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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 23, 2012, 2:00 p.m.
State Capitol, Room 325

Re: Testimony on H.B. No. 1839
Relating to Water Service Consumption Data

Thank you for the opportunity to submit testimony in opposition to H.B. No. 1839.

As explained in section 1, this proposal seeks to make confidential service location and billing addresses and billing information of persons who are consumers of water service provided by the county boards of water supply (service holders) by amending Hawaii's public records law, the Uniform Information Practices Act (Modified) (UIPA), chapter 92F, HRS. For the reasons described below, the Office of Information Practices (OIP) believes that the statutory amendment proposed by this bill does not achieve the bill's stated purpose and is unnecessary to correct the situation that it is attempting to rectify.

OIP administers and interprets the UIPA, which requires all public records to be disclosed, unless an exception applies to restrict or prevent disclosure. HRS Sec. 92F-11(a). The bill proposes to amend HRS Sec. 92F-12(a), which lists the types of records that must always be disclosed, without consideration of any exception to disclosure that may apply. Specifically, the bill would amend HRS Sec. 92F-12(a)(12) to require the disclosure of water service consumption data

maintained by the boards of water supply, "provided that for purposes of this paragraph, 'water service consumption data' shall not include the service holder's mailing address, amounts paid by or owed to the service holder for water or sewer service, or an individual's service location." (Bill page 4, lines 4-10.) In essence, the bill makes the language in the proviso not subject to the mandatory disclosure requirements. It appears that this bill's proposed amendment was drafted with the mistaken belief that by excluding service holders' address and billing information from the mandated-to-be-public category of "water service consumption data," these items of information would then be kept confidential. The proposed statutory amendment, however, would not make the records confidential because further analysis is required under the UIPA.

Even if items are not subject to the mandatory disclosure requirements, HRS Sec. 92F-11(a) of the UIPA requires all public records to be disclosed unless an exception applies. Five exceptions are listed in the UIPA, one of which would prevent the disclosure of "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." HRS. Sec. 92F-13(1). To see whether this exception applies, OIP balances the public interest in disclosure against the individual's interest in privacy.

In the attached OIP Opinion Letter No. 90-29 (October 5, 1990), OIP has already agreed with the bill's proposition that water service holders' addresses and billing information do not constitute "water service consumption data" that must automatically be made public under section 92F-12(a)(12), HRS.[1] In taking

[1] OIP further notes that this bill may not be the appropriate legislative vehicle because it is limited by its title to the subject matter relating to "water service consumption data," which, as OIP has already determined, consists of data directly related to service holders' water usage (e.g., gallons used and water zones) and not their addresses and billing information.

the next step to further analyze whether such information must nevertheless be disclosed under the UIPA's general mandate of public disclosure, OIP considered whether an exception to disclosure applied by balancing the public's interest in disclosure against the personal privacy interest. Under the facts presented in that case, OIP ultimately concluded that service holders' addresses and billing information could not be kept confidential. In reaching this conclusion, OIP looked at the recommendations of the Governor's Committee on Public Records and Privacy, which was the basis for adoption of the UIPA. OIP also took into account the fact that service address and billing information are already made public in other types of property records, such as real property tax records, land ownership, lien and transfer records, and state leases.

OIP emphasizes that this 1990 opinion was based on the general facts presented to it at that time, which did not include the specific concern for the privacy interests of a domestic violence victim who had obtained a temporary restraining order to protect her water service address from being disclosed to an individual that may jeopardize her health, safety, or welfare. If these specific facts are posed in a request for a new advisory opinion under the existing law, it is probable that a different conclusion would be reached in balancing the public interest against personal privacy interests and that safeguards could be instituted to protect against disclosure under those circumstances.

In summary, the statutory amendment proposed by this bill would not make service holders' addresses and billing information confidential, and is unnecessary to obtain OIP's review of its interpretation of the law under the specific facts motivating the proposal. Thank you for considering OIP's testimony.

Additionally, OIP notes that regardless of the legislative intent expressed in section one of the bill, it is a basic principle of statutory construction that a court will not look to such legislative intent unless necessary to ascertain the meaning of ambiguous statutory language.

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October 5, 1990

MEMORANDUM

TO: The Honorable Kazu Hayashida
Manager and Chief Engineer
Board of Water Supply
City and County of Honolulu

FROM: Hugh R. Jones, Staff Attorney

SUBJECT: Public Access to Water Service Consumption Data

This is in reply to your letter dated December 19, 1989, requesting an advisory opinion concerning public access to water service consumption data.

