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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to sections 92F-27.5 and 92F-42, HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

DECISION

Requester: Individual
Agency: University of Hawaii at Manoa
Date: June 2, 2015
Subject: Transcript and Diploma Denied
(U APPEAL 13-9)

REQUEST FOR DECISION

Requester is an individual seeking a decision as to whether the University of Hawaii at Manoa (UH) properly denied his request to be given two documents about his UH education, namely a certified official academic transcript and the original official diploma that UH maintains, under Part III of the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA).

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's e-mail correspondence to OIP dated September 11, 2012, April 24, 2013, May 6, 2013, and May 15, 2013 (some with attachments); and correspondence and e-mail correspondence from UH dated September 18, 2012, May 9, 2013, June 12, 2013, June 19, 2013, February 5, 2015, February 10, 2015, February 11, 2015, and March 31, 2015 (some with attachments).

QUESTIONS PRESENTED

1. Whether, under the UIPA, UH must give to Requester a certified official academic transcript, which does not currently exist.

2. Whether, under the UIPA, UH is required to give to Requester the official diploma in his name, which is an original document.

BRIEF ANSWERS

1. No. The UIPA does not require UH to create and give to Requester, upon his request, a certified official transcript because his request requires the creation of a new document. A certified official transcript is a new document because its creation involves formatting and certification in order to be “official” and is not merely a reproduction or readily retrievable compilation of an existing education record already maintained by UH. The UIPA does not compel either the creation or distribution of **new** original documents, but rather it mandates that agencies allow inspection or provide copies of **existing** government records, unless an exception or exemption to required disclosure applies.

2. No. The UIPA does not require UH to give Requester his official diploma because Requester is requesting to obtain the original government record, not a copy. The UIPA only requires that an agency allow inspection or provide a **copy** of a government record, upon request, unless an exception or exemption to required disclosure applies.

FACTS

Requester had been a student at UH. On September 11, 2012, Requester sent an e-mail to UH requesting his diploma and two certified copies of his transcript.¹ Requester acknowledged in his e-mail that there were financial holds imposed upon him by UH, and stated that Requester wanted to meet with UH to address the financial holds. In a letter dated September 18, 2012, UH replied that its policy is to not release official documents, such as transcripts and diplomas, if there is a financial hold.

On May 4, 2013, Requester completed a Transcript Order Form (Order Form) and enclosed payment for one transcript of his grades. By letter dated May 9, 2013, UH informed Requester that his Order Form was being returned to him because he had multiple financial holds. UH informed Requester that after Requester cleared his financial holds, he could re-submit his Order Form to UH.

¹ What Requester refers to as a “certified” copy of his transcripts, which he sought as verification for purposes of employment and further education, is what the UH and this opinion refer to as an “official” transcript.

Requester appealed to OIP UH's denials of Requester's requests for his diploma and transcript. In response to OIP's Notice of Requester's Appeal, UH replied on June 12, 2013, and in relevant part stated:

UHM will not release official transcripts (on security paper and including university seal) or certificates (diplomas) to students with outstanding financial obligations to the University.

The University is withholding the official transcript and the certificate for students with an outstanding financial obligation based on the following:

HRS 92F-22(5)

Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege.

HRS 92F-13(3)

Government records that, by their nature must be confidential in order for the government to avoid frustration of a legitimate government function.

HAR 20-10-6(2)(d)

Denial of Transcripts, diplomas, and other entitlements may be imposed as a sanction in all cases of delinquent financial obligation. These sanctions shall remain in force during appeals and contested case proceedings.

University of Hawaii policy A8.730 (Withholding of transcripts and Diplomas and Prevention of Registration for Individuals with Delinquent Financial Obligations)

In a letter dated February 5, 2015, UH provided clarification to OIP regarding its position on disclosure of official transcripts and stated that under the Family Educational Rights and Privacy Act, 20 U.S.C. 1232 g (FERPA)² and other previously stated grounds, UH is not required to provide Requester a copy of the

² A determination of FERPA's applicability is not necessary to the resolution of this case. See n. 5 infra.

records he sought. UH's position was that UH "under the conditions of [FERPA] will make available for review by the student, the contents of his/her education record. In cases where the student cannot reasonably be present to inspect the record, copies shall be provided."

UH also explained in its letter dated February 5, 2015, that

at [UH] official transcripts are produced for a student upon the receipt of signed written consent of the student, provided no financial obligations to the University of Hawaii exist. The process to create and produce an official transcript requires the following steps:

1. Access the University of Hawaii at Manoa's Student Information System
2. Enter transcript request information
3. Run process to print transcript (shall be printed on security paper)
4. Verify printed document
5. Have document embossed with University of Hawaii at Manoa's Official seal.

This will also confirm that the University does not possess an official transcript, and that the University is withholding the creation of an official transcript and the release of certificates (diplomas) for students with an outstanding financial obligation based on [statutes, rule and policy stated in UH's letter of June 12, 2013].

UH has confirmed to OIP that while no official transcript exists, UH is in possession of Requester's original diploma.

DISCUSSION

I. UH is Not Required by the UIPA to Create and Give to Requester, Upon His Request, a Certified Official Transcript Because This Request Requires the Creation of a New Document.

Under the UIPA, a government record³ about an individual is the individual's personal record.⁴ Under Part III of the UIPA, an agency is required to permit an

³ The term "government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." HRS § 92F-3 (2012).

individual to review or obtain a copy of the individual's personal record, upon request, unless an exemption allows the agency to withhold the record from the requester.⁵ Section 92F-23, HRS, states that “[u]pon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made . . . unless the personal record requested is exempted under section 92F-22” (emphasis added).

