

June 10, 1992

The Honorable Benjamin J. Cayetano
Lieutenant Governor
State of Hawaii
State Office Tower
235 South Beretania Street
Honolulu, Hawaii 96813

Dear Lieutenant Governor Cayetano:

Re: Government Records Relating to an Individual's Request for
Name Change

This is in reply to your request for an advisory opinion from
the Office of Information Practices ("OIP") concerning the
above-referenced matter.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act
(Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Office
of the Lieutenant Governor must make available for public inspection
and copying, an individual's petition for change of name,
accompanying fact sheet, and order, filed under chapter 574, Hawaii
Revised Statutes.

BRIEF ANSWER

The UIPA does not require an agency to disclose
"[g]overnment records which, pursuant to state or federal law .
. . are protected from disclosure." Haw. Rev. Stat. □
92F-13(4) (Supp. 1991). It appears that under section
574-5(e), Hawaii Revised Statutes, certain name change records are
expressly protected from public disclosure. However, in our opinion,
section 574-5(e), Hawaii Revised Statutes, does not expressly make
all name change records on file with the Office of the Lieutenant
Governor confidential.

Rather, for the reasons set forth herein, we conclude that subsection (e) of section 574-5, Hawaii Revised Statutes, only applies to those name change petitions that are supported by an affidavit from a prosecuting attorney showing that, for the protection of the petitioner, the publication, recordation, and reporting provisions of this statute, should not be required.

Additionally, based upon nearly identical provisions of the Uniform Information Practices Code, upon which the Legislature modeled the UIPA, and based upon previous OIP opinion letters, we conclude that an administrative rule promulgated under chapter 91, Hawaii Revised Statutes, is not a "state law" within the meaning of section 92F-13(4), Hawaii Revised Statutes. See OIP Op. Ltr. No. 92-3 at 12 n.2 (March 19, 1992). Accordingly, in our opinion, administrative rules adopted by the Office of the Lieutenant Governor before the passage of the UIPA, which provide that name change records are confidential, do not control whether such records must be made available for inspection and copying under the UIPA.

Lastly, we conclude that the disclosure of name change petitions and accompanying fact sheets maintained by the Office of the Lieutenant Governor would "constitute a clearly unwarranted invasion of personal privacy" under the UIPA. Haw. Rev. Stat. 92F-13(1) (Supp. 1991). Accordingly, it is our opinion that the UIPA does not require the Lieutenant Governor to make these government records available for public inspection or copying. In contrast, however, except as provided by section 574-5(e), Hawaii Revised Statutes, we conclude that the order for name change executed by the Lieutenant Governor is not protected from disclosure under the UIPA, and must be made available for inspection or copying upon request by any person.

FACTS

Chapter 574, Hawaii Revised Statutes, sets forth provisions applicable to the use and change of names. An individual's name can be changed by marriage, legitimation, family court order, decree, or judgment, by a court order of any court of competent jurisdiction, or by petition to the lieutenant governor. See Haw. Rev. Stat. 574-5 (1985 and Supp. 1991). A petitioner¹

¹"'Petitioner' means any person [individual] desiring to change the person's name, or, in the case of a minor, the parents or such parent who has custody of the minor, or the guardian of the minor, who submits to the office [of the lieutenant governor] a petition for a change of name." Hawaii Admin. Rules 2-2-1 (1987).

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seeking a change of name from the lieutenant governor must complete and submit a notarized petition, a notice, and a proposed order of name change to the Office of the Lieutenant Governor. An accompanying fact sheet is attached to the petition to verify information contained in the petition.

A notarized petition for a change of name includes the following information concerning the petitioner for a name change:

- (1)The individual's present name;
- (2)Date and place of birth;
- (3)Name as recorded on a birth certificate or certificate of naturalization;
- (4)Previous or other names used;
- (5)State of residency;
- (6)Current residence address;
- (7)Type and date of any felony convictions and their disposition;
- (8)A statement to the effect that the individual is not changing the individual's name to defraud creditors;
- (9)The reason or reasons for the name change; and
- (10)The new name desired.

See Haw. Admin. Rules □ 2-2-2 (1987).

In addition, pursuant to section 2-2-2(a) (10), Hawaii Administrative Rules, the Office of the Lieutenant Governor requires each petitioner for a name change to complete a fact sheet, which is attached to the petition, that contains the following information, as applicable:

- (1)Name and file number as recorded on petitioner's birth certificate and certificate of naturalization;

(2)P

assport name and number;

(3)Name as listed on petitioner's social security card;

(4)Name petitioner uses in employment; (5)Name

petitioner used in high school;

(6)List of all marriage partners, divorces, and corresponding
dates and places;

(7)List of names, dates of birth, and places of birth for all
living children;

(8)Name of legal custodian for each child under 18 years of
age; and

(9)Reason for requesting a name change.

