



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

CATHY L. TAKASE
ACTING DIRECTOR

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.hawaii.gov/oiip

The Office of Information Practices (OIP) is authorized to issue this advisory opinion under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to section 92F-42, HRS.

ADVISORY OPINION

Requester: Trace America LLC
Agency: Department of Labor and Industrial Relations
Date: December 3, 2010
Subject: Workers' Compensation Records (APPEAL 09-18)

Requester asks whether the Department of Labor and Industrial Relations (DLIR) properly denied Requester's request for workers' compensation records under part II of the UIPA.

Unless otherwise indicated, this determination is based solely upon the facts presented in Requester's memorandum dated January 28, 2009, and attached materials, Requester's letter dated February 19, 2009, and DLIR's letters dated February 3 and March 2, 2009, and attached materials.

QUESTION(S) PRESENTED

Whether workers' compensation claim information identifying a private sector claimant (with the exception of final decisions) is public under the UIPA.

BRIEF ANSWER(S)

No. With the exception of disputed claims on which a final decision has been issued, an individual has a significant privacy interest in the fact that he or she has filed a workers' compensation claim. See Haw. Rev. Stat. §§ 92F-13(1), -14. For private sector employees, the public interest in an individual's claim is minimal and does not outweigh that significant privacy interest. Thus, DLIR properly withheld the workers' compensation claim information under the UIPA's privacy exception.

FACTS

As part of its investigation of a current workers' compensation claim, Requester seeks to learn whether the claimant has made workers' compensation claims in the past, as well as some basic information about any such claims (the date of the accident, the claim number, the insurance carrier, the employer, and the body part injured). The individual in question is a private sector employee. Although the request was related to a current workers' compensation claim, Requester did not obtain a written consent to disclosure from the individual whose information was requested. DLIR denied the request based on the lack of written consent and the claimant's privacy interest, and subsequently clarified that the denial relied on the UIPA's privacy exception, section 92F-13(1), HRS.

DISCUSSION

Requester requested information on the claimant as part of its investigation of a current worker's compensation claim. OIP notes that the UIPA has an "any person" standard for disclosure of records in response to general government record requests made under part II of the UIPA, so a requester's identity and reason for making a request are usually not relevant to the requester's access rights for a part II request.¹ See OIP Op. Ltr. No. 90-29 at 13. In some instances where a requester has a particular connection to the requested records, the requester will provide a written consent to disclosure by the person or persons mentioned in those records. When there is written consent, section 92F-12(b)(1), HRS, provides that the records shall be disclosed "any provision to the contrary notwithstanding." Thus, records could not be withheld based on the privacy exception where all persons mentioned in the records had consented in writing to their disclosure. In the absence of a written consent, though, we follow the general rule that a requester's identity and reason for making a request are irrelevant.

The question presented to OIP here, thus, is whether a private sector workers' compensation claimant has a significant privacy interest in being identified as a claimant, that is not outweighed by a greater public interest in disclosure. If the claimant has a significant privacy interest that is not outweighed, then the claimant's identity may properly be withheld under the UIPA's exception for information whose disclosure would be a clearly unwarranted invasion of personal privacy. See Haw. Rev. Stat. §§ 92F-13(1), -14(a).

¹ In contrast, a requester's identity is relevant where records are "about" the requester, because the request is in that case a personal records request governed by part III of the UIPA, which does generally entitle the requester to greater access. In this instance, however, the requested records are not "about" Requester.

An individual has a significant privacy interest in information relating to non-governmental employment history, and in information relating to medical condition or diagnosis. Haw. Rev. Stat § 14(b)(1) and (5). The fact that a private sector employee is a workers' compensation claimant is information related to that individual's non-governmental employment, and also might be considered information relating to the individual's medical condition. Corollary information, such as the nature of the individual's injury,² is likewise information that might relate in some degree to the individual's medical diagnosis. Courts in other jurisdictions have concluded that workers' compensation information about an identifiable individual implicates that individual's privacy interest based on the nature of workers' compensation information as being to some degree both medical information and personnel information. Georgiou v. Comm'r of the Dep't of Industrial Accidents, 854 N.E. 2d 130 (Mass. App. 2006); Robinson v. Merritt, 375 S.E. 2d 204 (W. Va. 1988). OIP thus concludes that an individual's status as a workers' compensation claimant, along with corollary information such as the nature of the individual's injury, carries a significant privacy interest.

