

August 20, 1991

Mr. John H. Wood
Wood & Tait Incorporated
64-5292 Nani Waimea Street
P.O. Box 6180 Kamuela Station
Kamuela, Hawaii 96743-5622

Dear Mr. Wood:

Re: Motor Vehicle Registration Information

This is in reply to your letter dated April 2, 1991, requesting an advisory opinion concerning public access to motor vehicle registration information under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

ISSUE PRESENTED

Whether, under the UIPA, motor vehicle registration information maintained by the State Department of Transportation ("DOT"), or the county departments of finance, must be made available for public inspection and copying.

BRIEF ANSWER

Section 92F-12(a)(6), Hawaii Revised Statutes, requires agencies to disclose information from motor vehicle registration files, "provided that the person requesting such files shall have a legitimate reason as determined by rules." While section 92F-12, Hawaii Revised Statutes, is a legislative enumeration of government records that an agency must disclose as a matter of public policy, and as a general matter, does not establish prohibitions on agency disclosure, based upon the legislative history of this provision, we believe that the Legislature intended that the disclosure of motor vehicle registration information be entirely governed by the "rules" referred to in section 92F-12(b)(6), Hawaii Revised Statutes.

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Furthermore, we conclude that the "rules" referred to by section 92F-12(b)(6), Hawaii Revised Statutes, are rules adopted by the Director of Transportation under part VIII of chapter 286, Hawaii Revised Statutes, entitled "Traffic Records." At the time the UIPA was adopted, the OIP's rulemaking authority was narrowly confined to certain areas, and it was not given general rulemaking authority until 1989. See An Act Effective July 1, 1989, § 10, 1989 Haw. Sess. Laws 366. Additionally, it is presumed when interpreting an ambiguous statute that the Legislature was aware of existing statutes and regulations, such as the DOT's rules concerning the disclosure of information from the statewide traffic records system. Further, both sections 92F-12(b)(6) and 286-172(b), Hawaii Revised Statutes, use the term "legitimate reason" to describe the purpose for which information will be disclosed from the statewide traffic record system.

Lastly, the determination of whether a person's request for access to motor vehicle registration information is "legitimate" is left to the determination of the Director of Transportation, not the OIP. Accordingly, any person requesting access to motor vehicle registration information, should submit the person's request in accordance with the procedures established by rules adopted by the Director of Transportation, set forth at section 19-121-6, Hawaii Administrative Rules.

FACTS

By letter dated December 14, 1990, you requested the Director of Finance of Hawaii County to provide you with unrestricted access to motor vehicle registration records maintained by the County of Hawaii.

In your letter to the Department of Finance, citing section 463-1, Hawaii Revised Statutes, you stated that a licensed private detective is, by definition, "a person qualified to obtain information or evidence not readily or publicly accessible."

In response to your request, the Hawaii County Director of Finance stated that the UIPA:

[A]llows us to disclose information from motor

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vehicle registration files provided that the person requesting such file shall have a legitimate reason as determined by rules.' The rules refer to the rules adopted by the State Director of Transportation as per HRS 286-172.

Accordingly, in its written reply to your request, the Department of Finance informed you to make your request to the State Department of Transportation ("DOT"). In response to this letter, you have requested the OIP to advise you concerning whether motor vehicle registration information maintained by the county departments of finance must be made available for inspection and copying.

DISCUSSION

As part of the UIPA, in section 92F-12, Hawaii Revised Statutes, the Legislature set forth a list of government records, or information contained therein, that must be made available for public inspection and copying "[a]ny provision to the contrary notwithstanding." Subsection (b) of section 92F-12, Hawaii Revised Statutes, provides in pertinent part:

(b) Any provision to the contrary notwithstanding, each agency shall also disclose:

. . . .

(6) Information from motor vehicle registration files, provided that person requesting such files shall have a legitimate reason as determined by rules.

Haw. Rev. Stat. § 92F-12(b)(6) (Supp. 1990) (emphasis added).

Under the original House draft of the UIPA, the disclosure of motor vehicle registration information was limited to that information "necessary for recall purposes." H.B. No. 2002, 14th Leg., Reg. Sess. P 21(9) (1988). The present wording of section 92F-12(b)(6), Hawaii Revised Statutes, was added by the House Committee on Judiciary. The legislative history of this section provides:

Your Committee clarified the reference to motor vehicle registration information to make such

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information available for legitimate purposes as established by rules. The League of Women Voters were [sic] concerned about the release of motor vehicle registration information to learn the identity and address of the car owner. The amendment would permit release of such records for motor vehicle recall purposes, but disallow release of the same information to merely learn the identity and address of the car owner without a legitimate public purpose.