ISSUES PRESENTED

I. What Board of Water Supply ("BWS") service holder data constitutes "water service consumption data" that must be made available for public inspection and copying under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA")?

II. What, if any, sewer usage data is available for public inspection under the UIPA?

III. What BWS service holder data can be disclosed to federal, state, or local agencies?

IV. What, if any, deadlines are imposed upon an agency in responding to requests to inspect or copy government records under the UIPA?

V. Under the UIPA, may an agency properly require persons to identify themselves when making a request to inspect or copy government records or information?

BRIEF ANSWERS

I-II. Pursuant to section 92F-12(a)(12), Hawaii Revised Statutes, "[w]ater service consumption data maintained by the boards of water supply" must be available for inspection and copying. We conclude that service holder data maintained by the BWS concerning the holder's name, water use zone, highest and lowest consumption, averaged consumption, estimated gallons per day (GPD), water allotment, excess over allotment, water and sewer readings, type of water meter, and its location and installation date, constitutes "water service consumption data" under the UIPA.

Additionally, while a service holder's service location, and information concerning charges billed, paid or outstanding for water or sewer service may not constitute "water service consumption data," we conclude that this information must also be disclosed under the UIPA. Although the disclosure of a service holder's service location may sometimes result in the disclosure of an individual's residential address, under the circumstances present here, we conclude that under the UIPA's balancing test, the public interest in disclosure of this information outweighs any privacy interest an individual may have in the same.

Information concerning amounts billed for water or sewer service may easily be determined from "public" information, and should also be disclosed by the BWS upon request. In addition, we conclude that information concerning amounts paid by or owed by a service holder for water or sewer service should also be disclosed under the UIPA. Because the disclosure of this information would promote governmental accountability, in our opinion, the public interest in disclosure of this information outweighs an individual's privacy interest in the same.

III. If service holder data is "public" under the UIPA, it must be disclosed to other federal, state, or municipal governmental agencies. With respect to service holder data that is not public under the UIPA, it may be disclosed to other governmental agencies under the conditions specified in section 92F-19, Hawaii Revised Statutes.

IV. Under part II of the UIPA, which governs the public's right to inspect government records, no statutory deadline is imposed upon agencies in responding to requests to inspect or copy government records. However, pursuant to its authority under section 92F-42(12), Hawaii Revised Statutes,

administrative rules to be adopted by the OIP after public hearing will set forth the time period within which agencies must respond to requests to inspect or copy government records under part II of the UIPA.

As to requests by individuals to inspect their "personal records" under part III of the UIPA, section 92F-23, Hawaii Revised Statutes, requires that an agency permit an individual to whom a government record relates to inspect and copy such record within ten working days of the individual's request. This ten day period may be extended for an additional twenty working days if the agency provides to the individual within the initial ten working days, a written explanation of unusual circumstances causing the delay. Rules to be proposed by the OIP will provide examples of unusual circumstances which merit an extension of time for an agency's response under part III of the UIPA.

V. As a general rule, persons need not identify themselves when they request to inspect and copy a government record which is "public" under the UIPA. However, under the limited circumstances described in this opinion, agencies may properly request that persons making requests under the UIPA identify themselves.

FACTS

The BWS is a board or unit of government that manages, controls, and operates the waterworks of the county, for the purpose of supplying water to the public. See Haw. Rev. Stat. § 54-15 (1985). In connection with the operation of the county's waterworks, the BWS maintains a variety of information relating to its customers or service holders. For example, attached hereto as Exhibits "A" and "B" are copies of BWS forms entitled "Changes to Customer Record" which generally set forth the information the BWS maintains concerning a service holder.

These forms include such information as the service holder's name, service number, service location, mailing address, water use zone, estimated gallons used per day ("GPD"), water meter location, current water meter reading and the date of such reading, water consumption (gallons), averaged consumption, current water charges, water charges paid, outstanding charges, credits to the service holder, and the date that water service began. The forms also indicate the type of water meter installed at the service location and its

installation date. In times of water shortage or conservation, the forms also display a service holder's water allotment and the excess water consumed over such allotment.

The BWS also performs billing services, on behalf of the Department of Public Works, for sewer services which are provided to the public. Sewer charges are computed based upon a flat fee in addition to a charge based upon a service holder's water consumption. See Rev. Ord. Hon. § 11-6.4 and Appendix "G" (1983 & Supp. 1987). Thus, the forms attached hereto also list a service holder's current sewer reading date and charges, sewer current amount paid, outstanding charges, highest and lowest water consumption, and averaged consumption.

The BWS requests an advisory opinion concerning public access, under the UIPA, to the information which it maintains relating to its service holders. Additionally, the BWS requests guidance concerning the disclosure of service holder data to agencies of the federal and state governments.

