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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to section 92F-42, HRS, and chapter 2-73, Hawaii Administrative rules (HAR). This is a memorandum decision and will not be relied upon as precedent by OIP in the issuance of its opinions or decisions but is binding upon the parties involved.

MEMORANDUM DECISION

Requester: Edward Kim
Agency: City and County of Honolulu Board of Water Supply
Date: October 23, 2019
Subject: Residential Properties Without Water Service (U APPEAL 20-13)

Requester seeks a decision as to whether the City and County of Honolulu Board of Water Supply (BWS-HON) properly denied his request for records under Part II of the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's email with attachment to OIP dated September 1, 2019; OIP's Notice of Appeal with enclosures dated September 5, 2019; and BWS-HON's letter to OIP dated October 14, 2019.

Decision

In order to provide the residential water service information in the format requested, BWS-HON would have to engage in a significant amount of information technology (IT) work to create a compilation or summary. BWS-HON therefore is not required to provide the requested information because it is not readily retrievable in the format requested. HRS 92F-11(c) (2012).

Statement of Reasons for Decision

OIP was not provided with copies of either the record request or the agency response. However, based on information provided by both parties, it appears Requester made a written request to BWS-HON dated July 29, 2019, that was clarified on August 4 and 23, 2019. Requester sought access to a list of addresses for residential properties that did not have water service throughout the entire duration from February 23, 2019, through August 23, 2019, in the following zip codes: 96706, 96744, 96782, 96789, 96797, 96701, and 96709. Requester clarified that he was “looking for (homes that have had no water service for the **entire** time frame, meaning that the water was not turned back on), the time duration the search query falls under (February 23, 2019 – August 23, 2019), and have narrowed the location of the query to zip codes (96706, 96744, 96782, 96789, 96797, 96701, and 96709)” (emphases in original).

Requester indicated that BWS-HON denied his request as being not readily retrievable and cited section 92F-11(c), HRS, in support of its position in an email to him dated August 30, 2019. Requester provided what purports to be an email from BWS-HON to him which stated “after reviewing your request and consulting with the appropriate divisions, we are still unable to provide you with the information requested – it would require a custom development as no report currently exists with the information and criteria you are requesting.”

OIP first addresses the issue of administrative burden. Requester asked whether BWS is allowed to invoke section 92F-11(c), HRS, if the data exists yet it is “unwilling to create a report[.]” Requester believes BWS-HON is asserting the requested information is not readily available because “they would have to work to create it, instead of it being a report they could just double click and print.” Requester is correct that there is no UIPA exception allowing an agency to withhold a record on the basis that responding to a UIPA request will be burdensome to the agency. OIP Op. Ltr. No. 12-01 at 19, citing OIP Op. Ltr. No. 98-4 at 4, citing *SHOPO v. Soc. of Professional Journalists et al.*, 83 Haw. 378, 394-96, 927 P. 2d 386, 402-4 (1996). Further, the UIPA does not recognize as an exception to disclosure the possibility that disclosure will result in additional demands placed upon the agency. *Id.*, citing OIP Op. Ltr. No. 98-4 at 4. However, Requester misunderstands BWS-HON’s argument, which is not that it can withhold existing records based on the administrative burden of disclosure, but rather that there is no existing record responsive to Requester’s request and the UIPA does not require BWS-HON to create one. Based on the information provided by BWS-HON as discussed in the following paragraphs, OIP finds that BWS-HON is not attempting to use section 92F-11(c), HRS, merely to avoid responding to a burdensome record request.

The UIPA requires that all government records are open to public inspection and copying unless access is restricted or closed by law. HRS § 92F-11(a) and (b) (2012, Supp. 2018). In addition, section 92F-12(a)(12), HRS, requires agencies to disclose

“[w]ater service consumption data maintained by the boards of water supply[,]” notwithstanding any UIPA provision to the contrary. “Water service consumption data” is not defined in the UIPA, but OIP has defined it as “a service holder’s water use zone, water consumption, highest and lowest consumption, estimated gallons per day, averaged consumption, water allotment, excess over allotment, and water and sewer readings[.]” OIP Op. Ltr. No. 90-29 at 6-7.¹

However, the UIPA also provides that “[u]nless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.” HRS § 92F-11(c). This provision clarifies that under the UIPA, an agency’s duty is generally limited to providing access to existing records; an agency does not have to create “new” records for the convenience of a requester. OIP Op. Ltr. No. 92-7 at 2-3. When a request is for a compilation or summary of information recorded in an agency database, the agency is not required to create such a report unless the data can be “routinely compiled” given an agency’s existing programming capabilities. Id. at 11.

BWS-HON’s response to this appeal stated that in order to provide the requested information, it would have to “write a program to query the data fields within its customer information system and apply logic to output the desired information.” In order to provide the information as requested, BWS-HON further stated it would be required to:

- Determine scope (Requester’s needs must be clarified as the reference to “residential properties that are not consuming water” is different from “no water service” and is also different from “water was not turned back on”
- Reconcile data between systems (two different software applications may need to be queried)
- Identify a solution (based on information provided, the IT programmer will need to determine how to write the customized code)
- Write code (actual programming time)
- Execute the new custom code
- Validate results (confirm that output is accurate).

Based on BWS-HON’s explanation of the steps required to respond to the record request, OIP finds that it could not respond using its existing programming capabilities. BWS-HON is not able to readily retrieve the requested information

¹ Although OIP does not reach the question of whether the requested records fall under an exception to disclosure in this appeal, OIP notes that the requested information goes beyond what is mandatorily made public under section 92F-12(a)(12), HRS, and is not automatically public under this law.

about residential properties without water service for the listed zip codes during the specified time periods. To provide the information would require a significant amount of IT work. BWS-HON is therefore not required by the UIPA to provide the requested information because doing so would require preparation of a compilation or summary of information that is not readily retrievable. HRS § 92F-11(c).

Although BWS-HON is not required to provide the compilation or summary of information from its database requested here, Requester still has the option to request the underlying records containing the requested information, *i.e.*, the portion of the relevant databases covering the areas and period of interest to Requester. Should he choose to do so, BWS-HON may charge fees and costs for processing the record request in accordance with chapter 2-71, HAR. As in the present case, if a subsequent record request would again require compilation or summary of information that is not readily retrievable, BWS would not be required to provide such compilation or summary.

Right to Bring Suit

Requester is entitled to seek assistance from the courts when Requester has been improperly denied access to a government record. HRS § 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if Requester is the prevailing party, Requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F-15(d), (f) (2012).

For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

This decision constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. *Id.* The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. *Id.*

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES



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APPROVED:



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