

December 30, 1994

Dr. Duane P. Bartholomew, Chairman
Department of Agronomy and Soil Science
University of Hawaii at Manoa
G. Donald Sherman Laboratory
1910 East-West Road
Honolulu, HI 96822

Dear Dr. Bartholomew:

Re: Individual's Access to Personnel File

This is in regard to Ms. Elizabeth Graser's request to the Department of Agronomy and Social Science ("Department") of the University of Hawaii at Manoa ("University") to inspect the Department's personnel file about her.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Department is required, upon request, to make an unofficial personnel file available for inspection and copying to the individual to whom the file pertains when the individual's official personnel file is maintained, and can be inspected by the individual, at the University's personnel office.

FACTS

In a letter to the Department, Ms. Graser, who was formerly employed with the Department, requested to inspect the Department's personnel file pertaining to her. In a letter to Ms. Graser, dated June 21, 1994, former Department Chairman Samir A. El-Swaify responded to Ms. Graser's request by stating:

Your official file is retained in the Dean's office. I, therefore, suggest that you address your request to Dean Kefford instead of the department chair.

Thereafter, in a letter dated June 22, 1994 to the OIP, Ms. Graser requested the OIP's assistance in connection with her request to inspect the Department's personnel file about her.

In a telephone conversation on July 26, 1994, you explained to me that you have been informed of the University's policy that an individual's request for inspection or copying of a personnel file is to be handled only by the appropriate University personnel office maintaining the official personnel file, and not

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by the Department. You requested a written opinion from the OIP regarding whether this policy is consistent with the UIPA when an individual has specifically requested to inspect or copy the individual's personnel file, albeit the unofficial one, held by the Department.

DISCUSSION

Part III of the UIPA entitled "Disclosure of Personal Records" governs an agency's obligation to disclose a "personal record" to the individual to whom the personal record pertains upon request. As to the definition of the term "personal record," the UIPA states:

"Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Haw. Rev. Stat. § 92F-3 (Supp. 1992) (emphasis added). In our opinion, the Department's personnel file is "about" Ms. Graser because it refers to her by name and contains information regarding her employment with the Department.

Further, we find that the Department is an "agency" for purposes of the UIPA because this term means "any unit of government in this State." Haw. Rev. Stat. § 92F-3 (Supp. 1992); see, e.g., OIP Op. Ltr. No. 90-27 (July 19, 1990) (Research Corporation of the University is an "agency").

As for whether the Department "maintains" the personnel file, we note that the UIPA does not define this term, so the OIP has previously referred to the definition of this term set forth in the Uniform Information Practices Code ("Model Code")¹ when

¹The Model Code was drafted in 1980 by the National Conference of Commissioners on Uniform State Laws, and was modified for adoption in Hawaii. See H. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817 (1988); S. Conf. Comm. Rep. No. 235, Haw. S.J. 689 (1988).

discussing the definition of the term "government record" under the UIPA.² See H. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988) (legislative intent that commentary to the Model Code "guide the interpretation of similar provisions" in the UIPA); OIP Op. Ltr. No. 91-15 (April 15, 1991); OIP Op. Ltr. No. 91-25 (Dec. 11, 1991); OIP Op. Ltr. No. 92-25 (Dec. 22, 1992).

The Model Code defines the term "maintain" as "hold, possess, preserve, retain, store or administratively control." Model Code § 1-105 (1980). The Model Code commentary further explains that the term "maintain" is defined "to sweep as broadly as possible" and includes information possessed or controlled in any way by an agency. Id. commentary at 9. Applying this definition of the term "maintain," the OIP has previously found that an agency "maintains" government records even where the records were not created or compiled by the agency; for example, a law school accreditation report prepared by the American Bar Association, OIP Op. Ltr. No. 91-12 (April 15, 1991); newspaper clippings, OIP Op. Ltr. No. 91-25 (Dec. 11, 1991); and working papers of a consultant for an agency, OIP Op. Ltr. No. 92-25 (Dec. 22, 1992).

Consequently, we find that because the Department retains an "unofficial" personnel file on Ms. Graser, apart from the official personnel file maintained by the personnel office, we conclude that the Department "maintains" its own personnel file on her. Thus, this personnel file is a "personal record" subject to the UIPA because it is "information about an individual that is maintained by an agency." Haw. Rev. Stat. § 92F-3 (Supp. 1992). Under the UIPA, the determination of whether a record is a "personal record" does not rest upon whether the agency considers the record to be "official." Id.

Our conclusion that the UIPA applies to the Department's "unofficial" personnel file is consistent with one of the purposes of the UIPA, which is to "[m]ake government accountable to individuals in the collection, use, and dissemination of information relating to them." Haw. Rev. Stat. § 92F-2 (Supp. 1992). In order to make government accountable to an individual concerning the government records kept about an individual, the

²The UIPA defines the term "government record" as "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1992). The definition of the term "government record" encompasses "personal records" maintained by an agency.

UIPA's definition of "personal record" is broad enough to cover all government records about that individual regardless of whether the records originate outside the agency, or are records that are not within the designated "official" file about the individual.³

With regard to an individual's right of access to records pertaining to the individual, the UIPA provides:

§92F-23 Access to personal record; initial procedure. Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted under section 92F-22.

Haw. Rev. Stat. § 92F-23 (Supp. 1992). Under section 92F-23, Hawaii Revised Statutes, an agency is required to permit an individual's inspection of a "personal record" unless the record is protected from required disclosure by one of the five exemptions in section 92F-22, Hawaii Revised Statutes.

The exemptions in section 92F-22, Hawaii Revised Statutes, cover certain criminal law enforcement records, the identities of confidential sources, testing materials for employment or licensing, investigative reports relating to pending legal actions against the individual, and information made confidential by law. The UIPA does not include an exemption based upon the fact that access to an "official" file containing similar personal records is available to the individual elsewhere.

Consequently, we conclude that the Department's personnel file concerning Ms. Graser is a "personal record" that must be made available to her for inspection and copying, except for

³By comparison, we note that the term "official personnel file" was used in a 1993 arbitration decision, In the Matter of the Arbitration Between United Public Workers and State of Hawaii, Dept. of Personnel Services, File No. CU91-19 (April 5, 1993). This arbitration decision prohibited the State from retaining "black books" or "secret files," and required the State to make any derogatory information relating to a State employee in Unit 1 or 10 available to that employee for inspection in an "official personnel file."

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portions of the file, if any, that are found to fall within an exemption set forth in section 92F-22, Hawaii Revised Statutes. The Department cannot fulfill its obligation under the UIPA to allow Ms. Graser access to her personnel file merely by referring her to the University's personnel office. See OIP Op. Ltr. No. 92-26 (Dec. 23, 1992) (Convention Center Authority cannot refer to the Legislature requests for inspection and copying of its Report because the Report is a government record maintained by the Authority). As I informed you in our telephone conversation on July 26, 1994, I would be happy to assist your Department in determining whether any part of Ms. Graser's personnel file maintained by the Department is protected from disclosure under the exemptions set forth in part III of the UIPA.

If you have questions regarding this matter, please contact me at 586-1403.

Very truly yours,

Lorna J. Loo
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

LJL:sc\D94194
c: Elizabeth Graser

Ruddy Wong
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