H.R. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988) (emphasis added).

While section 92F-12, Hawaii Revised Statutes, is generally a legislative listing of government records that an agency must disclose as a matter of public policy, and as a general matter, does not establish prohibitions on agency disclosure,¹ based upon the above quoted legislative history, we conclude that the Legislature intended that the disclosure of motor vehicle registration records be entirely governed by the "rules" referred to in section 92F-12(b)(6), Hawaii Revised Statutes. That is to say, under the UIPA, the disclosure of motor vehicle registration records is governed by "rules" rather than the UIPA's general access provisions, set forth at section 92F-11, Hawaii Revised Statutes.

We also believe that section 92F-12(b)(6), Hawaii Revised Statutes, is ambiguous, because it does not indicate which agency's rules shall control the disclosure of motor vehicle registration information. A statute is ambiguous if there is doubt, doubleness of meaning, indistinctiveness or uncertainty of an expression used in a statute. State v. Sylva, 61 Haw. 385, 605 P.2d 429 (1980); see also 2A N. Singer, Sutherland Statutory Construction § 45.02 (Sands 4th ed. rev. 1984). Thus, we must now determine what "rules" the Legislature was referring to in section 92F-12(b)(6), Hawaii Revised Statutes.

Section 286-171, Hawaii Revised Statutes, creates a "statewide traffic records system," which includes all traffic

¹See S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H.R. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988) ("As to these records, the exceptions such as for personal privacy and for frustration of legitimate government purpose are inapplicable").

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records of the violation bureaus of the district courts, the circuit courts, the police departments, and the county directors of finance. Responsibility for the administration of the system is delegated to the Director of Transportation, who is also authorized to adopt "necessary rules and regulations" pursuant to chapter 91, Hawaii Revised Statutes. See Haw. Rev. Stat. § 286-171(b) (1985).

Additionally, with respect to the disclosure of information contained in the statewide traffic records system, section 286-172, Hawaii Revised Statutes, provides in pertinent part:

§286-172 Furnishing of information. (a)

Subject to authorization by the chief justice with respect to the traffic records of the violation bureaus of the district courts and of the circuit courts, the director of transportation shall furnish information contained in the statewide traffic records system in response to:

- (1) Any request from a state, a political subdivision of a state, or a federal department or agency, or any other authorized person pursuant to rules adopted by the director of transportation under chapter 91;
- (2) Any request from a person having a legitimate reason, as determined by the director, as provided under the rules adopted by the director under paragraph (1), to obtain the information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports; or
- (3) Any request from a person required or authorized by law to give written notice by mail to owners of vehicles.

(b) Any person requesting information in the statewide traffic records system under subsection (a)(2) shall file an affidavit with the director stating the reasons for obtaining the information and making assurances that the information will be used

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only for such reasons, that individual identities will be properly protected, and that the information will not be used to compile a list of individuals for the purposes of any commercial solicitation by mail or otherwise, or the collection of delinquent accounts or any other purpose not allowed or provided for by the rules. . . .

Haw. Rev. Stat. § 286-172(a) and (b) (Supp. 1990) (emphases added).

Thus, in creating a statewide traffic records system, the Legislature delegated to the Director of Transportation the authority to adopt rules concerning the disclosure of information from that system to persons who have a "legitimate reason" for seeking information from the system.

However, our analysis is not at an end because in adopting the UIPA, the Legislature also delegated to the OIP authority to adopt rules. Section 92F-42, Hawaii Revised Statutes, provides in pertinent part:

§92F-42 Powers and duties of the office of information practices. The director of the office of information practices:

. . . .

(12) Shall adopt rules that set forth an administrative appeals structure which provides for (A) agency procedures for processing records; (B) a direct appeal from the division maintaining the record; and (C) time limits for action by agencies;

(13) Shall adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of such fees when the public interest would be served;

(14) Shall adopt rules that set forth uniform standards for the records collection practices of agencies;

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(15) Shall adopt rules that set forth uniform standards for the disclosure of records for research purposes;

. . . .

(17) Shall adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter.

Haw. Rev. Stat. § 92F-42(12) through (15) and (17) (Supp. 1990) (emphasis added).

Only section 92F-42(17), Hawaii Revised Statutes, would arguably authorize the OIP to adopt rules concerning the disclosure of information from the statewide traffic records system. However, paragraph (17) of section 92F-42, Hawaii Revised Statutes, was created by the Legislature as part of An Act Effective July 1, 1989, 1989 Haw. Sess. Laws 370. As originally enacted, the OIP did not have the general rulemaking authority now set forth at section 92F-42(17), Hawaii Revised Statutes.

