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OPINION

Requester: Chief of Police[1]
Agency: Honolulu Police Department
Date: February 1, 2007
Subject: Firearm Permit Information (U RFO-G 99-11)

REQUEST FOR OPINION

Requester seeks an advisory opinion on whether the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"), requires the Honolulu Police Department ("HPD") to disclose certain records of individuals obtained through the firearm permitting process.[2] Specifically, the Office of Information Practices ("OIP") understands HPD's question to be whether the confidentiality afforded individually identifiable "registration data" under section 134-3(b), HRS (the "registration statute"), extends to information obtained under section 134-2, HRS (the "permitting statute"), including information that does not result in the registration of a firearm. OIP understands the permitting records to include individuals' firearm permit applications, supporting records contained in the individuals' permit application files, and issued firearm permits (collectively "Permit Information").

In submitting its request, HPD asked for a general advisory opinion rather than an opinion based upon a specific request made. However, OIP subsequently became aware of the fact that HPD's opinion request was prompted by its receipt of numerous requests to access gun registration and related records for Mr. Byran Uyesugi. At the time of the requests, Mr. Uyesugi had been arrested for killing

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1 The request for an opinion was made by former Police Chief Lee Donohue.

2 Mr. Daryl Huff, a reporter for KITV-4 News, also sought an opinion from OIP regarding access to information and records related to a specific individual's denied permit application.

seven coworkers with a firearm in Hawaii's worst mass murder.[3] According to a newspaper article, police said that Mr. Uyesugi was the registered owner of 17 guns and that he was denied a subsequent permit for a gun in January 1994 because of an arrest in September 1993 for criminal property damage.[4]

QUESTION PRESENTED

Whether records or information concerning an individual who has been issued a firearm permit or who has been denied a permit may be withheld from public disclosure.

BRIEF ANSWER

Individually identifiable records or information may be withheld for permit holders and non-permit holders as follows:

1. Permit Holders

Permit Information that identifies an individual permit holder by name or address must be deemed to be "registration data" protected under the registration statute and, therefore, should be withheld under section 92F-13(4) of the UIPA. Other Permit Information that could reasonably lead to the identification of the individual permit holder (such as the individual's social security number, fingerprints, and photograph) should also be segregated and withheld under the UIPA's frustration exception to maintain the confidentiality of the individual's identity. See Haw. Rev. Stat. § 92F-13(3) (1993). Once identifying information is redacted, the remaining Permit Information must be disclosed unless it falls within another exception to disclosure.

Accordingly, if a general request is made for **unidentified** Permit Information, HPD should respond by disclosing Permit Information redacted as provided above (citing to sections 92F-13(3) and (4) and any other relevant section). If a request is made for a **specific** person's Permit Information, HPD should generally protect that person's identity as a permit holder by denying the request, stating that records that would be responsive to the request, **if any**, are exempt from disclosure pursuant to sections 92F-13(3) and (4).

The registration statute may under specific circumstances, such as the Uyesugi case, authorize HPD to disclose Permit Information as part of its law enforcement duties. HPD should consult with its legal counsel regarding the extent of its authorization to disclose protected information under that statute.

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[3] See http://starbulletin.com/1999/11/02/news/story1.html.

[4] See http://starbulletin.com/1999/11/03/news/story1a.html.

2. Non-Permit Holders

HPD may generally deny access under the UIPA's privacy exception to information that allows the identification of individuals who have been denied permits, as well as those who did not apply for a permit, who did not complete the application process, or who were granted a permit, but allowed it to lapse without acquiring a firearm. The remaining information in any existing applications or application files (together "Application") should be disclosed unless it falls within another exception to disclosure.

Certain circumstances such as those present in the Uyesugi case, however, may alter the usual balance between the individual's privacy interests and the public interest in disclosure. HPD must determine, on a case-by-case basis, whether circumstances diminish the individual's privacy interest and/or give rise to a heightened public interest that tips the balance in favor of disclosure.

OIP believes that, in the Uyesugi case, Mr. Uyesugi's criminal actions taken with the use of a firearm diminished his privacy interests in his Application and heightened the public interest in disclosure of identifying and certain other information related to his failed Application that would shed light on HPD's performance of its duties in regulating firearms. Accordingly, OIP believes that any invasion of Mr. Uyesugi's privacy related to this information would not have been a clearly unwarranted invasion of his privacy and, thus, should have been disclosed.

