

**Op. Ltr. 02-04 Reports Under Section 8-14.2, Revised Ordinances of
Honolulu**

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.

June 26, 2002

The Honorable Carroll Ann S. Takahashi
Director
Department of Budget and Fiscal Services
City and County of Honolulu
530 South King Street, Room 208
Honolulu, Hawaii 96813

Re: Reports Under Section 8-14.2, Revised Ordinances of Honolulu

Dear Ms. Takahashi:

This is in reply to a memorandum from the former City and County of Honolulu Director of Finance, Russell W. Miyake, to the Office of Information Practices ("OIP") for an opinion on the above-referenced matter.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the City and County of Honolulu ("City") must make information about real property interests held or acquired by foreign persons that is reported to the City pursuant to section 8-14.2, Revised Ordinances of Honolulu ("Section 8-14.2") available to the public.

BRIEF ANSWER

Some of the information required to be reported under Section 8-14.2, is also contained in other records that are required to be disclosed under section 92F-12(a)(5), Hawaii Revised Statutes, or that are otherwise public. The City should disclose that information upon request as disclosure would not be a clearly unwarranted invasion of personal privacy.

Information reported to the City that is not contained in records that are required to be public under section 92F-12, Hawaii Revised Statutes, should be treated as follows. Disclosure of citizenship information concerning

foreign individuals is a clearly unwarranted invasion of personal privacy, under section 92F-13(1), Hawaii Revised Statutes, however, disclosure of citizenship information about non-natural persons is not, as only individuals have cognizable privacy interests.

Names and addresses of officers and directors of foreign corporations, and of partners in foreign limited partnerships, that are publicly available in annual reports filed with the Department of Commerce and Consumer Affairs (“DCCA”), must be made public by the City, as disclosure would not be a clearly unwarranted invasion of personal privacy.

Disclosure of names of shareholders of foreign corporations, and trustees, and beneficiaries of foreign trusts that own real property is not a clearly unwarranted invasion of personal privacy if that information is already in the public domain. This may need to be determined on a case by case inquiry. Home addresses of shareholders of foreign corporations and of trustees of foreign trusts that own real property that are not in the public domain should not be disclosed. Business addresses may be disclosed.

FACTS

Under Section 8-14.2, any foreign person¹ who acquires or transfers real property or a real property interest located in the City shall file a report with the City Director of Finance within thirty days of the acquisition or transfer, that contains the following information:

1. The real property's tax map key designation;
2. The identity, address, legal nature, and nationality of each foreign person acquiring or transferring the real property or interest therein;
3. The date of the acquisition or transfer;
4. The consideration, if any, paid for the acquisition or

¹ The term "foreign person" is defined in the Revised Ordinances of Honolulu, § 8-14.1 (1990).

transfer, and

5. The nature and percentage of the interest acquired or transferred.

Rev. Ord. Hon. § 8-14.2(c) (1990).

Additionally, any foreign person who owns or holds real property or an interest in real property in the City, must file a report with the City Director of Finance that contains the following information:

1. The tax map key designation of the real property;
2. The identity, address, legal nature, and nationality of each foreign owner or holder of the real property or of any interest therein;
3. When an owner or holder of real property or an interest therein in the City becomes a foreign person:
 - (A) The date upon which the owner or holder became a foreign person;
 - (B) The means by which the owner or holder became a foreign person;
 - (C) The date upon which the owner or holder initially acquired the real property or an interest therein; and
 - (D) The initial consideration, if any, paid by or on behalf of the owner or holder for the acquisition of the property or interest therein;
4. The estimated market value of the real property and of the foreign person's interest therein; and

5. The nature and percentage of the interest of each foreign owner or holder.

Rev. Ord. Hon. § 8-14.2(d) (1990).²

Section 8-14.3, Revised Ordinances of Honolulu, requires that the Director of Finance prepare an annual report to the City Council:

relating to the extent of foreign ownership of real property within the city within each class of property enumerated in Section 8-7.1 [improved residential, unimproved residential, apartment, hotel and resort, commercial, industrial, agricultural, or conservation]. The report shall include information relating to the nationality of the owners of real property and interests therein in the city.