The fact sheet is printed on page four of the petition, which has been designated by the Office of the Lieutenant Governor as "LTG Form A." A copy of the Petition/Fact Sheet form is attached as Exhibit "A."

In its request for an advisory opinion from the OIP, the Office of the Lieutenant Governor noted that historically, and under current administrative rules, it has treated the petition and accompanying fact sheet as a "confidential" record. The Office of the Lieutenant Governor requests the OIP to advise it regarding whether the enactment of the UIPA, effective July 1, 1989, affects the past confidential treatment of these government records. The Office of the Lieutenant Governor also asks whether further statutory authorization should be sought, in addition to the current administrative rules, to protect the confidentiality of the petition and fact sheet.

DISCUSSION

I. INTRODUCTION

The UIPA generally provides that, "[a] ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1991). In

addition, the UIPA states, "[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. 1991). In light of the nature of government records presented for our review, in order to resolve the question presented by this opinion, it is necessary to consider two UIPA statutory exceptions to access. We shall address these exceptions separately below:

II. GOVERNMENT RECORDS PROTECTED FROM DISCLOSURE BY STATE LAW

Section 92F-13, Hawaii Revised Statutes, provides in pertinent part:

□ 92F-13 Government records; exceptions to general rule. This chapter shall not require disclosure of:

. . . .

(4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure;

Haw. Rev. Stat. □ 92F-13(4) (Supp. 1991) (emphasis added).

In light of the above UIPA exception, it becomes necessary to examine the provisions of section 574-5, Hawaii Revised Statutes, which does contain a provision regarding the confidentiality of name change petitions. Specifically, section 574-5(e), Hawaii Revised Statutes, provides:

(e) When the petition is accompanied by an affidavit executed by a prosecuting attorney of this State, the affidavit shall show that for the protection of the person desirous of making a change of name, the following actions shall not be necessary:

(1) Publication in a newspaper of general circulation in the State;

(2) Recordation in the bureau of conveyances; and

(3)Reporting to the registrar of births.

The petition, affidavit, and order shall be kept confidential.

Haw. Rev. Stat. □574-5(e) (1985 and Supp. 1991) (emphasis added).

The underscored confidentiality provision, is placed within subsection (e) of section 574-5, Hawaii Revised Statutes. Thus, it is reasonable to conclude that, given its statutory placement, this confidentiality requirement expressly applies only to petitions for name change that are accompanied by an affidavit from a prosecuting attorney showing that, for the protection of the petitioner, the publication, recordation, and reporting of the name change should not be required. See, e.g., Legislative Reference Bureau, Hawaii Legislative Drafting Manual 13 (8th ed. 1989) ("[s]ubsections are the principal divisions of a section and deal with discrete elements of the section").

However, the legislative history of subsection (e) raises reasonable doubts as to the legislative purpose of the confidentiality provision of section 574-5(e), Hawaii Revised Statutes. Specifically, subsection (e) was enacted as part of an Act approved June 9, 1983, ch. 251, 1983 Haw. Sess. Laws 532 (1983). Legislative testimony and committee reports contain contradictory statements concerning the intended purpose of subsection (e). On one hand, the Senate Committee on Judiciary noted:

The purpose of the bill is to amend section 574-5, Hawaii Revised Statutes, which relates to procedures and requirements for name changes:

. . . .

2.To authorize that the documents used in all name changes be kept confidential;

S. Stand. Comm. Rep. No. 715, 12th Leg., 1983 Reg. Sess., Haw. S.J. 1359-60 (1983) (emphasis added).

On the other hand, The House of Representative Committee on Judiciary, observed:

Your committee is in agreement with the reorganization of the section and approves the

requirement[s] that the noncustodial parent's consent be notarized and that when a name change is made to protect the individual that all documents be kept confidential.

H.R. Stand. Comm. Rep. No. 542, 12th Leg., 1983 Reg. Sess., Haw. H.J. 1082-83 (1983) (emphasis added).

Lastly, written testimony of then Lieutenant Governor John Waihee before the House Committee on Judiciary on House Bill No. 1438, dated March 7, 1983, also states that the bill would amend section 574-5, Hawaii Revised Statutes, "to require that the documents involved with a change of name to protect an individual be kept confidential." [Emphasis added.]

Despite the Senate Committee on Judiciary's conflicting description of the purpose of Act 251, we conclude that the confidentiality provisions of section 574-5(e), Hawaii Revised Statutes, only apply to petitions for name change that are supported by an affidavit from a prosecuting attorney showing that for the protection of the person seeking the name change, the publication, recordation, and reporting of the name change should not be required. That is to say, in our opinion, the confidentiality provisions of section 574-5(e), Hawaii Revised Statutes, do not apply to all petitions for name change, but apply only to those petitions described by subsection (e) of section 574-5(e), Hawaii Revised Statutes. We base this conclusion on the clear statutory placement of the confidentiality provision, the written testimony of then Lieutenant Governor John Waihee, and the report of the House of Representatives Committee on Judiciary describing the intended purpose of House Bill No. 1438.

