

January 29, 1990

Ms. Pat Martin
c/o 1405 N. King Street, Suite 200
Honolulu, Hawaii 96817

Dear Ms. Martin:

Re: Public Access to Certified Abstracts of Motor Vehicle
Operating Records

This is in reply to your letter dated August 7, 1989, requesting an advisory opinion regarding public access to certified abstracts of motor vehicle operating records. Your letter set forth numerous other inquiries concerning government records and records retention, which are not within the scope of the Office of Information Practices' jurisdiction or duties. We shall, however, attempt to address those questions that implicate the Uniform Information Practices Act (Modified) ("UIPA"), chapter 92F, Hawaii Revised Statutes.

ISSUES PRESENTED

I. Whether certified abstracts of motor vehicle operating records ("abstracts") maintained by state district courts are "administrative" records and therefore, subject to the UIPA.

II. Whether certified abstracts maintained by state district courts are available for public inspection and copying under the UIPA.

III. Whether there are any laws or regulations limiting access to the abstracts of minors.

IV. Whether under the UIPA, abstracts maintained by the district courts are available to agencies of other states.

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V. Whether the UIPA requires that an individual be notified that another person has received that individual's abstract.

VI. Whether an individual has the right, under the UIPA, to require an agency to obtain their authorization to release that individual's abstract.

BRIEF ANSWER

Based upon the UIPA's legislative history, we conclude that certified drivers' abstracts are "administrative" records of the district courts and therefore, are "government records" subject to the UIPA. Further, pursuant to section 92F-12(b)(2), Hawaii Revised Statutes, each agency must disclose government records, which pursuant to a statute of this State, are authorized to be disclosed. Section 287-3, Hawaii Revised Statutes, unequivocally requires the district courts to provide to any person a copy of any person's certified abstract.

Additionally, section 287-3, Hawaii Revised Statutes, does not limit public access to the certified abstracts of minors, or limit access to agencies of other states or jurisdictions. Lastly, neither the UIPA, nor section 287-3, Hawaii Revised Statutes, requires that an individual be notified that another person has obtained that person's public abstract, or require that an agency obtain the authorization of the individual to whom a disclosable government record pertains before the disclosure of same.

FACTS

The various district courts, or in the case of the Oahu District Court, the Traffic Violations Bureau, compile abstracts of individuals' motor vehicle operating records. These abstracts include such information as the name and address of drivers who have been cited for traffic violations, their date of birth, driver's license number, car license number, nature and date of violation, citation number, court appearance date, and disposition, i.e. dismissed, fine imposed, etc. These abstracts are prepared based upon information entered into a database from traffic citations and from district court case records. For instance, when a particular driver is adjudged in violation of a traffic law by the court, this information is noted on that

driver's abstract. Likewise, if a driver is cited for a traffic violation and that citation is dismissed by the court, both the citation and the dismissal are noted on that driver's abstract.

DISCUSSION

I. Abstracts as "Administrative" Court Records

The UIPA, the State's new public records law, only applies to "agencies." Under the UIPA, "agency" is defined very broadly, such that units of both state and local government fall within the UIPA's provisions. See Haw. Rev. Stat. § 92F-3, (Supp. 1989). However, under the UIPA, agency "does not include the non-administrative functions of the courts of this State."¹ Therefore, as an initial matter, it must be determined whether driver abstracts are a "non-administrative" record of the district courts. If so, access to these records is not within the scope of the UIPA.

Examination of the legislative history of the UIPA provides guidance concerning the exclusion of the non-administrative functions of the state courts from the coverage of the Act. The enactment of chapter 92F, Hawaii Revised Statutes, repealed chapter 92E and section 92-50, Hawaii Revised Statutes, which had been the State's previous laws addressing public records and confidentiality of personal records. See Act approved June 9, 1988, chapter 262, 1988 Haw. Sess. Laws 473. Before its repeal, chapter 92E, Hawaii Revised Statutes, excluded from the definition of "agency" all functions of the Judiciary. Likewise, the first and second drafts of House Bill No. 2002, which led to the enactment of the UIPA, excluded all functions of the Judiciary from the definition of "agency." On the contrary, the third draft of House Bill No. 2002 included all functions of the Judiciary within the definition of "agency." The final draft of House Bill No. 2002 excluded only the "non-administrative functions" of the Judiciary, the language now set forth in

¹Section 92F-2, Hawaii Revised Statutes, provides that agency "means 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 owned, operated, or managed by or on behalf of this State or any county, but does not include the non-administrative functions of the courts of this State." [Emphasis added.]