DISCUSSION

Hawaii law generally requires an individual to obtain a permit from the police department prior to acquiring a firearm. Haw. Rev. Stat. § 134-2(a) (Supp. 2006). The permitting statute, section 134-2, sets forth the requirements and procedures to acquire a firearm permit. After issuance of a permit and acquisition of a firearm, the individual must then register the firearm with the police department as set forth in the registration statute. Haw. Rev. Stat. §§ 134-3(a) and -3(b) (Supp. 2006).

The registration statute contains a confidentiality provision that is clearly intended to protect the identity of those individuals registering firearms. Specifically, that provision makes all "registration data" that would identify an individual by name or address confidential:

> . . . **All registration data that would identify the individual registering the firearm by name or address shall be confidential** and shall not be disclosed to anyone, except as may be required for processing the registration or as may be required by a law enforcement agency for the lawful performance of its duties or as may be required by order of a court.

Haw. Rev. Stat. § 134-3(b) (emphasis added). Given this confidentiality provision, individually identifiable "registration data" should be withheld[5] under section 92F-13(4) of the UIPA because state law protects it from disclosure, while non-identifiable data, which is not protected by the registration statute, must be disclosed.[6] See Haw. Rev. Stat. § 92F-13(4) (1993) (providing that an agency may withhold "[g]overnment records which, pursuant to State or federal law . . . are protected from disclosure"); OIP Op. Ltr. No. 95-18.

OIP has previously opined on whether the confidentiality provision in the registration statute protects the identity of individuals granted licenses to carry concealed weapons under section 134-9, HRS ("Licensees"). See OIP Op. Ltr. No. 95-18. Based upon the registration statute's amendment to make the identity of registered firearm owners confidential and the legislative history for that amendment, OIP found that the confidentiality provision was intended to apply to all information that would identify individuals who have registered firearms. Because all Licensees under section 134-9 must have registered firearms, OIP found that the Licensees' names would identify registered firearm owners and therefore constituted protected "registration data." Accordingly, OIP opined that the Licensees' names in the license records could be withheld from disclosure under section 92F-13(4) of the UIPA.

The question presented here is whether, by this same reasoning, information identifying permit holders is also protected as "registration data," including where no permit is actually obtained or used to acquire a registered firearm.

1. Permit Holders

We first address the disclosure of Permit Information for individuals who have been issued and used a firearm permit to acquire a firearm. Although similar to Licensees, permit holders do not present an identical issue because, unlike Licensees, not every permit holder necessarily becomes a registered firearm owner. However, because all registered owners must first obtain a permit to acquire and

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[5] Similar to records that may implicate an individual's constitutional right to privacy, OIP instructs that, although the UIPA does not mandate the withholding of records, an agency should exercise its discretion to withhold records that are made confidential by statute or court order. See OIP Op. Ltr. No. 05-03 at 6 n.9.

[6] If HPD receives a request for a **specific** person's firearm registration information, however, OIP believes that HPD may deny the request on the basis that section 134-3(b) makes the identity of persons registering firearms confidential and, therefore, any response by HPD could disclose information protected by section 134-3(b). Thus, even where such information exists, HPD may deny a request to access information without affirming its existence under section 92F-13(4). See discussion on responding to a request for a specific individual's Permit Information set forth in the text below.

because of the fairly arduous process involved in obtaining a permit, it is reasonably clear that release of the identities of permit holders would in effect be the release, in substantial part, of the identities of individuals with registered firearms (or those in the process of acquiring a firearm to be registered).[7] Accordingly, OIP is constrained to find here that, as with the names of Licensees under section 134-9, the names (and addresses) of permit holders constitute "registration data" protected under the registration statute. See Haw. Rev. Stat. § 1-15 (1993) (meaning of ambiguous words may be sought by considering the reason and spirit of the law which induced the legislature to enact it); Haw. Rev. Stat. § 1-16 (1993) (laws upon the same subject matter to be construed with reference to each other); Yamaguchi v. State Farm Mut. Auto. Ins. Co., 706 F.2d 940, 948 n.11 (9th Cir. Haw. 1983) ("One provision of a comprehensive statute should be read in the context of the other provisions of that statute and in the light of the general legislative scheme."); OIP Op. Ltr. No. 95-18.[8]

Accordingly, if a general request is made for **unidentified** permit holders' Permit Information, the permit holders' names and addresses should be redacted and withheld pursuant to section 92F-13(4) of the UIPA.[9] See supra note 5. HPD

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[7] Once a permit is issued, the permit holder must acquire a handgun within ten days or the permit is void. See Haw. Rev. Stat. § 134-2(e) (Supp. 2006).

