	DEPARTMENT OF PUBLIC SAFETY	EFFECTIVE DATE: JUN 20 2008	POLICY NO.: ADM.05.01
	DEPARTMENT ADMINISTRATION POLICY AND PROCEDURES	SUPERSEDES (Policy No. & Date): ADM.05.01 of 5/12/93	
	SUBJECT: ACCESS CONTROL TO DEPARTMENT CONFIDENTIAL INFORMATION		Page 1 of 4

1.0 PURPOSE

To establish guidelines for controlling public and employee access to privacy and confidential Department information.

2.0 REFERENCES AND DEFINITIONS

.1 References

- a. Hawaii Revised Statutes (HRS), §92F-13, §92F-14, §846-1.
- b. Policy ADM.05.02, Public Access to Department Information.

.2 Definitions

- a. Confidential Information: Records which contain information the disclosure of which jeopardize the security, management, and control of offenders under the custody of the Department, compromise or frustrate operations of the Department (Reference Attachment A for examples). This category includes information that is restricted or closed by law to the public.
- b. Privacy Information: Records which contain information that would constitute a clearly unwarranted invasion of an individual's privacy. Examples are an individual's educational, financial, medical or employment history, or records that contain or make reference to an individual's name, identifying number, or any identifying particulars assigned to an individual, etc. (Reference Attachment for further details.)
- c. File: A collection of records on a particular subject or individual kept together in a single folder, group of folders, or some other type of container.
- d. Record: Any paper, photograph, map, drawing, chart, card, disk, computer print out, etc., or any copy thereof.

3.0 POLICY

- .1 Incompliance with the provisions of the Uniform Information Practices Act, all administrative and supervising personnel whose operations require the maintenance of Department records shall identify those records which are

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considered privacy or confidential and establish a system under the provisions of this policy which will endure their safeguard.

- .2 Should these guidelines conflict with statute, or administrative rules, the latter shall take precedence.

4.0 RESPONSIBILITIES

.1 Identification of Privacy Information

- a. Records containing privacy information shall be marked or stamped "Confidential-Privacy" on top right hand corner of each record.
- b. If a file contains one or more records which are classified as confidential-privacy, the outside of the file shall also be clearly marked or stamped "Confidential-Privacy".

.2 Identification of Confidential Information

- a. Records containing confidential information shall be marked or stamped "Confidential" on top right hand corner of each record.
- b. If a file contains one or more records which are classified as confidential, the outside of the file shall also be clearly marked or stamped "Confidential".

.3 Controls for the Safeguarding of Privacy and Confidential Information

- a. Access shall be restricted to the public as required by statute (Reference HRS, §92F-13, §92F-14, and §846-1.)
- b. Access by Department employees or other government agencies shall be in accordance with existing statute on a strict need-to-know basis, or when necessary in the performance of an employees' official duties.
- c. Storage areas for privacy and confidential information shall be controlled at all times and locked when not under the control of a designated custodian. An access list of authorized personnel and an access log shall be maintained. The access log shall record who checked the material out, date, what information was removed, and when the material was returned.

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Strict accountability of information shall be maintained and persons controlling access shall be held accountable for protecting the information.

- d. Privacy and confidential information shall be covered when being mailed or routed or when being processed where unauthorized disclosure or viewing is possible. Mail should be protected from tampering and may require receipting.
- e. Privacy and confidential information shall be filed separately from public information where possible. If this is not feasible, then the storage area being used must be given the proper protection or security as required for privacy and confidential information. All copies shall be accounted for, especially highly sensitive information on records.

.4 Disclosure of Privacy Information

- a. Upon request, an individual shall be permitted to review privacy information maintained on them by the Department.
- b. The individual's permission must be obtained in writing before the disclosure or releasing of any personal information on the individual, unless permitted by law.
- c. For guidelines in determining whether information is protected from disclosure under the privacy exception of the Uniform Information Practices Act, and how to segregate or remove this information before public disclosure, consult Attachment B.

.5 Approval for Release of Privacy and Confidential Information

The Director's prior approval in writing is required before privacy or confidential information is released to agencies or individuals outside the Department.

5.0 SCOPE


This policy applies to all employees within the Department.

