

BRIAN L. TAKESHITA
Chief Clerk

RUPERT JUAREZ
Assistant Chief Clerk



Phone: (808) 586-6400

Fax: (808) 586-6401

HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL, ROOM 027
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

House Bill No. 1768, H.D. 1
Tuesday, February 13, 2018
2:00 p.m., Conference Room 325

TO: Chair Scott Y. Nishimoto
Vice-Chair Joy A. San Buenaventura
Members of the House Committee on Judiciary

FROM: Brian L. Takeshita
Chief Clerk, Hawaii State House of Representatives

As the Chief Clerk of the Hawaii State House of Representatives, I **SUPPORT** House Bill No. 1768, H.D. 1.

Hawaii Revised Statutes Chapter 92F-12(a)(14) requires disclosure of the names and compensation (among other information) of most state and county employees. However, while civil service employees and educators may only have a salary range disclosed, other employees, including those of the Legislature, must have their exact salaries disclosed. This inconsistency must be addressed for a number of reasons.

First, this discrepancy puts legislative employees at a disadvantage relative to their civil service counterparts by requiring the release of more detailed information about one group over another. Where all are public servants, it is unreasonable to discriminate amongst the groups.

Second, the requirement to automatically disclose the exact salaries of specific individuals serves no reasonable purpose that couldn't be achieved by disclosing a salary range instead. Additionally, salary is in certain cases considered personally identifiable information, and disclosable only when a requesting entity has a legitimate reason for doing so. Employees in the private sector have a reasonable expectation that their salary is not given out upon just any request, and there is no reason public sector employees such as those employed by the Legislature should not have the same expectation.

Third, a local news organization has made a regular feature of obtaining the names and salaries of state and county employees and publishing this information on their website for all to access. Without even needing to submit a request to the House

or Senate, anyone from marketers to creditors to curious neighbors may access the exact salary of our legislative employees for whatever purposes they desire. Additionally, the easy availability of salary information can cause great disruption within an office when employees look up each other's pay levels, driving ill feelings among coworkers and causing difficulties for management.

I acknowledge the public expects transparency from their government, and disclosure of a reasonable amount of information regarding government employees is necessary. However, the disclosure of the names and exact salaries of legislative employees is both unreasonable and unnecessary, which is why I support H.B. 1768 HD1. This measure will address the discrepancy between disclosure requirements for civil service and legislative employees and provide a sensible level of disclosure.

Thank you very much for the opportunity to provide this testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

House Committee on Judiciary
Honorable Scott Y. Nishimoto, Chair
Honorable Joy A. San Buenaventura, Vice Chair

RE: Testimony Opposing H.B. 1768 HD 1, Relating to Information Practices
Hearing: February 13, 2018 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **opposing H.B. 1768 HD 1 as currently drafted.**

As drafted, H.B. 1768 HD 1 sweeps far too broadly. The salary/salary range distinction originated with the Governor's Committee on Public Records and Privacy. That Committee explained:

[T]he public has a right to know what public employees are making, at least in part, to judge whether it is worth the expense. . . . 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 ranges" for all other employees. For example, a Clerk-Typist II is in Salary Range 8 and, therefore, has under the current contract a salary of \$13,260 to \$20,040 a year depending upon seniority. (emphasis added)

H.B. 1768 HD 1 deviates from that original intent, exempting all legislative employees from the mandatory disclosure requirement regardless whether that person has managerial duties. For example, the bill improperly exempts individuals who are more equivalent to Executive Branch directors and deputy directors. The public interest in high-level staff (*e.g.*, chief clerks, sergeants-at-arms, legislative service agency directors, and others in senior positions) is much greater, and they should not be exempt.¹

¹ Withholding the auditor, LRB director, and ombudsman salaries also does not make sense because their salaries are tied to the DOH director's salary, which is public record.

