

August 21, 1995

Mr. Walter Wright
The Honolulu Advertiser
P.O. Box 3110
Honolulu, Hawaii 96802

Dear Mr. Wright:

Re: Public Access to City and County of Honolulu
Traffic Citations

This is in reply to your letter to the Office of Information Practices ("OIP") dated January 22, 1993. In your letter, you requested the OIP to provide you with an advisory opinion concerning the public's right to inspect and copy citations issued to motorists for traffic violations ("traffic citations").

ISSUES PRESENTED

I. Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), traffic citations maintained by the Traffic Violations Bureau ("TVB") of the District Court of the First Circuit, State of Hawaii ("District Court"), must be made available for public inspection and copying upon request.

II. Whether, under the UIPA, blue duplicate copies of traffic citations that may be retained by Honolulu Police Department ("HPD") officers must be made available for public inspection and copying upon request.

III. Whether, under the UIPA, white duplicate copies of traffic citations transmitted by the District Court to the Department of the Prosecuting Attorney ("Prosecutor's Office") and maintained by the Prosecutor's Office before the trial date must be made available for public inspection and copying upon request.

BRIEF ANSWERS

I. No. The disclosure provisions in part II of the UIPA apply only to "government record[s]," which term is defined as "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1992) (emphasis added). Under the UIPA, the term "agency" "does not include the nonadministrative functions of the courts of this State." Haw. Rev. Stat. § 92F-3 (Supp. 1992).

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Records that are associated with the adjudication of cases brought before the court, such as complaints, motions, exhibits, and orders, are not "government records" subject to the provisions of the UIPA. Because traffic citations are used to summon motorists to the District Court for alleged violations of the State's traffic laws, we believe that traffic citations constitute "nonadministrative" court records and, therefore, are not "government records" subject to the UIPA's disclosure provisions. However, while the UIPA does not apply to traffic citations maintained by the District Court, the District Court currently makes traffic citations available to the public through the TVB.

II. Yes. If a blue citation copy is retained by an HPD officer, it becomes a "government record" under the UIPA. Because the District Court already makes these citations available for public inspection and copying, we do not believe that any of the UIPA exceptions to required agency disclosure permits HPD officers to withhold access to the same. However, the HPD has informed the OIP that the HPD does not require its officers to maintain copies of traffic citations, nor does the HPD itself maintain any copies of the citations. Under the UIPA, agencies are only required to provide access to information "maintained" by the agency in some physical form. Haw. Rev. Stat. § 92F-3 (Supp. 1992) (definition of "government record").

Thus, in order to inspect a blue copy of a citation maintained by a police officer, a requester must direct the UIPA request to the specific police officer who issued the citation. In addition, the requester must also provide the police officer with the name of the individual cited, the approximate date of the citation, or the citation number, if known, in order to permit the police officer to conduct a reasonable search for the citation being requested.

III. Yes. However, white duplicate copies of citations sent to the Prosecutor's Office may not be currently "maintained" by the Prosecutor's Office because deputy prosecuting attorneys return all citation copies to the District Court upon the conclusion of each day's trials involving the returned citations. Thus, the Prosecutor's Office does not maintain any copies of traffic citations after the trial dates on the citations. Further, because the citations are grouped by trial dates and filed in alphabetical order, a requester must provide sufficient information identifying the trial date and the name of the individual cited in order to permit the Prosecutor's Office to conduct a reasonable search for the citation being requested.

FACTS

Motorists who are believed to have violated the State's traffic laws are issued citations by County police officers. Haw. Rev. Stat. § 291C-164 (1985). The district courts dictate the form and content of these citations, and for the island of Oahu, the TVB provides the HPD with booklets containing blank, sequentially numbered citations and their corresponding duplicate colored copies for HPD officers to use when issuing citations. See Haw. Rev. Stat. §§ 286-10, 291C-165(a), (c) (1985).

The TVB and the HPD have informed the OIP that the citation booklets are signed out by HPD officers. Upon issuance of all citations in the booklet, each HPD officer turns the booklet in to the HPD, whereupon the HPD transmits all completed booklets back to the TVB.

