

Op. Ltr. 99-06 Senior Mailing List

OIP Op. Ltr. No. 05-03 partially overrules this opinion to the extent that it states or implies that the UIPA's privacy exception in section 92F-13(1), HRS, either prohibits public disclosure or mandates confidentiality.

October 25, 1999

Ms. Eleanor Lloyd
County Executive on Aging
Office of Elderly Affairs
County of Kauai
Mo'ikeha Building
4444 Rice Street, Suite 105
Lihue Kauai, Hawaii 96766

Re: Senior Mailing List

Dear Ms. Lloyd:

This letter is in response to your letter of May 26, 1999, requesting an opinion on the above-referenced matter.

ISSUE PRESENTED

Whether the County of Kauai Office of Elderly Affairs ("OEA"), must disclose the mailing list of seniors in its database.

BRIEF ANSWER

No. The database stores "mailing" addresses, which may be home addresses, business addresses, or post office boxes numbers. The facts do not show that the public interest in disclosure of home addresses outweighs any privacy interests therein; therefore, the OEA may withhold them from disclosure.

Business addresses are generally public under the UIPA. However, when it cannot be determined whether an address is a home or a business address, the address need not be disclosed. Post office box numbers may be withheld because disclosure could lead to the requester obtaining the home address of the senior holding the box.

FACTS

According to the OEA's letter of May 26, 1999, the OEA plans and provides services for approximately eight thousand senior citizens sixty years old and older. Interested seniors are asked to fill out a registration form (see Exhibit "A"). The form collects both a "residence address" and a "mailing address" for each individual.

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The OEA uses the completed forms to collect information and “profile” the seniors it serves, and as an outreach tool to acquaint seniors with available services. The “profiles” are compilations of statistics such as the number of veterans or residents that are registered with the OEA.

Information collected on the forms is put into a database (“Database”). The Database is used for several purposes, including: planning services and programs, statistical record-keeping, complying with reporting requirements to State and federal agencies, and identifying seniors who may benefit from particular services. Some of the seniors may receive social services such as Medicaid or Department of Human Services state-funded services. However, the OEA’s services do not have income requirements.

Kauai Seniors, Inc., a private contractor with the OEA, requested the mailing list of the seniors from the Database. Kauai Seniors, Inc., provides senior center activities under its contract with the OEA. The OEA does not believe the requested information is necessary for Kauai Seniors, Inc., to perform under its contract with OEA. Kauai Seniors, Inc., has its own member registration process and database. Kauai Seniors, Inc., has not asked for the OEA’s paper application forms.

The OEA is concerned that disclosure of mailing addresses from the Database will allow the requester access to home addresses of individuals because some registrants use their home addresses as mailing addresses. The Database does not contain data that would indicate whether mailing addresses are home or business addresses. The OEA also believes disclosure of post office box numbers may result in identification of individuals who use their post office boxes for business purposes.

DISCUSSION

I. INTRODUCTION

Records of all State and county agencies are public unless access is restricted or closed by law. Haw. Rev. Stat. §92F-11(a) (1993). There are five exceptions to the general rule of disclosure under the UIPA. These are for: (1) information which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy; (2) information pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the state or any county is or may be a party, but only to the extent such records would not be discoverable; (3) information which, if disclosed, would cause the frustration of a legitimate government function; (4) information which is protected by a State or federal law or court order; and (5) certain legislative papers. Haw. Rev. Stat. §92F-13 (1993).

II. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

Government records need not be disclosed when disclosure would constitute a clearly unwarranted invasion of personal privacy. Haw. Rev. Stat. §92F-13(1) (1993). To determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy, the UIPA's balancing test must be applied: if the public interest in disclosure outweighs any privacy interests in a government record, disclosure would not constitute a clearly unwarranted invasion of personal privacy. Haw. Rev. Stat. §92F-14(a) (Supp. 1998).

When balancing the privacy rights of an individual against the public interest in disclosure, the public interest to be considered is that which sheds light upon the workings of government. OIP Op. Ltr. No. 93-20 at 7 (Dec. 30, 1993). The OIP reached this conclusion by looking at:

[t]wo basic policies served by the UIPA, which are to “[p]romote the public interest in disclosure” and to “[e]nhance governmental accountability through a general policy of access to government records.” Haw. Rev. Stat. §92F-2 [1993]. Further, in enacting the UIPA, the Legislature declared that “it is the policy of

this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of government agencies--shall be conducted as openly as possible.” Haw. Rev. Stat. §92F-2 [1993].

OIP Op. Ltr. No. 93-20 at 7 (Dec. 30, 1993).

A. Home Addresses

The OIP has found in the past that home addresses carry significant privacy interests. OIP Op. Ltr. No 89-4 (Nov. 9, 1989). In applying the UIPA's balancing test to home addresses in the past, the OIP opined that home addresses should not be disclosed under ordinary circumstances because the significant privacy interests that they carry outweigh any public interest in disclosure. See OIP Op. Ltrs. No. 95-2 (Jan. 19, 1995) (home address must be segregated prior to disclosure of background information on unsuccessful applicants on certified list of eligibles because disclosure could lead to actual identification of individuals about whom the information pertains); No. 93-20 (Oct. 21, 1993) (home addresses on mailing list of Citizens for Protection of the North Kohala Coastline ("CPNKC") not public as disclosure would be a clearly unwarranted invasion of personal privacy).