A further complication is the lack of publicly defined salary ranges for non-managerial legislative positions. Because legislative employees are appointed and not subject to the civil service system, salaries are discretionary. To take examples, the current spectrum of salaries for House legislative attorneys goes from \$62,568 to \$116,004; the spectrum for Senate office managers is from \$39,600 to \$71,436. Those huge differences in pay are not appropriate “salary ranges” and make any resulting disclosure meaningless for the public. This problem is not solved by the HD 1 amendments.

The Law Center respectfully requests that this Committee **amend H.B. 1768 HD 1** as follows and **provide clarification in the committee report that disclosed “salary ranges” for legislative employees cannot exceed a \$15,000 range.**

As used in this paragraph, “legislative employees” means staff of the legislative branch of the State and non-managerial employees of legislative service agencies as defined by section 21E-1.

Thank you again for the opportunity to testify.



Feb. 13, 2018

Rep. Scott Nishimoto
House Judiciary Committee
State Capitol
Honolulu, HI, 96813

Re: House Bill 1768, Relating to Information Practices

Chairman Nishimoto and Committee Members:

We are opposed to this measure.

It would block public views of important salary information and tells the public how its tax money is being spent.

This bill doesn't go far enough in separating disclosure of salaries of managerial and appointed employees from all legislative employees and would block public view of salaries of high-ranking officials that should be available to the public. The bill also does not establish a pay range that would be used.

This bill is troublesome, and we ask that you file this bill.

Thank you,

Stirling Morita
President, Hawaii Chapter of the Society of Professional Journalists

HB-1768-HD-1

Submitted on: 2/11/2018 10:22:26 PM

Testimony for JUD on 2/13/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan J. Wurtzburg	American Association of University Women, Hawaii	Oppose	No

Comments:

AAUW is focused on decreasing the gender pay gap. This bill has implications for pay equity since it decreases salary transparency. AAUW would like to see more wage transparency, rather than less. It is also disengenuous to suggest that salaries could be reported as ranges. Unless the salary ranges are incredibly narrow, these data are meaningless for making comparison.



House Committee on Judiciary
Chair Scott Nishimoto, Vice Chair Joy San Buenaventura

02/13/2018 2:00 PM Room 325
HB1768 HD1 – Relating to Information Practices

TESTIMONY / OPPOSE
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Nishimoto, Vice Chair San Buenaventura, and members of the committee:

Common Cause Hawaii opposes HB1768 HD1 which would exempt all legislative employees from mandatory disclosure of exact salaries, and instead require the disclosure of salary ranges.

As currently written this bill is too broad and would decrease public access to information, which we do not believe is the Legislature's intent. According to OIP opinion 93-10, the intent is for salary disclosure to apply to those with "appointed or high level positions".¹

If your intention is to protect employees' privacy while still providing useful information to the public, we suggest you exempt only "legislative employees" who are *not in top-level, managerial positions* from exact salary disclosure, as it's typically managerial positions which attract the most public attention and scrutiny. We also suggest defining the salary ranges, so that the increments are small enough, perhaps in the \$15,000-\$20,000 range, so that the information remains useful and meaningful to the public.

Thank you for the opportunity to testify in **opposition to HB1768 HD1**.

¹ <http://oip.hawaii.gov/formal-opinions/93-10/>



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

HOUSE COMMITTEE ON JUDICIARY

Tuesday, February 13, 2018, 2 PM, Conference Room 325
HB 1768, HD 1 Relating to Information Practices

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Nishimoto and Committee Members:

The League of Women Voters opposes HB 1768, HD 1. This bill substitutes disclosure of a salary range to replace disclosure of the exact salary paid to legislative officers and employees.

Legislative officers and employees include “political hires” whose selection and compensation primarily are based on political considerations. Several decades ago, some elected officials used to adjust the salaries of their “political hires” to encourage campaign contributions. The League opposes HB 1768, HD 1 because this bill would:

- preclude the public and news media from monitoring the adjustment of salaries paid to “political hires” and
- preclude the public and news media from evaluating whether “political hires” are appropriately compensated.

