December 17, 1990

MEMORANDUM

TO: The Honorable William W. Paty
Chairman, Board of Land and Natural Resources

FROM: Hugh R. Jones, Staff Attorney

SUBJECT: Public Access to Declarations of Water Use and Electronic Mailing List of Declarants

This is in reply to your memorandum dated August 2, 1990, requesting an advisory opinion concerning: 1) whether Declarations of Water Use filed under chapter 174C, Hawaii Revised Statutes, may be inspected and copied by the public; and 2) whether the Commission on Water Resource Management ("Commission") may limit public access to an electronic mailing list it maintains which contains the names and addresses of persons who filed Declarations of Water Use.

ISSUES PRESENTED

I. Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), Declarations of Water Use filed with the Commission pursuant to section 174C-26, Hawaii Revised Statutes, must be made available for public inspection and copying.

II. Whether, under the UIPA, an electronic mailing list maintained by the Commission, which sets forth the names and addresses of persons who filed a Declaration of Water Use, is a government record that must be made available for public inspection and copying.

III. Whether, under the UIPA, an agency may require persons requesting a copy of a "public" government record to promise that the information will not be used for commercial purposes.

BRIEF ANSWERS

I. Under the UIPA, except as provided by section 92F-13, Hawaii Revised Statutes, "each agency upon request by any person shall make government records available for inspection and copying." Haw. Rev. Stat. Þ 92F-11(b) (Supp. 1989). Under the UIPA, a "government record" includes information maintained by an agency in electronic or other physical form. See Haw. Rev. Stat. § 92F-3 (Supp. 1989). In reviewing the information set forth upon Declarations of Water Use maintained by the Commission, we conclude that except for the home telephone number of declarants who are "individuals," Declarations of Water Use must be made available for public inspection and copying.

Based upon previous Office of Information Practices ("OIP") advisory opinions, we conclude that the disclosure of an "individual" declarant's home telephone number would constitute a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. With respect to other information set forth in the declaration, we conclude that such data is not protected from disclosure under the UIPA's privacy exception. Even assuming that individuals have a significant privacy interest in information concerning their water use, in our opinion, such privacy interest is outweighed by the public interest in disclosure of this information, under the UIPA balancing test set forth at section 92F-14(a), Hawaii Revised Statutes.

Among other things, the Constitution of the State of Hawaii, the UIPA, and the State Water Code evidence a substantial public interest in information concerning the supply, use, and conservation of the State's water resources, that outweighs the privacy interests an individual may have in the same. Additionally, the State Water Code, and its legislative history, suggest that the Legislature intended that the process by which the Commission certifies a water use as reasonable and beneficial be one that is conducted in public view. Further, without access to Declarations of Water Use filed with the Commission, the public is left without a significant means of reviewing the reasonableness of the Commission's decision to certify a water use.

Lastly, with respect to the names and addresses of those who have filed a Declaration of Water Use, this information became part of a transcript, record, or report at a public meeting of

the Commission, and is therefore, public information. See Haw. Rev. Stat. § 92F-12(a)(16) (Supp. 1989).

II. The names and addresses of declarants contained in the Commission's computer database constitute information maintained by an agency in electronic form and, therefore, such information is a "government record." See Haw. Rev. Stat. § 92F-3 (Supp. 1989). While an agency is not required by the UIPA to create a compilation or summary of its records, or create a "new record" unless the information requested is "readily retrievable," we conclude that in this case, the electronic mailing list of those persons filing a Declaration may be easily retrieved from the Commission's database, given its existing programming capabilities.

Moreover, while under the federal Freedom of Information Act, 5 U.S.C. Þ 552 (Supp. 1989) ("FOIA"), authorities have thus far concluded that requesters are not guaranteed access to information in formats other than paper, we conclude that under the UIPA, as long as the information is physically maintained in the form at requested by a person, an agency must make copies of the government record in the format requested, such as on a floppy diskette or computer tape.