Traffic citations contain the following items of information:

1. Driver's License Number and State Issuing the License
2. Name of Driver
3. Current Address of Driver
4. Weight of Driver
5. Height of Driver
6. Sex of Driver
7. Date of Birth of Driver
8. Complexion of Driver
9. Place of Employment or Name of School of Driver
10. License Plate Number of Vehicle
11. Make of Vehicle
12. Type of Vehicle
13. Color of Vehicle
14. Year of Vehicle
15. Street Name (on which the violation occurred)
16. Type of Violation
17. Type of Accident (major or minor)
18. Report Number of Accident (if applicable)
19. Date of Citation
20. Time of Citation
21. Police Officer's Signature
22. Police Officer's Badge Number
23. Date of Court Appearance
24. Time of Court Appearance
25. District of Court
26. Courtroom Number
27. Citation Number

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A single citation consists of five, differently colored copies. When a citation is issued, the yellow copy is given to the motorist. The blue copy is retained by the HPD officer if the HPD officer gives testimony at the court appearance date given on the citation. However, HPD officers do not uniformly keep the blue copy, and the TVB informs us that blue copies found remaining in the booklets returned to the TVB are discarded.

There are two white copies of each citation. One is sent by the TVB to the district court of the district in which the ticket was issued. Another white copy is sent to the Prosecutor's Office. The pink copy remains in the booklet, and the booklets are filed in the TVB's master files in numerical sequence.

The white citation copies sent by the TVB to the Prosecutor's Office are sorted by the court appearance or "trial" dates. The week before the trial date, the Prosecutor's Office will group the citations according to courtroom numbers. Usually, before distributing the group of citations to the deputy prosecuting attorney assigned to the traffic violation trials for that date and courtroom, the clerks of the Prosecutor's Office will also alphabetize the citations by the last name of the individual cited. The Prosecutor's Office has informed the OIP that, at the conclusion of the day's trials, the deputy prosecuting attorney returns all of the citations to the District Court, and the Prosecutor's Office does not retain any copies of the citations after the trial date.

The TVB has informed the OIP that it considers traffic citations to be public court records. To inspect a specific traffic citation, the requester must either know the name of the motorist cited or the citation number. By entering the name of the motorist into the TVB's computer, TVB employees are able to locate and retrieve the citation number. Armed with the citation number, TVB employees can retrieve the pink copy of the citation from the booklets stored in numerical sequence in the TVB's master file.

In January 1993, you requested the HPD to permit you to inspect a traffic citation issued to an off-duty HPD officer cited for a moving violation in 1992. The HPD denied your request, and stated that the HPD does not maintain copies of traffic citations issued by HPD officers. We understand that you were later able to obtain the information you initially sought from the HPD by obtaining from the TVB, under section 287-3, Hawaii Revised Statutes, the driver's abstract of the HPD officer. Although you were ultimately able, through alternate

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means, to obtain the information you were seeking, you requested the OIP to provide you with an advisory opinion concerning whether traffic citations must be made available for public inspection and copying, upon request, under the UIPA.

DISCUSSION

I. INTRODUCTION

The provisions of part II of the UIPA, entitled "Freedom of Information," govern the public's right to inspect and copy government records. The term "government record" is defined under the UIPA as "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1992) (emphasis added). The UIPA defines the term "agency" as:

[A]ny 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 or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.

Haw. Rev. Stat. § 92F-3 (Supp. 1992) (emphasis added).

First, we shall examine whether traffic citations are records associated with the "administrative" function of the State Judiciary, and, therefore, are subject to the disclosure provisions of Part II of the UIPA.

II. JUDICIARY RECORDS SUBJECT TO THE UIPA

The OIP has addressed the issue of "administrative" court records in several advisory opinions. In OIP Opinion Letter No. 90-4 (Jan. 29, 1990), we found that certified abstracts of motor vehicle operators ("drivers' abstracts") are "administrative" court records subject to the provisions of the UIPA.

