



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

LESLIE H. KONDO
DIRECTOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
E-MAIL: oiip@state.hi.us
WEBSITE: www.state.hi.us/oiip

April 8, 2003

Mr. Clyde S. Sonobe
Administrator, Cable Television Division
Department of Commerce and Consumer Affairs
1010 Richards Street
Honolulu, Hawaii 96809

Re: 'Olelo Board Member's Resumé

Dear Mr. Sonobe:

This is in response to your letter to the Office of Information Practices ("OIP") for an opinion on the above-referenced matter.

ISSUE PRESENTED

Whether the resumé of a member of the board of 'Olelo: The Corporation For Community Television ("Olelo") maintained by the Department of Commerce and Consumer Affairs Cable Television Division ("DCCA") is public under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

BRIEF ANSWER

Yes. However, information that is unrelated to a board member's suitability for appointment to the 'Olelo board should be redacted. This may include: (1) home contact information; (2) educational and employment history, professional activities, voluntary service, memberships, military experience, and computer experience that is not related to suitability for appointment to the 'Olelo board; and (3) personal information and interests.

FACTS

You advised the OIP that a member of the public requested a copy of the resumé of Mr. Gary Honda, who serves on the 'Olelo board of directors. Mr. Honda's resumé was submitted to the DCCA by 'Olelo with a recommendation that he be appointed by the DCCA's Director to the board. You advised that the only exception to disclosure that the DCCA raised was at section 92F-13(1), Hawaii Revised Statutes, to protect Mr. Honda's privacy interests.

A copy of Mr. Honda's resumé was provided to the OIP. It includes his full name; home and business contact information; educational history; employment history; "professional activities" which includes voluntary service; memberships; military experience; computer experience; and personal information and interests.

You also advised that you had contacted Mr. Honda and that he did not want his resumé made public due to privacy concerns. You explained that Mr. Honda was not aware when he submitted his resumé to 'Olelo that it could become public. You believe 'Olelo should advise board applicants that it submits their resumé to the DCCA because the DCCA appoints board members, and that because the DCCA is a state department, their resumé will become a government record.

DISCUSSION

I. INTRODUCTION

The UIPA governs public access to all Hawaii State and county agency records. An "agency" is "any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State." Haw. Rev. Stat. §92F-3 (1993).

A "government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (1993). The resumé at issue is a government record subject to

the UIPA, as it is maintained by the DCCA. All government records are presumed to be public unless an exception to disclosure applies. Haw. Rev. Stat. § 92F-11(a) (1993).

II. 'OLELO BOARD MEMBERS ARE NOT "AGENCY" EMPLOYEES EXCEPT FOR UIPA PURPOSES

Section 92F-12(a)(14), Hawaii Revised Statutes, makes public, any other law to the contrary notwithstanding, the "education and training background, [and] previous work experience . . . of present or former officers or employees of [an] agency." Whether certain information in Mr. Honda's resumé is public under section 92F-12(a)(14), Hawaii Revised Statutes, depends on whether 'Olelo is an "agency" under the UIPA's definition.

The OIP previously found that the Hawaiian Sovereignty Advisory Commission ("Commission") is an "agency" for purposes of the UIPA based on the definition of "agency" in section 92F-3, Hawaii Revised Statutes, and the duties and responsibilities of the Commission. OIP Op. Ltr. No. 94-9 at 2 (May 16, 1994). The Commission was created by the Legislature for the stated purpose of advising the Legislature and was placed for administrative purposes within the Office of State Planning. Id. at 3-4. The OIP acknowledged that Commission members are not government employees, but concluded that the Commission members are "officers" of an agency for purposes of section 92F-12(a)(14), Hawaii Revised Statutes. Id. Thus, the OIP opined that the education and training background, and previous work experience of Commission members is public under section 92F-12(a)(14), Hawaii Revised Statutes. Id.¹