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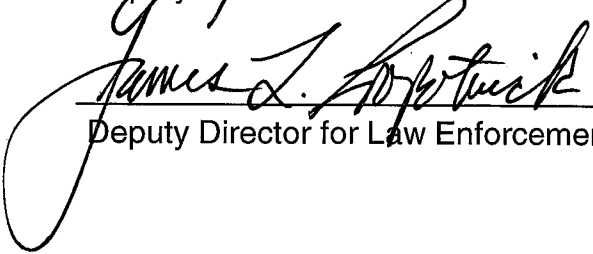
APPROVAL RECOMMENDED:


 Deputy Director for Administration

6/6/08
 Date

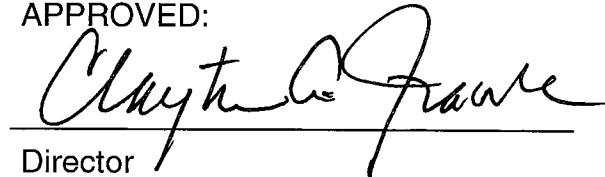

 Deputy Director for Corrections

6/18/08
 Date


 Deputy Director for Law Enforcement

6-19-08
 Date

APPROVED:


 Director

6/20/08
 Date



OIP OPENLINE

Office of Information Practices - Department of the Attorney General

May 1989

Vol. 1 No. 3

Records Considered Confidential under the UIPA

The general rule of the Uniform Information Practices Act (Modified) (UIPA) is that all records are open for public inspection unless access is restricted or closed by law. There are exceptions to this general rule.

For instance, the UIPA does not require the disclosure of five categories of exceptions that relate to personal privacy, the frustration of government functions, matters in litigation, records subject to other laws and an exemption relating to the Legislature.

1) Records that would constitute a clearly unwarranted invasion of personal privacy.

This is commonly called the "Balancing Test." Under the law, the privacy interests of the individual must be balanced against the public interest in disclosure. If the privacy interest of the individual outweighs the public interest in disclosure, then a clearly unwarranted invasion of personal privacy would occur. Thus, disclosure of the record would not be required.

Some examples of information in which an individual has a significant privacy interest are: medical, psychiatric or psychological history; nongovernmental employment history; eligibility for social services or welfare benefits; and personal recommendations or evaluations. The "balancing test" must be applied in these situations to determine whether to disclose the records.

2) Records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the state or any county is or may be a party to, to the extent that such records would not be discoverable.

3) Records that are protected from dis-

closure by state or federal law. This exception includes an order of any state or federal court.

4) Partial and draft working papers of legislative committees, including budget worksheets and unfiled committee reports, and the personal files of members of the Legislature.

5) Records that must be confidential in order for the government to avoid the frustration of a legitimate government function.

Examples of records that would frustrate a legitimate government function include:

a) Records or information compiled for law enforcement purposes.

b) Trade secrets or confidential commercial and financial information.

c) Information identifying or pertaining to real property under consideration for future public acquisition, unless otherwise available under state law.

d) Materials used to administer an examination which, if disclosed, would compromise the validity, fairness or objectivity of the examination.

e) Administrative or technical information, including software, operating protocols and employee manuals, which, if disclosed, would jeopardize the security of a record-keeping system.

f) Information that is expressly made nondisclosable or confidential under federal or state law or protected by judicial rule.

Personal Records

The Uniform Information Practices Act (Modified) defines personal records as "any item, collection or grouping of information about an individual that is maintained by an agency," such as an individual's education, financial, medical or employment history.

By law, each agency must make available any accessible personal record to the individual to whom it pertains.

Exemptions and limitations on individual access do exist. An agency is not required to grant to an individual access to personal records or information in such records:

1) Maintained by an agency that performs as a principal function any activity pertaining to the prevention, control or reduction of *crime*, and which consists of: information that falls within the definition of "criminal

history record information" (HRS Chapter 846-1); information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation; and reports prepared or compiled at any stage of the process of enforcement of the criminal laws.

2) The disclosure of which would reveal the identity of a *confidential source of information* to the agency.

3) Consisting of *testing material or scoring keys* used solely to determine individual qualifications for appointment or promotion in public employment, if the disclosure of such examination materials would compromise the objectivity, fairness or effectiveness of the testing or examination process.

4) Including *investigative reports* and materials related to an upcoming, ongoing or pending civil or criminal action or administrative proceeding against the individual.

5) *Required to be withheld by law* or judicial decision or authorized to be withheld by constitutional or statutory privilege.