This approach is supported by state court decisions interpreting open records statutes that are substantially identical to the UIPA. Unlike the FOIA, the UIPA and other state statutes specifically include information maintained in electronic form within the definition of records that may be inspected and copied by the public. As such, decisions of authorities applying the FOIA are less persuasive than those applying substantially similar state open records laws. Therefore, we conclude that because the Commission's electronic mailing list is readily retrievable in electronic form, under the UIPA, the Commission must make copies of such list available upon request in electronic form, such as on floppy diskette.

III. The UIPA provides that unless protected by a statutory exception to public access, "each agency upon request by any person shall make government records available for inspection and copying." Haw. Rev. Stat. § 92F-11(b) (Supp. 1989) (emphasis added). Under the UIPA, the commercial motivation of a records requester is generally irrelevant. Thus, in the absence of

statutory authority, an agency must treat commercial and non-commercial requesters equally.

FACTS

Under the new State Water Code, chapter 174C, Hawaii Revised Statutes, "any person making a use of water" in any area of the State, must file a declaration of the person's use with the Commission. See Haw. Rev. Stat. Þ 174C-26 (Supp. 1989). Among other things, the Declaration of Water Use form ("Declaration") must set forth the quantity of water used, the purpose or manner of the use, the time of the taking of water, and the point of withdrawal or diversion of water. See Haw. Rev. Stat. § 174C-26(c) (Supp. 1989).

The State Water Code does not describe what constitutes a "use of water" and, therefore, who must file a Declaration. However, administrative rules adopted by the Commission provide that "[a]ny person making a use of water from a well or stream diversion works" must file a Declaration of the person's use with the Commission. See Haw. Admin. Rule § 13-168-5 (1988). Approximately 7,300 Declaration forms, submitted by 2,600 separate declarants, have been filed with the Commission under the State Water Code. A copy of the Commission's Declaration form is attached to this opinion as Exhibit "A."

Pursuant to chapter 174C, Hawaii Revised Statutes, the Commission was required to "act upon" the Declarations within six months of their filing with the Commission. See Haw. Rev. Stat. Þ 174C-26(e) (Supp. 1989). Additionally, after the filing of a Declaration, and after the Commission has determined that the use declared is "a reasonable and beneficial use," the Commission is required to issue a certificate describing the use. See Haw. Rev. Stat. §174C-26 (Supp. 1989); Haw. Admin. Rule § 13-168-6(a) (1988). Under the Commission's rules, the issuance of a certificate of water use gives rise to a rebuttable presumption that the certificate holder's use is a reasonable and beneficial use. See Haw. Admin. Rule § 13-168-6(a) (1988). Both the State Water Code and the Commission's rules provide that the Commission shall hold a hearing upon the request of any person adversely affected by the certification or refusal to certify any water use. See Haw. Rev. Stat. § 174C-27(b) (Supp. 1989).

As mentioned above, the Commission was required to "act upon" all Declarations within six months of their filing with the Commission. As part of this requirement, the Commission's staff reviewed the Declarations and summarized their contents, including the name and mailing address of all declarants, in a report considered at a public meeting of the Commission. This report became part of the record of this public meeting, and paper copies of this report have been made available to the public upon request.

The Commission also maintains a computer database containing the information set forth on the Declarations. It does not maintain a separate electronic database of the names and addresses of persons who have filed Declarations. Rather, this information is commingled with other information in the database. However, through programming, the Commission has electronically retrieved the names and addresses of declarants for the creation of mailing labels.

An attorney representing the Native Hawaiian Advisory Council ("Council") requested an electronic copy of the names and addresses of those filing Declarations with the Commission. The Council would like to use the list to contact approximately 800 native Hawaiians who allegedly filed "incomplete" Declarations with the Commission. Through its receipt of an electronic copy of this mailing list, the Council would like to avoid the time, effort, and expense of reconverting the paper form of the mailing list back into an electronic format.

The Commission requests an OIP opinion concerning whether, under the UIPA, the Declaration forms may be inspected by the public, and whether it can restrict access to its electronic mailing list of declarants to parties who stipulate that the list "will not be used for commercial purposes."

