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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 sections 92F-27.5 and 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 are binding upon the parties involved.

MEMORANDUM DECISION

Requester: Dr. Miriam Riner
Agency: University of Hawaii
Date: June 23, 2017
Subject: Personal and Government Records Relating to Commuter Services
and Campus Security Offices (APPEAL 14-24)

Requester seeks a decision as whether the University of Hawaii (UH) improperly denied access to records under Parts II and III of the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's e-mail correspondence to OIP dated July 18, 2013, September 11 and 23, 2013, December 5 (two e-mails), 10, and 23, 2013, February 5 and 6, 2014, December 17 and 19, 2014, and attached materials, and e-mail correspondence from UH to OIP dated August 6, 2013, September 4, 2013, December 20 and 23, 2013, and January 22, 2014, and attached materials.

Decision

In its responses to Requester's record requests for various personal and government records and follow-up questions, UH made a reasonable effort to understand what Requester was asking for and to provide all responsive records within the timeframe provided in the UIPA and OIP's administrative rules. After reviewing correspondence and records comprising several inches of paper, OIP found no

evidence that UH deliberately delayed its response, ignored portions of a request, lied to Requester, or otherwise followed a pattern of bad faith denial of access that constructively denied Requester's access rights under the UIPA.

UH did redact limited information from the records it provided to Requester. UH was justified in withholding contact and insurance information of the owner of a parked vehicle under the UIPA's privacy exception, section 92F-13(1), HRS. However, UH should have disclosed photos of the vehicle, the vehicle's license plate number and registration and safety check expiration dates, and the name of the vehicle owner, as that information was either part of Requester's joint personal record or was not protected by the UIPA's privacy exception. See HRS § 92F-13(1); OIP Op. Ltr. No. 05-10.

Statement of Reasons for Opinion

Requester made a record request to UH on June 4, 2013. The request was a long and complex one, comprising 14 categories of information for which she was seeking records. For many of those categories, her description of the records she was seeking included subclauses and were phrased in the alternative, with a description of the records she believed would have the information she was seeking but also an alternate description of other records that could be provided instead. The request was divided by Requester into records of UH's Commuter Services Office (CSO),¹ and records of its Campus Security Office (Campus Security), and asked that Requester be told if the specified office did not have records responsive to its portion of the request.

UH sent an Acknowledgment to Requester dated June 6, 2013, in which UH advised Requester that extenuating circumstances existed based, among other things, on the extensive efforts required to fulfil the request. UH sent its Notice to Requester on July 3, 2013, in which it stated that the request would be granted in its entirety after receipt of prepayment of \$62.50. UH received the prepayment on July 10, 2013, and on July 12, 2013 sent Requester three e-mails with a total of 41 attachments, and also sent her a 317-page PDF file via the UH FileDrop. Between July 3 and July 12, UH also responded to several e-mail inquiries from Requester about details of the request, what was being provided, fees, and the format.

After the records were provided, UH and Requester exchanged a series of e-mails in which Requester asked questions and raised concerns about the records she had received, and UH responded. In her e-mails to UH, particularly one dated July 15, 2013, Requester stated that her request had included specific records that were not in the provided records, and asked UH to provide those. UH understood Requester to be asking for additional records beyond what had been set out in her original

¹ The CSO handles parking permits and parking citations for UH, among other things.

request, and based on that, UH advised her that it would be responding to the request for those records as a new request under the UIPA.

On July 18, 2013, Requester sought OIP's assistance in obtaining the records from her original request to UH, and OIP opened a Request for Assistance file, U RFA-P 14-7, and sent a letter to UH dated July 26 regarding Requester's complaint that UH's response had been incomplete.

Meanwhile, UH sent an Acknowledgment to Requester dated July 24, 2013, regarding this new request, which restated the records it understood her to be requesting. In its e-mail attaching the Acknowledgement, UH also included its answers to other questions Requester had asked as part of her ongoing exchange of questions and answers with UH.

In an e-mail to UH dated August 6, 2013, Requester disagreed that the records covered by the new request were in fact newly requested, as she believed her original request had included those records, but she asked UH for the Acknowledgment to Requester regarding that request. UH re-sent its Acknowledgment to Requester by e-mail that same day. Also on August 6, UH responded by letter to OIP to Requester's complaints in U RFA-P 14-7.

UH sent its Notice to Requester for the new request on August 12, 2013. In an e-mail dated September 11, 2013, Requester informed UH that she was sending the required prepayment for the new request, but also continued to complain that UH had not responded to the original request properly and that UH's description of what was requested in its response to what it deemed a new request changed her own description of the requested information. Also on September 11, Requester complained to OIP that her prepayment checks were being "lost" under suspicious circumstances, and that she believed the UH employee corresponding with her about her requests had a conflict of interest due to an internal complaint Requester had filed regarding the employee.

UH responded to the various specific complaints raised in Requester's September 11 e-mail in an e-mail dated September 12, 2013. UH sent the responsive records to the second request by e-mail on September 13, after receiving Requester's prepayment. In its e-mail attaching the records UH advised Requester that her balance due after applying her prepayment to the final calculation of costs and fees was \$38.75. Through the month of September 2013, Requester continued to e-mail UH complaining that UH's response was unresponsive, incorrect, and otherwise faulty, and UH continued to respond. Requester also e-mailed OIP on September 23, 2013, with further specific complaints regarding UH's response to the second request.

On December 1, 2013, Requester sent two letters to UH via e-mail complaining, among other things, that the second request had included records that were

actually covered by and should have been provided in response to the first request, and that UH had begun work on the second request without receiving Requester's prepayment so that it could charge her for a request she had not made. On December 5, 2013, Requester e-mailed OIP to complain, among other things, that UH would not allow her to file further UIPA requests because Requester had not yet paid the outstanding balance due from the second request, which Requester viewed as unauthorized.

