

June 10, 1997

Mr. Michael Frame  
First Insurance Company  
P.O. Box 2866  
Honolulu, Hawaii 96803

Dear Mr. Frame:

Re: Request for Written Opinion Regarding Disclosure of  
Arrest Records

This letter is in response to your request to the Office of Information Practices ("OIP") for an advisory opinion regarding whether arrest records are open to the public for inspection and copying under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), and if arrest records are open to the public, which agency maintains this information.

**ISSUE PRESENTED**

Whether an individual's arrest record is open to the public for inspection and copying under the UIPA.

**BRIEF ANSWER**

The Hawaii Criminal Justice Data Center ("HCJDC") is the State agency which collects, stores, and disseminates criminal record information. Haw. Rev. Stat. § 846-2.5(a) (Supp. 1996). Criminal record information includes arrest history, conviction, and nonconviction data. Conviction data is a public record. OIP Op. Ltr. No. 95-15 (May 8, 1995) and OIP Op. Ltr. No. 96-4 (Dec. 10, 1996).

Except for three specific situations, a person's arrest history, however, is confidential information which is not open for public inspection. Records of a person's arrest history are open to public inspection only where: (1) the arrest resulted in a conviction; (2) the charges are later dismissed because of the defendant's mental or physical defect, disorder, or disease; or (3) the defendant is acquitted because of his or her mental or physical defect, disorder, or disease. Haw. Rev. Stat. § 846-9 (1993).

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Under the UIPA, government records must be disclosed to the public unless the law restricts or closes access to the requested records. Haw. Rev. Stat. § 92F-11(a) (1993). One exception to disclosure is when federal or State law protects the record from disclosure. Haw. Rev. Stat. § 92F-13(4) (1993).

Except for cases where the arrestee's mental or physical defect, disease, or disorder results in an acquittal or dismissal of the charges, State law limits the disclosure of nonconviction data (which includes nonconviction arrest histories) to only certain situations and persons as specified in section 846-9, Hawaii Revised Statutes.

Based on the facts you provided to the OIP it is the OIP's opinion that you do not qualify as a person entitled to have access to these records under section 846-9, Hawaii Revised Statutes. Because State law restricts the HCJDC's dissemination of nonconviction data, section 92F-13(4), Hawaii Revised Statutes, similarly disallows HCJDC's public disclosure of those records. Accordingly, the OIP concludes that an individual's arrest history may not be disclosed to you except in cases where arrest results in a conviction and where the arrestee's mental or physical disease, defect, or disorder led to an acquittal or to the dismissal of the charge. However, you are entitled to inspect and copy HCJDC's conviction data on individuals, including arrests which resulted in conviction.

### **FACTS**

Information regarding persons arrested is reported to the HCJDC. Haw. Rev. Stat. § 846-3 (1993). The HCJDC is responsible for, among other things, collecting and disseminating arrest information and all other pertinent criminal justice data it receives from criminal justice agencies. Haw. Rev. Stat. § 846-2.5(a) (Supp. 1996) and § 846-3 (1993). Furthermore, the HCJDC's performance of its duties require it to act "in such a manner as to balance the right of the public and press to be informed, the right of privacy of individual citizens, and the necessity for law enforcement agencies to utilize the tools needed to prevent crimes and detect criminals[.]" Haw. Rev. Stat. § 846-2.5(a) (Supp. 1996). As a result of the HCJDC's mandate to balance the public and private rights, chapter 846 limits what type of HCJDC data may be disseminated.

In your request to the OIP, you indicated that in performing your duties as a claims investigator with an insurance company, you conduct background

checks on individuals. You inquired whether you were entitled to inspect name-indexed criminal histories which reveal an individual's arrest history.

## DISCUSSION

### I. INTRODUCTION

The OIP previously opined that police blotters which list arrests by date and time must be made available for public inspection and copying. See OIP Op. Ltr. No. 91-4 (Mar. 25, 1991). The OIP arrived at this conclusion based on two rationales: (1) no statute existed which specifically made the police blotter information confidential; and (2) disclosing police blotter information would not be a clearly unwarranted invasion of any arrestee's personal privacy rights. Because no exception to disclosure applied which would justify keeping the police blotter information confidential, the OIP advised that this type of information is open for public inspection.