In OIP Opinion Letter No. 90-4, we examined the definitions given in Black's Law Dictionary of the terms "administrative" and "judicial." We also surveyed the legislative history of the UIPA and found that the purpose of the exclusion of "nonadministra-

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tive" court records from the UIPA was, in part, to prevent closing access to court records which, under the common law, are customarily public records. Concluding that "nonadministrative records of the courts, generally speaking, are those records which are provided to the court incident to the adjudication of a legal matter before the tribunal," we noted that examples of such "nonadministrative" records would include: charging documents, complaints, motions, pleadings, clerk's minutes, legal memoranda, exhibits, orders, and decisions. See OIP Op. Ltr. No. 90-4 at 5. Thus, the OIP found that drivers' abstracts, which are compiled by TVB employees from the information in court records, are administrative records and not a part of the adjudication of a legal matter before the court.

More recently, in OIP Opinion Letter No. 93-8 (Aug. 2, 1993), the OIP also examined the distinction between administrative and nonadministrative functions of the courts of this State. This advisory opinion surveyed court cases from Connecticut, whose state records law also applies only to the administrative records of the Judiciary, and found that administrative functions "exclude matters involved in the adjudication of cases or the adoption of rules of court 'that directly control the conduct of litigation,' or that 'set[] the parameters of the adjudicative process that regulates the interactions between individual litigants and the courts.'" OIP Op. Ltr. No. 93-8 at 6, quoting Rules Committee of the Superior Court of Connecticut v. Freedom of Information Commission, 472 A.2d 9, 15 (Conn. 1984).

Section 291C-164, Hawaii Revised Statutes, sets forth the procedure upon which a person will be arrested for a violation of the traffic laws. This statutory provision states that the HPD officer, "upon making an arrest for violation of the state traffic laws shall take the name, address, and driver's license number of the alleged violator and the registered license number of the motor vehicle involved and shall issue to the driver in writing a summons or citation, hereinafter described, notifying the driver to answer to the complaint to be entered against the driver at a place and at a time provided in the summons or citation." Haw. Rev. Stat. § 291C-164 (1985) (emphasis added).

Based upon the discussion of "administrative" versus "nonadministrative" court functions in our previous advisory opinions, and based upon the statutory provision set forth above, the OIP concludes that the white copies of traffic citations maintained by the District Court are "nonadministrative" records. In our opinion, the citation is used by the District Court as a charging document or complaint which initiates the court

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proceeding against the individual cited, and thus, is specifically concerned with the adjudication of the case. Consequently, we believe that the white copies of traffic citations maintained by the District Court are documents relating to the court's nonadministrative functions, and not "government records" subject to the provisions of the UIPA.

The district courts, through the TVB, already consider traffic citations to be a matter of public record. See Honolulu Advertiser v. Takao, 59 Haw. 237, 239 (1978) (the public generally has the right, under the common law, to inspect and copy court records). Thus, although the citations maintained by the District Court are not "government records" under the UIPA, members of the public may still access the citations from the TVB provided that they know the name of the individual cited or the citation number so that the TVB staff can search for and retrieve the requested citation.

III. OTHER COPIES OF THE CITATIONS

We now turn to examine whether the other colored copies of traffic citations are "government records." Under the UIPA, "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1992).¹ Section 92F-11(b), Hawaii Revised Statutes, further states that "[e]xcept as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours."

We believe that the pink copies of traffic citations maintained by the TVB are "administrative" court records subject to the provisions of the UIPA because the pink TVB copies are not made a part of the court's adjudicatory files. Because the District Court, through the TVB, already makes the citations available for public inspection and copying, we need not determine whether any of the UIPA exceptions apply to protect the citations maintained by the TVB from disclosure. See OIP Opinion Letter No. 92-20 (Oct. 13, 1992) (records publicly available through other sources generally not protected from disclosure under UIPA exceptions).

The HPD does not require its officers to retain the blue

¹Our research has not revealed any State statute governing the disclosure of traffic citations. Moreover, there are no Hawaii cases that address this issue.