Thank you for the opportunity to submit testimony.

HB-1768-HD-1

Submitted on: 2/9/2018 4:45:47 PM

Testimony for JUD on 2/13/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes		Oppose	No

Comments:

When citizens are determining the function and efficiency of the legislature that their tax dollar fund, they need all the transparency and information available, including the salaries they are paying to their legislative employees.

HB-1768-HD-1

Submitted on: 2/10/2018 9:07:18 PM

Testimony for JUD on 2/13/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow		Oppose	No

Comments:

The public has a right to know. This bill should die now. It is another example of the government hiding things from those who pay their salaries. We need transparency, not opaqueness.

If people want to work for government then the public has a right to know the salaries. If the employee doesn't like it they can get another job. We are the ones who pay the salary, not legislators, etc. Everyone's salary should show, not vague ranges. And you wonder why populism is taking off!

I read the testimony from the last hearing, and find it interesting that those concerned with the public interest are opposed by unions, government organizations, etc. favor the bill.

Lynne Matusow



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Judiciary

Testimony by
Hawaii Government Employees Association

February 13, 2018

H.B. 1768, H.D. 1 – RELATING
TO INFORMATION PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO conceptually supports the intent of H.B. 1768, H.D. 1, which amends a section of the Uniform Information Practices Act by allowing the disclosure of a legislative employee's salary range rather than the exact compensation, with a proposed amendment.

Under the current Uniform Information Practices Act, each agency must allow the members of the public access to employee information, including an employee's name, bargaining unit, job title, business address and telephone number, education and training background, and previous work experience, in addition to an agency's present and former officers. While we understand and agree with the need for government accountability and transparency, and acknowledge that tax payers want to know how and where their money is being spent, publishing any employee's dollar amount salary does not adequately capture the State's expenses. All employees are entitled to a measure of privacy, and should be afforded basic dignity and respect in doing their jobs. Being a government employee does not necessitate one to be subject to the degradation, embarrassment and anxiety that a full disclosure may cause.

Therefore, while we support the intent of H.B. 1768 to amend statute specific to legislative officers, we respectfully request an amendment to equally extend the same provisions for all employees, including those who are exempt from civil service.

Thank you for the opportunity to testify in support of H.B. 1768, H.D. 1 with a proposed amendment.

Respectfully submitted,

Randy Perreira
Executive Director



February 13, 2018

2:00 PM

Conference Room 352

To: House Committee on Judiciary
Rep. Scott Y. Nishimoto, Chair
Rep. Joy A. San Buenaventura, Vice Chair

From: Grassroot Institute of Hawaii
Vice President of Research, Joe Kent

RE: HB1768 – RELATING TO INFORMATION PRACTICES

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB1768, which would allow use of salary ranges in public disclosure of compensation for legislative employees.

The Grassroot Institute is concerned that this bill frustrates the spirit of transparency and openness that are crucial to good governance. In our role as a government watchdog, we've found that requests for salary information can – when provided as a range – result in numbers so broad as to be useless for educational and informational purposes. When an inquiry into compensation for a government worker results in a salary range of \$58,000 - \$110,000 (an actual example from a response we've received), it violates the spirit of sunshine and disclosure laws.

Moreover, salaries of high-level staff and managers (many of whom have political influence or ties) should not be exempt, as there is a strong public interest in keeping such information open and transparent.

While we appreciate the privacy considerations that spurred this bill, we think a compromise is called for. If salary disclosures were limited to a range of \$10,000 or less, and high-level staff were not exempt, that could achieve the intent of the bill without undermining transparency.

Thank you for the opportunity to submit our testimony.

