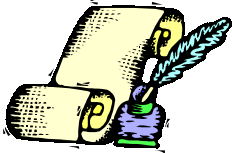


## Opinion Letter Summaries: UH, Tourism, Police Commission

### ✉ *Evaluation and Expectations of University of Hawaii President*

The University of Hawaii (“UH”) Board of Regents’ evaluation of UH President Evan Dobbelle dated October 26, 2003 (“Evaluation”) and the Expectations and Performance Guidelines 2003-2004 prepared by the Board of Regents relating to President Dobbelle (“Expectations”) are public under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“HRS”).



The OIP found that President Dobbelle has a significant privacy interest in the Evaluation and the Expectations. His privacy interest, however, is diminished by the fact that he is a public figure by virtue of his position as UH President. When balanced against the public interest in knowing how the Board of Regents is performing its duties, including the employment of the UH president, as well as in knowing how President Dobbelle is performing his job, the OIP concluded that the public interest is greater.

Accordingly, UH cannot withhold the Evaluation and the Expectations, as disclosure would not be a clearly unwarranted invasion of personal privacy under section 92F-13(1), HRS. This Opinion does not imply that evaluations of employees who are not in high ranking positions are public. [OIP Op. Ltr. No. 04-07, March 25, 2004]

### ✉ *Tourism Data*

The Department of Business, Economic Development and Tourism (“DBEDT”) asked the OIP if it can charge a requester for segregating information that a business has designated, with DBEDT’s concurrence, as proprietary and subject to withholding under the UIPA. The OIP responded that DBEDT can charge, assuming that the information segregated does indeed fall within an exception to disclosure under the UIPA.



DBEDT asked if, when a second person requests the same record, DBEDT can also charge the second requester for segregating the same information. If

DBEDT still has an already-segregated copy of the record, it cannot charge the second requester.

DBEDT also asked if it can selectively disclose, to only Hawaii businesses, compiled information that does not identify specific businesses or include competitively sensitive information. In the absence of a statute authorizing selective disclosure, access to public records

See OIP Opinions, p. 2

### Distribution of Opinion Letters

To conserve limited resources, the Office of Information Practices will discontinue distributing opinion letters in paper format to all non-government agency recipients effective April 30, 2004.


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All 275 prior opinion letters (as of April 2004), including summaries as well as the full text, are available on the OIP’s web site. Just select “Opinions” for an index from Op. Ltr. 89-01 (September 11, 1989) to the present.

### 2004 Opinion Letters

- 04-01 (January 13, 2004): Board Members Discussion of Official Business Outside of a Duly Noticed Meeting; E-Mail Communication
- 04-02 (February 3, 2004): Office of Disciplinary Counsel and Disciplinary Board
- 04-03 (February 9, 2004): Tourism Data
- 04-04 (February 20, 2004): Board Decisionmaking Outside of Open Meetings
- 04-05 (February 23, 2004): Honolulu Police Commission Records
- 04-06 (March 23, 2004): Disclosure of Court Abstracts
- 04-07 (March 25, 2004): Evaluation and Expectations of University of Hawaii President
- 04-08 (April 2, 2004): Lists of Voters 

## OIP Opinions (from p. 1)

may not be restricted to only those requesters who intend to use the information for certain purposes.



Finally, DBEDT asked if it can selectively charge a requester the market value of requested information, and if not, would legislation be required to sell information at market value to

a specific group of requesters. The OIP responded that unless an agency has specific statutory authority to sell information at market value, it may not do so.

The UIPA permits only fees for search, review, and segregation functions and other lawful fees (such as for copies and postage). [*OIP Op. Ltr. No. 04-03, February 9, 2004*]

### ℞ **Honolulu Police Commission Records**

A member of the public requested access to records of the Honolulu Police Commission (“Commission”) pertaining to investigations of complaints against police officers convicted of police brutality.



The Commission routinely destroys records after 30 months, and thus maintained no

records responsive to the record request. The OIP therefore provided the Commission with general advice on how to respond to future similar requests.

First, although the Commission adopted a rule that makes its investigative reports confidential, the rule is not a “state law” for purposes of the UIPA, and cannot be used to avoid disclosure of records that are otherwise public under the UIPA. The UIPA, not the Commission’s rules, dictates whether its records of the investigations may be withheld.

Assuming the Commission maintains records pertaining to a criminal conviction of a police officer, they are presumed public under the UIPA, subject to the exceptions at section 92F-13, HRS. Information about individuals mentioned in Commission investigations may be withheld from public disclosure to the extent that disclosure would constitute “a clearly unwarranted invasion of personal privacy” under section 92F-13(1), HRS.

In addition, agencies are not required to disclose government records that must be confidential for the government to avoid the frustration of a legitimate

government function. Haw. Rev. Stat. § 92F-13(3) (1993). This exception applies to certain records or information compiled for law enforcement and other purposes. Public information which is reasonably segregable from nonpublic information, however, should be made available.

The decision of whether to deny access to investigative records must be made on a case-by-case basis; and the OIP advised the Commission to consult with the OIP or its own attorney upon receipt of a record request. [*OIP Op. Ltr. No. 04-05, February 23, 2004*]

### ℞ **Disclosure of Court Abstracts**

The Judiciary asked the OIP whether the UIPA requires public access to court abstracts and miscellaneous criminal abstracts of the Traffic Violations Bureau of the District Courts.

The Judiciary provided information to OIP concerning court abstracts, but not miscellaneous criminal abstracts (which are apparently rarely used). Thus, with



the Judiciary’s agreement, the opinion is limited to the court abstracts.

The UIPA governs the public’s right to inspect and copy records maintained by an agency. See Haw. Rev. Stat. §§ 92F-3 (definitions of “government record” and “personal record”), 92F-11 (access to government records), and 92F-21 (access to personal records) (1993). The UIPA specifically defines “agency” to exclude “the non-administrative functions of the courts of this State.” Thus, the UIPA does not apply to records associated with the nonadministrative functions of the courts.

The OIP opined that court abstracts are not subject to the UIPA because the court abstracts are part of the non-administrative functions of the courts, and hence are not maintained by an “agency” subject to the UIPA. [*OIP Op. Ltr. No. 04-06, March 23, 2004*] 📄

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