After the personal record is obtained, an individual has the right to correct any factual error and amend any misrepresentation or misleading entry in that record.

Overview of the UIPA

The Uniform Information Practices Act (Modified) is divided into four parts. Part I is titled "General Provisions and Definitions." It deals with the law's name, the law's purpose and definitions of words used in the law.

Part II, titled "Freedom of Information," deals with the disclosure of government records. A government record is any information maintained by an agency in any physical form, such as written documents, maps, films, videotapes and computer-related items.

Part III, "Disclosure of Personal Records," deals with access to one's own personal record. A personal record includes any item, collection or grouping of information about an individual or any item that makes reference to an individual or the identification of the individual.

The final part of Chapter 92F covers the Office of Information Practices and its powers and duties.

Question and Answer

When should the agencies start to use the Uniform Information Practices Act (Modified) to respond to requests for records?

The portion of the new law that affects all state and county agencies takes effect July 1, 1989.

OIP OPENLINE is a publication of the Office of Information Practices, Department of the Attorney General, State of Hawaii.
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In the next issue: Legislative Update and Requests for OIP Advisory Opinions



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October 22, 1992

**Interdepartmental
Memorandum No. 1992-6**

TO: The Honorable John Waihee
The Honorable Benjamin J. Cayetano
The Honorable Herman T.F. Lum
The Honorable Richard S.H. Wong
The Honorable Daniel J. Kihano
The Honorable Frank F. Fasi
The Honorable Lorraine R. Inouye
The Honorable Linda Crockett Lingle
The Honorable JoAnn A. Yukimura
All State and County Department Heads

FROM: Robert A. Marks 
Attorney General

The Office of Information Practices has issued an important memorandum, attached, that addresses the very limited circumstances in which you and your staff can modify government records in order to safeguard individuals' significant privacy interests. The memorandum also addresses the manner in which information can properly be removed from government records. I strongly encourage you to share the OIP memorandum with your staff.

The OIP memorandum is designed to address the apparent confusion among some in state and county government about the requirements of Hawaii Revised Statutes chapter 92F, the Uniform Information Practices Act, as it pertains to altering government records. With this memorandum, we believe the line between acceptable and criminal conduct is more sharply drawn. We urge you to contact the Office of Information Practices for any guidance you may need in the future on this important issue.

To further clarify the responsibilities of government employees in this area, we will be introducing legislation to cure deficiencies that we have identified in the existing law.

Attachment (OIP memorandum of October 20, 1992)

JOHN WAIHEE
GOVERNOR
ROBERT A. MARIC
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DEPARTMENT OF THE ATTORNEY GENERAL
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October 20, 1992

MEMORANDUM

TO: All State and County Directors and
Department Heads

FROM: Kathleen A. Callaghan, Director *HPG FOR KAC*

RE: OIP Guidance Regarding the UIPA's Clearly Unwarranted
Invasion of Privacy Exception and the Segregation of
Protected Information From Records Before Public
Disclosure

I. INTRODUCTION

Recently, two separate and unrelated public controversies resulted from actions taken by government employees when responding to record requests under the State's public records law, the Uniform Information Practices (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

In the first case, an inter-agency memorandum was publicly disclosed to a UIPA requester by a department director. Before it was publicly disclosed, a paragraph had been removed from this memorandum in such a manner as to make it appear that no information had indeed been removed. In the other case, a county police department employee apparently removed the entire second page from a daily police arrest blotter (a record that the OIP has opined to be public), and renumbered the third page of the arrest log as page two before making the record available for inspection and copying by the public.

In both of these cases, the agency's actions were the focus of great media attention, public controversy, and allegations that illegal conduct took place. In each case, agency personnel could have consulted with the Office of Information Practices ("OIP") before responding to each of the UIPA requests.

In this memorandum the OIP, the agency created by the Legislature to implement and administer the UIPA, shall provide guidance to government agency personnel concerning:

- (1) The UIPA's clearly unwarranted invasion of personal privacy exception, section 92F-13(1), Hawaii Revised Statutes, and
- (2) How agencies should segregate, or mask, information from a government record that is protected by the UIPA's privacy exception (or other exceptions), before making the record available for public inspection and copying.

By following the advice set forth in this memorandum, the OIP believes that agency personnel can avoid possible criminal liability that could conceivably result from the improper segregation of information from government records (tampering with a government record), and possible civil actions brought under section 92F-15, Hawaii Revised Statutes.

