

December 29, 2003

Mr. Daniel S. Quinn
Administrator, State Parks Division
Department of Land and Natural Resources
1151 Punchbowl Street, Room 310
Honolulu, Hawaii 96813

Re: Records Pertaining to Kahana Valley
State Park Interpretive Leases

Dear Mr. Quinn:

This is in response to your request to the Office of Information Practices ("OIP") for an opinion on the above-referenced matter.

ISSUE PRESENTED

Whether specific activities conducted and hours credited in lieu of monthly rent for the lease of State lands are public under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

BRIEF ANSWER

Yes. Leases of State land are public. Haw. Rev. Stat. § 92F-12(a)(5) (Supp. 2003). Records pertaining to leases of State land which show the amount of compensation to be paid for the lease and how payment was made carry great public interests. In balancing this public interest against the privacy interests of leaseholders therein, the OIP finds the public interest to

be greater. Therefore, disclosure would not be a clearly unwarranted invasion of personal privacy and the records should be available for public inspection and copying.

FACTS

The following facts were provided by the Department of Land and Natural Resources Division of State Parks (“DLNR”). Between 1965 and 1974, the State initiated condemnation proceedings to acquire the ahupua’a of Kahana for park use. Residents¹ living in Kahana at the time negotiated a “living park” concept to be able to continue living in the Kahana Valley State Park (“Park”). Thirty-one families currently live under the terms of this “Interpretive Lease.”

The DLNR provided the OIP with copies of: (1) the Report on Interpretive Programs dated March 1999, (2) General Lease Agreement, Draft No. 11 dated August 5, 1992 (“General Lease”), (3) clarification statement entitled “Written Agreements,” and (4) sample copies of negotiated agreements for review.

The General Lease between the DLNR and the Lessees states that, for consideration of a Lessee’s participation in the Kahana Valley State Park interpretive program, the Lessee is given a residential lease to a specific lot for 65 years. With respect to the rent to be paid by the Lessees, the General Lease contains the following provision:

In lieu of monetary rent, Lessee shall contribute in-kind services to the Department by participating in the interpretive programs at the Park, in the amount of 25 hours per month for a total of 300 hours per year; subject to review of the Lessor. The nature of these in-kind services shall be as described in Exhibit “C” attached hereto and made a part hereof. For purposes of this lease, “rent” shall mean the above. The payment of rent shall commence upon notification by Lessor.

Exhibit “C” to the General Lease is entitled “Interpretive Hawaiian Cultural Program Participation Commitment” and sets forth the criteria for participation. Interpretive Programs are based on an addendum to Exhibit “C” of the General Lease, entitled “Kahana Valley State Park, Addendum to Schedule C, Interview Summary Data of Participation, Activities of Kahana

¹ Kahana residents participating in the Interpretive Program are referred to herein as “Lessees.”

Residents.” The OIP was not provided with a copy of the addendum to Exhibit “C.” The General Leases and Exhibit “C” do not include information on specific activities conducted and hours earned as payment of the Interpretive Leases. It is the OIP’s understanding that the addendum to Exhibit “C” likewise does not specify the activities to be performed by the Lessees in lieu of rent.

The Park Manager identified specific activities performed by Lessees to develop and implement the interpretive program and cultural themes relevant to Kahana. Broad guidelines for acceptable activities in compliance with interpretive hours were finalized after meetings with Lessees. Table I entitled “Goals, Objectives and Activities of the Kahana Interpretive Program” contained in the Report on Interpretive Programs includes 5 Goals of the interpretive program: (1) Malama kaiapuni (care of the ahupua’a), (2) Malama mo’omeheu o Hawai’i (care of the culture), (3) Malama kupuna (care of the ancestors), (4) Malama waiwai (care of the resources), and (5) Malama kupa (care of the people). Examples of approved activities under each of these goals include reestablishing traditional names within the park, kapa-making, maintaining cemeteries and gravesites, restoring and maintaining lo’i, and ‘ohana counseling and services, respectively. Contracts or agreements detailing the specific activity to be performed by the Lessee for rent credit are written and signed by the Lessee and the Park Manager.

