



**STATE OF HAWAII**  
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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to section 92F-42, HRS, and chapter 2-73, Hawaii Administrative rules (HAR). This is a memorandum decision and will not be relied upon as precedent by OIP in the issuance of its opinions or decisions but is binding upon the parties involved.

**MEMORANDUM DECISION**

**Requester:** Mr. Carroll Cox  
**Agency:** Ethics Commission, City and County of Honolulu  
**Date:** June 26, 2019  
**Subject:** Financial Disclosure Statements

Requester seeks a decision as to whether the Ethics Commission of the City and County of Honolulu (Ethics Commission) (City) properly denied his request for records under Part II of the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's e-mail to OIP dated September 27, 2016, and attached materials; a letter from the Ethics Commission to OIP dated October 7, 2016, and attached materials; and Requester's email to OIP dated May 8, 2019.

**Decision**

Article XIV of the Constitution of the State of Hawaii (Constitution) is a state law protecting records from disclosure for the purpose of section 92F-13(4), HRS. However, in OIP Opinion Letter Number 95-14, OIP concluded that Article XIV "makes confidential only the financial information disclosed by those making confidential financial disclosures," and did not apply to other associated information such as the names of individual filers and their dates of filing. Thus, based on Article XIV, the financial information in financial disclosure statements was properly withheld under the UIPA's exception for records protected by law. HRS § 92F-13(4) (2012). Of the remaining information, the names of any dependent

children were properly withheld under the UIPA's privacy exception. HRS § 92F-13(1) (2012). The filer's name, position title, and employing agency, the identity of the filer's agency personnel officer, the government salary range information included in the form, and the date of filing did not fall under an exception to the UIPA and thus must be disclosed. HRS §§ 92F-12(a)(14) and -13 (2012).

### **Statement of Reasons for Decision**

On September 26, 2016, Requester made a request to the Ethics Commission<sup>1</sup> for all financial disclosure forms or related documents filed by Charles Totto, former Executive Director and Legal Counsel to the Ethics Commission (Ethics Director), from 2000 to the request date. On the same date, the Ethics Commission responded with a Notice to Requester denying the request based on section 3-8.4 of the Revised Ordinances of Honolulu (ROH), which provides that the financial disclosure statements for specified officials are public, and all other financial disclosure forms required by the City are confidential. The Notice to Requester did not cite an exception to disclosure under the UIPA as required under chapter 2-71, HAR.

Requester appealed the denial to OIP. In its response to the appeal, the Ethics Commission cited to the UIPA's privacy exception, section 92F-13(1), HRS, as a basis for its denial, arguing that the requested records included information relating to an individual's finances, and as such carried a significant privacy interest recognized by statute. See HRS § 92F-14(b)(6) (2012). The Ethics Commission also cited again to section 3-8.4, ROH, as making the financial disclosure statements confidential.

The financial disclosure statements contain information about the filer's personal finances, including the value to within a set range<sup>2</sup> of any outstanding loans, real property or investments owned, or income from both government and non-government sources, the filer's personal contact information, the name, position,

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<sup>1</sup> The "To" line of the request actually listed the Honolulu City Clerk as the agency the request was addressed to, but the request was delivered to the Ethics Commission and stamped as received by the Ethics Commission, was responded to by the Ethics Commission, and was described by Requester in opening the appeal as a request made to the Ethics Commission. OIP therefore understands the request to have been made to the Ethics Commission.

<sup>2</sup> Instead of stating a specified dollar amount, each value entered on a financial disclosure statement is a letter representing a fixed range of values; for instance, the letter D represents a range from \$25,000 to \$49,000, and the letter J represents a range from \$400,000 to \$499,000. Instructions for Confidential Disclosure Form, Honolulu Ethics Commission, [http://www.honolulu.gov/rep/site/ethics/forms/Financial\\_Disclosure\\_Instructions\\_Rv\\_11-2018.pdf](http://www.honolulu.gov/rep/site/ethics/forms/Financial_Disclosure_Instructions_Rv_11-2018.pdf) (last visited June 20, 2019).

and salary of the filer's spouse, the names of any dependent children, and the filer's government agency and position.

Under the UIPA, all government records are open to the public unless an exception to disclosure in section 92F-13, HRS, applies. HRS § 92F-11 (2012). The Ethics Commission's justification for withholding the requested records raises two of them: the UIPA's exception for records made confidential by law, section 92F-13(4), HRS, and the UIPA's exception for records whose disclosure would be a clearly unwarranted invasion of personal privacy, section 92F-13(1), HRS.

## **I. Exception for Records Protected by State or Federal Law**

OIP first considers whether the confidentiality provided by section 3-8.4, ROH, allowed the Ethics Commission to withhold the financial disclosure statements. OIP has previously concluded that a county ordinance providing confidentiality for a record is not a "state or federal law" protecting the record from disclosure for the purpose of section 92F-13(4), the UIPA's exception to disclosure for records protected from disclosure by state or federal law. E.g. OIP Op. Ltr. No. 95-14 at 5-7. However, OIP also recognized in that same opinion that Article XIV of the Constitution, entitled "Code of Ethics," itself provides confidentiality for certain financial disclosure statements. As part of the Constitution, Article XIV is a "state law" for the purpose of section 92F-13(4), HRS. It requires each county to adopt a code of ethics to include financial disclosure requirements, and provides:

The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures.