Rev. Ord. Hon. § 8-14.3(c) (1990).

In a telephone conversation of May 15, 2001, Mr. Carl Watanabe, Acting Registrar for the State Department of Land and Natural Resources Bureau of Conveyances (“Bureau of Conveyances”), advised that home addresses of property owners are available to the public on assessment notices for billing purposes, even if those home addresses are different from the address of the owned property at issue. These records are maintained at county real property tax offices assessment counters. This information was confirmed in an e-mail dated May 16, 2002, from Mr. Robin Freitas of the City Department of Budget and Fiscal Services Real Property Assessment Division.

DISCUSSION

² Mr. Robin Freitas of the City Department of Budget and Fiscal Services Real Property Assessment Division advised in a telephone conversation of May 21, 2002, that the City has developed a form for foreign property owners to fill out in complying with Section 8-14.2. The form does not contain a space for collection of estimated market value of properties that is listed in Section 8-14.2(d)(4). Instead, the City uses actual assessments of properties, which is public. Real property tax assessments are based upon the fair market value of the property using market data and cost approaches to value. See Rev. Ord. Hon. § 8-7.1(a) (Am. Ord. 94-79). As the estimated market value is not collected by the City, the OIP does not opine on it at this time.

I. **LAND OWNERSHIP, TRANSFER RECORDS, AND REAL PROPERTY TAX INFORMATION**

A. **Records Expressly Made Public by the UIPA**

The UIPA governs access to records maintained by Hawaii State and county agencies; and sets forth a list of government records that agencies are required to make public. One is relevant to this opinion:

§92F-12 Disclosure required. (a) Any other law to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

...

(5) Land ownership, transfer, and lien records, including real property tax information and leases of state land; . . .

Haw. Rev. Stat. § 92F-12(a)(5) (Supp. 2001). The UIPA's legislative history states that for records set forth in section 92F-12, Hawaii Revised Statutes, "the exceptions such as for personal privacy and frustration of legitimate government purpose are inapplicable." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988). Therefore, if the information that foreign persons must report to the City under Section 8-14.2, is "land ownership, transfer, . . . [or] real property tax information," the UIPA requires that it be made available for public inspection and copying during regular business hours.

Many of the records listed in section 92F-12, Hawaii Revised Statutes, were included in the UIPA by the Legislature in response to the recommendations of the Governor's Committee on Public Records and Privacy ("Governor's Committee"). The OIP therefore believes it is appropriate to consult the Report of the Governor's Committee on Public Records and Privacy (1987) ("Governor's Committee Report"). With respect to the disclosure of real property ownership and transfer records, the Governor's

Committee Report states:

The next issue relates to the **records of land ownership, transfer, and liens**. These records are currently public and there was no dispute that they should remain open. This result is, to some extent, mandated by the degree to which these records are tied to the court system

Vol. I Governor's Committee Report 146 (1987) (emphasis in original).

With respect to real property tax information, the Governor's Committee Report states:

In contrast to the [income and general excise tax] systems the real property tax and exemption information is accessible to the public. This difference of treatment is not surprising because a property tax does not measure otherwise private information such as income and expenses, but instead measures publicly observable accessible items like land and structures.

Furthermore, the property tax system relies on an assessment process that includes notice and an opportunity to appeal. Access to these records is critical if there is to be a successful appeal since a comparison with comparable lots is often the best way to prove the case.

As one of the Committee members noted, land in Hawaii is a precious resource and knowledge about its ownership is, therefore, especially critical. The openness also serves to ensure equal application of the real property tax law to all citizens. That Committee member also noted that there was some talk about closing exemption information. Such a development would of course substantially undermine the current ability to ensure equal application of the law and the absence of special favors.

