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September 11, 1989

MEMORANDUM

TO: Mario R. Ramil, Director
Department of Labor & Industrial Relations

ATTN: Orlando K. Watanabe, Administrator
Disability Compensation Division

FROM: Martha L. Young, Staff Attorney
Office of Information Practices

SUBJECT: Public Accessibility of Workers' Compensation
Notices of Insurance Under Hawaii's New Uniform
Information Practices Act (Modified)

This is in response to your request for an Office of Information Practices advisory opinion on the public accessibility of information collected and maintained pursuant to Hawaii Revised Statutes ("Haw. Rev. Stat.") §386-122 (Supp. 1988), "Notice of insurance", under the new Uniform Information Practices Act (Modified), Chapter 92F, Haw. Rev. Stat. (Supp. 1988) ("UIPA").

QUESTION PRESENTED

Whether notices of insurance, copies of insurance contracts and policies, and statements of benefits collected and maintained by the State Department of Labor and Industrial Relations ("DLIR"), pursuant to Haw. Rev. Stat. §386-122, "Notice of insurance", are accessible to the public under Haw. Rev. Stat. Chapter 92F (Supp. 1988), the UIPA.

BRIEF ANSWER

Yes. Pursuant to the UIPA, notices of insurance, copies of insurance contracts and policies, and statements of benefits collected and maintained by the DLIR pursuant to Haw. Rev. Stat. §386-122 are public records and should be open for public inspection and duplication.

OIP Op. Ltr. No. 89-1

FACTS

The DLIR collects and maintains "notices of insurance", on a form prescribed by the department director, pursuant to the requirements of Haw. Rev. Stat. §386-122. This statute is a part of the Hawaii Workers' Compensation Law and applies to private employers who secure workers' compensation for their employees through the purchase of a workers' compensation insurance policy.

Haw. Rev. Stat. §386-122 was amended in 1988, with changes to take effect on July 1, 1989. The earlier form of this statute, Haw. Rev. Stat. §386-122 (1985), required employers to file with the DLIR a "notice of insurance" as well as a copy of the insurance policy or contract, as follows:

If the insurance so effected is not under paragraph (2) or (3) of section 386-121(a) the employer shall forthwith file with the director of labor and industrial relations in a form prescribed by the director a notice of the employer's insurance together with a copy of the contract or policy of insurance. (emphasis added)

The amended statute still requires the notice, but eliminates the requirement of the policy or contract. Instead, the law now requires a statement of the benefits provided by the insurance policy.¹ Haw. Rev. Stat. §386-122 (Supp. 1988), as amended, provides as follows:

If the insurance so effected is under section 386-121(a)(1), the employer shall file with the director in a form prescribed by the director a notice of the employer's insurance together with a statement of benefits provided by the policy of insurance.² (emphasis added)

¹ However, employers whose principal place of business is outside the State must still file a copy of the insurance policy or contract, along with the "notice of insurance" form. Haw. Rev. Stat. §386-10 (Supp. 1988).

² Haw. Rev. Stat. §386-121(a)(1) as referenced in the statute simply refers to the employer's chosen option of securing workers' compensation through the purchase of a workers' compensation insurance policy rather than by depositing satisfactory security with the state director of finance, furnishing the DLIR with proof of solvency and financial ability to pay, or membership in a workers' compensation self-insurance group.

The question presented applies to records collected under both the earlier and the amended forms of Haw. Rev. Stat. §386-122, because the DLIR will undoubtedly still be maintaining those records collected before July 1, 1989. Several requests under the UIPA for access to the workers' compensation insurance information collected pursuant to Haw. Rev. Stat. §386-122 have been received by the DLIR. We understand that one of these requests was made by IRC, Inc., a firm that represents the local painting industry. IRC has voiced concerns over whether all out-of-state painting contractors are complying with Hawaii's mandatory workers' compensation insurance law.

The two types of DLIR workers' compensation records to which the UIPA must be applied are as follows:

1. Copy of the insurance policy, contract, or endorsement. (Required only by the earlier form of §386-122 before July 1, 1989. No longer being collected, but still being maintained by the DLIR.)
2. Notice of employers' insurance and statement of insurance policy benefits. (A new DLIR-prescribed form combines both the notice and statement on one page. The "statement" requirement was added by the 1988 amendment to §386-122.)

The insurance policies, contracts, and endorsements collected by the DLIR before July 1, 1989, contain the following types of information:

1. Information about the employer (the "insured"):
 - a) name and address
 - b) other names and locations under which/where the insured also does business
 - c) type of business (corporation, partnership, etc.)
2. Information about the insurance company providing coverage (the "issuer"):
 - a) name
 - b) carrier number
 - c) authorized representative's signature
3. Information about the local agent who sold the policy (the "producer"):
 - a) name and address
 - b) producer's code
 - c) branch number and name

4. Information about the policy or insurance contract itself:
 - a) effective date(s) of coverage/endorsement
 - b) policy number, previous policy number
 - c) expiration date
 - d) issue date
 - e) policy period
 - f) states in which applicable
 - g) limits of coverage
 - h) estimated premium
 - i) payment schedule
 - j) any special surcharges or assessments
 - k) schedule number
 - l) classifications of operations for which the insured is covered
 - m) code numbers for operations classifications
 - n) type of coverage provided

The new "Notice of Insurance/Statement of Benefits" form (See Exhibit "A") required by the DLIR beginning July 1, 1989, contains the following information:

1. Information about the employer:
 - a) DLIR or unemployment insurance tax identification number
 - b) legal name
 - c) all "Doing Business As" names operating in Hawaii
 - d) mailing address
 - e) type of entity (corporation, partnership, etc.) and SIC code (from federal Office of Management and Budget's Standard Industrial Classification Manual)
2. Information about the insurance company providing coverage (the "carrier"):
 - a) name
 - b) address (form to be typed on their letterhead)
 - c) signature of authorized representative
3. Information about the local agent who sold the policy:
 - a) name
4. Information about the policy or insurance contract itself:
 - a) whether an initial policy or a renewal
 - b) previous policy number
 - c) policy number
 - d) effective period of coverage and expiration date
 - e) master policy name (for multiple entities)

DISCUSSION

The UIPA, effective July 1, 1989, is a new public records law which promotes open government while protecting the individual's constitutional right to privacy. Chapter 92F begins with the broad declaration that "...it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of government agencies - shall be conducted as openly as possible." Haw. Rev. Stat. §92F-2 (Supp. 1988). This section then lists the UIPA's "underlying purposes and policies", which include promoting "the public interest in disclosure" and enhancing "governmental accountability through a general policy of access to government records." Haw. Rev. Stat. §92F-2 (1), (2) (Supp. 1988). In addition, Part II of the UIPA states that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. §92F-11(a) (Supp. 1988). Notwithstanding this clear mandate for open public access to governmental information, careful analysis requires searching the UIPA for any exceptions that might apply to the information collected and maintained by the DLIR pursuant to Haw. Rev. Stat. §386-122.

The main exceptions to the UIPA's general rule of open disclosure are contained in §92F-13, beginning with "...[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-14(a) clarifies that this concept of personal privacy refers only to individuals, which are defined as "natural" persons in §92F-3. The UIPA's legislative history suggests that "[t]he case law under the Freedom of Information Act should be consulted for additional guidance" regarding an individual's privacy interest. S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S. J. 1093, 1094 (1988).

Cases interpreting the federal Freedom of Information Act agree that "...the right of privacy is primarily designed to protect the feelings and sensibilities of human beings and does not protect artificial entities." Health Central v. Commissioner of Insurance, 393 N.W.2d 625 (Mich. App. 1986). However, even if an individual were acting as an employer under Haw. Rev. Stat. §386-122, the public interest in disclosure of the types of information required by the DLIR as proof of compliance with Hawaii's workers' compensation law would easily outweigh the individual's privacy interest in information such as the insurance carrier, coverage, or policy number. "If the

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privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S. J. 689, 690 (1988).

The second subsection of §92F-13 excepts records relating to cases where the State or a county is or may be a party, and does not apply to the facts at hand.

Subsection three of §92F-13 excepts from disclosure records that must be confidential in order "for the government to avoid the frustration of a legitimate government function." A review of the UIPA's legislative history interpreting the concept of "frustration of a legitimate government function" reveals no examples which can be easily analogized to the types of information collected and maintained by the DLIR as proof of employers' compliance with the workers' compensation law.

Even the closest example, taken from Senate Standing Committee Report No. 2580, dated March 31, 1988, page 4, "...confidential commercial and financial information", sets a threshold for confidentiality that the DLIR information does not meet. The DLIR records at issue contain only the most minimal information necessary to ascertain that a submitting employer does indeed have workers' compensation insurance, such as basic identifying information about the employer, identification of the insurance carrier and local agent, basic policy information, and the carrier's verification of the coverage. This type of information certainly does not rise to the level of "confidential commercial and financial information."

Federal Freedom of Information Act case law applies ordinary meanings to the terms "commercial" and "financial", and a mere desire to keep information secret does not make it commercial. Guidebook to the Freedom of Information and Privacy Acts §4.02[2][a] (J. Franklin & R. Bouchard ed. 1989). To be exempt from disclosure, the information must be such that disclosure is likely "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).

The release of the types of information submitted by employers in compliance with Haw. Rev. Stat. §386-122 will not harm the employer's competitive position or prevent employers from submitting the required information to the DLIR.


Therefore, such release will not result in the "frustration of a legitimate government function." On the contrary, the release of this information will notify the general public that government has ensured that employers operating in the State have protected their employees as required by the workers' compensation law.

The last two disclosure exceptions of Haw. Rev. Stat. §92F-13 address records protected by state or federal law and with particular legislative records, neither of which applies to the instant fact situation.


Absent any disclosure exception in the UIPA which applies to the notices of insurance, copies of insurance contracts and policies, and statements of benefits collected and maintained by the DLIR pursuant to §386-122 to verify employers' workers' compensation insurance, these records should be open for public inspection and access in accordance with Haw. Rev. Stat. §92F (1988 Supp.).

CONCLUSION

The notices of insurance, copies of insurance contracts and policies, and statements of benefits collected and maintained by the DLIR pursuant to Haw. Rev. Stat. §386-122 do not contain any information which the UIPA excepts from its general rule of open disclosure. Therefore, these records are public and should be open for inspection and duplication.


Martha L. Young
Staff Attorney

APPROVED:


Kathleen A. Callaghan
Director

Attachment

CARRIER LETTERHEAD

WORKERS' COMPENSATION NOTICE OF INSURANCE

INITIAL
 RENEWAL (PREVIOUS POLICY NUMBER: _____)

EMPLOYER INFORMATION

1. DOL/UI NO.: _ _ _ / _ _ _ / _ _ _ _ _

2. LEGAL NAME: _____

3. DBAS: _____

4. MAILING ADDRESS: _____

5. ENTITY/SIC CODE: _____ / _____

POLICY INFORMATION

6. POLICY NUMBER: _____

7. EFFECTIVE PERIOD: from ___/___/___ to ___/___/___ 12:01 a.m.

8. MASTER POLICY NAME (FOR MULTIPLE ENTITIES IF APPLICABLE):

9. CARRIER: _____

10. AGENT: _____

This certifies that all employees of the named employer will be provided all benefits as required by the Hawaii workers' compensation law.

Date

Signature of Authorized Representative