UH responded to Requester's December 1 e-mail in an e-mail dated December 6, 2013, and in that same e-mail asked that Requester refrain from contacting the staff of the Campus Services Office again and advised that the office would not respond to future contacts from Requester. Requester e-mailed UH on December 9, 2013, asking for alternate contact information for future UIPA requests; however, that e-mail itself did not include a UIPA request. UH did not respond.

On December 10, Requester e-mailed OIP and reiterated her previously expressed concerns regarding UH, and alleged that UH had filed a third unauthorized UIPA request on her behalf (which was not attached) and that these requests were intended to prevent Requester from filing her own UIPA requests by creating a claim that subsequent requests were duplicative.

On December 20, OIP advised Requester and UH by letter that it was closing U RFA-P 14-7 and opening this appeal file on the issues raised by Requester's correspondence, and sent UH a Notice of Appeal. UH responded to the Notice of Appeal in a letter dated January 22, 2014, with extensive attachments.

Requester's complaints fall generally into three categories: (1) complaints about UH's response to specific elements of her requests for which UH asserts it has provided all responsive records, encompassing both the response process and the completeness of the response; (2) complaints about UH's response process as a whole, including allegations of a pattern of intentional delay, stonewalling, and efforts to prevent Requester from exercising her rights under the UIPA; and (3) a complaint that information was inappropriately redacted from the records UH provided. OIP understands Requester's complaints regarding the response process and UH's alleged pattern of behavior to be essentially alleging a constructive denial of access by UH, even where Requester ultimately received the requested records. OIP will first address the specific elements of Requester's request as to which she raised concerns about UH's response process and the completeness of UH's response, and then Requester's allegations relating to a general pattern of delay and stonewalling. Finally, OIP will examine the information that was actually redacted from the records UH provided.

I. Specific Categories of Records Requested

A. Information About Calls Returning Requester's Messages

In the second bullet point of her original request, which was among the records categorized as “[CSO] (aka parking office) Records” and described as “Personal Records regarding [Requester] maintained by [CSO],” Requester asked for

the date, time, and employee who returned messages left on [specified telephone numbers] the following dates: 2/25/2011, 2/2/2012, 2/23/2012, 4/10/12; or on 4/25/2012 left on [employee name and telephone number]. Alternatively, if easier to obtain, a list of calls (with date, time, origin phone number and duration) from Commuter Services or their employees (likely [telephone number] or [telephone number]) to [Requester] (likely [telephone number] or [telephone number]) over a two-week period following each of the dates listed above.

(Emphasis in original.) UH provided her with copies of a phone log kept by CSO and of her account in the CSO database, called a Flex account (Flex account). In her e-mail of July 15, 2013, Requester stated the following regarding the information described in bullet point two, which UH took to include a new request:

This information is not recorded in the Flex account. Please provide records of the calls requested either from telephone records maintained by the telephone company or the UH equivalent.

In its Acknowledgement to Requester for the new request, UH described the requested records in this category as

Telephone company record or UH equivalent for phone calls between [Requester (telephone numbers)] and Commuter Services ([telephone numbers]) for the following dates:

- a. 02/25/11
- b. 02/02/12
- c. 02/23/12
- d. 04/10/12

and

Telephone company records or UH equivalent for phone calls between [Requester (telephone numbers)] and UH employee [name (telephone number)] on 04/25/12.

Requester's first complaint regarding this category of information was that UH was unresponsive to her original request. She argued that her original request clearly

included telephone records but that UH did not provide those in its response to the original request. OIP understands Requester to be arguing that her later clarification of what she was seeking was not actually an expansion of her original request because the information was included in the original request.

UH responded that the original request was phrased in the alternative, rather than as a request for both types of records described, and UH thought that her preferred alternative was the first one listed, the date, time, and employee who returned messages, so it provided her with the CSO records where such information would most likely be logged, even though not all messages and conversations are logged. UH also noted that Requester's second alternative was not in fact "easier to obtain" as she suggested it might be.

OIP finds that UH's interpretation of the original request and what records were responsive to it was a reasonable reading of what was a complexly framed request. The request specified that it was seeking personal records of Requester from CSO, and CSO did not itself have telephone records, but did have a limited number of apparently responsive records, which it provided. Furthermore, when CSO understood that Requester was seeking the phone records it did not have, it attempted to obtain them so that it could respond to what it understood to be a new request. OIP cannot find that UH was acting maliciously or in bad faith for, essentially, failing to read Requester's mind when it provided records that appeared to be responsive given the way the request was framed. OIP does find that Requester's clarification that she wanted telephone records, not specifically from CSO but from UH in general or the telephone company, was indeed an expansion of her original request and UH was justified in responding to it as a new request.

Requester also complained that UH changed her request in its description of the requested records for the new request. Requester argues that she was "clearly requesting records of returned calls from [CSO]" for messages she had left on listed dates, and in her original request had offered as her second alternative a list of calls to Requester for two weeks after each specified date, but in processing the new request UH interpreted her request as request for calls to and from Requester on the listed dates.

UH argued that it was looking at the first option of Requester's original request together with the new request it understood her to be making in her July 15 e-mail, and it thought the description in the Acknowledgement to Requester was what she was seeking. UH further argued that if Requester disagreed with its description of the requested records, she could have let UH know that after she received the Acknowledgment and provided her preferred description before UH processed the request.

OIP finds that UH's description of Requester's new request did miss the fact that the second alternative as described in Requester's original request was a list of calls

“over a two-week period following each of the dates listed above.” However, given the length and the complexity of the requests, of which this bullet point is only a portion, OIP cannot conclude that this misreading was due to bad faith on UH’s part. OIP also finds compelling UH’s argument that Requester was informed of UH’s understanding of the request by the Acknowledgment. While Requester did eventually raise the issue of UH’s phrasing not including the two-week period after each date, she did not do so until her e-mail to UH of September 11, a month and a half after first receiving the Acknowledgment, in an e-mail that also advised UH that her prepayment was already on route and complained about the delay due to a previous check apparently being lost. Thus, while OIP believes that a better reading of Requester’s July 15 request for “records of the calls requested,” read in combination with her original request, may have been to include the two weeks following each listed date, OIP finds that UH was not unreasonable or acting maliciously when it proceeded to process immediately after receiving Requester’s prepayment check. Indeed, had UH instead responded to Requester’s September 11 e-mail by stating that it was returning her check so that it could provide a new Notice based on the corrected description of the requested records, which would likely change the fee and cost estimate, Requester could then have complained about UH’s failure to timely process a request for which she had already sent in her prepayment.

