

August 14, 1992

The Honorable Michael D. Veith
Director of Finance
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766

Re:Disclosure of Information from Drivers' License Records to
the Judiciary for Compilation of a Master Jury List

This is in reply to a letter to the Office of Information Practices ("OIP"), from the former Director of Finance, requesting an advisory opinion concerning the disclosure of information from drivers' license records to the Judiciary, for the purpose of creating a master list of prospective jurors.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), an agency that maintains drivers' license records may disclose the names, addresses, social security numbers, and dates of birth of licensed drivers to the clerk of each circuit court for the purpose of the clerk's creation of a master list of prospective jurors.

BRIEF ANSWER

Yes. Although the UIPA does place restrictions upon the inter-agency disclosure of information which is not otherwise "public" under part II of the UIPA, it also requires that "[a] ny provision to the contrary notwithstanding, each agency shall also disclose . . . [g] overnment records, which, pursuant to federal law or a statute of this State, are authorized to be

disclosed to the person requesting access." Haw. Rev. Stat. § 92F-12(b) (2) (Supp. 1991).

Section 612-11, Hawaii Revised Statutes, authorizes the clerk of each circuit court to obtain the "names" of persons contained in lists of drivers' licenses. The term "name" when used in connection with prospective jurors, "includes identifying numbers of the jurors." Haw. Rev. Stat. § 612-3 (1985) . Because of the express statutory definition of the term "name" set forth in chapter 612, Hawaii Revised Statutes, we believe that the above quoted UIPA provision authorizes the clerk of each circuit court to obtain the names, home addresses, social security numbers, and dates of birth of persons who have been issued a driver's license.

Assuming, however, that section 612-11, Hawaii Revised Statutes, authorizes the clerk of each circuit court to only obtain the proper names of persons who hold drivers' licenses, we nevertheless conclude that additional information concerning prospective jurors, such as their home addresses, social security numbers, and dates of birth, may be disclosed to the clerk of each circuit court pursuant to section 92F-19(a) (3), Hawaii Revised Statutes.

FACTS

Each year, the clerk for each circuit court compiles a "master list" of prospective jurors who reside within the circuit. Haw. Rev. Stat. § 612-11 (Supp. 1991) . According to the Jury Clerk Supervisor for the Circuit Court of the First Circuit, in the past, each county's department of finance would provide the court with the names, home addresses, social security numbers, and dates of birth of persons issued drivers' licenses. The social security numbers were used to prevent the duplication of names taken from voter registration lists. Additionally, a prospective juror's date of birth was requested in the past to verify whether such person was eligible to serve as a juror, as State law requires each juror to be at least 18 years of age. See Haw. Rev. Stat. § 612-4 (1985).

Recognizing that the UIPA places certain restrictions upon the inter-agency disclosure of government records, your office seeks an advisory opinion concerning whether your office may continue its past practice of disclosing to the Judiciary the names, home addresses, social security numbers, and date of birth of persons issued drivers' licenses.

DISCUSSION

I. GOVERNMENT RECORDS WHICH BY LAW ARE EXPRESSLY AUTHORIZED TO BE DISCLOSED TO THE PERSON REQUESTING ACCESS

The UIPA provides that "[a]ny provision to the contrary notwithstanding, each agency shall also disclose . . . [g]overnment records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." Haw. Rev. Stat. § 92F-12(b)(2) (Supp. 1989) (emphasis added). Because the clerk of the circuit court is included in the UIPA's definition of the term "person," see section 92F-3, Hawaii Revised Statutes, we must examine State statutes which expressly address the disclosure of government records to the Judiciary for the purpose of creating a master list of prospective jurors.

Chapter 612, Hawaii Revised Statutes, sets forth matters pertaining to the selection and service of jurors. Section 612-11, Hawaii Revised Statutes, provides:

§ 612-11 Master list. (a) Each year the clerk for each circuit shall compile a master list. The master list shall consist of all voter registration lists for the circuit, which shall be supplemented with names from other lists of persons resident therein such as lists of taxpayers and drivers' licenses. This includes names, addresses, and social security numbers taken from income tax returns and estimates notwithstanding section 235-116. Each person's name shall appear only once on the master list.

(b) Whoever has custody, possession, or control of any of the lists which are to be used in compiling the master list, shall make the list available to the clerk for inspection, reproduction, and copying at all reasonable times.

Haw. Rev. Stat. § 612-11 (Supp. 1991) (emphases added).

At first glance, section 612-11, Hawaii Revised Statutes, would only appear to expressly authorize the disclosure of the "names" of persons appearing upon lists of drivers' licenses. However, section 612-3, Hawaii Revised Statutes, states that the term "[n]ame," when used in connection with prospective jurors,

"includes identifying numbers of the jurors." Further, section 612-11, Hawaii Revised Statutes, states that the clerks of the circuit courts are authorized to obtain the addresses and social security numbers of prospective jurors from "lists of taxpayers."

We do not believe that the Legislature intended that the clerks of circuit courts obtain addresses and social security numbers of prospective jurors from income tax returns only. Rather, we believe that the Legislature chose to specifically state that such information may be compiled from tax returns due to the strict prohibition on the disclosure of tax returns in section 235-116, Hawaii Revised Statutes. This interpretation is supported by the fact that the term "name" for purposes of a prospective juror, includes "identifying numbers of the jurors."

