



Office of the Administrative Director of the Courts – THE JUDICIARY • STATE OF HAWAII
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December 9, 2022

Via electronic submission

The Honorable Ronald D. Kouchi
President of the Senate
State Capitol, Room 409
Honolulu, HI 96813

The Honorable Scott Saiki
Speaker of the House of Representatives
State Capitol, Room 431
Honolulu, HI 96813

Dear President Kouchi and Speaker Saiki:

Pursuant to Act 46, Session Laws of Hawaii'i 2022, the Judiciary is transmitting a copy of the *Report of the Judicial Security Task Force Relating to Securing Online Personal Information of Federal and State Judges and Appropriate Judiciary Personnel*.

In accordance with Section 93-16, Hawaii'i Revised Statutes, we are also transmitting a copy of this report to the Legislative Reference Bureau Library.

The public may view an electronic copy of this report on the Judiciary's website at the following link: https://www.courts.state.hi.us/news_and_reports/reports/reports.

Should you have any questions regarding this report, please feel free to contact Karen Takahashi of the Judiciary's Legislative Coordinating Office at 808-539-4896, or via e-mail at Karen.T.Takahashi@courts.hawaii.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodney A. Maile".

Rodney A. Maile
Administrative Director of the Courts

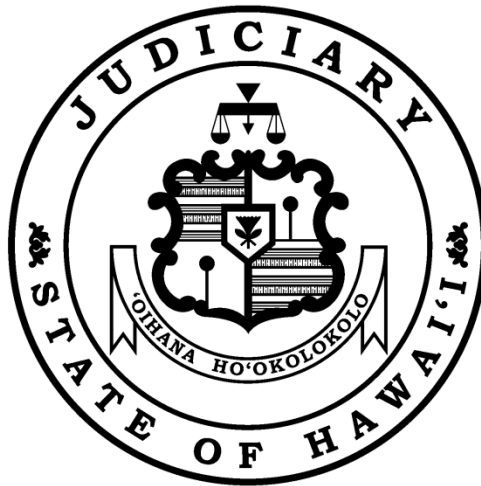
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c: Legislative Reference Bureau Library

**REPORT TO THE THIRTY-SECOND LEGISLATURE
2023 REGULAR SESSION**

**A Report of the Judicial Security Task Force Relating to Securing Online Personal
Information of Federal and State Judges and Appropriate Judiciary Personnel**

Pursuant to ACT 46, SESSION LAWS OF HAWAII 2022



Prepared by:

The Judiciary, State of Hawai'i

December 2022

REPORT TO THE THIRTY-SECOND LEGISLATURE 2023 REGULAR SESSION

A Report of the Judicial Security Task Force Relating to Securing Online Personal Information of Federal and State Judges and Appropriate Judiciary Personnel

Pursuant to ACT 46, SESSION LAWS OF HAWAI'I 2022

This report is respectfully submitted pursuant to Act 46, Session Laws of Hawai'i 2022, which requires the creation of a task force, placed within the Judiciary for administrative purposes, to identify appropriate measures to enhance the security of judges and judiciary personnel while not diminishing civil liberties or unduly hindering governmental operations, and requires the task force to submit a report to the legislature of its findings and recommendations, including any proposed legislation, no later than forty days prior to the convening of the regular session of 2023.

I. BACKGROUND

Act 46 was signed into law on June 17, 2022, and outlines the following objectives for the task force:

- 1) Identify, consult, and collaborate with public and private stakeholders to secure online personal information of federal and state judges and specified judiciary personnel;
- 2) Consider how other states, including New Jersey, California, Washington, and Illinois, as well as Congress are addressing the issue of judicial security with regard to prohibiting or limiting the online publication or posting of certain personal information for specified persons;
- 3) Determine the most effective practices or restrictions, including those that limit persons, businesses, and associations from publicly posting, publishing, or displaying personal information concerning federal and state judges and certain judiciary personnel;
- 4) Determine appropriate exceptions to these practices or restrictions, if any, for any suggested redaction or nondisclosure requirements, including matters affecting the title to real property;
- 5) Make recommendations regarding measures that would enhance judicial security without unduly hindering government operations and without diminishing civil liberties and first amendment rights; and
- 6) Make recommendations as to penalties, fines, or other sanctions to be imposed for unlawful publication of personal information about federal and state judges or specified judiciary personnel.

