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OPINION

Requester: State Auditor
Agency: Office of the Auditor
Date: May 4, 2007
Subject: Personnel Information in Agency's Response to Audit Report
(U RFO-G 07-52)

REQUEST FOR OPINION

Requester seeks an opinion on whether the Office of the Auditor (the "Auditor") may, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"), redact personnel information from an agency's response to an audit in order to protect the personal privacy of an audit analyst (the "Analyst"). Specifically, the information in question describes employee misconduct committed by the Analyst.

This case concerns the Auditor's audit of the Child Support Enforcement Agency (the "CSEA"), an agency under the purview of the Department of the Attorney General (the "AG"). At the time this request for an opinion was made, the Auditor had issued a draft audit of the CSEA (the "Audit Report") to which the AG had responded (the "AG's Response").¹ Since that time the final Audit Report, which includes the AG's Response as an attachment, has been issued and made public. However, the Auditor redacted the AG's descriptions of the Analyst's misconduct from the copy of the AG's Response attached to the Audit Report (the "Redacted Language").²

¹ The legislature directed the Auditor to review the performance of the CSEA since the issuance of the Auditor's January 2003 report "Study of the Automated Child Support Enforcement System (KEIKI)." Audit of the CSEA, Report No. 07-04 at 1.

² The AG's Response does not identify the Analyst by name. However, the Analyst's privacy is at issue because the descriptions of the misconduct combined with other information in the Audit Report, the AG's Response, and available public information would reveal the identity of the Analyst.

The Auditor contacted OIP for guidance prior to making the redactions. Specifically, the Auditor initially asked OIP whether the Redacted Language may properly be removed prior to attachment of the AG's response to the final Audit Report in order to protect the Analyst's privacy.³ OIP informed the Auditor that the UIPA did not dictate what information the Auditor must include in an audit report and, therefore, the proper form of the agency response to be attached to, i.e., included in, the final Audit Report was outside the purview of OIP. OIP thus confirmed to the Auditor that redaction of the personnel information from the AG's Response attached to the Audit Report would not be a violation of the UIPA.

However, OIP informed the Auditor that the UIPA issue presented by the redactions was whether, in response to a UIPA request for a copy of the AG's Response, the Auditor must provide that record without redaction. OIP advised that an agency may generally withhold personnel misconduct information that does not result in suspension or discharge for privacy reasons, and that the Auditor could request a written advisory opinion from OIP specifically addressing whether withholding of the Redacted Language is allowed. This request followed.

Unless otherwise indicated, this advisory opinion is based solely upon the facts presented in Requester's letter dated January 30, 2007 and attached materials, including a copy of the draft Audit Report and the AG's Response; and the final Audit Report (accessed on the Auditor's website).

QUESTION PRESENTED

Whether the Auditor may, in response to a UIPA request, redact from the AG's Response individually identifiable employee misconduct information about an audit analyst where that information directly impacts on the performance of the Auditor.

BRIEF ANSWER

No. OIP believes that the Auditor cannot redact this information under the UIPA's privacy exception because the public interest in the information, which directly sheds light on the performance of the Auditor, outweighs any privacy interest the Analyst may have in the information. Thus, in response to a UIPA request, the Auditor must provide a copy of the AG's Response without redaction.

³ Prior to issuing a final audit report, the Auditor creates a numbered draft of the report that is sent to the Governor, the legislative leadership, and to the affected agency. The agency being audited is allowed to review the draft report and to offer comment. The final audit report, which responds to and includes a copy of the agency's response to the draft report, is made public.

FACTS

The CSEA audit team consisted of a supervisor, an analyst-in-charge, and three analyst team members, whose audit tasks were assigned as follows:

- Team Member 1: Strategic planning
- Team Member 2: Information technology, including KEIKI
- Team Member 3: Customer service and personnel management

The Analyst was Team Member 3. During the course of the audit and after over three months of work performed on the audit, the Analyst applied for the CSEA's then-vacant position of administrator.⁴ After becoming aware of this application, Requester investigated and determined that the Analyst had violated both generally accepted government auditing standards ("GAGAS") and the Auditor's internal policies.

To address this violation with respect to the audit, the Auditor, pursuant to GAGAS, removed the Analyst from the audit team and issued a draft Audit Report that did not rely on any of the Analyst's analyses or conclusions. The Auditor explained its mitigation of this violation, deemed in audit terms a "personal independence impairment," as follows:

Further, during the course of our audit, it came to our attention that one of our auditing staff had engaged in an activity that constituted a personal independence impairment with respect to this audit engagement. Generally accepted government auditing standards require an audit organization and all individual auditors to be free, both in fact and appearance, from personal impairments of independence and that appropriate, timely measures be taken if independence is impaired. Such measures can include reporting the impairment, taking mitigating steps to remove the impairment, or withdrawing from the audit engagement.

