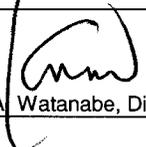


 <p style="text-align: center;">STATE OF HAWAII DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT POLICIES AND PROCEDURES</p>	POLICY NO./DIVISION ABBREVIATION 701.002 ERD/PTO	NO. of PAGES 14
	EFF. DATE 11/17/03	REV.NO./Date
TITLE: <p style="text-align: center;">EMPLOYMENT-RELATED PERSONNEL FILES</p>	APPROVED:  Kathleen N. A. Watanabe, Director	

I. POLICY

The integrity of employment-related personnel files shall be maintained in a confidential and secure manner and in accordance with and state and federal laws, regulations, and rules.

These procedures shall be used in conjunction with applicable provisions in chapter 92F, HRS, applicable state and federal laws and regulations, and other HRD policies and procedures.

II. RATIONALE

The purpose of this policy is to ensure the confidentiality and security of employment-related personnel files and that such personnel records are used solely for their intended purposes.

III. DEFINITIONS

“Custodian of records” means the Departmental Personnel Officer (DPO) or the designee of the department head directly responsible for the establishment, maintenance, storage, and disposal of official personnel folders and other employment-related files.

“Employment-related personnel files (EPF)” means a collection of employment documents that are established and maintained for the administration of specific personnel programs, such as leave sharing, or are separately maintained because of the confidential nature of the information, such as personal health information.

“Health information” means any information, whether oral or recorded in any form or medium, that is created or received by the employer and relates to the past, present, or future physical or mental health condition of an employee; the provision of health care to the employee; or the past, present or future payment for the provision of health care to an employee, and may individually identify the employee.

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“Official personnel folder (OPF)” means the official repository of records and reports of personnel actions effected during an employee's service with the state executive branch.

“Records officer” means the designated person acting in the capacity of the Custodian of Records at a program that has been delegated authority to maintain the OPF and employment-related personnel files of its employees.

IV. SCOPE

This policy covers employment-related personnel files for all employees of the executive branch, except for board of education employees of the department of education, board of regents employees of the university of Hawai'i, and employees of the Hawai'i health systems corporation.

V. RESPONSIBILITIES

A. DEPARTMENTS.

Each department head may designate a custodian of records for EPF who may be a different individual from the custodian for official personnel folders (OPF). Such designation shall be documented by completing HRD Form OPF-1, *Designation of Custodian* (See Policy No. 701.002, Attachment 1). The form shall be kept on file with the custodian of records and a copy sent to HRD, employee relations division (ERD), personnel transaction office PTO).

B. CUSTODIAN OF RECORDS.

The custodian of records shall:

1. Be responsible for the establishment, maintenance, storage, security, and disposal of the department's EPF, related electronic personnel data, and the periodic training of staff who are authorized access to personnel files;
2. Respond to requests for information contained in the EPF such as, but not limited to, subpoenas, employment verifications, and requests for employment data for service awards, and grievance investigations;

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3. Consult with the personnel transactions office when guidance is needed regarding the release of information contained in EPF; and
4. Ensure that EPF documents are included in the transfer of an employee's OPF pursuant to Policy Number 701.001, VII. F., *Transfer of OPF to Another State Department*.

D. RECORDS OFFICER.

The custodian of records may delegate the responsibilities contained in this policy and procedures to a records officer.

E. DEPARTMENTAL PERSONNEL OFFICE STAFF.

An employee who is assigned, as part of the employee's routine duties, access to EPF shall ensure that such access to and use of the information is limited to the purposes of performing the employee's work.

VI. GENERAL PROVISIONS

A. PHYSICAL SECURITY OF EPF.

1. EPF shall be maintained and stored in a secure manner that will guard against unauthorized access and the disclosure, damage or loss of confidential and private employee information.
2. The custodian of records shall be responsible for the department's physical security measures used to protect confidential employee information. The custodian of records shall:
 - a. Identify the location of the EPF;
 - b. Ensure the physical security of the files;
 - c. Identify and authorize the individuals who may have access to the physical files;
 - d. Develop and implement procedures for the security and access to the physical files; and
 - e. Establish training and periodic retraining on confidentiality and security procedures for employees responsible for maintaining EPF.

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3. EPF shall be stored in cabinets or storage areas that shall be locked and secured after normal work hours. Locking of the office's entry doors is not sufficient to meet this security requirement.
4. EPF shall be accessible only to authorized personnel office staff. Such authorized personnel shall receive training and periodic retraining on security procedures and their responsibilities to protect the confidentiality of the documents filed in the OPF. (See Policy and Procedures 701.001, Attachment 3.)

