

October 20, 1994

Mr. David Flavin
456 Wainee Street
Lahaina, Hawaii 96761

Dear Mr. Flavin:

Re: Request for Copies of Citations

This is in response to your request which you telefaxed to the Office of Information Practices ("OIP") on October 17, 1994.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), Harbors-Boating Complaint and Summons citations ("citations") issued by the Department of Public Safety, Maritime Law Enforcement Division ("MLED") must be made available, upon request, for public inspection and copying.

FACTS

On October 13, 1994, you contacted the OIP by telephone for assistance in gaining access to MLED citations issued to two companies for the past two years. You informed the OIP that there is a court hearing scheduled for October 24, 1994 in a matter related to a MLED citation you received, and that you would like to use the MLED citations you requested as exhibits at this hearing. We advised you in this telephone conversation that personal information about the individual cited, such as home address, social security number, and date of birth, must be segregated from the citations before they are disclosed, but that any remaining information not protected by any of the UIPA exceptions should be made available for public inspection. We also advised you that, under the UIPA, there is no time limit by which agencies must respond to "freedom of information" requests for records under Part II of the UIPA. The OIP has advised agencies that they must respond within a reasonable time to UIPA Part II requests and that "reasonable" depends upon the volume of

OIP Op. Ltr. No. 94-20

Mr. David Flavin
October 20, 1994
Page 2

records requested, the physical location of the records, the agency's staffing situation, and whether the agency must segregate confidential information from the records. We also informed you that the 10 working day time limit set forth in section 92F-23, Hawaii Revised Statutes, only applies to requests for personal records under Part III of the UIPA.

On October 14, 1994, you again contacted the OIP and informed us that you spoke with Lt. Roger Dainard of the MLED and that he stated that (1) all of the MLED files are considered confidential, and (2) he will only disclose the citations to you if he receives written direction to do so from the OIP. On October 14, 1994, we contacted Lt. Dainard and informed him that the MLED citations are public after personal information such as the individual's home address, social security number, and date of birth are segregated from the citation. He repeated that he would not disclose any of the citations unless the OIP provides him with a written opinion directing him to disclose the requested MLED citations. Accordingly, we requested that he send the OIP a blank copy of a citation, a copy of which is attached as Exhibit "A," for use in drafting this OIP advisory opinion.

DISCUSSION

Under the UIPA, "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1992). In addition, the UIPA states that "[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). Citations maintained by the MLED are "government records." See Haw. Rev. Stat. § 92F-3 (Supp. 1992).

Our examination of the blank citation form provided to the OIP by Lt. Dainard reveals that certain items of information contained in the MLED citations are protected by the UIPA's "clearly unwarranted invasion of personal privacy" exception in section 92F-13(1), Hawaii Revised Statutes. Specifically, in previous OIP advisory opinions, we have concluded that an individual's home address, social security number, date of birth, and physical description (height, weight, color of hair and eyes) must be segregated from a record before it is made public because disclosure of this personal information "would constitute a clearly unwarranted invasion of personal privacy." See OIP Op. Ltr. No. 93-12 (Sept. 15, 1993) (home addresses of owners of

Mr. David Flavin
October 20, 1994
Page 3

quarantined animals are confidential); OIP Op. Ltr. No. 90-7 (Feb. 9, 1990) (birthdates and social security numbers are confidential); OIP Op. Ltr. No. 90-25 (July 12, 1990) (physical descriptors of firearms registrants protected by UIPA's personal privacy exception).

We do not believe that the remaining information on the MLED citation is protected by any of the five UIPA exceptions to disclosure listed in section 92F-13, Hawaii Revised Statutes. Although information compiled for law enforcement purposes is protected under section 92F-13(3), Hawaii Revised Statutes, and the citation is issued as a result of MLED's law enforcement activities, we do not believe that the citation would, if disclosed, result in the "frustration of a legitimate government function" by interfering with law enforcement proceedings because the individuals or entities cited have already received their copies of the citations. See OIP Op. Ltr. No. 90-36 (Dec. 17, 1990) (Building Department Notices of Violation would not, if disclosed, jeopardize law enforcement activities once the alleged violator is served with a copy of the Notice of Violation). See also Caledonian Record Publishing Co. v. Walton, 573 A.2d 296 (Vt. 1990) (citations, which were summonses to appear in court at specific time to answer to charge, like arrest records, are public records under Vermont's Access to Public Records Act); State v. Lancaster Police Department, 528 N.E.2d 175 (Ohio 1988) (like arrest records, citations are not confidential law enforcement investigatory records under the Ohio Public Record Law).

We also found in OIP Opinion Letter No. 90-36 that the UIPA's personal privacy exception does not apply to protect Notices of Violation because there is an overriding public interest in learning whether the Maui County Department of Public Works is performing its obligation to enforce the Maui County zoning, housing, building, electrical and plumbing codes. OIP Op. Ltr. No. 90-36 at 2.

In the present situation, once the personal confidential information about the individual receiving a MLED citation has been segregated, we do not believe that the UIPA's personal privacy exception applies to protect the remaining information on the MLED citation. We note that the individual may be acting on behalf of a business entity, in which case the UIPA's personal privacy exception would not apply.¹ However, if an individual is

¹Section 92F-13(1), Hawaii Revised Statutes, only applies to

Mr. David Flavin
October 20, 1994
Page 4

acting on that individual's own behalf and receives a MLED citation, we nevertheless follow the conclusion drawn in OIP Opinion Letter No. 90-36 that the public interest in disclosure outweighs the individual's privacy interest.

We have also concluded in previous OIP advisory opinions that amounts owed to government agencies are public under the UIPA. See OIP Op. Ltr. No. 90-30 (Oct. 23, 1990) (library fines are public); OIP Op. Ltr. No. 92-9 (July 17, 1992) (harbor demurrage fee amounts are public); OIP Op. Ltr. No. 90-29 (Oct. 5, 1990) (water consumption fees are public). Consequently, in our opinion, the amount of the fine set forth in the MLED citation is also not protected by any of the UIPA's exceptions to required agency disclosure.

CONCLUSION

The information protected by the UIPA's personal privacy exception, such as home address, social security number, date of birth, and physical descriptors, must be segregated from the MLED citations before they are disclosed. However, the remaining information on the citation is not protected by any of the UIPA's exceptions to disclosure and should be made available, upon request, for public inspection and copying.

Very truly yours,

Stella M. Lee
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

SML:si
Attachment
c: Lt. Roger Dainard

information about "individuals." The term "individual" is defined in section 92F-3, Hawaii Revised Statutes, as "a natural person."

OIP Op. Ltr. No. 94-20