

Op. Ltr. 90-25 Firearm Permit Applications

The statutes at issue in this opinion were amended by Act 204, Session Laws of Hawaii 1994, which may materially affect the conclusion reached in similar future opinions. See instead OIP Op. Ltr. 07-01.

July 12, 1990

Mr. Richard Borreca
Capitol Bureau Chief
Honolulu Star Bulletin
P.O. Box 3080
Honolulu, Hawaii 96802

Dear Mr. Borreca:

Re: Public Access to Firearms Registration Information

This is in reply to your February 14, 1990, request for an advisory opinion concerning public access to county police records pertaining to firearms permits issued in Hawaii.

ISSUE PRESENTED

Whether information in the Firearms Registration forms maintained by the City and County of Honolulu Police Department ("HPD") concerning firearms registered, pursuant to section 134-3, Hawaii Revised Statutes, with the chiefs of police of the counties of Hawaii, Maui, and Kauai, and the City and County of Honolulu, is public under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

BRIEF ANSWER

Some of the Firearms Registration information maintained by HPD is public under the UIPA, and some of the information is confidential. Personal information contained on the Firearms Registration form, such as residence address and telephone number, place and date of birth, citizenship, complexion, sex, height, hair and eye color, age, and social security number, is protected from public disclosure by the UIPA's exception for personal privacy. The present fact situation presents no public interest in disclosure of such personal details that outweighs the individual's privacy interests.

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There is also a significant privacy interest in the owner's name and in the description of the firearm. A firearm could arguably be considered an "asset," and assets are included in the UIPA's examples of information in which the individual has a significant privacy interest. However, for both the owner's name and descriptions of handguns (pistols and revolvers), the individual's privacy interest is outweighed by the public interest in disclosure. Conversely, for long guns (rifles and shotguns), which need not be registered if acquired within the State, the public interest in disclosure does not outweigh the privacy interests of the individual. In addition, the release of firearms owners' names and the descriptions of handguns will not frustrate any legitimate government function.

Therefore, the names of registered firearms owners as contained in Firearms Registration forms are public under the UIPA. In addition, descriptions of handguns contained in Firearms Registration forms are also public. To the contrary, descriptions of long guns and other personal information contained in Firearms Registration forms are confidential and should not be made available to the public.

FACTS

Chapter 134, Hawaii Revised Statutes, regulates the acquisition, transfer, and possession of "firearms, ammunition and dangerous weapons." Persons wishing to acquire a firearm¹ must first obtain a "permit to acquire the ownership of a firearm" from the "chief of police of the county of the person's place of business or, if there is no place of business, the person's residence or, if there is neither place of business nor residence, the person's place of sojourn." Haw. Rev. Stat. § 134-2(a) (Supp. 1989). This "permit to acquire" a firearm must be obtained for all types of firearms, no matter how the firearm is to be acquired ("by purchase, gift, inheritance, bequest, or in any other manner"). Haw. Rev. Stat. § 134-2(a) (Supp. 1989). Permits to acquire pistols or revolvers are issued for one specific firearm only and are void if not used within 10 days from the date of issue. Haw. Rev. Stat. § 134-2(e) (Supp. 1989). Permits to acquire rifles or shotguns may be used to acquire any number of rifles or shotguns for a period of one year from the date of issue. Id.

¹"Firearm" means any weapon, for which the operating force is an explosive, including but not limited to pistols, rifles, shotguns, automatic firearms, noxious gas projectors, mortars, bombs, and cannon." Haw. Rev. Stat. § 134-1 (Supp. 1989).

Section 134-7, Hawaii Revised Statutes, sets forth the circumstances prohibiting ownership or possession of firearms in Hawaii, including being a fugitive from justice, waiver of indictment for or conviction of a felony or violent crime or illegal drug sale, and present or prior treatment for substance addiction or significant behavioral, emotional, or mental disorder. Haw. Rev. Stat. § 134-7 (Supp. 1989). The discovery of any of these circumstances will prevent a person from qualifying for a "permit to acquire" a firearm and will also disqualify a person who already owns a firearm from continued ownership and possession. In such a case, ownership of the firearm must be transferred to someone else who can qualify for a "permit to acquire," or the firearm will be confiscated or destroyed.