Sincerely,
Joe Kent
Vice President of Research

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Judiciary
From: Cheryl Kakazu Park, Director
Date: February 13, 2018, 2:00 p.m.
State Capitol, Conference Room 325
Re: Testimony on H.B. No. 1768, H.D. 1
Relating to Information Practices

Thank you for the opportunity to submit testimony on this bill, which would amend the Uniform Information Practices Act ("UIPA") to provide that for all legislative employees, only their salary range would be disclosable, as is the case for union or civil service employees, and not the exact salary, as for exempt employees. The Office of Information Practices ("OIP") takes **no position** on the question of whether the category of employees for whom only salary range is disclosable should be expanded. While such an amendment could be amended to more accurately reflect the original legislative history of the UIPA, **OIP is concerned that making such a change only for legislative employees would lead to differential treatment of salary information for legislative employees versus government employees in general.**

The substance and the legislative history of the UIPA's salary disclosure provision suggest that the Legislature adopted the recommendations of the Governor's Committee on Public Records and Privacy regarding how best to balance employee privacy with the public interest in government employee salaries, as discussed at length in OIP Opinion Letter Number 93-10, a copy of which is

attached to this testimony. The Governor's Committee intended the focus for exact salary disclosure to be on "the salaries of appointed or high level positions." Vol. I Report of the Governor's Committee on Public Records and Privacy (1987), 106, 109, quoted in OIP Op. Ltr. No. 93-10 at 4. More specifically, the intent was that "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," with only salary ranges disclosed for other employees. Id.

OIP recognizes that in the decades since that report was written, the number of exempt and excluded employees has grown to include many employees who are not managerial or high level, or are not appointed (except in the sense of being appointed by the head of the office or agency), and thus are not the type of employee the Governor's Committee and the Legislature originally envisioned as appropriate for disclosure of exact salaries. For this reason, **OIP is not conceptually opposed to amending the UIPA's mandatory disclosure provision to bring the category of government employees for whom exact salary must be disclosed more into line with the Legislature's original intent. However, this issue is not limited to legislative staff and legislative agencies. OIP is concerned that this bill as written would increase the differential treatment of government employee salary information under the UIPA,** by providing that all legislative staff (including even directors of legislative agencies whose salaries are set by statute) would have only broad salary ranges disclosed, while clerical and other lower level exempt employees in the executive branch and elsewhere would continue to have exact salaries disclosed.

OIP notes also that the salary ranges proposed by the H.D. 1 are very broad, with the three ranges likely to be applicable running from \$25,000-\$50,000, from \$50,000-\$100,000, and from \$100,000-\$150,000. **OIP shares the concerns**

raised by other testifiers that if the bill is to set salary ranges to be used for disclosure, those ranges should be more narrowly defined.

If this Committee is inclined to return to the original intent of the UIPA to provide only salary ranges for positions that are non-managerial and not appointed by the Governor or Legislature, then **OIP recommends that it make such an amendment, with reasonably narrow salary bands, applicable to all government employees and not just those in the legislative branch.** While OIP itself takes no position on this issue, OIP would be happy to work with this Committee to develop appropriate statutory language once the Committee's intent is clear.

Thank you for the opportunity to testify.

JOHN WAIHEE
GOVERNOR

WARREN PRICE, III
ATTORNEY GENERAL



KATHLEEN A. CALLAGHAN
DIRECTOR

PH. (808) 586-1400
FAX (808) 586-1412

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
OFFICE OF INFORMATION PRACTICES
426 QUEEN STREET, ROOM 201
HONOLULU, HAWAII 96813-2904

September 2, 1993

Honorable Ronald Mun
Corporation Counsel
City and County of Honolulu
Honolulu Hale, First Floor
530 South King Street
Honolulu, Hawaii 96813

Attention: Donna Woo
Deputy Corporation Counsel

Dear Mr. Mun:

Re: Salaries of Exempt Employees within the Office of
the Mayor

This is in reply to a telephone conversation with Deputy
Corporation Counsel Donna Woo on August 26, 1993, in which she
requested an advisory opinion from the Office of Information
Practices ("OIP") concerning the above-referenced matter.