B. MAINTENANCE OF EPF.

Documents maintained in EPF shall be retained in accordance with the DAGS General Records Schedule (GRS) as required by state and federal law, rules, or regulations, and in accordance with these procedures.

C. ACCESSIBILITY AND USE OF EPF.

1. Access by an Employee.
 - a. An employee may be permitted to review documents specific to the employee that are maintained in an EPF upon submission of a request in accordance with the department's procedures and chapter 92F, HRS, or other applicable state or federal statutes, regulations or rules. The custodian of records or authorized staff shall require that an employee provide personal identification to access the specified documents.
 - b. An employee may request copies of documents in accordance with applicable provisions of state or federal statutes, regulations or rules. Fees for processing copies of documents may be charged in accordance with section VI. E., *Fees for Processing Record Requests*, of these procedures.
 - c. If an employee disagrees with information contained in any of the documents maintained in the employment-related personnel file, the employee may request in writing that a correction be made of the

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incorrect information provided that such correction is allowed by state or federal statute, rules or regulations, or a written statement explaining the employee's position may be attached to the document.

2. OPF Access by Exclusive Representative.

The access to an employee's specific documents maintained in an EPF which are relevant to the investigation or processing of a grievance may be permitted unless prohibited by state or federal law, regulations or rules. The exclusive representative shall ensure the confidentiality, security, and custodial control of the information contained in the documents obtained from the employer in accordance with §89-16.5, HRS.

3. Access by Departmental Personnel.

The custodian of records may authorize or grant access to documents maintained in EPF to the following departmental personnel as necessary for the performance of their official duties and responsibilities unless prohibited by state or federal statutes, regulations or rules:

- a. Department Director and Deputy Director;
- b. A secondary Custodian of Records and Records Officer;
- c. Specified personnel office staff positions; and
- d. Supervisory and management employees who have an employment-related need in order to carry out their duties.

4. Access Restrictions.

Authorized departmental personnel shall not be allowed to freely review any document in an EPF.

- a. The access of authorized personnel office staff shall be limited to the specific duty or task required for the access to the EPF.
- b. Any use or disclosure of information shall be limited to the information necessary to achieve the purpose of

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the use or disclosure, or as necessary to carry out an employee's duties.

- c. The custodian of records shall determine if the request of other departmental staff to access documents maintained in an EPF is for a reason necessary for the performance of their official duties and responsibilities. Access shall be limited to the requested documents.
 - d. The custodian of records or designated personnel office staff shall monitor the review of the documents by the employee, exclusive representative, or other authorized departmental staff to maintain the integrity and confidentiality of the documents.
5. Verification of the identity and authority of the person requesting access to specific employment-related documents may be required if the identity or authority of the person is unknown to the custodian of records. (See Policy No. 701-001, Attachments 4 and 5 for samples of an access request and an access log.)
6. Information contained in EPF may be released to individuals other than the employee, union representatives, and departmental personnel in accordance with chapter 92F, HRS. Situations under which information may be released include:
 - a. Upon written permission of the employee;
 - b. Upon receipt of a court order or subpoena after consultation with the Attorney General;
 - c. To comply with applicable federal and state laws and regulations; and
 - d. Personal emergencies where compelling circumstances affect the health or safety of an individual.
7. Information contained in EPF, as required by Chapter 92F, HRS, shall be made available upon request. An appointment for public inspection and duplication of documents shall be during regular business hours.
8. Any individual who wishes to file a complaint concerning

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access, retention, use and disclosure, or the storage of EPF may submit a complaint to the custodian of records.

D. TRANSFER OF EMPLOYMENT-RELATED DOCUMENTS WITH OPF

See Policy No. 701.201, section VII. F., *Transfer of OPF to Other State Departments.*

E. FEES FOR PROCESSING RECORDS REQUESTS

Fees for processing records requests and copying documents shall be charged to the requestor in accordance with Chapter 92F, Hawai'i Revised Statutes, or applicable collective bargaining agreement.

VII. PROCEDURES

A. ESTABLISHMENT OF CERTAIN EPF

Due to the confidential nature of the information in certain documents, the following documents are not considered part of an OPF and shall be filed separate and apart from the OPF:

1. Drug and alcohol test records;
2. Family and Medical Leave applications and supporting documents;
3. Health benefit related documents, such as health benefit enrollment applications;
4. Leave Sharing applications and supporting documents;
5. Physical Examination Form/Personal Health information; and
6. Suitability DPS 329C, Request for Criminal History Record Clearance for State Civil Service Employment.