We believe that the "rules" referred to by section 92F-12(b)(6), Hawaii Revised Statutes, are rules adopted by the Director of Transportation under sections 286-171(b) and 286-172, Hawaii Revised Statutes, not rules adopted by the OIP. When interpreting an ambiguous statute, it is usually presumed that legislative bodies are aware of existing statutes and regulations. See 2A N. Singer, Sutherland Statutory Construction § 45.12 (Sands 4th ed. rev. 1984). At the time the UIPA was adopted, the OIP's rulemaking authority was confined to specific subject areas. The only "rules" existing at the time the UIPA was adopted were those adopted by the Director of Transportation. Our conclusion is also supported by the plain language of section 92F-12(b)(6), Hawaii Revised Statutes, which like section 286-172(b), Hawaii Revised Statutes uses the term "legitimate reason" to describe the purpose for which motor vehicle registration information will be disclosed.

Accordingly, we conclude that under section 92F-12(b)(6), Hawaii Revised Statutes, access to information maintained by a

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State or county agency² which is part of the statewide traffic records system, is governed by rules adopted by the Director of Transportation under section 286-172(b), Hawaii Revised Statutes.

Title 19, subtitle 5, chapter 121 of DOT rules, entitled "Traffic Records," sets forth the DOT's rules concerning the disclosure of information from the statewide traffic record system. Section 19-121-6 of those rules sets forth the provisions concerning access to identifying information and provides:

§19-121-6 Release of information identifying individuals. (a) Subject to authorization granted by the chief justice of the supreme court of the State with respect to the traffic records of the violations bureau of the district and circuit courts, which are within the chief justice's control, information concerning any individual or in which any individual is identified may be furnished by the director of transportation if the requester is:

- (1) Acting on behalf of a state, a political subdivision of a state, a federal department or agency;
- (2) Required by law to give written notice by mail to owners of vehicles; or
- (3) Deemed to have a legitimate request because the requester:
 - (A) Is using the information for non-commercial research in traffic safety programs or statistical reports;

²Our research discloses that before the enactment of the UIPA, disagreement existed between the State and the counties concerning whether the Department of Transportation's rules controlled the disclosure of motor vehicle registration and driver license records maintained by the county departments of finance. Any doubt concerning whether the DOT's rules regarding the disclosure of information from the statewide traffic record system apply to the counties has been removed by the adoption of the UIPA. Specifically, under the UIPA, the term "agency" includes units of county government. Therefore, by its terms, section 92F-12(b)(6), Hawaii Revised Statutes, makes county records subject to disclosure in accordance with rules adopted by the director of the DOT.

- (B) Is a manufacturer performing or an agency acting on behalf of the manufacturer of new motor vehicles to perform voluntary or ordered motor vehicle defect or safety defect recall pursuant to a specific request; or
- (c) Is determined otherwise to have a legitimate request by the director, pursuant to the standards of subsection (c) of this section.

. . . .

(c) The following are standards to be used by the pursuant to subsection (a)(3)(C). The director shall approve the request for the release of records when the director has determined with reasonable certainty that the release:

- (1) Is not in violation of any law or this chapter;
- (2) Is required by a specific compelling state interest;
- (3) Is necessary for the public health, safety, or welfare;
- (4) Conforms to this chapter; and
- (5) Would enhance the enforcement of county, state, or federal laws.

Haw. Admin. Rules §19-121-6(a) and (c) (1986) (emphasis added).

Accordingly, any request for individually identifiable information from the statewide traffic records system should be made in writing to the Director of Transportation. A determination of whether a request is "legitimate," within the meaning of section 92F-12(b)(6), Hawaii Revised Statutes, or section 19-121-6, Hawaii Administrative Rules, lies with the Director of Transportation, not the OIP.

CONCLUSION

The UIPA provides that State and county agencies shall disclose motor vehicle registration information provided that

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the person requesting such information shall have a legitimate reason as determined by rules. Haw. Rev. Stat. § 92F-12(b)(6) (Supp. 1990). We conclude that the "rules" referred to by section 92F-12(b)(6), Hawaii Revised Statutes, are rules adopted by the Director of Transportation under section 286-171 and 286-172, Hawaii Revised Statutes.

A determination whether a person's request to the DOT for access to motor vehicle registration information is "legitimate" is left to the determination of the Director of Transportation, not the OIP.

Hugh R. Jones
Staff Attorney

HRJ:sc

c: The Honorable William Takaba, County of Hawaii
The Honorable Michael Veith, County of Kauai
The Honorable Travis Thompson, County of Maui
The Honorable Edward Y. Hirata, Director of Transportation

APPROVED:

Kathleen A. Callaghan
Director