All who commented favored leaving the current system, with its openness, in place

Vol. I Governor's Committee Report 150 (1987) (emphasis in original).

When interpreting the meaning of a statute, the fundamental objective is to ascertain and give effect to the intention of the legislature. See Educators Ventures, Inc. v. Bundy, 3 Haw. App. 435, 652 P.2d 637 (1982); Haw. Rev. Stat. § 1-15(2) (1993). The above-quoted passages from the Governor's Committee Report convince the OIP that it was the Governor's Committee's recommendation to the Legislature that any new public records law preserve the existing public accessibility of land ownership and transfer records filed with the Land Court or the Bureau of Conveyances, and real property tax and exemption information maintained by the county departments of finance. The OIP also believes that in adopting section 92F-12(a)(5), Hawaii Revised Statutes, the Legislature intended to implement the Governor's Committee's recommendations. In fact, the legislative history of House Bill 2002 of the 1988 Regular Legislative Session ("H.B. 2002") notes that public testimony received by the Governor's Committee was incorporated into the records of public hearings on H.B. 2002. See H. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess. (Feb. 19, 1988). Further, the Senate noted that the Governor's Report was "translat[ed]. . . into legislation." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess. (Mar. 31, 1988).

Section 1 of the bill that led to the adoption of Section 8-14.2, shows that its purpose was to compile data about foreign investment, not to compile land ownership or transfer data:

In recent years, the rate of outside investment has risen, resulting in more rapid economic growth in the state. Non-US investment has played a much larger role in this more recent growth. Unfamiliar aspects of the new growth and an absence of data regarding non-US capital have led to guesses and conjecture regarding the effects of the changing levels and origins of the investment flow. As a means of better understanding the effects of foreign investment on the state, it is deemed advisable to begin generating data regarding amounts and origin of incoming capital.

Hon. Ord. No. 90-68, § 1 (1990).

Based on the legislative history of the UIPA and the Revised Ordinances of Honolulu, the OIP does not believe that, *as a whole*, the information reported to the City under Section 8-14.2, constitutes "land ownership, transfer, and lien records, including real property tax information" under section 92F-12(a)(5), Hawaii Revised Statutes. Thus, it is not required to be public under section 92F-12(a)(5), Hawaii Revised Statutes. The information reported to the City is still presumed public, however, under section 92F-11, Hawaii Revised Statutes.

B. Information Publicly Available Elsewhere

Some records filed at the Bureau of Conveyances, Land Court, and county departments of finance, contain information that is public under section 92F-12(a)(5), Hawaii Revised Statutes. Some of this information is the same information that must be reported to the City under Section 8-14.2. For example, the City advised the OIP that the name and address of real property owners, and assessed value of their real property are public records. Tax map keys are also publicly available, as are the dates of acquisition or transfer. Consideration paid by an individual to purchase real property is publicly available in Conveyance Tax Certificates on file with county departments of finance, as these records constitute land "transfer" or "real property tax information" under section 92F-12(a)(5), Hawaii Revised Statutes.

Information reported to the City under Section 8-14.2, such as names and addresses of real property owners, assessed value of real property, and consideration paid, that is also publicly available at other government agencies, should be made public. The OIP notes that the City did not provide a copy of the form it uses to collect information pursuant to Section 8-14.2. There may therefore be information collected by the City on its form that is publicly available elsewhere, but that was not discussed herein. The OIP opines generally that information collected by the City under Section 8-14.2 that is publicly available elsewhere should be disclosed, but declines to opine on every field of information collected on the City's form.

II. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

Except for information that is always required to be public under

section 92F-12, Hawaii Revised Statutes, the UIPA requires that all government records be publicly available unless access is restricted or closed by law. Haw. Rev. Stat. § 92F-11(a) (1993). The UIPA also states that "[e]xcept as provided by section 92F-13, each agency upon request by any person shall make government records available for inspection and copying." Haw. Rev. Stat. § 92F-11(b) (1993).

