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July 28, 1995

Mr. Mike Gordon
The Honolulu Advertiser
P.O. Box 3110
Honolulu, HI 96802

Dear Mr. Gordon:

RE: Names of Individuals who are Licensed to Carry Concealed Firearms

This is in response to your letter dated April 11, 1995, requesting an advisory opinion regarding the disclosure of the above-referenced government records that are maintained by the Honolulu Police Department ("HPD").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the HPD must publicly disclose, upon request, the names of individuals who are licensed by the HPD to carry concealed firearms ("licensees").

BRIEF ANSWER

No. The HPD informed the OIP that the names of licensees identify those individuals who have also registered guns. According to a recent legislative amendment to the gun registration law, "[a]ll registration data that would identify the individual registering the firearm by name or address shall be confidential." Haw. Rev. Stat. § 134-3 (Supp. 1994). As we discuss below, we have examined the legislative history of Act 204, Session Laws of Hawaii 1994, which added this confidentiality clause, and we conclude that this confidentiality provision is intended by the Legislature to apply to all information that would identify individuals who have registered firearms, including those who are licensees.

Furthermore, as we explain below, although section 92F-12(a)(13), Hawaii Revised Statutes, requires agencies to

disclose "[r]osters of persons holding licenses or permits granted by an agency," we find that this UIPA provision is superseded by section 134-3, Hawaii Revised Statutes, according to prevailing principles of statutory construction. Therefore, under section 134-3, Hawaii Revised Statutes, the HPD cannot publicly disclose licensees' names.

FACTS

In a letter dated March 28, 1995, you requested HPD Chief of Police Michael Nakamura to disclose to you the names of individuals to whom licenses have been issued to carry concealed pistols or revolvers, their occupations and their supporting reasons for licensure. Chief Nakamura denied your request pursuant to section 134-3, Hawaii Revised Statutes, that makes registration data identifying individuals registering firearms confidential. See letter from Chief Nakamura dated March 31, 1995. Consequently, you requested the OIP for an advisory opinion regarding whether licensees' names are public information under the UIPA.

DISCUSSION

I. GOVERNMENT RECORDS PROTECTED FROM DISCLOSURE BY LAW

Chapter 134, Hawaii Revised Statutes, regulates the acquisition, transfer and possession of firearms,[1] ammunition, and dangerous weapons. Under section 134-9, Hawaii Revised Statutes, the chief of police of the appropriate county may grant an individual a license to carry a concealed pistol or revolver ("license") within the county where the license is granted. An individual who is issued a license by the HPD ("licensee") must show "reason to fear injury to the applicant's person or property," and meet other requirements set forth by this State statute and procedures adopted by the HPD. Haw. Rev. Stat. § 134-9 (Supp. 1994).

In a telephone conversation on June 2, 1995, Timothy A. Liu, Esq., HPD, informed me that any individual applying for a license to carry a concealed firearm must have registered a firearm in accordance with section 134-3, Hawaii Revised Statutes, and must have met all the requirements for registration. Thus, according to Mr. Liu, the licensees named in HPD's license records necessarily identify individuals who have also registered guns.

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[1]The term "firearm" is defined as "any weapon, for which the operating force is an explosive, including but not limited to pistols, revolvers, rifles, shotguns, automatic firearms, noxious gas projectors, mortars, bombs, and cannon."

Section 134-3, Hawaii Revised Statutes, which governs the registration of firearms, was recently amended by Act 204, Session Laws of Hawaii 1994, to require that every firearm acquired shall be registered with the "chief of police of the county of the person's place of business, or, if there is no place of business, such person's residence or, if there is neither a place of business nor residence, the person's sojourn." Haw. Rev. Stat. § 134-3 (Supp. 1994). Previously, registration was only required for all pistols or revolvers acquired in the State and for any type of firearm brought into the State.[2]

In addition to extending the registration requirement to include other firearms acquired in the State, Act 204, Session Laws of Hawaii 1994, also added the following confidentiality provision to section 134-3, Hawaii Revised Statutes:

> All registration data that would identify the individual registering the firearm by name or address shall be confidential and shall not be disclosed to anyone, except as may be required for processing the registration or as may be required by a law enforcement agency for the lawful performance of its duties or as may be required by order of a court.

Haw. Rev. Stat. § 134-3 (Supp. 1994) (emphasis added).[3]

Under section 92F-13(4), Hawaii Revised Statutes, an agency is not required by the UIPA to disclose "[g]overnment records which, pursuant to state or federal law including an order of any

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[2]A person must register a gun after first acquiring the gun as authorized by a "permit to acquire the ownership of a firearm" from the chief of police of the same county where the person will be registering the firearm. Haw. Rev. Stat. § 134-2(a) (Supp. 1994). This "permit to acquire" a firearm must be obtained for all types of firearms, no matter how the firearm is to be acquired ("by purchase, gift, inheritance, bequest, or in any other manner"). Id. After July 1, 1995, police departments may issue a "permit to acquire" a pistol or revolver only to persons who have completed a firearms safety class. Haw. Rev. Stat. § 134-2(g) (Supp. 1994).

