



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, part I of chapter 92, HRS (the “Sunshine Law”).

OIP Formal Opinion Letter

UIPA *Hawaiian Humane Society as Agency; Animal Control Enforcement Records*

OIP was asked whether the Hawaiian Humane Society (HHS) properly denied a request for records pertaining



to a woman known as the “Cat Lady” and the animals in her possession (the Cat Lady Investigation). OIP addressed two questions: 1) the threshold question of whether HHS is an “agency” as

defined by the UIPA and therefore subject to its provisions; and 2) whether HHS must disclose records it maintains related to the Cat Lady Investigation.

OIP had previously opined that HHS is an “agency” subject to the UIPA “for the activities within the scope of its agreement with the City, and its enforcement of State and county laws enacted for the health, safety, and welfare of the public[.]” OIP Op. Ltr. No. 90-31.

However, because the Hawaii Supreme Court recently rejected the “totality of circumstances” balancing test adopted by OIP to determine whether a hybrid public-private entity falls within the definition of “agency” under the UIPA, OIP, as a threshold matter, reconsidered its opinion in OIP Opinion Letter Number 90-31 regarding HHS’ status as an “agency” subject to the UIPA. *See Olelo: The Corp. for Comm’ty Tel. v. Office of Information Practices*, 116 Haw. 337 (Haw. 2007).



Among other things, the court in *Olelo* instructed that an entity is an “agency” under the UIPA if it substitutes for government in the

performance of a governmental function. Applying this statutory interpretation, OIP opined that HHS is an “agency” for the limited purpose of compliance with the UIPA when it provides services directly related to

its enforcement of state and county laws concerning animal control. In so doing, HHS substitutes for the City in the performance of a government function.

OIP therefore concluded that, in accordance with the UIPA, HHS must disclose records maintained in the performance of services directly related to its enforcement of animal control laws.

OIP found that HHS’ records related to the Cat Lady Investigation are maintained by HHS as part of its enforcement of state laws concerning the treatment of animals. Thus, HHS must disclose those records except to the extent that they may be withheld under a UIPA exception to disclosure. [OIP Op. Ltr. No. 09-01]

OpenPoint: Agency or Not?



OpenPoint provides guidance on UIPA and Sunshine Law concepts that frequently arise.

The UIPA only applies to the records of a government agency as defined in HRS § 92F-3.

Generally, application of that definition to traditional government agencies is clear. Two opinions summarized in this *OpenLine* address two situations in which it is less clear.

The HHS opinion discusses one situation. Specifically, is a public-private hybrid organization considered an agency under the UIPA when it receives government monies to perform a government function? There are different factors that may be considered, such as government ownership of the organization. In the HHS opinion, the key fact was that HHS substitutes for government by enforcing animal control laws.



See OpenPoint, p. 2

OpenPoint (cont. from p. 1)

The Access to Justice informal opinion addresses a second situation. Because the Judiciary is not considered an agency for its nonadministrative functions, what are administrative versus non-administrative functions?



Generally, nonadministrative functions relate to operation of the judicial system, which includes management of court proceedings and the conduct of judges and attorneys. Administrative functions relate to the Judiciary's management of its budget and personnel consistent with every other government agency.

OIP has discussed specific records in prior published opinions such as Opinions Number 90-4, 93-8, 02-10, 03-20 and 04-06.

OIP Informal Opinion Letters

UIPA Hawaii Access to Justice Commission Subject to UIPA

OIP was asked whether the Hawaii Access to Justice Commission is an agency subject to the UIPA. If so, Requester specifically asked whether notes of discussions proposing changes to existing policies or procedures would be subject to disclosure.



OIP concluded that the Commission, a public-private hybrid, does not meet the definition of "agency" under the UIPA. See HRS § 92F-3; *Olelo v. OIP*, 173 P.3d 184 (Haw. 2007). Thus, the records maintained by the Commission are not subject to the UIPA.

The Judiciary, however, is included within the UIPA's definition of "agency" for its "administrative" functions. See HRS § 92F-3 ("agency" does not include the "non-administrative functions" of the state courts). Therefore, Commission-related records maintained by the Judiciary are subject to the UIPA only if the creation and oversight of the Commission is an "administrative" as opposed to a "judicial" function.

OIP presumes that records created pursuant to the court's authority to oversee and control the practice of

law in this State, particularly as expressed by Supreme Court rule, relate to its judicial function and would thus be exempt from the UIPA. [UIPA Memo 10-5]

UIPA Unemployment Insurance Benefits Hearing Transcript

OIP was asked whether the Employment Security Appeals Referees' Office, Department of Labor and Industrial Relations (DLIR), properly denied Requester's request under part III of the UIPA for a transcript or recording of the partial hearing on Requester's claim for unemployment insurance benefits.


Disclosure of information obtained from an employer or employee pursuant to administration of HRS chapter 383, Hawaii Employment Security Law, is governed by HRS § 383-95(a). OIP previously addressed disclosure of an Employment Security Appeals hearing transcript in OIP Opinion Letter Number 04-18. Based upon



that opinion, unless the Hearing Transcript is "necessary for the proper presentation of the claimant's claim in any proceeding" under chapter 383 or as otherwise provided in that chapter, DLIR may withhold the Hearing Transcript from the Requester/claimant.

Because there was no chapter 383 proceeding and Requester presented no basis for disclosure under HRS § 383-95(a), OIP concluded that DLIR may withhold the Hearing Transcript from Requester under HRS § 92F-22(5). [UIPA Memo 10-6]

OIP Welcomes E-mail Transmittals



OIP welcomes e-mail transmittals of letters and other documents. If you choose to transmit letters and documents by e-mail (or fax), it is *not* necessary to follow up with paper copies by mail or messenger.

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