Additionally, the OIP believes that by following the guidance supplied in this memorandum, agency personnel can better demonstrate that their responses to record requests under the UIPA were taken in good faith and, thereby, have a stronger basis to assert they are immune from civil or criminal liability under the UIPA's immunity provision, section 92F-16, Hawaii Revised Statutes. Under this UIPA provision, anyone who participates in the disclosure or non-disclosure of a government record "in good faith," is immune from any civil or criminal liability that would otherwise result.

State and county agency directors and department heads are requested to widely distribute a copy of this memorandum to employees within their respective agencies.

II. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY EXCEPTION

A. What is the UIPA's Privacy Exception?

Under section 92F-13(1), Hawaii Revised Statutes, agencies are not required to disclose "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." The UIPA also provides that "[d]isclosure 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." Under this balancing test, "if a privacy interest is not 'significant,' a scintilla of public interest in disclosure will preclude a finding of a clear unwarranted invasion of personal privacy." H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988); S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., S.J. 689, 670 (1988). Indeed, the UIPA's legislative history indicates that the UIPA's privacy exception only applies if the individual's privacy interest in a government record is significant.

B. How Does An Agency Determine Whether a Privacy Interest is "Significant?"

In determining whether an individual's privacy interest in information in a government record is "significant," in section 92F-14(b), Hawaii Revised Statutes, the Legislature provided examples of information in which the individual is deemed to have a significant privacy interest. A listing of these statutory examples is set forth in Exhibit "A." Because this list is not an exhaustive listing, agencies should consult with the OIP when in doubt regarding information that is not included in the attached list.

C. Who Does the UIPA's Privacy Exception Protect?

Under the UIPA, only "natural persons" have recognizable personal privacy interests. This is so because under the UIPA, the term "individual," means "a natural person." Haw. Rev. Stat. § 92F-3 (Supp. 1991). Thus, corporations, partnerships, and other business entities generally do not have cognizable personal privacy interests under the UIPA. See OIP Op. Ltr. No. 91-1 (Feb. 15, 1991); OIP Op. Ltr. No. 91-21 (Nov. 11, 1991); and OIP Op. Ltr. No. 92-6 (June 22, 1992). For similar reasons, deceased individuals generally do not have cognizable personal privacy interest in government records. See generally, OIP Op. Ltr. No. 91-32 (Dec. 31, 1992).

When presented with a request for information about present or former government agency officers or employees, agency personnel are strongly encouraged to consult published OIP Guidelines No. 1, Disclosure of Personnel Records (May 1, 1991), a copy of which should be contained in Vol. I of the UIPA Reference Manual distributed by the OIP to each agency.

D. If in Doubt, Contact the OIP for Specific Guidance

If agency personnel are uncertain or in doubt over whether information requested under the UIPA is protected from disclosure under the UIPA's "clearly unwarranted invasion of personal privacy exception," the OIP recommends that they first consult the four volume UIPA Reference Manual distributed by the OIP, which contains copies of formal advisory opinions and other helpful reference material published by the OIP concerning the UIPA.

If after consulting the UIPA Reference Manual, agency personnel are still uncertain about whether information is protected from disclosure, they should contact the OIP by telephone for an informal legal advice, or in writing to request an advisory opinion. In adopting the UIPA, the Legislature provided that the OIP shall "[u]pon request by an agency . . . provide and make public advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities." Haw. Rev. Stat. § 92F-42(2) (Supp. 1992).

Moreover, in adopting the UIPA, the Legislature provided in section 92F-16, Hawaii Revised Statutes, that anyone participating in the good faith disclosure or non-disclosure of a government record shall be immune from civil or criminal liability. The OIP believes that agency employees are in the strongest possible position to assert that they acted "in good faith," when their actions are in reliance upon an opinion issued by the agency created by the Legislature to administer Hawaii's public records law, the OIP.

We shall now provide guidance concerning how government agencies should segregate, cover, or mask protected (confidential) information in a government record before it is made available for public inspection and copy under the UIPA.

III. HOW TO SEGREGATE CONFIDENTIAL INFORMATION FROM A GOVERNMENT RECORD

A. Agency's Duty to Segregate Protected from Unprotected Information

If the agency has identified information that is protected from disclosure under the UIPA's privacy exception (confidential information) the OIP has opined that agencies have a duty:

- (1) To remove all "reasonably segregable" confidential information from a government record, and
- (2) To make the unprotected or "public" information available for public inspection and copying.