[3]Before this confidentiality provision was added, the OIP had previously opined that the UIPA required the public disclosure of certain firearm registration information, including names of registered firearms owners and descriptions of handguns. See OIP Op. Ltr. No. 90-25 (July 12, 1990).

state or federal court, are protected from disclosure." Haw. Rev. Stat. § 92F-13(4) (Supp. 1992). Because the HPD's license records, which identify individuals who are licensed to carry concealed firearms, are separate from the HPD's gun registration records, we must determine whether the licensees' names nonetheless constitute "registration data that would identify the individual[s] registering the firearm[s]" that is confidential under section 134-3, Hawaii Revised Statutes.

In past OIP opinions, the OIP has referred to the provisions of the federal Freedom of Information Act, 5 U.S.C. § 552 (1988) ("FOIA") for guidance in interpreting similar provisions of the UIPA. Similar to section 92F-13(4), Hawaii Revised Statutes, exemption 3 of the FOIA provides that federal agencies are not required to disclose records that are specifically exempted from disclosure by statute. 5 U.S.C. § 552(b)(3) (1988).[4] In order to determine whether a record falls within a specific withholding or confidentiality statute, the federal courts look to the legislative history behind the measure that resulted in that statute. See Central Intelligence Agency v. Sims, 471 U.S. 159 (1985); Baldrige v. Shapiro, 455 U.S. 345 (1982).

In the Sims case, the United States Supreme Court found that Congress intended to give the Central Intelligence Agency ("CIA") broad power to control the disclosure of intelligence sources in order to carry out its unique responsibilities, and accordingly held that the statutory protection of "intelligence sources" extended to the identities of scientists and academic researchers who performed academic research for the CIA. In an earlier case, Baldrige, the Supreme Court found that the history of the Census Act reveals a congressional intent to protect the confidentiality of raw data collected in the census, not merely the identities of individuals who provided the information. Consequently, the Court found that a list of vacant addresses constituted "information reported by or on behalf of individuals" that is confidential under the Census Act. Baldrige, 455 U.S. at 358; see also A. Michael's Piano, Inc. v. Federal Trade Commission, 18 F.3d 138, 145 (2d. Cir. 1994) (court found that Congress did

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[4]Specifically, the FOIA exempts from its disclosure requirements agency records that are "specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3) (1988).

not intend to create an exemption that would be so broad that it would eliminate the FTC's accountability to the public).

We reviewed the legislative history behind Act 204, Session Laws of Hawaii 1994, in order to assess the legislative intent behind the confidentiality provision included in this Act's amendment of section 134-3, Hawaii Revised Statutes. The only comment that appears to relate to this confidentiality provision was the following one made on the State House of Representatives' floor by Representative Robert N. Herkes before the bill was passed by the State House in its final form:

> Another issue, Mr. Speaker, is [that] the registration of handguns and long guns is tantamount to developing a gun catalogue for crooks. Law enforcement agencies need to be put on the record that these lists must be kept confidential to protect gun owners from being targeted for theft of their guns, or non-gun owners from being targeted for theft of their homes.

Haw. H.J. 710 (1994) (statement of Rep. Herkes).

Notably, as previously mentioned, Act 204, Hawaii Session Laws 1994, also amended section 134-3, Hawaii Revised Statutes, by extending the gun registration requirement to all guns, not only pistols and revolvers, when acquired. This amendment was one of the features of this Act highlighted by the Legislature. See, e.g., Haw. S.J. 645 (1994) (statement of Sen. Graulty) ("[t]his bill will make it possible for Hawaii to stand strong and to stand as the first state in the nation to have universal registration of all firearms in our state").

Because Act 204, Session Laws of Hawaii 1994, extended the gun registration requirement to all guns acquired at the same time that this Act added the confidentiality provision to section 134-3, Hawaii Revised Statutes, the OIP concludes that the Legislature intended that the confidentiality requirement apply to the identities of all individuals registering acquired guns, including those persons who also have been issued licenses to carry concealed weapons. This conclusion is also consistent with Representative Herkes' comment regarding the need for confidentiality of gun registration information.

Thus, because, as the HPD informed the OIP, the names of individuals licensed to carry concealed firearms identify individuals who have also registered their firearms, we are constrained to find that licensees' names constitute "registration data that would identify the individual[s]

registering the firearm[s]" and, therefore, are confidential under section 134-3, Hawaii Revised Statutes. In turn, licensees' names are also confidential under section 92F-13(4), Hawaii Revised Statutes, because they constitute government records protected from disclosure pursuant to state law.

