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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 is binding upon the parties involved.

MEMORANDUM DECISION

Requester: Mr. Rex Shilo
Agency: Department of Public Safety
Date: June 28, 2018
Subject: Background Investigation Materials (U APPEAL 15-24)

Mr. Rex Shilo (Requester) seeks a decision as to whether the Department of Public Safety (PSD) properly denied under Part III of the UIPA his request for his background investigation materials obtained in the course of his employment application.

Unless otherwise indicated, this decision is based solely upon the facts presented in an email to PSD from Requester dated December 4, 2014, with attachments; an email to Requester from PSD dated December 12, 2014; an email to OIP from Requester dated December 12, 2014, with attachments; OIP's Notice of Appeal to PSD dated January 27, 2015, with enclosures; an email to PSD from OIP dated February 25, 2015; an email to PSD from OIP dated April 25, 2016; a letter to OIP from PSD dated April 29, 2016, with enclosures (First Response); an email to Requester from OIP dated June 3, 2016; an email to OIP from Requester dated July 24, 2016; an email to OIP from PSD dated January 31, 2018, with attachments (Second Response); and an email to PSD from OIP dated March 23, 2018.

Decision

Except for the records retrieved from the Federal Bureau of Investigation's (FBI) identification records database, OIP concludes that nearly all of the other records

sought in this case must be disclosed to Requester because they are considered personal records “about” Requester under Part III of the UIPA, which are not exempt from disclosure under sections 92F-22(3), HRS, or 92F-28(2), HRS. If PSD can show that the FBI records were provided to PSD only on the condition that the information remains confidential and that it would lose access to FBI assistance if the FBI information is disclosed to Requester, then PSD may withhold them under section 92F-4, HRS.

The information in the records that is not “about” Requester was examined under Part II of the UIPA relating to government records. Notwithstanding any exceptions in Part II, the job titles and general business contact information of government employees are required to be disclosed under 92F-12(a)(14), HRS. Individuals’ direct business contact information, however, may be withheld from disclosure under the frustration exception in section 92F-13(3), HRS.

With respect to any remaining issues, OIP notes that PSD provided statutory citations, but no legal or factual arguments, to justify nondisclosure, and consequently, PSD has not met its burden of proof under section 92F-15(c), HRS.

Statement of Reasons for Opinion

On December 4, 2014, Requester sought access to “ALL the records related to my background investigation completed for me in reference to my Dept. Of Public Safety Human Services Professional IV at Halawa Correctional Facility job application.” (Emphases in original). In response, PSD cited sections 92F-13(3) and 92F-22(3), HRS, as its reasons to withhold. Subsequently, Requester appealed PSD’s denial to OIP. OIP accepted his appeal and sent PSD a Notice of Appeal on January 27, 2015. After OIP invited PSD three times to respond to the Notice of Appeal, PSD, in its First Response, agreed to the partial disclosure of the requested records.¹ As to the remaining records, PSD argued

¹ In this Opinion, OIP will not be discussing several records that PSD has agreed to disclose. However, they have not yet been disclosed as Requester indicated he preferred to receive them after this Opinion is issued. These records include:

1. Background Investigation Report, form PSD 0127, Part I
2. Signed Applicant’s Consent, Authorization and Request to Release Information & Waiver
3. Applicant’s Personal History Questionnaire, form PSD-DHRD PHQ Rev. 12/13
4. Applicant Data Sheet, form PSD 1406 (08/13)
5. Copy of Requester’s Hawaii Driver License & SSN (Social Security Number) card
6. Email response to PSD’s request for landlord information.

The Department of Public Safety (PSD), similar to other law enforcement or criminal justice agencies and public sector organizations has a duty to safeguard such documents, maintain the confidentiality of sensitive information and ensure it is used for purposes for which it is warranted.