Finally, Requester argued that UH’s response was untimely. Specifically, Requester argued that because UH considered the request for telephone records to be a new request, whereas Requester believed it was actually covered by the original request, and because it extended its response time based on extenuating circumstances, which Requester did not believe were present, UH took more time than it was allowed by the rules governing agency response time under the UIPA, chapter 2-71, HAR.

For the reasons discussed previously, OIP does not believe that UH’s reading of the request for telephone records as a new request was unreasonable. OIP agrees with UH that extenuating circumstances applied in its response to both the original and the second request, given the length and complexity of the requests as previously noted. See HRS § 92F-23 (agency may extend personal record response period for unusual circumstances); HAR § 2-71-15. OIP cannot conclude that UH’s response to this portion of Requester’s requests was unreasonable, done maliciously or in bad faith, or showed deliberate intent to delay.

B. List of Calls from Requester to CSO Over Stated Period

In the ninth bullet point of her original request, which was among the records categorized as “[CSO] (aka parking office) Records” and described as “Government records (not specifically personal records),” Requester asked for:

[A] list of calls from [Requester] (from [number] or [number]) to the [CSO] general number ([number]) between 19 January 2012 and 2 March 2012, including the date, time, and duration of the call. (This is the period over which [employee] and [employee] have claimed zero calls from me existed in the call log.)

As stated above, UH provided her with copies of a phone log kept by CSO and of her Flex account, which it believed to be the responsive records of those maintained by CSO. In her July 15 e-mail, Requester complained as follows, which UH took to state a new request:

The requested information was not provided. The [CSO] call log is not the only source of this information. Surely UH or the telephone company keeps a record of phone calls. Please provide records of the calls requested from telephone records not the "informal" call log, the legitimacy of which is being called into question.

In its Acknowledgement to Requester for the new request, UH described the requested records in this category as

Telephone company records or UH equivalent for phone calls from [Requester] ([number] or [number]) to [CSO] general number ([number]) for the time period 01/19/12 through 03/02/12.

Requester's first complaint as to this category of information was that UH was unresponsive to her original request. As with the information on which employees returned telephone messages, Requester here complained that the information she wanted was not in the records she received. Specifically, she argued that she asked for a list of calls and did not receive a list of calls, so UH should have referred the request to the correct office if CSO did not have telephone records. UH argued in response that she asked CSO for a list of calls, CSO gave the records of telephone calls that it had, and Requester had not specified that she was seeking telephone company records or a UH equivalent in her original request. Thus, UH believed it was providing her with the responsive records CSO maintained, and did not have reason to conclude that it should instead forward the request to a different office.

OIP agrees with UH that the original request was specifically directed to CSO, and in fact referred to CSO's "call log," so UH reasonably interpreted it to be seeking that call log and other CSO records that might list telephone calls, not records of the telephone company or equivalent records of the UH system. Given that CSO provided Requester with the responsive CSO records, OIP cannot conclude that UH's response was unreasonable in not searching other parts of the UH system for responsive records.

Requester's second complaint was that UH's response was not timely, because UH treated the request for telephone company records or the UH equivalent for the specified numbers and dates as a new request, whereas Requester believed it was covered by the original request, and because UH further extended its response time based on extenuating circumstances.

For the reasons discussed previously, OIP does not believe that UH's reading of the request for telephone company records or the UH equivalent as a new request was unreasonable. Once it understood that Requester was seeking telephone company records or an equivalent type of records from the UH system, UH began working on a response to that request. Likewise, as discussed supra, OIP finds that UH's extensions of its time to respond based on extenuating circumstances were appropriate. Thus, OIP cannot conclude that UH's response to this portion of Requester's requests was unreasonable, indicative of malice or bad faith, or showed deliberate intent to delay.

C. CSO Policy on Citation and Vehicle Photographs

In the seventh bullet point of her original request, which was among the records categorized as "[CSO] (aka parking office) Records" and described as "Government records (not specifically personal records)," Requester asked for:

[the CSO] policy on citation/vehicle photographs including but not limited to policy on collection, storage, and access (both to employees and cited customers), including ancillary information (i.e. date, time, time entered into system, associated citation number, file alteration history, etc.), specifications of the cameras used, and retention policy.

In response to this and other categories of information in the original request, UH provided her with a copy of subchapter 1 of chapter 12, HAR, relating to the parking and operation of motor vehicles at UH's Manoa campus, apparently in the absence of any more specific policy on citation and vehicle photographs. Requester stated, in her July 15 e-mail:

I also asked for specifications of the camera used in addition to policies. Surely the camera specifications are documented somewhere, via a users manual or the manufacturer?

UH took that to be a new request, explaining in its July 17 e-mail:

You asked for a [CSO] policy and listed a number of details you expected to be included *within* the policy, such as specifications on the camera used. There is no such policy. To the extent that you are now requesting specifications of the camera, we will respond to this as a new request.

(Emphasis in original.) In its Acknowledgment to Requester for the new request, UH described the requested records in this category as:

Specifications for the camera on handheld citation devices utilized by citation guards for [CSO].

Requester's complaint regarding this item was that she believed her original request included the camera specifications, so UH should have responded to that in its original response rather than treating the camera specifications as a new request.

