

May 12, 1994

The Honorable Michael S. Nakamura
Chief of Police
City and County of Honolulu
801 South Beretania Street
Honolulu, Hawaii 96813

Attention: Patrick Ah Loo
Labor Relations Specialist

Dear Chief Nakamura:

Re: Records Relating to the Application and Selection
of a Candidate for Promotion

This is in response to a letter from Jonathan Chun, former Deputy Corporation Counsel, Department of the Corporation Counsel, City and County of Honolulu, to the Office of Information Practices ("OIP"). In his letter to the OIP, on behalf of the Police Department, City and County of Honolulu ("HPD"), Mr. Chun requested an advisory opinion from the OIP regarding the public's right to inspect and copy certain records that are maintained by the HPD relating to the application and selection of a HPD officer for promotion to the rank of Metropolitan Police Assistant Chief ("MPAC").

ISSUES PRESENTED

I. Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the HPD must make the following government records available for public inspection and copying:

- A. Questions used in the written examination ("exam") and interview administered to each HPD officer applying for promotion to MPAC ("MPAC candidate"); and

- B. Guidelines for rating MPAC candidates based upon their responses in the exam and interview ("rating guidelines").

II. Whether, under the UIPA, the HPD must make available for public inspection and copying the following government records if the names of the MPAC candidates are segregated therefrom:

- A. Each MPAC candidate's application for promotion ("application"); and
- B. The worksheet for each MPAC candidate setting forth the scores given for the MPAC candidate's performance in the exam and interview ("score worksheet").

BRIEF ANSWERS

I. In our opinion, because the HPD will likely re-use the exam questions for future promotions, these questions constitute "[m]aterials used to administer an examination which, if disclosed, would compromise the validity, fairness, or objectivity of [an employment] examination." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988). Consequently, the HPD is not required to disclose these government records under the UIPA's "frustration of a legitimate government function" exception. Haw. Rev. Stat. § 92F-13(3) (Supp. 1992 and Comp. 1993). For similar reasons, we find that the interview questions, which also will likely be re-used by the HPD, are likewise protected by this UIPA exception. In contrast, as discussed below, we do not find that this UIPA exception applies to the rating guidelines and, therefore, it is our opinion that the HPD must disclose the rating guidelines upon request.

II. As the OIP has previously opined, individually identifiable information about unsuccessful applicants for public employment or promotion should not be disclosed because this information falls within the scope of the UIPA exceptions for a "clearly unwarranted invasion of personal privacy" and "frustration of a legitimate government function." Haw. Rev. Stat. § 92F-13(1), (3) (Supp. 1992 and Comp. 1993). Even if the HPD deletes the unsuccessful MPAC candidates' names from the applications, other remaining information in the applications, if disclosed, would still result in the likelihood of actual identification of the unsuccessful MPAC candidates and therefore,

Honorable Michael S. Nakamura
May 12, 1994
Page 3

should be kept confidential. Such information includes the MPAC candidate's social security number, home address and telephone number, current position at the HPD, business telephone number, previous work experience, education, and training. However, information on the application that is limited to citizen status, residency, qualification for veteran's preference without details, and availability for employment would not reasonably lead to the identification of the unsuccessful MPAC candidate. We find that these items of information are reasonably segregable from the confidential information in the application and must be disclosed if requested by the HGEA/AFSCME after the HPD informs it of the limited scope of information available for public inspection.

We find that the UIPA exceptions for privacy and frustration of a government function do not apply to the identity of the successful MPAC candidate. Consequently, we believe that the following information on the successful MPAC candidate's application must be made available for public inspection and copying: name, business telephone, education, training, current position at the HPD, and previous work experience. The HPD should not disclose the successful MPAC candidate's social security number, home address, and home telephone number because this information is protected under the UIPA's "clearly unwarranted invasion of personal privacy" exception.

When the MPAC candidates' names are deleted from the score worksheets, the score worksheets do not contain any other individually identifiable information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Furthermore, for the reasons described below, we also find that the disclosure of the score worksheets would not result in the "frustration of a legitimate government function." Consequently, because we believe that no UIPA exception applies, the HPD must make the score worksheets available for inspection and copying after deleting or segregating the names of the MPAC candidates.