[8] OIP believes it is constrained, absent further legislative direction, to read the permitting statute and section 134-9, the concealed weapon licensing section, consistent with the registration statute to protect identifying information made confidential under that statute. See OIP Op. Ltr. No. 95-18. It appears clear, however, that the legislature did not specifically address the release of identifying information under those statutes. For example, if the legislature had specifically intended to protect identifiable Permit Information as "registration data," it would seemingly have used broader language to include information under the permitting statute and would not have limited its protective language to names and addresses. See Haw. Rev. Stat. § 134-3(b) (confidentiality provision directly follows listing of what should be included on registration form and only protects information identifying individual by name and address, which are the only identifying entries on the registration form but not in the Permit Information). Moreover, it could very well be that the legislature did not intend to protect the identity of registered firearm owners who are subsequently granted licenses to carry concealed weapons because of a greater public interest in knowing the identity of these persons. For these reasons, OIP suggests that amendment of the statutes would be helpful to clarify and/or confirm what information under sections 134-2 and 134-9 the legislature intends to be confidential.

[9] Because OIP finds that the identity of permit holders is made confidential under section 134-3(b), a roster of persons holding permits granted by HPD need not be made available under section 92F-12(a)(13), HRS. See OIP Op. Ltr. No. 95-18. That section generally requires an agency to make available for public inspection and copying "[r]osters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of license." Haw. Rev. Stat. § 92F-12(a)(13) (Supp. 2006).

should also withhold other personal information that identifies, or may reasonably lead to the identification of, permit holders to avoid frustration of its duty under the registration statute to protect the identity of that individual. See Haw. Rev. Stat. § 92F-13(3) (agency may withhold records in order to avoid frustration of its performance of a legitimate agency function). For that same reason, HPD should also segregate and withhold information such as social security numbers, fingerprints, and photographs.

Once all identifying information is redacted, the remaining de-identified Permit Information should be disclosed,[10] unless HPD determines that another exception to disclosure applies. For example, under the UIPA's privacy exception, HPD may generally withhold the name and home contact information of an individual listed on the permit application as the party from whom the firearm is to be acquired because that individual's privacy interest in that information will, in most instances, outweigh any public interest in disclosure of that information.[11] See Haw. Rev. Stat. § 92F-13(1) (agency may withhold "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy"); OIP Op. Ltr. No. 06-04 (balancing test to be applied); OIP Op. Ltr. No. 93-16 (withholding residential addresses and telephone numbers).[12]

If a request is made for a **specific** permit holder's Permit Information, OIP believes that HPD generally should not disclose whether or not Permit Information exists for that person, unless that person's identity as a permit holder is public. For those whose identities are not public, a response that neither confirms nor denies

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[10] The confidentiality required by the registration statute will not be compromised as long as the identity of the individuals about whom the Permit Information relates is not revealed.

[11] The public interest balanced is the public's interest in the disclosure of official information that sheds light on an agency's performance of its statutory purpose and the conduct of government officials, or which otherwise promotes governmental accountability. See OIP Op. Ltr. No. 91-19; OIP Op. Ltr. No. 92-17; see generally State of Haw. Org. of Police Officers v. Soc'y of Prof'l Journalists-Univ. of Haw. Chapter, 83 Haw. 378, 399-400, 927 P.2d 386, 407-08 (1996).

[12] An individual listed generally has a significant privacy interest in his or her identity as a firearm owner and in his or her personal contact information, i.e. home telephone number and home address, that outweighs any public interest in disclosure, since this information in most instances would shed no light on the workings of HPD in issuing permits. Moreover, in many instances, this individual may be a registered firearm owner in Hawaii. Therefore, the individual's identity would be protected under the registration statute and should be withheld, along with other information that could lead to the individual's identity, under sections 92F-13(3) and (4).

the existence of responsive records maintains the confidentiality of the individual's identity required by the registration statute.[13] See Haw. Rev. Stat. § 92F-13(3). Accordingly, OIP believes that HPD should deny such a request by stating that records that would be responsive to the request, **if any**, are exempt from disclosure pursuant to sections 92F-13(3) and (4).