In addition to the Uniform Information Practices Act (Modified), chapter 92F (UIPA), PSD has its own authority to develop and apply its own standards, to wit, HRS §353C-5 and HAR §23-10. HAR §23-10-5(d) states that "Any disclosure of information pertaining to staff members or prospective staff members shall be subject to applicable state and federal laws, rules and regulations."

Due to the confidentiality of sensitive information, PSD is not obligated to disclose such records related to Mr. Shilo's background investigation. Pursuant to HRS §92F-13(3) and 92F-22(3), HAR §14-3.01-17(a) and (c), and the attached relevant sections of the United States Code, PSD is bound by certain legal limitations. There are handwritten notes or data on some documents, which are part of the thought process and suitability analysis. In addition, these documents are considered as a work product in the pre-decisional determination of Mr. Shilo's suitability.

These records must be confidential to avoid the frustration of a legitimate government function, which is the employment of persons in the civil service, as defined by the Civil Service Law (HRS, Title 7. Public Officers and Employees, Chapter 76) and governed by the merit principle, HRS §76-1.

(Emphases in original).

Upon OIP's first request for PSD's supplemental response, PSD responded in its email dated January 31, 2018, "[Requester] was offered the job, but declined by telephone on 12/03/2014, and confirmed by email on 12/04/2014." PSD also informed OIP to "See the attachments, the 2nd paragraph (second page) of the CJIS-HI policy & procedures states: Under no circumstances . . . confirm or deny . . . criminal history record information to any person or agency . . . in accordance with HCJDC's HRS §846-9." The attachments were pages 1, 49, 50, and 51 of a 98-page "CJIS Hawaii User Access Policies and Procedures" handbook, along with a redacted PSD "Confirmation of User Access Request" form dated January 19, 2005, and a redacted "CJIS-HAWAII INDIVIDUAL USER ID ASSIGNMENT" form.

Having received a response only addressing the information PSD retrieved from the Criminal Justice Information System (CJIS), OIP requested on March 23, 2018 that

PSD specifically provide the legal arguments and authority permitting PSD to withhold those records it did not address. PSD did not respond.

I. Burden of Proof Not Met to Justify Nondisclosure

The UIPA places the burden of proof on a government agency to justify its nondisclosure of records when it claims that access to a record is restricted under the UIPA. HRS § 92F-15(c) (2012). The agency is required to justify its nondisclosure when it responds to OIP's Notice of Appeal, and the agency's response must include its "explanation of its position, including the agency's justification for the denial of access or actions complained of, with citations to the specific statutory sections and other law that support the agency's position[.]" HAR § 2-73-14(3). If further explanation is needed, "OIP may, orally or in writing, seek any additional information from a party or any other person, and may consider input or relevant materials from any person on pending appeals." HAR § 2-73-15(e).

The quotations and attachments described above constituted PSD's entire legal and factual arguments in support of its nondisclosure. For the reasons set forth herein, OIP cannot conclude that PSD met its burden of proof to justify nondisclosure of all State and County records.

II. Distinguishing an Individual's Access to Personal Records and Access to Government Records Under the UIPA

An individual's access to his or her personal records, which is governed by Part III of the UIPA, must be distinguished from the general public's access to government records, which is subject to Part II. As set forth in OIP Opinion Letter Number F13-01, the framework for analysis is as follows:

- (1) What is the "personal record" of the individual requesting access under Part III of the UIPA?
- (2) Does any Part III exemption in section 92F-22, HRS, allow the withholding of access to the personal record?
- (3) What portion, if any, is a government record subject to the public disclosure requirements of Part II of the UIPA?
- (4) Does any Part II exception in section 92F-13, HRS, allow the withholding of access to a government record that is not a Part III personal record?

III. Requester's Access to His Personal Records Under Part III of the UIPA

A. What Are Requester's Personal Records?

First, it must be determined whether the requested records, or portions thereof, constitute "personal records" to which Requester has the right of access under Part III of the UIPA. The UIPA defines a "personal record" as "any item, collection, or grouping of information about an individual that is maintained by an agency." HRS § 92F-3 (2012) (emphasis added). This includes an individual's educational, financial, or medical records, or items that reference the individual by name or otherwise. Id. An agency is required to provide access under Part III to an "accessible" personal record, which generally means one that is filed by the person's name or other identifying information, or which the agency can otherwise readily find. See HRS §§ 92F-3, -21 (2012).