FACTS

The HPD circulated an intra-agency vacancy announcement informing HPD officers that they may apply for promotion to the rank of MPAC. The application form used by the HPD for this promotion was the standardized employment application form for civil service ("application"), a blank copy of which is attached as "Exhibit A." The HPD received 20 applications in response to

Honorable Michael S. Nakamura
May 12, 1994
Page 4

its vacancy announcement. Each HPD officer who applied for this promotion ("MPAC candidate") was required to take a written examination ("exam") and undergo an interview before an Assessment Interview Panel ("Panel"). All MPAC candidates were asked to respond to the same questions in the exam and interview.

On each MPAC candidate's score worksheet, a blank copy of which is attached as "Exhibit B," each Panelist rated the MPAC candidate's performance on the exam and interview by assigning a score between 1-5 points for each of the following rating criteria: written communication, verbal communication, command presence, interpersonal sensitivity, team leadership, and problem analysis. As a guide, the Panelists referred to the Assessment Rating Sheet ("ARS"), which sets forth the aforementioned rating criteria, as well as rating guidelines specifying: (1) the score that should be given for each criterion when a MPAC candidate's responses in the exam and interview demonstrated certain characteristics; and (2) the weights given to the different rating criteria to indicate their degree of importance in determining the final ranking of MPAC candidates.

For each MPAC candidate, the scores given by the Panelists were totaled and then adjusted to account for the different weights assigned to the different scoring criteria. A memorandum submitted to Michael S. Nakamura, Chief of Police, listed the MPAC candidates by their final ranking based upon their adjusted total scores with the individual having the highest adjusted score receiving the highest ranking. From this list, Chief Nakamura selected the MPAC candidate who would be promoted. The HPD has informed the OIP that, for future promotions, it intends to re-use the questions and rating guidelines for the promotional exam and interview.

In order to investigate and process grievances on behalf of two MPAC candidates who were not selected for promotion, the Hawaii Government Employees Association/American Federation of State, County, and Municipal Employees ("HGEA/AFSCME") made a request under the UIPA for all the MPAC candidates' applications and score worksheets and other information regarding the application and examination process used by the HPD for this promotion of a HPD officer to the rank of MPAC. In its records request to the HPD, HGEA/AFSCME acknowledged that the MPAC candidates' names should be deleted from these records before disclosure. The HPD provided to the HGEA/AFSCME some of the information that it requested, including the rating criteria used, but was uncertain whether to disclose, upon request by

HGEA/AFSCME, the exam and interview questions and rating guidelines, as well as the MPAC candidates' applications and score worksheets even if the MPAC candidates' names were removed from them. Consequently, on behalf of the HPD, former Deputy Corporation Counsel Jonathan Chun submitted a request to the OIP for an advisory opinion on this matter.

The OIP was informed by Mr. Chun that HGEA/AFSCME's request for information under the UIPA was separate and in addition to HGEA/AFSCME's request for information under section 89-16.5, Hawaii Revised Statutes, which requires that employee representatives be "allowed access to an employee's personal records which are relevant to the investigation or processing of a grievance." Our opinion is limited to addressing the issue of whether the requested information must be publicly disclosed under the UIPA.

DISCUSSION

I. INTRODUCTION

As its general rule, the UIPA declares 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). In particular, the UIPA states that "[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. 1992) (emphasis added). Thus, with respect to each government record that the HGEA/AFSCME requested for inspection and copying, we must examine whether any of the UIPA exceptions set forth in section 92F-13, Hawaii Revised Statutes, applies.

II. QUESTIONS AND RATING GUIDELINES

A. Exam and Interview Questions

The Legislature expressly considered examination materials when adopting the UIPA's exception for "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." See Haw. Rev. Stat. § 92F-13(3) (Supp. 1992 and Comp. 1993). Specifically, in listing "examples of records which need not be disclosed, if disclosure would frustrate a legitimate government function," the Legislature expressly included

"[m]aterials used to administer an examination which, if disclosed, would compromise the validity, fairness, or objectivity of the examination." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988).

We note that the phrase "materials used to administer an examination" was taken almost verbatim from section 2-103(a) of the Uniform Information Practices Code ("Model Code") which was drafted by the National Conference of Commissioners on Uniform State Laws, and upon which the Legislature modeled the UIPA.¹

The commentary² to this Model Code provision states:

Subsection (a)(4) protects the integrity of agency administered licensing, employment or academic examinations. . . . Subsection (a)(4) requires public disclosure of examination material only if the fairness or objectivity of the examination process would not be compromised. For example, essay questions of a type not ordinarily used in

¹Section 2-103 of the Model Code provides in pertinent part:

§2-103 Information Not Subject to Duty of Disclosure.

(a) This Article does not require disclosure of:

. . . .

