

May 9, 1991

MEMORANDUM

TO: Mr. Stanley Y. H. Siu  
Administrator, Employees' Retirement System

FROM: Lorna J. Loo, Staff Attorney

SUBJECT: House Bill No. 1059 Relating to the Employees'  
Retirement System

This is in response to your letter dated April 12, 1991, requesting an opinion from the Office of Information Practices ("OIP") regarding the disclosure of information concerning those government employees who would be affected by House Bill No. 1059 ("H.B. No. 1059"). State Representative David Hagino requested this information in a letter dated April 2, 1991 to Governor John Waihee, and his letter was referred to your office for a reply.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Department of Budget and Finance, Employees' Retirement System ("ERS"), must disclose to the public the number and identities of employees in each government agency who would be affected by House Bill No. 1059.

BRIEF ANSWER

Government employees who elected to become class C members of the ERS before July 1, 1984 have a significant privacy interest in information revealing their chosen retirement plan. Further, the disclosure of this information would not shed light on government conduct or activity. Consequently, the ERS cannot publicly disclose the names of those employees who elected

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to become class C members and are also affected by H.B. No. 1059 because disclosure of this information would constitute a clearly unwarranted invasion of privacy. In contrast, the ERS must disclose the names of employees who, by law, automatically become class A or class C members of the ERS.

Finally, the UIPA requires public disclosure of the number of government officials and employees in each government agency who would be affected by H.B. No. 1059 because there is no privacy interest in the number of unidentified employees or officials potentially affected by the bill.

#### FACTS

H.B. No. 1059 proposes amendments to chapter 88, Hawaii Revised Statutes, relating to the Employees' Retirement System. In particular, section 2 of the bill proposes to add a subsection (b) to section 88-47, Hawaii Revised Statutes. Under proposed subsection (b), those ERS members in government service before July 1, 1984 who elected to become "class C" members of the ERS and subsequently became "class A" members may convert their class C service to class A service and receive all rights and benefits of class A members for service converted pursuant to this proposed provision. In order for an ERS member to be eligible for this conversion, the member must apply for the conversion no later than December 31, 1994.

As you explained to me in our telephone conversation on April 15, 1991, class A members belong to a "contributory plan" in which they contribute a percentage of their salary to the pension fund and in turn receive greater retirement benefits. In contrast, class C members are part of a "non-contributory plan" in which only the State contributes to the fund and the retirement benefits are reduced accordingly.

#### DISCUSSION

The UIPA expressly recognizes that individuals have a significant privacy interest in their "finances, income, assets, . . . financial history or activities." Haw. Rev. Stat. § 92F-14(a)(6) (Supp. 1990). In OIP Opinion Letter No. 90-1 (Jan. 8, 1990), we found that a retired public employee had a significant privacy interest in the benefit income received or payout option selected by the retired employee. Further, we concluded that the

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retiree's privacy interest outweighed the public interest in disclosure of this data.

Applying the same analysis set forth in OIP Opinion Letter No. 90-1, we believe that an employee has a significant privacy interest in the employee's election to become a class C member and belong to the non-contributory plan, while disclosure of this information would not shed any light on government conduct. Therefore, in order to avoid a clearly unwarranted invasion of privacy under the UIPA, the ERS cannot disclose to the public the names of those employees who elected to become class C members and are covered by H.B. No. 1059. Further, this information cannot be disclosed to Representative Hagino when requesting the information in his individual capacity. See OIP Op. Ltr. No. 90-10 (Feb. 26, 1990) (section 92F-19(a)(16), Hawaii Revised Statutes, permits disclosure of confidential records to the legislature, or a committee thereof, but not to a legislator in the legislator's individual capacity). On the other hand, the name of any employee who automatically becomes a class C or a class A member by statute would constitute public information since this classification is set by State statute.

In his letter, Representative Hagino specifically requested the Governor to inform him "as to how many cabinet level officers and other executive officers will be affected by" H.B. No. 1059. Apparently, Representative Hagino is inquiring about the number of officers or employees who would be affected by H.B. No. 1059. There is no privacy interest in the number of officers or employees in each department who would be affected by the bill since this information does not individually identify any particular individuals. Accordingly, we find that the number of officials in each government agency who would be affected by H.B. No. 1059 does not fall under any UIPA statutory exception to disclosure and, therefore, would be subject to public inspection and duplication under the UIPA. In addition, if a government agency maintains information about the potential cost to the State that would result from the passage of this bill, the UIPA requires that this information be made public as well.

#### CONCLUSION

The number of employees covered by H.B. No. 1059 would constitute public information under the UIPA. However, the identities of those employees who would be affected by the bill

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must be kept confidential because disclosure of this information would constitute a clearly unwarranted invasion of the employees' privacy. See Haw. Rev. Stat. § 92F-13(1) (Supp. 1990).

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APPROVED:

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Director

LJL:ahm