Based on OIP's *in camera* review of the following records, OIP finds that they are all personal records of Requester because they identify him by name and are "about" him.

State and County Records:

1. Background Investigation Report, form PSD 0127, Parts II-IV (Item 1)
2. Background Investigation Summary, dated October 27, 2014 (Item 2)
3. Computerized results from the CJIS-HI (Criminal Justice Information System-Hawaii) (Item 3)
4. Computerized results from the HPD-LEQP S (Honolulu Police Department Law Enforcement System-Wanted Persons database) (Item 4)
5. Applicant Suitability Checklist (Item 5)
6. Email format of "Verification of Employment for Rex Shilo" from Cheryl L. Tanabe, Dept. of Budget & Fiscal Services, City & County of Honolulu (Item 6)
7. Confidential Employer Questionnaire (verification of employment) – information obtained from City & County of Honolulu (Item 7)
8. Confidential Employer Questionnaire (verification of employment) – information obtained from Department of Human Services (Item 8)

FBI Records:

9. Computerized results from the NCIC (National Crime Information Center-FBI) Interstate Identification Index (Item 9)
10. Computerized results from the NCIC-FBI Wanted Person File (Item 10).

B. Do Any Part III Exemptions Allow Withholding of Access to Requester's Personal Records?

Second, having determined that records, or portions thereof, are an individual's personal records, the agency may withhold the personal records from the individual only when there is an applicable Part III exemption as set forth in section 92F-22, HRS. OIP emphasizes that only Part III exemptions, and not Part II exceptions, are considered in analyzing Part III personal records requests.²

1. **State and County Records (Items 1 through 8) Are Examination Materials, But Their Disclosure Would Not Compromise the Examination Process and Thus They May Not be Withheld Under Section 92F-22(3), HRS**

PSD asserted that Requester was not entitled to the records by citing section 92F-22(3), HRS, but provided no legal or factual argument in support. Section 92F-22(3), HRS, states:

§92F-22 Exemptions and limitations on individual access.

An agency is not required by this part to grant an individual access to personal records, or information in such records:

- ...
(3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as

² In PSD's First Response, PSD asserted that the frustration exception set forth in section 92F-13(3), HRS, under Part II, permits nondisclosure. Specifically, PSD stated, "[t]hese records must be confidential to avoid the frustration of a legitimate government function, which is the employment of persons in the civil service, as defined by the Civil Service Law (HRS, Title 7. Public Officers and Employees, Chapter 76) and governed by the merit principle, HRS §76-1."

However, as explained in this section, section 92F-13(3), HRS, is inapplicable because Part II exceptions are not considered in determining whether Part III personal records may be withheld from disclosure. Additionally, it is not clear to OIP as to what part of section 76-1, HRS, PSD was arguing applies to the situation at hand because this section discusses neither records nor their nondisclosure. Therefore, PSD has not met its burden of proving that the requested records must be kept confidential.

or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.

HRS § 92F-22(3) (2012) (emphasis in original).

Here, OIP finds that the records at issue are “examination material . . . used solely to determine individual qualifications for appointment or promotion in public employment.”³ HRS § 92F-22(3).

This Part III exemption requires not only that the records constitute “examination material,” but also that the disclosure of the material “would compromise the objectivity, fairness, or effectiveness of the testing or examination process.” HRS § 92F-22(3). OIP believes that the disclosure of Requester’s criminal history check and prior employment check to Requester would not “compromise the objectivity, fairness, or effectiveness of the testing or examination process” as he should already be aware of the information contained in these background checks, and disclosure to Requester of these personal records would not give him an unfair advantage over other applicants. Accordingly, OIP finds that section 92F-22(3), HRS, does not permit PSD to withhold the State and County Records (Items 1 through 8).