¹ The OIP noted that the UIPA's legislative history provides that if the information requested falls within any of the categories listed in section 92F-12(a), Hawaii Revised Statutes, the UIPA's exceptions for personal privacy and for frustration of legitimate government function do not apply. OIP Op. Ltr. No. 94-9 at 2 (May 16, 1994), citing S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988). The OIP opined that section 92F-12(a)(14), Hawaii Revised Statutes, affirmatively requires the disclosure of education and training background information and the previous work experience of Commission members as "agency officers;" therefore the UIPA's personal privacy exception was not discussed. Id. Finally, the OIP opined that the information listed in section 92F-12(a)(14), Hawaii Revised Statutes, including all education and training background information and previous work experience, that is contained in the summaries provided by the Commission members should be public after segregation of personal information including social security number, birth date, home address, and home telephone number. Id. at 3.

The facts at issue, however, are distinguishable from the OIP Opinion Letter Number 94-9, as 'Olelo is not an "agency" for purposes other than the UIPA.² In the OIP Opinion Letter Number 02-08, the OIP advised that 'Olelo is a corporation owned, operated, or managed by or on behalf of the State under section 92F-3, Hawaii Revised Statutes, and is, therefore, required to follow the UIPA. Unlike the Commission, 'Olelo was not created by the Legislature, nor is it administratively attached to any agency (although the DCCA exercises certain control over it), as the Commission is. The OIP is unaware of any Hawaii court decisions or agency rulings that make 'Olelo an "agency" for other purposes such as collective bargaining, inclusion government pension and benefits plans, or State procurement laws. Thus, 'Olelo is an "agency" only insofar as it is required to respond to requests for records in accordance with the UIPA and its administrative rules.

Further, 'Olelo employees and board members are neither employees nor officers of any government agency as the Commission's board members are. The OIP, therefore, can neither conclude that 'Olelo employees or board members are "agency employees" nor characterize 'Olelo as an "agency" for the purposes of section 92F-12(a)(14), Hawaii Revised Statutes. Accordingly, the OIP does not treat Mr. Honda's resumé as a record pertaining to a government employee under section 92F-12(a)(14), Hawaii Revised Statutes, but, rather, as personal information about an individual that is maintained by a government agency.

III. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

As noted above, government records are presumed to be available to the public for inspection and copying unless an exception to disclosure applies. Haw. Rev. Stat. § 92F-11(a) (1993). There are five exceptions to this general rule requiring disclosure, only one of which has been invoked by the DCCA:

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

² The UIPA and its legislative history are silent on how to treat entities that are not true government agencies under the UIPA's definition, but whose records, in total or in part, are subject to the UIPA due to the entity's unique relationship with the government, such as 'Olelo. The applicability of the UIPA to the records of these unique entities is discussed in prior OIP Opinions. See OIP Op. Ltrs. No. 90-31 (Oct. 25, 1990) (Hawaiian Humane Society); No. 02-08 (Sept. 6, 2002) ('Olelo).

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

...

Haw. Rev. Stat. § 92F-13(1) (1993). To determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy, the agency maintaining a requested record must balance the public interest in disclosure against any personal privacy interests therein. Haw. Rev. Stat. § 92F-14(a) (Supp. 2002). In balancing the privacy right of an individual against the public interest in disclosure, the public interest to be considered is that which sheds light upon the workings of government. See OIP Op. Ltr. No. 97-10 at 5 (Dec. 30, 1997).

The OIP is of the opinion that Mr. Honda has a significant privacy interest in certain information contained in his resumé based on section 92F-14(b)(5), Hawaii Revised Statutes, which states:

- (b) The following are examples of information in which the individual has a significant privacy interest:

...

- (5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;

Haw. Rev. Stat. § 92F-14(b)(5) (Supp. 2002).

