

*The Office of Information Practices (“OIP”) is charged with the administration of Hawaii’s open records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (the “UIPA”), and Hawaii’s open meetings law, part I of chapter 92, HRS (the “Sunshine Law”).*

## OIP Formal Opinion Letters

### **UIPA** Ethics Commission Opinions

OIP was asked whether the City Ethics Commission should provide access to two Commission Advisory



Opinions in a manner that would disclose the identities of the subject employees whose misconduct is discussed.

Specifically, the Commission first asked whether it should disclose Advisory Opinion A in full, thus identifying a mid-level supervisor (Employee A), where (1) the Commission’s recommendation of suspension or discharge is not followed by the appointing authority; or (2) the employee has been suspended or discharged, but the administrative grievance period provided in HRS § 92F-14(b)(4) has not run.

OIP found that Opinion A did not present particular circumstances or facts that would bolster the public’s interest in disclosure and thereby outweigh Employee A’s significant privacy interest in the misconduct information. Accordingly, the Commission should, under the UIPA’s privacy exception, redact information that may reasonably identify Employee A before disclosing Opinion A.

Second, the Commission asked whether Advisory Opinion B, involving a lower level employee (Employee B), should be withheld in its entirety from public disclosure because the subject matter of the opinion would allow Employee B to be identified.

OIP found that Opinion B did not present extraordinary facts that heightened the public’s interest in disclosure, and therefore Employee B’s identity should be withheld under the UIPA’s privacy exception. Because it was not possible to redact Opinion B to prevent disclosure of Employee B’s identity, the Commission should withhold Opinion B from public disclosure in its entirety to prevent disclosure of Employee B’s identity. [OIP Op. Ltr. No. 10-03]

See OIP Formal Opinions, p. 2

### Reminder

## Legislation Affecting the UIPA or Sunshine Law



One of OIP’s roles is to recommend legislation and to provide guidance to agencies and the Legislature concerning legislation affecting records disclosure under the UIPA or access to meetings under the Sunshine Law. This includes offering testimony regarding any proposed bill that would affect the UIPA or Sunshine Law.


OIP wants to remind both the public and government agencies that they may seek legal guidance from OIP prior to submitting any proposed legislation by simply contacting OIP through our Attorney of the Day program. Through this program, OIP offers general, informal advice usually within the same day.



With respect to proposed legislation, a call to OIP prior to submission of legislation is often a more effective and efficient method for both OIP and the submitter to address

possible concerns that OIP would otherwise need to raise through testimony.

Accordingly, please call OIP if your board or agency intends to submit legislation that proposes to do any of the following:

- (1) insert, delete or amend any provision in the UIPA (chapter 92F) or the Sunshine Law (part I of chapter 92);
- (2) create a confidentiality provision;
- (3) exempt information or records from the UIPA;
- (4) exempt a board from the Sunshine Law;
- (5) create a hybrid public-private board with various community members and government officials or government board members. 

## OIP Formal Opinions (cont. from p. 1)

### **UIPA** *Settlement Proceeds Paid by County's Private Insurers*

Kauai County asked whether the County could keep confidential the amounts paid under its private liability insurance policies to settle claims against the County related to the Ka Loko Dam breach on March 14, 2006 (the Insurance Proceeds).



OIP opined: (1) that the Insurance Proceeds could not be kept confidential based upon a confidentiality clause in the settlement agreement because such a clause must yield to the UIPA's provisions; and (2) that no UIPA exception allows the County to withhold the Insurance Proceeds from public disclosure.

In so finding, OIP rejected a distinction between settlement payments made from public coffers versus private insurance proceeds. OIP found that the County's total settlement amount reflects the expenditure of public funds, either directly from County coffers or indirectly through the payment of insurance premiums. [OIP Op. Ltr. No. 10-01]

### **UIPA** *Form of Record; Limitation on Employer Actions*

Requester asked OIP whether the University of Hawaii properly denied Requester's request for all UH faculty names and e-mail addresses (faculty e-mail list) in electronic form, and whether statements made by UH concerning his use of the record it disclosed violate the UIPA.



OIP found that UH is not required to compile the faculty e-mail list if it is not "readily retrievable."

Further, UH need not provide access to information in an electronic form if information in that form is protected under a UIPA exception to disclosure and cannot be segregated.

OIP also found that UH is not prohibited from limiting its employees' use of information obtained under a UIPA request because the UIPA does not provide an affirmative right to use such information without repercussion. Thus, UH's notice to Requester that its internal policy prohibited use of its electronic mail system by its employees in the manner intended by Requester did not violate the UIPA. [OIP Op. Ltr. No. 10-02]

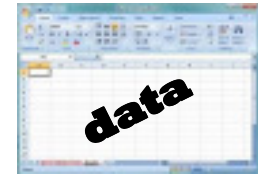
"Can I get it?"

Access



or Not

The agency maintains data on an Excel worksheet and in a Word document. Can I get copies of that information in Excel and Word?



An agency is usually required to provide the information in the electronic form requested unless an exception to the UIPA allows the agency to withhold information that cannot be redacted, such as embedded data. See OIP Op. Ltr. No. 10-02.

### **UIPA** *RICO Investigative Records*

OIP was asked whether the Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs (RICO) properly withheld all investigative records related to its petition for disciplinary action filed against the vocational license of an individual where the administrative proceeding on that petition was ongoing at the time the UIPA request was made.



OIP opined that because an administrative proceeding was ongoing, section 92F-22(4), HRS, generally allowed RICO to withhold access to its investigative report and other materials related to that proceeding.

However, certain records that were already public, or that were created by or were in the possession of the individual, should have been disclosed if disclosure would not have frustrated RICO's exercise of a legitimate government function. [OIP Op. Ltr. No. 09-03]

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