The OIP now examines whether the exception to disclosure for information which, if disclosed, would cause a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes, protects the information reported to the City under Section 8-14.2 that is not required to be publicly available elsewhere as discussed in section I., above.

A. Citizenship

1. Non-Natural Persons

The City asked whether the citizenship or nationality of foreign persons who report to the City under Section 8-14.2, information concerning how the person became a foreign person, and the date upon which the person became a foreign person ("Citizenship Information") is public.

Previous OIP opinion letters explain that, for purposes of the UIPA, only "individuals" have a personal privacy interest in government records, and the term "individual" is defined as "a natural person." Haw. Rev. Stat. § 92F-3 (1993). As such, disclosure of information about corporations, partnerships, agencies, or other entities would not constitute a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. See e.g., OIP Op. Ltr. No. 94-20 (Oct. 20, 1994). The OIP therefore concludes that disclosing Citizenship Information of foreign persons who are not individuals would not constitute a clearly unwarranted invasion of personal privacy.

2. Natural Persons

Under the UIPA, the "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. § 92F-14(a) (Supp. 2001).

The OIP Opinion Letter Number 90-25 examined whether firearms registration forms maintained by the Honolulu Police Department ("HPD") must be made available for public inspection and copying. Although the OIP concluded that much of the information contained in the HPD's firearms registration forms must be disclosed, the OIP also concluded that disclosing a registrant's citizenship, date of birth, sex, height, weight, age, and social security number would constitute "a clearly unwarranted invasion of personal privacy." See OIP Op. Ltr. No. 90-25 at 6-7 (July 12, 1990).³ Accordingly, the OIP advised the HPD not to disclose that information.

The OIP has also concluded that disclosing an individual's ethnicity, contained within a government record, would constitute a clearly unwarranted invasion of personal privacy. See OIP Op. Ltrs. No. 92-8 (Jul. 16, 1992); No. 92-20 (Oct. 13, 1992).

The OIP believes that, based on the sections of the Governor's Committee Report and the bill that led to the adoption of Section 8-14.2 cited in section I., above, there is a significant public interest in the level of foreign investment in the State of Hawaii, and particularly in the level of foreign investment in Hawaii real property. However, the OIP believes that this interest is adequately served by the City's disclosure of aggregate Citizenship Information compiled by the City under Section 8-14.2. In the OIP's opinion, under the UIPA's balancing test set forth at section 92F-14(a), Hawaii Revised Statutes, the public interest in the disclosure of Citizenship Information about a specific individual does not outweigh that individual's significant privacy interest in the information, especially when aggregate data serves to meet the public interest noted in the legislative history of Section 8-14.2. Thus, the OIP concludes that under the UIPA, the City should not disclose, in individually identifiable form, the Citizenship Information collected by the City about any foreign person who is a "natural person."

B. Names and Addresses of Foreign Individuals Who are the

³ The OIP Opinion Letter Number 90-35 was significantly affected by a subsequent amendment to section 134-3(b), Hawaii Revised Statutes, making firearm registration information confidential. However, this Opinion's analysis of privacy interests in citizenship is still valid.

Owners of Real Property

Names and addresses of owners of record of Hawaii real property is public information, as is noted in section I., above. In some instances, however, the owner of record of real property located in the City is a foreign corporation, foreign trust, or foreign partnership. The OIP was asked by Mr. Miyake whether the names and addresses of a corporation's officers, directors, and shareholders, the names and addresses of trustees and of partners in a partnership, and names of trust beneficiaries must be disclosed. For purposes of this section, the OIP assumes that this information is not contained in the records discussed in section I., above, that are publicly available.

1. Names and Addresses of Corporation Officers and Directors, and of Partners in Partnerships

For profit foreign corporations authorized to transact business in Hawaii are required to file an annual report with the DCCA that includes the names and business addresses of its directors and officers. Haw. Rev. Stat. § 414-472(b) (Supp. 2001).

