

April 25, 1994

Ms. Fusako Yamamoto
[Home address withheld]

Dear Ms. Yamamoto:

Re: Identities of Section 8 Housing Recipients

This is in reply to your letter 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"), information concerning whether a specified single-family home has been occupied by individuals who receive Section 8 housing assistance must be made available for public inspection and copying upon request.

BRIEF ANSWER

No. The UIPA generally provides that all government records shall be made available for public inspection and copying unless protected by one of the UIPA's exceptions to required agency disclosure contained in section 92F-13, Hawaii Revised Statutes.

In applying these exceptions, we find that the UIPA's "clearly unwarranted invasion of personal privacy" exception, section 92F-13(1), Hawaii Revised Statutes, protects from disclosure information concerning whether individuals, who have been identified by their residential address, receive Section 8 housing assistance.

Further, we believe that section 92F-12(b)(3), Hawaii Revised Statutes, which requires the disclosure of government records pursuant to a showing of compelling circumstances affecting the health or safety or any individual, does not apply to the facts presented.

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FACTS

By letter dated March 23, 1993, you requested an advisory opinion from the OIP concerning your right to know whether a neighboring house "has been occupied by Sec. 8 housing privileged people during the past 10 years."

As we described in OIP Op. Ltr. No. 92-11 (Aug. 12, 1992), the State of Hawaii ("State") and the City and County of Honolulu ("City") participate in a federal program that enables the State and the City to secure federal funds to provide rent-subsidized housing for financially eligible families who require government assistance. This housing program is authorized by the Section 8 Set-Aside Program of the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f (Supp. 1988), and is commonly referred to as the "Section 8 Housing Assistance Payments Program." The United States Department of Housing and Urban Development ("HUD") administers the Section 8 program on the federal level.

According to the State Hawaii Housing Authority ("HHA"), the Section 8 program is implemented locally in two ways: (1) the Section 8 existing housing program, under which the State provides housing certificates and vouchers to eligible families, who then find housing in the private rental market; and (2) project-based assistance, in which an entire apartment building is in the Section 8 program.

On February 10, 1993, you were informed by an OIP staff attorney that the HHA had stated that the house at the address you provided is not a Section 8 program structure, and that you could request an OIP opinion if you wanted to know whether the tenants are in the Section 8 program.¹

In your letter and in telephone conversations with OIP staff attorneys, you have described incidents of alleged harassment by the neighboring rental tenants. Because of this alleged harassment, you believe you are entitled to know whether these

¹On April 4, 1994, the HHA informed the OIP that it cannot conduct a computer search of its Section 8 records by tenant address. Thus, if the HHA were provided with only the tenant's address, HHA staff would have to search manually through thousands of files to determine whether a building at a particular address housed individuals who receive Section 8 housing assistance. If that is the case, then the HHA does not maintain records that would be responsive to your request. (The HHA believes that you also provided the HHA with the name of the landlord who owns the house at the particular address provided by you.)

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tenants receive Section 8 housing assistance, under section 92F-12(b)(3), Hawaii Revised Statutes.

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. 1992). Thus, "[e]xcept as provided by section 92F-13, each agency upon request by any person shall make government records available for public inspection and copying." Haw. Rev. Stat. § 92F-11(b) (Supp. 1992).

Based upon the facts before us, we find that only one of the five UIPA exceptions, section 92F-13(1), Hawaii Revised Statutes, is relevant in our consideration of whether the status of an individual as a recipient or non-recipient of Section 8 housing assistance is protected from disclosure under the UIPA. Under section 92F-13(1), Hawaii Revised Statutes, an agency is not required to disclose "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy."

Additionally, you believe that section 92F-12(b)(3), Hawaii Revised Statutes, requires disclosure of the Section 8 status of the occupants of the house at the address provided by you. Section 92F-12(b)(3), Hawaii Revised Statutes, provides:

(b) Any provision to the contrary notwithstanding, each agency shall also disclose:

. . . .

(3) Government records pursuant to a showing of compelling circumstances affecting the health or safety of any individual;

Haw. Rev. Stat. § 92F-12(b)(3) (Supp. 1992).

First, we consider the applicability of section 92F-13(1), Hawaii Revised Statutes, to the facts presented.

II. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

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

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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. 1992). Additionally, an individual must have a "significant" privacy interest in a government record before the UIPA's privacy exception will apply to that record. See 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) ("[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure").

Section 92F-14(b), Hawaii Revised Statutes, lists examples of information in which an individual has a significant privacy interest, and two of these examples may be applicable to the facts presented. Specifically, individuals have a significant privacy interest in "[i]nformation relating to eligibility for social services or welfare benefits or to the determination of benefit levels," section 92F-14(b)(3), Hawaii Revised Statutes, and in "[i]nformation describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness," section 92F-14(b)(6), Hawaii Revised Statutes.