Page 7 of the Report on Interpretive Programs notes that there was a concern over the fact that there was no consistent system for reporting and monitoring hours, as well as abuse of leases by not contributing work hours of any sort. Your memorandum to the OIP of October 4, 2001 indicated that some activities conducted are not considered appropriate to the identified goals above. As a result, some Lessees want specific activities being conducted and hours earned to be made public, while the Park Manager feels this information is confidential.

The Report on Interpretive Programs also includes an Appendix E entitled “Report on the Residents’ Interpretive Program Survey in the Ahupuaa O Kahana,” the stated purpose of which is to provide the Kahana Advisory Committee² with information regarding resident participation in interpretive programs relevant to the Park. The information in this Report

² According to the preface to the Report on Interpretive Programs at page *ii*, the Kahana Advisory Committee was established in January 1997 to address aspects of the Park’s interpretive program. Interpretive programs were recommended by the Committee with participation from the Lessees.

was based on surveys of resident families. Three families did not participate in the survey, but were quoted as saying, regarding interpretive programs, “[it is] my business what I do for my hours. Not anybody else’s in the valley. It’s confidential.” Statistics in the report noted that 19% of those who completed the survey felt that tracking of hours was a problem. The Survey concluded, in part, that the residents needed further clarification and definition as to what is an acceptable “Hawaiian interpretive program” and that the “issues of ‘private’ and ‘public’ information need to be addressed.” The authors of the Report noted that “because the sole purpose of the interpretive programs are for the education of the public, any and all programs where residents receive credit hours to fulfill obligations of their public lease documents should be open to public scrutiny.”

Minutes of the Kahana Advisory Committee meeting of October 31, 1998 are included in the Report on Interpretive Programs and note that Lessees had not been turning in their hours to the Park Manager in a timely manner. Lessees are now required to turn in a sheet monthly that documents: (1) the date of an activity performed as payment of the lease, (2) a brief description of the activity performed, (3) the names of the Lessee or Lessee’s family member performing the activity, (4) the amount of time spent on the activity, (5) the total amount of time spent for each day, and (5) the total amount of interpretive hours completed each month.

After these monthly sheets are turned in, the DLNR transfers the information to a spreadsheet entitled “Monthly Interpretive Hours” which includes: (1) the Lessees’ names, (2) the beginning balance of hours earned previously (3) the 25 required for the current month, (4) the hours worked for the current month, (5) the new balance, (6) a “comments” column, and (7) the activity performed.

DISCUSSION

The UIPA governs public access to records³ maintained by government agencies⁴. Haw. Rev. Stat. § 92F-11 (1993). The UIPA requires that leases of State land be public, any other law notwithstanding. Haw. Rev. Stat.

³ “Government record” means “information maintained by an agency in written, auditory, visual, electronic, or other physical form.” Haw. Rev. Stat. § 92F-3 (1993).

⁴ “Agency” means “any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.” Haw. Rev. Stat. § 92F-3 (1993).

§ 92F-12(a)(5) (Supp. 2003). Accordingly, the General Leases, including exhibits and addenda attached thereto, are public and may not be withheld from public disclosure by the DLNR. The General Leases, however, do not include the specific activities conducted and hours credited as rent payment. Therefore, this information is not automatically public under section 92F-12(a)(5), HRS. The specific activities that each Lessee performs in lieu of rent and the hours credited are contained in the subsequent agreements entered into by the Lessees and the Park Manager as well as other records generated and/or maintained by the DLNR.

