

December 15, 1989

Mr. D. Hunter Bishop
Hawaii Tribune Herald
P.O. Box 767
Hilo, Hawaii 96721-0767

Dear Mr. Bishop:

Re: Public Access to Names and Locations of Inmates
Confined in State Correctional Facilities

This is in reply to your letter dated November 14, 1989, requesting an advisory opinion regarding the public's right to inspect government records containing the names and locations of persons incarcerated in state correctional facilities.

ISSUE PRESENTED

Whether a government record identifying the names, locations, social security numbers, and tentative release dates of individuals incarcerated in state correctional facilities must be available for public inspection and copying under the Uniform Information Practices Act (Modified)("UIPA"), chapter 92F, Hawaii Revised Statutes.

BRIEF ANSWER

Under the UIPA, the Legislature established that certain records must, as a matter of public policy, be disclosed to any person upon request. Among other government records, under the UIPA any agency must disclose "directory information concerning an individual's presence at any correctional facility." Haw. Rev. Stat. § 92F-12(a)(4) (Supp. 1989). Further, as to the categories of records listed in section 92F-12(a), Hawaii Revised Statutes, the Legislature established that the exceptions to mandatory public inspection, such as for personal privacy and frustration of a legitimate government function were inapplicable. We conclude that the names and locations of

OIP Op. Ltr. No. 89-14

Mr. D. Hunter Bishop
December 18, 1989
Page 2

inmates, as contained in the Department of Corrections' inmate roster constitutes "directory information concerning an individual's presence at any correctional facility."

Further, we conclude that an inmate's tentative release date, as contained within a government record, is available for public inspection, there being no exception to the UIPA authorizing the withholding of such information.

Lastly, disclosure of inmate social security numbers would reveal nothing concerning their "presence" at a correctional facility, and need not be made available for public inspection.

FACTS

You requested a "list" of persons confined at the Kulani Correctional Facility, from The Honorable Harold J. Falk, Director of the Department of Corrections ("Department"). In response to that request, the Department informed you that such information was not available to the public, but that if given a specific name, the Department would provide you with that inmate's location and address. According to the Director, the Department maintains an inmate roster which includes each inmate's name, location, social security number, and tentative discharge date.

DISCUSSION

The UIPA, the State's new open records law, became effective on July 1, 1989. 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. 1989). In addition, section 92F-12(a), Hawaii Revised Statutes sets forth "a list of records (or categories of records) which the Legislature declares, as a matter of public policy, shall be disclosed." S. Conf. Comm. Rep. No. 235, 14th Leg., Reg. Sess., Haw. S.J. 689, 690 (1988). With respect to records pertaining to inmates at state correctional facilities, section 92F-12(a)(4), Hawaii Revised Statutes provides:

- (a) Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:

OIP Op. Ltr. No. 89-14

Mr. D. Hunter Bishop
December 18, 1989
Page 3

- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;

The Department construes section 92F-12(a)(4), Hawaii Revised Statutes, to mean that the Department is only required to provide directory information concerning an individual inmate specified by a requester. Thus, if a requester does not know the name of any particular inmate, no directory information will be provided. In the Department's view, the UIPA only requires disclosure of directory information concerning an individual, not all individuals confined at state correctional facilities.

Our research has not disclosed any statutory definition of "directory information."¹ The Hawaii Supreme Court has repeatedly held that in construing a statute, the fundamental objective is to ascertain and give effect to the intent of the Legislature as gleaned primarily from the language of the statute itself. Hawaii Public Employment Relations Bd. v. United Public Workers, Local 646, 66 Haw. 461, 667 P.2d 783 (1983).

Further, section 1-14, Hawaii Revised Statutes, generally provides that the words of a statute are to be understood according to their popular use or meaning. See also Hawaiian Beaches, Inc. v. Kondo, 52 Haw. 279, 474 P.2d 538 (1970). In addition, "every construction which leads to an absurdity shall be rejected." Haw. Rev. Stat. § 1-15 (1985). Thus, "even in the absence of statutory ambiguity, departure from literal construction is justified when such construction would produce an absurd and unjust result and the literal construction in the particular action is clearly inconsistent with the purposes and policies of the act." G. J. Hawaii, Ltd. v. Waipouli Dev. Co., 57 Haw. 557, 561, 560 P.2d 490 (1977).

Resort to dictionaries is helpful in providing the usual or popular meaning of the word "directory." Webster's Ninth New Collegiate Dictionary 358 (1988) defines "directory" in relevant part, as "b: an alphabetical or classified list (as of names and

¹"Directory information" is also used in section 92F-14(b)(1), Hawaii Revised Statutes, without any definition.

Mr. D. Hunter Bishop
December 18, 1989
Page 4

addresses)." Similarly, Black's Law Dictionary 415 (5th ed. 1979) defines "directory" as:

[a] book containing names, addresses and occupations of inhabitants of [a] city. Also, any list or compilation, usually in book or pamphlet form, of persons . . . forming some class separate and distinct from others [Emphasis added.]

Before the adoption of the UIPA, the Governor's Committee on Public Records and Privacy considered whether the names of inmates should be publicly available. Vol. I Report of the Governor's Committee on Public Records and Privacy 139 (1987),² notes:

[F]rom what the Committee has found, the Department of Corrections will confirm the status of any person upon request. This does not appear to be the source of any dispute since the conviction and sentencing would be matters of public record. This would include those who [sic] sentences involved detention in psychiatric facilities. [Emphasis added.]