To prevent identification of specific permit holders by the pattern of HPD's responses, OIP suggests that HPD respond in the same manner whether an individual has been issued or denied a permit, as well as where an individual has not applied for a permit, withdrawn an application, failed to complete the application, or failed to retrieve or use the permit prior to its expiration. See Bassiouni v. CIA, 392 F.3d 244, 246 (7th Cir. Ill. 2004) ("When a pattern of responses itself reveals classified information, the only way to keep secrets is to maintain silence uniformly."); see also discussion below regarding responses to non-permit holders.

OIP notes that the registration statute provides for limited disclosure of registration data in certain instances, including where disclosure "may be required by a law enforcement agency for the lawful performance of its duties . . . ." Haw. Rev. Stat. § 134-3(b). The extent to which section 134-3(b) authorizes a law enforcement agency to disclose an individual's registration data in the performance of its duties, such as a police investigation, is a question outside the purview of this office and one that should be addressed by HPD's legal counsel.

2. Non-Permit Holder

We next address identification of, or disclosure of information regarding, individuals who have been denied a permit, withdrawn Applications, failed to complete Applications, or failed to retrieve or use permits within ten days of their issue dates (the "Non-Permit Holders").[14] OIP believes that Permit Information that identifies individuals who do not have a valid permit at the time the request is made would not constitute protected "registration data" since this information would not allow the identification of registered firearm owners. Thus, withholding would not be justified under section 92F-13(4) of the UIPA.

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[13] Cf. Nation Magazine v. U.S. Customs Serv., 71 F.3d 885, 887 n.2 (U.S. App. D.C. 1995) (A response to a [federal Freedom of Information Act ("FOIA")] request, in which an agency states that it can "neither confirm nor deny" the existence of responsive records, is popularly referred to as a "**Glomar** response," after a case concerning a FOIA request for records relating to an underwater sea craft called the "**Glomar** Explorer."); see OIP Op. Ltr. No. 95-21 at 18 (recognizing use of "Glomar response" in privacy context).

[14] See Haw. Rev. Stat. § 134-2(e) (permit void unless used with ten days after the date of issue).

OIP believes, however, that identifying information should generally be withheld under the UIPA's privacy exception. Generally, unsuccessful applicants have a significant privacy interest in the fact that they were denied permits that, in most instances, outweighs the public's interest in knowing their identities, because this fact sheds minimal if any light upon HPD's performance in granting permits. See generally Haw. Rev. Stat. § 92F-13(1) (privacy exception); Haw. Rev. Stat. § 92F-14(b)(7) (Supp. 2006) (recognizing individual's significant privacy interest in information compiled as part of an inquiry into individual's fitness to be granted a (vocational) license); OIP Op. Ltr. No. 91-1, aff'd in part, overruled in part by OIP Op. Ltr. No. 91-11 (when agency has not yet issued a license or denies a license, the individual's significant privacy interest in their application information outweighs the public interest in disclosure since disclosure with respect to these applicants would shed little if any light upon the conduct of the agency in granting licenses).

Further, individuals may also have a significant privacy interest in the fact that they did not apply for a permit or did not complete the application process, but in any event neither fact would shed any light on HPD's performance and, therefore, their identities may be withheld for privacy reasons. Individuals granted a permit who then allowed it to lapse without acquiring a firearm have a significant privacy interest in that fact that would, absent circumstances that would create a heightened public interest, outweigh the public interest in disclosure. Their identities may, thus, generally be withheld.

Accordingly, OIP believes that, in response to a general request for **unidentified** Non-Permit Holders' Applications, HPD may segregate and withhold names and other personally identifying information for privacy reasons. Once de-identified, i.e., once the applicants' names and other personally identifying information are redacted, however, the Applications cannot be withheld under section 92F-13(1) and must be disclosed.

If HPD receives a request for a **specific** Non-Permit Holder's Application, HPD may generally, as with the Permit Information, decline to disclose whether records exist for that individual in order to protect the privacy interests outlined above. Again, to protect the identification of individuals by the pattern of HPD's responses, OIP believes it appropriate for HPD to deny requests for a specific individual's Application without indicating whether or not they exist. Accordingly, HPD may deny the request stating that records that would be responsive to the request, if any, are exempt from disclosure under section 92F-13(1).