Nonprofit foreign corporations authorized to conduct affairs in Hawaii are required to file an annual report with the DCCA that includes the names and addresses of the directors and officers; or that sets forth the names and business or residence addresses of its directors and principal officers; depending upon what kind of nonprofit corporation it is. Haw. Rev. Stat. § 415B-11(a)(4); § 414D-308(a)(4) (Supp. 2001).

Foreign limited partnerships registered in Hawaii must file an annual statement with the DCCA that sets forth the names and business addresses

of each general and limited partner. Haw. Rev. Stat. § 425D-906.5(a) (Supp. 2001).

Foreign general partnerships that do business in Hawaii must file registration and annual statements with the DCCA. Registration statements must include the name and address of each partner. Haw. Rev. Stat. §425-1(a) (Supp. 2001). Annual statements must also include the name and address of each partner. Haw. Rev. Stat. §425-1(b) (Supp. 2001).

The OIP confirmed with Mr. Ryan Ushijima, Commissioner for the DCCA Business Registration Division, in a telephone conversation on June 5, 2002, that the annual reports filed by foreign corporations and foreign partnerships are publicly available.

The OIP concludes that because foreign corporations are required to list names and addresses of directors and officers in their annual reports to the DCCA, and foreign partnerships are required to list names and addresses of partners in their annual reports to the DCCA; and because this information is publicly available at the DCCA, the City should also make this information public. As these names and addresses are publicly available elsewhere, disclosure by the City would not be a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. The City should, however, note that the above-cited statutes differentiate as to whether business and/or home addresses are to be collected, and as a result, made publicly available. For addresses that are not required by law to be public, the public interest in disclosure would have to be balanced against any privacy interests therein. This may need to be done on a case by case inquiry.

2. Names and Addresses of Corporate Shareholders, and of Trustees

a. Corporate Shareholder Names

Annual reports filed by foreign corporations with the DCCA need not contain names and addresses of shareholders. The OIP can find no provision

in Hawaii Revised Statutes requiring or prohibiting that names of shareholders of foreign corporations be public.

Generally speaking, disclosure of an individual's name is not a clearly unwarranted invasion of personal privacy. The OIP has opined, however, that in certain factual situations, an individual's name maintained in a government record need not be disclosed. See e.g., OIP Op. Ltrs. No. 95-2 (Jan. 19, 1995) (unsuccessful job applicants); No. 99-9 (Dec. 3, 1999) (names of suspects not yet arrested or charged); No. 93-14 (Sep. 21, 1993 (persons having communicable diseases)).

While the identification of shareholders along with some aspect of financial information may imply a significant privacy interest under section 92F-14(b)(6), Hawaii Revised Statutes, names of corporate shareholders are, at least to some extent, already in the public domain. Names of initial shareholders can be ascertained via a search of the articles of incorporation filed at the DCCA, so the names of at least some shareholders may be publicly available. The OIP has not been presented with any evidence to show that disclosure of shareholder names would constitute a clearly unwarranted invasion of personal privacy. The OIP therefore advises that because the UIPA operates on the presumption that all government records are public,⁴ names of corporate shareholders must be made public. Should evidence later be presented to show that disclosure of shareholder names would be a clearly unwarranted invasion of personal privacy, the OIP would reconsider this opinion.

b. Trustee Names

The OIP has not been presented with any evidence that disclosure of names of trustees would be a clearly unwarranted invasion of personal privacy; nor has the OIP found any laws that would protect these names from disclosure, nor that require that they be disclosed.

Testamentary and *inter vivos* probate trusts must be registered with the Judiciary. This registration requires filing a statement that indicates the name and address of the trustee in which it acknowledges the trusteeship. See chapter 560:7, Hawaii Revised Statutes. The OIP confirmed with Carl

⁴ See Haw. Rev. Stat. § 92F-11(a) (1993).