2. State and County Records (Items 1 through 8) May Not Be Withheld Under Section 92F-28(2), HRS

Although not raised by PSD, OIP considered the following section 92F-28(2), HRS, which requires access to personal records if access has been authorized by law.

[§92F-28] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law. Nothing in this part shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

- ...
- (2) Where any statute, administrative rules, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access.

³ See also Department of Human Resources Development’s (DHRD) “General Definitions” at www.dhrd.hawaii.gov/wp-content/uploads/2012/11/0102001.pdf (last visited June 20, 2018). On June 20, 2018, by telephone conversation, DHRD confirmed that its term “examination” encompasses “background and suitability determinations,” specifically, material received from conducting a criminal history check and prior employment check.

HRS § 92F-28(2) (2012) (emphasis in original).

PSD, in its Second Response, had referred to section 846-9, HRS, as not allowing the disclosure of the requested records.⁴ However, upon OIP's review, OIP finds that section 846-9(2), HRS, actually requires providing access to Requester.

⁴ Section 846-9, HRS, states:

§ 846-9 Limitations on dissemination. Dissemination of nonconviction data shall be limited, whether directly or through any intermediary, only to:

- (1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
- (2) **Individuals and agencies specified in section 846-10;**
- (3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement; provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the provisions of this chapter;
- (4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purposes of this chapter;
- (5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and
- (6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data. These dissemination limitations also do not apply to data relating to cases in which the defendant is acquitted, or charges are dismissed, by reason of physical or mental disease, disorder, or defect under chapter 704.

Criminal history record information disseminated to noncriminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

HRS § 846-9 (2014) (emphasis in original and added).

Section 846-10(3), HRS, which is referenced in section 846-9(2), specifically permits the dissemination of criminal history record information “[t]o such other individuals and agencies who are provided for in this chapter or by rule or regulation.” HRS § 846-10(3) (2014).

Requester is an “individual . . . provided for in this chapter,” as follows.

§ 846-2.7 Criminal history record checks.

...

(c) A qualified entity may conduct a criminal history record check on applicants for licensure or employment, employees, and volunteers who provide care to children, vulnerable adults, or individuals with disabilities. A qualified entity shall comply with the following requirements:

...

(6) The qualified entity shall notify the applicant, employee, or volunteer in writing of the person’s right to obtain a copy of any background screening report, including the criminal history records obtained under this subsection, if any, contained in the report, and of the person’s right to challenge the accuracy and completeness of any information contained in any such report and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the qualified entity reviewing the background screening, including the criminal history record check, if any[.]

HRS § 846-2.7(c)(6) (2014) (emphasis in original and added).

PSD is a “qualified entity” permitted to conduct criminal history record checks on applicants and did conduct a background screening report on Requester.⁵ Requester was an applicant for the position with PSD as a Human Services Professional IV to provide case management services and supportive counseling to inmates.⁶ Clearly, therefore, Requester is entitled to obtain from PSD “a copy of

⁵ Section 846-2.7(b)(16), HRS, specifically states, in pertinent part, “Criminal history record checks may be conducted by: . . . [t]he department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest.” HRS § 846-2.7(b)(16).

⁶ Position Description for “Human Services Professional IV (Corrections Mental Health) (SR-22) – Oahu, State of Hawaii Executive Branch” at www.governmentjobs.com/jobs/1572424-0/human-services-professional-iv-corrections-mental-health-sr-22-oahu (last visited June 26, 2018).

any background screening report, including the criminal history records.”⁷ HRS § 846-2.7(c)(6). Thus, PSD must disclose the State and County Records, Items 1 through 5, as these records are part of his background screening report.⁸