Certain factual situations may, however, alter the usual balance between the individual's privacy interests and the public interest in disclosure. See, e.g., OIP Op. Ltr. No. 03-09 (diminished privacy interests of arrested suspects); OIP Op. Ltr. No. 04-07; Nakano v. Matayoshi, 68 Haw. 140, 706 P.2d 814 (1985). These situations may diminish the individual's privacy interest and/or create a heightened public interest in information relating to a specific individual's Application or lack

thereof that sheds light on an agency's performance of its duties. HPD, thus, must analyze each request on a case-by-case basis to balance the specific individual's privacy interest in requested information related to an Application or lack thereof against the public interest in disclosure of that information in light of the circumstances that exist at the time of the request. Where HPD determines that the public interest outweighs the individual's privacy interests in the requested information so that disclosure would not constitute an unwarranted invasion of personal privacy, HPD must disclose the information.

3. The Uyesugi Records

The Uyesugi case presents such a situation. Although HPD did not ask OIP to opine specifically on the requests made to HPD for Mr. Uyesugi's records, Mr. Huff's request for an opinion was based upon his specific request to access Mr. Uyesugi's records. OIP has, thus, reviewed the facts surrounding the request made for Mr. Uyesugi's records and finds that his identity as an unsuccessful firearm permit applicant as well as some of the information in his Application that reveals his lack of qualification to own registered firearms[15] should have been disclosed.[16]

Specifically, the facts show that Mr. Uyesugi used a firearm to murder seven co-workers and to terrorize numerous others. Further, HPD reportedly stated that Mr. Uyesugi possessed 17 registered firearms, despite having been denied a subsequent firearm permit because of a criminal conviction.

OIP believes that Mr. Uyesugi's commission of these crimes with a firearm diminished his privacy interests in information showing whether he did or did not apply for a firearm permit and in some of the information from his failed Application. See generally OIP Op. Ltr. No. 03-09 (individual's privacy interest in identity as a suspect for a crime is diminished or nonexistent after arrest or charge). Further OIP believes that these actions gave rise to a heightened public interest in disclosure of records or information that reflected upon his qualification or lack thereof to retain issued permits and registered firearms, which would allow the public to scrutinize HPD's performance in regulating the ownership of firearms.

Balancing Mr. Uyesugi's diminished privacy interests against the heightened public interest in HPD's performance, OIP believes that disclosure of his denied

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[15] The extent of the information to be disclosed must also be determined on a case-by-case basis.

[16] Mr. Uyesugi's privacy interests in personal information, such as his home address, home telephone number, social security number, and fingerprints would, even under the circumstances there, most likely outweigh any public interest in disclosure because this information would not be relevant to scrutinizing HPD's performance.

Application information in general would not have been clearly unwarranted.[17] Accordingly, OIP believes that HPD should have disclosed that information upon request. Certain information contained in his Application, such as his social security number, should still be protected for privacy reasons because he retained a significant privacy interest in that information and disclosure would not shed light on HPD's performance. See OIP Op. Ltr. No. 99-02.

Permit Information for permits Mr. Uyesugi had previously been granted would generally still be protected by the registration statute as discussed above. As also discussed above, the registration statute may have allowed HPD to disclose Mr. Uyesugi's Permit Information as necessary to perform its law enforcement duties. Because the statute grants HPD discretionary authority to disclose information, determination of the extent of this authority is outside the jurisdiction of OIP. Accordingly, OIP cannot opine on whether and to what extent HPD may have been authorized to disclose Permit Information during the course of its investigation of Mr. Uyesugi.[18]

OFFICE OF INFORMATION PRACTICES

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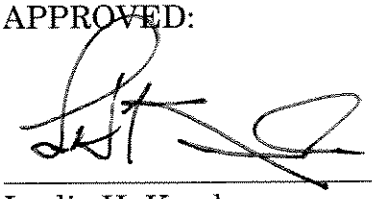
APPROVED:



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[17] Given that there is no outstanding request for records at this point in time, OIP provides this opinion without addressing the potential waiver issues based upon reported statements by HPD regarding Mr. Uyesugi's gun registrations and permit denial.

[18] Certain information regarding Mr. Uyesugi's registration of firearms and denied permit application was reported in newspaper accounts and attributed to HPD.