DISCUSSION

I. INTRODUCTION

The UIPA, the State's new open records law, generally provides that "[a]ll government records are available for public inspection unless access is closed or restricted by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1989). Thus, unless protected from disclosure by one of the exceptions set forth at section 92F-13,

Hawaii Revised Statutes, each agency must "make government records available for inspection and copying." Haw. Rev. Stat. § 92F-11(b) (Supp. 1989). Under the UIPA, a "government record" "means information maintained by an agency in written, auditory, visual, electronic or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1989). As indicated by the Act's legislative history, under the above definition, "[m]odern data storage technologies are specifically included and the definition is broad enough to encompass new information storage technologies." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1094 (1988).*ff*

II. PUBLIC ACCESS TO DECLARATIONS OF WATER USE

In examining the statutory exceptions to public access set forth at section 92F-13, Hawaii Revised Statutes, the only exception that potentially applies to the information set forth in the Declaration form attached as Exhibit "A," is that which does not require agencies to disclose "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-13(1) (Supp. 1989). Thus, we must determine whether the information on the Declaration form is protected from disclosure by the UIPA's personal privacy exception.

Under this UIPA exception, only "natural persons" have a cognizable privacy interest. See Haw. Rev. Stat. §§ 92F-3 and 92F-14(a) (Supp. 1989). Additionally, the legislative history of the UIPA indicates that unless an individual's privacy interest in a government record is "significant," "a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

A finding that an individual has a significant privacy interest in a government record does not, in and of itself, mean that the UIPA's privacy exception prohibits its disclosure. Rather, under the UIPA balancing test set forth at section 92F-14(a), Hawaii Revised Statutes, that privacy interest must be balanced against the public interest in disclosure to determine whether the disclosure of such information would be "clearly unwarranted." See Haw. Rev. Stat. § 92F-14(a) (Supp. 1989); S.

Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

With the above principles in mind, we note that in previous OIP advisory opinions, we have concluded that generally, the disclosure of an individual's home address would result in a clearly unwarranted invasion of personal privacy. See OIP Op. Ltr. 89-13 (Dec. 12, 1989). However, this conclusion does not categorically apply to all government records. In the case of those persons filing Declarations with the Commission, their names and addresses became part of a report considered at a public Commission meeting, and part of the record of said meeting. As such, the UIPA's privacy exception is inapplicable to this information, since it was made part of a transcript, report, or summary of a proceeding open to the public. See Haw. Rev. Stat. § 92F-12(a)(16) (Supp. 1989). In addition, arguably, the collection of the names and addresses of those filing a Declaration was for the purpose of making them available to the public. See Haw. Rev. Stat. § 92F-12(a)(15) (Supp. 1989).

The Declaration also contains the telephone number of the Declarant. Unless it can be determined by the Commission that this is a business telephone number, the Commission should not make such information available for public inspection. See OIP Op. Ltr. Nos. 90-9 (Nov. 20, 1989); 90-13 (Dec. 12, 1989) (disclosure of individual's home phone number a "clearly unwarranted invasion of personal privacy").

With respect to information contained upon the Commission's Declaration concerning the declarant's use of water, assuming for the sake of argument that an individual has a significant privacy interest in this information,[1] in our opinion, its disclosure would not be "clearly unwarranted" given the public interest in disclosure of such information.

First, the UIPA itself evidences the significant public interest in information concerning the supply and conservation of

[1]Section 92F-14(b), Hawaii Revised Statutes, which sets forth examples of information in which an individual has a significant privacy interest, does not include information concerning an individual's consumption of water. Indeed, section 92F-12(a), Hawaii Revised Statutes, is persuasive evidence that individuals have a minimal privacy interest, if at all, concerning their consumption of water.

the State's water resources. See Haw. Rev. Stat. §92F-12(a)(12) (Supp. 1989). Moreover, in addition to the State Water Code, article XI, section 7, of the Constitution of the State of Hawaii, which requires the State to "protect, control and regulate the use of Hawaii's water resources for the benefit of the people," reflects a compelling public interest in the use of the State's water resources.

Furthermore, the Commission's issuance of a certificate of water use creates a rebuttable presumption that the certificate holder's water use is reasonable and beneficial. Without access to the information set forth in the Declaration, which catalogs the extent and nature of a Declarant's water use, the public is placed at a significant disadvantage in reviewing a decision by the Commission to issue a certificate of water use. As such, public access to Declarations filed with the Commission will promote one of the UIPA's core purposes, to "[e]nhance governmental accountability." See Haw. Rev. Stat. § 92F-2 (Supp. 1989).