Items 6 through 8 contain factual information verifying Requester’s previous employment. Item 6 is an email exchange between PSD and Requester’s former employer, which provided verification of Requester’s previous employment dates, the Hawaii government agency he worked for, and his job title. Items 7 and 8 are questionnaires completed by two of Requester’s previous employers, entitled “Confidential Employer Questionnaire.” Although Items 7 and 8 requested information that asked for the employers’ recommendation or opinion of the employee, those questions were not answered and only the following factual information was provided by the employers: Requester’s name, last four digits of his social security number, the PSD position he applied for, the Hawaii government agency he previously worked for, his employment dates, prior job title, resignation or termination status, the name and title of the individual completing the questionnaire, and the completion date of the questionnaire.⁹

OIP has previously held that personal records about a requester’s past employment cannot be withheld when the requester already knows the information reported about his past employment. OIP Op. Ltr. No. 09-03 at 3 (citing OIP Op. Ltr. No. 89-17 at 7-8, which concluded that, unless a legitimate government function is compromised, exemptions generally do not apply if the requester already had or was provided the personal information requested). Allowing individuals to inspect information they already know is necessary to enable them to exercise their rights under the UIPA to have any factual error in their personal record corrected by the agency that maintains the record. See HRS § 92F-24, -25 (2012). Requester already knows the factual information about himself that was provided in Items 6 through 8, so these personal records must be disclosed to him.

⁷ Although sections 846-9(3) and -(5), HRS, also allow disclosure to an individual, those provisions are not necessary to the resolution of this case as section 846-2.7(c)(6), HRS, via section 846-9(2), HRS, is dispositive and directly provides that Requester, as an applicant, is entitled to access any background screening report.

⁸ To justify nondisclosure of the records, PSD also cited section 353C-5, HRS, section 23-10, HAR, and section 14-3.01-17, HAR, without providing any explanation or argument as to their relevancy. Not only did PSD fail to meet its burden to justify nondisclosure, but upon OIP’s review of these provisions, OIP concludes that these provisions actually permit disclosure based on the applicable state laws, 92F-28(2) and 846-2.7(c)(6), HRS, as discussed above.

⁹ Some other information contained in these records may be withheld, and will be discussed infra in section IV.

3. FBI Records (Items 9 and 10) Possibly May Be Withheld Under State Law Pursuant to Section 92F-4, HRS

OIP, however, does find that section 92F-4, HRS, in conjunction with section 534(a)(1)(4)(b) of title 28, United States Code (USC), may allow the nondisclosure of the FBI records. Section 92F-4, HRS, provides that an agency is not required to comply with a UIPA provision when the agency's compliance with that provision would cause the agency to lose or be denied federal funding, services, or "other assistance from the federal government." HRS § 92F-4 (2012).

The exchange of federal records with state penal and other institutions may be subject to cancellation under the following federal law.

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall--

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

...

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, including State sentencing commissions, Indian tribes, cities, and penal and other institutions.

(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

5 USC 534(a)(1)(4)(b). (Emphasis in original and added).

In OIP Opinion Letter Number 92-23 at 7-8, OIP found that, "[t]he FBI's provision of identification records to the DOE for its criminal history checks may be considered 'assistance from the federal government'" and held that "under section 92F-4, Hawaii Revised Statutes, the DOE would not be required to publicly disclose FBI identification records since such disclosure would result in the FBI's refusal to provide assistance in the form of its identification records." Although PSD has not presented any evidence in this case to show that it receives federal assistance from the FBI, OIP understands that PSD frequently uses the FBI's identification records database to conduct criminal history record checks on applicants. Therefore, to the extent that the information obtained from the FBI is released to PSD only on the condition that the information remains confidential and PSD can show that it would

lose such federal assistance if the FBI information is disclosed to Requester, PSD may withhold the FBI records, Items 9 and 10 pursuant to section 92F-4, HRS.¹⁰

IV. Public Access to Government Records Under Part II of the UIPA

A. Public Access to Government Records Under Part II of the UIPA

In this case, nearly all of the information in the requested records is “about” Requester and considered to be his personal records. Small portions of the records, however, are not about him, specifically, the job titles and direct business contact information of Requesters’ previous employers that are found in the email exchange with PSD (Item 6) and the completed questionnaires (Items 7 and 8). These portions are considered to be government records that must be examined under Part II of the UIPA to determine whether Requester, as a member of the general public, would be entitled to access such information. We emphasize that Part II, not Part III, applies to any portion of a record that is not the individual’s personal record.

