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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: Ms. Christine Paul-Russi
Agency: State Ethics Commission
Date: June 30, 2017
Subject: Obligation to Provide Original Records (U APPEAL 15-20)

Requester seeks a decision as to whether the State Ethics Commission (SEC) is required to provide her with the original letters addressed to her husband under Part II of the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in e-mail messages from Requester to OIP dated November 23, 2014 (with attachments), November 25, 2014, and January 28, 2015; and a letter to OIP from SEC dated December 2, 2014.

Decision

The UIPA allows members of the public to inspect and copy government records, but does not contain language allowing a record requester to take possession of original government records. Requester is not entitled under the UIPA to the original letters written to her husband.

Statement of Reasons for Decision

Requester made a request by e-mail on behalf of herself and her husband to SEC dated October 24, 2014, for “the original letters by your director to my husband, Tom, dated today, October 24, 2014 and emailed at 12:18 pm and 12:29 pm[.]”¹ The SEC provided a copy of the requested letters, but declined to provide the originals. It informed Requester, in a letter dated November 7, 2014, that “[t]he original documents are part of the agency’s records and, therefore, are not available to you.”

In response to this Appeal, SEC asserted that the UIPA, at section 92F-11(b), HRS, requires an agency to allow “inspection and copying” of records, but does not require an agency to provide a requester with its original records.

The relevant portions of the UIPA clearly support SEC’s position that the UIPA allows inspection and copying, but does not require agencies to provide original records in response to UIPA requests:

[§92F-11] Affirmative agency disclosure responsibilities.

(a) All government records are open to public inspection unless access is restricted or closed by law.

(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.

...

(d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.

HRS § 92F-11 (Supp. 2016). In addition, OIP has ruled that “[u]nder the UIPA, there are no requirements that a copy of a record be certified or that the original ‘official’ record be provided to a requester.” OIP Op. Ltr. No. F15-03 at 6-7 (finding that the University of Hawaii was not required, under the UIPA, to provide a former student with certified or original records). Part II of the UIPA does not entitle Requester to the original letters mailed to her husband.

Finally, Requester purported to make the record request for herself and on behalf of

¹ Other records were requested in Requester’s October 24 e-mail to SEC, however, SEC’s response to the other portions of the record request was not appealed.

her husband. The responsive records are the personal records² of Requester's husband, but not of Requester. Nevertheless, even if Requester's husband had made a personal record request under Part III of the UIPA, SEC would not have been required to provide the original letters. Section 92F-23, HRS, requires that, "[u]pon request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made[.]" See also OIP Op. Ltr. No. F15-03 at 6-7. Part III of the UIPA does not provide personal record requesters with the right to obtain original agency records about them. OIP. Op. Ltr. No. F15-03 at 6.

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.

² "Personal record" is defined in the UIPA as:

any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

HRS § 92F-3 (2012).

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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