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October 29, 2019

VIA EMAIL

Ms. Cheryl Kaster

Mr. Dean A. Soma
Deputy Attorney General
Department of the Attorney General

Re: Notaries Public Database (U APPEAL 20-21)

Dear Ms. Kaster and Deputy Attorney General Soma:

The Office of Information Practices (OIP) opened an appeal regarding the Department of the Attorney General's (AG) response to Ms. Kaster's (Requester) request for records made under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA). Specifically, Ms. Kaster requested access to "[f]or calendar year 2018, from the Notary Database maintained by ehawaii.gov: A digital file containing the following data for all Notaries Commissioned in 2018: Name Email Address and Employer, New or Renewal Commission."

This appeal file was randomly assigned to OIP's experimental alternative appeal resolution track pursuant to House Resolution (H.R.) 104, Regular Session of 2019, in which the Hawaii House of Representatives requested that OIP conduct an alternative appeal resolution pilot program and prepare "short, informal, unenforceable guidance" for files assigned to the alternative appeal resolution track within two weeks of receiving the agency's final response. A copy of H.R. 104 is attached with this letter.

In this appeal, Requester asked to appeal the AG's response to her record request, which stated that the AG was withholding the email addresses of individuals in accordance with "section 92F-13" as an "[u]nwarranted invasion of personal privacy." Further, although Requester asked for a "digital file," the AG's Notice to Requester indicated that the records would be mailed to Requester, and the AG assessed a cost of \$470.00 for "Hawaii Information Consortium Fees."

The AG provided its written response dated October 7, 2019 (October 7 Letter), and OIP is now providing informal, unenforceable guidance through this letter.

The October 7 Letter explained that "the AG has contracted with the Hawaii Information Consortium (HIC), a private entity, to create and maintain the Hawaii Online Notary Public website

at ehawaii.gov which contains the data requested by Ms. Kaster.” The October 7 Letter provided a breakdown of the cost to produce the requested digital file, but then stated that “HIC has recently informed us that they are not going to charge Notary for their service to provide the document. As such we have emailed to Ms. Kaster the redacted information.”

Requester stated that the record she received from the AG was not a “digital file”; however, Requester indicated that she can work with what the AG provided.¹ Therefore, the issue remaining is whether the AG properly denied Requester’s request for the email addresses of the notaries public commissioned in 2018, under Part II of the UIPA.

The AG provided a sample of the records to which access was partially denied, for OIP’s *in camera* review. In an email to OIP dated October 15, 2019, the AG stated that the source of the “Email Address” listed on the sample record is the sign-in information to log on to the Notary Public website, and the notary office uses the email addresses to communicate with the notaries public. The email addresses in the sample record appear to be direct business email addresses² for those notaries public who listed an employer, and either personal or business email addresses for those who are self-employed.

The AG also provided OIP with a “cut and paste copy” of the Application for Notary Public form from the Notary Public website, which shows that the applicant is asked to provide an “Email.” The application form does not specify whether a business or personal email address is being requested. In comparison, the form requires that the applicant provide both a home telephone number and a business telephone number, and OIP observes that telephone numbers for notaries public are available to the public on the eHawaii.gov “Online Notary Public - Public Search” page.

An agency is not required to disclose “[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.” HRS § 92F-13(1) (2012).³ OIP has previously opined that an agency may withhold personal information in which an individual holds a significant privacy interest and there is no public interest in disclosure, including personal email addresses, under the UIPA’s “privacy exception,” section 92F-13(1), HRS. OIP Op. Ltr. No. 07-11 (opining that under the UIPA’s privacy exception, agency may withhold personal information that sheds no light on the consideration of whether an application for a permit will be granted).

In contrast, OIP has found that “[a]n individual has no privacy interest in business contact information. However, where the information is a direct telephone number or e-mail address (as

¹ Telephone conversation between Requester and the undersigned on October 24, 2019.

² Based on a review of the sample record, OIP considers an email address to be a direct business email address if it is in the following format, or a similar format that includes an individual’s name: [first name].[last name]@[company name].com. The sample does not appear to include any general business email addresses.

³ An agency may withhold information from public disclosure if an individual’s significant privacy interest outweighs the public interest in disclosure. HRS § 92F-14(a) (2012). In balancing the competing interests, the public interest to be considered is that which sheds light on how the agency is performing its statutory duties. OIP Op. Ltr. No. 07-11 at 5 (citation omitted).

opposed to a switchboard number or general mailbox), the information may be withheld under the frustration exception if it helps the agency to perform its functions more efficiently (i.e., it can contact applicants quickly and directly) and applicants would be less likely to provide direct contact information if it were made public. See Haw. Rev. Stat. § 92F-13(3).” Id. at 8 n. 14.

In this appeal, as discussed earlier, the requested record may contain personal email addresses, as well as direct business email addresses. For the notaries public who listed themselves as self-employed, OIP cannot discern whether the email addresses on the sample record are personal or business email addresses, as individuals were asked only to provide an “email address.”⁴ Therefore, OIP is inclined to find that the AG may withhold from disclosure the email addresses that are not clearly business email addresses, under the UIPA’s privacy exception, section 92F-13(1), HRS.

The direct business email addresses, however, may not be withheld under the UIPA’s privacy exception, 92F-13(1), HRS, as an individual has no privacy interest in business contact information. Although the AG did not specifically assert that the direct business email addresses were being withheld “in order for the government to avoid the frustration of a legitimate government function” under section 92F-13(3), HRS, the AG did state that it uses the email addresses to communicate with the notaries public, and an email address is required to log on to the Notary Public website. Based on prior OIP opinions, OIP is inclined to find that the AG properly denied Requester’s request for the email addresses of the notaries public commissioned in 2018, in those cases where the email addresses are direct business email addresses.

OIP’s inclinations as stated herein are informal guidance and are not binding on the parties to this appeal. By this letter OIP notifies Requester and the AG that if any party does not wish to accept this informal guidance as resolving this appeal, that party is requested to so notify OIP in writing within 20 business days of the date of this letter, and OIP will resolve this appeal according to our general “first-in-first-out” policy, and cases older than yours will be completed first. Depending upon the facts of each appeal, many, but not all, appeals are closed with the issuance of an OIP opinion letter, which could take a year or longer to complete because of OIP’s backlog of cases.

Unless either party informs OIP in writing within 20 business days from the date of this letter that the party does not want to accept OIP’s initial inclinations, this appeal will be dismissed.

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

⁴ See OIP Op. Ltr. No. 91-19 at 7 (determining that where there is no way to distinguish whether a mailing address is a business address or a home address, mailing addresses in Hawaiian Home Lands lessee data file must be kept confidential). OIP Op. Ltr. No. 05-03 partially overruled OIP Op. Ltr. No. 91-19 to the extent that it states that the UIPA’s privacy exception in section 92F-13(1), HRS, either prohibits public disclosure or mandates confidentiality. The privacy exception confers on the agency the discretion to withhold a particular record. OIP Op. Ltr. No. 05-03 at 6.

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If you have any questions concerning this matter, please contact OIP.

Very truly yours,



Mimi K. Horiuchi
Staff Attorney

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Enclosure