DISCUSSION

I. WATER CONSUMPTION AND SEWER SERVICE DATA

As part of the UIPA, the State's new public records law, the Legislature set forth a list of records, or categories of records, which it declared "as a matter of public policy, shall be disclosed." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988). This list is not exhaustive, and "merely addresses some particular cases by unambiguously requiring disclosure."[1] Id. This list of disclosable government records is codified at section 92F-12, Hawaii Revised Statutes, which provides in pertinent part:

> §92F-12 Disclosure required. (a) Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:

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[1]As to the government records specified in this list, the UIPA's exceptions to disclosure, such as for personal privacy, and frustration of a legitimate government function, are inapplicable. See, S. Conf. Comm. Rep. No. 235 at 690; H. Conf. Comm. Rep. No. 112-88 at 818.

. . . .

(12) Water service consumption data maintained by the boards of water supply; . . . .

Haw. Rev. Stat. § 92F-12(a)(12) (Supp. 1989) (emphasis added).

An examination of the history of the above UIPA provision is instructive in arriving at the legislative intent behind its inclusion in section 92F-12, Hawaii Revised Statutes. Many of the records that were enumerated in section 92F-12, Hawaii Revised Statutes' list of disclosable records resulted from the recommendations of the Governor's Committee on Public Records and Privacy ("Governor's Committee").[2] With respect to water consumption data, the Governor's Committee observed as follows:

> The next issue raised concerned water service consumption data. At this time, the boards of water supply are county agencies and the handling of these records may thus vary between the counties. In Honolulu, this has been considered personal information and will only be released to the consumer. In fact, even a landlord was turned down when the data was sought on individual consumers. Given the increasing importance of the water supply in this State, it may at some point be necessary to provide the public with access to this information. It is also somewhat questionable that this is highly intimate or personal information which demands privacy protection. And finally, even if there is some personal privacy involved, this should not extend to, and Chapter 92E, HRS, does not apply to, commercial or business consumption data.

'Vol. I Report of the Governor's Committee on Public Records and Privacy 147 (1987) (boldface as in original) (emphasis added).

The reference in the Governor's Committee Report to a landlord who was denied access to water consumption data is probably an oblique reference to a memorandum opinion of the Corporation Counsel of the City and County of Honolulu, dated

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[2] See, e.g., S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988).

March 1, 1983.[3] In that opinion, the Corporation Counsel opined that data concerning the names, service locations, service numbers, and water consumption figures of tenants of Campbell Industrial Park could not be furnished to their lessor, the James Campbell Estate, under former chapter 92E, Hawaii Revised Statutes. While this opinion concluded that water consumption data was a "public record" under former section 92-50, Hawaii Revised Statutes, it also concluded that it was a personal record protected from disclosure under former section 92E-4, Hawaii Revised Statutes. A copy of this opinion was attached to the submission of Jeremy Harris, Managing Director of the City and County of Honolulu, to the Governor's Committee. See Vol. II Report of the Governor's Committee on Public Records and Privacy 116 (1987).

With this background in mind, we believe it is reasonable to assume that section 92F-12(a)(12), Hawaii Revised Statutes, was included in the UIPA to change the past county practice of not disclosing information relating to the consumption of water. Such a policy determination probably was viewed by the Legislature as being affected with significant public interest, given the State's limited supply of fresh water.

Because the phrase "water service consumption data" is not defined by the UIPA, determining what information maintained by the BWS is within the scope of section 92F-12(a)(12), Hawaii Revised Statutes, is not a simple task. A plain reading of this phrase would dictate that information, in the form of measurements and statistics, relating to a service holder's use of water be made available for public inspection. In our opinion, such information as a service holder's water use zone, water consumption, highest and lowest consumption, estimated gallons per day, averaged consumption, water allotment, excess over allotment, and water and sewer readings, constitutes "water consumption data," given this information's direct relationship to a service holder's water usage.

With respect to a service holder's "service location," given the UIPA's legislative history, it is arguable that this information constitutes information relating to the service holder's consumption of BWS supplied water. However, because this question is reasonably debatable, we shall proceed upon an assumption that an individual's service location does not constitute "water service consumption data." We shall

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[3]Corp. Counsel Op. M 83-13 (Mar. 1, 1983).

return to an examination of public access to this information, following a consideration of other information contained in Exhibits "A" and "B."