(4) material used to administer a licensing, employment, or academic examination if disclosure would compromise the fairness or objectivity of the examination process;

²The UIPA's legislative history directs those interpreting its provisions to consult the Model Code commentary "where appropriate" for guidance in interpreting similar UIPA provisions. H. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988).

Honorable Michael S. Nakamura
May 12, 1994
Page 7

future testing probably would be available after the examination is administered. On the other hand, disclosure of multiple choice or other objective questions would be unlikely since they are commonly used again.

Model Code § 2-103 commentary at 16 (1980).

The federal Privacy Act of 1974, 5 U.S.C. § 552a ("Privacy Act"), also contains a similar exemption for testing or examination material.³ Privacy Act guidelines issued by the Office of Management and Budget ("OMB") provide guidance regarding what constitutes testing or examination material:

This provision permits an agency to exempt testing or examination material used to assess the qualifications of an individual for appointment or promotion in the military or civilian service only if disclosure of the record to the individual would reveal information about the testing process which would potentially give an individual an unfair competitive advantage. For example, the Civil Service Commission and the military departments give written examinations which cannot be revised each time they are offered. Access to the examination questions and answers could give an individual an unfair advantage. This language also covers certain materials used in rating individual qualifications. This subsection permits the agency to withhold a record only to the extent that its disclosure would reveal test questions or answers or testing procedures.

OMB Privacy Act Guidelines Circular No. A-108 (July 9, 1975).

In view of the above-cited commentary to the Model Code and

³Exemption (k)(6) of the Privacy Act contains an exemption for "testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process." 5 U.S.C. § 552a(k)(6) (1988).

Honorable Michael S. Nakamura
May 12, 1994
Page 8

the OMB Privacy Act Guidelines, we believe that by using the term "materials used to administer an examination," the Legislature intended to protect testing materials such as exam questions and scoring keys. Thus, we find that the exam questions in the facts before us constitute "[m]aterials used to administer an examination."

According to the HPD, the exam questions will likely be used again to make future promotions. Thus, if these questions are publicly disclosed, any candidate for an upcoming promotion may review and prepare responses for them and would, therefore, have an unfair advantage over other candidates. This would defeat the HPD's apparent objective of obtaining spontaneous, rather than prepared, responses from all candidates for a promotion. See Social Services Employees Union, Local 371 v. Cunningham, 437 N.Y.S.2d 1005, 1008 (N.Y. App. Div. 1981) (explaining the policy considerations for nondisclosure of civil service exams that will be used again); Roulette v. Dep't of Central Management Services, 490 N.E.2d 60, 62 (Ill. App. Ct. 1986) (agency's "testing program would be frustrated" by release of written evaluation of an interview of an applicant because a future applicant can formulate responses).

For these reasons, we believe that the disclosure of the exam questions would "compromise the validity, fairness, or objectivity of the examination" used by the HPD to make a promotion in the future. Consequently, we conclude that the exam questions are not required to be disclosed because they fall within the scope of the UIPA's "frustration of a legitimate government function" exception set forth in section 92F-13(3), Hawaii Revised Statutes.

Similarly, although the interview questions may not actually be considered "[m]aterials used to administer an examination," we believe that the public disclosure of the interview questions would nonetheless lead to the "frustration of a legitimate government function" in the same manner as would the disclosure of the exam questions. The HPD informed the OIP that it will also likely re-use the interview questions for future promotions. The public disclosure of the interview questions would allow candidates for future promotions to rehearse responses before the actual interview. Since the scoring of the interview as well as the exam presumably depends upon the candidates' spontaneity in their responses, we find that the validity, fairness, and objectivity of the interview process will be seriously compromised by public disclosure of the interview questions.

Honorable Michael S. Nakamura
May 12, 1994
Page 9

This detrimental result is analogous to the previously described effect of disclosing exam questions which, as we concluded above, would constitute a "frustration of a legitimate government function." Therefore, like the exam questions, we believe that the interview questions also fall within the protection of the exception in section 92F-13(3), Hawaii Revised Statutes.

B. Rating Guidelines

The rating guidelines may arguably constitute "[m]aterials used to administer an examination." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988). Even so, we do not believe that the disclosure of the rating guidelines would "compromise the validity, fairness, or objectivity" of the examination and interview process as would the disclosure of the exam and interview questions.