OIP agrees with UH that the original request stated that it was for a CSO policy on specified topics, to include the camera specifications and other information listed. In other words, the request was for camera specifications **as part of** a CSO policy, **not in addition** to a CSO policy. In the absence of a specifically responsive policy, UH was not unreasonable in responding by providing the only policy it had related to those topics. OIP further agrees that when Requester clarified that she wanted the camera specifications by themselves, it was reasonable for UH to regard that as a new request. Here, again, OIP cannot conclude that UH's response to this portion of the requests was unreasonable, suggested malice or bad faith, or showed deliberate intent to delay.

D. Documentation on the CSO Call Log

In the eighth bullet point of her original request, which was among the records categorized as "[CSO] (aka parking office) Records" and described as "Government records (not specifically personal records)," Requester asked for:

Documentation on the [CSO] call log (referenced by [employee] and [employee] on 2 March 2012). Is this manually maintained or an automated record of calls? Does it log calls leading to voicemails as well as answered calls? Who has access to the referenced call logs? How long are call logs retained?

UH provided a one page memorandum dated June 26, 2012, with the subject line "Revised phone Etiquette," and a two-page document titled "Daily Procedures" with a revision date of July 2, 2002.

Requester complained, in her e-mail of July 15, as follows:

This memo was issued *after* the period of time in question. Please provide policy relevant at the time period listed 19 January 2012 – 2 March 2012.

In response, UH noted that the request had not specified that Requester wanted only documentation in effect during the specified time period. UH also noted that the "Daily Procedures" document was in effect at the time Requester specified in her July 15 e-mail, and that there was "no policy regarding call logs as you are requesting above."

OIP agrees with UH that the original request did not specify that Requester was seeking only records effective during a specified time period. Although Requester referenced the period from January 29 to March 2, 2012, in the next bullet point of her request (bullet point nine, discussed supra), there was no obvious indication that Requester also intended that time frame to apply to what she was requesting in the preceding bullet point. Thus, here again, OIP cannot conclude that UH's response was unreasonable or suggested malice or bad faith.

E. All Citation Information Associated with Requester and her Vehicle and All Information About Requester's Appeals

In the fourth and fifth bullet point of her original request, which were among the records categorized as "[CSO] (aka parking office) Records" and described as "Personal Records regarding [Requester] maintained by [CSO]," Requester asked for:

A copy of all citation information (see attached list) associated with [Requester] or her vehicle ([description]), including, but not limited to, [CSO] copy of the original citation (includes information not in the online list available to customers) and [CSO] online records of citations including the ultimate disposition and reason for disposition.

and

A copy of all information about appeals of tickets by [Requester], including but not limited to: web form appeals (including the full content of the "comments" section), paper appeals, and all [CSO] responses to appeals.

The request attached a two-page printout of citations, titled "View My Parking Citations," apparently printed from a UH user-accessible online database.

The copy UH provided of Requester's Flex account was UH's response to this item. In her e-mail of July 15, Requester asked UH for

[A] key to the symbols used in the "Flex account." Specifically, what is the difference between a circle and a diamond to the left of citations on page 20 of the provided pdf file. There are three quite blurry [sic]

symbols to the right of the citations, one unidentifiable, a pencil (?) and a circle with an "H."

Requester also asked how long the system had been used. Regarding appeals, Requester asked:

Ten of the 15 listed citations have the word "Appeal" to the left but the Appeals section indicates only five "Appeals(5)." Please explain.

UH originally responded (in its July 17 e-mail) as follows:

We provided the information to you per OIP guidelines. HRS Chapter 92F does not require government agencies to interpret documents for requesters.

UH did answer the questions about how long the system had been in use (since 2009) and noted that communications between customers and employees are not always entered into the system.

In its July 24 e-mail to Requester, UH attached a list of the symbols used in the Flex account, and answered Requester's specific questions from her July 15 e-mail. UH also explained why it was now providing this information:

FYI, our General Counsel's office receive [sic] a phone call from OIP, revising their earlier answer to us regarding interpreting information an agency provides to requesters. OIP now tells us if the information provided is considered a personal record, "where necessary the agency shall provide a translation into common terms of any machine readable code or abbreviation employee [sic] for internal agency use." We are interpreting this language broadly to include the questions you asked in your e-mail dated July 15

Requester does not contest that her questions about interpreting the Flex account were answered; rather, OIP understands her to have raised this specific dispute as an example of UH's alleged stonewalling. UH argues that it was following OIP's advice with regard to an agency's obligations, and that when that advice was corrected to take into account that the records at issue were personal records, UH promptly provided the requested key and other information.

OIP agrees that UH was following advice² provided through OIP's Attorney of the Day service, which provides general, non-binding advice to members of the public and agency staff. As such, OIP cannot find that UH's initial refusal to provide an explanation of the Flex account records was made maliciously or in bad faith or is an indication of stonewalling on the part of UH.

F. Campus Police Report of April 23, 2012

In the thirteenth bullet point of her original request, which was among the records categorized under Campus Security, Requester asked for:

[the] Campus Police Report filed by [Requester] on 23 April 2012 after a traffic accident in Zone 13 (POST lot) including officer photographs, officer notes, and witness statements.

UH provided a copy of the requested report with photos and other information about the other vehicle redacted. OIP will focus here on Requester's complaints regarding the completeness of the report and the response process; OIP will discuss the redactions and whether they were justified later in this opinion. In Requester's July 15 e-mail, she questioned whether the report she had been provided was complete, as it did not include some items:

(a) Photos were taken of the scene for context (facing mauka) that do not include other vehicle. There is no reason for these photos to be redacted. Please provide.

(b) Does the police report not have officer notes of any kind? He drew a diagram of the accident at the scene. Why is it not included in the report?

UH responded as follows:

You specifically asked for a campus police report including photos, notes, etc., contained within the report. We gave you the full and complete police report including whatever photos the campus security officer included as part of the report. All the redacted photos were of the vehicle that you hit. If you want us to research if there are any additional photos that were taken at the scene, but that were not included as part of the campus security report, the University considers this to be a new request.