See OIP Op. Ltr. No. 89-5 (Nov. 20, 1989); OIP Op. Ltr. No. 90-31 (Oct. 25, 1991); and OIP Op. Ltr. No. 91-1 (Feb. 15, 1991); see also, Haw. Rev. Stat. § 92F-42(13) (Supp. 1992) (authorizing the OIP to adopt fees that may be charged "segregating disclosable records").

B. How Should Confidential Information Be Segregated?

In order to segregate or cover information protected from a government record from unprotected, or "public" information, we suggest that agency personnel follow these steps:

- (1) Make a photocopy of the original government record.
- (2) Use "white-out," correction and cover up tape, or a dark marker to mask or cover the confidential information on the photocopy of the original record;
- (3) Photocopy the segregated or masked copy to ensure that confidential information is not readable and provide that photocopy to the UIPA requester; and
- (4) Retain a copy of the segregated or masked record for your agency's records and files in the matter.

An example of a record that has been segregated in the above manner is attached as Exhibit "B."

C. How Confidential Information Should Not be Segregated

Government agencies and their personnel are cautioned not to remove protected information from a government record and replace that information with text or information that did not appear in the original record. Agency personnel also should not alter the requested record in such a way that it is not readily apparent to

All Directors and Department Heads
October 20, 1992
Page 6

the reader or recipient of the record that information has been removed by the agency.

By removing or replacing information from a government record as described in the above paragraph, an agency will not be providing a requester with the government record that was requested, and an agency thereby runs the risk that the request will commence a civil action under section 92F-15, Hawaii Revised Statutes, seeking injunctive relief and attorneys fees against the agency. Additionally, depending on the circumstances, the improper segregation of information in the above described manner could subject agency employees to criminal liability for "tampering with a government record," which is a misdemeanor offense under section 710-1017, Hawaii Revised Statutes.

IV. CONCLUSION

The OIP believes that by following the guidelines set forth above for determining whether information is protected from disclosure under the UIPA's privacy exception, and describing how to segregate or remove this information before public disclosure, agencies and their personnel can avoid public controversy, and possible civil or criminal liability that might otherwise result.

In the near future, the OIP will consolidate the above advice into an OIP Guideline, a copy of which will be distributed to all State and county agencies for insertion into the UIPA Reference Manual. If you should have any questions regarding the guidance supplied above, please contact the OIP by telephone at 586-1400, or in writing at the above address.

If agency personnel are ever in doubt concerning their responsibilities under the UIPA, we strongly recommend that they contact the OIP for specific guidance from the OIP's legal staff.

KAC/HRJ:si
Attachments

K9203SI

EXAMPLES OF INFORMATION IN WHICH AN INDIVIDUAL HAS A SIGNIFICANT PRIVACY INTEREST

The following are examples provided by the Legislature of information in which an individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present as such facility;
- (2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;
- (4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except information relating to the status of any formal charges against the employee and disciplinary action taken or information disclosed under section 92F-12(a)(14);
- (5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;
- (6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;
- (7) Information identifiable as part of an inquiry into an individual's fitness to be granted or retain a license, except:
 - (A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;
 - (B) Information on the current place of employment and required insurance coverages of licensees; and
 - (C) The record of complaints including all dispositions; and
- (8) Information comprising a personal recommendation or evaluation.

EXHIBIT

"A"



JOHN WAIHEE
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OFFICE OF INFORMATION PRACTICES

September 9, 1992

'92 SEP 14 09:40

MEMORANDUM

TO: The Honorable John Waihee
Governor of Hawaii

FROM: Warren Price, III
Attorney General

RE: Gov. Ref. No. 92:480-05, Letter from [REDACTED] regarding the
OIP's Administrative Rules and the Public Records Report Project

Enclosed for your information is a copy of the Office of Information Practices' ("OIP") reply to a letter from [REDACTED], requesting the OIP to apprise him of the status of our administrative rules, and the public records report project. A copy of [REDACTED] letter to the OIP is also enclosed for your review.

If you or your staff should have any questions concerning [REDACTED] letter to the OIP or our reply, please contact Hugh Jones at 586-1413.

WP\HRJ:nk
Enclosures
wp51govref

EXHIBIT

"B"