FACTS

The OIP understands that Mr. David Waite, a reporter with
the Honolulu Advertiser, has requested the City and County of
Honolulu ("City") to provide him with the exact salaries of
individuals employed within the Office of the Mayor. Mr.
Waite's request was prompted by findings made by the City Ethics
Commission, that the City's Deputy Managing Director obtained
access to confidential salary information concerning exempt
employees within the Office of the Mayor, and used this
information in soliciting campaign contributions from those
employees.

Pursuant to the Charter of the City and County of Honolulu,
positions within the Office of the Mayor are exempt from the
civil service, "but such positions shall be included in the
position classification plan." Rev. Charter of the City and
County of Honolulu, art. VI, § 6-303(b) (rev. ed. 1984); see
also, Haw. Rev. Stat. § 76-77(1) (1985). Based upon this

OIP Op. Ltr. No. 93-10

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provision, it is the City Department of Personnel's belief that under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the exact salaries of employees within the Office of the Mayor are confidential.

ISSUE PRESENTED

Whether, under the UIPA, the salaries paid to exempt employees within the Office of the Mayor must be made available to the public upon request.

DISCUSSION

In determining whether government records must be made available for public inspection and copying under the UIPA, we observe at the outset that like the federal Freedom of Information Act, 5 U.S.C. § 552 (1988), and the open records laws of other states, the UIPA's affirmative disclosure provisions should be liberally construed, its exceptions narrowly construed, and all doubts resolved in favor of disclosure.¹ It is the agency's burden to establish that requested records (or information contained therein) is protected from disclosure by one of the UIPA's exceptions. Haw. Rev. Stat. § 92F-15(c) (Supp. 1992).

The UIPA provides "[e]xcept as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours." Haw. Rev. Stat. § 92F-11(b) (Supp. 1992). In addition to this general rule, in section 92F-12, Hawaii Revised Statutes, the Legislature set forth a list of government records that each agency must disclose "[a]ny provision to the contrary notwithstanding." The Legislature stated that "[a]s to these records, the exceptions such as for personal privacy and for frustration of legitimate government purpose are inapplicable . . . [t]his list merely addresses some particular cases by unambiguously requiring disclosure." S. Conf. Comm. Rep. No.

¹See, e.g., John Doe Corp. v. John Doe Agency, 493 U.S. 146 (1986); Department of the Air Force v. Rose, 425 U.S. 352, 361-63 (1976); Seminole County v. Wood, 512 So.2d 1000 (Fla. Dist. Ct. App. 1987); City of Monmouth v. Galesburg Printing and Pub. Co., 494 N.E.2d 896 (Ill. App. 3 Dist. 1986); Title Research Corp. v. Rausch, 450 So.2d 933 (La. 1984); Hechler v. Casey, 333 S.E.2d 799 (W. Va. 1985); Laborers Intern. Union of North America Local 374 v. City of Aberdeen, 642 P.2d 418 (Wash. 1982); Bowie v. Evanston Comm. Consul. School Dist., 538 N.E.2d 557 (Ill. 1989); Lucas v. Pastor, 498 N.Y.S.2d 461 (N.Y. A.D. 2 Dept. 1986).

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235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H.R. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988).

With regard to information concerning present or former agency employees, section 92F-12(a)(14), Hawaii Revised Statutes, requires each agency to make available for public inspection and copying during regular business hours, among other things, "[t]he name, compensation (but only the salary range for employees covered by or included in chapters 76, 77, 297, or bargaining unit (8))"

When the UIPA was adopted in 1988, section 92F-12(a)(14), Hawaii Revised Statutes, provided that the compensation of present or former agency employees shall be disclosed, "(or salary range for employees covered by chapters 76 and 77). See Act 262, 1988 Haw. Sess. Laws 474, 475 (1988) (emphasis added). The parallel provision of the Uniform Information Practices Code ("Model Code") drafted by the National Conference of Commissioners on Uniform State Laws, and upon which the UIPA was styled, simply provided that "the compensation" of present or former officers or employees of an agency shall be disclosed.²

As we have previously noted in several OIP advisory opinions, many of the government records described in section 92F-12, Hawaii Revised Statutes, were included by the Legislature in response to recommendations set forth in the Report of the Governor's Committee on Public Records and Privacy (1987) ("Governor's Committee Report").³ The Governor's Committee Report contains a detailed discussion of how the issue of compensation 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,

²See Model Code § 3-101(1) (1980).

