

**Op. Ltr. 95-02 Certified List of Eligibles and Background Information
Concerning Unsuccessful Job Applicants for a Hawaii
County Civil Service Position**

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.

January 19, 1995

Mr. Frederick Harris
P.O. Box 143
Hilo, Hawaii 96721

Dear Mr. Harris:

Re: Certified List of Eligibles and Background
Information Concerning Unsuccessful Job Applicants
for a Hawaii County Civil Service Position

This is in response to your letter to the Office of Information Practices ("OIP") requesting an advisory opinion concerning the public's right to inspect and copy "the entire list of certified eligibles and the ratings affixed thereto" that the County of Hawaii maintains for the previously vacant position of Planner III, as well as the eligible individuals' "resume(s) with the usual deletions as if they had been selected for the position."

ISSUES PRESENTED

1. Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the certified list of eligibles, with the ratings, for the County of Hawaii's position of Planner III must be made available for public inspection and copying upon request.

2. Whether, under the UIPA, background information concerning the unsuccessful employment applicants listed on the certified list of eligibles, with the names of the applicants segregated, must be made available for public inspection and copying upon request.

BRIEF ANSWERS

1. No. In a previous advisory opinion, the OIP determined that, with the exception of the name of the successful eligible appointed to the position, certified lists of eligibles are protected from disclosure under the UIPA. See OIP Op. Ltr. No. 90-14 (March 30, 1990). Specifically, the UIPA's personal privacy exception permits an agency to withhold public access to the names of unsuccessful eligibles as well as the home addresses and telephone numbers of all eligibles. In addition, the UIPA's "frustration of a legitimate government function" exception

also permits an agency to withhold the names of the unsuccessful eligibles. OIP Op. Ltr. No. 90-14 at 5-6. Thus, segregation of all information protected under these two UIPA exceptions would leave remaining only the name of the successful eligible, whose identity has already been revealed to you by the Director of Personnel, County of Hawaii.

Further, the list of certified eligibles does not contain the ratings or examination scores of the certified eligibles. If this information is provided on other records "in a readily retrievable form and can reasonably be segregated from information identifying the individuals, the examination scores of the certified eligibles shall be disclosed after information revealing the individuals' identities is deleted." OIP Op. Ltr. No. 90-14 at 8. However, if there is a likelihood of actual identification of a certified eligible with the respective examination score even after segregation of individually identifiable information, then public disclosure of the examination score will not be permitted in order to protect that individual's right to privacy. Id.

2. Yes. Based upon our examination of the sample employment application provided to us by the Department of Civil Service, and also because there are only four unsuccessful applicants who are on the list of certified eligibles, we believe that these employment applications are reasonably segregable of individually identifiable information and must be made available for public inspection and copying after such segregation. The OIP believes that the following items contained on the employment applications would result in the "likelihood of actual identification" and, therefore, must be segregated from the applications before they are disclosed: signature of applicant; name; social security number; address; telephone (both home and business); driver's license number; current and previous employers' names; current and previous employers' addresses; and names of immediate supervisors for current and all previous employment. The remaining information, which consists of: citizenship; residence; title of job applied for; examination number; military service without details; education; license without registration number; and employment experience from which the name of the employer, employer's address, and the name of the immediate supervisor are removed, must be made available for public inspection and copying upon request.

FACTS

When there is a vacant civil service position for the County of Hawaii, the Department of Civil Service, County of Hawaii ("DCS"), provides the County agency with a certified list of eligibles consisting of five applicants for a

position who have the highest civil service examination scores among the pool of applicants. The names of these five applicants, along with their home or mailing addresses and home telephone numbers, are listed in rank according to their examination scores. However, these examination scores are set forth in other records and do not appear on the certified list of eligibles.

You requested a copy of the certified list of eligibles and their ratings for the position of Planner III with the County of Hawaii, which was publicly advertised on October 11, 1992. In addition, you also requested copies of the resumés of all the certified eligibles, with the names of the individuals deleted. In a letter to you dated March 8, 1993, Michael R. Ben, the Director of Personnel for the County of Hawaii, denied your request, but disclosed the identity of the certified eligible actually appointed to the Planner III position. Mr. Ben also informed you that a copy of this individual's application is available upon payment of the appropriate copying fees.