With respect to a service holder's mailing address, in our opinion, this information bears no relationship to a service holder's consumption of water. Likewise, information concerning amounts currently paid by service holders for water and sewer service, their outstanding charges, and their credit balance fail to provide any meaningful data concerning water consumption. We conclude that a service holder's mailing address, and information concerning amounts paid by, or owed to the service holder for sewer or water service do not constitute "water service consumption data."

With respect to amounts currently or cyclically billed to a service holder by the BWS for sewer and water service, we need not decide whether this information constitutes "water consumption data" since this information may easily be computed from information which is "public" under the UIPA. Specifically, amounts charged for water service are set by county ordinance, based upon gallons consumed. Similarly, amounts charged for sewer service are set by county ordinance, based upon water consumption, in addition to a flat fee. Accordingly, this information should be disclosed by the BWS upon request.

Having concluded that a service holder's mailing address, information concerning amounts paid by or owed to the service holder for water or sewer service, and an individual's service location do not constitute "water service consumption data" does not end our analysis. Under the UIPA, all government records (or information contained therein) are subject to public inspection unless protected from disclosure by one of the exceptions set forth at section 92F-13, Hawaii Revised Statutes. Therefore, we must consider whether the disclosure of this data would constitute "a clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes.

In previous OIP advisory opinions, we concluded that generally, the disclosure of an "individual's"[4] residential

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[4]Under the UIPA, an individual is a "natural person." See Haw. Rev. Stat. § 92F-3 (Supp. 1989).

address would constitute a "clearly unwarranted invasion of personal privacy" under section 92F-13(1), Hawaii Revised Statutes. See OIP Op. Ltr. No. 89-13 (Dec. 12, 1989). We do not believe that the disclosure of an individual service holder's mailing address sheds any light upon the consumption of water, nor upon other governmental activities or conduct. In our opinion, little, if any public interest would be advanced by the disclosure of this information. For the reasons stated in the above-cited opinion letter, the BWS should not disclose a service holder's mailing address.

With respect to a service holder's "service location," we first observe that the exception set forth at section 92F-13(1), Hawaii Revised Statutes, only applies to information concerning "natural persons." See Haw. Rev. Stat. §§ 92F-3 and 92F-14(a) (Supp. 1989). Thus, if the service holder is a corporation, partnership, trust, or other entity, that service holder's "service location" is public under the UIPA. See Haw. Rev. Stat. § 92F-11(a) and (b) (Supp. 1989).

As to an "individual's" water service location, we must balance the public interest in disclosure of this information against the individual's privacy interest to determine whether the disclosure of this information would be "clearly unwarranted." See Haw. Rev. Stat. § 92F-14(a) (Supp. 1989). In our opinion, there is a significant public interest in the disclosure of a service holder's service location. It is this information which often makes the water consumption measurements and statistics, which must be disclosed under the UIPA, meaningful. For example, a service location sheds meaningful information concerning whether water users are exceeding their allotment, and whether their consumption is consistent with their use of the location, such as residential, industrial, or agricultural.

While we recognize that the disclosure of a service holder's service location, may sometimes result in the disclosure of an individual's residential address, we believe that the public interest in the disclosure of this information outweighs the privacy interest that an individual service holder has in this data. In other contexts, as a matter of public policy, an individual's residential address must be disclosed. For example, as part of the UIPA, the Legislature directed that the name and address of those borrowing funds from a state or county loan program must be disclosed. See Haw. Rev. Stat. § 92F-12(a)(8) (Supp. 1989). Similarly, real property tax records, which disclose the name, address and the

use of a particular property, are "public." See Hon. Rev. Ord. § 8.1.11 (1983). Therefore, we conclude that under the UIPA's balancing test, whatever privacy interest service holders have in their service location is outweighed by the public interest in disclosure, such that the disclosure of this information would not be "clearly unwarranted" under the UIPA's personal privacy exception.

Additionally, the BWS forms attached hereto as Exhibits "A" and "B" set forth information concerning a service holder's account balance, namely "water current amount paid," "credit," "sewer current amount paid," and "amount outstanding." The UIPA declares that individuals have a significant privacy interest in:

> (6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness; . . . .

Haw. Rev. Stat. § 92F-14(b)(6) (Supp. 1989) (emphases added). Thus, information maintained by the BWS concerning an individual's credit balance, payments on account, or outstanding balance, is data in which an individual has a significant privacy interest. Therefore, this significant privacy interest must be balanced against the public interest in disclosure to determine whether the disclosure of such information under the UIPA would be "clearly unwarranted."

