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October 25, 1993

Mr. John R. Penebacker
Special Assistant to the
State Librarian
Hawaii State Public Library System
Department of Education
465 South King Street, B-1
Honolulu, Hawaii 96813

Dear Mr. Penebacker:

Re: Postcard Format for Library Notices

This is in response to your memorandum dated April 21, 1993 to the Honorable Robert A. Marks, Attorney General, requesting an advisory opinion concerning the proposed new postcard format for library notices and its impact upon library patrons' privacy rights. In accordance with established protocol, your memorandum was forwarded to the Office of Information Practices ("OIP") for a reply.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Hawaii State Public Library System ("Library") may send library notices in an open postcard format through the U.S. Postal Service ("Postal Service"), if said notices contain the name of the library patron, the materials borrowed by the patron, the due date, and the fines incurred.

BRIEF ANSWER

Yes. Although in a previous OIP advisory opinion we have found that the disclosure of information identifying the materials borrowed by library patrons would constitute a "clearly unwarranted invasion of personal privacy" under section

92F-13(1), Hawaii Revised Statutes, see OIP Op. Ltr. No. 90-30 (Oct. 23, 1990), we believe that mailing a postcard containing confidential information through the Postal Service does not constitute public disclosure. Under Postal Service regulations, Postal Service employees are required to hold in confidence information contained in or on the cover of a piece of mail. See U.S. Postal Service, Issue 46, Domestic Mail Manual § 5.0, at G-13 (July 1, 1993). Moreover, under federal law, the unauthorized removal or inspection of any mailed item from an authorized depository for mail matter is a crime punishable by a fine of up to $2,000 or imprisonment for up to five years. See 18 U.S.C. § 1702 (1988).

Therefore, despite the fact that the open postcard contains some confidential information such as the materials borrowed by the library patron, we believe that mailing the postcards through the Postal Service would not constitute public disclosure of confidential information. Thus, we do not believe that mailing the postcards would constitute a "clearly unwarranted invasion of personal privacy" within the meaning of section 92F-13(1), Hawaii Revised Statutes. Accordingly, in our opinion, the Library may send library notices in an open postcard format through the Postal Service without violating the UIPA.

FACTS

At a meeting of the Library's Management Group, it was decided that the mailing format of library notices should be changed in order to save the taxpayers money. Currently, library notices are mailed to library patrons in a sealed envelope. Each library notice contains information such as the materials borrowed by the library patron, the due dates, and the fines incurred for overdue materials. The Management Group suggested that, in the future, this information be printed on a postcard, which requires less postage, in order to reduce postage costs. Due to concerns about library patrons' privacy interests in the materials they have borrowed, the Library requested an advisory opinion from the Department of the Attorney General. In accordance with established protocol, the Department of the Attorney General forwarded the Library's request to the OIP for a reply.

DISCUSSION

Under the UIPA, "[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." Haw. Rev. Stat. § 92F-11(b) (Supp. 1992). In OIP Opinion Letter No. 90-30 (Oct. 23, 1990), the OIP found that individuals have a significant privacy interest in "information that reveals the materials that they have requested, used, or obtained from a public library." OIP Op. Ltr. No. 90-30 at 9. Further, the OIP found that disclosure of this information would not shed light upon the workings of government. Thus, we concluded that the disclosure of information identifying materials borrowed by library patrons would result in a "clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes.

However, in OIP Opinion Letter No. 90-30, we also found that the disclosure of amounts owed by library patrons for overdue materials "would indicate whether Library personnel diligently collect unpaid fines, show favoritism in the assessment or collection of such penalties, or allow patrons to exceed fine maximums set by the Library." OIP Op. Ltr. No. 90-30 at 12. Disclosure of this information would "open up agency actions to the light of public scrutiny." Id. This significant public interest in the disclosure of amounts owed by library patrons for overdue materials outweighs the privacy interest of the library patrons in the same. Accordingly, we found that the disclosure of this information would not be a "clearly unwarranted invasion of personal privacy" under the UIPA's personal privacy exception.

The issue of the library patrons' privacy interests in library materials borrowed has arisen because the Library's Management Group proposed an open postcard format for notifying library patrons that materials are overdue. We recognize that such an open postcard format will enable employees of the Postal Service who handle the postcards to learn what library materials were borrowed by library patrons. We also realize that persons other than the intended recipient who have access to the recipient's mailbox will also be able to read the contents of the postcard.

The Postal Service regulations state, as their general policy concerning mail security, that the Postal Service "preserves and protects the security of all mail in its custody from unauthorized opening, inspection, or reading of contents or covers, tampering, delay, or other unauthorized acts." U.S. Postal Service, Issue 46, Domestic Mail Manual § 1.0, at G-11

(July 1, 1993).[1] In addition, the Domestic Mail Manual states that "no employee may in the performance of official duties disclose information on the cover of a piece of mail; information from the contents of a piece of mail inspected as authorized; or other information about a piece of mail sent or received by any sender, addressee, or group of senders or addressees" except under certain limited circumstances. Id. §5.0, at G-13.

Further, we note that under federal law, the unauthorized removal and inspection of any mailed item from any authorized depository for mail matter is a crime punishable by a fine of not more than $2000.00 or imprisonment of not more than five years, or both.[2] This provision protects mailed items not only while they are in the physical possession of the Postal Service, but also thereafter until it reaches the addressee or an authorized agent. See United States v. Murry 588 F.2d 641, 643 (8th Cir. 1978).

We do not believe that placing the postcards in the custody of the Postal Service in order to mail the postcards directly to the library patrons constitutes a disclosure to the general public for purposes of the UIPA. As such, we are of the opinion that the Library's mailing of postcards that reveal materials borrowed by patrons will not result in a "clearly unwarranted invasion of personal privacy" within the meaning of section 92F-13(1), Hawaii Revised Statutes. Consequently, we believe that the Library may utilize the open postcard format to mail its

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[1]The Domestic Mail Manual is incorporated by reference in Part 111 of Title 39, Code of Federal Regulations (1993).

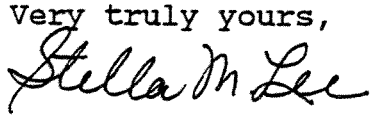
[2]"Whoever takes any letter, postal card or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined not more than $2000 or imprisoned not more than five years, or both." 18 U.S.C. §1702 (1988). This obstruction of correspondence section was designed to insure that correspondence between a sender and an addressee be unobstructed and free from unauthorized prying. United States v. Grieco, 187 F. Supp. 597, 600 (D.C.N.Y. 1960).

notices to library patrons regarding overdue materials and fines incurred.

CONCLUSION

Although the Library's proposed open postcard format for mailing notices would reveal the materials borrowed by library patrons to anyone reading the postcard, we do not believe that mailing these library notices using a postcard format constitutes public disclosure under the UIPA. In our opinion, the proposed postcard format will not constitute a "clearly unwarranted invasion of personal privacy" within the meaning of section 92F-13(1), Hawaii Revised Statutes. Accordingly, we believe that the Library may send library notices in an open postcard format through the Postal Service without violating the UIPA.

Very truly yours,



Stella M. Lee
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APPROVED:

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Director

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