Persons who acquire pistols or revolvers pursuant to section 134-2, Hawaii Revised Statutes, or who bring any type of firearms into the State, must then register the firearms with the "chief of police of the county of the person's place of business or, if there is no place of business, such person's residence or, if there is neither a place of business nor residence, the person's place of sojourn." Haw. Rev. Stat. § 134-3(a), (b) (Supp. 1989). Registration is mandatory for all pistols or revolvers acquired in the State and for any type of firearm brought into the State. Id. It is illegal in Hawaii to own a pistol or revolver without registering the firearm. Registration is not required for rifles and shotguns acquired within the State.²²

Persons moving into the State and registering firearms (including pistols, revolvers, rifles, and shotguns) they already possess pursuant to section 134-3(a), Hawaii Revised Statutes, are not required to obtain "permits to acquire" before registering their firearms, but the HPD performs an initial background computer check before registering the firearms. In addition, the same investigation that is done for a "permit to acquire" is then performed as soon as possible. If the out-of-state person does not meet the same standards as those applied to an in-state applicant for a "permit to acquire," the person is notified that the qualifications have not been met to own a firearm in the State of Hawaii, and the firearm's ownership must be transferred to another person or it will be confiscated by the HPD.

Firearms Registration forms issued by all four counties within the State are maintained by the HPD in Honolulu. The HPD

²²Automatic firearms are illegal within the State, and their acquisition, ownership, or possession is prohibited. See Haw. Rev. Stat. § 134-8 (Supp. 1989).

Firearms Section is staffed twenty-four hours a day to respond to other law enforcement agencies' calls. A sample form is attached as Exhibit "A."³ The Firearms Registration forms are permanent government records which the HPD maintains in duplicate, one copy filed alphabetically by owner's name and another copy filed by manufacturer, type of firearm, and serial number. The original copy of the form is kept by the owner as proof of ownership and registration. Firearms Registration information is used to verify ownership and thus, prove a person's right to possession, as well as to identify owners of found or confiscated firearms.

There are approximately 400,000 Firearms Registration forms in the HPD's files, dating back to the 1930's. But this figure does not accurately represent the total number of registered firearms presently within the State, because the law does not require that the HPD be notified when firearms are taken out of the State, destroyed, or made inoperable, although the HPD does note these facts when they are known. In addition, the other three counties within the State are not required to notify the HPD when firearms registered in those counties are confiscated or destroyed.

The HPD is presently in the process of computerizing the information contained in the Firearms Registration forms that were issued by the HPD, with the task approximately two-thirds completed. There are no plans to computerize the information contained in the Firearms Registration forms maintained by the HPD but issued by the other three counties within the State. All handgun information is now on computer, as well as all recent information dating back to mid-1982 on other types of firearms. Computerized Firearms Registration information can be accessed either by owner's name or manufacturer and serial number, just like the physical forms. The HPD does not maintain any roster or list containing Firearms Registration information, either manually or in the computer.⁴

You indicate that you have requested and been denied access to Firearms Registration information maintained by the HPD, which you are seeking for a news story in relation to state legislative hearings on gun control. The HPD has expressed concern about the public safety aspects of making Firearms Registration information public.

³Although the Firearms Registration form also contains blanks for information on ammunition, chapter 134, Hawaii Revised Statutes, no longer requires such information.

⁴The HPD does keep a daily chronological firearms application log, in manual form, including in-state, out-of-state, and "license to carry" application information. Retention time is one year.

This opinion letter shall address public accessibility to the information contained on the Firearms Registration forms only, and not the information contained in permits to acquire firearms or applications for such permits. This focus is due to the fact that the act of obtaining "a permit to acquire the ownership of a firearm" under section 134-2, Hawaii Revised Statutes, is not necessarily followed by the acquisition of a firearm and, therefore, will not provide you with the specific information requested, namely those who actually own firearms.

DISCUSSION

The UIPA provides 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. 1989).⁵ Section 92F-13 lists several exceptions to the general rule of disclosure, including the following:

§92F-13 Government records; exceptions to general rule. This chapter shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
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- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;

Haw. Rev. Stat. § 92F-13 (Supp. 1989) (emphases added). For purposes of discussion, we shall address each of these exceptions separately.

A. Personal Privacy Exception

The UIPA provides that "disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat.

⁵One could argue that Firearms Registrations are "licenses or permits granted by an agency" within the meaning of section 92F-12(a)(13), Hawaii Revised Statutes, which mandates disclosure of name, business address, type of license held, and status of the license. But we need not decide this, because there are other provisions of the UIPA that can guide us in determining whether Firearms Registration information is public or confidential.

§ 92F-14(a) (Supp. 1989).