In the OIP Opinion Letter Number 95-12, the OIP opined that the Department of Human Resources Development ("DHRD") must make public the identities and qualifications of consultants who assist DHRD in reviewing job applications for civil service positions. OIP Op. Ltr. No. 95-12 at 1 (May 8, 1995). The OIP noted that the DHRD consultants at issue were unpaid and did not have a contract with DHRD. Id. at 2. Regarding nongovernmental DHRD consultants, the OIP noted that section 92F-14(b)(5), Hawaii Revised Statutes, provides that individuals have a significant privacy interest in "[i]nformation relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position." The OIP advised that public disclosure of the consultants' employment history, including nongovernmental employment history that is relevant to their

consultant work, is necessary to demonstrate that the consultants are qualified to provide government agencies with specialized information in the agency's decisionmaking process. Thus, the OIP opined that there was no significant privacy interest, the public interest in the disclosure outweighed any privacy interests of the DHRD consultants, and the disclosure of their identities and their nongovernmental employment history would not result in a "clearly unwarranted invasion of personal privacy." Id. at 2.

Similarly, the issue here is whether disclosure of Mr. Honda's resumé would shed light on the workings of government. Mr. Honda is not a government employee and is neither an official nor a consultant of a government agency. The OIP believes, however, that because the DCCA's Director is tasked with appointing a majority of 'Olelo's board members³, disclosure of the board members' resúmes would shed light on the criteria used by the DCCA's Director in making his appointments. As is discussed throughout the OIP Opinion Letter Number 02-08, the DCCA exerts both direct and indirect control over 'Olelo; therefore, the OIP believes that the public interest in the DCCA's appointment of 'Olelo's directors is high.

The public's interest in learning about the qualifications of 'Olelo directors, however, is not without bounds. The OIP is of the opinion that certain information in Mr. Honda's resumé will shed little, if any, light on the DCCA's selection criteria and, therefore, should be redacted. The type of information that should be redacted includes, for instance, Mr. Honda's home contact information⁴ as well as other information that is unrelated to his suitability for appointment to the 'Olelo board. Generally, an individual's educational and non-governmental employment history, professional activities, voluntary service, memberships and military experience would be other types of information in which the individual's privacy interests outweighs the public interest in disclosure; however, in the case of a director or commissioner, the OIP notes that such information may be a consideration in the individual's appointment to the board or commission. If such information was a factor in evaluating and appointing Mr. Honda to 'Olelo's board, disclosure of that information likely is appropriate.

³ See OIP Op. Ltr. No. 02-08 at 14-17 (Sept. 6, 2002).

⁴ The OIP has opined many times in the past that home addresses and telephone numbers of individuals carry significant privacy interests that are not outweighed by the public interest in disclosure of this information. See OIP Op. Ltr. No. 99-3 at 10 (June 1, 1999). The facts here do not justify opining otherwise.

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CONCLUSION

'Olelo is not an "agency" other than for the purpose of responding to record inquiries under the UIPA. Therefore, information about 'Olelo employees and officers is not subject to the mandatory disclosure provisions of section 92F-12(a)(14), Hawaii Revised Statutes.

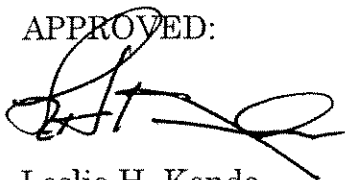
Disclosure of certain information contained in Mr. Honda's resumé would shed light on the workings of government, as the DCCA's director is tasked with appointing a majority of 'Olelo's board members, and the DCCA exerts both direct and indirect control of 'Olelo. Therefore, the public interest in 'Olelo's directors and the criteria used in the DCCA's appointment of 'Olelo's directors is high. However, the public interest in disclosure is not greater than Mr. Honda's personal privacy interest in the information, and the DCCA may withhold disclosure. Accordingly, certain information in Mr. Honda's resumé should be redacted, including home contact information and other unrelated personal information. Disclosure of information that does not directly relate to Mr. Honda's suitability for appointment on 'Olelo's board would be a clearly unwarranted invasion of his personal privacy because disclosure does not shed light on the workings of government. Thus, the public interest in disclosure of such information is clearly not greater than Mr. Honda's personal privacy interest in the information, and the DCCA need not disclose it.

Very truly yours,



Carlotta Dias
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

CMD: ankd