

Op. Ltr. 92-20 Disclosure of Information About Apprentices

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 13, 1992

The Honorable Keith Ahue
Director
Department of Labor & Industrial Relations
830 Punchbowl Street, Room 321
Honolulu, Hawaii 96812-3769

Attention: Mr. Stanley S. Honda
Apprenticeship Division Administrator

Dear Mr. Ahue:

Re: Disclosure of Information About Apprentices

This is in reply to a memorandum from Mr. Mario R. Ramil, former Director of the Department of Labor & Industrial Relations, to the Office of Information Practices ("OIP"), requesting an advisory opinion concerning the above-referenced matter.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Department of Labor and Industrial Relations' Apprenticeship Division ("DLIR"), may disclose to the federal Bureau of Apprenticeship and Training ("BAT") the name, social security number, date of birth, sex, ethnicity, and veteran status of each apprentice who is registered with the DLIR under chapter 372, Hawaii Revised Statutes.

BRIEF ANSWER

In our opinion, the DLIR's public disclosure of the social security number, date of birth, sex, ethnicity, and veteran status of each apprentice who is registered with the DLIR under chapter 372, Hawaii Revised Statutes, would constitute a "clearly unwarranted invasion of personal privacy" under the UIPA. See Haw. Rev. Stat. § 92F-13(1) (Supp. 1991). Accordingly, we conclude that under part II of the UIPA, the DLIR should not make

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this information available for public inspection and copying.

Furthermore, we believe that the UIPA's inter-agency disclosure provisions, which permit the inter-agency disclosure of otherwise confidential information under limited circumstances, do not authorize the DLIR to disclose this information to the BAT. See Haw. Rev. Stat. § 92F-19 (Supp. 1991).

In contrast, we find that the name of each registered apprentice is not protected from disclosure under the UIPA and, therefore, must be made available for public inspection and copying, upon request.

FACTS

By letter dated October 27, 1989, the DLIR informed the OIP that the BAT, an agency within the U.S. Department of Labor, had requested information concerning registered apprentices for BAT's computerized system known as Apprenticeship Management System ("AMS"). Specifically, the information required by the BAT for the AMS is: each apprentice's name, social security number, date of birth, sex, ethnic code, and veteran code. Currently, the DLIR provides the BAT with aggregate data only, severed of any identifying characteristics.

According to the DLIR's October 27, 1989 letter, the AMS is designed to use information on individual apprentices obtained from various states' programs to build summaries of apprenticeship activity by program, state, region, industry, occupation, and by demographic and veteran status characteristic groups. The BAT has assured the DLIR that the information requested would not be "released to the public at large or to specific segments of the general public." Furthermore, the letter stated that "[w]hile the data from Hawaii would be reflected in national statistical data, it would be purged of individual identification criteria."

In its letter to the OIP, the DLIR requests an opinion regarding whether, under the UIPA, the requested information concerning registered apprentices may be disclosed to the BAT in individually identifiable form.

In 1986, before the passage of the UIPA, the DLIR made a similar inquiry to the Department of the Attorney General. The Attorney General concluded, under the records law in effect at that time (chapter 92E, Hawaii Revised Statutes), that "[w]hile recognizing the merits of a computerized system of record keeping, we were unable to locate any statutory authority enabling the Apprenticeship Division to release the information requested. Therefore, we respond to your inquiry in the negative." Haw. Att'y Gen. Op. No. 86-14 at 2.

Under chapter 372, Hawaii Revised Statutes, the Director of the DLIR is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices and to extend the application of those standards by requiring the inclusion thereof in apprenticeship programs. See Haw. Admin. Rules § 12-30-2(a) (1981). Under section 12-30-7(a), Hawaii Administrative Rules, "[a]pprentices shall be individually registered under a registered program. Registration shall be effected by filing copies of each apprenticeship agreement with the [DLIR]." The term "apprenticeship agreement" means a written agreement that conforms to standards established under chapter 372, Hawaii Revised Statutes, and is entered into between an apprentice and (1) an employer, (2) an association of employers, (3) an organization of employees, or (4) a joint committee representing employers and employees. Haw. Rev. Stat. § 372-2(4) (1985).

The OIP is informed that it has been the DLIR's practice to routinely disclose information concerning an individual's apprenticeship status, in response to inquiries from the public.

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); see also Haw. Rev. Stat. § 92F-12 (Supp. 1991) (instances in which disclosure of government records is mandated). The UIPA further provides that unless one of the exceptions set forth in section 92F-13, Hawaii Revised Statutes, authorizes an agency to withhold access to government records, they must be made available for inspection and copying upon request by any person. Haw. Rev. Stat. § 92F-11(b) (Supp. 1991).