The Firearms Registration forms maintained by the HPD contain some personal information, such as owner's name, residence address and telephone number, place and date of birth, citizenship, complexion, sex, height, weight, hair and eye color, age, and social security number. Previous OIP opinion letters have found that individuals have a significant privacy interest in personal information such as name and home address, home telephone number, age, date of birth, and social security number.⁶ In addition, "the courts have vigorously protected the personal, intimate details of an individual's life, the release of which is likely to cause distress or embarrassment." J. Franklin & R. Bouchard, Guidebook to the Freedom of Information and Privacy Acts § 1.09 at 1-128 (2d ed. 1989). Such details have also been found to include citizenship. Id. (citing Hemenway v. Hughes, 601 F. Supp. 1002, 1006 (D.D.C. 1985)); J. O'Reilly, 2 Federal Information Disclosure § 16.05 at 16-12 (1989) (citing Brown v. FBI, 658 F.2d 71 (2d Cir. 1981)).

We believe that the physical descriptors of complexion, sex, height, weight, and hair and eye color, would likewise qualify for protection from disclosure because of personal privacy. See also O'Reilly, supra § 16.06 at 16-14 (listing "physical measurements" as an example of records the dissemination of which could be considered an invasion of privacy, citing New England Apple Council, Inc., v. Donovan, 560 F. Supp. 231, 234 (D. Mass. 1983), rev'd on other grounds, 725 F.2d 139 (1st Cir. 1984)).

In the facts presented, we can find no public interest in disclosure of such personal details contained in the Firearms Registration form, except for owner's name, that outweighs an individual's privacy interests. We will discuss the privacy interest in the owner's name, and the ensuing balancing test, later in this opinion.

Next we turn to the question of public access to information about the firearm, such as make and model, factory serial number, caliber or gauge, type, where acquired, and prior registrant's name. Section 92F-14(b) lists several "examples of information in which the individual has a significant privacy interest," including the following:

(6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;

⁶See OIP Op. Ltr. Nos. 89-4 (Nov. 9, 1989), 89-13 (Dec. 12, 1989), 89-16 (Dec. 27, 1989), and 90-7 (Feb. 9, 1990).

Haw. Rev. Stat. § 92F-14(b)(6) (Supp. 1989) (emphasis added). The UIPA does not define the term "assets," so we again follow the statutory construction principle of "general or popular use or meaning." Haw. Rev. Stat. § 1-14 (1985).

The word "assets" is defined, in part, as:

Property of all kinds, real and personal, tangible and intangible, The entire property of a person, association, corporation, or estate that is applicable or subject to the payment of his or her or its debts.

Black's Law Dictionary 108 (5th ed. 1979) (emphases added). Case law definitions have described "assets" similarly:

Assets are generally defined as property of any kind, whether real or personal, tangible or intangible, legal or equitable, which can be made available for the payment of debts.

American Reserve Ins. Co. v. Caldarone, 67 N.C. App. 359, 313 S.E.2d 253, 261 (1984) (citations omitted) (emphasis added); see Harris v. United States, 431 F. Supp. 1173, 1178 (E.D. Va. 1977). An earlier case defined an asset as simply "something of value." McDonough Co. Orphanage v. Burnhart, 5 Ill. 2d 230, 125 N.E.2d 625, 634 (1955).

A firearm is certainly tangible personal property, and it does have value. Indeed, certain firearms have great value to collectors. A firearm is also an asset that can be made "available" or "applicable" for the payment of debts. Therefore, one could argue that section 92F-14(b)(6), Hawaii Revised Statutes, establishes a significant privacy interest in information on the Firearms Registration form that describes the firearm, such as make and model, factory serial number, caliber or gauge, and type. Assuming for argument's sake that a firearm is an asset, then this information is public only if the public interest in its disclosure outweighs the privacy interests of the individual. We will discuss this balancing test later in this opinion.

B. Frustration Exception

Section 92F-13(3), Hawaii Revised Statutes, excepts from mandated disclosure records that "must be confidential in order for the government to avoid the frustration of a legitimate government function." A government agency might argue that

frustration of a government function would result because citizens would refrain from registering their firearms rather than provide the government with descriptions of the firearms, for fear that they could become the targets of thefts if those descriptions became public information. Whether this is sufficient to constitute a "frustration of legitimate government function" is discussed below.

C. Application of Personal Privacy and Frustration Exceptions

For guidance in applying both the privacy and frustration exceptions to the owner's name and the firearm's description, we look to "the developing common law," which the Legislature advises us "is ideally suited to the task of balancing competing interest [sic] in the grey areas and unanticipated cases." S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1094 (1988).