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section 92F-3, Hawaii Revised Statutes., The Senate Conference Committee Report sheds some light upon the scope of section 92F-3, Hawaii Revised Statutes:

The definition of "agency" excludes the "non-administrative" records of the Judiciary." The intent of this language is to preserve the current practice of granting broad access to the records of court proceedings. The records of the Judiciary which will be affected by this bill are the administrative records.

S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988) (emphasis added).

In drafting the UIPA, the Legislature drew guidance from the Report of the Governor's Committee on Public Records and Privacy² ("Governor's Committee Report"). A review of the Governor's Committee Report indicates that the exclusion of the non-administrative records of the Judiciary from the coverage of the UIPA was meant to insure that state court files and records, which have been traditionally open to public inspection, would not be subject to the protection of the UIPA's various exceptions to public access. Specifically, the Governor's Committee Report states that inclusion of state court records within the coverage of a public records law:

is not intended to close any judicial records now open, and especially not the records of judicial proceedings. The application of this law to the Judiciary should effect [sic] primarily administrative records.

Vol. I Report of the Governor's Committee on Public Records and Privacy 94 (1987) (emphasis added).

Further, before language excluding the "non-administrative functions" of the Judiciary was included in House Bill No. 2002, Janice Wolf, then Administrative Director of the Courts, in written testimony dated March 22, 1988, before the Senate Committee on Government Operations, stated that inclusion of all

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

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judicial records within the reach of a new public records law may unwittingly close access to court records which were traditionally open:

[A] possible adverse effect of this bill, which promotes public access to government information, may be to require closure of court records which are presently open to the public.

In our opinion, the legislative history reflects that in excluding the "non-administrative" records of state courts from the scope of the UIPA, the Legislature intended that only the administrative records of state courts be subject to the UIPA. However, we must still determine whether a driver's abstract is such an administrative record. Black's Law Dictionary 42 (5th ed. 1979) defines "administrative" as follows:

Connotes of or pertaining to administration, especially management, as by managing or conducting, directing, or superintending, the execution, application or conduct of persons or things. Particularly, having the character or executive or ministerial action. In this sense, administrative functions are distinguished from such as are judicial. [Citations omitted.]

On the contrary, Black's Law Dictionary (5th ed. 1979) defines "judicial," in pertinent part, as follows:

Related to or connected with the administration of justice Having the character of involving the exercise of judgment or discretion; as distinguished from ministerial.

Based upon the legislative history of the UIPA and the common meaning of the word "administrative," we conclude that non-administrative records of the courts, generally speaking, are those records which are provided to the court incident to the adjudication of a legal matter before that tribunal. Such a construction means that records including, but not limited to, charging documents, complaints, motions, pleadings, clerk's minutes, legal memoranda, exhibits, orders, and decisions are not subject to the provisions of the UIPA. However, these non-

administrative records of the courts have historically been subject to public inspection, unless access is closed or restricted by court order or rules. With respect to drivers' abstracts, we further conclude that although some of the information contained therein reports the dispositions of legal proceedings, they are nonetheless "administrative" in nature insofar as they are a compilation of data that does not involve the exercise of judgment or discretion by the court. Rather, the preparation of a driver's abstract involves ministerial action by the preparer of these records.

Having determined that a driver's abstract is an administrative record of the district courts and thus, subject to the UIPA, we now must examine whether access to this government record is required by the UIPA.

II. Public Access to Certified Driver Abstracts

III. Limitations on Access to Abstracts Regarding Minors

IV. Access by Other States

Under the UIPA, "[a]ll government records are available for public inspection, unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1989). Additionally, although the Legislature created several exceptions to mandatory public access to government records in section 92F-13, Hawaii Revised Statutes, it was "not the intent of the Legislature that this section be used to close currently available records, even though these records might fit within one of the categories in this section." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988). Further, under the UIPA, an agency must disclose government records, which "pursuant to . . . a statute of this State, are expressly authorized to be disclosed." Haw. Rev. Stat. § 92F-12(b)(2) (Supp. 1989).

