LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAI'I 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oip@hawaii.gov
www.hawaii.gov/oip

LESLIE H. KONDO
DIRECTOR

August 23, 2004

The Honorable Russ K. Saito
Comptroller, State of Hawaii
Department of Accounting and General Services
P.O. Box 119
Honolulu, Hawaii 96810-0119

Re: Payroll Clearance Fund Escheated Warrants Report

Dear Mr. Saito:

This opinion is in response to a request from former Comptroller Sam Callejo, for an advisory opinion on the disclosure requirements under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"), for Payroll Clearance Fund Escheated Warrants Reports ("Reports") generated by the Department of Accounting and General Services ("DAGS").

ISSUE PRESENTED

Whether the UIPA requires disclosure of the Reports, which include the names of present and former state employees in connection with the amounts of their uncashed payroll checks and the issue date of those checks.

BRIEF ANSWER

With respect to present and former state employees not involved in undercover law enforcement capacities, we believe that any personal privacy interest they may have in the information contained in the Reports is outweighed by the public interest in disclosure. Accordingly, it is our opinion that, with respect to these employees, the Reports should be disclosed under the UIPA.

Present or former employees engaged in undercover law enforcement activities, on the other hand, have a significant privacy interest in being identified as government employees that clearly outweighs the public interest in disclosure and, therefore, the names of these employees included in the Reports should be withheld from disclosure.

FACTS

It is our understanding that on every June 30, the close of the State's fiscal year, all of the payroll checks issued during the prior fiscal year that remain uncashed are deemed void, and the money escheats to the State.[1] The Reports, run annually, document these uncashed checks and include the check numbers, issue dates, amounts, and payees (the names of the employees). The Reports do not identify whether the employees are included in, or exempted from, the state civil service or bargaining unit systems.

Payees (or their assignees or representatives) may file claims with the state comptroller for up to four years after the money escheats to the general fund. Haw. Rev. Stat. § 40-68 (Supp. 2003). The Reports are used to verify claims and to note any payments made on claims. A copy of the report for fiscal year 2001 lists five hundred and forty-six payroll checks, ranging in amount from $0.21 to $2,882.98 and totaling $82,882.50, with approximately eighty-five percent of the checks being less than $300.00.

DISCUSSION

Under the UIPA, all government records are presumed to be open to public inspection and may be withheld from disclosure only where access is restricted or closed by law. Haw. Rev. Stat. § 92F-11(a) (1993). The UIPA itself restricts access to certain categories of records at section 92F-13, HRS.

---

[1] On July 1, 1994, the State began issuing checks instead of warrants. This change did not affect the escheat procedures or the Reports.

Among other things, this section provides that the UIPA does not require disclosure of "records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy[.]" Haw. Rev. Stat. § 92F-13(1)(1993).

A clearly unwarranted invasion of personal privacy requires a finding, first, that an individual has a significant privacy interest in the information contained in the record, and second, that such privacy interest outweighs the public interest in disclosure. Haw. Rev. Stat. § 92F-14(a) (Supp. 2003). The legislative history to the UIPA explains that "[i]f the privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

The UIPA also mandates disclosure of certain specifically listed government records, notwithstanding an individual's privacy interest in the information. See Haw. Rev. Stat. § 92F-12(a) (Supp. 2003). Relevant here, this statutory section requires disclosure of employment related information for present and former state employees, excluding undercover law enforcement personnel. The information required to be disclosed includes, among other things, names; dates of employment; and compensation ranges for employees covered by the state civil service or certain bargaining units ("included employees") or the exact compensation for non-covered employees ("exempt employees"):

> § **92F-12. Disclosure required.** (a) Any other law to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:
>
> * * *
>
> (14) The name, compensation (but only the salary range for employees covered by or included in chapter 76, 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 . . . of present or

> former officers or employees of the agency; . . . 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[.]

Haw. Rev. Stat. § 92F-12(a)(14) (Supp. 2003).

1. Employees Not Involved In Undercover Law Enforcement Capacities.

Clearly, with the exception of employees involved in undercover law enforcement capacities, section 92F-12(14), HRS, expressly requires disclosure of information that identifies persons as present or former state employees. We recognize, however, that aside from listing the names of employees, the Reports do not fall squarely under the language of this statute because they list employees' names in connection with their uncashed payroll checks, representing the employees' salaries with various adjustments made rather than specified salaries or salary ranges, and the issue date of those checks rather than "dates of first and last employment[.]"

We therefore also look to whether the information contained in the Reports, if disclosed, would constitute a clearly unwarranted invasion of the personal privacy of the employees named in the Reports. The UIPA, at section 92F-14, HRS, lists various examples of information in which the Legislature has found that an individual has a significant privacy interest. Of relevance here, this section states that an individual has a significant privacy interest in, among other things, personal financial information:

> **§ 92F-14 Significant privacy interest; examples.**
> (a) Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual.
>
> (b) The following are examples of information in which the individual has a significant privacy interest:
>
> * * *

> (6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;

Haw. Rev. Stat. § 92F-14(a)(b)(6) (Supp. 2003). State law recognizes, however, that employees of the State or its political subdivisions have a lesser expectation of privacy in the disclosure of their financial affairs than other citizens. Nakano v. Matayoshi, 68 Haw. 140, 706 P.2d 814 (1985). See Haw. Rev. Stat. § 92F-12(a)(14) (1993) (by which the Legislature directed that many details related to public employees' employment be disclosed "as a matter of public policy" and that "[a]s to these records, the exceptions such as for personal privacy . . . are inapplicable." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988)).

Given the express designation of similar employment related information as "public" under section 92F-12(a)(14), HRS,[2] and the lesser expectation of privacy afforded government employees in such information, we conclude that the employees listed in the Report have no significant privacy interest in the information contained in the Reports.[3] Because we find no significant privacy interest here, a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy. Here, release of the Records would arguably allow some review of the State's escheat procedures for uncashed payroll checks, provide annual, aggregate data of escheated payroll funds, and facilitate the payment

---

[2] The disclosure provisions of section 92F-12(a), HRS, must be liberally construed in order to "[p]romote the public interest in disclosure." Haw. Rev. Stat. § 92F-2 (1993). See OIP Op. Ltr. No. 90-33; See also OIP Op. Ltr. No. 89-9 and 90-16 (both construing section 92F-12(a), HRS, liberally to find that other details about an individual's government position, namely membership on a student admissions committee and college search committee, respectively, would not constitute a clearly unwarranted invasion of privacy).

[3] We recognize that the Legislature has implicitly directed that included employees have a significant privacy interest in their exact salaries. We reject the notion that disclosure of the Reports provides the public with information that could lead to discovery of the exact compensation of included employees because of the many variables affecting an employee's uncashed paycheck amount, including mandatory deductions, such as federal and state tax withholdings and social security contributions; voluntary deductions, such as health insurance premiums, parking fees, union dues, and deferred compensation; and other variables, including sick leave pay, vacation pay, unpaid vacations, unpaid suspensions, overtime payments, and partial pay periods.

of monies owed to these employees. See Haw. Rev. Stat. § 92F-2 (one of purposes of the UIPA is to open up government processes to public scrutiny). See also OIP Op. Ltr. No. 97-10 (generally, the public interest to be considered is that which sheds light upon the workings of government). While we acknowledge that the public interest is minimal here, we nevertheless believe that it is sufficient to preclude withholding of the Records under the privacy exception.[4] Accordingly, it is our opinion that disclosure of the Reports would not constitute an unwarranted invasion into the personal privacy of the listed employees and, therefore, that the Reports should be disclosed.[5]

2. Employees Involved in Undercover Law Enforcement Capacities.

With respect to present and former employees involved in undercover law enforcement capacities, it our opinion that these employees' names should not be disclosed under the privacy exception to the UIPA. The Legislature expressly exempted this category of employees from the disclosure requirements for employment information applied to all other government employees. By so doing, the Legislature clearly recognized the significant privacy interest these employees have in information that identifies them as government employees, which could thereby reveal them to be involved in undercover law enforcement capacities. Because the public

---

[4] Moreover, although unnecessary for our conclusion, we note the court's reasoning in Lepelletier v. FDIC, 334 U.S. App. D.C. 37, 48 (1999), that in protecting individuals' privacy interests (there under the federal Freedom of Information Act), the interests of the individuals in release of the information should be considered, particularly when the individuals "protected" are likely unaware of the information that could benefit them. The court in Lepelletier found that the FDIC should, under certain conditions, disclose a list of names of individuals with unclaimed deposits because, although there was no discernible public interest, the disclosure would greatly increase the probability that the depositors would be reunited with their funds. The court reasoned that "it is overly paternalistic to insist upon protecting an individual's privacy interest when there is good reason to believe that he or she would rather have both the publicity and the money than have neither." Id.

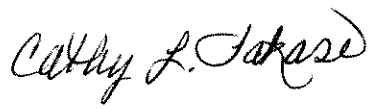
[5] We are aware that this information may be used for solicitation purposes. Given the small amounts involved, however, we do not foresee a barrage of solicitations that could elevate the privacy interest of the employees. Cf. National Ass'n of Retired Fed. Employees v. Horner, 279 U.S. App. D.C. 27, 879 F.2d 873 (D.C. Cir. 1989)(court applying federal Freedom of Information Act found privacy interest of federal employees in the release of names, addresses and annuitant status "significant" threat to the privacy of the individuals because the court predicted that these employees, being owed substantial sums of money, would be targets of a barrage of solicitations).

interest, as stated above, does not outweigh the privacy interest of undercover law enforcement employees in their identities for obvious safety and other reasons, we conclude that the names of such employees should be withheld from disclosure. See Haw. Rev. Stat. § 92F-13 (1) (1993).[6]

CONCLUSION

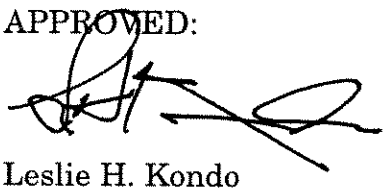
It is our opinion that the Reports should be disclosed upon request with the names of present and former employees involved in undercover law enforcement capacities redacted.

Very truly yours,



Cathy L. Takase
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

CLT:ankd

cc: Mr. Wayne M. Horie, DAGS Accounting Division
Mr. Glenn Y. Miyashiro, DAGS Accounting Division

---

[6] The remaining information on the Reports does not identify these employees and, therefore, disclosure of that information will not constitute a clearly unwarranted invasion of personal privacy. See OIP Op. Ltr. 98-5.