

OIP Guidelines

Office of the Lieutenant Governor

Office of Information Practices

Subject: DISCLOSURE OF PERSONNEL RECORDS		
Guideline No. 2	Date of Issuance: 6/6/2001	Effective Date: 6/6/2001
Revises: OIP Guidelines No. 1	File Under: Chapter VI UIPA Reference Manual	Table of Contents

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DISCLOSURE OF PERSONNEL RECORDS

A. INTRODUCTION

1. What is this Document?

These are guidelines about the disclosure of government records concerning State and county employees (“personnel records”) under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”). These guidelines revise OIP Guidelines No. 1 issued May 1, 1991, on the same subject matter. These guidelines do not have the force and effect of law, but are intended to assist State and county government agencies in understanding what personnel records must be disclosed under the UIPA.

2. To Whom do the Guidelines Apply?

These guidelines apply to the personnel records of all State and county government agencies, including the executive branch agencies, the State legislature, the county councils and the administrative functions of the State judiciary.

B. GENERAL PRINCIPLES REGARDING AN AGENCY’S DISCLOSURE DUTIES

1. An agency **IS REQUIRED** to do the following:

- a) **Allow Inspection and Duplication.** Upon request by any person, the agency must make disclosable records, such as those listed in Part C below, available for inspection and duplication during regular business hours. Haw. Rev. Stat. § 92F-11(b) (1993).
- b) **Segregate Disclosable Information.** When a person requests to inspect or duplicate disclosable information, the agency must redact any portion of the record which is exempt from public access and allow inspection and duplication of the disclosable information so long as the

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record is reasonably segregable. See OIP Op. Ltr. No. 89-5 (Nov. 20, 1989).

- c) **Comply with Chapter 2-71, H.A.R.** When an agency receives a record request, it should respond following the OIP's administrative rules at Chapter 2-71, Hawaii Administrative Rules, entitled "Agency Procedures and Fees for Processing Government Record Requests." These rules may be downloaded from the OIP's webpage at www.state.hi.us/oip.
- 1) An **informal record request** is a request in any form that an agency responds to following section 2-71-11, H.A.R. For "informal" requests, the agency should:
 - a. provide the record in a reasonably timely manner, and if fees are to be charged, the amount or an estimate should be provided prior to processing the request;
 - b. deny the request, if allowed by law, but if the requester disagrees with the denial, the agency shall advise the requester of the option of submitting a formal request;
 - c. advise the requester that the agency does not maintain the record; or
 - d. inform the requester to submit a formal request. Haw. Admin. Rules § 2-71-11 (1998).
 - 2) A **formal record request** is in written, electronic, or other physical form, and contains information required by section 2-71-12(b), H.A.R. The OIP has a model form titled "Request to Access a Government Record" that persons may use to make a formal record request. This form may be downloaded from the OIP's webpage. For "formal requests," the agency should:

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- a. disclose the record within a reasonable time, not to exceed ten business days, if it is:
 1. required to be disclosed in its entirety under section 92F-12, Hawaii Revised Statutes; or
 2. otherwise public in its entirety.
- b. For other records, including those that must be segregated, the agency should:
 1. provide notice in accordance with section 2-71-14, H.A.R., within ten business days. The OIP has a model form titled "Notice to Requester" that an agency may use to respond to a formal record request. This form may be downloaded from the OIP's webpage; and
 2. disclose the record within five business days of providing notice (or after receiving a prepayment, if applicable).
- 3) **Extenuating Circumstances.** When extenuating circumstances exist in accordance with section 2-71-15, H.A.R., an agency may provide written acknowledgment prior to giving notice. The notice may then be given no later than 20 days following receipt of the request. Haw. Admin. Rules § 2-71-13(c). The agency must then give proper notice and provide access to the record within 5 business days of providing notice (or after receiving a prepayment, if applicable) unless it is exempt from disclosure.

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- 4) **Forwarding Requests.** When an agency receives a request that should have been directed to another unit within the agency, the agency shall promptly forward the request to the head of the department. Haw. Admin. Rules § 2-71-13(d).
2. An agency **MAY** Charge Fees. Agencies are allowed to charge the following fees:
 - a) **Search, Review and Segregation.** Sections 2-71-31 and 33, H.A.R., discuss when and how much agencies may charge for search, review, and segregation of records. Agencies have discretion to impose these fees; they are not mandatory. If fees for search, review, and segregation are imposed, the agency shall not assess the first \$30. Haw. Admin. Rules § 2-71-31.
 - b) **Copying.** Section 92-21, Hawaii Revised Statutes, provides that agencies may charge for copies of government records.
 - c) **Other Lawful Fees.** Agencies may charge any other lawful fees.
 3. An agency **IS NOT REQUIRED** to:
 - a) **Create a Roster.** The UIPA does not require the agency to create a roster of employees. Haw. Rev. Stat. § 92F-12(a)(14) (Supp. 2000). The agency must disclose a roster of employees that exists and is maintained by the agency.
 - b) **Summarize or Compile.** The UIPA does not require the agency to prepare a compilation or summary of records unless the information is readily retrievable in the form requested. Haw. Rev. Stat. § 92F-11(c) (1993).