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copies of the citations; thus, any copies are retained solely at the officer's discretion. Blue copies found remaining in the booklets returned to the TVB are discarded before the TVB files the booklets in its master files. Moreover, the HPD has informed the OIP that it does not "maintain" any copies of the issued citations in its central files.

We noted in OIP Opinion Letter No. 91-5 (April 15, 1991), OIP Opinion Letter No. 91-29 (Dec. 23, 1991), and OIP Opinion Letter No. 95-8 (May 8, 1995), that the UIPA does not define the meaning of the term "maintain." The Uniform Information Practices Code ("Model Code"), drafted in 1980 by the National Conference of Commissioners on Uniform State Laws, and upon which the UIPA was modeled, defines the term "maintain" as to "hold, possess, preserve, retain, store or administratively control." Model Code § 1-105(6) (1980). The Model Code commentary explains that:

"Maintain" is defined in Section 1-105(6) to sweep as broadly as possible. It includes information possessed or controlled in any way by an agency. The administrative control component of the definition is especially important since it prevents an agency that does not have physical custody of government records from evading its obligations under this Code.

Model Code § 1-105 commentary at 9 (1980) (emphasis added).

Based upon the definition of "maintain" provided above, and consistent with our previous opinion letters, we find that the HPD does not "maintain" any copies of the issued citations. Therefore, there is no government record for the HPD to make available for public inspection. However, if an HPD officer has retained the blue copy of the citation, we believe that this blue copy is "maintained" by the HPD officer and, thus, is a "government record" subject to the provisions of the UIPA.

In Bureau of National Affairs v. Dep't of Justice, 742 F.2d 1484 (D.C. Cir. 1984) ("BNA"), the Court of Appeals for the District of Columbia considered whether the appointment calendar, telephone message slips, and daily agenda of the Assistant Attorney General for Antitrust were agency records of the Department of Justice under the federal Freedom of Information Act, 5 U.S.C. § 552 (1988) ("FOIA"). Although the court examined a variety of factors surrounding the creation, possession, control, and use of the records, the court focused particularly

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on "the purpose for which the document was created, the actual use of the document, and the extent to which the creator of the document and other employees acting within the scope of their employment relied upon the document to carry out the business of the agency." BNA at 1493. The court also noted that reliance solely upon a "possession and control" test could be an overly restrictive approach:

An "agency" may choose not to assert any control over a particular document, but an employee who created that document for the express purpose of enabling him to perform his duties certainly retains possession and control over the document.

The issue is not simply whether the agency as an institution has taken steps to "obtain" the document. Rather the question presented by these cases is whether, when an agency employee creates a document, that creation can be attributed to the agency under the FOIA.

BNA, 742 F.2d at 1492.

In the present situation, an HPD officer may retain the blue copy of a citation because the HPD officer will be giving testimony at the court appearance date given on the citation. Thus, HPD officers who retain the blue copies for the court appearance rely upon this record to carry out the official business of the HPD. Based upon the BNA case, despite the fact that the copies of citations are not centrally filed by the HPD, we nevertheless believe that they are government records.

Moreover, because the citations are already made public by the District Court, none of the UIPA exceptions will apply to protect the blue citations from disclosure, and any blue copies kept by HPD officers must be made available, under the UIPA, for public inspection upon request.² However, in order to permit the police officer to locate the citation, the requester must be able to provide the police officer with the name of the individual cited, the approximate date of the citation, or the citation number.

²If a blue citation copy contains additional information not contained in the white or pink citation copies (e.g. HPD officers notes), the disclosure of this additional information must be determined on a case-by-case basis applying the UIPA's exceptions in section 92F-13, Hawaii Revised Statutes.

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With respect to whether the white citation copies transmitted to the Prosecutor's Office are "government records" under the UIPA, we believe that, during the limited period of time when the District Court has forwarded the white citation copies to the Prosecutor's Office and these copies are held until the trial date, the Prosecutor's Office "maintains" the white citation copies.