Acceptance of the literal construction of section 92F-12(a)(4), Hawaii Revised Statutes, adopted by the Department would result in an absurd result. Specifically, rather than requesting the roster of inmates (which is prohibited in the Department's view) any person would merely have to request directory information concerning every individual, by name, who is present at a correctional facility. While such a request would be time consuming, it would not be impossible based upon the availability of conviction data under sections 846-8(6) and 846-9, Hawaii Revised Statutes. A construction of a statute that results in an absurd result is to be avoided, even where that construction is contrary to the statute's literal meaning. Pacific Ins. Co. v. Oregon Auto Ins. Co., 53 Haw. 208, 490 P.2d 899 (1971). Further, the usual or commonly-accepted meaning of

²The Governor's Committee Report provided significant guidance to the Legislature in the drafting of the UIPA. See S. Comm. Rep. No. 2580, 14th Leg., Reg. Sess., Haw. S.J. 1093, 1095 (1988).

Mr. D. Hunter Bishop
December 18, 1989
Page 5

"directory" in of itself contemplates the compilation of data concerning a class of individuals into a list form. Other principles of statutory construction also militate against the Department's interpretation of this section. "It is most often ruled that a term introduced by 'a' or 'an' applies to multiple subjects or objects unless there is reason to find that singular application was intended or is reasonably understood." 2A N. Singer, Sutherland Statutory Construction § 47.34 (Sands 4th ed. rev. 1984). This maxim of statutory construction, when coupled with the legislative directive set forth at section 92F-2, Hawaii Revised Statutes, that the UIPA be applied and construed to "promote the public interest in disclosure" and "enhance governmental accountability through a general policy of access to government records" compels a liberal construction³ of section 92F-12(a)(4), Hawaii Revised Statutes. As the U.S. Supreme Court noted of the federal Freedom of Information Act, "disclosure not secrecy, is the policy of the FOIA." Department of the Air Force v. Rose, 425, U.S. 352, 361, 96 S. Ct. 1592, 1599, 48 L. Ed. 2d 11 (1976).

We note that our conclusion is buttressed by the determination of the state ombudsman in case summary 74-635, Office of the Ombudsman, Fiscal Year 1973-74, Report No. 5 102 (1975). In that case summary, the Ombudsman, in response to advice from a Deputy Attorney General, concluded that an inmate roster was a "public record."

As to what portions of the roster must be made available as "directory information," we believe that the Legislature intended at minimum that the inmate's name and location be made available. We do not think that the inmate's social security number must be made available, given the inmate's significant privacy interest in this data, and because disclosure of the social security numbers of inmates would say nothing concerning their "presence at any correctional facility" or the conduct of the Department.

³Authorities from other states liberally construe the provisions of their open records laws and strictly construe the exemptions. See, e.g., Bowie v. Evanston Community Consul. School Dist., 538 N.E.2d 557 (Ill. 1989); Federation of New York State Rifle and Pistol Clubs, Inc. v. New York City Police Dept., 535 N.E.2d 279 (N.Y. 1989); Guy Gannett Pub. Co. v. Univ. of Maine, 555 A.2d 470 (Me. 1989); Itasca County Bd. of Com'rs v. Olson, 372 N.W.2d 804 (Minn. App. 1985); Cowles Pub. Co. v. State Patrol, 748 P.2d 597 (Wash. 1988). We see no reason why the courts of the State of Hawaii would not do the same.

Mr. D. Hunter Bishop
December 18, 1989
Page 6

With respect to the tentative release dates of inmates, as contained in the Department's roster, we need not decide whether this data is "directory information." We believe that this information is available under section 92F-11(a), Hawaii Revised Statutes, there being no UIPA exception authorizing the withholding of such information.

Accordingly, the roster of inmates' names and locations maintained by the Department must be available for public inspection and duplication under the UIPA as "directory information" concerning inmates present at state correctional facilities. In addition, an inmate's tentative release date is subject to public inspection under section 92F-11(a), Hawaii Revised Statutes. Lastly, we express no opinion as to what, other than inmate name and location, must be contained within a directory concerning inmates at state correctional facilities.

CONCLUSION

The names and locations of inmates set forth in the Department's roster of inmates confined at state correctional facilities must be available for public inspection under the UIPA as "directory information concerning an individual's presence at any correctional facility." Haw. Rev. Stat. § 92F-12(a)(4) (Supp. 1989). A construction of this section that would permit disclosure of such data only as to a specific individual would result in an absurdity, and be contrary to commonly-accepted principles of statutory construction and the legislative purposes and policies behind the UIPA. The Department should not disclose inmate social security numbers, as such information would say nothing concerning an individual's presence at a correctional facility and because of the inmate's significant privacy information in such data. An inmate's tentative release date is subject to public inspection under section 92F-11(a), Hawaii Revised Statutes, there being no UIPA exception authorizing the withholding of such data.

Hugh R. Jones
Staff Attorney

HRJ:sc

OIP Op. Ltr. No. 89-14

Mr. D. Hunter Bishop
December 18, 1989
Page 7

cc: The Honorable Harold J. Falk
Director of Corrections

APPROVED:

Kathleen A. Callaghan
Director