For records such as the subsequent agreements and any other records relating to the Lessees' activities that are not required by section 92F-12, HRS, to be public in all instances, the UIPA operates on the presumption that government records are available for public inspection and copying, unless an exception to disclosure in section 92F-13, HRS, applies. Haw. Rev. Stat. § 92F-11 (1993). Only one exception to disclosure is relevant here, the exception for records which, if disclosed, 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 agency maintaining a requested record must balance the public interest in disclosure against any personal privacy interests therein. Haw. Rev. Stat. § 92F-14(a) (Supp. 2003). In balancing the privacy right 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. See OIP Op. Ltr. No. 97-10 at 5 (Dec. 30, 1997).

Section 92F-14(b), HRS, provides a nonexhaustive list of examples of information in which an individual has a significant privacy interest. This includes "[i]nformation describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness[.]" Haw. Rev. Stat. § 92F-14(b)(6) (Supp. 2003).

The OIP is of the opinion that the records showing which activities the Lessees must perform in consideration of their leases and the hours already earned arguably include information described in section 92F-14(b)(6), HRS, and, accordingly, that the Lessees have a significant privacy interest in that information. The OIP further believes that the Lessees have a significant privacy interest in their day-to-day activities.

With respect to the public interest in disclosure, the OIP believes that disclosure of the Lessees' activities conducted and hours earned would shed light whether the DLNR is leasing State lands for a reasonable amount, the State's and the Lessees' performance of the Interpretive Lease program, the various informal contracts and agreements, and the DLNR's performance in managing the Park. As noted above, this public interest must be balanced against the Lessees' privacy interests in their financial information and day-to-day activities.

In applying the balancing test, the OIP finds section 92F-12(a)(5), HRS, which requires that leases of State land be public, to be instructive. When the Legislature enacted this provision, it codified the substantial public interest in knowing how State land is used, including the identity of the parties to whom the State leases public land and the specific terms of the lease. In a typical lease, the dollar amount paid as lease rent is set forth in the lease itself and, therefore, is public. With the General Leases, the activities performed as rent for the residential leases of land are not set forth because the specific activities to be performed were agreed upon at a later date and are memorialized in subsequent agreements or other similar records. Thus, because of the unique method of payment of the General Leases, rent amounts were not included in the lease documents at the time they were executed. If the information on lease payment amounts and activities performed is not made public, the DLNR's administration and management of the Park, including the rent for leases of State land, cannot be fully scrutinized by the public.

While the OIP acknowledges the concerns expressed by certain of the Lessees that how they spend their time is their business, the OIP finds that the Lessees' privacy interests are diminished by the fact that compensation for leases are generally set forth within lease documents and thus are public. The OIP believes that the Lessees, at the time they entered into the General Leases, could not have reasonably believed that the activities to be performed in lieu of rent would be confidential. Such an expectation would be contrary to all other State leases. In addition, according to the Report on Interpretive Programs, the sole purpose of the interpretive programs are for the education of the public. The Lessees were aware at the time they negotiated their leases that public education was a part of their payment obligation, and in many cases Lessees fulfill their lease obligations in full view of the public (e.g.: restoring lo'i, shoreline cleanup, lot, cemetery, and trail maintenance).

Mr. Daniel S. Quinn

December 29, 2003

Page 7

The OIP also finds, in balancing the competing interests here, that, while individuals have privacy interests in activities conducted and hours earned, the public interest is the greater interest, and that disclosure of records showing specific activities conducted and hours earned as payment of rent for General Leases of State land are public because disclosure would not be a clearly unwarranted invasion of personal privacy under section 92F-13(1), HRS. Accordingly, it is the OIP's opinion that the agreements between the Lessees and the Park Manager, and any other records setting forth the activities to be performed by the Lessees in lieu of rent under the General Leases, other records maintained by the DLNR reflecting the number of hours credited to each Lessee, and monthly summary sheets prepared by the DLNR are public.

Very truly yours,

Carlotta Dias
Staff Attorney

APPROVED:

Leslie H. Kondo
Director

CMD:ankd