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C. PERSONNEL RECORDS DISCLOSABLE TO THE PUBLIC

Upon request by any person, an agency shall disclose the following records or information about any current or former officer or employee of the agency that the agency maintains (**EXCEPT information about present or former employees involved in an undercover capacity with a law enforcement agency**):

1. Name.*
2. Education and training background including for unpaid consultants.*
3. Previous work experience (NOT including the individual's non-government employee history, except as necessary to demonstrate compliance with requirements for a particular government position; see Part F (4)).*
4. Compensation as follows:
 - a) Salary range for employees covered by or included in chapters 76, 77, and 297, and sections 302A-602 to 302A-640, and 302A-701, or bargaining unit (8); and
 - b) Actual gross salary for all other employees.*
5. Dates of first and last employment in any government position.*
6. Job title.*
7. Job description.*
8. Type of appointment (permanent/temporary, etc.).*
9. Occupational group or class code.*

* Section 92F-12(a)(14), Hawaii Revised Statutes, expressly makes this information public.

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10. Position number.*
11. Service computation date.*
12. Work week code.
13. Number of hours worked per pay period.
14. Employing agency name.*
15. Employing agency code.*
16. Department.*
17. Division.*
18. Branch.*
19. Office.*
20. Section.*
21. Unit.*
22. Island of employment.*
23. Business address.*
24. Business telephone number.*
25. Work location address, including building name, street number, street name, floor/room number, city, state, and zip code.

* Section 92F-12(a)(14), Hawaii Revised Statutes, expressly makes this information public.

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26. List of government facilities (if one exists).
27. Bargaining unit code.*
28. Bargaining unit status (included/excluded).
29. Exclusion designation code (indicating the bargaining unit from which the employee is excluded).
30. Reason for exclusion from bargaining unit.
31. Date of exclusion from bargaining unit.
32. Attendance and leave records (NOT including any medical information).
See OIP Op. Ltr. No. 90-17 (April 24, 1990).
33. Applications for leave of absence.
See OIP Op. Ltr. No. 90-17 (April 24, 1990).
34. Membership on search committee.
See OIP Op. Ltr. No. 90-16 (April 24, 1990).
35. After the highest non-judicial grievance adjustment procedure has concluded, a written decision sustaining the suspension or discharge has been issued, and thirty calendar days have elapsed following issuance of the decision, the following information related to employment misconduct that results in an employee's suspension or discharge: (1) name of employee, (2) nature of the employment related misconduct, (3) agency's summary of the allegations of misconduct, (4) findings of fact and conclusions of law, and (5) disciplinary action taken by the agency.

* Section 92F-12(a)(14), Hawaii Revised Statutes, expressly makes this information public.

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This provision does not apply to county police department officers except in a case that results in the discharge of the officer.

See Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2000). **NOTE: In State of Hawaii Organization of Police Officers v. Society of Professional Journalists—University of Hawaii Chapter, 83 Haw. 378, 927 P.2d 386 (1996) (“SHOPO”), the Hawaii Supreme Court ruled that there is no constitutional right to privacy regarding a police officer’s misconduct in the course of his duties that results in discharge. In the OIP Opinion Letter Number 97-1, (Feb. 21, 1997), the OIP opined based on SHOPO, that disclosure of information about suspended police officers is not a clearly unwarranted invasion of personal privacy.**

D. DISCLOSURE OF PERSONNEL RECORDS TO EMPLOYEE ORGANIZATIONS

1. **Personnel Records Required to be Disclosed.** An agency shall disclose to an employee organization the following personnel records, although some of these records may not be required to be disclosed to the public in general under the UIPA:
 - a) **Public Records.** All personnel records listed in part C above that are disclosable to the public.
 - b) **Records About Mandatory or Voluntary Deductions Remitted to the Employee Organization from Payroll or Allowances.** The following information (**EXCEPT** records relating to present or former employees involved in an undercover capacity with a law enforcement agency):
 - 1) Name.
 - 2) Social security number.
 - 3) Amounts and dates of voluntary and mandatory payroll deductions remitted to the recipient. Haw. Rev. Stat. §§ 40-54.5 and 88-103.5 (1993 & Supp. 2000).