Section 92F-12(b)(2), Hawaii Revised Statutes, requires each agency to disclose "[g]overnment records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." [Emphasis added.] Section 372-8, Hawaii Revised Statutes, provides that the DLIR shall "cooperate with the federal committee on apprenticeship to the fullest extent consistent with this chapter." In our opinion, section 372-8, Hawaii Revised Statutes, is not a State statute that expressly authorizes disclosure of the relevant government records.

In addition to the disclosures authorized by the above UIPA provisions, the UIPA contains provisions that apply exclusively to the inter-agency disclosure of government records. Specifically, section 92F-19(a), Hawaii Revised Statutes,

describes the limited conditions under which one agency may disclose to another agency government records which are not otherwise "public" under the UIPA.¹

Thus, State agencies must disclose government records or information therein to another agency if it is "otherwise subject to disclosure" under the UIPA, and they may disclose otherwise confidential information to another agency if at least one of the applicable conditions authorizing inter-agency disclosure under section 92F-19, Hawaii Revised Statutes, is met. See Haw. Rev. Stat. § 92F-19(a)(10) (Supp. 1991).

As such, to resolve the issue presented, we must first examine whether information concerning the name, social security number, date of birth, sex, ethnic code, and veteran code of each apprentice who is registered with the DLIR is "public" information under part II of the UIPA. If so, this information must be disclosed to the BAT.

II. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

The only one of the UIPA's statutory exceptions to required agency disclosure that would apply to the information concerning registered apprentices is the exception for "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-13(1) (Supp. 1991).

The UIPA's personal privacy exception involves a "balancing" of competing interests. Specifically, the UIPA states that "[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). Furthermore, the UIPA's legislative history instructs that "[i]f the privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." 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).

A. Social Security Number, Date of Birth, Sex, Ethnicity, and Veteran's Status

¹The limitations of section 92F-19, Hawaii Revised Statutes, apply only if the government record is not otherwise publicly accessible to any person under part II of the UIPA, entitled "Freedom of Information." See Haw. Rev. Stat. § 92F-19(a)(10) (Supp. 1991); see also Haw. Rev. Stat. § 92F-3 (Supp. 1991) ("person" includes an "agency").

In previous OIP advisory opinions, we concluded that the disclosure of the social security number, date of birth, sex, ethnicity, and veteran's status of an individual would generally constitute a clearly unwarranted invasion of personal privacy. See OIP Op. Ltr. No. 89-4 (Nov. 9, 1989) (social security numbers of applicants for Hawaiian Home Lands homestead leases); OIP Op. Ltr. No. 90-7 (Feb. 9, 1990) (social security numbers and birth dates of former licensees); OIP Op. Ltr. No. 90-10 (Feb. 26, 1990) (birth dates of licensees); OIP Op. Ltr. No. 90-25 (July 12, 1990) (birth dates, social security numbers, and sex of individuals registering firearms); OIP Op. Ltr. No. 90-28 (Aug. 23, 1990) (social security numbers and birth dates of former contractors' licensees); OIP Op. Ltr. No. 91-26 (Dec. 13, 1991) (birth dates of police officers); OIP Op. Ltr. No. 91-19 (Oct. 18, 1991) (ethnicity of Hawaiian Home Lands lessees); OIP Op. Ltr. No. 92-8 (July 16, 1992) (ethnicity and names of veterans).

We find no basis to depart, in this opinion, from our previous conclusion that an individual has a significant privacy interest in information such as that individual's social security number, date of birth, sex, ethnicity, and status as a veteran, and that disclosure of this information would, in most cases, constitute a clearly unwarranted invasion of personal privacy.²

Because the Legislature adopted the UIPA's personal privacy exception to implement the individual's right to privacy under the Constitution of the State of Hawaii, see section 92F-2, Hawaii Revised Statutes, the DLIR should not publicly disclose this information about individual apprentices.

B. Name

It is questionable whether an individual has a significant privacy interest in the disclosure of the fact that the individual is an apprentice or that the individual participates in an apprenticeship program. In comparison, in previous opinion letters, we concluded that individuals do not have a significant privacy interest in the fact that they are licensed to practice a profession or a trade, or certified to engage in a restricted activity by the State. See OIP Op. Ltr. No. 90-28 (Aug. 23, 1990); OIP Op. Ltr. No. 92-18 (Sept. 16, 1992). Additionally, the DLIR's longstanding practice has been to disclose the names of registered apprentices, or the fact that a named individual is

²BAT's assurances that it will not disclose the requested information and that it will purge the data of "individual identification criteria" do not affect our conclusion. Because the UIPA utilizes an "any person" access standard, see section 92F-11, Hawaii Revised Statutes, all requesters must be treated equally. See OIP Op. Ltr. No. 90-34 (Dec. 10, 1990).

a registered apprentice, in response to inquiries from the public. It was not the intent of the Legislature that the UIPA's exceptions to public access, including its personal privacy exception, apply to records that were available for inspection before enactment of the UIPA. 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). Accordingly, it is our opinion that under the UIPA, the DLIR must make the names of the registered apprentices available for public inspection and copying.³

Although we find that the information requested by the BAT, other than the names of the registered apprentices, is protected from public disclosure under the UIPA's clearly unwarranted invasion of personal privacy exception, the UIPA does provide limited circumstances under which information protected from disclosure on privacy grounds under part II of the UIPA may be disclosed by one agency to another agency.