² As OIP clarified subsequent to its more general initial advice, for personal records, the UIPA states that "[w]here necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal use." HRS § 92F-21 (2012),

and

We included the campus security report in its entirety. Whatever the HPD provided to us, we provided to you.

UH did indeed treat the request to provide additional photos taken of the scene as a new request, describing it in the Acknowledgment to Requester for the new request as:

Any potential photos that were taken in relation to Campus Security case number 2012-0459; but that were not included as part of the official Campus Security report for that case number.

UH located two additional photographs in its response to the new request and provided one but redacted the other because it was of the other vehicle. In answer to Requester's repeated questions about why the photographs were not included in the requested report, UH advised her:

They were not included in Campus Security report 2012-0459 because they are similar to the photos that were already included in the Campus Security report.

In this appeal, Requester continued to question, first, whether the report UH provided her was complete. Requester also complained that it was unclear what in the report came from the Honolulu Police Department (HPD) and what came from Campus Security. Requester argued that UH may have failed to provide a complete report due to improper record keeping, as she maintained that the additional photographs should have been part of the official report.

UH argued: (1) it provided the entire report as maintained by Campus Security; (2) the report is not incomplete; and (3) if HPD did not give Campus Security everything it generated, UH cannot provide Requester with records HPD did not give to UH. Regarding the allegation that the official report was incomplete due to improper record keeping, UH argued that photos taken by Campus Security are not included in the report if they are redundant or are not pertinent to the report, and that this practice is not improper record keeping, but instead appropriate and efficient record keeping.

The question of whether UH **should** have included all photos taken of the scene in its official report of the incident is not relevant under the UIPA, as the UIPA does not dictate how an agency must keep its records or what information a report must include. OIP finds that the original request asked for the report filed on the specified date, which UH provided as it maintained it. When Requester clarified that she wanted photos that were not part of the report, UH provided those as well.

UH's UIPA obligation was limited to records UH maintained; it was not required to contact HPD to see if any additional photographs or other records of the incident might be found in HPD's files. See HRS § 92F-3 (definition of "government record" limited to information "maintained" by an agency).

Requester's second complaint regarding this category of information was that UH had engaged in what she described as "semantic stonewalling": because, as Requester believed, the additional photographs should have been part of the report in the first place, it would have been more appropriate for UH to assume they were covered by the original request rather than to include them among the items it considered to be new requests after Requester made it clear that she wanted such additional photographs. Requester also complained that UH's response was untimely, apparently based again on the theory that UH should have realized that her original request included the additional photographs, so it was unreasonable for UH to start the clock on a new request with respect to those photographs.

UH argued that the original request asked for the report, and UH provided Requester with a copy of the report. UH further argued that it understood Requester's subsequent request that it provide any photos not included in the report to be a new request, as those photos by definition were not part of the report that the original request had asked for, so it was appropriate for UH to treat it as a new request.

OIP finds that it was reasonable for UH to respond to the request for the specific report by simply providing a copy of the report, and not also searching for any additional materials that could have been included in the report but were not. Given that UH reasonably understood the original request to include just the report, and not additional materials that were not part of the report, OIP likewise finds that UH acted reasonably in treating Requester's clarification that she would like copies of any additional photographs as a new request. Thus, UH's response deadlines for the new request did not date from the original request, but instead from the date Requester clarified that she wanted additional photographs, and UH's response to that new request was timely. OIP finds no reason to conclude that UH's response to this portion of the requests was unreasonable or was malicious or indicative of bad faith.

G. Campus Police Report of May 25, 2012

In the fourteenth bullet point of her original request, which was among the records categorized under Campus Security, Requester asked for:

[the] Campus police report filed by [employee] and/or [CSO] against [Requester] on 25 April 2012, including but not limited to witness statements, time and originator of first telephone call about

[Requester] to campus police on 25 April 2012, any witness statements or evidence collected, and the ultimate resolution of the complaint.

UH did not provide such a report; its Notice to Requester indicated generally that any records not provided did not exist.

In her July 15 e-mail, Requester wrote:

In addition to the police report I asked for information about calls made to Campus Security. Please provide telephone records documenting **any** calls from [CSO] ([employee], [employee], or [employee]) to Campus Security on 25 April 2012 **and** any entries in the Campus Security call log referencing **any** calls from [CSO]. Alternatively confirm that there are no telephone records of any contact between [CSO] and Campus Security concerning [Requester] on 25 April 2012.

(Emphasis in original.) UH responded on July 17 that it considered the request for telephone records and a call log a new request:

You specifically asked for a campus police report and included details you expected to find *within* the campus police report such as witness statements, phone calls, and evidence collected. No such report exists. Your request above for telephone records for [CSO] for April 25, 2012, and a Campus security call log for April 25, 2012, is a new request.

(Emphasis in original.) UH included the request for telephone records and a call log in its Acknowledgment to Requester for the second request, as follows:

Telephone company records, or the UH equivalent, for [CSO] for 04/25/12.

and

Campus Security call log for 04/25/12.

Requester subsequently complained (in her e-mail to UH of September 11) that her wording in the original request had been based on "false statements by you and employees working under you stating that a police report had been filed on 4/25/2013 to document my behavior," and that UH's description of what she was seeking in the Acknowledgment to Requester for the second request was broader than what she had actually asked for. In an e-mail to OIP of the same date, Requester also claimed that a specific UH employee had lied to her by telling her that a police report had been filed, and questioned whether a call to report an incident to Campus Security might have been considered a police report.

Regarding the complaint that CSO provided false information to Requester that misled her when she worded her request in reliance on that information, such a complaint would not typically be considered to fall within the jurisdiction of the UIPA. However, given Requester's allegations of a pattern of malicious behavior by UH, OIP will consider the complaint in that context. The UH employee in question, responding on behalf of UH, denied having ever told Requester that a police report had been filed, and further argued that she would not have shared such sensitive and confidential information. Given the lack of any evidence beyond the statements of Requester and the UH employee in question, OIP has no basis for concluding that the UH employee in fact lied to Requester. Thus, OIP cannot find that UH lied to Requester, or that this was part of a pattern of malicious or bad faith conduct on UH's part.