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- 4) Records of its retirants and beneficiaries to the Hawaii public employees' health fund for the disbursement of payments authorized under section 87-27, Hawaii Revised Statutes. Haw. Rev. Stat. § 88-103.5 (Supp. 2000).
- c) **Records About Payroll Deductions Remitted to the Employee Organization as Exclusive Representative.** The following information (**EXCEPT** records relating to present or former employees involved in an undercover capacity with a law enforcement agency):
- 1) Name.
 - 2) Mailing address.
 - 3) Social security number.
 - 4) Bargaining unit.
 - 5) Date of change in bargaining unit status.
 - 6) Full time equivalence.
 - 7) Leave without pay status (including effective dates and duration).
 - 8) Basic rate of pay.
 - 9) Types and effective dates of personnel actions that affect the amount and payment of the basic rate of pay.
 - 10) Salary scale and range or equivalent.
 - 11) Salary step or equivalent.
 - 12) Amounts and dates of differential pay.
 - 13) Amounts and dates of statutory dues deductions; and
 - 14) Amounts and dates of other authorized voluntary payroll deductions remitted.
- Haw. Rev. Stat. § 89-16.6 (1993).
- d) **Records Relevant to a Grievance.** An employee's personal records which are "relevant" to the investigation or processing of a grievance by the employee organization as exclusive representative. Haw. Rev. Stat. § 89-16.5 (1993).

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Note: Any agency needing guidance about which records are relevant to the investigation or processing of a grievance should contact its Deputy Attorney General or Deputy Corporation Counsel. See OIP Op. Ltr. No. 90-14 (March 30, 1990).

2. Restrictions on Disclosure of Personnel Records by Employee Organizations; Notice to Employee.

- a) When obtaining access to records under D.1.b) and c) above, the employee organization shall be subject to the same disclosure restrictions as the originating agency. Haw. Rev. Stat. §§ 40-54.5 (1993), 88-103.5, and 89-16.6 (Supp. 2000).
- b) When receiving access to records under D.1.d) above, the employee organization shall:
 - 1) Not share or disclose the specific information contained in the personal records; and
 - 2) Shall notify the employee that access has been obtained. Haw. Rev. Stat. § 89-16.5 (1993).

E. GENERAL PRINCIPLES ABOUT PERSONNEL RECORDS NOT REQUIRED TO BE DISCLOSED

1. An agency **IS NOT** required to disclose information in a personnel record which falls within any of the following exceptions to disclosure provided in section 92F-13, Hawaii Revised Statutes (unless E.2. below applies):
 - a) Records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy (further explanation provided in Part F below);

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- b) Records pertaining to the prosecution or defense of any judicial or quasi-judicial action in which the State or county is or may be a party, to the extent that the records would not be discoverable;
 - c) Records that must be confidential in order for the government to avoid the frustration of a legitimate government function;
 - d) Records that are protected from disclosure pursuant to State or federal law, including an order of any State or federal court; and
 - e) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.
Haw. Rev. Stat. § 92F-13 (1993).
2. An agency **IS** required to disclose a personnel record which would otherwise be exempt from public inspection or duplication when:
- a) The agency is required to make an accessible personnel record available to the individual to whom it pertains under part III of chapter 92F, Hawaii Revised Statutes. Haw. Rev. Stat. § 92F-21 (1993). This includes “unofficial” files maintained on an individual. OIP Op. Ltr. No. 94-29 (Dec. 30, 1994).
 - b) The personnel record is disclosed to another government agency under any one of the permissible conditions described in section 92F-19, Hawaii Revised Statutes. Haw. Rev. Stat. § 92F-19 (1993).
 - c) The requesting person has the prior written consent of all individuals to whom the record refers. Haw. Rev. Stat. § 92F-12(b)(1) (Supp. 2000).

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- d) Compelling circumstances affecting the health or safety of any individual are shown. Haw. Rev. Stat. § 92F-12(b)(3) (Supp. 2000).
 - e) Disclosure is authorized by federal law, a statute of this State, an order of a court, or a subpoena from the State legislature. Haw. Rev. Stat. § 92F-12(b)(2),(4),(5) (Supp. 2000).
3. **Subpoenas.** When an agency receives a subpoena for personnel records covered by an exception listed in E.1. above, the agency should contact its Deputy Attorney General or Deputy Corporation Counsel for advice. The agency shall disclose the records if a court orders disclosure.
- F. PERSONNEL RECORDS NOT REQUIRED TO BE DISCLOSED UNDER THE UIPA'S EXCEPTION FOR PERSONAL PRIVACY**
- 1. **Personal Privacy Exception.** An agency should not allow public inspection or duplication of a personnel record which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. Haw. Rev. Stat. § 92F-13(1) (1993).
 - 2. **Balancing Test.** To determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy, the UIPA's balancing test must be applied: *if the public interest in disclosure outweighs any privacy interests in a government record, disclosure would not constitute a clearly unwarranted invasion of personal privacy.* Haw. Rev. Stat. § 92F-14(a) (Supp. 2000).
 - 3. **How to Apply the Balancing Test.**
 - a) If an individual's privacy interest in a personnel record is **significant** (see examples in F.4. below), it is weighed against the public interest in disclosure:
 - 1) If the privacy interest outweighs the public interest, the information is confidential; and

