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Hawaii Disclosure Law For Government Officials Not Transparent

By Robert Brown | 04/25/2011

More than 90 percent of financial disclosures — documents required to be filed by Hawaii public employees and politicians to enhance government transparency — are not visible to the public.

And the people charged with reviewing them don't have the training, funding or time to review them, except to make sure they're filled out properly.

No one scrutinizes the disclosures for accuracy or possible conflicts of interest — and if a conflict were to arise, the only way the public would know is if the official disclosed it or someone else raised a concern.

Hawaii State Ethics Commission Executive Director Les Kondo says the filings are a means to improve transparency in government, but the intent of the law has been undermined.

"The transparency that might have been intended... it's not like looking through glass," Kondo told Civil Beat. "There's not a lot of transparency."

In Hawaii and Honolulu governments, about 2,300 disclosures are filled out annually. Of those, only about 210 are available for public review. The rest are submitted to either the state or local ethics commission, read over once and filed away.

The disclosures can offer telling glimpses into a public employee's financial ties and associations. Occasionally, they can be used to point out conflicts of interest that may arise throughout the course of a public career. For example, Honolulu City Council Chair [Nestor Garcia](#) recently came under [fire](#) for failing to declare a questionable part-time job listed in his disclosure.

But the ethics commissions, both Hawaii's and Honolulu's, have neither the staffing nor the expertise to analyze each filing and determine if a conflict exists.

"We have neither the manpower required to provide even minimal review of the 1,800 (state) financial disclosures that the office receives," said Kondo. "More importantly, we don't have the subject matter knowledge. Meaning, we don't have sufficient knowledge as to what the person's official duties are, and what type of interests, or matters, or issues that person is dealing with in their official capacity to reasonably understand whether or not there's a conflict."

Kondo told Civil Beat that approximately 160 of the 1,800 financial disclosure filings the ethics commission receives each year are public. As a courtesy, not because it is required by statute, the commission posts the 160 filings [online](#).

He says every disclosure is read over by staff, and that if obvious errors are apparent, the commission can communicate with the filer to make a correction. Essentially, the commission ensures the T's are crossed, instructions were followed and that zeros are in the right place.

For deeper scrutiny, reporters and bloggers dig through the few publicly available disclosures.

So what's the point of the other 90 percent of the disclosures if they have no oversight?

"The purpose of requiring financial disclosures is: (1) to inform the public (or the Ethics Commission as its representative for the confidential disclosures) and the media about potential conflicts of interest that may arise as the officer does his or her job," Chuck Totto, the executive director of the Honolulu Ethics Commission, told Civil Beat in an email. "(2) to assure that the officer annually focuses on the ethics requirements of the city and recalls that he or she is working for the public's benefit, and (3) provide a first tier of information against which the Commission may check conflict of interest disclosures."

But Totto acknowledges the city ethics commission, just like the state's commission, is not able to provide any more than that first tier of analysis.

"We have never had the resources to conduct random audits or other reviews to determine if the information submitted is complete and accurate; we have to rely on the filer for that," Totto wrote. "In order to conduct audits, we'd have to take our very limited resources away from, for instance, investigating complaints of misconduct."

Enter the media.

One of the traditional roles of the journalist is to provide a third eye over the workings of government and its

HAWAII STATE ETHICS COMMISSION
DISCLOSURE OF FINANCIAL INTERESTS (LONG FORM)

NAME: _____ DATE: _____

EMPLOYER: _____

POSITION: _____

RESIDENCE: _____

DATE OF BIRTH: _____

DATE OF DISCLOSURE: _____

DISCLOSURE OF FINANCIAL INTERESTS (LONG FORM)

1. List all sources of income, including but not limited to: salary, wages, honoraria, fees, gifts, and other income.

2. List all assets, including but not limited to: real estate, vehicles, stocks, bonds, and other investments.

3. List all liabilities, including but not limited to: mortgages, loans, and other debts.

4. List all conflicts of interest, including but not limited to: family members, friends, and other persons with whom you have a financial interest.

5. List all other information that may be relevant to your disclosure.

6. Sign and date this disclosure.

7. Submit this disclosure to the Hawaii State Ethics Commission.

Hawaii State Ethics Commission

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representatives.

But that's only possible if the organizations and individuals have access to the disclosures.

Totto said that the city ethics commission receives 450 to 500 disclosures each year. All candidates for elected office, elected and full-time appointed officers such as Cabinet members and board members, and employees, such as attorneys in the prosecutor's office, are required to file. Some civil service employees must also file, depending on their fiscal and discretionary power.

About 50 of those disclosures are public.

Hawaii Revised Statute [84-17](#) defines which state disclosures must be made public. They include:

- The governor, the lieutenant governor, the members of the Legislature, candidates for and delegates to the constitutional convention, the members of the board of education, the trustees of the Office of Hawaiian Affairs, and candidates for state elective offices;
- The directors of the state departments and their deputies, regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general;
- The administrative director of the State;
- The president, the vice presidents, the assistant vice presidents, the chancellors, and the provosts of the University of Hawaii;
- The superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education;
- The administrative director and the deputy director of the courts; and
- The administrator and the assistant administrator of the office of Hawaiian affairs.

Totto explained to Civil Beat the rationale behind keeping some disclosures private.

"The reason for this is to maintain a balance between the need for the public to review potential conflicts of interest, on the one hand, and the personal and financial privacy of the city officers and employees, on the other hand," Totto wrote. "This balance is especially important in local government where so many boards and commissions are made up of unpaid volunteers who have other employment. Some board and commission members balk at having to disclose their financial information, even if it is just to the Commission."

Totto says that making all disclosures public wouldn't necessarily be positive. He says that information provided on disclosures is general, failing to reveal much in the way of possible conflicts.

"Specific conflicts of interest (such as, 'the applicant is the city official's brother' or 'the city official owns property where the zoning change would occur') is much more relevant to whether there is ethical misconduct," Totto wrote. "So, the public trust is better served by having officers and employees disclose the specific conflicts of interest and recuse themselves."

The flaw in that argument, though, is that it relies on the integrity of the public employee or official.

Even with the disclosures that are required to be public, Civil Beat has found [discrepancies](#) between what elected officials report and other public records. And the people filing those disclosures know they'll be subject to public scrutiny.

Tomorrow, Civil Beat will share an examination of just one aspect of the financial disclosures of the 76 state legislators. When we compared property tax records with disclosure forms, we found discrepancies in the reports of 14 lawmakers.

It's impossible to say if the hundreds of private disclosures would have similar errors.

DISCUSSION: [What do you think of the number of publicly available financial disclosures?](#) [Join the conversation.](#)

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