LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAI'I 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oip@hawaii.gov
www.hawaii.gov/oip

LESLIE H. KONDO
DIRECTOR

April 12, 2005

Mr. Clayton Wong
Fiscal Officer
Council Administrative Support Services
Honolulu City Council
City Hall
Honolulu, Hawaii 96813-3065

Re: Request for an Opinion (RFO-G 04-011)

Dear Mr. Wong:

In a letter dated April 1, 2004, you asked the Office of Information Practices ("OIP") for an opinion about the obligation for members of the City Council for the City and County of Honolulu ("Council") to furnish cellular telephone records to the public under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA").

ISSUE PRESENTED

I. Are the councilmembers' cellular phone invoices subject to the UIPA if the Council pays councilmembers an allowance for maintaining cellular phone service, rather than directly paying for the service?

II. If the invoices are subject to the UIPA, may any part of them be redacted?

BRIEF ANSWER

I. Yes. The cellular phone invoices and other records provided to the Council by councilmembers to account for the cellular phone allowance are "government records" as defined in section 92F-3, HRS (1993). Thus, they are subject to the UIPA whether a request is made to the Council as an organization or to the individual councilmember.

II. Yes. Information in the invoices that falls within an exception to the UIPA, such as the exception for information whose disclosure would be an unwarranted invasion of personal privacy, may be redacted from the invoices.

FACTS

In the past, the Council had paid directly for cellular phone service for councilmembers. The Council released cellular phone invoices regarding that service to the public when so requested. The Council has recently changed to a policy of giving councilmembers a monthly allowance for cellular phone service. Councilmembers receiving the allowance pay for their cellular phone service out of personal funds, with the understanding that the phone will be used primarily for City business. Councilmembers are accountable to the Council for how the cellular phone allowance is spent: they must show cellular phone invoices reflecting the amount claimed, and payment of the allowance is contingent upon proof of a cellular phone plan. The records submitted by councilmembers include details such as telephone numbers called and the times of the calls.

DISCUSSION

I. RECORDS OF EXPENDITURE AS "GOVERNMENT RECORDS"

The UIPA applies to a request for a "government record," which is defined in section 92F-3, HRS, as "information maintained by an agency. . . ." Haw. Rev. Stat. § 92-3 (1993). In OIP Opinion Letter Number 93-17 (Oct. 8, 1993), OIP addressed whether records showing how legislators spent their legislative allowances were government records and thus subject to the UIPA. OIP concluded that records of expenditure of legislative allowances, which do not require any accounting and are treated as part of legislator's income for tax purposes, are not government records. Id. However, OIP noted in the same opinion that if the Legislature were to require legislators to account for or substantiate the expenditure of their legislative allowances,

the records compiled and submitted by a legislator in connection with that requirement would be government records. Id. at 12.

In the present situation, the councilmembers are required to account for and substantiate the expenditure of their cell phone allowances. Thus, the records compiled and submitted by councilmembers to meet those requirements are government records and a request for them must be responded to under the UIPA, whether the request is to the Council as an institution or to the individual council member. See Haw. Rev. Stat. §§ 92F-3 and -11 (1993).

II. EXCEPTIONS TO PUBLIC DISCLOSURE

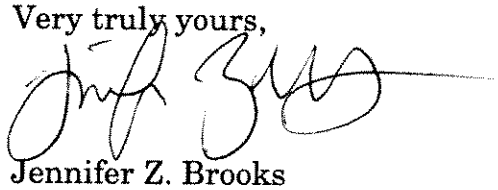
Since your question regarding the cellular telephone records is general and you have not asked for an opinion on a particular record, OIP does not now opine on whether information may be redacted from a specific record. As a general matter, however, OIP notes that the cellular telephone records submitted by councilmembers may contain information that falls within an exception to disclosure, in which case it may be redacted from records provided to the public. For instance, the records may show telephone numbers called, which could include home telephone numbers. Home telephone numbers carry a significant privacy interest and, unless the privacy interest is outweighed by the public interest, may be redacted. See Haw. Rev. Stat. §§ 92F-13(1) and -14 (1993 and supp. 2004); see also, e.g., OIP Op. Ltr. No. 99-3 at 10 (June 1, 1999). Moreover, as councilmembers are not required to use their cellular phones exclusively for City business, OIP notes that the numbers called may legitimately include personal calls. Generally, information concerning councilmembers' personal calls can be redacted. However, the public's interest in what home telephone numbers are called from City-reimbursed cellular phones may be strong in some circumstances. In the absence of a specific record, OIP cannot opine on whether home telephone numbers may be redacted in a particular situation.

CONCLUSION

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 them must be responded to under the UIPA, whether the request is to the Council as an institution or to the individual council member. Some information within the records may fall under an exception to the UIPA,

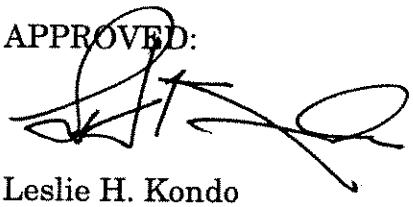
though, in which case that information may be redacted from the records provided in response to a UIPA request.

Very truly yours,



Jennifer Z. Brooks
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

JZB: