

## Summaries of Recent OIP Opinions

[Note: For the full text and summaries of all formal OIP opinions, go to [www.hawaii.gov/oip](http://www.hawaii.gov/oip).]

### **UIPA** Traffic Accident Reports and Data

The Honolulu Advertiser (“Advertiser”) and the Department of Transportation (“DOT”) asked OIP for an opinion regarding the Advertiser’s request to DOT for an electronic copy of all statistical data on major vehicle traffic accidents reported to DOT for the calendar years 2002 and 2003 (“Accident Data”).

DOT maintains a traffic accident database derived from the State of Hawaii’s Motor Vehicle Accident Report Forms. The Advertiser had previously obtained the Accident Data from the Honolulu Police Department, but was now specifically seeking that same information in the electronic format maintained by DOT.

DOT denied the Advertiser’s record request, citing 23 U.S.C. § 152, chapter (sic) 291C-20, HRS, and section 15-5.3, Revised Ordinances of Honolulu, as the basis for the denial, but efforts were made by the parties to resolve the issue.



DOT represented to OIP that DOT’s software allows it to display all 67 fields of the traffic accident database, but that it does not allow DOT to segregate the information fields and display selected fields within the traffic accident database.

This is relevant because the traffic accident database includes fields of information containing drivers’ personal information that may be protected from disclosure and that, in any event, the Advertiser indicated it was not seeking. DOT further represented that it contacted the license holder of its software to determine the cost of obtaining the software that would allow it to display only selected fields from its traffic accident database and was quoted a cost of approximately \$20,000.

OIP concluded that 23 U.S.C. § 409 does not make the traffic accident database confidential and thereby protected from disclosure under the UIPA. OIP further concluded that the privacy exception, section 92F-13(1), HRS, may allow DOT to withhold certain information or fields of

information, but the traffic accident database, in its entirety, cannot be withheld from disclosure under the UIPA.

Based upon DOT’s representation that it does not have the ability to segregate the personal information (that it is likely entitled to withhold from disclosure) from the traffic accident database without purchasing additional



software at the cost of approximately \$20,000, however, OIP found that DOT is not required to make the Accident Data available in the requested electronic form. OIP further found that the UIPA and its administrative rules did not require DOT to incur the cost to purchase the software that would allow it to segregate

the traffic accident database. However, in the event that the Advertiser is willing to pay the software cost, DOT would then be required to make the segregated Accident Data available in the electronic format requested. [OIP Op. Ltr. No. 05-06]

### **UIPA** Cellular Telephone Invoices

Cellular telephone records compiled and submitted by councilmembers to meet the requirement that they account for and substantiate the expenditure of their cell phone allowances are government records and a request for these records must be responded to under the UIPA, whether the request is to the council or to the individual councilmember.



Some information within the records may fall under an exception to the UIPA, though, in which case that information may be redacted from the records provided in response to a UIPA request. [OIP Op. Ltr. No. 05-08]

### **☀** Speaking at Public Meetings on Matters Outside the Agenda

The County Clerk for the County of Hawaii asked OIP for an opinion on the Hawaii County Council’s practice of permitting members of the public to make statements at the end of each meeting regarding matters outside of the agenda. A member of the public subsequently asked OIP for an opinion regarding whether members of the public who testify at a public

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meeting may be restricted to speaking only about matters that are on the meeting agenda.



OIP found that a board may permit members of the public to speak at a meeting on matters that are not on the agenda, but is not required to do so. The board members themselves, however, may not discuss, deliberate, or decide matters that are not on the agenda.

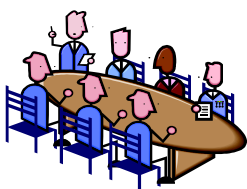
Thus, if a board elects to hear public statements regarding matters not on the agenda and the statements relate to “board business,” i.e., matters over which the board has supervision, control, jurisdiction, or advisory power, the board members must be careful not to respond or discuss the matter. [OIP Op. Ltr. No. 05-02]

### Executive Meetings to Interview Mayor’s Appointees

A member of the Kauai County Council (the “Council”) asked OIP for an advisory opinion regarding whether the Council may convene an executive meeting to interview individuals who are appointed by the Mayor to county boards and commissions.

OIP advised that the Council cannot meet in executive session in order to interview the nominees because the interviews do not qualify for any of the exemptions to the Sunshine Law’s open meeting requirements, as set forth in section 92-5, HRS.

OIP rejected the argument that the Council’s interviews of nominees triggered the Sunshine Law exemption that allows a board to meet in executive session in order to



“deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law” based upon the fact that the Council might have been able to protect


certain information from disclosure for privacy reasons under the UIPA. The UIPA is not a state law under which information “must be kept confidential” because the UIPA does not mandate confidentiality of government records, but rather permits withholding under certain exceptions to its general rule of public disclosure.

Also, although the UIPA recognizes that individuals have a significant privacy interest in “applications” and “nominations” for “appointment to a governmental position,” OIP has previously opined that this significant

## Staff Update




The OIP welcomes its newest staff attorney, **Wintehn K. T. Park**. Wintehn is a graduate of Kamehameha, Pitzer College, and the William S. Richardson School of Law. Wintehn, who comes to the OIP from private practice, enjoys fishing in his spare time. Welcome, Wintehn!

The OIP is also pleased to announce that staff attorney **Lorna Aratani** is now permanently ensconced in her position at the OIP. Lorna, who returned to the OIP in a temporary capacity last year, was the first attorney hired by the OIP in 1988, and was the senior staff attorney for ten years. Lorna also served as a staff attorney for the Committee on Judiciary, House of Representatives, when the UIPA and the OIP came into existence. 

privacy interest is outweighed by the public interest in application information concerning successful applicants or nominees because such information “sheds light upon the composition, conduct, and potential conflicts of interest of government board and commission members.” Haw. Rev. Stat. § 92F-14(b)(4). OIP Op. Ltr. No. 91-8.

Furthermore, although the Revised Charter of the County of Kauai (“Charter”) requires open meetings “[w]ith the exception of deliberations relating to confirmation of appointees[,]” appearing to indicate that the Council’s hearings to confirm appointees should be closed to the public, the Charter is not a “state law” for purposes of invoking the exemption to the open meeting requirements provided at section 92-5(a)(8), HRS.

Finally, because an individual nominated to a board or commission will not be serving for pay or compensation, a nominee cannot be considered a “hire” for purposes of invoking the exemption in section 92-5(a)(2). [OIP Op. Ltr. No. 05-04] 

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