The UIPA's mandate to agencies to allow inspection and provide copies applies only to records that an agency already maintains and does not require that a new record be created. See HRS §92F-11(c); Nuuanu Valley Assoc. v. City and County of Honolulu, 119 Haw. 90, 97 (2008) (Hawaii Supreme Court's “conclusion that the UIPA simply requires *access* to those records the agency has in fact maintained”) (emphasis in original); see also OIP Op. Ltr. Nos. 97-8, 10-02.

OIP understands that UH maintains and is able to electronically compile information about the academic courses completed by Requester and grades he received. Requester's coursework information constitutes a “government record,” because it is maintained by UH, and also a “personal record” because it is “about” Requester. See HRS § 92F-3 (defining “government record” and “personal record”). Under the UIPA, UH would be required to provide Requester with a compilation of his courses and grades upon his request because it maintains information about his courses taken and grades, and that information, though not maintained by UH as an official transcript, is readily retrievable. See HRS § 92F-11(c) (2012) (stating that “[u]nless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records”).

In the present case, however, Requester is not asking to inspect or obtain a mere copy of his coursework information maintained by UH. Instead, Requester is

⁴ A “personal record” is “about” an individual and is a type of government record. The Part III rights to access personal records “about” an individual requester are distinct from the rights set forth in Part II of the UIPA, which governs access to government records by the general public. See OIP Op. Ltr. No. F13-01 (explaining the different records governed by Parts II and III of the UIPA).

⁵ One of the five exemptions listed in section 92F-22, HRS, allows an agency to withhold a personal record based on a statute, judicial decision, or constitutional or statutory privilege. HRS § 92F-22(5). Whether FERPA, or any other statute, judicial decision, or constitutional or statutory privilege, would allow the UH to withhold Requester's records because of his outstanding financial obligations is not a question that we must determine in this case, as there are independent reasons under the UIPA upon which this case has been decided.

seeking to require UH to create and provide to him a certified official transcript, which UH confirmed that it does not maintain.

There is a distinction between a copy and a certified official record. A copy is defined as “[a]n imitation or reproduction of an original.” Black’s Law Dictionary 410 (10th ed. 2014). In contrast, a certified record additionally requires an “attest[ation] as being true or as meeting certain criteria” while an official record is defined as “[a] legally recognized original document, [usually] prepared or recorded by someone with authority, that establishes a fact.” Id. at 275, 1465.

In order to provide an “official” transcript that would be legally recognized by other schools and employers to verify a student’s coursework and grades, UH requires the student to complete an Order Form containing the student’s signed consent. After receiving the signed consent and confirming that there are no outstanding financial obligations, UH will create an official transcript on special security paper that is also certified with UH’s embossed seal. UH’s creation of a certified official transcript clearly involves more than simply making a reproduction of an existing record. Thus, OIP finds that Requester’s request for a certified official transcript requires the creation of a new, original document, rather than a simple copy of an existing record maintained by UH.

Under the UIPA, there are no requirements that a copy of a record be certified or that the original “official” record be provided to a requester. Regardless of UH’s reason for refusing to provide an official transcript to Requester, the UIPA does not compel an agency to provide a certified or official record to any requester. Consequently, OIP concludes that UH was not required by the UIPA to provide a certified official transcript to the Requester.

II. UH is Not Required to Give Requester a Graduation Diploma Because the UIPA Does Not Require an Original Government Record to be Provided.

As previously noted, section 92F-23, HRS, requires that an agency permit a requester to review and make a copy of his personal record. See also HRS § 92F-11 (a), (b) and (d) (allowing agencies to provide access through inspection and duplication of records); OIP Op. Ltr. No. 94-3 at 10 (recognizing an agency’s duties to permit inspection and copying of existing government records).

In the present case, Requester is not seeking to obtain a copy of the diploma for his graduation from UH. Rather, he is seeking to take possession of the actual original diploma that UH maintains and is prepared to provide to him when he has met his financial obligations. While UH would be required to allow Requester to inspect or copy his diploma upon request, the UIPA does not require UH to provide Requester with the original government record that it maintains, which is the

diploma. Consequently, we conclude that UH is not required to provide the original diploma to Requester.

CONCLUSION

Requester's requests for a certified official transcript of his academic record and his original diploma were properly denied under the UIPA. The UIPA only requires agencies to provide inspection or copying of existing records that they maintain. The UIPA does not require UH to create a certified official transcript, which would be a new, original document and not merely a copy of an existing record that UH maintains. Also, the UIPA does not require UH to provide Requester with the official diploma in his name, which was an original document.

RIGHT TO BRING SUIT

Requester is entitled to seek assistance directly from the courts after Requester has exhausted the administrative remedies set forth in section 92F-23, HRS. HRS §§ 92F-27(a), 92F-42(1) (2012). An action against the agency denying access must be brought within two years of the denial of access. HRS § 92F-27(f). For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

If the court finds that the agency knowingly or intentionally violated a provision under Part III, the personal records section of the UIPA, the agency will be liable for (1) actual damages (but in no case less than \$1,000) and (2) costs in bringing the action and reasonable attorney's fees. HRS § 92F-27(d). The court may also assess attorney's fees and costs against the agency when a requester substantially prevails, or it may assess fees and costs against Requester when it finds the charges brought against the agency were frivolous. HRS § 92F-27(e).

This opinion constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES

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APPROVED:

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