The OIP specifically did not advise whether arrest records, organized and maintained under the arrestee's name (as opposed to being organized according to the arrest date), are also open to the public for inspection and copying. As was explained in OIP Opinion Letter No. 91-4 (Mar. 25, 1991), both the federal and State government laws allow public access to chronologically organized police blotter information to protect privacy interests. The U.S. Department of Justice discusses the risk to privacy rights if public access is not restricted to chronologically organized police blotter information:

In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's **arrests**. Such files create a partial criminal history data bank potentially damaging to the individual privacy, especially since they do not contain any final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

OIP Op. Ltr. No. 91-4 at 7 (Mar. 25, 1991) (quoting 41 Fed. Reg. 11717 (1976) (emphasis added). In the facts presented to the OIP, you seek arrest information from a database that can be accessed not only chronologically, but by identifiable persons.

## **II. HCJDC IS NOT REQUIRED TO DISCLOSE GOVERNMENT RECORDS MADE CONFIDENTIAL BY LAW**

Generally, the UIPA requires that agencies make government records available for public inspection and copying unless the law restricts or closes access to the requested records. Haw. Rev. Stat. § 92F-11 (1993). One exception to disclosure is when records are protected from disclosure to the public by a specific federal or State law. Haw. Rev. Stat. § 92F-13(4) (1993).

Section 846-9, Hawaii Revised Statutes, specifically limits the dissemination of nonconviction data. The term "nonconviction data" means the following:

- (1) information about an arrest that is "without a disposition" (one year has elapsed since the arrest but no active prosecution is pending);
- (2) information disclosing that the police department has declined to refer the matter to the prosecutor;
- (3) information disclosing that the prosecutor declined to begin criminal proceedings;
- (4) information disclosing that proceedings were indefinitely postponed;
- (5) information disclosing that the defendant was acquitted; or
- (6) information disclosing that charges were dismissed.

Haw. Rev. Stat. § 846-1 (1993). In other words, nonconviction data encompasses all information pertaining to a person's journey through the criminal justice system from the arrest through, but excluding, a conviction.

Under section 846-9, Hawaii Revised Statutes, the HCJDC may disseminate nonconviction data only to designated persons or agencies and then only in limited

situations. Haw. Rev. Stat. § 846-9 (Supp. 1996).<sup>1</sup> Specifically, section 846-9, Hawaii Revised Statutes, allows disclosure of nonconviction data in the following situations:

- (i) for screening for employment with criminal justice agencies and for security clearance where federal or state law allows (Haw. Rev. Stat. § 846-9(1) and (6) (Supp. 1996));

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<sup>1</sup>Section 846-9 (Supp. 1996) reads in relevant part as follows:

**§ 846-9 Limitations on dissemination.**

Dissemination of nonconviction data shall be limited, . . . only to:

- (1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
- (2) Individuals and agencies specified in section 846-10;
- (3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement;
- (4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; . . .
- (5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or other, as construed by appropriate state or local officials or agencies; and
- (6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data. These dissemination limitations also do not apply to data relating to cases in which the defendant is acquitted, or charges are dismissed, by reason of physical or mental disease, disorder, or defect . . . .

- (ii) where specifically provided in agreements between persons providing administrative services to criminal justice agencies and persons conducting research, evaluations, and or statistical activities (Haw. Rev. Stat. § 846-9(3) and (4) (Supp. 1996));
- (iii) where the law requires access, for example, a court order, decision, statute, ordinance, court rule, or executive order (Haw. Rev. Stat. § 846-9(5) (Supp. 1996));
- (iv) to the governor when he or she elects to become actively involved in a case (Haw. Rev. Stat. §§ 846-9(2) (Supp. 1996) and 846-10(1) (1993));<sup>2</sup>
- (v) to the attorney general which allows him or her to fulfill statutory authority and duties to administer and enforce criminal laws (Haw. Rev. Stat. § 846-9(2)(Supp. 1996));
- (vi) where chapter 846 and its rules and regulations<sup>3</sup> so allow (Haw. Rev. Stat. §§ 846-9(2) (Supp. 1996) and 846-10(3) (1993)).

