

**Op. Ltr. 90-24 Inter-agency Access to Government Records Maintained by the
Employees' Retirement System**

OIP Op. Ltr. No. 05-03 partially overrules this opinion to the extent that it states or implies that the UIPA's privacy exception in section 92F-13(1), HRS, either prohibits public disclosure or mandates confidentiality.

July 9, 1990

MEMORANDUM

TO: The Honorable Mario R. Ramil
Director of Labor and Industrial Relations

ATTN: Mamoru Isobe, Labor Law Specialist
Enforcement Division, DLIR

FROM: Hugh R. Jones, Staff Attorney

SUBJECT: Inter-agency Access to Government Records Maintained by
the Employees' Retirement System

This is in reply to your letter dated November 24, 1989, requesting an advisory opinion concerning the right of the Department of Labor and Industrial Relations ("DLIR"), under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), to inspect government records maintained by the State of Hawaii, Employees' Retirement System ("ERS").

ISSUE PRESENTED

Whether the home address of a former agency employee who receives pension payments from the ERS may be disclosed to the DLIR, when this retiree is also an "employer" responsible for unpaid wage claims under chapter 388, Hawaii Revised Statutes, in order for the DLIR to locate the retiree and collect the unpaid wages pursuant to its duty to enforce chapter 388, Hawaii Revised Statutes.

BRIEF ANSWER

In previous Office of Information Practices' ("OIP") advisory opinions, we concluded that in the usual case, the

OIP Op. Ltr. No. 90-24

The Honorable Mario R. Ramil
July 9, 1990
Page 2

disclosure of an individual's home address, as contained within a government record, would constitute a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. The UIPA provides that no agency may disclose or authorize disclosure of "confidential" government records to any other federal, state, or local government agencies, unless the disclosure is one permitted by section 92F-19(b), Hawaii Revised Statutes. Therefore, unless the disclosure of the confidential information to the DLIR is authorized by section 92F-19, Hawaii Revised Statutes, the disclosure would be contrary to the UIPA.

Under the facts present here, only section 92F-19(a)(3), Hawaii Revised Statutes, would authorize disclosure. Based upon the express legislative purpose behind this section, we previously opined that this section must be narrowly construed. See OIP Op. Ltr. No. 90-9 (Feb. 26, 1990). Consistent with standards adopted in that opinion, we conclude that the ERS may disclose the pertinent information to the DLIR, insofar as its disclosure would directly further the performance of the DLIR's express statutory duty to enforce the wage provisions of chapter 388, Hawaii Revised Statutes. Lastly, in our opinion, section 92F-19, Hawaii Revised Statutes, only permits the inter-agency disclosure of confidential government records when one of the circumstances set forth therein is present; it does not mandate the inter-agency disclosure of confidential government records when such circumstances are present.

FACTS

The DLIR's Enforcement Division investigates violations of chapter 388, Hawaii Revised Statutes, entitled "Wages and Other Compensation, Payment Of," and is authorized by section 388-9, Hawaii Revised Statutes, to enforce its provisions. Among other things, chapter 388, Hawaii Revised Statutes, requires the payment of wages that are conceded to be due by an employer, at least twice each calendar month. See Haw. Rev. Stat. §§ 388-2 and 388-5 (1985 and Supp. 1989).

Some time ago, the DLIR pursued the former president of a Hawaii corporation, which had failed to pay wages to its employees as required by chapter 388, Hawaii Revised Statutes. After commencing a civil action to collect several thousand

The Honorable Mario R. Ramil
July 9, 1990
Page 3

dollars in unpaid wages, the DLIR and the employer's former president entered into a settlement agreement, pursuant to which, the former president agreed to make payment of the unpaid wages in installments. The former president of the employer-corporation is a retired employee of the City and County of Honolulu, and receives monthly pension payments from the ERS. The former president of the employer-corporation has failed to pay the amount required by the terms of the settlement agreement. The DLIR has been unsuccessful in locating the former president's whereabouts, in order to collect the remaining unpaid wages due under chapter 388, Hawaii Revised Statutes.

The DLIR desires to inspect government records maintained by the ERS, in particular those containing the residential address where the former president's monthly pension payments are mailed, so as to locate this person and collect the remaining unpaid wages.