We must also consider the effect, if any, of section 2-2-6.1 of the Hawaii Administrative Rules, which provides:

□2-2-6.1 Confidentiality of records and hearing.
Petitions on file with the office are confidential and not a matter of public record. The hearing on the denial of a petition shall be confidential and not open to the public.

Haw. Admin. Rule □2-2-6.1 (1987) (emphasis added).

This leads us to consider whether an administrative rule adopted by an agency is a "state law" within the meaning of

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section 92F-13(4), Hawaii Revised Statutes, that permits an agency to deny access to a government record. Based upon the legislative history of section 92F-13(4), Hawaii Revised Statutes, we think the answer to this question is clearly in the negative. Specifically, the UIPA was modeled upon the Uniform Information Practices Code ("Model Code"), drafted by the National Conference of Commissioners on Uniform State Laws. Section 2-103 of the Model Code sets forth the Code's exceptions to public access, and like section 92F-12(4), Hawaii Revised Statutes, protects information made non-disclosable "by federal or state law." See Model Code §2-103(a)(11). The Model Code commentary² on this provision states:

Subsection (a) (11) is a catch-all provision which assimilates into this Article any federal law, state statute or rule of evidence that expressly requires the withholding of information from the general public. The purpose of requiring an express withholding policy is to put a burden on the legislative and judicial branches to make an affirmative judgment.

Model Code §2-103 commentary at 18 (1980) (emphasis added).

Thus, the Model Code provision which is substantively identical to section 92F-13(4), Hawaii Revised Statutes, was intended to permit an agency to deny access to government records made confidential by state legislative, as opposed to administrative, enactments. By limiting the Model Code disclosure exception to legislative enactments, the Model Code drafters apparently wished to prevent an agency from avoiding its affirmative disclosure responsibilities through administrative rulemaking.

For the above reasons, in OIP Opinion Letter No. 92-3 (March 19, 1992), we stated:

²The Legislature directed those interpreting the UIPA to consult the Model Code's commentary to guide the interpretation of similar provisions of the UIPA. See H.R. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988). See also, section 1-24, Hawaii Revised Statutes, concerning the interpretation of uniform acts.

It is our opinion that an agency rule prohibiting the disclosure of government records which is adopted pursuant to a general legislative delegation of rulemaking power is not a state law that protects a government record from disclosure under section 92F-13(4), Hawaii Revised Statutes. A contrary conclusion would permit agencies to readily defeat the comprehensive legislative scheme established by the UIPA. [citations omitted.]

OIP Op. Ltr. No. 92-3 at 12 n.2 (emphasis added).

Consistent with the above authorities and our previous opinion letter, we conclude that an agency rule adopted under chapter 91, Hawaii Revised Statutes, is not a "state law" that permits the non-disclosure of a government record under section 92F-13(4), Hawaii Revised Statutes..

III. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

Our conclusion that only those name change petitions described by section 574-5(e), Hawaii Revised Statutes, are protected from disclosure under section 92F-13(4), Hawaii Revised Statutes, does not end our analysis. The UIPA also does not require an agency to disclose "[g] overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. □92F-13(1) (Supp. 1991). We now consider whether name change petitions are protected from disclosure by the UIPA's personal privacy exception.

The UIPA declares that 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. 1991).

Under this balancing test, "if a privacy interest is not `significant,' a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988); S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw S.J. 689, 690 (1988). Indeed, the legislative history of the UIPA's privacy exception indicates this exception only applies if an individual's privacy

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interest in a government record is "significant." See id. ("[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure").

In section 92F-14(b), Hawaii Revised Statutes, the Legislature set forth examples of information in which an individual has a "significant" privacy interest. This section does not include in its examples information set forth in a name change petition or accompanying fact sheet. However, the examples set forth in section 92F-14(b), Hawaii Revised Statutes, do not purport to be exhaustive, and indeed, the commentary to parallel provisions in the Model Code reflects that they were not intended to be. See Model Code § 3-102(b) commentary at 23 (1980).

Although the information set forth in a name change petition and accompanying fact sheet is not highly intimate, we nevertheless believe that given its nature, it involves a significant privacy interest. The petition and fact sheet includes information concerning the petitioner's family history, date and place of birth, nature and date of felony convictions, passport data, marriages and divorces, names and dates of birth of all living children, current residential address, and the reason for the name change. Accordingly, we conclude that as an initial matter, an individual has a significant privacy interest in the information set forth on the petition and accompanying fact sheet.