Although you requested to inspect the resumés of the unsuccessful applicants on the certified list of eligibles, the only record maintained by the DCS that would contain such background information about an unsuccessful applicant is the "Application for Employment" form ("application form") each applicant submitted when applying for this position. At the OIP's request, the DCS forwarded a copy of a blank application form for the OIP's review. A copy of this application form is attached as Exhibit "A."

DISCUSSION

I. INTRODUCTION

The UIPA begins with the general premise 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. 1992). Section 92F-11(b), Hawaii Revised Statutes, further explains that "[e]xcept as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours."

II. CERTIFIED LIST OF ELIGIBLES

Two of the UIPA's exceptions contained in section 92F-13, Hawaii Revised Statutes, apply to permit the DCS to withhold all of the information on the certified list of eligibles, except the name of the successful eligible appointed to the position. Section 92F-13(1), Hawaii Revised Statutes, provides that an agency may withhold public access to "[g]overnment records which, if disclosed,

would constitute a clearly unwarranted invasion of personal privacy." This personal privacy exception protects the names of the unsuccessful eligibles and their home addresses and telephone numbers, as well as the home address and home telephone number of the successful eligible appointed to the position. See OIP Op. Ltr. No. 91-12 (Aug. 8, 1991) (home addresses and home telephone numbers of State Employment Services job applicants are confidential); OIP Op. Ltr. No. 89-4 (Nov. 9, 1989) (Hawaiian Homelands applicants' home addresses and home telephone numbers protected under UIPA's personal privacy exception).

Section 92F-13(3), Hawaii Revised Statutes, protects "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." Because the disclosure of the identities of unsuccessful applicants may discourage individuals from applying for a government position, the UIPA's "frustration" exception has been found to protect the names of the unsuccessful eligibles. See OIP Op. Ltr. No. 90-14 at 6 (March 30, 1990). In a letter to you dated March 8, 1993, Michael R. Ben, Director of Personnel for the County of Hawaii, disclosed the name of the successful eligible appointed to the Planner III position.

You also requested the ratings on the certified list of eligibles; however, neither the ratings of the eligibles nor their examination scores appear on the certified list of eligibles. In OIP Op. Ltr. No. 90-14, we also noted that the ratings or the examination scores of the eligibles are not contained on the certified list of eligibles, but may be contained in other records maintained by the Department of Civil Service. We further observed that if the ratings or examination scores are maintained by the Department of Civil Service in a readily retrievable form, this information may be publicly disclosed after segregation of all individually identifiable information. However, if there is a likelihood of actual identification of a certified eligible with the respective rating or examination score even with the identity segregated, then public disclosure will not be permitted in order to protect that individual's right to privacy. See OIP Op. Ltr. No. 90-14 at 8.

III. BACKGROUND INFORMATION OF UNSUCCESSFUL APPLICANTS

In previous advisory opinions, the OIP has determined that two of the UIPA's exceptions apply to permit agencies to withhold information identifying unsuccessful applicants for public employment. See OIP Op. Ltr. No. 94-8 (May 12, 1994); OIP Op. Ltr. No. 90-14 (March 30, 1990); OIP Op. Ltr. No. 89-2 (Oct. 27, 1989). Section 92F-13(1), Hawaii Revised Statutes, which provides that an agency may withhold public

access to "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy," permits withholding of information that would identify unsuccessful applicants. Information identifying unsuccessful applicants for public employment is also protected under the UIPA exception for "[g]overnment records that, by their nature, must be confidential in order for government to avoid the frustration of a legitimate government function." Haw. Rev. Stat. section 92F-13(3) (Supp. 1992 and Comp. 1993). See also OIP Op. Ltr. No. 90-14 at 6.