Regarding the complaint that the telephone records and call log were encompassed in the original request and should not have been considered a new request, OIP agrees with UH that Requester's original request was specifically for a police report, and "time and originator of first telephone call about [Requester]" (the only reference to telephone calls) was described as being included in the requested report. The information described in Requester's July 15 e-mail differed both in seeking telephone records and a call log documenting telephone calls, rather than a police report that might include such information, and in broadening the information requested from "time and originator of first telephone call about [Requester]" to **any** calls from CSO to Campus Security. Thus, OIP finds that the information described in the July 15 e-mail was not covered by Requester's original request, and UH acted reasonably and in good faith in responding to it as a new request.

Regarding Requester's complaint that UH had changed her request to make it broader than what she had asked for, OIP first notes that Requester did not make this complaint until September 11, at the same time she notified UH that her prepayment was on the way and further complained about delays. Thus, it was not at all clear that Requester wanted UH to cancel processing the request at the last minute so that Requester could clarify the description of the records being sought, which would have restarted the clock for UH's response. Had UH done so, Requester might well have complained about the further delay. In any case, OIP finds that UH's description of the records being sought – telephone company records or the UH equivalent for CSO and a Campus Security call log for the date at issue – was closely tailored to produce the information Requester had identified in her July 15 e-mail. Thus, OIP finds that UH's description of the records being sought was reasonable, and did not change what Requester had asked for in her July 15 e-mail.

Regarding this portion of Requester's requests, OIP finds that UH acted reasonably in its efforts to respond to Requester, and finds no indication of malice, bad faith, or deliberate delay by UH.

H. Miscellaneous Issues Regarding Specific Parts of UH's Response

Requester raised various issues in the course of her correspondence with UH and with OIP that she is no longer actively complaining about, but that OIP will examine to see whether they provide evidence of a pattern of bad faith or malicious behavior on the part of UH as alleged by Requester.

In her July 15 e-mail to UH, in which Requester raised most of her concerns regarding UH's response to the original Request, Requester complained about the quality of scanned photographs and asked for better copies. UH provided those on July 17, and Requester indicated that she was satisfied with that response.

In the same e-mail, she stated, "Page 209 is undated." UH responded on July 17, "True." Requester subsequently indicated that she was content with that response.

Also in her July 15 e-mail, Requester asked for verification that what she had been sent was the extent of CSO's parking log. UH confirmed it on July 17, and Requester indicated that she was satisfied.

Since the time that Requester made her original request to when UH provided the responsive records, Requester and UH exchanged many e-mails regarding the format in which the records would be provided. During the course of this exchange, Requester complained about various aspects of UH's responses and accused UH of not knowing what "electronic records" meant. However, the records were ultimately provided in electronic format, primarily PDFs, and the format was apparently to Requester's satisfaction (with the exception of the poor quality photograph scans mentioned above).

Having reviewed all the correspondence between Requester and UH regarding these now resolved issues, OIP finds nothing to suggest a pattern of bad faith or malicious behavior, or of intentional delay, on UH's part.

II. General Complaints Regarding the Response Process and UH's Alleged Pattern of Behavior

A. Handling of Prepayment Checks

In her September 11 e-mail to UH, Requester stated that the prepayment check on its way to UH for the second request was actually the second one she had sent for the same payment from her account at the UH Credit Union, and that she had had to stop payment on her first check after UH denied receiving it. Requester also complained to OIP on the same date that her "prepayment checks [had] been getting 'lost'" and that she believed it was suspicious because CSO (which was handling the request for UH) was the only one having a problem receiving them.

UH advised Requester in its e-mail of September 12 that her check dated September 9 had been received. UH denied having destroyed or otherwise failed to process any checks received from Requester, and suggested that Requester send checks via certified mail if she was having a problem with payments getting through.

Regarding Requester's allegation to OIP that multiple "prepayment checks" had disappeared, OIP notes that only one such incident was specifically raised in Requester's correspondence with UH. As to that incident, the record before OIP lacks sufficient evidence for OIP to make any finding as to what may have happened to the earlier check that Requester stated she had sent. For that reason, OIP has no basis to conclude that UH actually received an earlier prepayment check that it denied receiving. Thus, while destruction of prepayment checks by an agency would indeed suggest bad faith on the agency's part, OIP has no basis to find that UH destroyed or otherwise mishandled Requester's prepayment checks.

B. Quality of Record Keeping

Requester argued generally that poor record keeping on UH's part may have prevented a full response to her requests. UH argued that it provided Requester with all the responsive records it had, and in specific instances where Requester suggested that a record was incomplete (e.g., the campus police report of April 23, 2012), argued that that the record was complete and was kept appropriately.

The UIPA applies to the records an agency actually has, and does not set record retention requirements for agencies or create a duty of care with regard to government records. Molfin v. Yuen, 134 Haw. 181, 339 P.3d 679, 685 (2014). Thus, even if UH's records were incomplete (and the record does not establish that they were), that would not be a violation of the UIPA. OIP therefore cannot conclude that UH's record keeping practices were unreasonable or comprised a violation of the UIPA.

C. UH's Initiative In Putting Together "Unauthorized" Requests

Requester argued that UH submitted three unauthorized UIPA requests on her behalf with poor wording that she would not have chosen, so that UH could deny those requests and then prevent her from requesting the same information in her own words by claiming that any subsequent requests were duplicative and thus need not be answered based on a formerly effective provision of section 92F-11, HRS.

UH argued that it did not make unauthorized requests on Requester's behalf, as the Acknowledgment to Requester it sent out regarding the second request was based entirely on records Requester had asked it to provide in her correspondence. UH noted that in some of her correspondence Requester referred to herself as having

made multiple requests, which suggested she believed she had, in fact, made multiple requests. UH further argued that if Requester did believe a request was unauthorized, she could simply have not followed through with the request when she received the Acknowledgement and Notice to Requester.