In comparison, federal cases applying the federal Freedom of Information Act, 5 U.S.C. § 552, have found that a federal agency's program of evaluating civil service applicants "will be seriously compromised" by the public disclosure of "crediting plans" or "rating plans" that reveal the agency's indicia for scoring applicants' experience and demonstrated abilities. See National Treasuries Employees Union v. United States Customs Service, 802 F.2d 525, 529 (D.C. Cir. 1986); Kaganove v. Environmental Protection Agency, 856 F.2d 884, 890 (7th Cir. 1988). These federal cases found that with advance knowledge of the "crediting plan" or "rating plan," applicants would be able to "embellish" their job and educational history in unverifiable ways in order to receive a higher score. National Treasuries Employees Union, 802 F.2d at 529; Kaganove, 856 F.2d at 890.

While disclosing the "crediting plan" or "rating plan" in the federal cases cited would reveal the type of background information that applicants must provide in order to receive high scores, it does not appear that the public disclosure of the rating guidelines used by the HPD would provide a similar advantage to MPAC candidates for several reasons. First, the rating guidelines are used to evaluate the MPAC candidates' thoughts and ideas expressed in the candidates' responses in the exam and interview. Such subjective responses cannot be readily embellished like the factual information upon which the applicants were evaluated in the federal cases cited. Second, without advance knowledge of the exam or interview questions which, as we have concluded above, are not required to be

disclosed, the MPAC candidates are unable, before the exam or interview, to prepare responses to the questions that would receive high scores based upon the scoring guidelines.

Thus, in our opinion, there is insufficient evidence to support the position that the public disclosure of the rating guidelines would "compromise the validity, fairness, or objectivity" of the HPD's exam or interview process. Consequently, this government record does not fall within the scope of the UIPA exception for "frustration of a legitimate government function." See Haw. Rev. Stat. § 92F-13(3) (Supp. 1992 and Comp. 1993). Accordingly, the HPD must disclose the rating guidelines because we find that no UIPA exception applies to it.

III. APPLICATIONS AND SCORE WORKSHEETS

A. Applications for Promotion

In previous opinion letters, the OIP concluded that information identifying unsuccessful applicants for government employment must be kept confidential because such information is protected by the UIPA exception for "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-13(1) (Supp. 1992 and Comp. 1993); see OIP Op. Ltr. No. 89-2 (Oct. 27, 1989) (executive search report); OIP Op. Ltr. No. 90-14 (March 30, 1990) (certified list of eligibles). In those opinion letters, we also concluded that information about unsuccessful applicants for public employment also fell within the scope of the UIPA exception for "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." See Haw. Rev. Stat. § 92F-13(3) (Supp. 1992 and Comp. 1993). As discussed in the cited opinions, we found that this UIPA exception applied to lists and reports identifying unsuccessful applicants because the disclosure of this information may discourage qualified individuals from applying for government positions, and this effect would frustrate the legitimate government function of personnel recruitment.

However, if individually identifiable information about unsuccessful public employment applicants can be reasonably segregated from a government record, then information in the government record that does not identify such applicants must be made available for public inspection and copying if no other UIPA

Honorable Michael S. Nakamura
May 12, 1994
Page 11

exception applies. See, e.g., OIP Op. Ltr. No. 90-14 (March 30, 1990); OIP Op. Ltr. No. 91-24 (Nov. 26, 1991). In determining what constitutes individually identifiable information about unsuccessful applicants, we must examine whether the information, if disclosed, would result in the "likelihood of actual identification" of such individuals. Arieff v. United States Dep't of Navy, 712 F.2d 1462, 1468 (D.C. Cir. 1983); Citizens for Environmental Quality, Inc. v. United States Dep't of Agriculture, 602 F. Supp. 534, 538 (D.D.C. 1984). Further, "the likelihood of such identification must be 'more palpable than [a] mere possibilit[y].'" Citizens for Environmental Quality, Inc., 602 F. Supp at 538, citing Dep't of Air Force v. Rose, 425 U.S. 352, 380 n.19 (1976); see also OIP Op. Ltr. No. 91-24 (Nov. 26, 1991).

Applying the same analysis set forth in the OIP opinion letters cited above, we believe that information in the applications identifying the unsuccessful MPAC candidates is protected by the UIPA exceptions based upon a clearly unwarranted invasion of personal privacy, and the frustration of a government function. Haw. Rev. Stat. § 92F-13(1), (3) (Supp. 1992 and Comp. 1993). In the facts before us, we find that, even if an unsuccessful MPAC candidate's name is segregated from the application, the application still contains other information that would directly reveal the identity of the unsuccessful MPAC candidate, such as social security number, home address, and home telephone number. See Carter v. United States Dep't of Commerce, 830 F.2d 388, 394 (D.C. Cir. 1987) (disclosing names, addresses, and other personal identifying information would lead to the identification of subjects of investigations).