B. DOCUMENTS THAT CONTAIN HEALTH INFORMATION

1. Documents containing health information shall not be kept in an employee's OPF. Health information may be stored in EPF maintained for the administration of specific personnel programs, including but not limited to the following:
 - a. Accidental injury leave;
 - b. Drug and alcohol testing;

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- c. Family and Medical leave;
 - d. Fitness for duty examination;
 - e. Temporary disability insurance;
 - f. Workers' compensation, e.g., WC-1 report, and related correspondence;
 - g. Leave sharing, e.g., requests and supporting documents;
 - h. Other files that may contain health information such as, but not limited to, leaves of absence with or without pay, grievance files, health benefit enrollment files.
2. Any use or disclosure of health information shall be limited to the information necessary to achieve the purpose of the use or disclosure or as necessary to carry out an authorized employee's duties.
 3. Health information that is maintained in EPF, except for information contained in workers' compensation files, may be released to other individuals upon consent of the employee. Examples of such information are:
 - a. Medical and health care reports;
 - b. Records and x-rays covering medical, psychological and psychiatric examinations;
 - c. Medical history and/or diagnoses, including reports of alcohol and drug treatment; and
 - d. Testing and treatment and care for HIV infection, ARC or AIDS, or any other infectious and communicable disease or condition.
 4. Health information shall be retained in accordance with applicable state and federal laws, regulations, and rules.
 5. Under the federal Health Information Portability and Accountability Act (HIPAA) health care providers are subject to privacy and security regulations which protect an individual's personal health information. As a result, an employee's written consent may be necessary in order to release health information.
 - a. General consents to release information.

A consent should contain the following information:

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- (i) Name of employee and social security number or other employee identification number;
- (ii) Name of the department, program, and departmental contact;
- (iii) The requested information and the routine use of the information.
- (iv) The name of the doctor, medical provider, or official and address to whom the request is being submitted;
- (v) Other data to identify the information requested, e.g. date of accident, case number, etc.;
- (vi) A statement of the consent, authorization, or permission signed by the employee, employee's guardian, or personal representative; and
- (vii) The department or program and representative to whom the information is to be sent.

See Attachments 1 and 2 for samples of a release form.

- b. Workers' compensation consents to release information.

In addition to the information provided in *Employee Consent to Release Health Information*, workers' compensation consents may also include statements to:

- (i) Release information to any State agency as may be necessary for the performance of workers' compensation duties and functions, or for official purposes on a need to know basis only, including law enforcement purposes; or
- (ii) Release information to other agencies such as administrative and quasi-judicial bodies, courts, consultants, and agents and independent contractors, as may be necessary for the performance of workers' compensation duties and functions.

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- c. The duration of a consent and waiver should be tailored to the specific authority and purpose for which the records are needed.

However, for workers' compensation consents and waivers, the duration shall be for the life of the worker's compensation claim and continue for eight years or ten years for injuries or illnesses prior to June 12, 1985, following the final closure of the claim in accordance with section 386-89, HRS, unless otherwise restricted by federal law.

- d. A provision that the consent may be revoked in writing and that there may be consequences of non-consent, e.g. suspension of processing of a workers' compensation claim, should be included in a consent.
- e. Departments that rely upon vendors to obtain, process, provide, disseminate, and retain protected health information should ensure that the vendor's contract provides that the vendor shall obtain consents for the release of protected health information in conformance with these procedures.

C. DRUG AND ALCOHOL TESTING RECORDS

Information and records pertaining to an employee shall be maintained as provided by the U. S. Department of Transportation regulations.

See compliance manuals issued by HRD, safety office, and related bargaining unit memoranda of agreement.

D. GRIEVANCE FILES

While a department has the right to maintain grievance information for internal management purposes, employees shall be protected against unwarranted use, release, and disclosure of derogatory material in grievance files that might otherwise be inaccessible if a grievance had not been filed. Grievance files shall be maintained apart and separately from the OPF in a manner that will not be detrimental to an employee who exercised the right to grieve.

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Grievance files shall be maintained in accordance with applicable collective bargaining agreements or memoranda of agreement.

E. PERFORMANCE APPRAISAL SUPERVISOR'S WORKING FILES

1. During an employee's performance rating cycle, the employee's performance appraisal forms that are not finalized shall be kept in a confidential working file retained and secured by the rater.
2. The employee or union representative shall, by appointment, be permitted to examine the employee's performance appraisal working file during the rating cycle while the employee's performance appraisal is in progress.
3. The finalized performance appraisal form and other relevant information shall be maintained in the employee's OPF.
4. Other information held in the employee's performance appraisal working file that is not placed in the employee's OPF after the rating cycle shall be destroyed.

