senate, the workings of government are exposed to the public as it has an opportunity to comment to the Senate on a prospective judge prior to that person's confirmation. The confirmation process adequately avails the process to the public without frustrating the appointing authority's legitimate government function of making a selection from the List of Nominees.

Finally, the OIP notes that, although it has concluded that the Governor and the Chief Justice, as the appointing authorities, are not required by the UIPA to disclose the List of Nominees prior to Senate confirmation of an appointee,⁹ as stated earlier in this Opinion, section 92F-13(3), Hawaii Revised Statutes, is not a confidentiality statute prohibiting disclosure of records and information falling within its scope. The statute allows governmental agencies to decide to withhold records and information. As the Pray Court noted, "it is within the sole discretion of the appointing authorities whether to make public disclosure of the JSC's lists of judicial nominees." Pray at 355.

CONCLUSION

Nominees have a significant privacy interest in the fact that they have applied for a government position. Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2002). In balancing the significant privacy interest of nominees to judicial

⁹ The OIP has opined in the past that the "frustration" exception can be temporal. For example, criminal investigation records of prospective or pending proceedings are protected from disclosure under the "frustration" exception if disclosure would impede the investigation. OIP. Op. Ltr. No. 95-21 at 10-12 (Aug. 28, 1995). Here, the OIP believes that the "frustration" exception no longer applies to a List of Nominees maintained by the appointing authority after Senate confirmation. After confirmation, there is no conceivable scenario in which disclosure would frustrate the appointing authority's ability to make an appointment.

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vacancies against the public interest in disclosure, the OIP finds the public interest to be greater. Therefore, disclosure would not be a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes.

However, the facts show that public disclosure of a List of Nominees prior to selection of an appointee could subject the appointment process to outside influences and partisan pressure. Therefore, it is possible that circumstances in the future could warrant that a List of Nominees be withheld under the "frustration" exception.

Very truly yours,

Carlotta Dias
Staff Attorney

APPROVED:

Leslie H. Kondo
Director

CMD: ankd

cc: The Honorable Linda Lingle, Governor
The Honorable Ronald Moon, Chief Justice
Ms. Amy Agbayani, Chair, Judicial Selection Commission