Haw. Const. art. XIV (emphasis added). In other words, as discussed in OIP Opinion Letter Number 95-14 at 9, the provision sets out two classes of public officials who must submit financial disclosure statements. The financial disclosure statements of the first class (elected officers, candidates, and "such appointed officers and employees as provided by law") must be publicly disclosed. The financial disclosure statements of the second class (other public officials with "significant discretionary or fiscal powers as provided by law") are made confidential by Article XIV.

As required by Article XIV, the City Council has considered the public interest in disclosure of such information for high-level City officials and has designated specific City officials in addition to those specified in Article XIV as being sufficiently high-ranking that their financial disclosure statements are rightfully made public. Section 3-8.4, ROH, provides that financial disclosure statements are public when filed by candidates and elected officers (the officials specifically

required to be included by Article XIV) or by “the directors of the city agencies and their first deputies.” The directors and their first deputies are thus the “appointed officers and employees as provided by law” who must make public financial disclosure statements under Article XIV. Section 3-8.4, ROH, goes on to provide that “[a]ll other financial disclosure statements required to be filed under this section shall be confidential.” This is consistent with Article XIV, which provides that all other public officials required to make financial disclosure statements “shall make confidential financial disclosures.” Haw. Const. art. XIV.

OIP notes that the State of Hawaii (State), like the City, provides that financial disclosure statements filed by a limited list of state officials are public, while those filed by all other state officials subject to the filing requirement are confidential. HRS § 84-17(c), (d), and (e) (Supp. 2018). The equivalent State records, the financial disclosure statements filed by the Executive Director for the State’s Ethics Commission, are not required to be public. *Id.* Thus, the City’s determination as whether the Ethics Director is sufficiently high-ranking to qualify as an official whose financial disclosure statement must be made public is consistent not just with the requirements of Article XIV, but also with the State’s determination for the equivalent State official.

In OIP Opinion Letter Number 95-14, OIP concluded that Article XIV “makes confidential only the financial information disclosed by those making confidential financial disclosures,” and did not apply to other associated information such as the names of individual filers and their dates of filing. OIP thus concludes that based on Article XIV, the financial information from the financial disclosure statements – *i.e.*, the description and values of various assets and obligations and income information<sup>3</sup> – was properly withheld under the UIPA’s exception for records protected by law. HRS § 92F-13(4).

## II. Privacy Exception

OIP next considers whether the remaining information in the financial disclosure statements falls within the UIPA’s privacy exception, section 92F-13(1), HRS.

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<sup>3</sup> Governmental salary information, either exact salary or salary range depending on the position, is public by statute. HRS § 92F-12(a)(14). However, Article XIV specifically protects the financial disclosures required by Article XIV and the laws implementing it. It is well established that in a conflict between a statute and a constitutional provision, the constitutional provision is superior. *See, e.g., Schwab v. Ariyoshi*, 58 Haw. 25, 564 P.2d 135 (Haw. 1977) (stating that a violation of a constitutional requirement would render legislation nugatory). OIP therefore concludes that the government salary information included in the financial disclosure statements is made confidential by Article XIV even though the UIPA would made it public in a different context, and thus it was properly withheld as part of the financial disclosure statements.

The filer's position title and employing agency and the identity of the filer's agency personnel officer are all information mandated by law to be public without application of the UIPA's exceptions. HRS § 92F-12(a)(14). Thus, this information may not be withheld from disclosure under the UIPA's privacy exception. See HRS § 92F-13(1).

OIP has previously concluded that the basic facts of vital statistic information, such as the type of vital event (*e.g.*, a Record of Marriage) and the names of the registrants, are public. OIP Op. Ltr. No. 07-07 at 4. Thus, the name of a filer's spouse may not be withheld under the UIPA's privacy exception. See HRS § 92F-13(1).

Regarding the listing of dependent children, though, OIP notes that although a filer's status as the parent of a child is likewise an event that may be determined from the basic facts of vital statistic information, an individual's status as either dependent or nondependent is not something that may be determined from public vital statistic information. Since such a status reflects the dependent or independent individual's financial and taxpaying status, OIP concludes that it carries a significant privacy interest as personal financial information. See HRS § 92F-14(b)(6). In the absence of any real public interest in the information that might outweigh that significant privacy interest, OIP concludes that an individual's status as a dependent falls within the UIPA's privacy exception. See HRS § 92F-13(1). The Ethics Commission thus properly withheld the names of any dependent children listed on the financial disclosure statements.

Finally, as OIP previously concluded in OIP Opinion Letter Number 95-14, the filer's name and the date of filing do not fall within the UIPA's privacy exception, and thus cannot be withheld on that basis. See HRS § 92F-13(1).

If Requester wishes to receive a redacted copy of the financial disclosure statements as discussed herein Requester should so advise the Ethics Commission in writing, and the Ethics Commission should provide Requester with a new Notice to Requester reflecting the estimated fees and costs, if any, for providing such redacted copies.

### **Right to Bring Suit**

Requester is entitled to seek assistance from the courts when Requester has been improperly denied access to a government record. HRS § 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if Requester is the prevailing party, Requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F-15(d), (f) (2012).

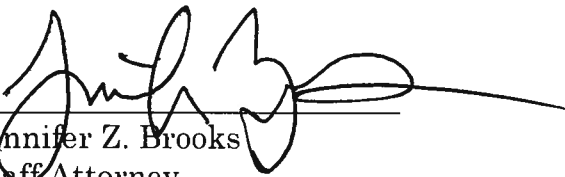
For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

This decision constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

#### **OFFICE OF INFORMATION PRACTICES**

  
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APPROVED:

  
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