

December 23, 1991

Mr. Eric Wane Schroeder
99-902 Moanalua Highway
Aiea, Hawaii 96701

Dear Mr. Schroeder:

Re: Table of Contents to Department of Public Safety
Policies and Procedures Manual

This is in reply to your letter to the Office of Information Practices ("OIP") dated September 8, 1991, requesting an advisory opinion concerning your right to inspect and copy the table of contents to the Department of Public Safety ("PSD") Policies and Procedures Manual.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the table of contents to the PSD Policies and Procedures Manual must be made available for public inspection and copying.

BRIEF ANSWER

In OIP Opinion Letter No. 90-34 (Dec. 10, 1990), we examined whether the PSD Policies and Procedures Manual must be made available for public inspection and copying under the UIPA.

In that opinion, we concluded that under the UIPA, each PSD policy or procedure must be publicly accessible, unless such policy or procedure is: (1) "predominantly internal," i.e. directed at staff and does not affect a member of the public, and 2) its disclosure would significantly risk the circumvention of PSD regulations, prison security measures, or measures concerning the control of inmates.

Based upon our examination of the table of contents to this

particular PSD Policies and Procedures Manual, we do not believe that permitting the public to inspect and copy only the policy numbers and policy titles or headings (as opposed to the policies themselves) would significantly risk the circumvention of prison security measures, PSD regulations, or policies concerning the control of inmates. Accordingly, it is our opinion that the table of contents must be made available for inspection and copying "upon request by any person." Haw. Rev. Stat. § 92F-11(a) and (b) (Supp. 1991).

FACTS

On July 5, 1991, you submitted a PSD Form 1017, entitled "Request for Disclosure/Access of Department Information/Records" to the Halawa Correctional Facility ("HCF") in which you requested a copy of the index to the PSD Policies and Procedures Manual ("PSD Manual").

In response to this request, HCF personnel provided you with a copy of the table of contents to the PSD Manual after segregating, or deleting, the policy numbers and policy titles of one hundred twenty-four (124) PSD policies, procedures, or directives.

On July 12, 1991, after receiving a censored copy of the table of contents to the PSD Manual, you submitted another PSD Form 1017 to HCF personnel, requesting a copy of the uncensored table of contents to the PSD Manual. By the handwritten notation of a PSD records clerk dated July 15, 1991, this second request was denied on the basis that "[i] nmate not privy to a `staff use only' P & P's."

Then, on July 20, 1991, you filed a PSD Inmate Grievance/Complaint form concerning the HCF's failure to provide you with an uncensored copy of the table of contents to the PSD Manual. By a notation on the grievance form dated July 26, 1991, an Adult Offender Services Supervisor responded to your grievance as follows:

Inmates may request and copy only Policies and Procedures and only [those] portions of the Table of Contents pertaining to inmates. Certain chapters have no relevance to inmates; therefore, [they are] not available at the discretion of PSD AND HCF's Administration.

Presently, no index is available. The rejection of your request . . . is a legitimate decision. Your grievance is denied.

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After two further grievances, you filed a fourth Inmate Grievance/Complaint dated July 30, 1991 regarding the HCF's refusal to provide you with an uncensored copy of the table of contents to the PSD Manual. This last grievance was also denied and, in doing so, an HCF Adult Offender Services Supervisor stated:

Your assertion that the denied access to certain sections of the HCF P & P's is contrary to HRS 92F is unfounded. Both the HCF and PSD P & P's regarding inmate access referenced HRS 92F to insure compliance.

Any Departmental or facility policy and procedure of which the disclosure would jeopardize facility security and management, or control of inmates, or frustrate government operations are deemed as confidential. Inmates may be denied access to these policies. Your grievance is, therefore, denied.

By letter dated September 8, 1991, you requested that the OIP render an opinion concerning your right to receive an uncensored copy of the table of contents of the PSD Manual. At the request of the OIP, the PSD provided the OIP with an uncensored copy of the table of contents to the PSD Manual for its review in the preparation of this opinion letter.

DISCUSSION

In OIP Opinion Letter No. 90-34 (Dec. 10, 1990), we examined whether, under the UIPA, the PSD Manual must be made available for inspection and copying by inmates. Based upon the express definition of the term "person" set forth at section 92F-3, Hawaii Revised Statutes, and authorities interpreting state and federal open records laws similar to the UIPA, we concluded in OIP Opinion Letter No. 90-34 that inmates in State correctional facilities have the same UIPA rights of access as members of the public or any other "person." See OIP Op. Ltr. No. 90-34 at 3-4 (Dec. 10, 1990).

Additionally, based upon federal court decisions interpreting Exemption 2 of the federal Freedom of Information Act, 5 U.S.C. § 552 (1988), we concluded that each policy, procedure, or directive contained in the PSD Manual must be made available for inspection and copying "upon request by any person" except where the policy, procedure, or directive meets both of the following tests:

1. The policy or procedure is "predominantly internal," i.e., directed at agency staff and does not regulate members of the public or establish standards for agency personnel in deciding to proceed against or take action affecting members of the public; and
2. The disclosure of the policy or procedure would significantly risk the circumvention of agency regulations or statutes, or policies concerning the the control of inmates, or prison security.

See OIP Op. Ltr. No. 90-34 at 7-10.

We have examined an uncensored copy of the PSD Manual's table of contents and compared it to the censored copy that was provided in response to your UIPA request. It is our opinion that public access to solely the policy numbers and policy titles of the policies contained in the PSD manual would not significantly risk the circumvention of the law, or measures concerning the control of inmates or prison security. Unlike inmate access to the contents of the policies themselves, we find it difficult to believe that informing an inmate or a member of the public that the PSD has policies regarding inmate escape procedures, the control of weapons, or the transportation of inmates, among others, would permit an inmate or member of the public "simultaneously to violate the law and to avoid detection." Crooker v. Bureau of Alcohol, Tobacco & Firearms, 670 F.2d 1051 (D.C. Cir. 1981).

Accordingly, it is our opinion that the the table of contents to the PSD Manual is not a government record that by its nature "must be confidential in order for the government to avoid the frustration of a legitimate government function." Haw. Rev. Stat. §92F-13(3) (Supp. 1991). As such, we believe that it must be made available for inspection and copying "upon request by any person." Haw. Rev. Stat. §92F-11(a) and (b) (Supp. 1991).

CONCLUSION

We conclude that the table of contents to the PSD Manual is not a government record that must remain confidential in order to avoid the frustration of a legitimate government function,

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because its disclosure would not significantly risk the circumvention of PSD regulations, or measures concerning the control of inmates or prison security.

Very truly yours,

Hugh R. Jones
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

HRJ:

c: The Honorable George Sumner
Director of Public Safety

Mr. Eric Penarosa
Deputy Director for Corrections