

Op. Ltr. 93-16 Disclosure of Condominium Association Registry

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 1, 1993

The Honorable Clifford K. Higa
Director
Department of Commerce and Consumer Affairs
P.O. Box 3469
Honolulu, Hawaii 96801

Attention: Ms. Noe Noe Tom
Licensing Administrator

Dear Mr. Higa:

Re: Disclosure of Condominium Association Registry

This is in reply to Ms. Noe Noe Tom's letter to the Office of Information Practices ("OIP") dated March 31, 1993, requesting an advisory opinion concerning the above-referenced matter.

ISSUE PRESENTED

Whether the State of Hawaii's Real Estate Commission ("Commission") must make a computerized condominium association registry ("computerized registry") available for public inspection and copying, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

BRIEF ANSWER

Yes. In our opinion, the computerized registry in its current form must be made available for public inspection and copying upon request, after individuals' addresses and telephone numbers have been segregated. In previous OIP advisory opinions, we found that the disclosure of an individual's home address and home telephone number would constitute a "clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes. We see no reason to depart from the conclusion that individuals' privacy interest in their home addresses and home telephone numbers outweighs the public interest in disclosure.

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The current computerized registry contains the addresses and telephone numbers of individuals, some of which are residential addresses and telephone numbers. Because they are identified only as "addresses" and "telephone numbers," it is not possible to determine by examining the computerized registry alone whether these addresses and telephone numbers are the individuals' "public" mailing addresses and telephone numbers, or the "residence" addresses and telephone numbers, provided on the Condominium Association Registration Applications ("Application"). Therefore, we conclude that the Commission may not make any of the addresses and telephone numbers in the computerized registry available for public inspection and copying, because the disclosure of this information would constitute a "clearly unwarranted invasion of personal privacy."

FACTS

Section 514A-95.1, Hawaii Revised Statutes, requires each condominium project having six or more units to register annually with the Commission and to provide information such as "the name, business address, and phone number of a designated contact person for the association." Haw. Rev. Stat. § 514A Supp. 1992).

The OIP is informed that the Commission developed the Application form to implement section 514A-95.1, Hawaii Revised Statutes. A copy of the Application form is attached as Exhibit A. The Application form seeks, among other items of information, the "residence address" and the "residence telephone no." of the president of the board of directors and the association's contact person.

In Ms. Noe Noe Tom's letter to the OIP dated March 31, 1993, Ms. Tom explains that "[t]he Commission's staff uses information from the application form to create a computer database registry." The March 31, 1993 letter further states that the "[a]ddresses are entered without distinction whether it is a public or residential address. It's simply shown as an 'address.'" Similarly, the telephone numbers, whether public or residential, are shown in the registry merely as "telephone numbers."

DISCUSSION

I. COMPUTERIZED CONDOMINIUM ASSOCIATION REGISTRY IS A GOVERNMENT RECORD

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. 1992). Under the UIPA, the term "'[g]overnment record' means information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-11(a) (Supp. 1992)

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(emphasis added). Thus, the computerized registry is a "government record" subject to the UIPA's disclosure provisions.

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, the records must be made available for inspection and copying upon request by any person. See Haw. Rev. Stat. § 92F-11(b) (Supp. 1992). The only one of the UIPA's statutory exceptions to required agency disclosure that would arguably apply to some of the information in the computerized registry is set forth in section 92F-13(1), Hawaii Revised Statutes. Under section 92F-13(1), Hawaii Revised Statutes, agencies must not disclose information that, if disclosed, would constitute a "clearly unwarranted invasion of personal privacy."

II. RESIDENTIAL ADDRESSES AND TELEPHONE NUMBERS PROTECTED FROM DISCLOSURE

In previous OIP advisory opinions, we have found that an agency's disclosure of an individual's home address and home telephone number would constitute a "clearly unwarranted invasion of personal privacy" and, therefore, is protected from disclosure under section 92F-13(1), Hawaii Revised Statutes. See, e.g., OIP Op. Ltr. No. 89-13 (Dec. 12, 1989); OIP Op. Ltr. No. 89-16 (Dec. 27, 1989); OIP Op. Ltr. No. 90-14 (Mar. 30, 1990).

The "addresses" in the computerized registry consist of a mixture of the residential addresses and "public mailing addresses" of individuals, and nothing in the registry differentiates the two types of addresses. Based on the principles of the OIP advisory opinions above referenced, we believe that the Commission's disclosure of the addresses and telephone numbers in the current computerized registry, which includes residential addresses and telephone numbers, would constitute a "clearly unwarranted invasion of personal privacy" under the UIPA. Consequently, the Commission must segregate the addresses and telephone numbers of individuals in the computerized registry, before making the computerized registry available for public inspection and copying.

