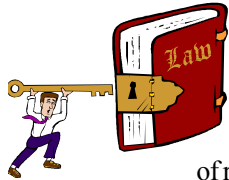


Public Employee Salaries and the UIPA

The Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“HRS”) (“UIPA”), governs the disclosure of records maintained by a State or county agency.



Section 92F-12(a)(14), HRS (see full text in the box to the right), is the part of the UIPA relating to the disclosure of records about public employees, including salary information. Records listed in 92F-12(a)(14) and other subsections of section 92F-12, HRS, must be disclosed.

The fact that a record is not included in the types of records listed in section 92F-12, HRS, however, does not mean that those records may be withheld. Those other records are subject to disclosure in accordance with section 92F-11, HRS, and may be withheld if an exception to disclosure under section 92F-13, HRS, is applicable.

On August 14, 2003, the OIP issued its latest opinion regarding compensation of public employees. A summary of that opinion follows. A copy of the opinion is available online at www.state.hi.us/oip/whatsnew.html.

► Disclosure of University’s Contract with Head Football Coach

The 1998 contract between the University of Hawaii (“UH”) and Head Football Coach June Jones must be publicly disclosed.

The OIP’s opinion letter came in response to a request for an opinion by UH, as well as by a member of the public and members of the media.

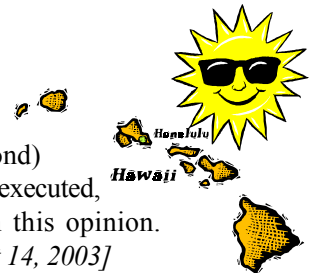


Certain information about the contract has already been disclosed by UH and Coach Jones and has been reported by the media. Thus, there is no reasonable basis to withhold the portions of the contract containing information that has previously been made public.

The OIP also found that, because of the public nature of his position and the fact that he is one of the highest paid State employees, if not the highest, Coach Jones’ privacy interests relating to the contract are outweighed by the public’s right to know.

Lastly, based upon the information provided by UH, the OIP could not conclude that disclosure of the contract will frustrate a legitimate government function, i.e., UH’s ability to maintain morale in the athletic department or to negotiate contracts with its coaches. For those reasons, the contract, in its entirety, was deemed disclosable.

The OIP also stated that, absent extraordinary circumstances, disclosure of UH’s new (second) contract with Coach Jones, once executed, should be in accordance with this opinion. [OIP Op. Ltr. No. 03-16, August 14, 2003]



► Prior OIP Opinions on Public Salaries

The OIP has interpreted the UIPA’s application to the compensation of government employees in over a dozen prior formal opinions. The following index (page 2) lists those opinions. Summaries and full text of these opinions are available at www.state.hi.us/oip/opinions.html. For the complete subject index of the OIP opinion letters, go to www.state.hi.us/oip/opinionsubjectindex.doc.

► Why Government Employee Salaries Are Public

The UIPA was adopted in 1988 in response to recommendations set forth in the *Report of the Governor’s Committee on Public Records and Privacy* (1987) (“*Governor’s Committee Report*”). The *Governor’s Committee Report* contains a detailed discussion of how the issue of compensation

See **Public Salaries**, p. 2

Public Disclosure and the Law

Disclosure of the salaries of public employees in Hawaii is governed by section 92F-12(a)(14), HRS, which makes public the following:

“The name, compensation (but only the salary range for employees covered by or included in chapters 76 and 77, and sections 302A-602 to 302A-640, and 302A-701, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not require the creation of a roster of employees; and provided further that this paragraph shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency[.]”



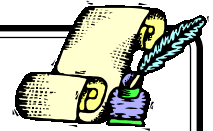
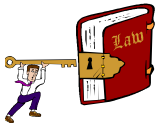
Public Salaries (from p. 1)

paid to public employees should be treated as part of a new public records law:

“The Committee heard a good deal of testimony on the subject of records relating to government employees. As was often stated, these are public officials being compensated with public dollars. There is, therefore, a strong interest in ensuring that this money is well spent. There is also a need to reduce any potential for corruption and most importantly to allow for a meaningful review of actions and policies. . . .

“As was expressed by a Committee member, the public has a right to know what public employees are making, at least in part, to judge whether it is worth the expense.

“One way to handle this would simply be to provide that the salary or compensation paid to an employee is public. There are, however, alternatives. If the focus is the salaries of appointed or high level positions, and that appeared to be the case from much of the testimony and comment, then perhaps the formula should allow the specific salaries of most employees to be confidential while providing the information which is more important. For example, providing the actual salaries of all ‘exempt and/or excluded employees’ would mean that the salaries of all appointed positions and all managerial positions would be public. That could be supplemented by providing the ‘salary range’ for all other employees.” [*Governor’s Committee Report*, Vol. I, 106, 109 (1987)]



Compensation of Government Employees

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Clarification: Disclosure to Auditor

Last month’s *Openline* included a summary of a recent OIP opinion regarding the disclosure of a State agency’s records to the Office of the Legislative Auditor.

The summary may have implied that an agency is always required to disclose its records to the Auditor. Where, however, an agency may “lose or be denied funding, services, or other assistance from the federal government,” section 92F-4, HRS, waives an agency’s compliance with the UIPA.



In other words, notwithstanding the UIPA’s requirement that an agency disclose records to the Auditor, where an agency may lose federal funding because of disclosure, the agency is entitled to withhold its records.

The OIP’s opinions are based upon specific factual situations. The *Openline* summaries are intended to provide a general overview of the recent opinions and may not discuss all of the relevant factual bases for the OIP’s conclusion. For that reason, agencies should refer to the full opinion, available on the OIP’s web site, for a complete understanding of the OIP’s decision. The OIP also encourages agencies to contact the Attorney of the Day for general guidance.

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