

The Office of Information Practices (“OIP”) administers Hawaii’s open records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (the “UIPA”), and Hawaii’s open meetings law, chapter 92, HRS (the “Sunshine Law”).

## Recent OIP Opinions

### **UIPA** *Employee Misconduct Information*



The Ethics Commission, City and County of Honolulu, asked whether the UIPA required public disclosure of the Commission's advisory opinion identifying an employee who the Commission concluded had violated

ethics laws, where the employee was not suspended or discharged from employment for that misconduct.

OIP concluded that although the employee retained a significant privacy interest in records or information relating to the misconduct in question because the employee was not suspended or terminated, the employee's privacy interest was diminished by the Commission's determination that the employee had engaged in misconduct warranting suspension.

Further, the employing department's handling of the matter, instituting lesser discipline while the Commission was still investigating, heightened the public interest. Thus the public interest in information about the employee's misconduct (including the employee's identity) outweighed the employee's privacy interest in this case, requiring disclosure of the advisory opinion in full. [OIP Op. Ltr. No. 07-09]

### **UIPA** *Employee Misconduct Information*

The Office of the Auditor (“Auditor”) asked whether it may redact individually employee misconduct information about an audit analyst from an agency's written response to its audit. In response to a UIPA request, OIP concluded that the Auditor must provide a copy of the agency’s response without redaction.

OIP found that the misconduct directly impacted the Auditor’s performance of the audit and reflected on the overall functioning of the office.

OIP thus concluded that the Auditor could not redact the information under the UIPA's privacy exception because

*See Opinions, p. 2*

## OpenPoint

### *UIPA and Sunshine Law Pointers and Guidelines*

#### **Q. Is information regarding government employee misconduct public?**

**A.** Most government employees are aware that, as government employees, we have less right to privacy in information about our employment compared to private employees.

The UIPA is very specific about what government employee information is automatically public, and what information carries a significant privacy interest.

Section 92F-12(a)(14), HRS, sets out types of government employee information that are required to be public, including an employee’s name, compensation (limited to salary range for many employees), job title, work address and telephone number, job description, education and training background, previous work experience, employment dates, 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.



Conversely, section 92F-14 (a)(4) makes clear that other employee information carries a significant privacy interest, **except** for information about misconduct that led to suspension or discharge.

Thus, the general rule for employee misconduct information is that it will not be disclosed unless the employee was suspended or discharged and the employee’s appeal time has run.

But does that mean that other misconduct information should never be disclosed?

*See OpenPoint, p. 2*

## OpenPoint (from p. 1)

OIP recently looked at this issue in two opinions dealing with employee misconduct that didn't technically result in a suspension or discharge.

In OIP's Opinion Letter Number 07-08, a state employee had resigned in lieu of discharge, and in Opinion Letter Number 07-09 a county employee was reprimanded shortly after allegations of misconduct were made, which



meant that the employing department didn't have the option of suspending the employee when the county's Ethics Commission later recommended suspension.

Under the UIPA, both employees thus retained a significant privacy interest in information relating to their misconduct because neither had actually been suspended or discharged.

However, information that has a significant privacy interest may still fall outside the UIPA's privacy exception if the public interest outweighs that significant privacy interest.

In balancing these interests, the factors to look at are (1) the employee's rank and level of responsibility, (2) the activity in question, (3) whether there is evidence of employee wrongdoing, and (4) whether the information sheds light on the agency's performance or conduct related to the alleged wrongdoing, such as a failure to adequately investigate wrongdoing or to manage its employees.

These factors may increase the public interest in knowing that a particular employee was accused of, or was found to have committed, some form of misconduct. In OIP's recent opinions, those factors weighed in favor of disclosure despite the employees' significant privacy interest in the information.

In summary, government employees' background information listed in section 92F-12(a)(14) is always public. Information about misconduct resulting in suspension or discharge is public.

Other information, such as performance evaluations and information about misconduct that didn't result in suspension or discharge, is typically private but could be public if the public interest in the information outweighs the employee's privacy interest.

If you think there might be a strong public interest and need assistance in balancing it against an employee's privacy interest, feel free to call OIP for help. 

## Opinions (from p. 1)

the public interest in the information, which directly sheds light on the performance of the Auditor, outweighs any privacy interest the analyst might have in that information. [OIP Op. Ltr. No. 07-08]



### UIPA Personal Information in Land Records

The Department of Land and Natural Resources, Land Division ("DLNR") sought guidance on the disclosure of personal information and vital records included in its land records. OIP advised DLNR as follows:

Personal information contained in DLNR's land records that carry a significant privacy interest, such as social security numbers, home addresses and telephone numbers, ethnicity, and dates of birth, may generally be redacted under the UIPA's privacy exception. There is usually no public interest in disclosure of this type of information that would outweigh the individuals' privacy interests in that information.

However, where personal information sheds light on DLNR's functions, such as its duty of ensuring the genealogy of land owners and transferees, the public interest may outweigh individuals' significant privacy interests and thus require disclosure.

Thus vital records maintained must be disclosed to the extent they shed light on DLNR's performance of its statutory purpose, but all other information on those records may be withheld. Specifically, prior to disclosure, DLNR may redact all information except the information that is necessary to establish genealogy for purposes of DLNR's functions. This information would likely include the vital event in question and information such as individuals' names that are necessary to establish requisite relationships. [OIP Op. Ltr. No. 07-07] 

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