

December 31, 2001

Honorable Wayne Nishiki
Councilmember
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Re: Maui County Charter

Dear Mr. Nishiki:

This is in response to your request to the Office of Information Practices (“OIP”) for an opinion on the above-referenced matter.

ISSUE PRESENTED

Whether section 3-8 of the Charter of the County of Maui, as interpreted by the prior administration, can require Maui County Council members to route requests to county agencies for public information through the Mayor’s office.

BRIEF ANSWER

No. The Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”), does not specifically prohibit a unit of government, including a county administration, from routing record requests through its executive. The UIPA does require that agencies make government records available to “any person.” Haw. Rev. Stat. § 92F-11 (1993). Therefore, to require that only certain classes of record requesters, rather than all requesters, route requests through a central office, would be a discriminatory practice not sanctioned by the UIPA.

In addition, the OIP believes routing all requests through the executive as a standard practice may not comport with the spirit and requirements of the UIPA set forth at section 92F-2, Hawaii Revised Statutes. If such a policy is put in place, the executive may be responsible for violations of the UIPA by the employees of the sub-units of that government unit, particularly violations of time limits set forth at section 2-71-13, Hawaii Administrative Rules. Such a policy could also increase administrative costs.

FACTS

In your letter of November 24, 1997, you stated that the Maui County administration at that time required Council members and staff to route written record requests through the Mayor when seeking public records from any county agency. This requirement was based on the following provision of the Maui County Charter:

Section 3-8. Restrictions on Council and Council Members.

...

2. Except for the purpose of inquiries under Subsection 3-6(3), the council or its members, in dealing with county employees or with county officers other than those appointed pursuant to Section 3-7 or Article 5, shall deal solely through the mayor, and neither the council nor its members shall give orders to any such employee or officer either publicly or privately. Any willful violation of the provisions of this subsection by a member of the council shall be sufficient grounds for his removal from office by impeachment.

Maui County Charter § 3-8 (1999).

You advised, in addition, that county agency responses to requests for information were also routed through the Mayor before reaching the Council. You expressed a concern that this process creates unnecessary delays, that it may deny the Council access to public records, and that it seems to give members of the public more direct access to public records than Council members who are elected to represent the public. You did not specifically state whether members of the public had to route record requests through the Mayor's office also; so it is assumed for purposes of this opinion that members of the public need not request records through the Mayor's office.

DISCUSSION

I. FREEDOM OF INFORMATION

One of the underlying policies and purposes of the UIPA is to "[p]rovide for accurate, relevant, timely, and complete government records. Haw. Rev. Stat.

§ 92F-2 (1993). Along this vein, the UIPA imposes basic responsibilities on agencies subject to it:

[§92F-11] Affirmative agency disclosure responsibilities.

- (a) All government records are open to public inspection and copying unless access is restricted or closed by law.

- (b) Except 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.

- ...

- (d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.

Haw. Stat. Rev. § 92F-11 (1993).

The term “person” is defined in the UIPA as “an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.” Haw. Rev. Stat. § 92F-3 (1993). The OIP’s rules¹ use the same statutory definition of “person” as the UIPA, and state that any person may, during an agency’s regular business hours, submit a request to access government records. Haw. Admin. R. §§ 2-71-11(a), -12(a).

For formal record requests, which must be in written, electronic, or other physical form, the record requester must provide, among other things, information that would enable the agency to correspond with or contact the requester. Haw. Admin. R. § 2-71-12(b)(1). In response to formal record requests, an agency must provide written notice to the requester in accordance with sections 2-71-13, and -14, Hawaii Administrative Rules.

Section 2-71-13, Hawaii Administrative Rules, sets forth time limits for agencies to respond to record requests. In most cases, agencies must respond to requests for records within ten business days.

The OIP’s rules also address routing of requests:

¹ Section 92F-42, Hawaii Revised Statutes, required the OIP to adopt administrative rules to implement the UIPA. These rules are set forth at Chapter 2-71, Hawaii Administrative Rules, entitled “Agency Procedures and Fees for Processing Government Record Requests.”

- (d) When a unit of an agency receives a request for a record that should have been otherwise directed to another unit of the same agency for a response, the unit receiving the request shall promptly forward the request to the head of the unit's department.
- (e) When one unit of an agency forwards a request to the head of that department, the duties of this section do not commence until the head receives the request.

