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LESLIE H. KONDO
DIRECTOR

December 9, 2005

Ms. Joan Hori, Curator
University of Hawaii at Manoa
Hawaiian Collection, Hamilton Library
2500 McCarthy Hall
Honolulu, Hawaii 96822

Re: Disclosure of Plantation Archive Records (RFO 03-044)

Dear Ms. Hori:

This opinion letter responds to your request for guidance regarding the records received from Hawaii Sugar Planters' Association that comprise the Plantation Archives held by the University of Hawaii at Manoa Library ("Library"). Specifically, you requested an opinion on whether the records are accessible to the public and whether the Library may implement a policy of disclosing records created eighty years or more ago.[1]

ISSUES PRESENTED

Whether, in accordance with the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"), the Library may implement a policy of allowing public access to records created over 80 years ago that are part of the Plantation Archives, including social security numbers[2] and personal income tax information contained in the records.

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[1] Although your request to us cites chapter 94F, we have assumed that the reference to chapter 94F should have been to chapter 92F which the Office of Information Practices ("OIP") is charged with administering.

[2] We note that the Social Security Act was implemented in 1935. Accordingly, notwithstanding your characterization of the information contained in the records, we suspect that any record containing a worker's social security number is less than 80 years old. However, because your request regarding whether the Library can implement a disclosure policy for records that are at

BRIEF ANSWER

Yes. Under the UIPA, personal information contained in a record generally may be withheld where the person's privacy interest outweighs the public interest in disclosure of that information. In those cases, the public interest in a person's social security number and in personal income tax information is outweighed by the person's significant privacy interest. We, however, previously noted that "the passage of time since a record was created is an issue to consider in balancing privacy interests against the public interests." OIP Op. Ltr. 03-19, at p. 13. For records that are over 80 years old, we opined that those records, and information contained in those records, are not expected to carry a significant privacy interest and, therefore, cannot be withheld under the personal privacy exception, section 92F-13(1), HRS.

Notwithstanding our opinion that the UIPA allows the Library to implement a policy of disclosing records over 80 years old that contain personal information, we note that other statutes may make certain information confidential. For instance, Hawaii law prohibits disclosure of tax return information and does not appear to contain an exception for historical records. With respect to those records, we do not believe that the Library may implement a policy to allow access, even for records that are 80 years old. We strongly recommend that the Library discuss those issues with its attorney prior to making decisions regarding whether to make such information available to the public.

FACTS

In 1981, the Hawaiian Sugar Planters' Association created the Plantation Archives to provide a repository for the records of the sugar plantations that elected to donate them. The records, which include corporate records, correspondence, cultivation contracts, financial records, personnel and payroll records, production records and other miscellaneous company records from Hamakua Sugar Company, Hilo Coast Processing Company, Honokaa Sugar Company, Kau Sugar Company, Kekaha Sugar Company, Lihue Plantation Company, Mauna Kea Sugar Company, McBryde Sugar Company, Oahu Sugar Company, Pioneer Mill Company, Puna Sugar Company, and Honolulu Iron Works, were received in varying degree of conditions: some were in very good condition, others were damp, moldy and insect infested. Each record was fumigated and cleaned, and information about the content entered into a computer database.

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least 80 years old is based, in part, on your concern that social security numbers may be disclosed, for the purposes of this opinion, we have assumed that the records include social security numbers. For records that are less than 80 years old, the Library should balance the individual's privacy interest, which may be diminished over time, against the public's interest in disclosure of the information. See OIP Op. Ltr. No. 03-19.

In 1995, the Hawaii Sugar Planters' Association donated the Plantation Archives to the Library. The Plantation Archives is used by students and other researchers and is accessible only by appointment. According to your request to OIP, many of the files contain individual worker's personal information, including social security numbers, tax records, criminal records and health records.

DISCUSSION

1. No Significant Privacy Interest In 80 Or More Years Old Records

Under the UIPA, the records maintained by a government agency are subject to public inspection and disclosure unless the record falls within one of the five enumerated exceptions that allow the record to be withheld. Haw. Rev. Stat. § 92F-11 (1993).[3] The only exception applicable to the present situation, section 92F-13(1), HRS, allows an agency to withhold records, or portions of records, where disclosure would constitute an unwarranted invasion of a person's privacy.

From your description, some of the information in the Plantation Archives records is clearly personal. For instance, we have previously determined that an individual has a significant privacy interest in his or her social security number. OIP Op. Ltr. No. 04-11. Likewise, an individual has a significant privacy interest in his or her criminal history, financial records and medical information. OIP Op. Ltr. No. 89-5; OIP Op. Ltr. No. 03-5. Generally, absent a compelling public interest, i.e., one that outweighs the individual's privacy interest in the information, the UIPA allows an agency to withhold the information, and as noted above, because of the highly private nature of the information, we, generally, would suggest that the agency exercise its right to withhold the information.

With respect to the records relating to your request, however, we need not consider whether the public interest in disclosure of the records outweighs the privacy interests of the individuals identified in the records because the records were created at least 80 years ago. In OIP Op. Ltr. No. 03-19, we addressed, among other things, whether the names of Hansen's disease victims could be disclosed for the purpose of erecting a monument to the memory of victims. Following recent federal court opinions, including one by the United States Supreme Court, we reconsidered earlier opinions in which we had concluded that death of the individual whose personal information was contained in a record extinguished any privacy interest in that record and opined that an individual's death does not

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[3] The UIPA works on the premise that, where a record or portions of a record fall within one of the exceptions to disclosure, an agency may withhold the record or portions of the record from public inspection and disclosure. The UIPA, however is not a confidentiality statute and, therefore, does not prohibit an agency from disclosing records, even those that the agency could withhold under one of the UIPA exceptions. Therefore, the Library's implementation of a policy of allowing access to the Plantation Archives is not prohibited by the UIPA.

extinguish all privacy interests in the record. Specifically, we identified an individual's reputation and the privacy interest of surviving family members as the type of privacy interest that may survive an individual's death.