Haw. Rev. Stat. §612-3 (1985) . Additionally, pursuant to section 612-13(a), Hawaii Revised Statutes, the clerk is required to mail a juror qualification form to each person whose name appears in the master jury wheel. Without access to the home addresses of prospective jurors, the clerk would not be able to perform this statutory duty.

II. INTER-AGENCY DISCLOSURE OF CONFIDENTIAL INFORMATION

Assuming, however, that section 612-11, Hawaii Revised Statutes, only authorizes the clerk to obtain the proper names of persons on lists of drivers' licenses, we must consult other provisions of the UIPA which may authorize disclosure. Section 92F-19(a), Hawaii Revised Statutes, sets forth the circumstances under which an "agency" may disclose government records to another "agency."

As a starting point, the "nonadministrative functions of the judiciary" are excluded from the definition of the term "agency" under the UIPA. See Haw. Rev. Stat. §92F-2 (Supp. 1991). In OIP Opinion Letter No. 90-4, (Jan. 29, 1990), based upon the UIPA's legislative history, we concluded that the UIPA only applies to the administrative records and activities of the State courts. See also OIP Op. Ltr. No. 92-3 (March 19, 1992) . Here, we believe that the procedures and methods for compiling a master list of prospective jurors are sufficiently "administrative," such that the Judiciary is acting as an "agency" under the UIPA when engaged in this process.

The limitations upon inter-agency disclosure of government records set forth at section 92F-19, Hawaii Revised Statutes, only apply if the government records, or information contained therein, are not otherwise available for public inspection and copying under the UIPA's freedom of information provisions contained in part II of the Act. See Haw. Rev. Stat.

□ 92F-19(a)(10) (Supp. 1991). In previous advisory opinions, we concluded that the disclosure of a person's home address, social security number, and date of birth would "constitute a clearly unwarranted invasion of personal privacy" and therefore such information is excepted from disclosure under section 92F-13(1), Hawaii Revised Statutes. See OIP Op. Ltr. No. 89-4 (Nov. 9, 1989); OIP Op. Ltr. No. 89-16 (Dec. 27, 1989); OIP Op. Ltr. No. 90-7 (Feb. 9, 1990); OIP Op. Ltr. No. 90-24 (July 9, 1990); OIP Op. Ltr. No. 90-29 (Oct. 5, 1990); and OIP Op. Ltr. No. 92-4 (June 10, 1992). Accordingly, the Department of Finance may disclose this confidential information to another agency so long as the inter-agency disclosure of this information is authorized by section 92F-19, Hawaii Revised Statutes.

Subsection (a) of section 92F-19, Hawaii Revised Statutes, provides:

(a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

. . . .

(3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions.

Haw. Rev. Stat. □ 92F-19(a)(3) (Supp. 1991).

In OIP Opinion Letter No. 90-9, (Feb. 26, 1990), we concluded that section 92F-19(a)(3), Hawaii Revised Statutes, permits the disclosure of a government record, or information therein, when such disclosure "reasonably appear[s] to directly further an agency's performance of its expressed constitutional or statutory purposes and duties, or those that may be fairly implied."

Under Hawaii law, the clerk of each circuit court is directed by statute to compile a master list of prospective

jurors and to conduct a "careful investigation" of each juror's qualifications. See Haw. Rev. Stat. §§612-11(a) and 612-14 (Supp. 1991).

In applying this legal standard to the facts present here, the disclosure of a prospective juror's home address, social security number, and date of birth is appropriate to, and would directly further, the performance of the clerk's expressed statutory duties. Without access to this information, the clerk would be hindered in carefully investigating a prospective juror's qualifications and eliminating those persons who, for whatever reason, may appear more than once on a drivers' licenses list.

Therefore, assuming that section 612-11, Hawaii Revised Statutes, does not expressly permit the clerk to obtain access to a licensed driver's home address, social security number, and date of birth, we conclude that such disclosure is nevertheless permitted under section 92F-19(a)(3), Hawaii Revised Statutes.

CONCLUSION

Under the UIPA, each agency must disclose government records, which pursuant to a statute of this state, "are expressly authorized to be disclosed to the person requesting access." Haw. Rev. Stat. §92F-12(b) (2) (Supp. 1991). Section 612-11, Hawaii Revised Statutes, provides that any person having custody of names appearing on lists of drivers' licenses shall make this information available to the clerks of circuit courts.

In our opinion, section 612-11, Hawaii Revised Statutes, appears to authorize the clerk to obtain the names and identifying numbers of prospective jurors from lists of drivers' licenses. We do not believe that the Legislature intended that the clerks of circuit courts obtain the home addresses and social security numbers of prospective jurors from income tax records only as set forth in section 612-11, Hawaii Revised Statutes.

Regardless, the disclosure to the clerks of circuit courts of the names, home addresses, social security numbers, and dates of birth of prospective jurors would be proper to, and directly further, the performance of the clerk's statutory duty to compile master jury lists and to carefully investigate the qualifications of jurors. Accordingly, in our opinion, the

The Honorable Daniel C. Navarro
August 14, 1992
Page 7

inter-agency disclosure of this otherwise confidential information is permitted by section 92F-19(a) (3), Hawaii Revised Statutes.

Very truly yours,

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