DISCUSSION

The UIPA, the State's new public records law, carefully limits inter-agency disclosure of government records which are not otherwise subject to public inspection under part II, "Freedom of Information," of the Act. Section 92F-19, Hawaii Revised Statutes, sets forth the conditions under which one agency may disclose such records to another agency. However, the limitations set forth in section 92F-19, Hawaii Revised Statutes, do not apply if the particular government record, or information contained therein, is otherwise "public" under part II of the UIPA.¹

In previous OIP advisory opinion letters, we concluded that in most cases, the disclosure of an individual's home address, as set forth in a government record, would constitute a clearly unwarranted invasion of personal privacy under section 92F-13 (1), Hawaii Revised Statutes. See OIP Op. Ltr. Nos. 89-4 (Nov. 9, 1989), and 89-16 (Dec. 27, 1989). We are aware of no facts that would change this conclusion based on the facts present here. Therefore, we must examine section 92F-19, Hawaii Revised Statutes, to determine whether the inter-agency

¹See Haw. Rev. Stat. § 92F-19(a)(10) (Supp. 1989) (inter-agency disclosure prohibited unless "[o]therwise subject to disclosure under this chapter").

The Honorable Mario R. Ramil
July 9, 1990
Page 4

disclosure of this protected information is authorized by the
UIPA.

The former president's residential mailing address was provided to the ERS for the purpose of processing the payment of her retirement allowance, thus, disclosure of this information to another government agency would not be "[c]ompatible with the purpose for which the information was collected or obtained." Haw. Rev. Stat. § 92F-19(a)(1) (Supp. 1989). Similarly, under these circumstances, disclosure of the former president's home address to the DLIR would not be "[c]onsistent with the conditions of reasonable expectations of use and disclosure under which the information was provided." Haw. Rev. Stat. § 92F-19(a)(2) (Supp. 1989).

In OIP Opinion Letter No. 90-1 (Jan. 5, 1990), we concluded that section 92F-19(a)(5), Hawaii Revised Statutes, does not permit the disclosure of government records from one State or county agency to an agency of another state, and only permits disclosure of confidential government records to agencies of the federal government. Because the DLIR is not a "federal" agency, section 92F-19(a)(5), Hawaii Revised Statutes, does not authorize disclosure of the information requested by the DLIR.

The provisions contained in section 92F-19(a)(4), (6), (7), (8), (9), and (10) are inapplicable to the facts presented. Thus, the only provision of section 92F-19, Hawaii Revised Statutes, that would sanction the disclosure of the relevant government records to the ERS under these circumstances, would be that which authorizes disclosure when it "[r]easonably appears to be proper for the performance of the requesting agency's duties and functions." Haw. Rev. Stat. § 92F-19(a)(3) (Supp. 1989). We previously examined this UIPA provision, its legislative history, and its relationship to a similar provision of the Uniform Information Practices Code in OIP Opinion Letter No. 90-9, (Feb. 26, 1990). In that opinion, we concluded that section 92F-19(a)(3), Hawaii Revised Statutes, must be narrowly construed so as not to frustrate the legislative intent that the UIPA "[m]ake government accountable to individuals in the collection, use, and dissemination of information relating to them." Haw. Rev. Stat. § 92F-2 (Supp. 1989) (emphasis added). Accordingly, we concluded that section 92F-19(a)(3), Hawaii Revised Statutes, permits inter-agency disclosure of government records, only when disclosure would reasonably appear proper and directly further

The Honorable Mario R. Ramil
July 9, 1990
Page 5

the requesting agency's express or fairly implied constitutional or statutory duties and functions. See OIP Op. Ltr. No. 90-9, at 10 (Feb. 26, 1990).

Turning to the issue presented, the DLIR is expressly charged by statute to "enforce and administer" chapter 388, Hawaii Revised Statutes, and to "hold hearings and otherwise investigate charges of violations" of Hawaii laws concerning the payment of wages. Disclosure of the former president's residential address will directly further these duties by allowing the DLIR to locate the responsible employer and to collect the wages that remain unpaid. Further, disclosure would, in our opinion, be "proper" for the performance of the DLIR's duties and functions. Therefore, we conclude that the ERS may disclose the residential address of a retired public employee to the DLIR, under the circumstances presented here. The DLIR, upon receipt of this confidential information, shall be subject to the same restrictions on disclosure of the information as the ERS. Haw. Rev. Stat. § 92F-19(b) (Supp. 1989).

Whether section 92F-19, Hawaii Revised Statutes, mandates one agency to disclose confidential government records to another agency presents another issue. Section 92F-19(a), Hawaii Revised Statutes, states, "[n]o agency may disclose or authorize disclosure of government records to any other agency unless" The plain language of this statute prohibits the inter-agency disclosure of confidential government records unless an exception exists; it does not, on its face, require such disclosures. The legislative history of section 92F-19, Hawaii Revised Statutes, upon examination, contains contrary indications as to whether disclosure is permissive or mandatory under the statute. First, the legislative committee reports to section 92F-19, Hawaii Revised Statutes, state:

11. Limitation on Disclosure to Other Agencies. The bill will continue the current prohibitions on the sharing of records and information between agencies except in specific circumstances or where the record or information is otherwise public. Specific mention has, however, been made to the Legislative Reference Bureau, the Legislative Auditor, and the Ombudsman to ensure that they receive the information necessary to carry out their duties.