Next, we must determine whether another provision of the UIPA, section 92F-12, Hawaii Revised Statutes, would require the disclosure of the licensees' names despite the confidentiality of this information under sections 134-3 and 92F-13(4), Hawaii Revised Statutes.

II. RECORDS REQUIRED TO BE DISCLOSED UNDER THE UIPA

In section 92F-12, Hawaii Revised Statutes, the UIPA lists certain categories of records that agencies must make available for public inspection and duplication as a matter of law:

> **§92F-12 Disclosure required.** (a) Any provision to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:
>
> . . . .
>
> (13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license.

Haw. Rev. Stat. § 92F-12(a)(13) (Supp. 1992). Because individuals who are granted licenses to carry concealed firearms fit the description of "persons holding licenses or permits granted by an agency," we must determine whether section 92F-12(a)(13), Hawaii Revised Statutes, applies to the facts herein despite the OIP's finding that licensees' names are confidential under section 134-3, Hawaii Revised Statutes. For the reasons discussed below, the OIP concludes that disclosure is not required.

First, according to prevailing rules of statutory construction, where a general statute and a specific statute cannot operate concurrently, the specific statute will supersede or exist as an exception to the general statute's terms. See, e.g., State v. Spencer, 68 Haw. 622 (1986) (conflicting criminal penalty provisions); see also OIP Op Ltr. No. 92-10 (Aug. 1, 1992); OIP Op. Ltr. No. 92-22 (Nov. 18, 1992); see generally 2B N. Singer, Sutherland Statutory Construction § 51.05 (Sands 5th

ed. rev. 1992). The language of section 134-3, Hawaii Revised Statutes, indicates that it is a statute which is specific as to the confidentiality of the identities of registered gun owners. The OIP concludes that, as a matter of statutory construction, this statute supersedes section 92F-12(a), Hawaii Revised Statutes, that describes, in general terms, categories of records that must be publicly available, including information about "persons holding licenses."

Second, in previous opinion letters, the OIP has concluded that the Legislature intended that the phrase "[a]ny provision to the contrary notwithstanding" in section 92F-12(a), Hawaii Revised Statutes, to specifically apply only to the UIPA's exceptions for "clearly unwarranted invasion of personal privacy" and "frustration of a legitimate government function." See OIP Op. Ltr. No. 92-10 (Aug. 1, 1992); 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) (clarifying that as for records listed in section 92F-12, Hawaii Revised Statutes, the UIPA's exceptions to the disclosure rule "such as for personal privacy and for frustration of legitimate government purposes are inapplicable.") Consequently, we find that section 92F-12, Hawaii Revised Statutes, yields to: (1) the UIPA exception in section 92F-13(4), Hawaii Revised Statutes, that protects government records pursuant to these confidentiality statutes, and (2) the specific confidentiality statutes themselves.

Lastly, OIP notes that under section 92F-17, Hawaii Revised Statutes, an agency officer or employee shall be guilty of a misdemeanor when the person "intentionally discloses or provides a copy of a government record, or any confidential information explicitly described by specific confidentiality statutes, to any person or agency with actual knowledge that disclosure is prohibited." Haw. Rev. Stat. § 92F-17 (Supp. 1992) (emphasis added). Thus, an employee or official disclosing confidential information would be criminally liable under section 92F-17, Hawaii Revised Statutes, if the employee or official had actual knowledge that disclosure is prohibited by a specific statute, regardless of whether section 92F-12, Hawaii Revised Statutes, may authorize the disclosure.

For the foregoing reasons, OIP concludes that section 134-3, Hawaii Revised Statutes, is a specific statute which supersedes section 92F-12(a)(13), Hawaii Revised Statutes and, thus, section 92F-12(a)(13), Hawaii Revised Statutes, would not apply to the facts herein.

CONCLUSION

OIP concludes that the HPD is prohibited from disclosing licensees' names because the OIP finds that this information is "registration data that would identify the individual[s] registering the firearm[s]," which is information expressly required to be kept confidential under section 134-3, Hawaii Revised Statutes. Furthermore, licensees' names are not required to be disclosed under the UIPA exception set forth in section 92F-13(4), Hawaii Revised Statutes, for government records protected from disclosure pursuant to state law. According to principles of statutory construction, section 92F-12(a)(13), Hawaii Revised Statutes, requiring disclosure of certain information about "persons holding licenses," is inapplicable herein.

Very truly yours,

Lorna J. Loo
Staff Attorney

APPROVED:

Moya T. Davenport Gray
Director

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