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OPINION

Requester: Land Division
Agency: Department of Land and Natural Resources
Date: April 18, 2007
Subject: Personal Information and Vital Records in Land Records
(U RFO-G 07-53)

REQUEST FOR OPINION

Requester seeks guidance on disclosure under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“HRS”) (the “UIPA”), of certain personal information and vital records included in the land records of the Department of Land and Natural Resources, Land Division (“DLNR”).

Unless otherwise indicated, this advisory opinion is based solely upon the facts presented in Requester’s e-mail correspondence to the Office of Information Practices (“OIP”) dated February 1, 2007 and March 30, 2007 and attached examples of vital records, and in Requester’s telephone conversations with OIP.

QUESTIONS PRESENTED

1. Whether personal information contained in DLNR’s land records may be redacted prior to public disclosure of those records.
2. Whether and to what extent vital records, which could conceivably be used to promote identity theft, or information contained in those records, must be disclosed.

BRIEF ANSWERS

1. Personal information contained in DLNR's land records that carry a significant privacy interest, such as social security numbers, home addresses and telephone numbers, ethnicity, and dates of birth, may generally be redacted under the UIPA's privacy exception. Generally, there is no public interest in disclosure of this type of information that would outweigh that privacy interest. Certain other records or information in which individuals may have a significant privacy interest must be disclosed, however, where those records or information shed light on DLNR's functions, such as its duty of ensuring the genealogy of land owners and transferees.

2. DLNR must disclose vital records it maintains to the extent that the records shed light on DLNR's performance of its statutory purpose, but DLNR may withhold all other information on those records. Specifically, DLNR may, prior to disclosure, redact all information contained in the vital records except that information necessary to establish genealogy for purposes of DLNR's functions. Such information would likely include the vital event in question, the names of individuals necessary to establish requisite relationships, and the sex of the individual whose vital record is being sought.

FACTS

DLNR maintains various records containing information relevant to its duties of managing, administering, and exercising control over the State's public lands and water resources. Haw. Rev. Stat. § 171-3 (Supp. 2006).¹ These records include, among others, leases, land sales agreements, and vital records necessary to establish genealogy to evidence land ownership or rights to the transfer of land interests. DLNR has asked for general guidance regarding the disclosure of records or information it maintains.² In particular, DLNR has asked whether social security numbers and vital records should be protected pursuant to Acts 135 and 136, Session Laws of Hawaii 2006, and section 338-18, HRS.

¹ Among other things, DLNR makes lands or the use of lands available through sales, leases, licenses, permits and other methods. See Haw. Rev. Stat. § 171-6 Supp. 2006).

² DLNR has only provided as specific examples of records or information contained in its files names and addresses on leases, social security numbers on death certificates, and vital records. Accordingly, the advice contained in this opinion is general in nature and only specifically addresses the examples given.

DISCUSSION

DLNR must disclose its land records in response to general requests made under Part II of the UIPA unless an exception to disclosure applies. See Haw. Rev. Stat. § 92F-11 (1993). The UIPA’s “privacy exception” would apply to certain personal information contained in DLNR’s records, and DLNR may withhold such information in accordance with the guidelines set out in this opinion.³

The UIPA allows an agency to withhold records or information where an individual’s significant privacy interest in the records or information outweighs the public interest in disclosure. See Haw. Rev. Stat. § 92F-13(1) (1993). The public interest to be considered is the public interest in the disclosure of official information that sheds light on an agency’s performance of its statutory purpose and the conduct of government officials, or which otherwise promotes governmental accountability. See OIP Op. Ltr. No. 91-19, OIP Op. Ltr. No. 92-17.

In the usual case, the “public interest” is “not fostered by 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 at 7 (quoting United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989)). OIP has thus found that individuals have a significant privacy interest in information, such as their social security numbers,⁴ home addresses and telephone numbers, ethnicity, and dates of birth, that generally outweighs the non-existent public interest in disclosure. See OIP Op. Ltr. No. 91-12; OIP Op. Ltr. No. 92-8. DLNR’s land files likely contain this type of personal information that does not shed light on its functions and, therefore, may be withheld under the privacy exception.