In a previous OIP advisory opinion letter, we stated our belief that "ordinarily, an individual has a significant privacy interest in the fact that they appear on a waiting list for rent-subsidized housing." We further stated in that opinion letter that an individual has a significant privacy interest in information that "would reveal that the applicant has an income equal to or below the minimum required for eligibility in the Section 8 Program." OIP Op. Ltr. No. 92-11 at 10 (Aug. 12, 1992) (finding no significant privacy interest where names of applicants on waiting list for rent-subsidized housing had been publicly announced; finding public interest in disclosure of information regarding the awarding of apartment units to the proper individuals and in accordance with the waiting list procedure outweighs the significant privacy interests of the individuals applying for the Section 8 Program).

Accordingly, in our opinion, ordinarily individuals have a significant privacy interest in the fact that they receive Section 8 housing assistance, under sections 92F-14(b)(3) and 92F-14(b)(6), Hawaii Revised Statutes. Further, we believe that, ordinarily, any public interest in the disclosure of the identities of those receiving Section 8 housing assistance would not outweigh the significant privacy interests of the individual recipients and, therefore, disclosure of the identities of those who receive Section 8 assistance would constitute a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. We have previously found that the "public interest" underlying the UIPA is "not fostered by

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disclosure of information about private citizens that is accumulated in various government files but that reveals little or nothing about an agency's own conduct." OIP Op. Ltr. No. 89-16 (Dec. 27, 1989), quoting United States Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989). In our opinion, the disclosure of the identities of Section 8 recipients would reveal little or nothing about an agency's conduct. On the facts presented, we do not find a public interest in disclosure that would outweigh the significant privacy interests of the Section 8 recipients. Therefore, under the UIPA, information that would confirm or deny whether individuals who are identified as living at a particular address receive Section 8 housing assistance should not be made publicly available.

We now turn to examine whether this information must be made available to you under the UIPA provision that requires the disclosure of government records in certain compelling circumstances involving an individual's health or safety.

III. COMPELLING CIRCUMSTANCES AFFECTING THE HEALTH AND SAFETY OF ANY INDIVIDUAL

In a recent advisory opinion letter, we examined in depth the scope of section 92F-12(b)(3), Hawaii Revised Statutes. See OIP Op. Ltr. No. 93-15 at 11-13 (Oct. 1, 1993) (disclosure of medical information concerning a county fire rescue specialist to the individual's employer is prohibited under the UIPA, absent the individual's written consent). In that opinion, we observed that section 92F-12(b)(3), Hawaii Revised Statutes, is substantially the same as section 552a(b)(8) of the federal Privacy Act of 1974 (1988 & Supp. IV 1992) ("Privacy Act"),² and looked to the legislative history underlying that Privacy Act section for guidance:

Both the Senate and House reports on the Privacy Act indicate that this exemption was intended to be limited to "life or death" emergency situations:

This subsection is designed to protect an employee or agency from being in technical violation of the

²Under the Privacy Act, federal agencies are generally prohibited from disclosing an individual's personal records without the individual's consent, unless one of the Privacy Act's exemptions permits the disclosure. Exemption (b)(8) of the Privacy Act permits the disclosure of an individual's personal records "to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual."

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law when they disclose personal information about a person to save the life or protect the safety of that individual in a unique emergency situation. The subsection requires a showing, which should be documented, of compelling circumstances affecting the health or safety of the person, or enabling identification for purposes of aiding a doctor to save such person's life. The discretion authorized here is intended to be used rarely

S. Rep. No. 93-1183, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 6916, 6985; see also, H.R. Rep. No. 93-1416, 93rd Cong., 2d Sess (1974) ("[t]he Committee is of the view that special consideration must be given to valid emergency situations, such as an airline crash or epidemic, where consent cannot be obtained because of time and distance and instant action is required").

Against this legislative backdrop, in DePlanche v. Califano, 549 F. Supp. 685, 704 (D.C. W.D. Mich. 1982), the court held that despite the sworn declaration by a non-custodial parent that his children were being neglected, Exemption (b)(8) of the Privacy Act would not authorize the Social Security Administration to disclose the current addresses of his minor children.

OIP Op. Ltr. No. 93-15 at 12 (Oct. 1, 1993).

In OIP Opinion Letter No. 93-15, we concluded that section 92F-12(b)(2), Hawaii Revised Statutes, did not apply to the facts presented in that opinion, "since there is no showing that because of an emergency, and due to the time and distance involved, written consent of the [Hawaii County Fire Department] employee cannot be obtained." Similarly, we conclude that section 92F-12(b)(2), Hawaii Revised Statutes, is not applicable to the facts presented, because there is no showing that "because of time and distance" and the need to take "instant action" in a life or death emergency situation, the individuals' written consents to the disclosure of their status as Section 8 recipients cannot be obtained.

CONCLUSION

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For the reasons stated above, we conclude that the disclosure of information concerning whether individuals, who have been identified by their residential address, receive Section 8 housing assistance would constitute a clearly unwarranted invasion of personal privacy. Therefore, under the UIPA, this information should not be made available for public inspection and copying upon request.

Further, we conclude that on the facts presented, there has not been a showing of compelling circumstances affecting an individual's health or safety that would require the disclosure of the requested information under section 92F-12(b)(3), Hawaii Revised.

Very truly yours,

Mimi K. Horiuchi
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

MKH:sc
c: Ms. Sharyn Miyashiro, HHA