Recognizing a claimant's significant privacy interest, we next look to whether there is a public interest in disclosure that would outweigh that interest. The public interest to be considered in balancing these interests 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.

With a government sector claimant, OIP previously found that there is a high public interest in disclosure of the individual's workers' compensation claim information because the State of Hawaii is self-insured for workers' compensation purposes, so that any benefits paid to an injured worker are paid directly by the State. OIP Op. Ltr. No. 94-21 at 6. Thus, OIP found in that opinion that claim information concerning a state legislator, who was the claimant there, "would shed substantial light upon the actions of a government agency, the Legislature, or one or more of its officials, and also promote governmental accountability, two of the core policies that underlie the UIPA."³ Id. However, because claims by government

² In the record at issue here, the only information regarding the injury is the part of the body affected; however, other workers' compensation files may provide more detailed information as to the nature of the injury.

³ In the instant opinion OIP does not address the question of whether the public interest in public sector claimant information is strong enough to outweigh such a claimant's privacy interest, as the information at issue here relates solely to a private sector claimant. OIP found in its Opinion Letter Number 94-21 that a legislator's workers' compensation claim information was public under the UIPA. However, that decision relied

employees shed light on a public agency employer and affect the public fisc⁴ while claims by private sector employees do not, the public interest in individual workers' compensation claims by government employees is not the same as the public interest in those by private sector employees. See Georgiou, supra, at 136-37.

For private sector claims, the public interest is in monitoring the State's performance in administering the workers' compensation system and in deciding disputes between claimants and employers⁵ rather than in monitoring the State's expenditure of public funds as an employer providing benefits or paying premiums. Where a private sector claimant makes a claim that is not disputed, and thus DLIR has no reason to issue a decision on the claim, identifiable information about that private sector claimant does little to shed light on DLIR's performance of its duties or to otherwise promote governmental accountability.

OIP accordingly concludes that for private sector workers' compensation claimants, the public interest in workers' compensation information about an identifiable claimant is minimal, and does not outweigh the claimant's significant privacy interest in the information. Thus, DLIR was justified under the UIPA's privacy exception in denying access to the requested workers' compensation records about a specific individual.

RIGHT TO BRING SUIT

Requester has the right to bring an action in the circuit court to compel disclosure of the record. Haw. Rev. Stat. §§ 92F-15 and -15.5(a). This action must be brought within two years after the agency denial. If Requester prevails, the court will assess against the agency Requester's reasonable attorney's fees and costs incurred in the action. Haw. Rev. Stat. § 92F-15(d).

not just on the public interest in the information but also on the fact that the legislator in question had already publicly discussed her claim with a newspaper, thus diminishing any privacy interest in that information. Given those facts, OIP did not have reason to decide there, and does not here decide, whether workers' compensation claim information for a public sector claimant may be withheld under the privacy exception.

⁴ Where a governmental employer is self-insured, worker's compensation claims are directly paid by the government; where a governmental employer carries workers' compensation insurance through a private insurer, workers' compensation claims are indirectly paid by the government through premiums.

⁵ See "About Workers' Compensation," Department of Labor and Industrial Relations, Disability Compensation Division, at <http://Hawaii.gov/labor/dcd/aboutwc.shtml>.

If Requester files a lawsuit, Requester must notify OIP in writing at the time the action is filed. Haw. Rev. Stat. § 92F-15.3.

OFFICE OF INFORMATION PRACTICES

Jennifer Z. Brooks
Staff Attorney

APPROVED:

Cathy L. Takase
Acting Director