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<sup>2</sup>Section 846-10, Hawaii Revised Statutes, reads in relevant part as follows:

§ 846-10 **Dissemination.** Criminal history record information may be disseminated to:

- (1) The governor in individual cases or situations wherein the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice . . . ;
- (2) The attorney general in connection with the attorney general's statutory authority and duties in the administration and enforcement of the criminal laws . . . ;
- (3) To such other individuals and agencies who are provided for in this chapter or by rule or regulation.

<sup>3</sup>As of the date of this opinion letter, the HCJDC has not yet adopted its administrative rules.

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However, these limitations on dissemination do not apply to situations where the defendant's physical or mental disease, disorder, or defect resulted in his or her acquittal or dismissal of the charges. Haw. Rev. Stat. § 846-9 (Supp. 1996).

Based on the facts provided, neither you, as an individual, nor your employer, as a private business, appear to fit into any of the criteria set forth of persons to whom the HCJDC is authorized to disclose nonconviction data. Thus, the HCJDC is not permitted to disclose to you an arrestee's nonconviction data other than acquittals of dismissals due to the arrestee's mental or physical defect, disease, or disorder. Because section 846-9, Hawaii Revised Statutes, limits the HCJDC's dissemination of nonconviction data, the UIPA will concurrently protect these records from public disclosure.

### **III. CONVICTION DATA IS OPEN TO THE PUBLIC**

HCJDC must make conviction information available for public inspection unless the law restricts or closes access. Haw. Rev. Stat. § 92F-11(a) (1993). Chapter 846, Hawaii Revised Statutes, does not limit the dissemination of conviction data.

Nothing within chapter 846, Hawaii Revised Statutes, makes conviction information confidential. Moreover, section 846-9, Hawaii Revised Statutes, which limits the public's access to nonconviction information, clearly specifies that "[t]hese dissemination limitations do not apply to conviction data." Haw. Rev. Stat. § 846-9 (Supp. 1996). Consequently, the OIP has previously opined that conviction data is public. See OIP Op. Ltr. Nos. 95-15 (May 8, 1995) and 96-4 (Dec. 10, 1996).

Based on the facts you have presented, no other exceptions to disclosure exist under the UIPA. Therefore, because access to the HCJDC's conviction data is not "restricted or closed by law[,]" this information is open to the public for inspection and copying. Haw. Rev. Stat. § 92F-11(a) (1993).

### **CONCLUSION**

Under section 92F-13(4), Hawaii Revised Statutes, government agencies are not required to disclose records which a State or federal law has protected from disclosure. The HCJDC collects, stores, and disseminates arrest records, and other

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pertinent criminal justice data. Section 846-9, Hawaii Revised Statutes, limits the dissemination of all nonconviction data maintained by HCJDC. Except for cases where the defendant was acquitted, or charges against him or her were dismissed because of mental or physical defect or disorder, the nonconviction information about an individual may only be disseminated to specified persons or agencies in limited situations. Haw. Rev. Stat. § 846-9 (Supp. 1996).

Because State law restricts dissemination of nonconviction data, including nonconviction arrest records, section 92F-13(4), Hawaii Revised Statutes, concurrently protects arrest records from public disclosure. Based on the facts presented here, neither you nor your employer are statutorily authorized to obtain nonconviction data from the HCJDC, which includes arrests which do not result in a conviction. Accordingly, based on the above facts and law, you are entitled to inspect only the HCJDC's nonconviction data for defendants whose mental or physical defect or disorder resulted in his or her acquittal or in the dismissal of charges. All other nonconviction data of individuals who do not fall into this category is not disclosable to you.

However, because neither chapter 846 nor 92F, Hawaii Revised Statutes, restricts the public's access to conviction data, you may inspect and copy the HCJDC's data regarding an individual's conviction history.

Very truly yours,

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Staff Attorney

APPROVED:

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Director

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