



**EFiled: Jun 13 2017 03:46PM HAST  
Transaction ID 60728504  
Case No. 16-DR 00-108**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

MERIT APPEALS BOARD, STATE OF  
HAWAII,

Petitioner,

and

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO; DEPARTMENT OF PUBLIC  
SAFETY, State of Hawaii; KEIRON PRATT;  
and UNITED PUBLIC WORKERS,  
AFSCME, LOCAL 646, AFL-CIO,

Intervenors.

CASE NO. DR-00-108

ORDER NO.: 3266

ORDER GRANTING INTERVENOR  
HGEA'S MOTION TO PLACE UNDER  
SEAL EXHIBIT "D" TO HAWAII  
GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO'S POSITION STATEMENT,  
FILED ON OCTOBER 31, 2016

ORDER GRANTING INTERVENOR HGEA'S MOTION TO PLACE UNDER SEAL  
EXHIBIT "D" TO HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,  
LOCAL 152, AFL-CIO'S POSITION STATEMENT, FILED ON OCTOBER 31, 2016

On April 27, 2017, Intervenor Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA) filed a motion with the Hawaii Labor Relations Board (Board) to place under seal Exhibit "D" attached to HGEA's Position Statement that was filed on October 31, 2016 (Motion to Seal), because Exhibit "D" contains personal information that should not be publically available, such as home address, medical and health records, and social security number.

On May 4, 2017, Intervenor United Public Workers, AFSCME, Local 646, AFL-CIO (UPW) filed its Opposition to HGEA's Motion to Place Under Seal and Not Redact Exhibit D to HGEA's Position Statement. The UPW asserts that it is entitled to review an unredacted version of Exhibit "D"; that Oahu Publications Inc. v. Takase, 139 Hawai'i 236, 386 P.3d 873 (2016),

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which was cited by the HGEA, provides for a hearing on a party objecting to a motion to seal the record and provides for a procedure for redacting the confidential portions; and that Oahu Publications Inc. affords the public the right to file objections to the sealing of the document.

On May 5, 2017, the HGEA submitted its Response to UPW's Opposition to HGEA's Motion to Place Under Seal and Not Redact Exhibit "D" to HGEA's Position Statement, Filed May 4, 2017 (HGEA's Response). The HGEA's Response asserts that the UPW was provided with a complete copy of Exhibit "D" via hand delivery on May 3, 2017, with only the social security number and home address redacted/blacked out; the HGEA took steps to effectuate sealing of personal information contained in Exhibit "D" based upon its interpretation of the HCRR and Oahu Publications; and that the individual's privacy interests outweigh any remote interest in allowing public access, there is/has been no prejudice to the UPW or any other party by sealing Exhibit "D," and all parties have received notice and a fair opportunity to object to the Motion to Seal. The Board is persuaded by the HGEA's Motion to Seal and the HGEA's Response, as discussed below.

The Board's administrative rules provide in relevant part:

**§12-42-6 Public records.** (a) The term "public record," as used in this chapter, shall be as defined in section 92-50, HRS, and shall include all rules, regulations, written statements of policy, or interpretations formulated, adopted, or used by the board, all complaint, opinions and orders, written testimony, and any other material on file in the office of the board *unless accorded confidential treatment pursuant to law or this chapter.*

(b) All public records shall be available for inspection in the office of the board during established business hours, unless public inspection of such records is in violation of any state or federal law; provided that, except where such records are open under any rule of court, *the board may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the board, the State, or any governmental agency or sub-division is or may be a party, or when such records do not relate to a matter in violation of law and nondisclosure is deemed necessary for the lawful protection of the character, reputation, or business of any person.*

\* \* \*

Hawaii Administrative Rules (HAR) § 12-42-6 (emphases added).<sup>1</sup>

With respect to records that are “accorded confidential treatment pursuant to law,” there are several laws that indicate social security numbers, medical records, and home addresses are accorded confidential treatment. For example, social security numbers are protected under HRS § 487J-2, which governs “Personal Information Protection.” Medical records are accorded confidential treatment by HRS chapter 622, part V. Furthermore, HRS chapter 92F, the Uniform Information Practices Act, provides in § 92F-14 specific examples of records in which a person has a “significant privacy interest,” which include, *inter alia*, information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation (§ 92F-14(b)(1)); and social security numbers (§ 92F-14(b)(9)). Moreover, Rule 2.19 of the Hawai‘i Court Records Rules (HCRR), expressly includes social security numbers and medical and health records in its definition of “Personal information,” which pursuant to HCRR Rule 9.1(a), shall not be included in any accessible document filed in any state court.