Watanabe, Acting Registrar for the Bureau of Conveyances, in a telephone call of June 17, 2002, that once probate trusts are recorded at the Bureau of Conveyances, they are part of the public record and can be viewed on microfilm. In light of the fact that trustee names are publicly available once recorded, the OIP does not believe disclosure would be a clearly unwarranted invasion of personal privacy after the trust documents are recorded.

For other types of trusts, if trust documents are recorded and publicly available at the Bureau of Conveyances or elsewhere, and contain names of trustees, the City should make those names public. For these other types of trusts, the issue of disclosure of trustee names may need to be decided on a case by case basis.

c. Shareholder and Trustee Addresses

In previous OIP opinions, the OIP concluded that in most circumstances, natural persons have a significant privacy interest in information concerning their residential addresses that is not outweighed by the public interest in disclosure. See e.g. OIP Op. Ltr. No. 99-2 (Apr. 5, 1999). After examining case law under the privacy exemption of the Federal Freedom of Information Act, 5 U.S.C. § 552 (1988), the OIP concluded that the disclosure of an individual's home address would generally constitute a clearly unwarranted invasion of personal privacy because such disclosure would shed little light upon the conduct of government agencies or their officials.

Home addresses of shareholders and trustees that are not contained in government records that are publicly available elsewhere by law, need not be disclosed by the City. See e.g. OIP Op. Ltr. No. 99-2 (Apr. 5, 1999). Business addresses should be disclosed, however, as they do not carry the same privacy interests as home addresses do.

3. Names of Foreign Trust Beneficiaries

For trusts that convey legal and equitable title to real estate in trust to a trustee, names of beneficiaries must be recorded in a conveyance, deed, mortgage, lease assignment, or other instrument, and filed with the Bureau of Conveyances. See chapter 558, Hawaii Revised Statutes. The OIP confirmed with Carl Watanabe, Acting Registrar for the Bureau of

Conveyances, in a telephone call of June 17, 2002, that once real estate trusts are recorded at the Bureau of Conveyances, they are part of the public record and can be viewed on microfilm. In light of the fact that beneficiary names in recorded real estate trusts are public, the OIP does not believe disclosure would be a clearly unwarranted invasion of personal privacy.

For other types of trusts, if trust documents are recorded and publicly available at the Bureau of Conveyances or elsewhere, and contain names of beneficiaries, the City should make those names public. For these other types of trusts, the issue of disclosure of names of beneficiaries may need to be decided on a case by case basis.

CONCLUSION

Some information reported to the City under Section 8-14.2, is available in records on file elsewhere such as at the Bureau of Conveyances, Land Court, or the county departments of finance, and is public under section 92F-12(a)(5), Hawaii Revised Statutes. This includes information regarding the name of the owner, address of the real property within the City, and assessed value of real property, and consideration paid. This information should be available for public inspection and copying upon request by any person.

Citizenship Information pertaining to non-natural persons, such as corporations, partnerships, or other entities may be disclosed because only individuals, or "natural persons" possess privacy interests. Citizenship Information of natural persons, however, should generally not be disclosed, except in aggregate form, because the public interest in disclosure does not outweigh privacy interests therein.

When the owner of real property within the City is a foreign corporation or foreign limited partnership, the names and addresses of each officer, director, or partner, are required to be filed with the DCCA, and are available to the public. The City should therefore, make this information public. There is no clearly unwarranted invasion of privacy in disclosure, as it is already publicly available elsewhere.

The City should disclose names of foreign corporate shareholders. Names of trustees and beneficiaries of foreign trusts that own real property

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within the City should also be disclosed when this information is already in the public domain. Home addresses of shareholders and trustees that are not in the public domain should not be disclosed. Business addresses may be disclosed.

For information that must be analyzed on a case by case inquiry, feel free to consult with the OIP should you receive a request for access to that information.

Very truly yours,

Carlotta M. Dias
Staff Attorney

APPROVED:

Moya T. Davenport Gray
Director

CMD: ankd

cc: Robin Freitas, City Department of Budget and Fiscal Services
Nalani Wilson-Ku, Deputy Attorney General
Ginny Bell