

**Memorandum to the Chief of the Honolulu Police Department:  
Defending Officers' Right to Privacy**

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LEPS-530: Public Safety Law

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January 18, 2021

TO: Chief of Police

FROM: Benjamin Moszkowicz, Major, Honolulu Police Department

SUBJECT: Pre-Employment Psychological Evaluation Disclosure

This memorandum outlines the reasons your administration should vehemently oppose any release of officers' pre-employment psychological evaluations. This opposition is rooted in the officers' right to privacy as expressed by the United States Supreme Court (USSC), the Hawaii Constitution, and the Hawaii Uniform Information Practices Act (UIPA).

Simply stated, while it may not be expressly articulated, the United States Constitution most certainly still protects an individual's right to privacy. While true that "the association of people is not mentioned in the Constitution nor in the Bill of Rights," the United States Supreme Court also held in *Griswold v. Connecticut* that, "... the First Amendment has a penumbra where privacy is protected from governmental intrusion."<sup>i</sup>

Since the Hawaii Constitution was adopted in 1950, rather than imply a right to privacy, citizens are expressly protected. Article I, Section 6 states that, "the right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest."<sup>ii</sup>

The officers involved in this potential release are civil service employees, typically subject to public scrutiny. However, in the eyes of the law, they are also citizens with privacy rights that we, as law enforcement leaders, are sworn to uphold.

As pre-employment material, the evaluations being considered for release do not contain information germane to their employment in the department. Instead, they include perhaps the most private of materials, namely a summary and analysis of individuals' personal thoughts and feelings. As such, they require the utmost protection available against intrusion.

While transparency in government is certainly a compelling argument when deciding which materials your administration should make public, there is relevant state legislation on point protecting the officers. The Uniform Information Practices Act, HRS 92F-14, requires disclosure of government records unless the individual's privacy interests outweigh the public interest in disclosure.<sup>iii</sup> Two of the specific examples of "significant privacy interest" listed in the statute apply clearly and explicitly here:

- Subsection (b)(1), "Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment or evaluation..."
- Subsection (b)(4), "Information in an agency's personnel file, or applications [...] for public employment..."

Based on these well-established precedents, by withholding the confidential psychological evaluations, the department is not only well within its rights but is fulfilling its responsibility to protect the privacy interests its employees are due as citizens of the United States and the state of Hawaii. I strongly urge you to protect the privacy rights of our employees and resist all efforts to disclose their psychological evaluations.

//signed// Benjamin Moszkowicz

Major, Honolulu Police Department

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<sup>i</sup> Quoting the USSC in *Griswold v. Connecticut*, Justice Douglas writing for the Court. 381 U.S. 479 (1965). The full text is available at:

<https://supreme.justia.com/cases/federal/us/381/479/>

<sup>ii</sup> Quoting the Hawaii State Constitution. The full text is available at:

<https://lrb.hawaii.gov/constitution#articleI>

<sup>iii</sup> The full text of Hawaii Revised Statutes §92F-14, Significant privacy interest; examples, is available at [https://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/HRS0092F/HRS\\_0092F-0014.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092F/HRS_0092F-0014.htm)