Accordingly, the Board finds and concludes that the HGEA’s Exhibit “D” contains information that is accorded confidential treatment pursuant to law, and therefore may be withheld from public access pursuant to HAR § 12-42-6. Pursuant to HAR § 12-42-8(g)(3)(C)(iv), the Board “may” decide to hear oral argument or testimony on a motion filed pursuant to § 12-42-8(g)(3)(C); here, the Board finds that there can be no legitimate dispute that the personal information contained in Exhibit “D” is accorded confidential treatment pursuant to law, and thus the Board hereby rules on the HGEA’s Motion to Seal without hearing or testimony.<sup>2</sup>

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<sup>1</sup> HAR § 12-42-6 notes that the rule implements HRS §§ 89-5 and 92-50. HRS § 89-5 does not expressly address public records, and HRS § 92-50 has since been repealed. HRS § 89-16 governs public records and proceedings, but expressly references only proceedings instituted under, or pursuant to, HRS § 377-9. Additionally, there are references in HRS chapter 89 regarding access to personal records, but those provisions do not appear applicable here (for example, HRS § 89-16.5 governs access to personal records by an employee organization, and provides, “Exclusive representatives shall be allowed access to an employee’s personal records which are relevant to the investigation or processing of a grievance. The exclusive representative shall not share or disclose the specific information contained in the personal records and shall notify the employee that access has been obtained”).

<sup>2</sup> In Oahu Publications Inc., the Court held, “If the court does not receive a motion objecting to the sealing, then no further action is required. If the court receives such a motion, then it must address the motion *as appropriate under the circumstances*” which was followed by a footnote. 139 Hawai‘i at 247 (emphasis added). The footnote clarified,

With respect to the UPW's assertion that it is entitled to review an unredacted version of Exhibit "D," the Board looks toward the HCRR for guidance. Pursuant to HCRR Rule 10.4, which governs confidential records and documents, that rule provides:

Except as otherwise provided by statute or court rule or as ordered by (a) the court that has jurisdiction over a court case, (b) the Administrative Director or the hearing officer's designee having jurisdiction over an ADLRO case, (c) the court that has jurisdiction over an appeal from a court or ADLRO case, or (d) the supreme court, **access to confidential records, documents, exhibits, and information shall be limited to the court and court personnel in the performance of their duties**, the Administrative Director and his subordinates in the performance of their duties, the hearing officer, **attorneys of record, parties to the court or ADLRO case, and duly authorized service providers**.

Accordingly, the Board finds that "sealing" Exhibit "D" in a manner that prohibits public access while allowing access by the Board and its personnel in the performance of their duties, attorneys of records, parties to the proceeding, and necessary service providers is appropriate under the circumstances of this case. **The Board hereby orders that Exhibit "D" be sealed in similar manner to that described in HCRR Rule 10.4.** The Board notes that the HGEA, while asking that Exhibit "D" be sealed, did not request to redact social security numbers; the Board further notes that the UPW does not object to the redaction of social security numbers. The Board also finds that social security numbers are not relevant to its consideration of the Petition for Declaratory Ruling in this matter. Therefore, the Board, *sua sponte*, **orders that any social security number appearing in the records of this case be redacted**, and that the parties redact any social security numbers from their copies of documents that were filed in this matter.

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"If the motion identifies a legitimate dispute regarding whether a filing impermissibly includes personal information, then the court should, *when appropriate*, promptly schedule a hearing to resolve the dispute." *Id.* (emphasis added). Here, the Board does not find a legitimate dispute regarding the confidentiality of the personal information contained in Exhibit "D."

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LOCAL 152, AFL-CIO'S POSITION STATEMENT, FILED ON OCTOBER 31, 2016  
ORDER NO. 3266  
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DATED: June 13, 2017, Honolulu, Hawaii.

HAWAII LABOR RELATIONS BOARD



*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO. Member



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