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May 4, 1995

Mr. Lincoln Rutledge
[Home address withheld]

Dear Mr. Rutledge:

Re: Pawn Transaction Records Maintained by HPD

In a letter to the Office of Information Practices ("OIP") dated December 15, 1994, you requested the OIP's assistance in obtaining access to pawn transaction records maintained by the Honolulu Police Department ("HPD"). Specifically, you wanted to inspect all of the pawn transaction records maintained by HPD for the months of August and September 1994.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), pawn transaction records maintained by the HPD in its computer database must be made available for public inspection and copying.

BRIEF ANSWER

No. The pawn transaction records contain information which would reveal the financial activities of the individual pawning the items. Under section 92F-14(b)(6), Hawaii Revised Statutes, individuals have a significant privacy interest in information which reveals their financial activities. Although there is a public interest in the disclosure of records which the HPD uses in its investigations of thefts, we believe that the significant privacy interest of the individual outweighs the public interest in disclosure. Consequently, the UIPA's personal privacy exception in section 92F-13(1), Hawaii Revised Statutes, protects all individually identifying information contained in the pawn transaction records.

In addition, even if all individually identifiable information is segregated from the pawn transaction records, we believe that the remaining information in these records is protected under section 92F-13(3), Hawaii Revised Statutes. This UIPA exception permits agencies to withhold "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." Haw. Rev. Stat. § 92F-13(3) (Supp. 1992). The legislative history of the UIPA indicates that this exception protects the disclosure of "trade secrets or confidential commercial and financial information." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988).

The pawn transaction records contain commercial and financial information such as the prices and terms for each pawn transaction. We also believe that the information in the pawn transaction records are "confidential" because the pawnbrokers are currently voluntarily submitting copies of their pawn transaction records to the HPD, and disclosure of these records would likely result in the pawnbrokers ceasing to provide these records, which number in the hundreds every month, to the HPD. Because section 445-134.17, Hawaii Revised Statutes, only requires pawnbrokers to make their pawn transaction records available for inspection by the HPD or by county police departments on the pawnbroker's premises, the HPD would be forced to visit each pawnshop on a regular basis to inspect the pawn records, and the HPD also would be forced to make its own arrangements for the copying of the pawn transaction records, such as transporting a portable copying machine to each pawnshop to make the copies. We also believe that the pawn transaction records are "confidential" because disclosure would reveal prices and terms that could cause substantial harm to the competitive position of the pawnbroker. Accordingly, in our opinion, the pawn transaction records constitute "confidential commercial and financial information" protected under section 92F-13(3), Hawaii Revised Statutes, and the HPD is not required to make the pawn transaction records available for public inspection and copying.

FACTS

Chapter 445, Part V, of the Hawaii Revised Statutes contains the statutory provisions governing pawnbrokers. Section 445-134.11(a) and (b), Hawaii Revised Statutes, provides that "[a]ll pawn transaction agreements shall be in writing" and the customer must be provided with a signed copy of the pawn transaction agreement. Section 445-134.11(c), Hawaii Revised Statutes,

requires the following information to be included in a pawn transaction agreement:

(1) The name, address, and telephone number of the pawnbroker;
(2) The name, address, telephone number, and date of birth of the customer;
(3) The type of identification presented by the customer;
(4) The pawn transaction number;
(5) The date on which the pawn transaction agreement is signed;
(6) The net amount paid to, received by, or paid or payable for the account to the customer, expressed as the "amount financed";
(7) The dollar amount of the pawn finance charge, expressed as the "finance charge";
(8) The rate of the pawn finance charge as applied to the amount financed expressed as the "annual percentage rate";
(9) The total amount that must be paid to redeem the pledged goods on or before the maturity date, expressed as the "total of payments";
(10) An identification of pledged goods, including all serial numbers and model numbers, where available, and any other identifying markings or information;
(11) The maturity date of the pawn transaction;
(12) A statement to the effect that the customer is not obligated to redeem the pledged goods, and the pledged goods shall be forfeited to the pawnbroker upon the expiration of the last holding period, provided that the pledged goods may be redeemed by the customer within the holding period by making payment of the originally agreed total of payments plus an additional pawn finance charge in accordance with section 445-134.12; and
(13) The date on which the holding period expires.