The record before OIP only reflects the second request that arose out of Requester's clarifications and concerns regarding UH's response to her original request. Thus, OIP cannot draw conclusions as to requests not included in the record of this appeal, but will focus on whether the second request was unauthorized and was intended to prevent Requester's exercise of her UIPA rights.

As discussed supra with regard to the specific items included in the second request, UH's basis for sending an Acknowledgement and later Notice to Requester, and otherwise processing the request, was that Requester had asked UH to provide her with a number of specific records that UH did not believe were covered by her original request. OIP found UH's understanding to be reasonable and reached in good faith for all those items. Requester raised concerns about whether UH's description of the requested records matched what she was seeking in some areas in her e-mail of September 11; however, at the same time Requester advised UH that she had sent the requested prepayment. UH did not proceed with the request until it had received prepayment. As OIP noted supra, UH was placed in the position of either proceeding with the request based on receipt of prepayment – a request for which Requester had already been complaining about delays – or canceling the current request to issue a new Notice based on Requester's suggested changes to the requested information in her September 11 e-mail. Had UH canceled processing the second request and instead issued a new Notice based on Requester's clarification, Requester might well have regarded that as an unjustified delay.

OIP notes that at the relevant time and through June 2014, section 92F-11, HRS, had been temporarily amended to provide that an agency could simply not respond to a subsequent request by the same person for the same or substantially similar records, so long as the agency had responded properly the first time and the response would not change. Act 100, 2010 Haw. Sess. Laws. (That amendment is no longer in effect as it included a sunset provision. HRS § 92F-11.) Requester's concern that UH might decline to respond to subsequent requests for similar information thus had some legal basis at the time, and a showing that UH actually ignored requests from Requester on the theory that they were duplicative could have supported Requester's argument.

However, there is no indication in the record before OIP that Requester sought to make other requests using her preferred phrasing, or that UH declined to respond to such requests. To the contrary, the record reflects that UH responded to all requests it received, including those that were in the middle of lengthy e-mails from Requester. Thus, regardless of whether it would have hypothetically been possible for UH to decline to respond to subsequent requests on the basis that it had already

responded properly in the original request, in fact UH did not do so, and OIP cannot find that UH acted improperly or in bad faith when it responded to all requests Requester made.

D. Volume of Correspondence

Requester alleged that UH was swamping her with written requests in an intentional effort to interfere with personal and professional obligations. UH asserted that its communication with Requester was limited to responses to communications from Requester.

Having reviewed the entire record, OIP finds that although the volume of correspondence included is indeed substantial, all UH correspondence to Requester appeared to be sent in an effort to respond to Requester's own correspondence to UH. Thus, to the extent that excess communication would even comprise a valid complaint under the UIPA, OIP has no basis to conclude that UH was excessively corresponding with Requester in an effort to interfere with her obligations.

E. UH's Responsiveness and Timeliness

Requester argued that UH was unresponsive to her requests and questions, and that it played semantic games with her requests to avoid giving her the information she actually wanted and draw out the process. UH, in response, argued that it did not intentionally delay the process, and in fact put in a large amount of time to meet deadlines it found challenging. According to UH, the employee coordinating the response alone put in hundreds of hours in responding to Requester's UIPA requests, e-mails, questions, and accusations.

This issue goes to the heart of the question of whether UH responded reasonably and in good faith to Requester's requests. In its consideration of the various specific elements of Requester's requests on which she had concerns, OIP found that UH had responded reasonably and in fact appeared to have done its best to understand and fulfil a lengthy and complex request and the follow-up request made during the ensuing correspondence. From its review of the record in this appeal, OIP finds it entirely credible that UH spent hundreds of hours in responding to Requester's requests and associated correspondence. While OIP understands that Requester in many cases believed that her original request should have been read more broadly, and in other instances less broadly, than UH did, OIP has found UH's interpretation to be reasonable in all the specified instances. Thus, OIP has no basis to conclude that UH was seeking to avoid providing requested information or unreasonably drawing out the response process.

F. Conflict of Interest

Requester argued that the employee coordinating UH's response was "seriously conflicted" due to an internal complaint Requester had filed against her as well as a complaint Requester had filed against the CSO as a whole. In support of this, Requester also stated that the employee had refused requests for alternate contact information or the name of her superior. Requester argued that because of this alleged conflict of interest, the employee had created the "unauthorized" second request and manipulated the description of the requested records and intentionally made conflicting statements. Requester further argued that the employee had a motive to slow down the processing of Requester's requests to prevent Requester from obtaining records relevant to her complaint.

Responding on behalf of UH, the employee noted that she had not been notified of any formal complaints against her by Requester, and stated that she had kept her supervisor apprised of the situation and told her supervisor that Requester was asking for the supervisor's name, but she was not providing it. UH denied that the employee altered or manipulated requested information, delayed in processing the requests, or intentionally made conflicting statements.

The UIPA does not contain any requirement that the person responding to a record request be free of conflicts of interest, either financial or interpersonal. Thus, Requester's allegation of a conflict of interest is only relevant to the extent that UH actually responded improperly or in bad faith under the UIPA. As discussed supra, OIP has found that UH's responses to the specific parts of the requests complained of were based on reasonable interpretations of what Requester was seeking. OIP has not found evidence that any UH employee was altering or manipulating information, delaying in processing Requester's requests, or intentionally making conflicting statements. OIP therefore finds no indication of bad faith or malice based on UH's decision to have the employee complained of coordinate UH's response to the requests.

G. Refusal to Respond to Future Contacts by Requester

Requester alleged that the employee coordinating UH's response has forbidden her from contacting CSO employees in the future and threatened her with legal action, thus preventing her from making other UIPA requests.

