

Summaries of Recent UIPA Opinions



☛ Charter Provision Providing Greater Disclosure

The Department of Finance, County of Kauai (“Finance”) asked the OIP for an opinion concerning the disclosure of the job titles and the exact salaries of covered employees by Finance to the Kauai County Council (“Council”).

Finance asked whether a provision in the Revised Charter of the County of Kauai (“Charter”), requiring the Council to make the information publicly available upon its receipt from Finance, is in conflict with and contrary to the UIPA provision that recognizes a covered employee’s significant privacy interest in such information.

The OIP found that a county charter provision requiring disclosure of the exact salaries of covered employees is not contrary to the UIPA. The UIPA is premised on disclosure, i.e., on allowing public access to records maintained by state and county agencies. While the UIPA confers on an agency the discretion to withhold certain types of records (or certain types of information contained in records), it does not require an agency to deny access to those records.

Accordingly, the OIP does not believe that a county charter provision that requires disclosure of records that could otherwise be withheld under the UIPA violates or otherwise contradicts the statute. [*OIP Op. Ltr. No. 05-03, January 19, 2005*]

Note: See this month’s OpenPoint, on the right, for a detailed explanation of the privacy exception.

☛ Transcript of Administrative Hearing Protected by Confidentiality Statute

The UIPA authorizes agencies to withhold access to government records when a confidentiality statute explicitly restricts access to those records. Section 383-95(a), HRS, requires that information concerning unemployment compensation determinations be confidential and only made available as necessary to process a particular claim.

See OIP Opinions, p. 2

OpenPoint

OpenPoint focuses on UIPA and Sunshine Law concepts that frequently arise.

The Privacy Exception

In adopting the UIPA, the Legislature stated that “[t]he policy of conducting governmental business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in . . . the Constitution of the State of Hawaii.” To do so, the Legislature provided a privacy exception to the UIPA at section 92F-13(1), HRS. This exception allows an agency to withhold government records from the public where disclosure would be “a clearly unwarranted invasion of personal privacy.”

To make this determination, a balancing test must be applied to the specific factual situation in which an agency is seeking to invoke the exception. To constitute a “clearly unwarranted” invasion of personal privacy, the identified privacy interest of the affected individual must outweigh the public interest in disclosure.



The legislature has further instructed that unless a privacy interest is “significant,” even a “scintilla of public interest in disclosure” will outweigh a privacy interest and thereby require disclosure. To assist, the Legislature has provided specific examples of information in which an individual has a “significant” privacy interest. These examples are set forth at section 92F-14(b), HRS.

Although the UIPA is not a confidentiality statute, i.e., it does not prohibit agencies from allowing access to records that fall within one of the exceptions to disclosure, where disclosure of the records would constitute a clearly unwarranted invasion of privacy, the OIP suggests generally that agencies refrain from exercising their discretion to disclose those records. Because certain privacy interests may be protected under Hawaii’s Constitution, if an agency is inclined to allow public access to records that it is authorized to withhold under the UIPA’s privacy exception, the OIP strongly recommends that the agency consult with its attorney for guidance prior to disclosure to the public. 📄

OIP Opinions (from p. 1)

After an unemployment compensation hearing is concluded and where neither the claimant, the employer, nor the Department of Labor and Industrial Relations seeks



to appeal within the statutory time limit, the transcript of the hearing is no longer necessary to process a particular claim. Therefore, according to section 383-95(a), HRS, the transcript is confidential.

Moreover, section 92F-4, HRS, waives compliance with the UIPA when compliance would cause an agency to lose or be denied funding, services, or other assistance from the federal government. In order for states to be certified to receive payment from the United States Department of Labor, federal law requires that the states adopt laws that provide for methods of administration determined by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due. This requirement has been interpreted by the Secretary of Labor to require confidentiality of unemployment compensation information.

Accordingly, the transcript of the hearing is not required to be disclosed as the time for appeal has passed, and the provisions of the UIPA are waived to the extent necessary to protect eligibility for federal funding. [OIP Op. Ltr. No. 04-18, November 15, 2004]

Personal Calendars and Telephone Message Slips Not Government Records

The OIP found it to be consistent with the definition of “government record” under the UIPA and its legislative history to distinguish between records held by an agency official in his or her personal capacity versus official capacity.



In line with other state and federal courts that have similarly construed other open records laws, the OIP found that the determination of whether or not a record is a “government record” subject to disclosure under the UIPA or a personal record of an official depends on the totality of circumstances surrounding its creation, maintenance, and use.

The records at issue were the personal appointment or scheduling calendars (the “Calendars”) and telephone

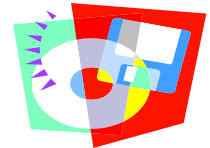
message slips of certain current and former officials of the City and County of Honolulu (the “City Officials”).

Through the Corporation Counsel, the City Officials represented that their Calendars and telephone message slips are not required to be kept or maintained to document their official functions but are created solely for their personal convenience; are not circulated or intended for distribution within agency channels for official purposes, such as notifying others of their schedules; are not integrated into agency files but are maintained in a way indicating a private purpose with limited access by their respective secretaries; are not under agency control; and may be discarded at their sole discretion.

Based upon the totality of these representations, the OIP found the Calendars and the telephone message slips generally to be personal records of the City Officials and not “government records” subject to disclosure under the UIPA. [OIP Op. Ltr. No. 04-17, October 27, 2004]

Records to be Provided in Requested Format

Government records required to be disclosed under the UIPA that are maintained in electronic format generally must be provided to a requester in paper format if requested. Under the UIPA and the OIP rules, an agency must make reasonable efforts to accommodate record requesters.



In this instance, the agency maintained a business directory in electronic format with public access available through its website. The agency could, however, convert the directory to paper format without unreasonable interference with its functions.

Accordingly, the OIP instructed the agency that, although it could advise requesters of the directory’s availability on its website, it must provide a paper copy of that directory when so requested. Prepayment of fees authorized by the OIP rules can be required. [OIP Op. Ltr. No. 04-16, September 22, 2004]

Openline is a monthly publication of the Office of Information Practices, State of Hawaii.

Director: Leslie H. Kondo
 Editor: Michael V. Little
 Address: No. 1 Capitol District Building
 250 S. Hotel St., Suite 107
 Honolulu, Hawaii 96813

Phone: (808) 586-1400

Fax: (808) 586-1412

Internet: www.hawaii.gov/oip

email: oip@hawaii.gov

