

July 30, 2002

Mr. Gregory Barnett
A4000428-FH203
P.O. Box 2667
Florence, Arizona 85232-2667

Re: Agency Maintenance of Records Submitted by Private Entity

Dear Mr. Barnett:

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 an agency subject to the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), may maintain information about an individual that is generated and submitted by a private entity.

BRIEF ANSWER

Yes. The UIPA does not impose affirmative obligations on agencies to maintain records. Collection and maintenance of records may be governed by laws outside the UIPA and by agencies' policies.

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FACTS

In a letter to the OIP dated October 26, 2001, you asked:

Can a state agency as defined under Section 92F-3, Hawai'i Revised Statutes, legally maintain personal information about an individual which is generated and submitted by a for profit, non-governmental, private corporation?

You indicated that this question applies to the policy of the Department of Public Safety of incarcerating over one thousand Hawaii inmates in private mainland prisons. You advised that these institutions "taint" inmates' institutional files with disciplinary infractions or other detrimental information that is then provided to the PSD. As a result, incarceration is prolonged or classification is negatively affected.

DISCUSSION

I. AGENCY DUTY TO MAINTAIN RECORDS

The UIPA governs access to records maintained by Hawaii State and county agencies. Under the UIPA, an "agency" is defined as:

any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.

Haw. Rev. Stat. § 92F-3 (1993).

The Hawaii Supreme Court noted that the UIPA does not impose an affirmative obligation on government agencies to maintain records. State of Hawaii Organization of Police Officers v. Society of Professional Journalists-University of Hawaii 83 Haw. 397, 927 P.2d 386, 401 (Hawaii 1996). Other laws may exist that require the retention of records by agencies, such as chapter 94, Hawaii Revised Statutes, but the UIPA contains no such requirements. Assuming no other law requires that the PSD maintain or not

maintain information in personal files submitted by private entities, the PSD's policies on collection and maintenance of such records apply.

Pursuant to statutory mandate, the OIP is in the process of drafting administrative rules governing records collection practices. See Haw. Rev. Stat. § 92F-42(14) (1993). While these rules are not yet in effect, they will set forth uniform standards for the records collection practices of agencies. Until these rules become effective, the OIP recommends that an agency collect only what personal information is necessary for it to accomplish its authorized or required purposes, and to maintain that information only as long as is necessary.

II. RIGHT TO CORRECT PERSONAL RECORD

If you believe the PSD, or any other agency subject to the UIPA, maintains erroneous personal information¹ about you, you have the right to have factual errors corrected:

§92F-24 Right to correct personal record; initial procedure. (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing and promptly:

- (1) Make the requested correction or amendment; or

¹ A "personal record" is defined in the UIPA as "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 (1993).

- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal.

Haw. Rev. Stat. § 92F-24 (1993).

If your request to correct a personal record is denied, you have the right to petition the agency to review its denial:

§92F-25 Correction and amendment; review procedures.

(a) Not later than thirty business days after receipt of a request for review of an agency refusal to allow correction or amendment of a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow correction or amendment of a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual's disagreement with the refusal of the agency to correct or amend it; and
- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy.

Haw. Rev. Stat. § 92F-25 (1993). If you disagree with an agency's ultimate decision on a request to correct your personal record, you may file a lawsuit in accordance with section 92F-27, Hawaii Revised Statutes.

CONCLUSION

The UIPA does not impose duties on agencies to maintain, or to not maintain, records submitted by private entities. Such requirements, if any, may be found in other laws, or in an agency's policies on record maintenance. If an individual believes an agency is maintaining erroneous personal information, the individual may seek to have his or her personal record

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corrected in accordance with sections 92F-24 and 25, Hawaii Revised Statutes.

Very truly yours,

Carlotta Dias
Staff Attorney

APPROVED:

Moya T. Davenport Gray
Director

CMD: ankd