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August 13, 1992

The Honorable Daniel J. Mollway
Executive Director
State Ethics Commission
P. O. Box 616
Honolulu, Hawaii 96813

Attention: Rowena Adachi
Legal Assistant

Re: Electronically Stored Addresses of Registered
Lobbyists

This is in reply to Legal Assistant Rowena Adachi's letter to the Office of Information Practices ("OIP") requesting an advisory opinion concerning the above-referenced matter.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the State Ethics Commission ("Commission") must make an electronically stored mailing list of registered lobbyists available for public inspection and duplication.

BRIEF ANSWER

While under section 92F-13(4), Hawaii Revised Statutes, agencies are not required to disclose "[g]overnment records which, pursuant to state or federal law . . . are protected from disclosure," based upon a previous OIP opinion letter, we conclude that the addresses of lobbyists who have filed registration statements with the Commission are not protected from disclosure by this UIPA exception. In OIP Opinion Letter No. 92-6 (June 22, 1992) we concluded that under this UIPA exception, the authority to withhold a government record must be found in the express wording of the statute itself, and that resort to the statute's legislative history to find such authority is generally inappropriate.

OIP Op. Ltr. No. 92-12

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Because section 97-4.5, Hawaii Revised Statutes, merely directs the Commission not to include the address of each lobbyist in the list it is required to publish, and because under section 97-4, Hawaii Revised Statutes, the address of each lobbyist as contained upon the lobbyist's registration statement must be made available for public inspection, it is our opinion that the addresses of registered lobbyists maintained by the Commission in electronic form are not protected from disclosure pursuant to State law.

Additionally, because section 97-4, Hawaii Revised Statutes, provides that all statements filed with the Commission "shall constitute part of the public records of the state ethics commission and shall be open to public inspection," and because the address of each lobbyist is disclosed in the lobbyist's registration statement filed with the Commission, we do not believe that under these circumstances, the Commission's disclosure of the address of each registered lobbyist would constitute a clearly unwarranted invasion of personal privacy.

Finally, in OIP Opinion Letter No. 90-35 (Dec. 17, 1990), we concluded that 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, such as upon a computer diskette, unless doing so might significantly risk damage, loss, or destruction of the original record. Accordingly, the Commission should provide a UIPA requester with a copy of the electronically stored addresses of registered lobbyists in electronic form, if requested.

FACTS

Under section 97-2(a), Hawaii Revised Statutes, each lobbyist must file a registration form with the Commission within five days of becoming a lobbyist. Subsection (b) of section 97-2, Hawaii Revised Statutes, provides:

- (b) Each lobbyist shall provide and certify the following information:
 - (1) The name, mailing address, and business telephone number of the lobbyist.
 - (2) The name and principal place of business of each person by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears or works and a written authorization

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- to act as a lobbyist from each person by whom the lobbyist is employed or with whom the lobbyist contracts.
- (3) The subject areas on which the lobbyist expects to lobby.

Haw. Rev. Stat. § 97-2(b)(1), (2), and (3) (1985).

Section 97-4.5, Hawaii Revised Statutes, requires the Commission "to publish," after the commencement of each regular session of the Legislature, "a list of registered lobbyists, the names of the persons whom they represent, and other pertinent information, but shall not include in such lists the addresses of the lobbyists."

Section 97-4, Hawaii Revised Statutes, provides that all statements filed with the Commission under chapter 97, must be retained for a period of four years from the date of filing, "shall constitute part of the public records of the state ethics commission and shall be open to public inspection pursuant to section 92-51."¹ Section 97-2(c), Hawaii Revised Statutes, refers to each lobbyist's registration form as a "registration statement."

In a letter to the OIP, the Commission requested an opinion concerning whether it can provide to a member of the public electronically stored information about the addresses of each registered lobbyist, even though section 97-4.5, Hawaii Revised Statutes, provides that the list of registered lobbyists required to be published by the Commission shall not include the addresses of the lobbyists. The Commission's request for an opinion results from the Commission's receipt of a UIPA request for this information. The Commission's letter to the OIP asks, "[c]an we provide the requesting company in this case with a floppy disk that contains data (taken from our database) on lobbyists' addresses?"

¹Section 92-51, Hawaii Revised Statutes, the State's former public records law was repealed as part of the act that created the UIPA. See Act 262, § 3, 1988 Haw. Sess. Laws 473. Apparently, this reference to section 92-51, Hawaii Revised Statutes, was never amended to reflect the adoption of a new State freedom of information act.

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DISCUSSION

The UIPA, the State's new open records law, generally provides that "[a]ll government records are open to inspection and copying unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1991). In particular, section 92F-11(b), Hawaii Revised Statutes, states, "[e]xcept 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."

We now turn to an examination of two of the UIPA's exceptions to required agency disclosure in section 92F-13, Hawaii Revised Statutes, that may arguably protect the Commission's electronically stored addresses of registered lobbyists from disclosure.

II. RECORDS PROTECTED FROM DISCLOSURE BY STATE OR FEDERAL LAW

Section 97-4.5, Hawaii Revised Statutes, which requires the Commission to publish a list of registered lobbyists, also provides that the Commission shall not include in such list the addresses of the lobbyists." [Emphasis added.] Under section 92F-13(4), Hawaii Revised Statutes, agencies are not required by the UIPA to disclose "[g]overnment records which, pursuant to state or federal law . . . are protected from disclosure."