With respect to "historical records," i.e., records older than 80 years, however, we opined that those records "would not be expected to carry a significant privacy interest." OIP Op. Ltr. No. 03-19 at 14. More specifically, in the context of health records, we stated:

> [a]fter a long enough period of time - about 80 years - no significant privacy interest will survive, so the public interest will always prevail and it will no longer be necessary to balance the interests before disclosure.

Id. at 10. Our conclusion was heavily influenced by section 94-7, HRS, the statutory provision that allows unrestricted access to records deposited in the state archives that are 80 or more years old. We reasoned that, in enacting section 94-7, the legislature had determined that an individual ceased to have any privacy interest in the records maintained by the state archives after 80 years. Given that policy decision by the legislature, in our opinion, it was appropriate to adopt the same standard with respect to the records maintained by all government agencies.

While our opinion in OIP Op. Ltr. No. 03-19 related to the privacy interest of deceased persons, we believe that section 94-7 is not so limited. In our opinion, under the UIPA, an individual, whether living or deceased, has no privacy interest in a record maintained by a government agency that was created 80 or more years ago. Accordingly, with respect to the Plantation Archives, with one exception discussed below, it is our opinion that there is no basis under the UIPA to withhold access to the records. The policy authorizing disclosure of the records that comprise the Plantation Archives that are 80 or more years old, which the Library is proposing to implement, is consistent with our interpretation of the UIPA.

2. Income Tax Returns And Return Information Are Confidential Under Hawaii Law

As noted above, generally, the UIPA is a discretionary statute and does not require an agency to withhold a record. The exception to that general statement is where the records are made confidential and protected from disclosure by another statute, court order or constitution. In such cases, we inform agencies that disclosure is not allowed by the UIPA. Our advice is based upon the UIPA's provision that makes it a misdemeanor for an agency employee to intentionally disclose a record that is protected by a confidentiality statute. Haw. Rev. Stat. § 92F-17 (1993).

With respect to the income tax returns and return information, they are confidential. Haw. Rev. Stat. § 235-116 (1993). Under the state tax code, it is illegal for the returns or the information to be disclosed to persons other than those specifically identified in the statute. Id. Specifically, in relevant part, the statute provides:

> [i]t shall be unlawful for any person, or any officer or employee of the State to make known intentionally information imparted by any income tax return . . . or willfully permit any income tax return or estimate so made or copy thereof to be seen or examined by any person other than the taxpayer or the taxpayer's authorized agent, persons duly authorized by the State in connection with their official duties, the Multistate Tax Commission or the authorized representative thereof, except as provided by law, and any offense against the foregoing provisions shall be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

Id.

Although the OIP does not believe that section 235-116, HRS, was intended to protect income tax records that are 80 or more years old or that were given to the Library by a private entity for historical purposes,[4] nothing in the statute suggests that, upon the expiration of a certain period of time, disclosure of the income tax returns and other return information is allowed. Moreover, while the state archives may be authorized to disclose records after 80 years, including income tax records, in our opinion, the statute contains no similar exception for the Library or any other government agency. We, therefore, are constrained to opine that, based upon section 235-116, HRS, the UIPA prohibits disclosure of the income tax records that are part of the Plantation Archives and that the Library may not implement a policy that is contrary to section 235-116, HRS. Because we believe that the statute was never intended to encompass the income tax records contained in the Plantation Archives, we suggest that the Library consult with the Office of the General Counsel or the Department of the Attorney General as to whether section 235-116, HRS, applies to the income tax returns that are part of the Plantation Archives. The Library may also wish to consider seeking direction from the state legislature on the issue.[5]

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[4] In a telephone conversation with DOTAX on July 19, 2004, we were advised that income tax records are not sent to the state archives, but are destroyed after a period of seven years. Thus, generally, historical income tax records are not maintained by state agencies. Moreover, the tax records contained in the Plantation Archives were obtained by the Library from a private source and are not records that were maintained by a government agency.

[5] We note that the federal District Court for the District of Hawaii has opined that the disclosure of a person's social security number may constitute a violation of that person's

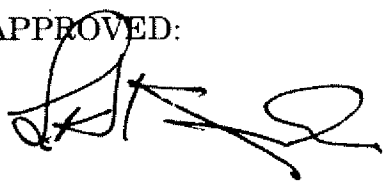
CONCLUSION

A policy allowing public access to records that are 80 or more years old is consistent with the UIPA. In our opinion, based upon the legislature's determination that records of such age maintained by the state archives is public, without exception, there is no privacy interest that allows the Library to withhold such historical records. However, with respect to income tax records and any other records made confidential by statute, absent a specific provision allowing disclosure of those records, we do not believe that the UIPA supports a policy of disclosure and suggest that the Library consult with its attorney before implementing such a policy.

Very truly yours,

Wintehn K.T. Park
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

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constitutional right to privacy. See Arakawa v. Sakata, 133 F. Supp. 2d 1223, 1230 (D. Haw. 2001). In rendering its decision the court considered the "amount of highly personal information that can be recovered as a result of the release" of a person's social security number. As noted above, however, records 80 years old and older are not expected to carry a significant privacy interest. See Haw. Rev. Stat. § 94-7 (1993). We, therefore, believe that disclosure of such records, including those containing social security numbers, does not constitute an invasion of a person's constitutionally protected right of privacy. We, however, recommend that the Library consult its attorney concerning the disclosure of social security numbers contained in the Plantation Archives.