III. EFFECT OF SECTION 514A-95.1, HAWAII REVISED STATUTES

The OIP is informed that the Commission believes that section 514A-95.1, Hawaii Revised Statutes, may make the residential addresses of contact persons contained in the registry public. Although section 514A-95.1, Hawaii Revised Statutes, provides that the contact person's "name, business address, and phone number" shall be submitted to the Commission annually, it does not explicitly require that the information submitted be made public. Further, in our review of chapter 514A, Hawaii Revised Statutes, known as the Condominium Property

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Act, we did not find any provision that explicitly makes the Applications public. Therefore, our conclusion that the UIPA prohibits disclosure of the undifferentiated addresses and telephone numbers in the current computerized registry is unaffected by the provisions of section 514A-95.1, Hawaii Revised Statutes.

IV. EFFECT OF OIP OPINION LETTER NO. 92-18 (SEPT. 16, 1992)

Ms. Tom's letter to the OIP dated March 31, 1993 states that although "a hard copy of the registry has never been released to the public," the Commission has been re-examining the issue of public disclosure of the registry "in light of OIP Op. No. 92-18 . . . and in light of inquiries it has been receiving." We do not believe the principles set forth in that opinion are applicable to the computerized registry in its current form.

In OIP Opinion Letter No. 92-18 (Sept. 16, 1992), we found that pesticide applicators who worked out of their homes and who listed their home addresses as their business addresses on applications for certification had a diminished privacy interest in their home addresses. In contrast, in the facts before us, one cannot discern which of the addresses in the computerized registry are used by contact persons as both their residential and business, or "public," addresses. Because the computerized registry in its current form does not distinguish those addresses that are purely residential from those that are business or used for both residential and business purposes, the principles of OIP Opinion Letter No. 92-18 (Sept. 16, 1992) do not apply, and the addresses in the computerized registry may not be publicly disclosed.

We emphasize that our discussion here is limited to the addresses in the current computerized registry, as distinguished from the "public mailing" and "residence" addresses and telephone numbers as listed on the Applications. With respect to the addresses and telephone numbers on the Applications, in our opinion an individual would not have a significant privacy interest in that individual's "public mailing address" or "public telephone number," even if the public mailing address or public

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telephone number is also that individual's residential address or residential telephone number, respectively.¹

V. EFFECT OF NOTICE ON APPLICATION FORM

Additionally, we do not believe that the Application form's statement that "[t]he name and address of the contact person will become public information" changes our conclusion that the registry addresses must not be disclosed. The UIPA provides that each agency shall disclose "[a]ny government record, if the requesting person has the prior written consent of all individuals to whom the record refers." Haw. Rev. Stat. § 92F-12(b)(1) (Supp. 1992). In our opinion, the "notice" does not constitute the "prior written consent" of the contact person to disclose that individual's residential address. In fact, based on our review of the application form, it appears that the contact person is not necessarily the same individual who signs the application form. Additionally, it is not clear as to what "address" the "notice" refers; that is, the "public mailing address," the "residence address," or both.

VI. EFFECT OF ASSURANCES OF CONFIDENTIALITY

Ms. Tom's March 31, 1993 letter to the OIP states the Commission's concern that the UIPA "may be violated if [the registry] were provided to the public because (1) staff may have informed registrants that residence addresses would remain confidential (based on OIP Op. No. 91-1),² and (2) the application form may give the impression that residential addresses would remain confidential." As above discussed, it is the UIPA itself that prohibits disclosure of the residential addresses, and not the express or implied representations of the Commission staff or the application form.³

VII. COMPILATION OF RECORDS

¹See OIP Op. Ltr. No. 91-1 (Feb. 15, 1991) (a "public record address" provided on a massage therapist license application must be made available for public inspection and copying).

²In OIP Opinion Letter No. 91-1 (Feb. 15, 1991), we found that public disclosure of a licensee's home address and home telephone number would constitute a clearly unwarranted invasion of personal privacy.

³We note that the OIP previously opined that an agency may not validly make a promise of confidentiality that would circumvent the disclosure requirements of the UIPA. See, e.g., OIP Op. Ltr. No. 90-2 (Jan. 18, 1990); OIP Op. Ltr. No. 90-39 (Dec. 31, 1990).

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Under the UIPA, "an agency shall not be required to prepare a compilation or summary of its records," "[u]nless the information is readily retrievable in the form in which it is requested." Haw. Rev. Stat. ~~§ 192F~~ (Supp. 1992). Thus, the Commission is not required by the UIPA to compile a new computerized registry that contains the names and "public" addresses and "public" telephone numbers of the contact persons. However, we note that a requester has the option of inspecting and copying the records from which the registry is derived, that is the Applications. If that option is chosen, the agency would be required to review the Application forms and segregate the residential addresses and the residential telephone numbers.

CONCLUSION

For the reasons stated above, we conclude that the addresses and telephone numbers as contained in the current computerized registry are protected from public disclosure under section 92F-13(1), Hawaii Revised Statutes. Therefore, under the UIPA, the addresses and telephone numbers must be segregated from the computerized registry before it is made available for public inspection and copying.

Very truly yours,

Mimi K. Horiuchi
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

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