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- 2) If the public interest outweighs the privacy interest, the information is public.
 - b) When balancing the privacy rights of an individual against the public interest in disclosure, the public interest to be considered is that which sheds light upon the workings of government. OIP Op. Ltr. No. 93-20 at 7 (Dec. 30, 1993). The OIP reached this conclusion by looking at:

[t]wo basic policies served by the UIPA, which are to “[p]romote the public interest in disclosure” and to “[e]nhance governmental accountability through a general policy of access to government records.” Haw. Rev. Stat. § 92F-2 [1993]. Further, in enacting the UIPA, the Legislature declared that “it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of government agencies--shall be conducted as openly as possible.” Haw. Rev. Stat. § 92F-2 [1993].
 - c) If an individual’s privacy interest is not significant, then a “scintilla” of public interest will require the disclosure of the personnel record. 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).
 - d) Questions about applying the balancing test to specific information in a record should be directed to the OIP or the agency’s attorney.
4. **Significant Privacy Interest; Examples.** An individual has a significant privacy interest in the following information or records. Therefore, the significant privacy interest must be balanced against the public interest in disclosure as explained in F.3. above:

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- a) Home address.
See OIP Op. Ltr. No. 89-16 (Dec. 27, 1989).
- b) Home telephone number.
See OIP Op. Ltr. No. 89-16 (Dec. 27, 1989).
- c) Birthdate.
See OIP Op. Ltr. No. 90-7 (Feb. 9, 1990).
- d) Social security number.
See OIP Op. Ltr. No. 90-7 (Feb. 9, 1990).
- e) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation (other than directory information while an individual is present at a government facility).
Haw. Rev. Stat. § 92F-14(b)(1) (Supp. 2000).
- f) Applications (e.g. employment, employment benefits).
Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2000).
- g) Nominations.
Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2000).
- h) Recommendations (e.g. employment).
Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2000).
- i) Proposals for public employment or appointment to a government position. Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 2000).
- j) Nongovernmental work experience for non-employees (**EXCEPT** records necessary to demonstrate compliance with requirements for a particular government position). Haw. Rev. Stat. § 92F-14(b)(5) (Supp. 2000).

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- k) Financial information (e.g., an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness).
Haw. Rev. Stat. § 92F-14(b)(6) (Supp. 2000).
- l) Personal recommendations.
Haw. Rev. Stat. § 92F-14(b)(8) (Supp. 2000).
- m) Evaluations.
Haw. Rev. Stat. §92F-14(b)(8) (Supp. 2000).
- n) Civil service examination scores.
See OIP Op. Ltr. No. 90-14 (Mar. 30, 1990).
- o) Information relating to retirement allowance or pension benefits.
See OIP Op. Ltr. No. 90-1 (Jan. 8, 1990).

NOTE: The issue of whether privacy rights that existed while a person was alive can still be exercised after their death is not fully settled in this state. The OIP has issued an opinion letter indicating that no privacy rights in government records exist after death. See OIP Op. Ltr. No. 97-2 (Mar. 11, 1997).

The privacy rules recently adopted by the federal Department of Health and Human Services, which became effective April 14, 2001, recognize a privacy interest in protected health information following an individual's death. Standards for Privacy of Individually Identifiable Health Information, to be codified at 45 C.F.R. § 164-502(f). The Department of Health and Human Services has sought additional public comment on the entire regulation. This provision may be amended.

When the issue arises as to whether there is a privacy interest in information relating to a deceased individual, an agency

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should consult with the OIP, or with its Deputy Attorney General or Deputy Corporation Counsel.

G. OTHER PERSONNEL RECORDS

If you have any questions about whether a personnel record not listed in these guidelines is public or confidential, or any other questions about the UIPA, please contact the OIP at:

Office of Information Practices
No. 1 Capitol District Building
250 South Hotel Street, Suite 107
Honolulu, Hawaii 96813
Telephone: (808) 586-1400
Facsimile: (808) 586-1412
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