³ Another exception to disclosure allows an agency to withhold records where they are protected by state law. See Haw. Rev. Stat. § 92F-13(4) (1993). Requester has asked whether DLNR should restrict access to vital records as required by section 338-18, HRS, for the Department of Health (“DOH”). OIP believes that that section only restricts disclosures made by DOH. Accordingly, DLNR may not justify its withholding of vital records under that statute and the exception set forth in section 92F-13(4). Requester has also asked whether access should be restricted pursuant to Acts 135 and 136, Session Laws of Hawaii 2006. These laws do not specifically make social security numbers confidential, but rather deal with notification of security breaches and disposal of records, respectively. Accordingly, withholding under section 92F-13(4) pursuant to these acts would also not be appropriate. But see n.4 below.

⁴ A recently enacted law, effective July 1, 2007, generally prohibits the disclosure of an individual’s entire social security number. Haw. Rev. Stat. § 487J-2 (Supp. 2006). It is likely that this statute would prohibit DLNR from disclosing individuals’ social security numbers contained in its records and, therefore, when the law becomes effective, DLNR should also cite to the exception provided under section 92F-13(4) as an additional basis for redacting those numbers prior to disclosure.

However, other personal information likely contained in those files would clearly reflect on DLNR's performance of its statutory purpose of managing the State's lands. For example, records or information needed to establish and document genealogy would shed light on DLNR's duty of confirming land ownership and ensuring qualified transfers of land, such as the transfer of homestead leases under chapter 171, HRS. See Haw. Rev. Stat. § 171-99(e) (Supp. 2006) (homestead leases may be transferred and assigned only to a member(s) of the occupier's or lessee's family). In these instances, the public interest in disclosure of those records or information would outweigh the individual's privacy interest and, therefore, the records or information must be disclosed.

This would include at least portions of vital records submitted for this purpose. OIP believes that an individual has a significant privacy interest in much of the personal information contained in his or her vital records and, given the problems of identity theft, in the vital record as a whole. Cf. Haw. Rev. Stat. § 338-18 (making vital records maintained by DOH confidential). However, in light of the public interest in disclosure of information establishing genealogy, discussed above, OIP believes that the vital records maintained by DLNR must be disclosed in part.

OIP further notes that, pursuant to statute, DOH itself discloses certain information in the vital records it maintains, and, therefore, individuals would not have a significant privacy interest in that information. Specifically, the statute provides that "[i]ndex data consisting of name and sex of registrant, type of vital event, and such other data as the director may authorize shall be made available to the public." Haw. Rev. Stat. § 338-18 (Supp. 2006). According to its director, DOH creates a daily list of the vital statistics records it receives that the public may inspect. The daily list consists of the name and sex of the registrant and the type of vital event.

Accordingly, OIP believes that DLNR should, upon request, disclose a copy of an individual's vital record maintained by DLNR, but may redact out all information except the information necessary to establish the requisite genealogy and information of the type disclosed by DOH. Generally, this would include information such as the following:

1. Type of vital event, e.g. Certificate of Death, Record of Marriage, etc.;
2. Names of the registrants;
3. Names of the individuals necessary to establish the requisite relationship; and
4. The sex of the registrant or of the individuals whose sex must be determined for DLNR's purposes.

DLNR may contact OIP for further assistance regarding disclosure of information not discussed in this opinion.

Requester has also asked about disclosure of names and addresses of lessees under state land leases. The UIPA provides that “[a]ny other provision of [the] chapter notwithstanding, each agency shall make available for public inspection and duplication . . . leases of state land.” Haw. Rev. Stat. § 92F-12(a)(5) (Supp. 2006). This means that DLNR must make its state leases available in their entirety with no redactions.

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