II. ACT 46, SLH 2022, JUDICIAL SECURITY TASK FORCE

Task Force members:

- Rodney A. Maile, Administrative Director of the Courts, Task Force co-chair
- Max Otani, Director of the Department of Public Safety, Task Force co-chair
- Timothy Kozak, Special Assistant to the Administrative Director of the Courts for Judiciary Security, Task Force Vice Chair
- Hon. Robert M. Browning, Chief Judge of the First Circuit
- Hon. J. Michael Seabright, United States District Court, District of Hawai'i
- Vincent Hoang, Chief Information Security Officer, Office of Enterprise Technology Services
- Randy Takehara, Cyber Security Manager, Office of Enterprise Technology Services
- Christopher Leong, Deputy Attorney General
- Catherine Awakuni Colon, Director of the Department of Commerce and Consumer Affairs
- Tracy Teruya, Property Valuation Analyst, Department of Budget and Fiscal Services, Real Property Assessment Division, City and County of Honolulu
- Jordan Lowe, Deputy Director, Department of Public Safety, representing the law enforcement community
- Pat Mau Shimizu, Executive Director, Hawaii State Bar Association, representing the nonprofit sector
- Patricia Kickland, Program Manager for the Students, Teachers, and Officers Preventing School Violence ("STOP") program, Hawaii State Fusion Center under the State of Hawaii Office of Homeland Security, Department of Defense (invited stakeholder member)
- Rochelle Mahoe, Ph.D., Complex Area Superintendent Farrington-Kaiser-Kalani (FKK) Complexes, representing the Department of Education (invited stakeholder member)

III. WORK OF THE TASK FORCE

Pursuant to Act 46, SLH 2022, the Judiciary convened the judicial security task force on August 8, 2022 and November 4, 2022 to examine, evaluate, and determine optimal methods for securing online personal information of federal and state judges and appropriate judiciary personnel, which may include requirements for nondisclosure or redaction of personal information on the Internet.

The task force identified, consulted, and collaborated with public and private stakeholders to consider how other states and jurisdictions address the issue of judicial security with regard to prohibiting or limiting the online publication or posting of certain personal information for specified persons. The task force also considered the most effective practices or restrictions that would enhance judicial security without hindering government operations or diminishing civil liberties and first amendment rights.

A. Efforts in Other States and Congress to Address Judicial Security

California

The following provisions of the California Code will take effect on January 2, 2023.

Sections 7928.205 and 7928.210 prohibit a person from posting the home address/telephone number of elected or appointed officials on the Internet if that person “[knows] that person is an elected or appointed official and [intends] to cause great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual.” “Elected or appointed officials” include judges.

A violation of this law will be a misdemeanor. A violation that leads to the bodily injury of the official, or the official’s residing spouse or child, is a misdemeanor or felony.

Section 7928.225 states that an official whose home address or telephone number is made public as a result of this law may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney’s fees. A fine not exceeding \$1,000 may be imposed for a violation of the court’s order for an injunction or declarative relief.

Section 7928.230 states that no person, business, or association shall solicit, sell, or trade on the Internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official’s home address. If a jury or court finds that a violation has occurred, it shall award damages to that official in an amount up to a maximum of three times the actual damages, but in no case less than \$4,000.

Illinois

The following section of Illinois law was enacted on September 12, 2012 and appears to be current as of 2022.

- Section 2-1. Publicly posting or displaying a judicial officer's personal information by government agencies.

- (a) Government agencies shall not publicly post or display publicly-available content that includes a judicial officer's personal information, provided that the government agency has received a written request in accordance with Section 2-10 of this Act that it refrain from disclosing the judicial officer's personal information. After a government agency has received a written request, that agency shall remove the judicial officer's personal information from publicly available content within five business days. After the government agency has removed the judicial officer's personal information from publicly available content, the agency shall not publicly post or display the information and the judicial officer's personal information shall be exempt from the Freedom of Information Act unless the government agency has received consent from the judicial officer to make the personal information available to the public.
- (b) Redress. If a government agency fails to comply with a written request to refrain from disclosing personal information, the judicial officer may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction.

