



The Office of Information Practices (“OIP”) is charged with the administration of Hawaii’s open records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (the “UIPA”), and Hawaii’s open meetings law, chapter 92, HRS (the “Sunshine Law”).

Recent Happenings

Sunshine Law & UIPA Workshops

Over 500 Hawaii state employees and members of state boards recently attended OIP’s Sunshine Law and UIPA workshops held during the month of October.



The workshops provided general overviews of the Sunshine Law and the UIPA and provided a forum for discussing numerous issues and concerns related to both statutes. Response to the workshops has been overwhelmingly positive, and OIP

hopes to offer similar workshops annually on Oahu as well as on the neighbor islands.

Recent OIP Opinions

Serial One-On-One Communications



A City Council member may not use the “permitted interaction” under section 92-2.5(a) of the Sunshine Law (which allows two members to discuss “board business” with each other outside of an open meeting as long as no commitment to vote is made or sought) to discuss Council business with another Council member, then use the same permitted interaction to discuss the same Council business with other Council members through a series of private one-on-one discussions.



Notwithstanding the explicit statutory language that prohibits a permitted interaction from being used to circumvent the spirit or requirements of the Sunshine Law, the Council argued that, as long as they did not seek or make a commitment to vote, the public is unharmed by Council members discussing Council business through a series of private one-on-one discussions. Under the Council’s interpretation, Council members could privately discuss, for instance, raising property taxes — without public notice, without public testimony and without minutes reflecting the Council members’ discussion — and could decide the matter at a Council meeting without any discussion.

The Sunshine Law, however, is intended to “[o]pen[] up the governmental processes to public scrutiny and participation” and requires that the council’s discussions, deliberations, decisions and actions be conducted as openly as possible. Haw. Rev.

Continued

UIPA Reference Handbook

OIP has created a UIPA reference handbook entitled “The Uniform Information Practices Act (Modified) - Hawaii’s Open Records Law” that will soon be available in print and in a downloadable form on the OIP website in both a 5 1/4” x 8 1/2” booklet format and a 8 1/2” x 11” format. A draft of the manual was provided to those attending OIP’s recent UIPA workshops.

This manual provides a general overview of the UIPA and contains a guideline that agencies may follow in responding to requests for general government records.

OIP welcomes any comments concerning the manual.

Stat. § 92-1 (1993). Consistent with the legislative intent, unless an exception or other statutory provision expressly allows the Council members to discuss Council business outside of a properly noticed meeting, the public has an absolute right to participate in the Council’s meeting and to hear all of the Council’s discussions, deliberations, decisions and actions. Accordingly, OIP advised the Council that the series of one-on-one discussions between more than two Council members about the same Council business was contrary to and violated the Sunshine Law. [OIP Op.Ltr. No. 05-15]

A number of public interest groups have filed a lawsuit against the Council, asking the court to declare that the permitted interaction does not allow the Council to discuss Council business through a series of one-on-one discussions. See Right to Know Committee, et al. v. City Council, et al., Civ. No. 05-1-1760-10EEH.

UIPA Emergency 911 Tape

On October 12, 2005, the Hawaii County Police Department (“HCPD”) received an emergency 911 telephone call concerning an “accidental stabbing.” Authorities responding to the 911 call discovered the body of a 4-month old infant who had suffered a fatal stab wound. The infant’s 16-year old mother was arrested and charged in Family Court with second degree murder in connection with the stabbing death of her son. HCPD denied a request for access to the 911 tape, and the requester appealed HCPD’s denial to OIP.



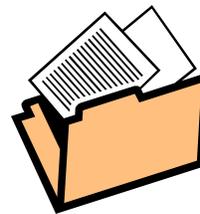
The UIPA generally provides that a government record must be made accessible to a requester unless an exception to that general requirement exists. Haw. Rev. Stat. § 92F-11 (1993). The exception relied upon by HCPD, section 92F-13(4), HRS, provides that an agency may withhold “[g]overnment records which, pursuant to State or federal law including an order of any State or federal court, are protected from disclosure[.]” Haw. Rev. Stat. § 92F-13(4) (1993). Under state law, police department records relating to proceedings filed in the Family Court are

confidential unless otherwise ordered by the court. Haw. Rev. Stat. § 571-84(e) (Supp. 2004).

OIP ruled that, because state law requires confidentiality of the requested 911 tape in this instance, the UIPA allowed HCPD to deny access to the tape. [OIP Op. Ltr. No. 05-17]

UIPA CVCC Criminal Case Records

A convicted felon made a request to the Crime Victim Compensation Commission (the “CVCC”) for records pertaining to the criminal case that resulted in his conviction for murder and also resulted in an award of compensation to the victim’s family. The CVCC denied the request and the requester appealed the denial to OIP under the UIPA.



In this case, assuming that the applicant was promised confidentiality, OIP determined that the applicant’s identity could be withheld under the UIPA’s exception for information whose disclosure would frustrate a legitimate governmental function.

OIP further concluded that information regarding the deceased victim that was part of the public court record from the requester’s trial no longer carried a significant privacy interest and therefore could not be withheld under the UIPA’s privacy exception. However, other highly personal information about the victim that was not already of public record could be withheld even though the victim was deceased. [OIP Op. Ltr. No. 05-16]



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