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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 section 92F-42, HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Mr. Lael Samonte
Agency: Honolulu Police Department
Date: February 28, 2025
Subject: Reasonable Search for Records; Employee Medical Records
(U APPEAL 24-36)

REQUEST FOR OPINION

Requester seeks a decision as to whether the Honolulu Police Department (HPD) properly denied his request for disciplinary and medical records of an HPD officer (Officer) under parts II and III of the UIPA (Part II and Part III, respectively).

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's letter to OIP dated April 20, 2024, and attached materials; HPD's letter to OIP dated May 16, 2024, and attached materials including *in camera* records; and HPD's email to OIP dated December 16, 2024.

QUESTIONS PRESENTED

1. Whether HPD conducted a reasonable search for records responsive to Requester's request for Officer's disciplinary records.
2. Whether HPD properly withheld a portion of Officer's workers' compensation records that were also about Requester, based on Officer's privacy.

3. Whether HPD properly withheld Officer's workers' compensation records under the UIPA's exception for records which, if disclosed, would result in a clearly unwarranted invasion of personal privacy.

BRIEF ANSWERS

1. Yes. OIP finds that HPD conducted a reasonable search for records responsive to Requester's request for Officer's disciplinary records by looking for them in the places most likely to contain such records. OIP therefore concludes that HPD's response that it does not maintain records responsive to this part of Requester's record request was proper under the UIPA.

2. No. OIP finds that a specific portion of the responsive records was also about Requester, and therefore, this portion is a joint "personal record" of both Requester and Officer that must be analyzed under Part III. OIP concludes that the exemptions to disclosure of personal records do not apply to that specific section of the responsive records, so the records subject to Part III must be disclosed to Requester.

3. Yes, for the most part. For the remainder of the responsive records, which are subject to Part II, OIP finds that, on balance, Officer's privacy interest in his workers' compensation records exceeds the public's interest in disclosure. OIP therefore concludes that HPD properly withheld Officer's workers' compensation records under the UIPA's privacy exception, section 92F-13(1), HRS, with the exception of one page of the responsive records that contains only general information. OIP further finds that the information in which Officer has a privacy interest is not reasonably segregable from the records responsive to Requester's request, so apart from that specific page, which must be disclosed, HPD properly withheld the Part II records.

FACTS

On March 8, 2024, Requester made a record request to HPD for copies of Officer's (1) disciplinary records; and (2) medical records from 1985 through 1992. On April 5, 2024, HPD responded to the record request with a Notice to Requester that informed Requester that (1) records responsive to his request for disciplinary records did not exist; and (2) access to Officer's medical records was denied in accordance with section 92F-13(1), HRS, in order to avoid a clearly unwarranted invasion of Officer's privacy. Requester appealed the denial of his record request to OIP.

DISCUSSION

I. HPD Conducted a Reasonable Search for Disciplinary Records

The UIPA requires that all government records are public unless access is restricted or closed by law. HRS § 92F-11(a) (2012). A government record is defined as “information maintained by an agency in written, auditory, visual, electronic, or other physical form.” HRS § 92F-3 (2012). So long as an agency maintains a government record in the format requested by a requester, the agency must generally provide a copy of that record in the format requested unless doing so might significantly risk damage, loss, or destruction of the original record. OIP Op. Ltr. No. 97-8 at 4 (citing OIP Op. Ltr. No. 90-35 at 13). However, an agency’s disclosure obligation applies only to those 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 “[g]overnment record” as records maintained by an agency) and 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”).

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.”¹ *Id.* at 5 (citations omitted).

In its letter responding to the notice of appeal dated May 16, 2024, HPD explained that it had sent Requester’s request to the HPD-Professional Standards Office (HPD-PSO) and the HPD-Human Resources Division (HPD-HRD), which were the HPD divisions most likely to maintain the requested disciplinary records, and that those divisions performed searches of their internal record-keeping systems. HPD explained that HPD-PSO is the division within HPD that, among other duties, conducts investigations into allegations of police misconduct, and that HPD-HRD is the division within HPD that maintains all divisional and departmental information, including records of disciplinary actions, for current and former HPD personnel. Therefore, HPD argued that any records responsive to Requester’s request for Officer’s disciplinary records would be maintained by those divisions. HPD indicated that both HPD-PSO’s and HPD-HRD’s searches produced no results. In its email to OIP dated December 16, 2024, HPD clarified that when searching for responsive

¹ In rare instances, when OIP finds that an agency has actual knowledge that the requested record was never created, OIP will conclude that 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.

records, HPD-HRD reviewed Officer's physical personnel file and confirmed that it did not contain any disciplinary reports or records. HPD also clarified that HPD-PSO searched its electronic record-keeping system by searching for Officer's name and did not find any responsive records.

Based on the information provided by HPD regarding its search for Officer's disciplinary records responsive to Requester's request, OIP finds that HPD conducted a reasonable search for responsive records in the locations where any responsive records were most likely to be found and could not locate any responsive records. OIP therefore concludes that HPD properly responded that it does not maintain any records responsive to this part of the record request, and that it has satisfied its obligations under the UIPA to search for such records. HRS § 92F-11(c); HAR § 2-71-14(c).

II. Some of the Responsive Records are Joint Personal Records of Requester and Must be Disclosed

Part III governs an individual's right of access to any government record that constitutes a "personal record," i.e., a record "about" that individual. HRS § 92F-3 (2012) (definition of "personal record"). An agency responding to a request should identify what information in the requested records identify and are specifically about the requester and thereby constitute the requester's personal record. OIP Op. Ltr. No. F13-01 at 15. When portions of government records are about a requesting individual as well as one or more other individuals, those portions of the records constitute "joint personal records" of all individuals the records are collectively about, and each of the individuals have access to their own respective personal records under Part III. *Id.* at 16. Joint personal records may be withheld from a requester only if a Part III exemption to disclosure applies under section 92F-22, HRS. HRS § 92-23 (2012). The Part III exemptions do not include an exception for personal privacy. HRS § 92-22 (2012).

Based on its *in camera* review of the responsive records, OIP finds that pages 8 and 9 of the responsive records are a Report of Industrial Injury/Illness (Report) based on a shooting encounter between Officer and Requester that took place on December 27, 1988 at Requester's home.² Officer testified in open court more fully about this encounter during Requester's third trial, which resulted in Requester's conviction for the attempted murder in the first degree of Officer. State v. Samonte, 83 Haw. 507, 512, 926 P.2d 1, 6 (1996). OIP finds that while Requester did not specifically make a request for records "about" him, portions of the Report are "about" Requester and Officer and those portions of the Report, specifically the two

² Residents of the home testified that Requester was living at the address listed in the Report. State v. Samonte, 83 Haw. 507, 511-12, 926 P.2d 1, 5-6 (1996).

fact statements in the Report and Requester's name and address, constitute a joint personal record of both Requester and Officer.

Of the exemptions to disclosure for personal records found in section 92F-22, HRS, the most relevant exemption would be the exemption found in section 92F-22(1), HRS, for records maintained by an agency that performs as a principal function an "activity pertaining to the prevention, control, or reduction of crime" and which consist of information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation or reports prepared or compiled at any stage of the process of enforcement of criminal laws, and the exemption found in section 92F-22(4), HRS. However, while HPD is a law enforcement agency that has as its principal function an activity pertaining to the prevention, control, or reduction of crime," the Report was a workers' compensation report, and not a report prepared for the purpose of criminal intelligence or a criminal investigation, or as part of the process of the enforcement of criminal laws. The other exemptions found in section 92F-22, HRS, also do not appear to be relevant to the sections of the Report that are about Requester. Therefore, OIP concludes that the exemptions to disclosure found in section 92F-22, HRS, do not apply to the sections of the Report that are "about" Requester. HPD must disclose these sections of pages 8 and 9 to Requester as his personal record. The remainder of the Report may be mostly withheld, for the reasons discussed below.

III. Most of the Remaining Responsive Records May Be Withheld Because Disclosure of Workers' Compensation Records Would Lead to a Clearly Unwarranted Invasion of Personal Privacy

OIP finds that the remainder of the responsive records are not "about" Requester, and therefore concludes that they are government records subject to Part II. The UIPA provides an exception to disclosure at section 92F-13(1), HRS, for records "which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." HRS § 92F-13(1) (2012). In determining whether a disclosure would constitute a clearly unwarranted invasion of personal privacy, the UIPA directs 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." HRS § 92F-14(a) (2012). The public interest to be considered is whether disclosure of the information sheds light upon an agency's performance of its statutory duties and upon the actions and conduct of government officials. OIP Op. Ltr. No. 12-01 at 17.

To assist in determining an individual's privacy interest, the Legislature enumerated categories of information in which individuals are deemed to have a significant privacy interest. HRS § 92F-14(b) (Supp. 2024). One such category is "[i]nformation relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation." HRS § 92F-14(b). OIP has previously opined

that even agencies not covered by the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) should treat the confidentiality of health records in a manner similar to what HIPAA requires, and that if such records would be confidential under HIPAA if maintained by a HIPAA covered entity,³ then the UIPA's privacy exception will almost always allow the records to be withheld from disclosure. OIP Op. Ltr. No. 05-05 at 4. OIP has previously found that an individual's status as a workers' compensation claimant, along with corollary information such as the nature of the individual's injury, carries a significant privacy interest. OIP Op. Ltr. No. 10-05 at 3.

Based on *in camera* review, OIP finds that the Part II records mostly consist of information related to Officer's health, including workers' compensation information. However, OIP also finds that page 7 contains only general information for supervisors about workers' compensation and does not appear to contain any confidential information or information in which Officer would have a personal privacy interest.