B. Do Any Part II Exceptions Allow the Withholding of Government Records?

Notwithstanding any exceptions under Part II, section 92F-12(a), HRS, mandates the disclosure of certain information. Relevant to this case is section 92F-12(a)(14), HRS, which requires certain information pertaining to government employees to be disclosed. As government employees’ job titles must be disclosed under section 92F-12(a)(14), HRS, there is no basis for withholding this information in Items 6, 7, and 8.

OIP previously opined, however, that direct business contact information may be withheld under the Part II exception for “[g]overnment records that, by their nature must be confidential in order for the government to avoid the frustration of a legitimate government function.” HRS § 92F-13(3) (2012); see OIP Op. Ltr. No. 07-11 at 8, n.14 (opining that while an individual has no privacy interest in business contact information, an individual’s direct business contact information, such as an email address or telephone number, may be withheld under the frustration

¹⁰ In conjunction with section 534(a)(1)(4)(b) of title 28, USC, OIP also considered section 92F-22(5), HRS, which permits the withholding of records that are “[r]equired to be withheld from the individual to whom it pertains by statute[.]” HRS § 92F-22(5). OIP concludes, however, that section 534(a)(1)(4)(b) of title 28, USC, is not an express prohibition statute that would require the records to be withheld from the individual to whom it pertains. Instead of an outright prohibition, this federal statute provides only for the possibility of cancellation of access to the federal database if an agency disseminates records retrieved. Therefore, section 92F-22(5), HRS, is inapplicable to the FBI Records, Items 9 through 10.

exception set forth in section 92F-13(3), HRS). Thus, while PSD must disclose government employees' job titles and any general business contact information, PSD may withhold individual's direct email addresses or telephone numbers found in the email exchange with PSD (Item 6) and the completed questionnaires (Items 7 and 8).

V. Additional Authority Provided by PSD ("The Attached Relevant Sections of the United States Code")

To justify nondisclosure of the records, PSD provided citations to the authority that was already discussed in this Opinion as well as an attachment of the "relevant sections of the United States Code," but no further explanation of the attachment's alleged relevance to the facts of this case. Specifically, PSD included with its First Response a copy of federal section 534 of title 28, United States Code (USC)¹¹ and the federal Privacy Act, section 552a of title 5, USC (Privacy Act).¹² PSD neither identified the specific sections of this attachment that justify nondisclosure nor did it provide any argument why these sections are relevant. Having received only a pile of papers, OIP declines to speculate as to their relevance to the case at hand and concludes instead that PSD has not met its burden to justify nondisclosure based on these references to federal statutes. See OIP Op. Ltr. No. 06-07 at 5; see also OIP Op. Ltr. No. F15-01 at 14 (finding in both opinions, that agency failed to meet its burden of proof when agency did not provide legal argument).

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).

¹¹ Title 28 addresses the federal judiciary's handling of federal identification records and information. While section 534 of title 28, USC, attached by PSD, does discuss the collection and dissemination of information specifically in sections 534 (a) and -(b) of title 28, USC, OIP declines to speculate as to why PSD believes this federal law applies to a state record request under the UIPA.

¹² In OIP Opinion Letter Number F13-01 at 9-10, OIP found that the federal Privacy Act does not presumptively permit a state agency to withhold requested records under Part III of the UIPA from a requester. Here, OIP sees no reason to find the federal Privacy Act relevant to a state record request made under the UIPA.


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 no 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



Liza Onuma Canady
Staff Attorney

APPROVED:



Cheryl Kakazu Park
Director