Haw. Admin. R. § 2-71-13.

II. ROUTING REQUESTS THROUGH A CENTRAL LOCATION COULD VIOLATE THE UIPA AND ADMINISTRATIVE RULES

A. "Any Person" May Request Records

Council members are "persons" for purposes of the UIPA. Haw. Rev. Stat. § 92F-3 (1993). Agencies are required to make their records available for inspection and copying during regular business hours to "any person." Haw. Rev. Stat. § 92F-11 (1993); Haw. Admin. R. §§ 2-71-11(a), -12(a). While the UIPA does not specifically prohibit a government administration from routing all requests through its executive, in light of the "any person" language in the UIPA, government agencies should not discriminate against certain classes or types of requesters when processing record requests. If one class of requester is required to go through a central office, then all requesters should be subject to the same requirement. If certain classes of record requesters are required to go through a more onerous process of requesting records than others, such a process would violate the UIPA's requirement that "any person" be given access to records of each agency. Haw. Rev. Stat. § 92F-11(b) (1993).

B. Timely Access to Records

The Charter's apparent requirement that a Council member's record request be routed through the Mayor's office twice may also cause the administration to inadvertently violate one of the UIPA's basic policies, that the public be given "accurate, timely, and complete government records." Haw. Rev. Stat. § 92F-2 (1993). The routing of requests through the Mayor's office could cause unnecessary

and inappropriate delays in a Council member's receipt of government records in an "accurate, timely" manner, and could also violate time requirements in section 2-71-13, Hawaii Administrative Rules. Therefore, if a routing system for record requests is implemented, it is the executive's responsibility to ensure that all time limits imposed by the UIPA and the OIP's administrative rules are complied with.

The OIP's rules allow for routing of requests, however, this section was meant to address record requests that were sent to the wrong unit of an agency. Haw. Admin. R. 2-71-13(d). In such instances, the receiving unit is required to forward the request to the agency director for proper processing, and the time limits set forth in section 2-71-13, Hawaii Administrative Rules, do not commence until the agency head receives the request. Haw. Admin. R. 2-71-13(d), (e). Under the routing system envisioned by the Charter, such a rule would have no application because the Mayor's office would never be the wrong unit of an agency. Therefore, there would never be a "tolling" of the time requirements under section 2-71-13(e), Hawaii Administrative Rules.

For formal record requests under the OIP's administrative rules, the requester must provide information that would allow the agency to contact the requester. Haw. Admin. R. § 2-71-12(b)(1). In response, the agency must provide the requester with a written notice setting forth specifics regarding the disclosure. Haw. Admin. R. § 2-71-14. The Charter provision, as interpreted, would prevent the requester and the agency from contacting each other directly, and could cause one or both to violate the procedures or time limits set forth in the OIP's administrative rules. This would put the burden squarely on the Mayor's office to relay all necessary correspondence between the requester and the agency in a timely manner.

In appropriate circumstances, record requests can be routed through the Mayor, such as when the requester does not know which agency under the Mayor's administration maintains the record, or when the requester has had difficulty in getting a response from the agency maintaining the record. Also, if an agency or a government system is working with reduced funds or budget cuts, a centralized process of routing requests could be implemented to more efficiently use available staff. However, the agency head must take great care to ensure that any centralized process meets the requirements of the law and the rules. In order to avoid problems with compliance, the OIP does not recommend that centralization become a standard practice without careful consideration.

CONCLUSION

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The UIPA allows “any person” access to government records. Should an executive institute a routing system for record requests, it should ensure not to discriminate against a particular class of “persons” who are entitled by law to request records, such as council members.

In addition, while the UIPA does not prohibit routing of all requests for government records through the executive of a government administration, the OIP does not recommend such a practice be standard operating procedure. Such a routing of record requests through a central office will likely cause unnecessary delays in the receipt of public records, which would violate the UIPA’s policy that the public be given accurate, relevant, timely, and complete government records. Haw. Rev. Stat. § 92F-2 (1993). This practice may also violate the time limits and procedures for processing record requests that are set forth at section 2-71-13, Hawaii Administrative Rules.

Very truly yours,

Carlotta Dias
Staff Attorney

APPROVED:

Moya T. Davenport Gray
Director

CMD:jetf

c: Honorable James “Kimo” Apana, Mayor
David Raatz, Esq.