OIP has not previously addressed whether workers' compensation claim information of agency employees, on its own, must be disclosed absent other factors. OIP has previously found that because the State of Hawaii is self-insured for workers' compensation purposes and any benefits paid to an injured worker are paid directly by the State, there is a high public interest in disclosure for workers' compensation claim information for government employees. OIP Op. Ltr. No. 94-21 at 6. In OIP Opinion Letter No. 94-21 (Opinion 94-21), OIP found that claim information concerning a state legislator, who was the claimant there, "would shed substantial light upon the actions of a government agency, the Legislature, or one or more of its officials, and also promote governmental accountability, two of the core policies that underlie the UIPA." *Id.* However, in Opinion 94-21, in applying the balancing test to determine whether records should be disclosed, OIP also relied on an additional factor not present here. In that case, the state legislator's interest in privacy was substantially diminished because she had publicly confirmed or discussed the matters in question for a newspaper interview, and had waived any privacy interest she may have had in such information. *Id.* at 3-4. The facts here are distinguishable from those in Opinion 94-21 because, unlike the state legislator in that case, Officer has not publicly confirmed or discussed workers' compensation claim information with the media, and so has not diminished his privacy interest in such information. The question presented here is whether government employees' workers' compensation information falls under the privacy exception in the absence of other factors such as were present in Opinion 94-24.

While the federal Freedom of Information Act, 5 U.S.C. section 552 (FOIA), and the Privacy Act, 5 U.S.C. section 552a, are not the same as the UIPA, OIP looks

³ A "covered entity" is an entity such as a health care provider which must comply with the requirements of HIPAA. 45 C.F.R. § 160.103 (2024).

to how courts have interpreted FOIA as persuasive where appropriate. FOIA's privacy standard is different in that the UIPA requires a clearly unwarranted invasion of personal privacy, as opposed to just an unwarranted invasion of personal privacy, meaning the UIPA requires a higher showing of privacy to withhold a record. Nonetheless, it is instructive to look at how courts have treated the same type of information under FOIA. In Plain Dealer Pub. Co. v. U.S. Dep't of Labor, the District Court for the District of Columbia considered FOIA's equivalent exception for records which would constitute an unwarranted invasion of personal privacy, and whether it would protect from disclosure workers' compensation information for employees of the Office of Worker's Compensation Programs (OWCP). Plain Dealer Pub. Co. v. U.S. Dep't of Labor, 471 F. Supp. 1023, 1026-1030 (D.D.C. 1979). In that case, the court concluded that the employees of OWCP held a significant privacy interest in the requested files, that disclosure of the requested files would result in a serious invasion of personal privacy, and that this invasion of privacy outweighed the public interest in disclosure. Id. at 1030. The court in that case specifically noted that there was only general interest in the "individual careers of public servants" without factors that would heighten the public interest in those employees' records. Id. at 1029.

Notwithstanding the difference between the UIPA and FOIA's privacy standards, the Plain Dealer Pub. Co. court's reasoning is persuasive and OIP finds that even though the public has a heightened interest in workers' compensation information for public employees as compared to private sector employees, it is not sufficient to overcome the strong privacy interest in what is ultimately medical information. Therefore, OIP finds that, on balance, Officer's privacy interest outweighs the public's interest in disclosure of Officer's medical information. OIP concludes that disclosure of Officer's medical records would be a clearly unwarranted invasion of Officer's personal privacy.

OIP has previously opined that when an exception to disclosure applies, an agency must still disclose portions of government records that are public and reasonably segregable. OIP Op. Ltr. No. 04-12 at 7. However, OIP has also previously opined that there are circumstances in which segregation of a record is not reasonable, such as when attempting to segregate records "would render them nonsensical." OIP Op. Ltr. No. 00-01 at 6. Upon *in camera* review of the remaining responsive records, OIP finds that the information in which Officer has a significant privacy interest is dispersed throughout the responsive Part II records such that removing or redacting it would render the remainder of the records nonsensical, with the exception of page 7. Therefore, OIP concludes that HPD may fully withhold from disclosure all Part II records except for page 7, which must be

disclosed. As discussed above in section II, HPD must also disclose parts of pages 8 and 9 under Part III.⁴

RIGHT TO BRING SUIT

Requester is entitled to file a lawsuit for access within two years of a denial of access to government records. HRS §§ 92F-15, 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if Requester is the prevailing party, Requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F-15(d), (f) (2012).

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).

This 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-3(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.

⁴ If Requester would still like a redacted copy of the responsive records to which he is entitled based on this opinion, Requester should inform HPD within twenty business days of Requester's receipt of this letter, and HPD should either disclose the redacted copies of the records within ten business days of receipt of Requester's confirmation that he wants a redacted copy, or should provide a notice regarding fees and costs that will be charged.

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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APPROVED:

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