F. REDUCTION-IN-FORCE (RIF) FILES

1. See the HRD Reduction-in-Force Guidelines and Separation Incentive Program Guidelines for information on the establishment and maintenance of employee and departmental files.
2. RIF folders for employees shall be retained for a minimum of two years from the last personnel action or final disposition of any related grievance, whichever occurs later.

G. SELECTION MATERIALS

Departments shall establish procedures for the handling of selection materials to ensure that the integrity of the selection process is not compromised.

1. Selection materials are all documents that are related to and used in evaluating candidates for a vacant position. The documents include, but are not limited to:
 - a. Employment applications;

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- b. Selection instrument developed by the department or program, such as interview questions, essays, multiple choice tests, and performance tests, e.g., typing test or equipment tests, and the related supporting documentation, e.g., evaluation criteria worksheet;
 - c. Correspondence relating to the interviews;
 - d. Documentation approving the selection panel;
 - e. Completed selection documents, e.g, interviewer notes taken during an interview, interview scoring or rating sheets, written tests, or performance tests;
 - f. Documents submitted by an applicant for consideration by the panel;
 - g. Applicant releases for reference checks;
 - h. A summary of the candidates' scores or ratings; and
 - i. Recommendation for hire.
2. All selection materials shall be treated as confidential information to protect the integrity of the selection process.
- a. If unused selection instruments and related materials are stored at the program level, the materials shall be stored in a locked cabinet with access limited to the program manager or authorized representative.
 - b. Selection materials to be used for interviews shall be sent directly to the interview panel chair ensuring that materials are not handled by employees who may have or may be perceived as having an interest in the outcome of the selection process.
 - c. Once the selection process is completed, all used selection materials shall be stored in accordance with the department's policy and procedure for the handling of selection materials.
3. The release of selection materials shall be in accordance with chapter 89, HRS, and in consideration of provisions in collective bargaining agreements.

H. ELECTRONIC PERSONNEL FILES

The same confidentiality and security policies and considerations provided for EPF shall be applied to the information maintained

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electronically in the HRD human resource management system (HRMS) and departmental computer systems.

VIII. BACKGROUND

These procedures include concepts that are based upon settlement agreements with the United Public Workers for grievances relating to employment-related personnel files, i.e., supervisory working PAS files and disciplinary grievance files. Concepts from the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations are included for handling the various health and medical documents maintained in the OPF and EPF. The inclusion of such concepts is to ensure employees and medical providers of the employer's commitment to the security and confidentiality of employee personal health information.

IX. REFERENCES

The following references were used in the development of this policy and procedure.

1. Chapter 76, HRS, *Civil Service Law*
2. Chapter 89, HRS, *Collective Bargaining in Public Employment*
3. Chapter 92F, HRS, *Uniform Information Practices Act (Modified)*
4. Department of Human Resources Development memorandum dated January 28, 1996, Subject: Storage of Official Personnel Folders at the State Records Center
5. Department of Human Resources Development memorandum dated June 7, 1996, Subject: Procedures for Storage of Official Personnel Folders at the State Records Center
6. Department of Human Resources Development memorandum dated January 28, 1997, Subject: Removal of Employee Information from Official Personnel Files
7. Department of Human Resources Development memorandum dated January 28, 1997, Subject: Storage of Official Personnel Folders (OPF) at the State Records Center
8. General Records Schedules (GRS) - No. 1-11, 2002, Department of Accounting and General Services (DAGS)

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9. Collective Bargaining Agreements of the Hawai'i Government Employees Association, United Public Workers, and Hawai'i Fire Fighters Association, July 1, 1999 – June 30, 2003
10. Memorandum of Agreement, Implementation of Arbitrator Yim's Decision and Award in UPW (BU 1 and 10) Grievances GWR 96-19 and GWR 96-20 dated July 19, 1999
11. Memorandum of Agreement, UPW (BU 1 and 10) Grievances
GWR-96-7 and GWR-96-8 and Prohibited Practice Complaints CE-01-307 CE-10-306 and HLRB Decision No. 409 dated August 8, 2000
12. Health Insurance Portability and Accountability Act (HIPAA), Privacy Regulations, 45 CFR Parts 160 and 164.
13. Office of Information Practices Guideline No. 2 dated June 6, 2001.
14. U. S. Department of Transportation Regulations, 49 CFR 382.

X. ATTACHMENTS

- 1 Authorization and Waiver for Release of Information – Sample
- 2 Authorization for Release of Health Information – Sample