

CIVIL BEAT EDITORIAL

The Public Has a Right to Know How Government Decisions Are Made

A judge ruled that officials don't have to let the public in on their thinking behind important policy decisions. But that's not what our public records law envisioned.

JULY 30, 2015 • By The Civil Beat Editorial Board 

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Where the public's money and interests are at stake, doesn't the public have a right to know what considerations public officials are taking into account in making significant government decisions?

We think so. In fact, we think it's a principle worth fighting for. That's why we went to court this week to challenge the Caldwell administration's refusal to release memos sent to the mayor by city agency heads justifying their budget requests for fiscal year 2016.

But a [Circuit Court judge ruled on Tuesday](#) that some records are, in effect, none of the public's business. While not taking a stand on the city budget documents, Judge Virginia Crandall determined that state and local agencies are allowed to keep "predecisional or deliberative" documents secret, because revealing them might lead to "frustration of a legitimate government function."

Civil Beat Files

The OIP has wrongly undermined the public records law, Civil Beat argued Tuesday, with an interpretation of the UIPA that, in effect, adopted the deliberative process privilege. For years now, that interpretation, which Crandall affirmed on Tuesday, has been used to keep even mundane information under lock and key.

What sort of information are we talking about? For fiscal year 2015, the city's fire operations department requested \$1.9 million for restoration of a "non-holiday pay budget cut." Why? It's hard to say. The justification for that request in the "predecisional" paperwork that city officials ultimately provided was mostly redacted, save for the idea that "relations with the Firefighters union have severely limited the (Honolulu Fire Department's) ability to train our personnel without incurring overtime costs." Huh?

Government that seeks the trust of the people must earn it. Transparency in process is essential, and not just as it pertains to final decisions and outcomes.

In that same budget year, another city department requested \$178,400 for "inspection of welds and anchor bolts on ballfield light poles." Of the roughly eight lines of budgetary justification, nearly six were blacked out, leaving only basic details on the different amounts needed to inspect softball

and baseball field poles around the island.

Asking for a greater level of transparency elicits a near phobic response from government lawyers.

"If the public views every idea that's suggested by anyone in the government then people would be reluctant to give ideas," declared Honolulu Deputy Corporation Counsel Derek Mayeshiro in court on Tuesday.

Added Deputy State Attorney General Dierdre Marie-Iha, whose office joined the city and county in an amicus brief, "Is decision making a legitimate government interest? Yes. Will it be hindered by placing deliberations in a fishbowl? Yes."

Their concerns seem to be driven by an idea, left largely unexplained on Tuesday, that

allowing the public greater access to the machinations of government would place government workers under such a degree of criticism and stress that creativity and brainstorming would cease; they'd be unable to do their jobs.

It's an argument that understandably carries little weight with Brian Black, executive director of the nonprofit Civil Beat Law Center for the Public Interest, which represented Civil Beat in the matter.

"We shouldn't have this situation where government agencies are allowed to withhold records simply because they want to avoid scrutiny," said Black.

Civil Beat, of course, will appeal Crandall's ruling on the deliberative process privilege.

We disagree with the city, the state and OIP that government decisions shrouded in secrecy somehow make taxpayers feel better and government operate more efficiently.

Government that seeks the trust of the people must earn it. Transparency in process is essential, and not just as it pertains to final decisions and outcomes.

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16 Comments

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Jan Mitchell · School Of Communication Electronics

I thought this was about TPP... my bad.

Like · Reply · 2 · Jul 30, 2015 3:14am



Steve Miller · Owner at Denwa Hawaii

lol

Like · Reply · Jul 31, 2015 10:26am



Stephenie Blakemore

Thank you for taking this to court for all of us. It is a dangerous presumption to presume secrecy is something that can be equated with efficiency, or that such an equation is a calculation that adds up to what is best for WE the People.

Like · Reply · 3 · Jul 30, 2015 7:52am · Edited



Frank De Giacomo

I'd add that if they made up a new rule to administer the act it may have needed to go through a rule making process, and/or there should be clearly ascertainable standards as to how this implied rule may be implemented.

At the end of the day though, should CB succeed in court, the legislature will turn around and pass the exception into law next session. But at least that will be on them and they will have to own that decision-just not a lot of accountability with the reluctance of voters to vote, much less throw the rascals out. We need publicly funded elections to give people candidates to vote for.

Like · Reply · 2 · Jul 31, 2015 4:41pm · Edited



Arvid Youngquist

It is so wrong when the Judiciary sides with the Executive Branch when it comes to transparency and out right to petition and appeal for redress as a public, and to have the Press keep us informed. I thought this matter was settled when the Courts ruled in favor of the Press over the Judicial Selection and Governors' choices for a nominee or is the Court a case of Justice Being Blind to Decisions of Other tiers of the Bench. Don't precedence take an important place in judicial arguments. I say appeal this court's decision (opinion).

Like · Reply · 1 · Jul 30, 2015 8:42am



Rick Tubania · University of Hawaii at Manoa

your analogy is incorrect - the judicial selection did not involve the process of selection of candidates, the suit was to have the governor to release the names of the other candidates selected which abercrombie decided not to. another side note - if you claim that the press have an unlimited right to transparency of government operations, then what about the press's claim that they do not need to divulge their sources of information. this protection does not allow anyone to determine if the information is correct or the source is being truthful or just pushing an agenda. is this not being hypocritical?