Furthermore, due to the particular facts before us, public disclosure of certain additional information contained in an unsuccessful MPAC candidate's application would result in the "likelihood of actual identification" of that MPAC candidate even if the MPAC candidate's name and other identifying information are masked. Specifically, since the intra-agency pool of MPAC candidates consists exclusively of HPD officers, certain detailed information on the application, if disclosed, would readily reveal the unsuccessful MPAC candidate's identity because the information can be matched with the same information that is already made public about that particular HPD officer. Such information includes the MPAC candidate's current position at the HPD, business telephone number, previous work experience, education and training. See Carter, 830 F.2d at 388 (disclosing client and associate names would lead to identification of

Honorable Michael S. Nakamura
May 12, 1994
Page 12

investigation subjects). In our opinion, all these items of information on an unsuccessful MPAC candidate's application that would result in the "likelihood of actual identification" of the unsuccessful MPAC candidate must be kept confidential in order to avoid a clearly unwarranted invasion of personal privacy and the frustration of a legitimate government function. See Haw. Rev. Stat. § 92F-13(1), (3) (Supp. 1992 and Comp. 1993).

In contrast, we believe that an unsuccessful MPAC candidate would not likely be identified from disclosing information on the application that is limited only to citizen status, residency, qualification for veteran's preference without details, and availability for employment. Consequently, these items of information must be publicly disclosed if they are "reasonably segregable" from the confidential information in the applications. Whether the public information in the application is reasonably segregable "depends on the portion of information in the record that is public and how the public information is dispersed throughout the record." OIP Op. Ltr. No. 90-8 (Feb. 12, 1990); see Mead Data Central, Inc. v. United States Dep't of Air Force, 566 F.2d 242, 261 (D.C. Cir. 1977).

In Mead Data Central, Inc., the court pointed out that under the federal Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), the established rule in its jurisdiction was that "non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions." Mead Data, 566 F.2d at 260; see also Krikorian v. Dep't of State, 984 F.2d 461, 466 (D.C. Cir. 1993). As an example provided by the court, "if only ten percent of the material is non-exempt and it is interspersed line-by-line throughout the document, an agency claim that it is not reasonably segregable because the cost of line-by-line analysis would be high and the result would be an essentially meaningless set of words and phrases might be accepted." Id. at 261, cited in Lead Industries Ass'n v. OSHA, 610 F.2d 70, 86 (2d Cir. 1979).

Applying the standard established in FOIA case law regarding reasonable segregation, we find that the public information on an unsuccessful MPAC candidate's application is reasonably segregable because this information consists of clearly marked items located in specific sections of a standardized application form and, thus, is not "inextricably intertwined" with the confidential portions of the application described above. Furthermore, we find that twenty applications in the facts before us is a reasonable number of applications that would require this

Honorable Michael S. Nakamura
May 12, 1994
Page 13

segregation. Accordingly, the HPD should inform HGEA/AFSCME that the disclosure of the applications of the unsuccessful MPAC candidates would be limited only to the aforementioned items of information and, if requested by the HGEA/AFSCME, make this information available for public inspection and copying.⁴

As for a successful employment applicant's identity and qualifications, we have previously found that the public's interest in this information outweighs the individual's privacy interest in this information. See OIP Op. Ltr. No. 89-2 (Oct. 27, 1989); OIP Op. Ltr. No. 90-14 (March 30, 1990); cf. Nakano v. Matayoshi, 68 Haw. 140 (1985) (government officials have a diminished privacy interest in the disclosure of their financial affairs as compared to other citizens). Applying the same analysis to the facts before us, we conclude that the public interest in the identity and qualifications of the MPAC candidate selected for promotion would outweigh this individual's privacy interest in this information. Further, we find that the UIPA's "frustration of a legitimate government function" exception would not apply to this information about the successful MPAC candidate. See id.

Consequently, the following information on the successful MPAC candidate's application must be made available for public inspection and copying: name, business telephone number, education, training, current position at the HPD, and previous work experience. See Haw. Rev. Stat. § 92F-12(a)(14) (Supp. 1992) (requiring the disclosure of this information concerning present employees); but see Haw. Rev. Stat. § 92F-14(b)(5) (Supp. 1992) (individual has a significant privacy interest in the individual's "nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position"). However, the HPD should not disclose the successful MPAC candidate's social security number, home address, and home telephone number because this information is protected under the UIPA's "clearly unwarranted invasion of personal privacy" exception. See, e.g., OIP Op. Ltr. No. 89-16 (Dec. 27, 1989); OIP Op. Ltr. No. 90-7 (Feb. 9, 1990); OIP Op. Ltr. No. 91-8 (June 24, 1991).