Washington

Washington State statutes prohibit Internet postings of the personal information of court and law enforcement employees if release of the information poses an imminent and serious threat to the employee or their immediate family. The following statutes were enacted in 2002 and last amended in 2006.

- RCW 4.24.680 Unlawful release of court and law enforcement employee information—Exception. (1) A person shall not knowingly make available on the world wide web the personal information of a peace officer, corrections person, justice, judge, commissioner, public defender, or prosecutor if the dissemination of the personal information poses an imminent and serious threat to the peace officer's, corrections person's, justice's, judge's, commissioner's, public defender's, or prosecutor's safety or the safety of that person's immediate family and the threat is reasonably apparent to the person making the information available on the world wide web to be serious and imminent. (2) It is not a violation of this section if an employee of a county auditor or county assessor publishes personal information, in good faith, on the website of the county auditor or county assessor in the ordinary course of carrying out public functions. (3) For the purposes of this section: (a) "Commissioner" means a commissioner of the superior court, court of appeals, or supreme court. (b) "Corrections person" means any employee or volunteer who by state, county, municipal, or combination thereof, statute has the responsibility for the confinement, care, management, training, treatment, education, supervision, or counseling of those whose civil rights have been limited in some way by legal sanction. (c) "Immediate family" means a peace officer's, corrections person's, justice's, judge's, commissioner's, public

defender's, or prosecutor's spouse, child, or parent and any other adult who lives in the same residence as the person. (d) "Judge" means a judge of the United States district court, the United States court of appeals, the United States magistrate, the United States bankruptcy court, and the Washington court of appeals, superior court, district court, or municipal court. (e) "Justice" means a justice of the United States supreme court or Washington supreme court. (f) "Personal information" means a peace officer's, corrections person's, justice's, judge's, commissioner's, public defender's, or prosecutor's home address, home telephone number, pager number, social security number, home email address, directions to the person's home, or photographs of the person's home or vehicle. (g) "Prosecutor" means a county prosecuting attorney, a city attorney, the attorney general, or a United States attorney and their assistants or deputies. (h) "Public defender" means a federal public defender, or other public defender, and his or her assistants or deputies. [2006 c 355 § 2; 2002 c 336 § 1.] Finding—2006 c 355: "The legislature finds that the dissemination of personally identifying information as proscribed in RCW 4.24.680 is not in the public interest." [2006 c 355 § 1.]

- 4.24.690 – provides information about “Unlawful release of court and law enforcement employee information – Court action to prevent.
- RCW 4.24.700 Unlawful release of court and law enforcement employee information—Damages, fees, and costs. Any person whose personal information is made available on the world wide web as described in RCW 4.24.680(1) who suffers damages as a result of such conduct may bring an action against the person or organization who makes such information available, for actual damages sustained plus damages in an amount not to exceed one thousand dollars for each day the personal information was made available on the world wide web, and reasonable attorneys' fees and costs. [2006 c 355 § 3; 2002 c 336 §3.]

New Jersey (current as of 2021)

New Jersey Revised Statutes (NJ Rev Stat) Section 47:1-17, pertaining to publishing of certain information by governmental agencies, prohibits knowingly posting or making available the home address of any active, formally active, retired judicial officer, prosecutor, or law enforcement officer without their written permission.

Congress - Daniel Anderl Judicial Security and Privacy Act

Under this Act, individuals and businesses would be prohibited from sharing the personal information of judges or their families online if they receive a demand from the judge that data not be disclosed. This bill was attached as an amendment to Congress's annual defense bill in 2021, but does not appear to have yet been enacted.

B. Efforts in Other States to Address Disclosure of Real Property Information

Due to time constraints, the task force's work focused primarily on prohibiting or limiting the online publication or posting of real property ownership information for specific persons.

Online Real Property Ownership Information

With regard to prohibiting or limiting the online publication or posting of real property ownership information for specified persons, California, New Jersey, and Illinois do not provide property search by owner name. Washington provides property search by owner name if recorded as a business entity.