Because the Prosecutor's Office possesses the white citation copies, albeit during a limited period of time before the trial, and also because the term "maintain" includes information possessed, retained, or controlled in any way by an agency, we believe that the white citation copies, while in the possession of the Prosecutor's Office, are "government records" for purposes of the UIPA. Therefore, the copies temporarily held by the Prosecutor's Office are subject to the provisions of the UIPA, and again, because the citations are already made available by the TVB, none of the UIPA exceptions to disclosure will operate to protect the citation copies temporarily maintained by the Prosecutor's Office.

We note that the citations are grouped by the Prosecutor's Office according to the trial date and are only alphabetized in the week immediately preceding trial. Consequently, unless a requester knows the trial date and the name of the individual receiving the citation, the Prosecutor's Office may not be able to reasonably locate the specific citation sought by a requester.³ Further, because the Prosecutor's Office returns the

³Under the federal FOIA, there are two requirements for access requests: (1) they must "reasonably describe" the records sought and (2) they must be made in accordance with federal agencies' published procedural regulations. Office of Information and Privacy, U.S. Dep't of Justice, Freedom of Information Guide & Privacy Act Overview 18 (1994). Thus, under the FOIA, agencies are not required "to have 'clairvoyant capabilities' to discover the requester's needs or to spend 'countless numbers of personnel hours seeking needles in bureaucratic haystacks.'" Id. at 13-14, quoting Devine v. Marsh, 2 Gov't Disclosure Serv. (P-H) para. 82,022 at 82,186 (E.D. Va. Aug. 27, 1981). Moreover, FOIA's legislative history indicates that "a description of a requested record is sufficient if it enables a professional agency employee familiar with the subject area to locate the record with a 'reasonable amount of effort.'" Id. at 18, quoting H.R. Rep. No. 876, 93d Cong., 2d Sess. 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6271.

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white citation copies to the District Court at the end of the assigned trial date, we note that after the trial for the citation, the Prosecutor's Office no longer "maintains" the citation and is not required to provide access to a citation that it no longer possesses.

IV. TREATMENT OF TRAFFIC CITATIONS IN OTHER JURISDICTIONS

Our research of case law from other jurisdictions has revealed that, in other states, citations for traffic violations are also made available for public inspection. In Beckon v. Emery, 153 N.W.2d 501 (Wisc. 1967), the Supreme Court of Wisconsin held that traffic citations issued by police officers are public because, by Wisconsin statute, records in the possession or control of city officers must be made available to the public.

Similarly, the Arkansas Attorney General found that traffic violation records maintained by the Department of Arkansas State Police are specifically made public by Arkansas statute. Ark. Att'y Gen. Op. No. 91-111 (May 15, 1991). Under section 27-53-209, Arkansas Code Annotated, records of traffic violations and all motor vehicle accident reports made by the Arkansas State Police are open to public inspection.

The Supreme Court of Vermont, in Caledonian Record Publishing Co. v. Walton, 573 A.2d 296 (Vt. 1990), found that under the common law, the public has the right to access arrest records. Likewise, because citations were essentially summonses to appear in court at a specific time to answer to a charge, the Vermont Supreme Court found that citations were, like arrest records, subject to required disclosure under Vermont's Access to Public Records Act.

The Ohio Supreme Court, in State v. Lancaster Police Department, 528 N.E.2d 175 (Ohio 1988), also found that citations issued for traffic violations are public events similar to arrests. The court found that traffic citations, like arrest information, are not exempt under the "law enforcement investigatory records" exemption of the Ohio Public Records Law and must be made available for public inspection.

CONCLUSION

Traffic citation copies maintained by the TVB, HPD officers, and the Prosecutor's Office should be made available for public inspection and copying under the UIPA. However, due to the various methods of filing and retaining the traffic citation

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copies, identifying information such as the name of the individual cited, the date of the issuance of the citation, or the citation number must be provided to the HPD officers and the Prosecutor's Office in order to permit them to locate the citation requested. Similarly, citation copies maintained by the TVB are made available for public inspection and copying provided that either the name of the individual cited or the citation number is known by the requester.

Very truly yours,

Stella M. Lee
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SML:sc

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