Lastly, insofar as the Commission's issuance of a certificate of water use is based upon information supplied in a Declaration which catalogs the nature and extent of the declarant's use of water, it would be difficult for persons to determine whether they are adversely affected by the Commission's issuance of a certificate and, therefore, entitled to a hearing, without access to the information supplied in the Declaration. In fact, the legislative history of the State Water Code strongly suggests that the Legislature intended that the process by which certificates of water use are issued be one conducted before the public:

> The section on certificates of use is intended to afford protection to constitutionally recognized interests under Article XII, Section 7 of Hawaii's Constitution that are not in designated areas. The Commission should adopt rules to provide adequate notice and procedural safeguards for all users including actual notice of applications to other users, that may be affected . . . .

Conf. Comm. Rep. No. 118, 14th Leg., 1987 Reg. Sess., Haw. S.J. 884, 885 (1987); H. Conf. Comm. Rep. No. 119, 14th Leg., 1987 Reg. Sess., Haw. H.J. 1067, 1069 (1987) (emphasis added).

Accordingly, we conclude that except for the disclosure of an individual's home telephone number, the disclosure of Declarations filed with the Commission would not constitute a clearly unwarranted invasion of personal privacy. Therefore, Declarations filed with the Commission under the State Water Code must, upon request, be made available for public inspection and copying. However, if a Declaration contains the home telephone number of an "individual," that information should be deleted before the public is permitted to inspect and copy the Declaration.

III. PUBLIC ACCESS TO ELECTRONIC MAILING LIST OF WATER USE DECLARANTS

Although we have concluded that the names and addresses of persons who filed a Declaration with the Commission are not protected from disclosure by a UIPA exception to public access, several other issues are raised with respect to the public's access rights to the Commission's electronic mailing list, each of which we shall discuss separately.

A. Creation or Compilation of a Government Record

Although the UIPA includes information maintained by an agency in electronic form within the definition of government record, because the Commission's electronic mailing list does not exist separate and apart from other information in its database, we must determine whether the UIPA requires the Commission to extract the mailing list from its computer database. This question arises because generally, agencies are not required by the UIPA to create new records in response to a request. Section 92F-11(c), Hawaii Revised Statutes, provides:

> **§92F-11 Affirmative agency disclosure responsibilities.**
>
> . . . .
>
> (c) Unless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.

Section 92F-11(c), Hawaii Revised Statutes, is identical to section 2-102(b) of the Uniform Information Practices Code ("Model Code") drafted by the National Conference of Commissioners on Uniform State Laws. The commentary[2]2 to this provision is instructive, and states that this provision "makes plain that the agency's duty is to provide access to existing records; the agency is not obligated to create `new' records for the convenience of the requester." Id. However, the commentary also states that in the case of agencies with computerized record systems, where data can be routinely compiled "given the existing programming capabilities of the agency," an agency must prepare a compilation of its records. Id.

Whether information is "readily retrievable" from an agency's database presents a question of fact, that must be determined on a case-by-case basis. However, given the fact that the Commission, using existing programming capabilities, has routinely retrieved this information for its own use, we conclude that such information is "readily retrievable" within the meaning of section 92F-11(c), Hawaii Revised Statutes.

B. Requester's Choice of Formats

The Commission's inquiry also presents the question of whether a UIPA requester may determine the format in which a copy of a government record is provided by an agency. That is to say, when requested by the public, must an agency provide the requested information on computer diskette or tape, or is it sufficient merely to provide a computer printout or paper form.

While it does not control the resolution of this issue, it would be useful to consult the FOIA and case law applying the same. Unlike the broad and comprehensive definition of "government record" under the UIPA, nowhere does the FOIA define the meaning of the term "agency record" used throughout the Act. Thus, some commentators have argued that the FOIA may not even apply to information maintained by agencies in electronic form. See generally, U.S. Congress, Office of Technology Assessment,

[2]The Legislative history of the UIPA instructs those applying its provisions to consult the Model Code's commentary, where appropriate, in guiding the interpretation of similar UIPA provisions. See H. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw H. J. 969, 972 (1988).