Whether balancing individual privacy rights against the public interest in disclosure, or evaluating the possible frustration of a legitimate government function, we find that "[i]n an open society such as ours where its members normally conduct their business while unarmed, the subject of gun control and regulation is fraught with the public interest." Kwitny v. McGuire, 102 Misc. 2d 124, 422 N.Y.S.2d 867 (1979), aff'd, 432 N.Y.S.2d 149 (1980), aff'd, 53 N.Y.2d 968, 424 N.E.2d 546 (1981). In responding to the concern that serious harm might result from opening up approved pistol license applications on file with the New York City Police Department to public inspection, the Kwitny court opined the following:

[Respondent Police Commissioner] speculates that criminals will spend their diurnal hours at police stations and county clerks' offices searching for likely "targets" who may then be nocturnally attacked for their weapons or those valuables the weapons were carried to safeguard. This suggestion is at best speculative; the ordinary mugger may generally prefer the little old lady with a string handbag to the subject lethally armed with a loaded pistol.

Id. at 868. Although the New York statute under consideration made public "[t]he application for any license, if granted," the Kwitny court rejected as inapplicable the argument that courts could "temper" access to records specifically made public by statute.

The two issues of personal privacy and frustration of government function (crime prevention and licensing) were both

addressed in CBS, Inc., v. Block, 42 Cal. 3d 646, 725 P.2d 470, 230 Cal. Rptr. 362 (1986). CBS sought access under the California Public Records Act to concealed weapons applications submitted to and licenses issued by the Los Angeles County Sheriff. The California Act was modeled on the federal Freedom of Information Act and, like the UIPA, reflects both a general policy of disclosure and the individual's right to privacy. CBS at 473. It contained 19 express exceptions and also a "catch-all" exception allowing an agency to withhold a record if it could show that "the public interest served by not making the record public clearly outweighs the public interest served by the disclosure of the record." CBS at 473-74. The Sheriff argued that "releasing this information will allow would-be attackers to more carefully plan their crime against licensees and will deter those who need a license from making an application." Id. at 474.

The CBS court, however, strongly disagreed with the Sheriff:

Defendants' concern that the release of the information to the press would increase the vulnerability of licensees is conjectural at best. . . . A mere assertion of possible endangerment does not "clearly outweigh" the public interest in access to these records. . . .

. . . . This court respects the people's right to know and will not limit that right based on an inchoate fear that some will violate the law rather than have their name disclosed.

. . . .

While some of the holders of concealed weapon licenses may prefer anonymity, it is doubtful that such preferences outweigh the "fundamental and necessary" right of the public to examine the bases upon which such licenses are issued. It is a privilege to carry a concealed weapon.

Furthermore, there is a clear and legislatively articulated justification for disclosure--the right of the public and the press to review the government's conduct of its business. Public inspection of the names of license holders and the reasons the licenses were requested enables the press and the public to ensure that public officials are acting properly in issuing licenses for legitimate reasons. . . .

. . . .

. . . . If the press and the public are precluded from learning the names of concealed weapons' licensees and the reasons claimed in support of the licenses, there will be no method by which the public can ascertain whether the law is being properly applied or carried out in an evenhanded manner.

Id. 474-77 (footnote omitted; emphases added). We note that because the access requested by CBS was for information on concealed weapons rather than mere possession of a firearm, the privacy interests involved were potentially even more significant than those presented by the facts before us.

We have previously found that the UIPA does establish significant privacy interests in the firearm owner's name and, arguably, in the description of the firearm. For this information, we must next balance these significant privacy interests against the public interest in disclosure.

As the Kwitny and CBS cases both reflect, there is a strong public interest in the disclosure of certain firearms regulation information. In fact, proposed gun control legislation is what prompted the initial request for this advisory opinion. And the CBS court clearly identified another public interest in disclosure: "the right of the public and the press to review the government's conduct of its business." CBS at 475.

In order to monitor how the police departments of the State are doing the job of registering firearms, and performing the required investigations into ownership qualifications, we believe that the public does need to know the names of registered firearms owners. The county police departments perform these investigations before issuing a "permit to acquire" a firearm, which is necessary to acquire any type of firearm, and immediately after registering firearms brought into the State. All firearms brought into the State must be registered, as must all handguns (pistols and revolvers) which are acquired within the State. But long guns (rifles and shotguns) acquired within the State need not be registered. Therefore, HPD does not maintain records of individual long guns acquired within the State, and there is no way to ascertain or verify current ownership of long guns. However, HPD maintains handgun ownership information on all handguns within the State, whether acquired within or brought into the State.