³The UIPA's Legislative history acknowledges the "Herculean efforts" of the Governor's Committee on Public Records and Privacy, and the important role that this committee performed in the drafting of the UIPA. See S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093 (1988); see also, OIP Op. Ltr. No. 89-11 (Dec. 12, 1989); OIP Op. Ltr. No. 90-20 (June 12, 1990); OIP Op. Ltr. No. 90-29 (Oct. 5, 1990); OIP Op. Ltr. No. 92-17 (Sept. 2, 1992).

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 meaningful review of actions and policies

. . . .

The information which attracted the most attention was the **salaries and compensation of public employees**. There was strong sentiment that more information in this area should be available expressed by Representative Rod Tam (II at 7 and I(H) at 53-54), John Simonds (II at 224 and I(H) at 56-57), Beverly Keever (II at 355; III at 338; and I(H) at 44-46), Marcia Reynolds (II at 148), Desmond Byrne (II at 317 and I(H) at 57-59), Jahan Byrne (II at 332 and I(H) at 47), Ah Jook Ku (II at 221 and I(H) at 39), and James Setliff (I(H) at 32). 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.

Vol. I Governor's Committee Report, 106, 109 (1987) (boldface in original) (emphasis added).

In adopting the UIPA, the Legislature chose to modify the parallel provisions of the Model Code concerning the availability of the compensation paid to agency officers or employees. Since

the legislative committee reports concerning Act 262, 1988 Haw. Sess. Laws 474 are silent about the issue of the disclosure of salaries of agency employees, we believe that it is reasonable to assume that the Legislature intended to adopt the recommendation set forth in the Governor's Committee Report, namely, that the exact salaries of employees exempt from the civil service be publicly available during an agency's regular business hours.

In 1989, the Legislature amended section 92F-12(a)(14), Hawaii Revised Statutes, to provide in pertinent part, "(but only the salary range for employees covered by chapters 76, 77, 297 or 304)" The legislative history of Act 160, 1989 Haw. Sess. Laws 297, indicates that this change was made in response to concerns expressed by the University of Hawaii in its written testimony on 1989 H.B. No. 1799:

In addition, we would like this committee to consider clarification of section 92F-12, Disclosure Required, as follows:

. . . .

- (14) The name, compensation (or salary range for employees covered by chapters 76, [and] 77 and 304-11), job title
. . . .

This change is required in order to afford those employees appointed pursuant to section 304-11, HRS, the same protection of the right of privacy as those employees covered by sections 76, and 77, HRS.

Written Testimony of the University of Hawaii on H.B. No. 1799 at 1 (February 21, 1989).

We recognize that employees within the Office of the Mayor are included within the position classification plan established under chapter 77, Hawaii Revised Statutes.⁴ However, one of the principal purposes of chapter 77, Hawaii Revised Statutes, is that "in [so] compensating employees in the civil service, due consideration shall be given to a decent standard of living and

⁴Under section 77-31, Hawaii Revised Statutes, the provisions of chapter 77, Hawaii Revised Statutes, apply to all positions included in the position classification plan for the City and County of Honolulu.

to the ability of the people to pay for such service." Haw. Rev. Stat. § 77-2 (1985) (emphasis added). We believe that the Legislature included the reference to chapter 77, Hawaii Revised Statutes, in the UIPA to recognize the coverage of this chapter to employees in the civil service. In other words, in attempting to implement the recommendations of the Governor's Committee, the Legislature used the reference to "chapters 76 and 77," Hawaii Revised Statutes, as a shorthand, or concise method to distinguish civil service employees from "exempt and/or excluded employees."