Haw. Rev. Stat. § 445-134.11(c) (Supp. 1992).

Previously, Hawaii law required pawnbrokers to "keep a book in which shall be written the date, duration, amount, rate of interest of any loan made by the licensee, an accurate description of the property pledged, and the name and residence

of the pledgor." Haw. Rev. Stat. § 445-133(6) (repealed 1992). The repealed law also required pawnbrokers to provide to the chief of police of the county in which the pawnbroker operated, "a true and correct copy of all the entries required under paragraph (6) to be made by the licensee in the book concerning the licensee's transactions for that week and for the period since the licensee's last preceding report." Haw. Rev. Stat. § 445-133(7) (repealed 1992). These records that were provided to the chief of police were "open to the inspection of any person upon satisfactory showing to the chief of police that the inspection is desired for a proper purpose." Id.

Current Hawaii law merely states that "[a] copy of all pawn transactions shall be kept on the pawnshop premises and open to inspection by the proper authorities for a period of one year after the maturity date." Haw. Rev. Stat. § 445-134.17 (Supp. 1992). Pawnbrokers have continued to voluntarily provide copies of their pawn transactions to the HPD despite the fact that they are not legally required to do so. Chapter 445, Hawaii Revised Statutes, does not currently contain an express provision making the pawn transaction records maintained by the HPD or maintained by the pawnshops available for public inspection.

The HPD has informed the OIP that the information from the pawn transaction records provided to the HPD by the pawnbrokers is logged into the HPD's computer database and the original paper copies are discarded. The HPD receives hundreds of pawn transaction records voluntarily every month from the various pawnshops in the City and County of Honolulu.

By entering the serial number of a pawned item into its database, the HPD can retrieve the pawn transaction information for the item. However, the HPD cannot retrieve pawn transaction information by entering the brand or model number of the item and often, the pawnshop owner does not enter the serial number of the item or may mistakenly enter the model number as the serial number.

Several items were stolen from your residence in August and September 1994. You reported this theft to the HPD and a police report was filed. You have recovered one of your stolen items at a pawnshop; however, you have not been able to locate the remaining stolen items. Although you have provided the HPD with serial numbers for some of the items, you do not know the serial numbers for some of the other items stolen. The HPD searched its pawn transaction database using the serial numbers you provided,

but the serial numbers did not match any serial numbers in the database and the HPD has not been able to determine whether your stolen items were pawned. Consequently, you wanted to browse through the HPD's database of pawn transactions for the months of August and September 1994 to see if you could recognize any of the items or the name of the person pawning the items. In a letter to you from Major Robert Au of the HPD dated December 12, 1994, a copy of which you provided to the OIP, the HPD denied you access to its pawn transaction records. Major Au also stated that your case concerning the thefts was referred to the Department of the Prosecuting Attorney for further action.

DISCUSSION

I. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

Under the UIPA, "[e]xcept as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours." Haw. Rev. Stat. § 92F-11(b) (Supp. 1992). Section 92F-13(1), Hawaii Revised Statutes, provides that "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy" are not required to be disclosed by an agency. This provision is explained further in section 92F-14(a), Hawaii Revised Statutes, which states that "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Examples are given in section 92F-14(b), Hawaii Revised Statutes, of information in which an individual has a significant privacy interest. Of particular importance is section 92F-14(b)(6), Hawaii Revised Statutes, which includes "[i]nformation describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness." [Emphases added].

According to the legislative history underlying the UIPA's personal privacy exception, "[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure. If the privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988). In our opinion, an individual has a significant privacy interest in the fact that the

individual has pawned items, because we believe that this information reveals the individual's financial activities under section 92F-14(b)(6), Hawaii Revised Statutes. As for the public interest in disclosure, it is our opinion that the disclosure of the pawnshop records would shed minimal light upon the activities of the HPD in investigating reports of thefts and in recovering stolen items.[1] We do not believe that this minimal public interest outweighs the significant privacy interest of the individuals who are identified in the pawnshop records. Consequently, under section 92F-13(1), Hawaii Revised Statutes, the HPD may not publicly disclose any identifying information from the pawn transaction records.