One of the core purposes of the UIPA is to promote the disclosure of government records which shed light upon "the discussions, deliberations, decisions, and action of government agencies." Haw. Rev. Stat. § 92F-2 (Supp. 1989). The UIPA evidences a strong public interest in the disclosure of information revealing amounts owed to the government. Specifically, section 92F-12(a)(8), Hawaii Revised Statutes, requires agencies to disclose the "[n]ame, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan."

Similarly, amounts owed by individuals to the counties for real property taxes are open to public inspection, see Hon. Rev. Ord. § 8.1.11 (1983), and recently, the Legislature has directed that state income tax compromises must be open to public inspection. See An Act Approved July 6, 1990, ch. 320, 1990 Haw. Sess. Laws 994 (1990). Likewise, authorities have concluded that that there is a significant public interest in

the disclosure of information relating to amounts owed by individuals on public obligations. For example, in Attorney General v. Collector of Lynn, 385 N.E.2d 505 (Mass. 1979), the Supreme Judicial Court of Massachussets concluded that the names of those who were delinquent in paying their real property taxes were public records open to inspection. While the court noted that the publication of one's name on a list of tax delinquents would result in personal embarrassment, the court concluded that any invasion of privacy was outweighed by the public interest in disclosure of this information, stating:

> [A]ny invasion of privacy resulting from the disclosure of the records of tax delinquents is also outweighed by the public right to know whether the burden of public expenses is equitably distributed, and whether public employees are diligently collecting delinquent accounts. The public has an interest in knowing whether public servants are carrying out their duties in an efficient and law abiding manner. [Citation omitted.] We think that the public interest in the disclosure in such information outweighs any invasion of privacy occasioned by the disclosure of the records of tax delinquents.

Collector of Lynn, 385 N.E.2d at 509.

Moreover, in Doe v. Sears, 263 S.E.2d 119 (1980), the Georgia Supreme Court held that tenants who lived in public subsidized housing, and who were delinquent in the payment of rent, had waived any constitutional, statutory or common law privacy protection they might have had in the status of their rental accounts, reasoning that "the general public properly is concerned with whether or not public housing tenants are paying their rentals when due." Sears, 263 S.E.2d at 123. Lastly, in Op. Att'y. Gen. Fla. 88-57 (1988), the Florida Attorney General concluded that county records relating to payments made by individuals for municipal waste collection services, were "public records" under Florida's Public Records Law.

Based upon the foregoing authorities, we conclude that despite the significant privacy interest that individuals have in information relating to their finances and liabilities, the public's right to know whether public employees are equitably and diligently collecting public obligations outweighs this privacy interest. Accordingly, we conclude that under section 92F-14(a), Hawaii Revised Statutes, the disclosure of a BWS service holder's credit balance, payments on account, or

outstanding balance would not constitute a clearly unwarranted invasion of personal privacy under the UIPA.

With respect to the type of water meter installed at a particular service location, its location, and installation date, arguably, there is a relationship between this data and a service holder's water consumption such that this information must be disclosed under section 92F-12(a)(12), Hawaii Revised Statutes. Again, however, we need not determine whether this information constitutes "water consumption data," since in our opinion, an individual service holder does not have a significant privacy interest in such data. This being the case, access to this information is not "restricted or closed by law," and must be disclosed under section 92F-11(a) and (b), Hawaii Revised Statutes.

II. DISCLOSURE OF SERVICE HOLDER DATA TO FEDERAL OR STATE AGENCIES

First, to the extent that service holder data is "public" under part II of the UIPA, the BWS may disclose such information to any federal, state, or municipal agency. However, to the extent that service holder data is protected from disclosure by one or more of the exceptions to public access set forth at section 92F-13, Hawaii Revised Statutes, the BWS must consult the UIPA's provisions which limit the inter-agency disclosure of "confidential" government records.

Section 92F-19, Hawaii Revised Statutes, sets forth the conditions under which an agency subject to the UIPA may disclose to other agencies, government records which are protected by one of the exceptions itemized in section 92F-13, Hawaii Revised Statutes. In OIP Opinion Letter No. 90-12 (Feb. 26, 1990), we advised the BWS that only section 92F-19(5) and (8), Hawaii Revised Statutes, sanction the disclosure of "confidential" government records to agencies of the federal government. This conclusion was reached because the UIPA's statutory definition of "agency"[5] only includes units of government "in this State."

Similarly, in OIP Opinion Letter No. 90-1 (Jan. 8, 1990), we concluded that section 92F-19, Hawaii Revised Statutes, does not sanction the disclosure of confidential government records to agencies of other states. With respect to the BWS'

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[5]See Haw. Rev. Stat. § 92F-3 (Supp. 1989).

disclosure of confidential government records to other agencies of this State, we suggest that the BWS consult our previous advisory opinion, referred to above, for additional guidance, or contact the OIP when inter-agency disclosure questions arise in a concrete factual setting.