⁴ The AG publicly disclosed the nature of the misconduct in an interview reported in the newspaper. See Jim Dooley, Child Support Enforcement Ripped, The Honolulu Advertiser, February 14, 2007, at B6. This disclosure raises the question of whether the Auditor could still withhold the Redacted Language even if it fell within the UIPA's privacy exception, given that it has already been published. Cf. OIP Op. Ltr. No. 03-02 at 6; OIP Op. Ltr. No. 05-16 (disclosure of information of public record would not constitute a clearly unwarranted invasion of personal privacy, making UIPA's privacy exception inapplicable). However, OIP need not address the question of whether the AG's action waived the application of the privacy exception for all agencies, since OIP concludes for the reasons set forth in this opinion that the privacy exception does not protect this information from disclosure.

We determined that the impairment was limited to one individual audit staff and did not impact the remaining auditors' ability to maintain objectivity and impartiality in their findings and conclusions. Thus, in accordance with generally accepted government auditing standards, the personal impairment was mitigated by immediately removing the impaired audit staff from this audit engagement. We were, therefore, not required to withdraw from the audit engagement, however, all work performed by the impaired staff member has been discounted and has not been relied upon to support any findings or conclusions contained in this report.

Draft Audit Report at 9.⁵ The Analyst subsequently resigned.

In the AG's Response, the AG claimed that the CSEA audit was flawed due to the improper actions of an important member of the audit team and objected to the Auditor's failure to fully and accurately describe the misconduct in the Audit Report. Audit Report at 54. The AG's Response included specific descriptions of the misconduct, which, as noted above, the Auditor redacted from the AG's Response attached to the final Audit Report.

DISCUSSION

The UIPA allows an agency to withhold records or information where an individual has a significant privacy interest in the records or information that outweighs the public interest in disclosure. See Haw. Rev. Stat. § 92F-13(1) (1993). The public interest to be considered is the public interest in the disclosure of official information that sheds light on an agency's performance of its statutory purpose and the conduct of government officials, or which otherwise promotes governmental accountability. See OIP Op. Ltr. No. 91-19; OIP Op. Ltr. No. 92-17.

Generally, an individual has a significant privacy interest in information in his or her personnel file and personnel file type information contained in other records. See Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2006); OIP Op. Ltr. No. 99-1. This includes information related to employment misconduct, except where the misconduct results in the employee's suspension or discharge. See Haw. Rev. Stat. § 92F-14(b)(4). In this case, the Analyst resigned from his position with the Auditor. However, OIP need not make a determination here as to whether the Analyst's misconduct would have resulted in suspension or discharge. Even assuming the Analyst would not have been suspended or discharged and, therefore,

⁵ The Auditor provided the draft Audit Report for OIP's *in camera* review in connection with this opinion. OIP maintains the confidentiality of records provided for *in camera* review and information in those records; however, the statement quoted above is no longer confidential because the Auditor has already made it public by including it verbatim in the final Audit Report.

has a significant privacy interest in the Redacted Language, OIP finds that the public interest here outweighs that significant privacy interest. See Haw. Rev. Stat. § 92F-14(a) (Supp. 2006).

The information describing the nature of the Analyst's misconduct sheds substantial light on the Auditor's performance of the CSEA audit, as well as on the overall agency functioning of the Auditor, because the misconduct directly impacted the Auditor's performance of its primary statutory purpose. Specifically, because the Analyst's misconduct violated GAGAS, the Auditor was forced to mitigate that misconduct by negating all of the Analyst's work performed on the audit over a three month period, thereby wasting government resources. Further, the timing of the misconduct apparently precluded the Auditor's ability to reassign the Analyst's portion of the audit. This reduced the scope and therefore the completeness and effectiveness of the audit. Lastly, the misconduct at a minimum caused an appearance of impropriety that raised questions regarding the impartiality and integrity of the CSEA audit.

In light of the foregoing, OIP concludes that the public interest in disclosure of the misconduct information here is significant and outweighs the Analyst's privacy interest in the information.⁶ Accordingly, OIP concludes that the Auditor cannot withhold the Redacted Language in response to a UIPA request for access to an unredacted copy of the AG's response.

OFFICE OF INFORMATION PRACTICES

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APPROVED:

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⁶ The information of public interest is the description of the Analyst's misconduct relating to the CSEA audit, rather than the Analyst's identity. However, given the balancing of interests above, disclosure of the misconduct information must be made even though it will reasonably lead to identification of the Analyst.