II. FRUSTRATION OF LEGITIMATE GOVERNMENT FUNCTION

Even if all identifying information about the individuals are segregated from the pawnshop records, we still believe that these records would be protected under the UIPA. Section 92F-13(3), Hawaii Revised Statutes, provides that agencies are not required to disclose "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." We note that "confidential commercial and financial information" is an example given by the Legislature of information which would, if disclosed, result in the "frustration of a legitimate government function." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988).

The federal Freedom of Information Act, 5 U.S.C. §552(b)(4) (1988) ("FOIA"), contains a similar exemption from disclosure for "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." Cases interpreting FOIA's Exemption 4 have found the following information to be commercial or financial information: business sales statistics; customer and supplier lists; profit and loss data; overhead and operating costs; and information on financial

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[1]In previous OIP advisory opinions, we concluded that the "public interest" to be considered under the UIPA's balancing test is the public interest in the disclosure of official information that sheds light on an agency's performance of its statutory purpose and in information that sheds light upon the conduct of government officials. OIP Op. Ltr. No. 93-20 (Oct. 21, 1993); OIP Op. Ltr. No. 93-1 (Apr. 8, 1993); OIP Op. Ltr. No. 92-17 (Sept. 2, 1992).

condition. See U.S. Dep't of Justice, Office of Information and Privacy, Freedom of Information Act Guide & Privacy Act Overview 106 (Sept. 1994 ed.).

To determine whether the commercial or financial information is also "privileged or confidential" to qualify for protection under FOIA's Exemption 4, courts generally consult a two-part test set forth in National Parks & Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974):

> To summarize, commercial or financial matter is "confidential" for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

National Parks at 770.

Regarding the first prong of the National Parks test, we note that a pawnbroker is only required by current law to permit the HPD or county police departments to inspect the pawnbroker's records on the premises. See Haw. Rev. Stat. §445-134.17 (Supp. 1992). However, the pawnbrokers are voluntarily continuing to provide copies of their pawn transaction records to the police departments. The HPD believes that if the HPD makes these pawn transaction records, which number in the hundreds every month, available for public inspection and copying, the pawnbrokers will cease providing the HPD with copies of their pawn transaction records and the HPD will be forced to visit each pawnshop to inspect the pawn transaction records. Moreover, because section 445-134.17, Hawaii Revised Statutes, only requires the pawnbrokers to make their pawn transaction records available for inspection on the pawnbrokers' premises, the pawnbrokers are not required to make copies for the HPD. If the HPD wanted copies of the pawn transaction records, the HPD would be forced to make its own arrangements, such as transporting a portable copy machine to each pawnshop.

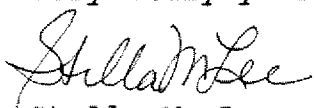
In addition, because the pawn transaction records contain the prices and terms of each pawn transaction of each pawnbroker, we believe that disclosure of this information would be likely to cause substantial harm to the competitive position of the pawnbroker. Consequently, in our opinion, the information

contained in the pawn transaction records constitutes "confidential commercial and financial information" protected by the UIPA's "frustration of a legitimate government function" exception, and the HPD is not required to make these records available for public inspection and copying.

CONCLUSION

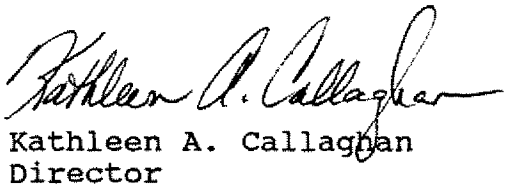
The UIPA's "clearly unwarranted invasion of personal privacy" exception and "frustration of a legitimate government function" exception permit the HPD to withhold public access to the pawn transaction records voluntarily provided to the HPD by pawnbrokers.

Very truly yours,



Stella M. Lee
Staff Attorney

APPROVED:



Kathleen A. Callaghan
Director

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