III. AGENCY DEADLINES TO PERMIT INSPECTION AND COPYING OF GOVERNMENT RECORDS UNDER THE UIPA

Part II of the UIPA, "Freedom of Information,"[6] contains no statutory period within which an agency must respond to a request to inspect government records. Pursuant to its rule-making authority under section 92F-42(12), Hawaii Revised Statutes, the OIP will be adopting administrative rules that specify the time within which an agency must respond to a request to inspect records under part II of the UIPA. Pending the adoption of these rules, however, we advise all agencies that meaningful access to government records requires that such records be available within a reasonable time. To advise otherwise would frustrate the clear legislative purpose behind the UIPA "[t]o promote the public interest in disclosure," and "[t]o enhance governmental accountability through a general policy of access to government records." Haw. Rev. Stat. § 92F-2 (Supp. 1989).

With respect to requests under part III of the UIPA, which governs the rights of individuals to inspect their "personal records,"[7] section 92F-23, Hawaii Revised Statutes, provides:

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[6]Part II of the UIPA governs access to government records by the public generally. Part III of the UIPA governs access to government records by the individuals to whom such records pertain.

[7]Under the UIPA, a "personal record" is defined as:

> [A]ny item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Haw. Rev. Stat. § 92F-3 (Supp. 1989) (emphases added).

> §92F-23 Access to personal record; initial procedure. Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted under section 92F-22. The ten day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay. [Emphasis added.]

Thus, unless unusual circumstances exist or unless an individual's personal records are exempt from disclosure, an agency must permit an individual to review and duplicate their personal records within ten working days following the date of their request. Rules being drafted by the OIP regarding the disclosure of "personal records" provide examples of unusual circumstances which merit an extension of time for an agency's response under part III of the UIPA.

IV. UIPA REQUESTER IDENTIFICATION POLICIES

The BWS requests guidance concerning whether an agency may properly require persons to identify themselves when making requests to inspect government records under the UIPA.

A. Requests Under Part II of the UIPA

If a record is subject to "public" inspection under the UIPA, a requester's identity is generally irrelevant, since under the UIPA, "any person" may inspect and copy "public" records. See Haw. Rev. Stat. § 92F-11(b) (Supp. 1989). See also Department of Justice v. Reporters Committee for Freedom of the Press, 429 U.S. __, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989) (FOIA requesters' identity can have "no bearing upon the merits of his or her request"). Thus, under the UIPA, the axiom "disclosure to one is disclosure to all" applies.

Part II of the UIPA does not set forth procedures for requesting access to government records, but rather, leaves those procedures to be addressed in administrative rules to be adopted by the OIP after public hearings. There are a few circumstances where a requester's identity would be properly sought by an agency under the UIPA. First, where an agency permits a requester to examine, inspect, or copy an original

government record, an agency may properly request identification from that person to prevent damage, loss, or destruction of such original record. This will be further set forth in the proposed rules governing the protection of records "from theft, loss, defacement, alteration or deterioration." See Haw. Rev. Stat. § 92F-11(e) (Supp. 1989).

Second, when an agency is requested to mail a copy of a "public" government record to a requester, an agency must necessarily be informed of the requester's or someone else's name and mailing address. Third, under rules to be promulgated by the OIP for the waiver of fees charged for searching, reviewing, and segregating disclosable records, it would be proper to request, for example, that the requester provide evidence that the requester is a person who is entitled to a fee waiver. Fourth, it would similarly be proper for an agency to ask for the name and address of a UIPA requester for the purpose of sending the requester an estimate of the fees that will be charged for searching, reviewing, and segregating the records sought to be inspected, or for billing for the same.

Fifth, a requester's identity would also be relevant to an agency's determination of whether the disclosure of confidential government records to other agencies would be proper under section 92F-19, Hawaii Revised Statutes. For example, an agency may condition the disclosure of government records to federal agencies for a criminal law enforcement investigation upon satisfactory proof that the requester is who he or she purports to be.

A closely related issue to the one presented by the BWS, is whether the UIPA requires a a written request to inspect a government record. Nothing under part II of the UIPA expressly requires a person to put the person's request in writing, however, the OIP is proposing to adopt rules that may require a person to file a written request to invoke that person's administrative remedies under section 92F-15.5 and 92F-27.5, Hawaii Revised Statutes. In any event, the rules adopted by the OIP after public hearing will specify when a requester must put a UIPA request in written form.