We now must balance an individual's significant privacy interest in information set forth in a name change petition against the public interest in disclosure, to determine whether its disclosure would constitute a clearly unwarranted invasion of personal privacy. See Haw. Rev. Stat. § 92F-14(a) (Supp. 1991). In previous OIP opinion letters, we concluded that the "public interest" to be considered under the UIPA's balancing test is the public interest in the disclosure of "[o]fficial information that sheds light on an agency's performance of its statutory purpose," see OIP Op. Ltr. No. 90-7 (Feb. 9, 1990), and in information which sheds light upon the conduct of government officials, see OIP Op. Ltr. No. 90-17 (Apr. 24, 1990). Two of the basic policies served by the UIPA are to "[p]romote the public interest in disclosure" and to "[e]nhance governmental accountability through a general policy of access to government records." See Haw. Rev. Stat. § 92F-2 (Supp. 1991).

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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 (Supp. 1991). Thus, the public interest to be considered in applying the UIPA's balancing test is the public interest in disclosure of information which sheds light upon an agency's performance of its duties and the conduct of government officials, or which otherwise promotes governmental accountability. In contrast, however, in previous OIP advisory opinions, we reasoned that this "public interest," in the usual case, is "not fostered by disclosure of information about private citizens that is accumulated in various government files but that reveals little or nothing about any agency's own conduct." OIP Op. Ltr. No. 89-16 (Dec. 27, 1989), quoting U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989).

Applying the above principles to the information set forth in a name change petition and accompanying fact sheet, we conclude that the individual's significant privacy interest in the same is not outweighed by the public interest in disclosure.

In particular, we find that disclosure of the information set forth in a name change petition and accompanying fact sheet would say little, if anything, about the Office of the Lieutenant Governor's performance of its statutory duties, its conduct, upon the formation and conduct of public policy, or "the discussions, deliberations, decisions and action of government agencies" or their officials. Accordingly, we conclude that the disclosure of name change petitions and accompanying fact sheets on file with the Office of the Lieutenant Governor would constitute a clearly unwarranted invasion of personal privacy under the UIPA.

On the contrary, however, we do not believe that public access to the name change order entered by the Lieutenant Governor under section 574-5, Hawaii Revised Statutes, would result in a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. First, the name change order contains identical information to that set forth in the Notice of Change of Name, that, by law, must be published in a newspaper of general circulation. Additionally, the name change order must be sent by the petitioner to the Bureau of Conveyances for recording. See generally, Haw. Rev. Stat. §92F-12(a) (15) (Supp. 1991).

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Additionally, even assuming that an individual has a significant privacy interest in the information set forth in a name change order, we believe that such privacy interest is outweighed by the public interest in disclosure. The Governor's Committee on Public Records and Privacy noted the existence of a significant public interest in information concerning the previous and new name assumed under the name change procedures set forth by chapter 574, Hawaii Revised Statutes. See Vol. I Report of the Governor's Committee on Public Records and Privacy 152 (1987).

Similarly, courts in other jurisdictions have found a substantial public interest in the disclosure of the equivalent of Hawaii's name change order. For example, a New York statute requires that a copy of the name change order be available for public inspection in the court clerk's office. In In re the Adoption of J.O.T., 466 N.Y.S.2d 636 (Fam. Ct. 1983), noting the public interest in access to an order for name change, the court stated, "[f] or the protection of both the petitioner and the public, a public record should be created in order to memorialize the change of name." Id. at 638.

Lastly, section 92F-12(a) (2), Hawaii Revised Statutes, requires that agencies make available for inspection during regular business hours "orders made in the adjudication of cases." See generally, OIP Op. Ltr. No. 90-40 (Dec. 31, 1990). Therefore, we conclude that except for those orders described by section 574-5(e), Hawaii Revised Statutes, name change orders must be made available for inspection and copying under the UI PA.

In light of our conclusion that the disclosure of a name change petition would constitute a clearly unwarranted invasion of personal privacy, we do not believe that statutory amendments need be pursued by the Office of the Lieutenant Governor to authorize it to continue its past practice of treating name change petitions and accompanying fact sheets as confidential.

CONCLUSION

We conclude that, except as provided by section 574-5(e), Hawaii Revised Statutes, name change orders maintained by the Lieutenant Governor must be made available for inspection and copying during regular business hours.

In contrast, we conclude that under the UIPA, the disclosure of an individual's name change petition, and

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accompanying fact sheet, would "constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. 92F-13(1) (Supp. 1991) . Accordingly, the UIPA does not require the Lieutenant Governor to make a name change petition and fact sheet available for public inspection and copying.

Very truly yours,

Hugh R. Jones
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

HRJ: sc