

March 11, 1994

The Honorable Robert A. Marks
Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Marks:

Re: Supplemental Homicide Reports

This is in response to your memorandum dated February 18, 1994, and received by the Office of Information Practices ("OIP") on February 22, 1994, requesting an advisory opinion concerning the public's right to inspect and copy Supplemental Homicide Reports ("Reports"). Your memorandum was prompted by a letter dated February 17, 1994, which you received from Maxwell Cooper, M.D., requesting copies of the Reports.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Reports must be made available for public inspection and copying upon request.

FACTS

The president of the Hawaii Rifle Association, Dr. Maxwell Cooper, has requested the Attorney General of the State of Hawaii to provide him with copies of the Reports submitted by all of the counties in the State of Hawaii for the years 1987 through 1993.

A blank copy of the Report form is attached as Exhibit "A." You have also provided sample copies of the completed Reports for the OIP to review in connection with this advisory opinion. We understand that the Reports are prepared each month by the county

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police departments and contain the following information about homicides that occurred within each respective county during the month:

- 1) Whether the situation involved single or multiple victim(s) and offender(s);
- 2) Age of victim and offender;
- 3) Sex of victim and offender;
- 4) Race of victim and offender;
- 5) Ethnicity of victim and offender;
- 6) Weapon used;
- 7) Relationship of victim to offender;
- 8) Circumstances (of the homicide); and
- 9) Hawaii race (ethnicity) of victim and offender.

The Reports provided for the OIP's review do not contain the names, addresses, or any other individually identifiable information about the victims and offenders. The "Circumstances" column in the Reports merely contains a brief, typically one-sentence description about the homicide. Examples are provided at the top of the column to indicate the format of the brief description for the "Circumstances" column. The examples provided are: "[v]ictim shot in hunting accident, gun-cleaning, children playing with gun, etc."

It is our understanding that the information contained in the Reports is summarized in an annual report, made available to the public, entitled "Crime in Hawaii" which is published by the Crime Prevention Division, Department of the Attorney General.

DISCUSSION

Under the UIPA, agencies must permit inspection and copying of government records unless specifically excepted by one of the provisions in section 92F-13, Hawaii Revised Statutes. See Haw. Rev. Stat. § 92F-11(a), (b) (Supp. 1992). Our review of the five UIPA exceptions set forth in section 92F-13, Hawaii Revised Statutes, reveals that only two of the UIPA exceptions could conceivably apply to permit withholding of the Reports. We will address these two exceptions, sections 92F-13(1) and (3), Hawaii Revised Statutes, separately.

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Because the Reports merely contain aggregate and statistical information about each homicide, and do not contain any names,¹ addresses, or any other individually identifiable information about the victim or offender, the disclosure of the Reports would not implicate the privacy interests of any individual.² Thus, in our opinion, the UIPA's personal privacy exception, section 92F-13(1), Hawaii Revised Statutes, would not apply to permit the withholding of the Reports.

"Records or information compiled for law enforcement purposes," are an example of the type of records protected by the UIPA's "frustration of a legitimate government function" exception in section 92F-13(3), Hawaii Revised Statutes. See S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988). However, this UIPA exception does not provide a blanket exception for all law enforcement records. Only those law enforcement records which, "by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function" are protected by this exception. Haw. Rev. Stat. § 92F-13(3) (Supp. 1992).

¹Although the Report does contain the name and signature of the agency employee who prepared the Report and the signature of the Chief Sheriff, Commissioner, or Superintendent of the agency preparing the Report, this information is not protected by the UIPA's personal privacy exception. Under section 92F-12(a)(14), Hawaii Revised Statutes, except for individuals employed in an undercover capacity with a law enforcement agency, the names of agency employees and their job positions are specifically designated as public information. See OIP Op. Ltr. No. 91-14 (Aug. 28, 1991) (names of employees acting as raters for Purchase of Service Proposal Rating Sheets not protected under the UIPA).

²See OIP Op. Ltr. No. 91-24 (Nov. 26, 1991) (record must be individually identifiable to result in an invasion of personal privacy). Furthermore, in previous OIP advisory opinions, we have found that deceased persons do not have any privacy interests under the UIPA. See OIP Op. Ltr. No. 91-32 (Dec. 31, 1991); OIP Op. Ltr. No. 90-18 (May 18, 1990). Thus, since no individually identifying information is given in the Reports about either the victim(s) or offender(s), we need not address the privacy interests of those individuals.

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In previous OIP advisory opinions, we found it useful to examine the parallel exemption for law enforcement records contained in the federal Freedom of Information Act, 5 U.S.C. § 552(b)(7) (1988) ("FOIA"), when determining whether a law enforcement record maintained by a Hawaii State agency should be protected under the UIPA. See OIP Op. Ltr. No. 91-21 (Dec. 31, 1991); OIP Op. Ltr. No. 91-6 (May 2, 1991); OIP Op. Ltr. No. 90-36 (Dec. 17, 1990). FOIA's Exemption 7, as originally enacted, provided a blanket exception from disclosure for all law enforcement investigative records. However, in 1974, Congress narrowed the scope of Exemption 7 and provided that withholding under this exemption is permitted only if disclosure would "threaten one of the enumerated harms of Exemption 7's six subparts." Office of Information and Privacy, U.S. Dep't of Justice, Freedom of Information Act & Privacy Act Overview 196 (1993). Exemption 7 of the FOIA provides that federal agencies are not required to disclose:

[R]ecords or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

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5 U.S.C. § 552(b)(7) (1988).

Because the Reports contain aggregate and statistical information only, we do not believe that disclosure would threaten any of the enumerated harms listed in FOIA's Exemption 7.³ Our examination of the type of information contained in the Reports does not reveal any information which, if disclosed, could reasonably be expected to hinder a law enforcement agency's investigations or enforcement activities; reveal the identity of any offender or witness; or reveal investigative techniques. There is no evidence to indicate that disclosure of the Reports under the UIPA would result in the "frustration of a legitimate government function" under section 92F-13(3), Hawaii Revised Statutes, especially where the information is later compiled into a publicly available report. In addition, we do not believe that any of the other UIPA exceptions contained in section 92F-13, Hawaii Revised Statutes, can be applied to permit the Department of the Attorney General to withhold the Reports. Consequently, we believe that, under the UIPA, the Reports must be made available for public inspection and copying upon request.

CONCLUSION

The sample Reports provided for the OIP's review do not contain any names, addresses, or any other individually identifying information about either the victims or offenders. Thus, the UIPA's personal privacy exception does not apply to protect the Reports. Further, because the disclosure of the Reports would not threaten any harm sought to be protected under the UIPA's "frustration of a legitimate government function" exception, and because none of the other UIPA exceptions apply to

³Our research of case law from other jurisdictions has revealed that statistical information concerning crimes generally is not protected under other states' public records laws. See Bozeman Daily Chronicle v. City of Bozeman Police Department, 859 P.2d 435, 437 (Mont. 1993) (statistical information on crimes committed constitutes "public criminal justice information" under the Montana Criminal Justice Information Act of 1979). See also People v. Nelson, 427 N.Y.S.2d 194, 197 (1980) (court advised defendant that the disclosure of statistical data for prostitution-related offenses is authorized under New York's Freedom of Information Law).

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the Reports, we conclude that, under the UIPA, the Reports must be made available, upon request, for public inspection and copying.

Very truly yours,

Stella M. Lee
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

SML:sc
Attachment
c: Dr. Maxwell Cooper
Hawaii Rifle Association