General search results return Geographic Information System (GIS) maps that exclude property owners' names, with the exception of Washington, which provides "taxpayer" names with a link to assessor information including "name." Information displayed is the parcel ID, site address, and exemption type granted (i.e. homeowner, etc.) without reference to exemption claimant. The home address of the property owner is not immediately discernible with provided information. Washington provides a link to tax billing information that includes the mailing address of the owner or owner's agent.

California Law

California's Government Code, Chapter 3.5, Section 6253 (b), pertaining to the inspection of public records, states that "express provisions of law" (i.e. reference to chapter, section, etc.) are required for exception from disclosure. Section 6276.04, pertaining to other exemptions from disclosure, expressly distinguishes exceptions for assessment records in the Revenue and Taxation Code (RTC). RTC, Section 408(a) provides that any information and record in the assessor's office, not required to be prepared or kept by law, is not open to public inspection, unless specifically exempt. The assessment roll must be available for public inspection and RTC Section 602 requires the roll to show name, site address, and land legal description. RTC Section 1254, pertaining to assessor's office equipment, requires map books to be indexed by owners' name. However, Section 481, pertaining to change in ownership reporting, requires that all information on the change of ownership statement must be held secret to the assessor and board of equalization.

Illinois Law

Illinois Compiled Statutes (ILCS) Chapter 5, Section 1.2, pertaining to its Freedom of Information Act, presumes that all records possessed by a public body is

open for public inspection, unless the public body wanting to withhold disclosure can prove, by evidence, an exemption from disclosure. 5 ILCS 140/1.2 also describes public records as being all records pertaining to transaction of public business, and clarifies in Section 7(1)(c), that information required to be disclosed to fulfill the public duties of public employees and public officials is not an invasion of personal privacy.

The section also provides exemptions from disclosure including disclosure of “personal information” that is an “unwarranted invasion of personal privacy” such that disclosure of the information would be considered highly objectionable to a reasonable person, and which personal privacy exceeds the interest of permitted public disclosure. Section 2 defines private information as unique identifiers citing specific types of information such as personal email address, home address, and others. 35 ILCS 200/9-40 provides that counties with 3,000,000 population or less must maintain maps according to rules of the department. Counties with a population of three million or more may, instead of that provided in Section 9-40, establish a system of property index numbers for the purpose of real property tax assessment, collection, or automation for the office of the recorder. The system must describe the property by township, section, block, parcel or lot, and may cross-reference the street or post office address. Tax maps must carry the property index numbers and the maps are open for public inspection. 35 ILCS 200/12-25 requires that the assessment roll include the owner’s name or last taxpayer, address, if any, and property index number.

Washington Law

The Revised Code of Washington (RCW) Section 42.56.070, pertaining to documents to be made public, requires that all public records be made open to disclosure unless specific exemptions apply. RCW 42.56.230 provides exemptions for public disclosure and prohibits disclosure of assessment or tax collection information to persons prohibited by specified RCW law or where a taxpayer’s right to privacy qualifies under Section 42.56.230(4). A right to personal privacy is determined to be invaded when the disclosure of the information is offensive to a reasonable person and is of a non-legitimate public interest. Exemptions are not intended to prohibit disclosure of statistical non-descriptive information of readily identifiable persons. Section 84.40.020, pertaining to public inspection of assessment listing, requires all real property to be annually listed. Section 84.40.160, pertaining to the manner of listing, requires the list to show “names and owners,” if known. It also requires maps boundaries, subdivisions, and parcel numbering to be regularly updated as reflected by transfer information. Section 84.56.050, pertaining to treasurer’s duties of notice of taxes due, requires the treasurer to use the assessor’s roll to prepare the treasurer’s roll for the purpose of providing tax bill notice to each name or owner on the assessor’s roll. Tax billing references the property’s “taxpayer,” defined as the person responsible or whose property is charged with property tax. GIS maps provide a link to the assessor’s information. Assessor’s information shows “taxpayer’s” name.