In previous advisory opinions, the OIP has noted that, under the federal Freedom of Information Act, 5 U.S.C. section 552 (1988) ("FOIA"), the standard for determining when information should be segregated from a record is "whether the information, if disclosed, would result in the 'likelihood of actual identification' of an individual." See OIP Op. Ltr. No. 94-8 at 10; *Arieff v. U.S. Dep't of Navy*, 712 F.2d 1462, 1467 (D.C. Cir. 1983); *Citizens for Environmental Quality, Inc. v. United States Dep't of Agriculture*, 602 F. Supp. 534, 538 (D.D.C. 1984). Thus, if the records requested concerning the unsuccessful applicants can be reasonably segregated of individually identifiable information and no other UIPA exception applies, then the segregated records must be made available for inspection and copying.

In OIP Opinion Letter No. 94-8, which concerned the disclosure of applications submitted to the Honolulu Police Department ("HPD") for the position of Metropolitan Police Assistant Chief ("MPAC"), the OIP concluded that "even if an unsuccessful MPAC candidate's name is segregated from the application, the application still contains other information that would directly reveal the identity of the unsuccessful MPAC candidate, such as social security number, home address, and home telephone number." OIP Op. Ltr. No. 94-8 at 11. In addition, the candidate's current position at the HPD, business telephone number, previous work experience, and education and training would also result in the "likelihood of actual identification" because the pool of candidates consisted exclusively of HPD officers. However, the applicant's citizen status, residency, qualification for veteran's preference without details, and availability for employment are not protected by the UIPA's personal privacy exception and must be publicly disclosed if reasonably segregable from the confidential information contained in the applications. Id.

Similarly, in *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984), where an employee requested the employment histories of applicants for a particular federal position, the court found that the requested information was disclosable for the successful applicants, but not for the

unsuccessful applicants. Even if the names of the unsuccessful applicants were deleted, the applications contained the names of present and former employers, awards, commendations, and membership in professional organizations, all of which would provide sufficient information for interested persons to identify the unsuccessful applicants. Core at 948.

Based upon the principles set forth in OIP Opinion Letter No. 94-8 and the Core decision, and after examining the sample employment application provided to the OIP by the DCS, we believe that the employment applications of the four unsuccessful applicants on the list of certified eligibles are reasonably segregable of information that would, if disclosed, result in the "likelihood of actual identification." In our opinion, the following information would result in the "likelihood of actual identification" and, therefore, must be segregated from the application forms before they are disclosed: signature of the applicant; name; social security number; address; telephone (both home and business); driver's license number; current and previous employers' names and addresses; and names of immediate supervisors for current and all previous employment.

In contrast, we believe that the following items remaining on the employment applications must be disclosed under the UIPA: citizenship; residence; title of job applied for; examination number; military service without details; education; license without registration number; and employment experience after the name of the employer, employer's address, and name of immediate supervisor has been removed.

CONCLUSION

Under the UIPA, the only publicly available information on a list of certified eligibles is the identity of the successful eligible appointed to the position. See OIP Op. Ltr. No. 90-14. However, the Director of Personnel has already disclosed to you the identity of the successful eligible appointed to the Planner III position. Although the ratings and examination scores are not contained on the list of certified eligibles, this information should be publicly disclosed if it is readily retrievable from other records maintained by the Department of Personnel and also if it is possible to segregate all individually identifiable information from these records. However, if there is a likelihood of actual identification of a certified eligible with the respective rating or examination score even with the identity segregated, the rating or examination score must remain confidential in order to avoid a "clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes.

The UIPA's personal privacy exception protects much of the background information on the unsuccessful applicants from public disclosure. However, some of the information on the application form would not result in the "likelihood of actual identification" and must be made available for public inspection. Once the applications of the unsuccessful applicants have been segregated of the individually identifying information, the applications must be made available for public inspection and copying under the UIPA.

Very truly yours,

Stella M. Lee
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

SML:sc
Attachment

c: Honorable Michael R. Ben
Director of Personnel, County of Hawaii

Honorable Richard Wurdeman
Corporation Counsel, County of Hawaii