

BENJAMIN J. CAYETANO
GOVERNOR



MARGERY S. BRONSTER
ATTORNEY GENERAL

MOYA T. DAVENPORT GRAY
DIRECTOR

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
OFFICE OF INFORMATION PRACTICES

235 S. BERETANIA STREET, ROOM 304
HONOLULU, HI 96813-2437
TELEPHONE: 808-586-1400 • FAX: 808-586-1412

June 17, 1998

The Honorable Raymond H. Sato
Comptroller
State of Hawaii
Department of Accounting and General Services
P.O. Box 119
Honolulu, Hawaii 96810-0119

Re: Monthly Outstanding Checks Reports

Dear Mr. Sato:

This letter is in response to former Comptroller Sam Callejo's November 20, 1997 memorandum to the Office of Information Practices ("OIP") requesting an advisory opinion on whether the monthly outstanding checks reports maintained by the Department of Accounting and General Services ("DAGS") must be made available for public inspection and copying.

On December 21, 1990, the OIP determined that escheated warrants reports issued by DAGS are subject to public inspection and copying, after certain confidential information is deleted. OIP Op. Ltr. No. 90-38 (Dec. 21, 1990). Specifically, the OIP held that the titles of each report and the identifying letters at the beginning of each warrant number must first be deleted to protect an individual's privacy interest and information made confidential by statute while the remaining information must be disclosed. OIP Op. Ltr. No. 90-38 (Dec. 21, 1990).

In making its present request for guidance on the need to disclose its monthly outstanding checks reports regarding unescheated warrants, DAGS does not raise the issues previously resolved in OIP Opinion Letter Number 90-38 (Dec. 21, 1990). Instead, where disclosure is required, DAGS intends to disclose its monthly outstanding checks reports after segregating information in a manner

OIP Op. Ltr. No. 98-4

consistent with OIP Opinion Letter Number 90-38 (Dec. 21, 1990). Here, DAGS only asks whether the administrative burden that disclosure places upon DAGS constitutes an exception from disclosure under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the monthly reports of checks outstanding for more than 180 days maintained by DAGS ("Reports"), in segregated form, are exempt from disclosure because of the administrative burden that disclosure places upon DAGS.

BRIEF ANSWER

No. Under the UIPA, government records must be made available for public inspection and copying, unless an exception to disclosure under section 92F-13, Hawaii Revised Statutes, applies. See Haw. Rev. Stat. § 92F-11(b) (1993). It is the agency's burden to demonstrate that an exception to disclosure exists. See Haw. Rev. Stat. § 92F-15(c) (1993); see also OIP Op. Ltrs. No. 91-15 at 8 (Sept. 10, 1991); 94-11 at 5 n. 1 (June 24, 1994); 94-18 at 10 (Sept. 20, 1994); 95-5 at 3 n. 1 (March 9, 1995); 95-21 at 8 n. 1 (Aug. 28, 1995).

DAGS has stated that the disclosure of the Reports and the resulting increase in work arising from submission of premature claims based on the Reports will place an administrative burden upon DAGS. However, there is no exception from disclosure under the UIPA for requests that an agency deems too burdensome. SHOPO v. Soc. Of Professional Journalists, et al., 83 Haw. 378, 394-96, 927 P. 2d 386, 402-4 (1996). In addition, the administrative burden following disclosure does not constitute a frustration of a legitimate government function under section 92F-13(3), Hawaii Revised Statutes, nor do the facts posed by DAGS qualify for any other exception to disclosure under 92F-13, Hawaii Revised Statutes. Because DAGS has not established an exception to disclosure under the UIPA, pursuant to section 92F-11, Hawaii Revised Statutes, the Reports, in segregated form, must be made available for public inspection and copying.

FACTS

In a November 20, 1997 memorandum to the OIP, former Comptroller Sam Callejo noted that the Report, dated September 1997, contained a listing of approximately 48,000 checks. He stated that DAGS sends monthly Reports to departments and agencies who use DAGS' check disbursing services. In conversations with the OIP, Wayne Horie of DAGS' Accounting Division stated that the Reports are maintained on the computer and are printed out monthly. The Reports are often voluminous, with the April 1998 report running up to 3,100 pages.

Through the November 20, 1997 memorandum and conversations with the OIP, DAGS informed the OIP that because the Reports deal with unescheated checks, the status of the checks listed is continually changing. The checks are still in the process of being cashed, or where a payee has not received a check, the checks are being reissued.