In OIP Opinion Letter No. 92-6 (June 22, 1992), based upon the parallel provision of the uniform code upon which the UIPA was modeled by the Legislature, and federal court decisions under Exemption 3 of the Federal Freedom of Information Act, 5 U.S.C. § 552(b)(3) (1988), we stated that "under section 92F-13(4), Hawaii Revised Statutes, authority to withhold a government record must be found in the express wording of the statute itself, and that resort to the statute's legislative history to find such authority is generally inappropriate." OIP Op. Ltr. No. 92-6.

Based on the authorities set forth in our previous opinion letter, we believe that while the list of registered lobbyists published by the Commission shall not include the lobbyists' addresses, section 97-4.5, Hawaii Revised Statutes, does not either expressly prohibit the Commission from disclosing the addresses of registered lobbyists, or expressly authorize the withholding of such information, as contained in other government records maintained by the Commission, such as in lobbyist registration statements. See, e.g. Haw. Rev. Stat.

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§ 97-2 (1985) (all statements filed with the Commission under chapter 97 shall be public records of the Commission and be available for inspection).

Not only does section 97-4.5, Hawaii Revised Statutes, not expressly protect the addresses of registered lobbyists from disclosure or authorize the withholding of this information by the Commission, an examination of this provision's legislative history fails to support such a conclusion too:

It is believed by your Committee to be in the best interests of the public and the state government to have readily accessible and in one convenient location a list of those lobbyists who are registered in this State. We have therefore required the State Ethics Commission to publish a list of lobbyists as soon as feasible after the commencement of each regular legislative session. The lobbyist list will identify registered lobbyists and the names of the persons whom those lobbyists represent.

S. Stand. Comm. Rep. No. 692-80, 10th Leg., 1980 Reg. Sess., Haw. S. J. 1338, 1339 (1980) (emphasis added); see also, S. Stand. Comm. Rep. No. 830-80, 10th Leg., 1980 Reg. Sess., Haw. S. J. 1667, 1668 (1980) ("the bill has a requirement that the State Ethics Commission publish . . . a list which will identify registered lobbyists and the names of those whom they represent").

Therefore, it is our opinion that while the Commission is directed not to include the addresses of registered lobbyists in the list it is required to publish, under section 92F-13(4), Hawaii Revised Statutes, the addresses of lobbyists who have registered with the Commission are not protected from disclosure by State law. We now turn to a consideration of whether the UIPA's personal privacy exception protects such addresses from disclosure.

III. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

Under section 92F-13(1), Hawaii Revised Statutes, agencies are not required by the UIPA to disclose "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy."

In previous opinion letters, we opined that generally the disclosure of an individual's home address, as contained within

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a government record, would constitute a clearly unwarranted invasion of personal privacy under the UIPA. See OIP Op. Ltr. No. 89-4 (Nov. 9, 1989); OIP Op. Ltr. No. 89-13 (Dec. 12, 1989); OIP Op. Ltr. No. 89-16 (Dec. 27, 1989); OIP Op. Ltr. No. 90-25 (July 12, 1990); and OIP Op. Ltr. No. 92-8 (July 16, 1992). We have also opined that the disclosure of an individual's mailing address would generally constitute a clearly unwarranted invasion of personal privacy. See OIP Op. Ltr. No. 90-29 (Oct. 5, 1990); and OIP Op. Ltr. No. 91-1 (Feb. 15, 1991).

The facts presented in this case, however, call for a different conclusion. Under section 97-4(2), Hawaii Revised Statutes, the Commission is required to permit the public inspection of lobbyist registration statements filed with the Commission. These registration statements contain the mailing addresses of lobbyists who have registered with the Commission.

In light of the mandate of section 97-4(2), Hawaii Revised Statutes, it would be difficult for the OIP to conclude that the disclosure of the mailing addresses of registered lobbyists would constitute a clearly unwarranted invasion of personal privacy. See Haw. Rev. Stat. § 92F-12(b)(2) (Supp. 1991) (agencies shall disclose government records which pursuant to federal law or a statute of this state are authorized to be disclosed to a person requesting access); OIP Op. Ltr. No. 89-8 (Nov. 20, 1989) (addresses, if contained in certified payroll records must be publicly accessible).

Therefore, in light of section 97-4(2), Hawaii Revised Statutes, we conclude that the Commission's disclosure of the mailing addresses of lobbyists who have registered with the Commission would not constitute a clearly unwarranted invasion of personal privacy under the UIPA.

IV. REQUESTER'S CHOICE OF DISCLOSURE FORMATS

In its letter to the OIP requesting an opinion, the Commission requested guidance concerning whether it could furnish the information contained in its lobbyist database to a UIPA requester on computer diskette.

In OIP Opinion Letter No. 90-35 (Dec. 17, 1990) we examined whether the Commission on Water Resource Management must provide a UIPA requester with a copy of a mailing list of persons who filed Declarations of Water Use on floppy diskette, or in other physical form. As a result of the express

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definition of the term "government record" set forth in section 92F-3, Hawaii Revised Statutes, we concluded as follows:

[W]e conclude [that] 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.

OIP Op. Ltr. No. 90-35 at 13.

Consistent with our previous advisory opinion letter, we believe that the Commission must provide access to a copy of the electronically stored addresses of registered lobbyists upon computer diskette, unless doing so might significantly risk damage, loss, or destruction of the original list.

CONCLUSION

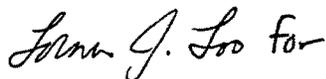
For the reasons set forth above, we conclude that under the UIPA, an electronic mailing list of lobbyists who have registered with the Commission is not protected from disclosure by the UIPA, and must be made available upon computer diskette upon request, unless disclosure of the list in this form would significantly risk damage, loss, or destruction of the original mailing list.

Very truly yours,



Hugh R. Jones
Staff Attorney

APPROVED:



Kathleen A. Callaghan
Director

HRJ:sc