Like · Reply · Jul 30, 2015 11:28am



Miz Ott · Public Education Advocate at Citizen



Rick Tubania There is no hypocrisy because it is not about "confidentiality." The issue is the public's right to know what its government employees are doing with their time and money. A free press can only be ensured when confidential sources are protected. This is one way the truth gets to the people. Another way the truth gets to the people is when government employees are required to disclose reports that have effected important decisions -- especially expenditures made in the name of the people with the money we had to give them to do it. Protecting press informants' confidentiality achieves the same goal that open and transparent government does. The truth gets out. So, those government employees with nothing to hide shall have no cause for concern.

Like · Reply · Aug 2, 2015 9:09pm



Jim Shon · Director at Hawai'i Educational Policy Center

Justification for all budgetary decisions should be made public. Too often we have no idea about the priorities and agendas of departments that are not led by a board or commission. The dilemma, and this reaches all the way through every executive operation, all the way to the US President, and the US Supreme Court, is to determine when something is just an idea, when it is a serious (official) proposal, and when it is, actually, a decision. In recent years, even emails are often made public. The notion that there might be a "safe" zone of ideas and recommendations is not a silly one. We ... See More

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Arvid Youngquist

As good as Brian Schatz, Della Au Bellatti, and erstwhile seat warmer Sam Aiona, your presence in the State House, Jim Shon, is sorely felt. You are still very much a young man. Come back. I can picture you as speaker of the House inside of 10-15 years and then you could make some real changes in your term as a Speaker lasting about 6-8 years. Perhaps not as long as that held by Rep. Calvin Say, but still yet you can make some very important Progressive changes to our Status Quo. Ask Della Au Bellatti to consider yielding to you and promote her as the next Senator, Congresswoman, Mayor, or City Prosecutor, anything so that we don't lose two very good lawmakers.

Like · Reply · Aug 2, 2015 9:42am



Bert Thomas

Once again....Hawaii is NOT Russia.. and/or other "Commie" approaches to our Freedoms. Period.

Like · Reply · 1 · Jul 30, 2015 12:00pm



Stan Fichtman · Honolulu, Hawaii

I understand that transparency at all levels of government is a good thing. However, I do support the judges ruling on this matter. From a policy-formation point of view, there has come a growing distrust of anything that the government puts forward to the public - look how everything gets second guessed even in a off-the-cuff conversation. Putting these "brainstorming" ideas in the same light will just elicit even more of that second-guessing from the public. With the government system we have now - a representational form of government, like it or not we as the people do yield a little power... See More

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Patti Epler · Honolulu, Hawaii

 **Aloha Stan**: We're not talking about making "brainstorming" public. We're talking about when an agency director submits his/her request for money for the coming year to the mayor and says this is why we need this funding. Currently, the city only wants to release what the mayor submits to the council so there is no way for the public to judge whether the mayor's decision is based on sound reasoning or politics. Many other states and local governments provide the public with full briefing books or budget justification memos written by agency heads just as a matter of course. That's the kind of info we are seeking here and we believe that is what the authors of our public records law intended. Mahalo as always for your thoughtful comments on Civil Beat.

Like · Reply ·  7 · Jul 30, 2015 2:52pm



Choon James

Patti Epler It would be a good idea to have minutes of "brainstorming" ideas. After all, they are public servants working for the public good and being paid by the public. There had been a lot of irrational decisions made at City Hall and when we asked, everybody said it was NOT them. If not them, who?

Like · Reply ·  2 · Jul 30, 2015 4:47pm



Rick Tubania · University of Hawaii at Manoa

Patti Epler - but, why? the city council goes line item by line item with each agency in examining and approving the budget. the ask for support of the line items and make changes if they feel that the administration is "padding" the budget. the final budget approved by the city council is then sent to the mayor for signature, who can sign it or veto it. it is rare that the mayor will veto the budget as differences are worked out before the budget is finalized. do you believe you - the media or joe blow on the street, know better than the administration or city council? do you suspect hank-panky by the administration and/or city council? this attitude is simply ludicrous.

Like · Reply · Jul 30, 2015 5:34pm

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SE Shiroma · University of Hawaii

What about taking a good look at OIP and its operation...?

Like · Reply · Jul 30, 2015 1:07pm



Arvid Youngquist

The will be an instance of suppression. We live in a democracy and not in a theocracy or under totalitarianism...thank God.

Like · Reply · Aug 2, 2015 9:33am



Robert Manning · Church College of Hawaii

Appeal the ruling....The judges are human too...they err...

Like · Reply ·  1 · Jul 30, 2015 2:32pm



David DeLeon · Government Affairs Director at REALTORS (R) Association of Maui, Inc. (Official)

I agree with the Judge. Until the Mayor submits his budget, the discussion and decision

making is internal. There has to be a balance between functionality and transparency. The department heads report to the Mayor. It is the Mayor's budget. He is ultimately responsible. If the budget documents leading up to those mayoral decisions are open to scrutiny, then those documents will not longer be direct and frank. Consider what it would be like to conduct your business -- your editorial board decisions -- your choices of which stories to run or kill -- in a public forum open to public debate.

Like · Reply ·  1 · Jul 30, 2015 4:11pm



Choon James

I don't know about your Mayor in Maui, but in Honolulu, the Mayor is a Houdini with public funds. Many decisions are based on personal agenda and not sound public policy. We need more transparency and accountability; not just hear his decisions after-the-fact from the mass media.

Here's an example of hiring a consultant from New York:

<https://www.youtube.com/watch?v=89aqZ66QIL8>

Like · Reply ·  1 · Jul 30, 2015 5:07pm

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