Informing the Nation: Federal Information Dissemination in an Electronic Age 19-20, 207-08 (1988). Because of the uncertainty surrounding FOIA's application to electronic information, it appears that FOIA requesters are not guaranteed access to copies of agency records in electronic formats.

Thus, in Dismukes v. Department of the Interior, 603 F. Supp. 760 (D.D.C. 1984), the court addressed the issue of equivalency of alternative agency record formats. In Dismukes, the plaintiff requested a computer tape listing participants in the Bureau of Land Management's California oil and gas leasing lotteries "in nine track, 1,600 b.p.i., DOS or unlabeled, IBM compatible formats, with file dumps and file layouts." The Department of the Interior responded that the information was only available on microfiche. The court held that the agency had no obligation under the law to satisfy the request on computer tape, and could determine the form in which it would make its records available, providing it had a reasonable argument for not providing the information in the format requested:

> [The agency] has no obligation under FOIA to accommodate plaintiff's preference. The agency need only provide responsive, nonexempt information in a "reasonably accessible form," and its offer to plaintiff satisfies that obligation.

Dismukes, 603 F. Supp. At 763.

However, the Dismukes court suggested that its decision would be different if the agency's choice of format unreasonably hampered the requester's access to the requested information or reduced the quantum of information made available. For example, the court did allow that, in some cases, agency record formats would not be equivalent, as in the case of audiotapes, where written transcripts would not be able to provide the "nuances of inflection which give words added meaning beyond that reproducible on paper." Id. at 762. In the case before the court however, the court determined that "neither the plaintiff nor any document in the record suggests that the quantum of information contained in microfiche varies in any way from that recorded on the computer tape." Id.

Because the UIPA's definition of "government record" explicitly includes information maintained by an agency in

electronic form, it would be ill-advised to reach a conclusion solely with reference to the FOIA case law. While at least one court has reached a contrary conclusion,[3]3 the modern trend of state court decisions under state open records laws reject the approach taken under FOIA, as set forth in the Dismukes decision.

For example, in Brownstone Publishers, Inc. v. New York City Department of Buildings, 550 N.Y.S.2d 564, aff'd, 560 N.Y.S.2d 642 (1990), the Supreme Court of New York County held that an agency had not satisfied its disclosure obligations under the state's Freedom of Information Law, by providing a computer printout of information requested in computer tape format. In the Brownstone case, the requester was a commercial enterprise which intended to sell the requested information to its subscribers. Therefore, the requester sought the information in electronic format to avoid the expense of reconverting information in documentary form back into the electronic digitized format. The agency asserted that the New York statute only required that it supply the requested information, not that it accommodate the requested format preference of the requester. The court, citing to the Dismukes case, noted that under the federal FOIA, agencies have no obligation to accommodate the requester's preference of format, but nevertheless held that the state's public records law required that the requester be provided with a copy of the information in electronic form:

> [T]his state's statute and case law impose somewhat different standards. As the petitioner notes, the language of New York's [open records law] requires that non-exempt "records" be made available, and § 86(4) specifically includes in its definition of "record" computer tapes or discs. In addition, our state courts have emphasized that "full" or "maximum" access to the records is required.

Brownstone, 550 N.Y.S.2d at 566.

Similarly, in AFCME v. County of Cook, 555 N.E.2d 361

[3]See Recodat Co., Ohio ex rel, v. Buchanan, 546 N.E.2d 203 (Ohio 1989) (county auditor required to make available all records contained on computer tapes, but not the tapes themselves, because the tapes are not "a separate public record").

(Ill. 1990), a public employees' labor union sought to compel the county to provide it access to a computer tape containing information pertaining to agency employees, instead of the same information in computer printout form. Relying upon the Dismukes case, the appellate court held that in supplying the requester with a computer printout, it had satisfied its disclosure obligations under the Illinois Freedom of Information Act. The Illinois Supreme Court held that the appellate court had erred in applying the Dismukes rationale under the state's FOIA. Noting that the Illinois statute included "tapes, recordings, electronic data processing records, recorded information and all other documentary materials, regardless of physical form or characteristics," the court held that the agency could not choose the format in which to provide the requested information, stating:

> The Act states that public bodies must make public records available for inspection and copying, unless they can avoid doing so by invoking an exception that is provided in the Act. Computer tapes are public records and must, therefore, be made available to the public. The Act does not state that a public body may reply to information requests by supplying different public records than those for which the requester asked.

