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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to sections 92F-27.5 and 92F-42, HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Karsten Oliva
Agency: County of Hawaii Department of Parks and Recreation
Date: March 27, 2025
Subject: Adequacy of Search for Personal Records (U APPEAL 23-15)

REQUEST FOR OPINION

Requester seeks a decision as to whether the County of Hawaii Department of Parks and Recreation (Parks) fully responded to Requester's request for "all those numerous emails and an itemized list of all that extensive and abusive name calling you had attributed to me before the [Hawaii County Ethics] Board" under part III of the Uniform Information Practices Act (Modified), chapter 92F, HRS (Part III).

Unless otherwise indicated, this decision is based solely upon the facts presented in an email from Requester to OIP dated January 13, 2023, with an attachment and an attached email thread; an email from Requester to OIP dated January 19, 2023, with an attached email thread; a letter from OIP to Parks dated January 19, 2023, with enclosures; an email from OIP to Requester dated January 24, 2023, with an attached email thread; an email from Parks to OIP dated January 27, 2023, with attachments and an attached email thread; an email from Requester to OIP dated January 29, 2023, with an attached email thread; a letter from OIP to Requester dated February 6, 2023; an email from Requester to OIP dated February 7, 2023; an email from OIP to Requester dated February 8, 2023, with an attached email thread; an email from Requester to OIP dated February 8, 2023, with an attached email thread; a letter from OIP to Parks dated February 14, 2023, with enclosures; a letter from Parks to OIP dated February 24, 2023; an email from OIP to Parks dated February 27, 2023, with an attachment and an attached email

thread; an email from Parks to OIP dated February 27, 2023, with an attached email thread; an email from Parks to OIP dated March 2, 2023, with an attached email thread; two emails from Requester to OIP dated March 6, 2023, each with an attached email thread; and two emails from OIP to Requester dated March 6, 2023, each with attachments and an attached email thread.

QUESTIONS PRESENTED

1. Whether Part III required Parks to compile a list of name-calling by Requester.

2. Whether Part III required Parks to make a further search for records of name-calling.

3. Whether part II of the UIPA (Part II) required Parks to compile a list of name-calling by Requester.

4. Whether Part II required Parks to make a further search for records of name-calling.

BRIEF ANSWERS

1. No. Part III includes no requirement for an agency to create a compilation or summary of personal records or to create new personal records, so OIP concludes that Parks has no Part III obligation to create a list of name-calling. HRS § 92F-21 (2012).

2. No. OIP finds that the records Parks provided to Requester, which it had previously gathered for use as an exhibit, were "accessible" personal records; but if there were any additional records of name-calling by Requester those would not be "accessible." OIP thus concludes that because Parks has already provided Requester all the "accessible" personal records responsive to his request, and Part III does not require an agency to search for non-accessible personal records, Parks has met its Part III obligation to Requester. HRS § 92F-21.

3. No. OIP finds that creating a list of name-calling from oral communications would require not just compiling information from existing records, but actually creating a new record based on the recollections of any employees Requester had called names, and OIP concludes that Part II did not require Parks to create a list of information not recorded in its existing records. OIP finds that since Parks had previously gathered together emails containing name-calling for use as an exhibit, the information in any similar emails that Parks had missed previously was not readily retrievable. OIP therefore concludes that Part II did not require Parks to compile information from such emails. With respect to the emails

Parks provided to Requester, OIP finds that because creating a list of name-calling would require Parks to take the additional step of compiling that list from emails it had already provided to Requester in full, the list would not be readily retrievable; and OIP concludes that Part II did not require Parks to create such a compilation.

4. No. Requester's request was limited to those emails Parks had presented to the Hawaii County Board of Ethics (Ethics Board) as evidence of name-calling. OIP found that based on the actual knowledge of the person who compiled the emails presented to the Ethics Board, the emails Parks provided to Requester were the only emails the Director of Parks (Director) had presented to and discussed with the Board in connection with Requester's alleged name-calling. OIP therefore concludes that Parks had no further duty to search for additional responsive records and it met its UIPA obligations by providing Requester with the emails presented to the Ethics Board.

FACTS

Requester emailed Parks on December 28, 2022. In that email, Requester (1) asserted that Director had "appeared before the [Ethics Board] and stated that [Requester] had been calling [Director] all sorts of names - calling [Director's] folks all sorts of names" even though Requester's "communications with [Parks] were entirely limited to emails," and then (2) requested "copies of all those numerous emails and an itemized list of that extensive and abusive name calling [Director] had attributed to me before the Board." Parks had not yet responded as of January 13, 2023,[1] so Requester sought assistance from OIP in obtaining a response, and OIP opened a Request for Assistance file, U RFA-P 23-33, on the matter. On January 27, 2023, Parks emailed Requester (1) a Notice to Requester stating that his request would be granted in full, and (2) a copy of the exhibits Parks had previously provided to the Ethics Board, which consisted almost entirely of emails from Requester to Parks.