Here, any public interest in disclosure of home addresses of seniors using the OEA's services is minimal because disclosure would not shed light upon the workings of the OEA as a government agency. See e.g. OIP Op. Ltr. 89-16 (Dec. 17, 1989) (disclosure by Hawaii Criminal Justice Commission of home addresses of attendees of Third Annual Safety Seminar would not shed light on "what the agency is up to"). The public interest in disclosure here does not outweigh individual privacy interests in home addresses because the workings the OEA as a government agency will not be opened up for public scrutiny. Therefore, home addresses need not be disclosed by the OEA.

The OIP has also opined that when "mailing" addresses cannot be differentiated from home addresses, mailing addresses should not be disclosed, in order to protect individual privacy interests. See OIP Op. Ltrs. No. 91-19 at 6 (Oct. 18, 1991); No. 93-20 at 8 (Oct. 21, 1993). Here, the Database contains a "mailing address" for each senior. The OEA cannot determine from the Database whether an address given as a "mailing address" is also a "residence address" because only the mailing address is put in the Database. Therefore, based on our prior opinions, mailing addresses that cannot be distinguished from home addresses need not be disclosed. Mailing addresses that are clearly business addresses must be disclosed, as there is no significant privacy interest in business addresses. OIP Op. Ltr. No. 93-1 at 10 (Apr. 8, 1993) (business addresses of Native Hawaiian Revolving Loan Fund recipients must be disclosed).

B. Post Office Boxes

The OIP previously noted that privacy interests in post office boxes are minimal because they do not reveal the location of a person's residence, and individuals do not have significant privacy interests in their business address. OIP Op. Ltr. No. 91-19 at 6 (Oct. 18, 1991). However, the OIP subsequently noted in footnote 7 of the OIP Opinion Letter Number 93-20, that:

[t]he United States Postal Service will furnish the "recorded name, address, and telephone number of the holder of a post office box being used for the purpose of doing or soliciting business with the public, and any person applying for a box on behalf of a holder . . . to any person upon request." Privacy Act Issuances, Fed. Reg., vol. V, 441 (1991 Compilation). Thus, if one had a list of the post office box numbers of CPNKC members, one could gain access to identifying information concerning those individual CPNKC members, if any, who use their post office boxes for business purposes.

Based on this policy of the United States Postal Service ("USPS"), the OIP opined in OIP Opinion Letter 93-20, that disclosure of post office box numbers "may result in the disclosure of identities of individual CPNKC members," and therefore, should remain confidential.

The OEA contends that based on the above policy of the USPS, disclosure of post office boxes of seniors may result in identification of individual seniors. The OIP reconfirmed with the USPS, in a telephone call on July 7, 1999, that the recorded names and addresses of persons using post offices boxes for business purposes is disclosed upon request and payment of a fee. The USPS stated it will not disclose names and addresses of personal users of post office boxes except upon court order.

The OIP believes that the facts here are sufficiently similar to the facts of OIP Opinion Letter Number 93-20, because both cases raise the issue of whether mailing lists containing post office box numbers should be disclosed. We opine here that post office box numbers in the OEA's Database should be withheld because disclosure could lead to the requester obtaining the home address of the individual who holds the box, if the person holding the box uses it for business purposes.

III. REQUESTS FOR FORMS

When a requester seeks access to a record, the agency maintaining the record is required to make that information available in the form requested if the record is maintained in that form. See OIP Op. Ltr. No. 90-35 (Dec. 17, 1990). Therefore, if the OEA receives a request for information contained on the application forms rather than in the Database, it should first determine whether that information is public. If it is, the OEA should make segregated copies of the forms available for public inspection and copying, if the public information is reasonably segregable from information that is protected from disclosure. This applies for as long as the paper forms continue to be maintained, even if the information is also retrievable electronically. One way to minimize the time involved in segregating non-disclosable information from public information is to reorganize the form so that all information that will not be disclosed is in the same place and can be easily segregated.

IV. INFORMATION COLLECTION PRACTICES

Pursuant to statutory mandate, the OIP is in the process of drafting administrative rules governing records collection practices. See Haw. Rev. Stat. §92F-42(14) (1993). While these rules are not yet in effect, they will define what types of personal information government agencies may collect and maintain on individuals. Until these rules become effective, we recommend that an agency collect only what personal information is necessary for it to accomplish its authorized or required purposes.

CONCLUSION

Home addresses of seniors should not be disclosed publicly because the public interest in disclosure of this information does not outweigh privacy interests therein. Normally, business addresses do not carry significant privacy interests. However, when an agency cannot determine whether an address that has been requested is a residential or business address, as is the case here, the agency need not disclose the address. The OEA may also withhold post office box numbers from disclosure because disclosure of post office box numbers could also lead to the requester discovering home address of the box holder.

Very truly yours,

Ms. Eleanor Lloyd
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