The Honorable Mario R. Ramil
July 9, 1990
Page 6

S. Conf. Comm. Rep. No. 235, 14th Leg., Reg. Sess., Haw. S.J. 689, 691 (1988), H. Conf. Comm. Rep. No. 112-88, 14th Leg., Reg. Sess., Haw. H.J. 817, 818 (1988) (emphasis added). Section 92F-19, Hawaii Revised Statutes, was taken almost entirely from former section 92E-5, Hawaii Revised Statutes. The legislative committee reports to section 92E-5, Hawaii Revised Statutes, similarly send conflicting signals as to its permissive or mandatory nature:

Section -5. Limitations on disclosure of personal record to other agencies. This section delineates guidelines for agencies maintaining records on individuals when making disclosures to other agencies. Thus, if the disclosure is in line with the purpose for which the information was collected, if the disclosure is consistent with the conditions of use and disclosure under which the information was given, if the disclosure appears to be consistent with the requesting agency's performance of duties, if the disclosure is to the archives, if the disclosure is to a federal agency, or to a foreign government and authorized by treaty or statute, for law enforcement investigative purposes, if the disclosure is to the legislature or committees within the Legislature, if the disclosure is ordered by court, or if the disclosure is to officials of a department or agency of the federal government for specific purposes, then such disclosure is permitted.

Therefore, an office, such as the legislative auditor, would clearly have access to records maintained by other agencies, if their investigation and request for disclosure are in keeping with the performance of its duties and functions as circumscribed by statute.

H. Conf. Comm. Rep. No. 46-80, 10th Leg., Reg. Sess., Haw. H.J. 1098, 1099 (1980) (emphases added). The Uniform Information Practices Code ("Model Code"), drafted by the National Conference of Commissioners on Uniform State Laws, served as a model for the UIPA. Sections 92F-19 and 92E-5, Hawaii Revised Statutes, are

The Honorable Mario R. Ramil
July 9, 1990
Page 7

substantially identical in substance to section 3-103 of the Model Code. The Commentary to this Model Code section states:

Subsection (a) prohibits inter-agency disclosure of individually identifiable records unless one of the enumerated exceptions is applicable This approach tends to require agencies to collect information directly from the individual to whom it pertains and thus reinforces a central principle of this Article. [Emphases added.]

Despite possibly contradictory statements in the legislative committee reports to sections 92F-19 and 92E-5, Hawaii Revised Statutes, we feel constrained to apply the plain language of subsection (a) of section 92F-19, Hawaii Revised Statutes. This language clearly only permits, and does not require, inter-agency disclosure if one of the exceptions is applicable. This conclusion also better comports with the legislative intent behind section 92F-19, Hawaii Revised Statutes, which is to "[m]ake government accountable to individuals in the collection, use, and dissemination of information relating to them." Haw. Rev. Stat. § 92F-2 (Supp. 1989).

CONCLUSION

The UIPA limits the ability of agencies to disclose government records, which are not otherwise "public" under the Act, to other agencies. In previous OIP advisory opinions, we concluded that the disclosure of a person's home address, under most circumstances, would constitute a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes. No facts are present here that would change this conclusion. Therefore, under these circumstances, disclosure of the information requested by the DLIR must be authorized by section 92F-19, Hawaii Revised Statutes.

An examination of section 92F-19, Hawaii Revised Statutes, reveals that the only provision of this section that would permit disclosure of the pertinent information, is that which allows disclosure when it "[r]easonably appears proper for the performance of the requesting agency's duties and functions." Haw. Rev. Stat. § 92F-19(3) (Supp. 1989). Based upon standards adopted in a previous OIP advisory opinion letter, we conclude that disclosure of the home address of a retired public employee

The Honorable Mario R. Ramil
July 9, 1990
Page 8

by the ERS to the DLIR, would directly further the performance of its express statutory duties and is, therefore, proper under the UIPA. Lastly, we conclude that section 92F-19, Hawaii Revised Statutes, only authorizes the inter-agency disclosure of confidential government records if one of the circumstances described therein is present; it does not mandate the inter-agency disclosure of confidential government records when such circumstances exist.

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HRJ:sc
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APPROVED:

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