While the most desirable construction of a statute is that which is consistent with the spirit and letter of the statute, "both of which should be considered, frequently the purpose of an Act justifies the departure from a literal construction of the wording." G.J. Hawaii, Ltd. v. Waipouli Dev. Co., 57 Haw. 557, 562 (1977). We believe that given the UIPA's legislative history, a departure from the literal wording of this provision is justified. For example, if section 92F-12(a)(14), Hawaii Revised Statutes, were literally applied, even the exact salaries of exempt employees would remain confidential since section 76-16, Hawaii Revised Statutes, establishes the exemptions from the civil service, and one could therefore argue that even exempt employees may be said to be "covered by or included in" chapter 76, Hawaii Revised Statutes.

In 1992, the Legislature amended section 92F-12(a)(14), Hawaii Revised Statutes, to delete the reference, within the parentheses, to University of Hawaii employees covered by chapter 304, Hawaii Revised Statutes.⁵ It narrowed this proviso by requiring the public availability of the exact salaries of employees of the University of Hawaii, except for those employees "included in" bargaining unit (8), the administrative, professional, and technical employees of the University. See H.R. Conf. Comm. Rep. No. 44, 16th Leg., 1992 Reg. Sess, Haw. H.J. 809 (1992).⁶ The term "included" in section 92F-12(a)(14),

⁵Before the 1992 amendments to section 92F-12(a)(14), Hawaii Revised Statutes, provided in pertinent part, "(but only the salary range of employees covered by chapters 76, 77, 297, or 304)"

⁶The conference committee report states:

The intent of this bill, as currently drafted, is to exclude members of bargaining unit (8), or certain employees of the University of Hawaii, as well as its

(continued...)

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Hawaii Revised Statutes, was added to except those employees included within bargaining unit (8) from provisions requiring exact salary information to be disclosed.

The committee report of the Senate Committee on Employment and Public Institutions, which was responsible for adding the exclusionary language concerning bargaining unit (8) to 1992 H.B. No. 3424, further strengthens our conclusion that the reference to chapters 76 and 77, Hawaii Revised Statutes, was intended solely to identify those employees who are included in the civil service:

The purpose of this bill is to include as public information the specific salaries of employees of the Department of Education and the University of Hawaii.

Current law protects the exact salaries but provides for public disclosure of the salary ranges paid to civil servants, including the Department and University personnel.

S. Stand. Comm. Rep. No. 2595, 16th Leg., 1992 Reg. Sess., Haw. S. J. 1158 (1992) (emphasis added). Thus, a legislative committee

⁶(...continued)

community college system, from reporting their specific salaries as public information. Your Committee, however notes that the amended language manifesting this intent currently reads:

" . . . compensation (but only the salary range for employees . . . or **included** in chapters 76,77, [297 or 304] **297 and bargaining unit (8)** . . ."

This language, as previously drafted, may be interpreted to mean that salary ranges shall be reported as public information for the employee that is subject to the mandate of all chapters listed, as well as require that the employee be a member of bargaining unit (8). To clarify its legislative intent, your Committee has amended the bill by replacing the word "and" with the word "or." [Emphasis added, boldface in original.]

Honorable Ronald Mun
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report on the 1992 amendments to section 92F-12(a)(14), Hawaii Revised Statutes, reveal that the Legislature understood that the purpose and effect of the pre-existing language was to protect the exact salaries of civil service employees from disclosure.

CONCLUSION

For the foregoing reasons, it is the opinion of the OIP that the specific salaries of present or former employees within the Office of the Mayor, who are exempt from the civil service, must be made available for public inspection and copying during regular business hours.

Please contact me at 586-1404, if you should have any questions regarding this opinion.

Very truly yours,



Hugh R. Jones
Staff Attorney

APPROVED:



Kathleen A. Callaghan
Director

HRJ:sc

c: David Waite
Honolulu Advertiser

Honorable Frank M. Fasi
Mayor of Honolulu