B. Requests Under Part III of the UIPA

Part III of the UIPA, governing the disclosure of personal records, grants greater access rights to individuals to whom a government record pertains, than to the public generally. Therefore, the OIP may require, pursuant to administrative rule, that requests under part III of the UIPA contain

sufficient evidence that the person making the request is who he or she purports to be. For example, the rules may require that the person present a Hawaii driver's license or state identification, or in the alternative, make a written request acknowledged before a notary. The BWS should consult the OIP administrative rules, following their adoption after public hearings, for further guidance. The UIPA provides that agencies shall adopt the OIP's rules governing the disclosure of personal records "insofar as practicable, in order to ensure uniformity among state and county agencies." Haw. Rev. Stat. § 92F-26 (Supp. 1989).

CONCLUSION

The UIPA requires that the boards of water supply disclose "water service consumption data." Haw. Rev. Stat. § 92F-12 (a)(12) (Supp. 1989). We conclude that a service holder's name, water use zone, water and sewer meter readings, water consumption, averaged consumption, estimated gallons used per day, highest and lowest consumption, water allotment, excess over allotment, and type of meter and its location constitute "water service consumption data" that must be disclosed.

In addition, we conclude that a water service holder's service location, amounts billed for water or sewer service, amounts outstanding for water or sewer service, current amount paid and credit balance, must also be disclosed under section 92F-11(a) and (b), Hawaii Revised Statutes. Although, a service holder may have a significant privacy interest in this information, in our opinion, such interest is outweighed by the public interest in disclosure of this information under the UIPA's balancing test, section 92F-14(a), Hawaii Revised Statutes.

However, we conclude that the BWS should not disclose a service holder's mailing address since any public interest in disclosure of this data is slight, when compared to the privacy interest that an individual may have in this information. The disclosure of this data, would shed little, if any light upon the conduct of a government agency or the consumption of water.

BWS service holder data which is not "public" may be disclosed to federal or state agencies under the conditions set forth in section 92F-19, Hawaii Revised Statutes.

Under part III of the UIPA, an agency must permit an individual to inspect and copy the individual's "personal records" within ten working days from the date of the individual's request, unless within this period, the agency

provides to the individual a written explanation of unusual circumstances causing a delay. In such case, the ten day period may be extended an additional twenty working days. Part II of the UIPA imposes no express statutory deadline in responding to requests thereunder. However, rules to be adopted by the OIP after public hearing may establish a deadline for an agency's response to requests made under part II of the UIPA.

Lastly, except under the circumstances described in this opinion, or under rules proposed by the OIP, persons generally do not have to identify themselves when making a request to inspect government records under part II of the UIPA.

Hugh R. Jones
Staff Attorney

HRJ:sc
Attachments
cc: The Honorable Ronald Mun
Corporation Counsel

APPROVED:

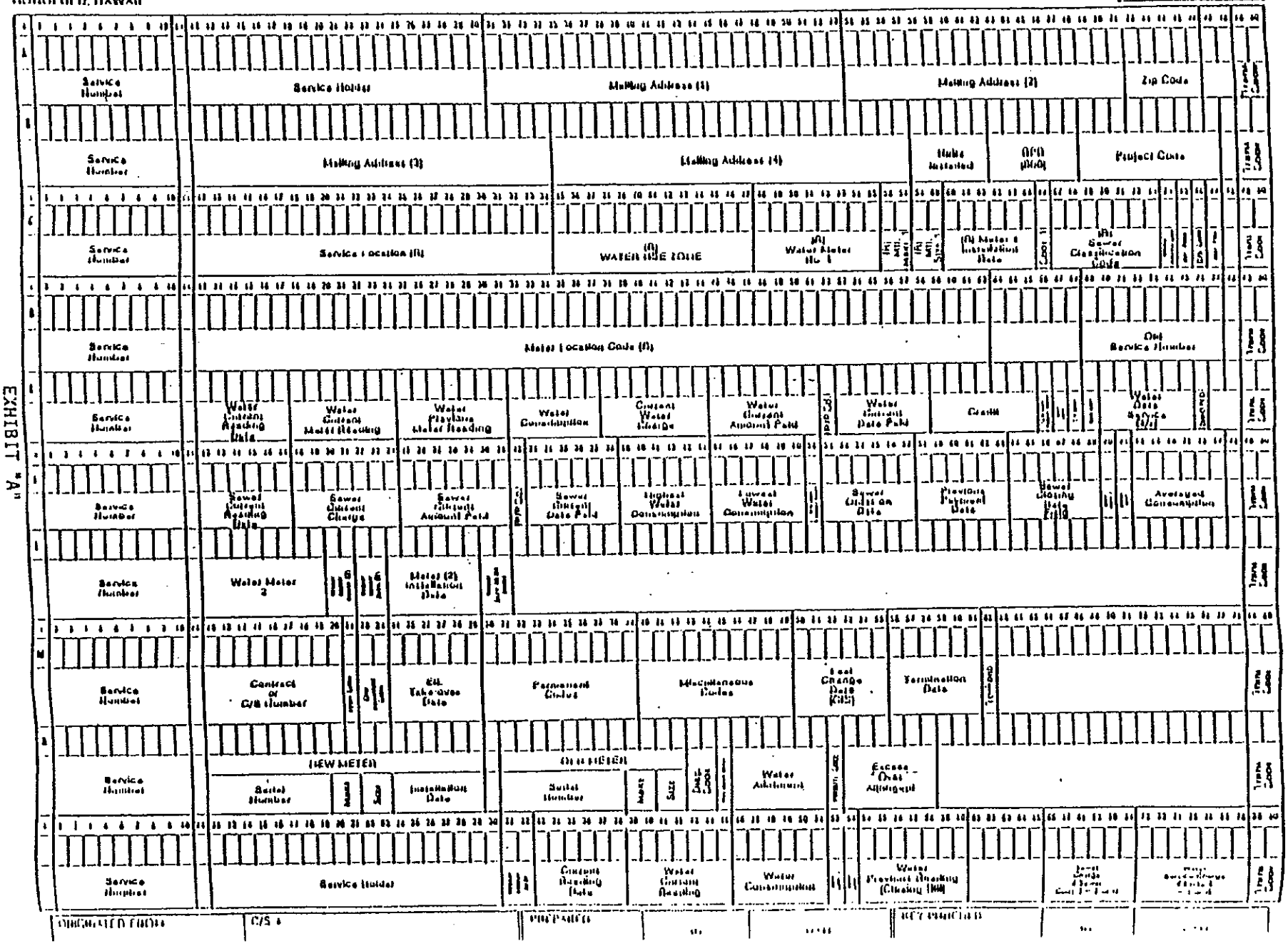
Kathleen A. Callaghan
Director

BOARD OF WATER SUPPLY
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CHANGES TO CUSTOMER RECORD

KEY

EXHIBIT "A"



BOARD OF WATER SUPPLY
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CHANGES TO CUSTOMER RECORD

KEY

Service Number

Current Reading Date

Water Current Meter Reading

Water Previous Meter Reading

Water Consumption

Current Water Charge

Water Current Amount Paid

Water Current Date Paid

Credit

Water Date Service Left

Trans Code

Service Number

Sewer Current Reading Date

Sewer Current Charge

Sewer Current Amount Paid

Sewer Current Date Paid

Highest Water Consumption

Lowest Water Consumption

Sewer Order on Date

Previous Payment Date

Sewer Closing Date Paid

Trans Code

Service Number

1 Cycle Reading Date

Water 1 Cycle Amount Billed

Water 1 Cycle Amount Paid

Water 1 Cycle Date Paid

Sewer 1 Cycle Amount Billed

Sewer 1 Cycle Amount Paid

Sewer 1 Cycle Date Paid

Sewer 1 Cycle Reading Date

Trans Code

Service Number

2 Cycle Reading Date

Water 2 Cycle Amount Billed

Water 2 Cycle Amount Paid

Water 2 Cycle Date Paid

Sewer 2 Cycle Amount Billed

Sewer 2 Cycle Amount Paid

Sewer 2 Cycle Date Paid

Date of Last Closing Bill

Last Change Date (P/C)

Trans Code

Service Number

3 Cycle Reading Date

Water 3 Cycle Amount Billed

Water 3 Cycle Amount Paid

Water 3 Cycle Date Paid

Sewer 3 Cycle Amount Billed

Sewer 3 Cycle Amount Paid

Sewer 3 Cycle Date Paid

Trans Code

Service Number

4 Cycle Reading Date

Water 4 Cycle Amount Outstanding

Water 4 Cycle Date Paid

Sewer 4 Cycle Amount Outstanding

Sewer 4 Cycle Date Paid

Cycle Code 2

1 2 3 4 5 6 7 8 9 10 11

Trans Code

Service Number

1 2 3 4 5 6 7 8 9 10 11

WATER CONSUMPTION BY CYCLES

Trans Code

Service Number

Trans Code

Service Number

Trans Code

ORIGINATED FROM

DATE

C/S #

OTHERS

PREPARED

CHECKED

BY

DATE

KEY PUNCHED

BY

DATE