III. UIPA'S INTER-AGENCY DISCLOSURE PROVISIONS

As we explained above, section 92F-19(a), Hawaii Revised Statutes, sets forth the limited conditions under which an agency may disclose otherwise confidential government records to another "agency." See Haw. Rev. Stat. § 92F-3 (Supp. 1991) (definition of "agency"). The purpose of the UIPA's limitations on the inter-agency disclosure of otherwise confidential information is to further the UIPA's policy of "[m]ak[ing] government accountable to the individual in the collection, use and dissemination of information relating to them." Haw. Rev. Stat. § 92F-2 (Supp. 1991).

In OIP Opinion Letter No. 90-9 (Feb. 26, 1990), we concluded that only paragraphs (5) and (8) of section 92F-19(a), Hawaii Revised Statutes, authorize the disclosure of government records to agencies of the federal government. Therefore, for disclosure to be permitted to federal agencies, it must be specifically authorized by either of the following two paragraphs of subsection (a) of section 92F-19, Hawaii Revised Statutes:

§ 92F-19 Limitations on disclosure of government records to other agencies. (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

. . . .

³The OIP is informed, however, that the names of the registered apprentices alone will not be useful to the BAT for its purposes.

- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;

. . . .

- (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that received federal moneys;

Haw. Rev. Stat. § 92F-19(a) (Supp. 1991).

We find that the provisions of subsection (a)(5) above do not apply to the facts presented in this opinion. As discussed earlier, the BAT merely seeks the information concerning apprentices to create summaries of apprenticeship activity; we have no reason to conclude that it is conducting a civil or criminal law enforcement investigation. Therefore, in our opinion, section 92F-19(a)(5), Hawaii Revised Statutes, does not authorize the disclosure of the requested information to the BAT.

We now turn to an examination of whether section 92F-19(a)(8), Hawaii Revised Statutes, authorizes disclosure of the pertinent information to the BAT. Even assuming that the information concerning the apprentices is requested by the BAT "for the purpose of auditing or monitoring," and that the DLIR apprenticeship program constitutes an "agency program," we still would need to find that the apprenticeship program "received federal moneys." The OIP is informed that the DLIR's apprenticeship program does not receive any federal moneys. Furthermore, based on the definitions of the terms "audit" and "monitor" as discussed in previous OIP opinions, we conclude that the disclosure of the social security number, date of birth, sex, ethnicity, and veteran's status of each apprentice to permit the BAT to establish a computerized system of statistical data about apprenticeship activity would not be for the purpose of either "auditing" or "monitoring." See OIP Op. Ltr. No. 90-9 (Feb. 26, 1990); OIP Op. Ltr. No. 92-8 (July 16, 1992).

Thus, neither provision permitting inter-agency disclosure to federal agencies applies to the information requested by the BAT. Accordingly, we conclude that section 92F-19(a), Hawaii Revised Statutes, does not authorize the disclosure of each

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registered apprentice's social security number, date of birth, sex, ethnicity, and veteran's status to the BAT.

Finally, a new section of the UIPA, section 92F-4, Hawaii Revised Statutes, provides that "[w]here compliance with any provision of [the UIPA] would cause an agency to lose or be denied funding, services, or other assistance from the federal government, compliance with that provision shall be waived but only to the extent necessary to protect eligibility for federal funding, services, or other assistance." See Act 118, 1992 Haw. Sess. Laws 197. As discussed previously, the DLIR does not receive any federal moneys for its apprenticeship program. Further, the OIP is informed that the DLIR will not lose or be denied federal funding or other assistance by not disclosing to the BAT the information concerning the registered apprentices. Consequently, section 92F-4, Hawaii Revised Statutes, does not apply to require disclosure of the requested apprentice information.

CONCLUSION

For the reasons stated above, we conclude that the social security number, date of birth, sex, ethnicity, and veteran's status of each registered apprentice are protected from public disclosure under section 92F-13(1), Hawaii Revised Statutes. Furthermore, it is our opinion that the UIPA's inter-agency disclosure provisions do not authorize the disclosure of this information to the BAT. However, we conclude that under the UIPA, the DLIR must make the names of the registered apprentices available for public inspection and copying upon request.

Very truly yours,

Mimi K. Horiuchi
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

MKH:sc
c: Wayne Matsuura
Deputy Attorney General