



STATE OF HAWAII
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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: Mike Dennis
Agency: Planning Department, County of Hawaii
Date: March 29, 2018
Subject: Complainant's Name (U APPEAL 15-22)

Requester seeks a decision as to whether the Planning Department, County of Hawaii (PLAN-H) properly withheld the name of the complainant who reported an alleged zoning violation (complainant) to PLAN-H under Part II of the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's letter, dated November 26, 2014, which included a copy of PLAN-H's letter, dated November 25, 2014, denying Requester's record request (PLAN-H's Response). PLAN-H did not provide a response to this appeal and apparently relied on PLAN-H's Response as justification of its denial.¹

¹ Because the UIPA places the burden upon an agency to justify its denial of a record request, an agency should respond to a notice of appeal. See HRS § 92F-15(c) (2012) (providing that "[t]he agency has the burden of proof to establish justification for non-disclosure"); see also HAR § 2-71-14 (2012) (providing that "[t]he agency shall respond to the notice of appeal within ten days of receipt of the notice [of appeal] with a written statement").

Decision

PLAN-H properly withheld the complainant's name under the UIPA's exceptions for a "clearly unwarranted invasion of personal privacy" and "frustration of a legitimate government function." HRS § 92F-13(1), (3) (2012).

Statement of Reasons for Decision

With regard to Requester's email request for information on the complaint filed about a property identified by the tax map key number," PLAN-H's Response stated:

. . . You are specifically requesting the name of the complainant (accuser/complainer). Your request is denied.

The Planning Department is citing Hawai'i Revised Statutes [sic] (HRS) concerning your UIPA request for information:

HRS 92F-13 (1) and (3) Government records; exceptions to general rule. This part shall not require disclosure of

(1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

. . . .

(3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function.

This justifies the reason the Planning Department is denying your request for the name of the complainant.

Requester appealed PLAN-H's denial, asserting that public disclosure of the complainant's name would allow a property owner to "know which neighbor to speak with if an issue comes up" and noted that, "if the complainer/accuser is just a business rival with an ax to grind, it becomes more evident what the motivations are."

In OIP Opinion Letter No. 89-12, OIP addressed the issue of whether the UIPA required PLAN-H to disclose a complainant's identity. OIP opined that "[m]andatory public access to information about complainants' identities would frustrate agencies' legitimate enforcement function because agencies would be less

likely to receive incriminating information at the initiative of private citizens.” OIP Op. Ltr. No. 89-12 at 4. Therefore, OIP concluded that the complainant’s identity is protected from required public disclosure by the UIPA’s exception allowing agencies to withhold information in order to avoid the “frustration of a legitimate government function.” HRS § 92F-13(3).

Also, in OIP Opinion Letter No. 89-12, OIP opined that “a complainant under the UIPA would have a significant privacy interest in the disclosure of his [or her] identity since disclosure makes the complainant an identifiable target for retribution and harassment.” OIP Op. Ltr. No. 89-12 at 5. OIP concluded that “[i]n the absence of a countervailing public interest,” the complainant’s identity is also protected from required public disclosure by the UIPA’s “clearly unwarranted invasion of personal privacy” exception. Id.; HRS § 92F-13(1).

This OIP opinion also concluded that, where the complainant’s identity is part of a personal record to which an individual has requested access, an agency is not required to disclose the complainant’s identity under Part III of the UIPA. OIP Op. Ltr. No. 89-12 at 6. Specifically, as OIP concluded, the complainant’s identity falls under the UIPA exemption that protects “the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.” HRS § 92F-22(2) (2012).

PLAN-H’s Response cited the UIPA’s exceptions for “clearly unwarranted invasion of personal privacy” and “frustration of a legitimate government function” as legal authority for PLAN-H’s denial of access to the complainant’s name. In the facts presented in this appeal, OIP does not find a great public interest in the complainant’s name and thus, does not find that the complainant’s significant privacy interest in this identifying information would be outweighed by the public interest, if any. See HRS § 92F-14(a) (2012) (stating that “[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual”).

Therefore, consistent with its conclusion in OIP Opinion Letter No. 89-12, OIP believes that, in the present case, the complainant’s name is protected by the two UIPA exceptions cited by PLAN-H and the UIPA does not require PLAN-H to publicly disclose the complainant’s name. Consequently, OIP concludes that PLAN-H properly denied public access to the complainant’s name.

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:



Cheryl Kakazu Park
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