AFSCME, 555 N.E.2d at 364-65.

The court did not find the Dismukes rationale controlling for a number of reasons. Among other things, the court noted that the federal FOIA only requires that "public information" be made available, whereas, the Illinois FOIA required that "public records," which include computer tapes be made available. Additionally, while the court noted that under the Dismukes rationale, an agency may choose the format in which the information is provided so long as it does not, as a practical matter, deny access to the information, it nevertheless held that under the Illinois statute, "once a proper request has been made, the public body must either comply, or explain why it cannot . . . [a] public body may not in Illinois, however, as it did in Dismukes, provide a public record that does not conform to the request and then force the requester to explain why the record furnished is inadequate." Id. at 366.

We find that the decisions of the Brownstone and AFSCME courts are more persuasive and consistent with the express statutory language of the UIPA. Like the statutes under consideration in those decisions, and unlike the FOIA, the UIPA definition of "government record" expressly includes information maintained by an agency in "electronic" form. Like the open records laws of New York and Illinois, the UIPA requires that a copy of a public or government record be made available upon request, unless protected by a statutory exception to public access. As such, we believe that the standard adopted by the court Dismukes does not best effectuate the express statutory requirements and the legislative purposes underlying the UIPA. Therefore, we conclude so long as an agency maintains the information in the form requested by a UIPA requester, the agency must generally provide a copy of that government record in the format requested by the public, unless doing so might significantly risk damage, loss, or destruction of the original record.

Accordingly, we conclude that under the UIPA, the Commission must make publicly available its mailing list of those filing Declarations in electronic or computer disk form, upon request, there being no exception set forth at section 92F-13, Hawaii Revised Statutes, which is applicable to this information.

IV. AGENCY RESTRICTIONS ON COMMERCIAL USE OF GOVERNMENT RECORDS

The Commission asks whether it can limit access to copies of the electronic form of the mailing list to those who will promise not to use it for commercial purposes. Like the federal Freedom of Information Act, 5 U.S.C. § 552 (Supp. 1989) ("FOIA"), and other state open records laws, under the UIPA, the purpose for which a record is sought is generally irrelevant. See Haw. Rev. Stat. § 92F-11(b) (Supp. 1989) ("upon request of any person"); OIP Op. Ltr. No. 90-9 (Feb. 26, 1990); Aronson v. U.S. Department of Housing & Urban Development, 822 F.2d 182, 186 (1st Cir. 1987) ("[c]ongress granted the scholar and scoundrel equal rights of access to agency records"); Colombia Packing Co. v. U.S. Department of Agriculture, 563 F.2d 495, 499-500 (1st Cir. 1977) (the rights of a party seeking access "are not lessened, any more than they are enhanced, by the private purposes for which the documents are sought"); see also U.S. Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989) (public access turns on

nature of the requested document "rather than on the particular purpose for which the document is being requested"); Techniscan Corp. v. Passaic Valley Water Commission, 549 A.2d 233 (N.J. 1988) (for profit records searchers have equal rights of access under "Right-to-Know Law").

Therefore, under the UIPA an agency may not restrict access to government records which are "public" to requesters who intend to use the information for commercial purposes, in the absence of a statute authorizing the same.

CONCLUSION

For the reasons stated above, we conclude that under the UIPA, except for a declarant's home telephone number, information set forth on the Commission's Declaration form must be made available for public inspection and copying. Additionally, we conclude that as long as a government record exists in the format requested by a person, an agency must make copies of the record available in that format upon request. Thus, in the case of electronically stored information, upon request, an agency must make a copy available on a computer diskette, or similar format. Lastly, an agency may not restrict access to public government records to those who promise not to make commercial use of the information, in the absence of a statute authorizing the same.

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