UH responded that due to abusive and harassing communications from Requester it asked Requester to remain courteous and professional, but Requester's communications continued to be abusive and harassing, and that the CSO had asked Requester to stop harassing the office by repeatedly asking about the same information. UH denied that any UH employee had threatened Requester, including with legal action, or had abused power.

The UIPA does not require an agency to allow its staff to be harassed or abused, nor does it dictate an agency's phone-answering practices. Nonetheless, an agency must have a way in which it can be contacted by members of the public to make UIPA requests. If the CSO's refusal to respond to future contacts by Requester meant that it failed to respond to a UIPA request, that could indeed present a violation of the UIPA.

Based on OIP's review, the record in this appeal does not include a UIPA request from Requester that went unanswered. There is indeed a great deal of correspondence from Requester to UH in which she complained about how UH processed her request and complained that UH's responses did not include records she expected would be included, and OIP understands that the reason for this appeal is that Requester continued to be unsatisfied with UH's responses to her requests; however, OIP cannot find an outstanding UIPA request that went unanswered. OIP also cannot find from the record before it that UH threatened Requester with legal action if she made another UIPA request or otherwise contacted UH. Thus, OIP cannot conclude that UH's efforts to protect its staff from what it perceived as abusive and harassing communications prevented Requester from exercising her rights under the UIPA.

H. Conclusion Regarding UH's Response Process In General

Having reviewed the record as a whole, examined the specific items for which Requester believed UH's responses indicated malice or bad faith, and considered the general patterns of behavior by UH that Requester alleged, OIP finds that UH acted reasonably and in good faith in its responses to Requester's requests and throughout its correspondence with Requester regarding those requests. UH's responses were not without fault – most notably, and as discussed *infra*, UH redacted some information yet did not indicate on its Notice that it would do so, nor did it specify the legal basis for doing so. However, OIP finds no basis to conclude that any flaws in UH's responses were the result of anything but a good faith error in the course of a major effort to respond to a complex and lengthy request and the ensuing questions and clarification from Requester, including a follow-up request.

III. Redactions

UH redacted information about the parked vehicle hit by Requester from the requested campus police report of April 23, 2012. Specifically, UH redacted photographs of the vehicle, the information in the categories listed as driver's name and the number of operators, driver's phone number, insurer and policy number and expiration date, vehicle year, make, model, body type, and license number and state, vehicle tax and safety expiration dates, and the registered owner and owner's address. UH acknowledged redaction of a photo in its correspondence with Requester but did not indicate on either Notice to Requester that it would be withholding any part of the responsive records, so UH did not state its legal

justification for doing so. OIP assumes UH's basis to have been the UIPA's exception for information whose disclosure would be a clearly unwarranted invasion of personal privacy. See HRS § 92F-13(1) (2012).

OIP has previously opined that certain parts of a campus police report can be a joint personal record, *i.e.*, the report is "about" two or more persons, so that there is a presumption that the entire record is accessible by each of those persons as a personal record. OIP Op. Ltr. No. 05-10. In this OIP opinion, OIP explained that where "certain information is "about" another individual also relates to or is intertwined with information about the requester, such information must be considered to be part of the personal record of each and is not subject to redaction for a request by either party." Id. (concluding that the names of the witnesses and alleged assailant related to and are intertwined with portions about requester and cannot be reacted).

State law requires that a driver of a vehicle which collides with an unattended vehicle "shall either locate and notify the operator or owner of such vehicle or other property of the driver's name, address, and the registration number of the vehicle the driver is driving" or "attach a note with this information on the unattended vehicle." HRS § 291C-15 (Supp. 2016). Because State law required the Requester to contact the vehicle's owner, OIP believes that the vehicle owner's name, contact information, and insurance information in the campus police report relate to and are intertwined with parts of the report about the Requester and her actions, so that this information constitute both the Requester's and the vehicle owner's joint personal record and must be disclosed to the Requester.³

Finally, given that the vehicle was parked in a public place, Requester was there at the time of the incident and when the photographs were taken, and Requester saw the parked vehicle she had just hit (including its license plate number and state and the safety check and registration expiration stickers), OIP believes that the vehicle photographs and the information describing the vehicle, including its license plate number and state and the expiration stickers, were part of Requester's joint personal record and as such were not subject to the privacy exception.

If Requester still wishes to obtain the unredacted photographs of the parked vehicle, the vehicle description and expiration sticker information, and the owner's name, contact information, and insurance information, Requester should contact UH to so advise UH, and UH should then provide copies of the campus police report and the additional photographs with that information not redacted.

³ In comparison, a police department is required to disclose a traffic accident report, upon request, "to any person directly concerned in the traffic accident or having a proper interest therein, including: (1) The driver or drivers involved, . . ." HRS § 291C-20 (2007).

Right to Bring Suit

Requester is entitled to seek assistance directly from the courts after Requester has exhausted the administrative remedies set forth in section 92F-23, HRS. HRS §§ 92F-27(a), 92F-42(1) (2012). An action against the agency denying access must be brought within two years of the denial of access (or where applicable, receipt of a final OIP ruling). HRS § 92F-27(f).

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).

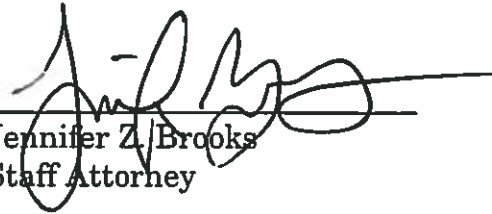
If the court finds that the agency knowingly or intentionally violated a provision under Part III of the UIPA, the agency will be liable for: (1) actual damages (but in no case less than \$1,000); and (2) costs in bringing the action and reasonable attorney's fees. HRS § 92F-27(d). The court may also assess attorney's fees and costs against the agency when a requester substantially prevails, or it may assess fees and costs against the requester when it finds the charges brought against the agency were frivolous. HRS § 92F-27(e). If Requester decides to file a lawsuit, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

This opinion 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-3(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 request for assistance. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES



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