New Jersey Law

New Jersey Revised Statutes (NJ Rev Stat) Section 47:1-17, pertaining to publishing of certain information by governmental agencies, prohibits knowingly posting or making available the home address of any active, or formally active retired judicial officer, prosecutor, or law enforcement officer without their written approval. Section 54:4-24, pertaining to the form and content of the assessor's list, requires listing of the property owner's name. Section 54:1-95 requires the annual tax list to be open for public inspection.

C. Effective Practices or Restrictions

The task force received a recommendation from the Real Property Assessment Division (RPAD), Department of Budget and Fiscal Services, of the City and County of Honolulu, that a more expansive approach to address the security issues would be to amend the Uniform Information Practices Act (UIPA) to provide exception for redaction of proposed "personal information" in every format (digital and print).

Pursuant to the Revised Charter of the City and County of Honolulu, the Department of Budget and Fiscal Services is tasked to review assessment rolls, prepare bills, and collect and receive moneys due to the city. The duties of the director of the RPAD are to assess real property for tax purposes, collect taxes imposed, and maintain maps showing divisions of land based upon ownership. Maps must show, as far as possible, the names of the owners of each division of land. Revised Ordinances of Honolulu (ROH) § 8-1.14(a), pertaining to real property tax records, deems all maps and records obtained, received, compiled, or made by the director, public record open to public inspection, unless the information is provided an exception by subsection (b). Subsection (b) provides exception to disclosure of trade secrets, confidential commercial information, taxpayer financial information, and certain agreements. ROH § 1-24.1 defines "public records" as having the same meaning as defined in Hawai'i Revised Statutes ("HRS") Section 92-50 HRS. HRS Section 92-50 pertaining to public records, was repealed in 1988. RPAD is obligated to disclose records deemed public to any requestor and for which use may include commercial publication or selling of information.

The UIPA defines "government record" and assumes, pursuant to HRS Section 92F-11, that all government records are open to public inspection unless restricted by law and allowed exception from disclosure by HRS Section 92F-13. HRS Section 92F-12(5) expressly requires public disclosure of land ownership, transfer, lien records, and real property tax information. OIP Formal Opinion 11-1, considers mailing addresses to be tax information. Redaction of any information must qualify for an exception listed in Section 92F-13. Amending the UIPA to provide exception for redaction of the proposed

“personal information” in every format (digital and electronic) will provide broad exception to requested data whether posted online or requested through UIPA provisions. In absence of any State of Hawai‘i statute mandating the availability of electronically downloadable and searchable formats, printed, un-redacted documents may be located at the assessor’s office to fulfill public inspection requirements. However, a mandate may be imminent due to revision of the Freedom of Information Act (FOIA) requiring the availability of such formats.

Consequently, the redaction of specified information for certain persons on particular electronic platforms would require amending the UIPA. HRS Section 92F-13 would have to be amended to add an exception providing for redaction of information contained in government records. The exception would have to address the following matters: a) the type of information categorized as “personal information;” b) specify electronic and/or digital information; c) specify that the proposed exception would apply to information hosted, posted, made available for download, or electronic transmission; d) identify the category of persons, if limited, qualifying for the exception; and e) reference the specific statute requiring the exception. HRS Section 92F-12(5) would also have to be amended to reference the exception created in Section 92F-13, and could also provide that any information and records in the assessor’s office, not required to be prepared or kept by law, is not open to public inspection.

IV. CONCLUSION

After considering the matters identified in Act 46, the task force concludes that the original intent and content of H.B. No. 1539 (2022) are still appropriate in regards to addressing the security concerns of justices, judges, and probation officers.

Additionally, although not included in the specific objectives of Act 46, the task force also identified other groups of elected/appointed officials, as well as other state employees who might also benefit from having similar protections provided by H.B. No. 1539 (2022). These groups include, but are not limited to: a) state legislators, b) Department of Education teachers and administrators, and, c) elections administrators and staff.

The judiciary intends to introduce a measure similar in content to H.B. No. 1539 (2022) into the 2023 Hawai‘i State Legislature, and would be willing to assist these and any other groups that would be interested in having similar protections.

This concludes the report of the judiciary, submitted pursuant to Act 46, Session Laws of Hawai‘i 2022.