⁴The HPD may charge any applicable fees, as provided by law or administrative rules, for segregating the public information in the applications and making copies of the redacted applications available for public disclosure upon request.

Honorable Michael S. Nakamura
May 12, 1994
Page 14

B. Score Worksheets

In OIP Opinion Letter No. 91-24 (Nov. 26, 1991), the OIP opined that a summary of interview scores given to applicants for a Program Budget Analyst VII position at the Judiciary must be disclosed. In that opinion, we found that the applicants did not have a privacy interest in the interview scores summary because the interview scores summary did not reveal the identities of the applicants who received the corresponding scores.

Similarly, we find that when a MPAC candidate's name is segregated from the score worksheet, the MPAC candidate's identity is not revealed in any way by the remaining information in this government record. Thus, a MPAC candidate does not have a privacy interest in the score worksheet in which the MPAC candidate's name has been removed. See, e.g., Arieff v. United States Dep't of the Navy, 712 F.2d 1462 (D.C. Cir. 1983) (list of prescription drugs supplied by the Navy to the Office of Attending Physician to Congress that contained no information about individual users); Citizens for Environmental Quality v. United States Dep't of Agriculture, 602 F. Supp. 534 (D.D.C. 1984) (health test results of unidentified employee).

Furthermore, we do not believe that the score worksheet in which the MPAC candidate's name has been deleted falls within the scope of the UIPA's exception for "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." See Haw. Rev. Stat. § 92F-13(3) (Supp. 1992 and Comp. 1993). We have previously found that, under this exception, an agency may deny access to certain intra-agency and inter-agency memoranda that are predecisional and deliberative and, thus, covered by the deliberative process privilege. In our opinion, score worksheets are not predecisional; on the contrary, they are decisional in nature because the scores, when totaled and adjusted, determine the final rankings of all the MPAC candidates in the memorandum to Chief Nakamura. See OIP Op. Ltr. No. 91-14 (Aug. 28, 1991) (rating sheets are decisional because they determine which proposal will receive a recommendation for budget funding).

Secondly, as we discussed above, the UIPA's "frustration of a legitimate government function" exception encompasses "[m]aterials used to administer an examination which, if disclosed, would compromise the validity, fairness, or objectivity of the examination." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988). As we

Honorable Michael S. Nakamura
May 12, 1994
Page 15

previously stated, we believe that the Legislature intended the term "materials used to administer an examination" to encompass testing materials such as exam questions and scoring keys. In our opinion, the score worksheets do not constitute such materials that are used to administer an examination, but rather reflect the Panel's evaluation of the MPAC candidates resulting from the administration of the exam and interview. Also, we find no reason to believe that disclosing the score worksheets would cause the frustration of the HPD's legitimate function of making promotions in the same manner as disclosing the exam and interview questions would.

Thus, we conclude that none of the UIPA exceptions apply to the score worksheets in which the MPAC candidates' names have been deleted. Therefore, the HPD must make available for public inspection, upon request, each MPAC candidate's score worksheet after removing the MPAC candidate's name.

CONCLUSION

We conclude that under the UIPA's "frustration of a legitimate government function" exception, the HPD is not required to disclose the exam and interview questions that it will likely use again for future promotions. The UIPA does require the HPD to disclose its rating guidelines because no UIPA exception applies to this government record.

Furthermore, in order to avoid a clearly unwarranted invasion of privacy and the frustration of a legitimate government function, the HPD should not disclose the previously described items of information in an unsuccessful MPAC candidate's application that would result in the "likelihood of actual identification" of that individual. The HPD must disclose the following information from the successful MPAC candidate's application: name, business telephone, education, training, current position at the HPD, and previous work experience. The UIPA also requires the HPD to disclose the MPAC candidates' score worksheets after deleting the MPAC candidates' names therein.

Very truly yours,

Lorna J. Loo
Staff Attorney

Honorable Michael S. Nakamura
May 12, 1994
Page 16

APPROVED:

Kathleen A. Callaghan
Director

LJL:sc\HPD
c: Diane Kawauchi
Division Head
Counseling & Drafting Division
Department of the Corporation Counsel