The debate continues between strict gun control proponents and those who believe that the "right to bear arms" provision of the Second Amendment to the U.S. Constitution applies to individuals. The federal Gun Control Act of 1968, passed in response to a public demand for increased gun regulation, set up a decentralized system of "federal firearms owner registration or licensing," with firearms transactions recorded at the state level. Zimring, Firearms and Federal Law: The Gun Control Act of 1968, IV J. Legal Stud. 133 (1975). The Gun Control Act also included the prohibitions or qualifications for gun ownership that appear in Hawaii's firearms control statute and the system of establishing ownership eligibility in advance by first requiring a "license to acquire," which dealers must check before making a sale. Id. at 151-53; see Haw. Rev. Stat. §§ 134-7 and 134-2 (1985).

What Hawaii has done is establish a comprehensive registration "system for handguns only. Therefore, in response to this statutory scheme, the government action that should be opened up for public inspection and review is ensuring that those registering firearms have already met the State's ownership qualifications, as evidenced through the previous issuance of a "permit to acquire." Mere inspection of the "permit to acquire" records will not accomplish this, because not all who obtain a "permit to acquire" will then acquire a firearm. Thus, for the names of handgun owners as contained in Firearms Registration forms, the public interest in disclosure outweighs the individual's privacy interests. In addition, because a "permit to acquire" a handgun is issued only for a specific pistol or revolver, the handgun's description must also be public, in order for the public to ascertain that the new owner had a "permit to acquire" the specific handgun being registered.

We also conclude that the names of long gun owners as contained in Firearms Registration forms are public, although we note that such a listing will not be complete and will represent mainly those who have brought long guns into the State. Because no "permit to acquire" is required of such persons, their names are necessary to verify that they meet ownership qualifications. However, we find that descriptions of long guns (rifles and shotguns) are not public, since the public interest in disclosure will be met by the owner's name alone. This is because (1) long guns acquired within the State are not required to be registered, (2) "permits to acquire" long guns are not specific to any one firearm and may be used to acquire any number of long guns for up to a year, and (3) the State statute appears to reflect a stronger public interest in the regulation of handguns than long guns. Thus, for the description of long guns contained in

Firearms Registration forms, the individual's privacy interests are greater and outweigh the public interest in disclosure.

We note that personal details of ownership qualification or disqualification, such as treatment for substance addiction, mental disorders, or confidential juvenile information, remain confidential. The CBS court addressed this issue of a "substantial privacy interest" as follows:

. . . [T]he records may contain information concerning an applicant's own or his family's medical or psychological history. In such special cases, the confidential information may be deleted.

CBS at 475.

We do not believe that the "frustration of a legitimate government function" would result from the release of names of registered firearms owners, or the descriptions of handguns. Although we certainly do not take a position in the long-standing gun control debate, we do not believe that either of the legitimate government functions of licensing or crime prevention will be "frustrated" by the release of this information.

CONCLUSION

The Firearms Registration forms maintained by HPD contain some personal information, such as owner's residence address and telephone number, place and date of birth, citizenship, complexion, sex, height, weight, hair and eye color, age, and social security number, in which the individual does have a significant privacy interest. For these personal details, this privacy interest outweighs any public interest in disclosure. Such information is confidential under the UIPA and should not be made available to the public.

A significant privacy interest also exists in the firearms owner's name, but after balancing this privacy interest against the public interest in disclosure, which is to monitor the registration of firearms and the required investigations into ownership qualifications, we find that for the names of firearms owners, the balance tips in favor of disclosure. Names of registered firearms owners as contained in the Firearms Registrations maintained by HPD are, thus, public under the UIPA.

Because the UIPA establishes a significant privacy interest in individuals' "assets," and a firearm may arguably be termed an asset, we must also find a significant privacy interest in the firearm's description. For long guns (rifles and shotguns),

which need not be registered at all if acquired within the State, the public interest in disclosure does not outweigh the individual's privacy interests. Thus, descriptions of long guns contained in the Firearms Registrations are confidential under the UIPA and should not be made available to the public. However, for handguns (pistols and revolvers), for which registration is required, the public interest in disclosure outweighs the individual's privacy interests. This is to allow public scrutiny of the governmental process of registering specific handguns. Thus, the descriptions of handguns contained in Firearms Registrations are public under the UIPA.

We do not believe that release of the names of firearms owners or the descriptions of handguns will frustrate the legitimate government functions of licensing or crime prevention.

We note that the Firearms Registration forms contain both confidential and public information, and thus, segregation will be required before making the public information available for inspection and copying.

Very truly yours,

Martha L. Young
Staff Attorney

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APPROVED:

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