The Reports have been requested by private search companies, which track down unclaimed money and notify their customers of money owed to them. It is anticipated that after the search companies have received copies of the Reports, they or their customers will file claims to receive the check amounts listed in the Reports. However, because of the changing status of the checks listed in the Reports, in its November 20, 1997 memorandum, DAGS contends that the disclosure of the Reports to search companies would be premature, and the amount of staff time expended to prepare the Report for disclosure and to substantiate resulting claims would be a waste of limited staff resources.

Through discussions with Mr. Horie and the deputy attorney general advising DAGS, the OIP informed DAGS that, if no exception under section 92F-13, Hawaii Revised Statutes, applies, the Reports are required to be disclosed pursuant to the UIPA. In response to the OIP's inquiries, DAGS has asserted that its main concern is the large administrative burden upon its staff and other operations that disclosure would impose.

Should the OIP determine that the Reports must be disclosed, Mr. Horie indicated that DAGS would provide the Reports after segregating information previously determined to be exempt from disclosure in OIP Opinion Letter Number 90-38 (Dec. 21, 1990).

DISCUSSION

As information maintained by an agency in written and electronic form, the Reports are government records subject to the UIPA. See Haw. Rev. Stat. § 92F-3 (1993) (definition of "government record"). Under the UIPA, all government records are open to the public unless an exception under section 92F-13, Hawaii Revised Statutes, applies. See Haw. Rev. Stat. § 92F-11 (1993). Consistent with other state and federal open records laws, the UIPA imposes upon the agency the burden of proving that an exception to disclosure applies. See Haw. Rev. Stat. § 92F-15(c) (1993); see also OIP Op. Ltrs. No. 91-15 at 8 (Sept. 10, 1991); 94-11 at 5 n. 1 (June 24, 1994); 94-18 at 10 (Sept. 10, 1994); 95-5 at 3 n.1 (March 9, 1995); 95-21 at 8 n. 1 (Aug. 28, 1995).

In its communications with the OIP, as its basis for an exemption from disclosure under the UIPA, DAGS has cited only the administrative burden that disclosure would present. The burden cited is two-fold: first, DAGS maintains that disclosure, itself, presents a burden, and second, DAGS states that disclosure will result in premature claims for the warrant amounts, placing unnecessary demands upon DAGS' resources.

With regard to the burden of disclosing the Reports, there is no UIPA exception excusing disclosure because responding will be burdensome to the agency. In SHOPO v. Soc. of Professional Journalists et al., the Hawaii Supreme Court stated that there is no exception in the UIPA for requests that an agency deems too burdensome. SHOPO v. Soc. of Professional Journalists et al., 83 Haw. 378, 394-96, 927 P. 2d 386, 402-4 (1996). Moreover, as the data is electronically maintained, the burden of preparing the reports for public disclosure should be minimal.

Further, the UIPA does not recognize as an exception to disclosure the possibility that disclosure will result in additional demands placed upon the agency. While section 92F-13(3), Hawaii Revised Statutes, excuses disclosure where it will result in the frustration of a legitimate government function, application of that exception necessarily requires that an agency's ability to carry out some legitimate government function be truly impaired. Haw. Rev. Stat. §92F-13(3) (1993); see also S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S. J. 1094-95 (1988) (examples provided of records which need not be disclosed, if disclosure would frustrate a legitimate government function). It is not enough merely to allege that disclosure will result in an increased demand upon the agency's resources. That consideration is one outside the ambit of the UIPA. See

The Honorable Raymond H. Sato
June 17, 1998
Page 5

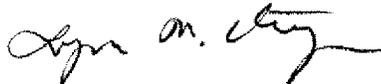
generally Haw. Rev. Stat. § 92F-2 (1993) (purpose of the UIPA is to open up government).

As DAGS has not alleged any other basis for exemption from disclosure, it has not carried the burden of establishing the existence of an exception under section 92F-13, Hawaii Revised Statutes. Therefore, the segregated Reports must be disclosed under the UIPA. See Haw. Rev. Stat. § 92F-11 (1993). However, because the data is electronically maintained, the administrative burden of segregating the confidential information within the Reports should be eased. DAGS has indicated that it would segregate confidential information with the help of the Information and Communication Services Division's programming capabilities prior to disclosing the Reports.

CONCLUSION

As DAGS has not established the existence of an exemption under section 92F-13, Hawaii Revised Statutes, it must make the Reports available for public inspection and copying after segregation of confidential information described in OIP Opinion Letter Number 90-38 (Dec. 21, 1990).

Very truly yours,



Lynn M. Otaguro
Staff Attorney

APPROVED:



Moya T. Davenport Gray
Director

LMO:pm