Section 287-3, Hawaii Revised Statutes, provides:

§ 287-3 Furnishing of operating records. The traffic violations bureau of the district courts shall upon request furnish any person a certified abstract of the bureau's record, if any, of any person relating to all alleged moving violations, as well as any

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convictions resulting therefrom, arising from the operation of a motor vehicle. The traffic violations bureau may collect a fee, to be a realization of the general fund of not in excess of \$2 for any such certificate. [Emphasis added.]

This section had its origins in an Act approved May 24, 1949, ch. 393, 1949 Haw. Sess. Laws 474. Section one of this Act amended chapter 140, Revised Laws of Hawaii, by creating section 7403, which required the chief of police to furnish upon request of "any person" a certified abstract of the operating record, if any, of "any person." In 1980, the Legislature amended these provisions to transfer the responsibility to provide certified abstracts from the chief of police to "the administrator" which would include either the chief of police of each county or the director of finance for each county. See Act approved May 21, 1980, ch 84, 1980 Haw. Sess. Laws 123. Section 287-3, Hawaii Revised Statutes, in its present form, was created by an Act approved June 12, 1982, ch 210, 1982 Haw. Sess. Laws 394. Pursuant to Act 210, the traffic violations bureaus of the district courts were delegated the responsibility to furnish certified driver's abstracts.

Section 287-3, Hawaii Revised Statutes, by its terms, requires the district courts to furnish a certified abstract relating to any person, upon the request of any person, upon the payment of the required fee. In our opinion, this statute admits of no ambiguity. Further, in response to your question regarding whether access to the abstracts of drivers who are under the age of majority is limited in any manner, the answer is no. As stated above, any person may request the abstract of any other person. Similarly, section 287-3, Hawaii Revised Statutes, does not limit the ability of other governmental jurisdictions to obtain a copy of these abstracts.

V. Notification to Individuals That Records Concerning Them Have Been Disclosed

Neither the UIPA or section 287-3, Hawaii Revised Statutes, require that an individual be notified that government records which relate to them have been disclosed. However, under the UIPA, and in absence of a statute or court order requiring disclosure, an agency should not disclose any records, "which if

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disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-13(1) (Supp. 1989).

Section 92F-14(a), Hawaii Revised Statutes, provides that "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Additionally, section 92F-14(a), Hawaii Revised Statutes, sets forth examples of information in which an individual has a significant privacy interest and includes, but is not limited to, information relating to an individual's medical condition or treatment, or their eligibility for social services or welfare; applications, nominations, or recommendations for public employment; and information describing an individual's finances, financial history, or credit worthiness. However, we observe that the UIPA's privacy exemption does not apply to records which are required to be disclosed by statute or court order.³

Lastly, neither the UIPA or section 287-3, Hawaii Revised Statutes, requires an agency to obtain an individual's permission before the disclosure of a government record or that driver's certified abstract.

CONCLUSION

Based upon the legislative history of the UIPA, we conclude that the Act applies to the "administrative records" of the state courts. We generally conclude that such records are those which are not provided to the court incident to an adjudication before the court. Further, in our opinion, certified drivers' abstracts are an administrative record of the District Courts. Their compilation involves ministerial action, and they are not furnished to the court incident to the adjudication of a legal matter before the court. Section 287-3, Hawaii Revised Statutes, unambiguously requires the district courts to provide a person's certified drivers' abstract to any person, upon request. Thus, there are no restrictions upon access to these records either under the UIPA or chapter 287, Hawaii Revised Statutes. Lastly, nothing in the UIPA requires that an agency notify an

³See Haw. Rev. Stat. § 92F-12(b) (Supp. 1989) ("any provision to the contrary notwithstanding.")

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individual or seek that person's authorization to disclose records which must be disclosed under the UIPA.

Hugh R. Jones
Staff Attorney

HRJ:sc
cc: The Honorable Herman R.F. Lum

APPROVED:

Kathleen A. Callaghan
Director