Requester then complained to OIP that he had requested all emails including name-calling, "not just the ones that [Director] chose to use as his exhibits for the [Ethics Board]," and that the Parks response did not include the itemized list of name-calling he had requested. OIP closed its Request for Assistance file on the basis that Parks had in fact provided what it said were all responsive records, and advised Requester regarding his request for an itemized list that the "[UIPA] and OIP's administrative rules do not require an agency to provide lists or logs of responsive records." Requester appealed the Parks response as a denial of access, on the basis that the Parks response was incomplete and even if Parks was not required to create a list, "that does not relieve [Parks] to produce all emails."

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[1] An agency is required to respond within ten working days to a request made under Part III. HRS § 92F-23 (2012).

Parks responded to the appeal by informing OIP that "the emails [Director] provided as evidence to the Ethics Board were the only emails [Director] spoke of in front of the board." Parks subsequently clarified that its response was based on Director's actual knowledge of what his representations to the Ethics Board were based on, as "the person who compiled the emails that were discussed in front of the Board."

DISCUSSION

I. Agency Search Requirements for Personal Records

A. Part III Provides Access to "Accessible" Personal Records

Part III requires "[e]ach agency that maintains any accessible personal record [to] make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form." HRS § 92F-21. A personal record is defined 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.

HRS § 92F-3 (2012) (definition of "personal record"). Here, Requester seeks records of name-calling by Requester himself, so OIP finds that any responsive records would be "about" Requester and thus "personal records" for the purpose of Part III.

Notably, Part III's access right set out in section 92F-21, HRS, applies specifically to an "accessible" personal record rather than to personal records generally. In OIP Opinion Letter Number 95-19, OIP adopted the definition of when a personal record is "accessible" from the Uniform Information Practices Code of the National Conference of Commissioners on Uniform State Laws (Model Code), which the UIPA was modeled on. Under this definition, a personal record is accessible when it is either "maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals" or is "otherwise retrievable because an agency is able to locate the record through the use of information provided by a requester without an unreasonable expenditure of time, effort, money or other resources." OIP Op. Ltr. No. 95-19 n. 5 (quoting Model Code § 1-105(1) (1980)). Thus, the Part III access right is intended to apply to either records filed under the requester's name or other identifier, or to other records "about" the requester that an agency can locate without significant search time. Part III also does not include any requirement for

an agency to create a compilation or summary of personal records or to create new personal records.

If a requester's personal records are not "accessible," that does not mean the agency has no UIPA obligation to search for them. OIP has previously concluded that even when a requester is not entitled to access a record under Part III because an exemption to disclosure applies, the requester may still have the right to access it under Part II, which provides the public's right to access government records generally. E.g., OIP Op. Ltr No. F20-04 at 12 (quoting OIP Op. Ltr. No. 05-14 at 6-7). Similarly, even when an agency is not obliged to search for a requester's personal records under Part III because they are not "accessible," the agency may still be required to search for those records following the process set out for government record requests under Part II and chapter 2-71, HAR.[2]

B. Parks Met its Part III Obligations

Parks provided access to all the responsive records it located, and has not argued that a UIPA exemption or exception justified a denial of access to particular information or records. The question presented to OIP is whether Parks was required to create a list of information, either found in other records or not previously recorded, and whether it made a reasonable search for requested records. Because Requester's request was for personal records, OIP must first determine whether the requested records were "accessible" so as to require Parks to provide access to them under Part III.

The records Parks provided to Requester had been previously gathered by Parks for use as an exhibit before the Ethics Board. OIP finds although those records were not filed under Requester's name, and thus were not maintained under a retrieval scheme or indexing structure based on Requester's identity, they were nonetheless "otherwise retrievable" because Parks could readily locate them through Requester's reference to the Ethics Board in his request. OIP further finds that any additional records of name-calling by Requester that were not included in the exhibit were not filed under Requester's name and could not be otherwise

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[2] When a requester seeks personal records that are not filed under the requester's name or other identifier and cannot be located without significant search time, the agency can thus follow the response deadlines and fees applicable to a request made under Part II, including search fees as permitted under chapter 2-71, HAR. However, once the agency has searched for and located the requester's personal records under Part II, it should not proceed straight to considering the applicability of the Part II exceptions to disclosure, but instead should disclose the personal records unless a Part III exemption applies; once located, the requester's personal records are "accessible" and thus subject to Part III disclosure. See OIP Op. Ltr. No. F24-01 at 6 (setting out steps of analysis for disclosure of personal records).

readily located by Parks, so such records (if they existed) would not be "accessible" personal records. OIP thus concludes that because Parks has already provided Requester with all the "accessible" personal records responsive to his request, and Part III does not require an agency to either search for non-accessible personal records or to create new personal records, Parks has met its Part III obligation to Requester. The remaining question is whether Part II required Parks to further search for responsive records or to create a list of name-calling.

II. Agency Search Requirements for Part II Records

A. Parks Was Not Required to Create a List of Name-Calling

Part II provides that "[a]ll government records are open to public inspection unless access is restricted or closed by law." HRS § 92F-11(a) (Supp. 2024).

> However, an agency's obligation to disclose records only applies to the records it actually maintains; it is not required to provide records that it does not maintain, including records that do not exist. See HRS §§ 92F-3 (defining "government record" as records maintained by an agency), 92F-11(c) (providing that an agency is not required to create "a compilation or summary of its records" unless the information is "readily retrievable"); see also State of Hawaii Organization of Police Officers v. Society of Professional Journalists - University of Hawaii Chapter, 83 Haw. 378, 393, 927 P.2d 386, 401 (Haw. 1996) (opining that the UIPA does not impose an affirmative obligation to maintain records).

OIP Op. Ltr. No. F24-07 at 10.

Requester sought "an itemized list of that extensive and abusive name calling [Director] had attributed to me before the Board." Requester himself asserted that his communications with Parks were all through email, and Parks has already provided him with all the emails it believed included name-calling. Thus, the requested list could potentially be drawn from three sources: name-calling that was not recorded in writing or otherwise (perhaps because it was an oral communication in a telephone call or in-person encounter), name-calling compiled from the emails Parks has already provided to Requester, or name-calling compiled from any additional emails not located when Parks gathered emails for its exhibit and thus not already provided to Requester. With respect to the first possibility, even if there were additional name-calling incidents in Requester's oral communications with Parks employees (Requester asserted his communications were all through email), OIP finds that creating a list of that name-calling would require not just compiling information from existing records, but actually creating a new record based on employees' recollection of names Requester had called them. OIP concludes that

Part II did not require Parks to create a list of information not found in its existing records. With respect to any emails containing name-calling that Parks did not find when it originally gathered together such emails for use as an exhibit, OIP finds that information in such emails was not readily retrievable due to the additional time and effort finding the emails would require of Parks, and OIP concludes that Part II did not require Parks to compile information from such emails. (Whether Parks satisfied its Part II obligation to search for additional emails is addressed below.) Finally, with respect to the emails Parks previously provided to Requester, OIP finds that because creating a list of name-calling would require Parks to take the additional step of compiling that list from emails it had already provided to Requester in full, the list would not be readily retrievable; and OIP concludes that Part II did not require Parks to create such a compilation.

B. Parks Made a Reasonable Search for Responsive Records

> Normally, when an agency's response to a record request states that no responsive records exist and that response is appealed, OIP assesses whether the agency's search for a responsive record was reasonable. OIP Op. Ltr. No. 97-8 at 4-6. A reasonable search is one "reasonably calculated to uncover all relevant documents," and an agency must make "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." Id. at 5 (citations omitted).

OIP Op. Ltr. No. 24-07 at 10.

> However, in rare cases, when an agency's staff has "actual knowledge that the type of record requested was never created," the agency is "absolved from having to conduct a search reasonably likely to produce the requested records." OIP Op. Ltr. No. F16-03 at 3-4.

Id. at 17-18.

In this case, it is important to note that Requester's request to Parks was not for all Parks records containing name-calling by Requester, but instead specifically asked for "all those numerous emails . . . of that extensive and abusive name calling [Director] **had attributed to me before the Board**." (Emphasis added.) Thus, the records responsive to the search were limited to those emails Parks had presented to the Ethics Board as evidence of name-calling. Even if Parks actually maintained additional records of name-calling by Requester that it did not present to the Ethics Board, those records would not be responsive to the request for the emails containing name-calling that Parks had "attributed to [Requester] before the Board." Parks asserted, based on Director's actual knowledge as the person who compiled the emails presented to the Ethics Board, that the emails it provided to

Requester were the only emails it had presented to and discussed with the Ethics Board in connection with Requester's alleged name-calling. OIP accepts this assertion as true, having no reason to find otherwise. OIP therefore concludes that based on Director's actual knowledge that the emails it provided to Requester were the only emails it had compiled and presented to the Ethics Board as evidence of name-calling, Parks had no further duty to search for additional responsive records and it met its UIPA obligations by providing Requester with the emails presented to the Ethics Board.

RIGHT TO BRING SUIT

Requester is entitled to seek assistance directly from the courts. HRS §§ 92F-27(a), 92F-42(1) (2012). An action against the agency denying access must be brought within two years of the denial of access (or where applicable, receipt of a final OIP ruling). HRS § 92F-27(f).

For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

If the court finds that the agency knowingly or intentionally violated a provision under Part III, the personal records section of the UIPA, the agency will be liable for: (1) actual damages (but in no case less than $1,000); and (2) costs in bringing the action and reasonable attorney's fees. HRS § 92F-27(d). The court may also assess attorney's fees and costs against the agency when a requester substantially prevails, or it may assess fees and costs against Requester when it finds the charges brought against the agency were frivolous. HRS § 92F-27(e).

This opinion constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES

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