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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to section 92F-42, HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Ms. Sophie Cocke
Agency: Department of Public Safety
Date: April 14, 2023
Subject: Inmate Database Information (U APPEAL 20-18 and U APPEAL 19-25)

OIP is consolidating U APPEAL 20-18 with a related and unresolved issue from U APPEAL 19-25, as permitted by section 2-73-15(g), HAR, which authorizes consolidation of appeals that have similar issues or facts, or when the parties are similarly situated.

U APPEAL 20-18: Requester seeks a decision as to whether the Department of Public Safety (PSD) properly denied her request for records under Part II of the UIPA.

U APPEAL 19-25: Requester seeks a decision as to whether PSD must disclose the names, scheduled release dates, and actual release dates for all 2018 inmates.

Unless otherwise indicated, this decision is based solely upon the facts presented in:

U APPEAL 20-18: An email from Requester to OIP dated September 16, 2019, with attachments; an email from the Department of the Attorney General (AG) on behalf of PSD to OIP dated October 30, 2019, with an attachment; an email from OIP to the AG dated November 1, 2019, with attached thread; two emails from the AG to OIP dated November 4, 2019, with attached threads; an email from OIP

to the AG dated November 5, 2019, with attached thread; an email from the AG to OIP dated November 5, 2019, with attached thread; a letter from the AG to OIP dated November 22, 2019, with enclosures; two emails from OIP to Requester dated November 25, 2019, one with an attachment and one with multiple attachments and attached thread; three emails from Requester to OIP dated November 25, 2019, two with attached threads and one with an attachment and attached thread; an email from Requester to PSD with a copy to OIP dated December 9, 2019, with an attachment and attached thread; an email from Requester to PSD with a copy to OIP dated December 11, 2019, with attached thread; an email from Requester to PSD with a copy to OIP dated December 12, 2019, with attached thread; two emails from Requester to PSD with a copy to OIP dated December 16, 2019, with attached threads; an email from Requester to OIP dated January 10, 2020, with attached thread; a letter from OIP to the AG dated February 17, 2023, with enclosures; and a letter from the AG to OIP dated March 17, 2023.

U APPEAL 19-25: An email from Requester to OIP dated May 21, 2019, with attachments; an email from Requester to OIP dated May 22, 2019, with an attachment and attached thread; a telephone conversation with PSD's Intake Services Administrator on May 24, 2019; an email from PSD to OIP dated May 24, 2019, with attachments and attached thread; a letter from OIP to PSD dated May 30, 2019, with enclosures; a letter from the AG on behalf of PSD to OIP dated July 1, 2019, with enclosures; an email from Requester to OIP dated July 3, 2019, with an attachment and attached thread; an email from the AG to OIP dated July 19, 2019, with an attachment and attached thread; emails from the AG to OIP dated January 31, February 4, 15, and 24, and April 29, 2022, all with attached threads; an email from Requester to OIP dated April 29, 2022, with attached thread; two emails from Requester to PSD dated April 29, 2022, with attachments and attached threads; an email from OIP to Requester and PSD dated May 2, 2022, with attached thread; an email from PSD to OIP dated May 2, 2022, with attachments; an email from Requester to PSD dated May 2, 2022, with attached thread; an email from OIP to Requester and PSD dated May 2, 2022, with attached thread; emails from Requester to PSD dated May 7, 17, 19, 23, and 25, 2022, all with attached threads; an email from the AG to OIP dated May 19, 2022, with attachments; and an email from PSD to Requester dated May 25, 2022, with attachments and attached thread.

QUESTIONS PRESENTED

1. Whether PSD may withhold inmate names based on the possibility that a former inmate's conviction had been expunged after the inmate's time in custody.

2. Whether PSD may verify information in its records prior to responding, and charge Requester for its time and costs spent doing so.

3. Whether a set of selected Offendertrak fields for all inmates in a specified year or years is readily retrievable by PSD. See HRS § 92F-11(c) (2012) (providing that an agency is not required to prepare a compilation or summary of records unless the information is readily retrievable).

4. Whether PSD may redact information from the "Release To" field in Offendertrak.

BRIEF ANSWERS

1. No. PSD must disclose correctional directory information, including inmate names and locations, without application of the UIPA's exceptions. HRS § 92F-12(a)(4) (2012). Even though in some instances an inmate may have been either a pretrial detainee who was not convicted, or had a conviction subsequently expunged, the limitation on dissemination of nonconviction data in section 846-9, HRS, does not override the UIPA's disclosure mandate for correctional directory information because disclosure of correctional directory information still gives effect to the purposes of both the UIPA and chapter 846, HRS. Alternatively, if section 846-9, HRS, was irreconcilable with the disclosure mandate for correctional directory information in section 92F-12(a)(4), HRS, the UIPA provision would be favored as the more specific law regarding correctional directory information.

2. No. PSD has no duty under the UIPA to ensure the accuracy and completion of information in its Offendertrak system or its other records. Because it has no duty to do so, PSD cannot delay responding to a record request to verify the accuracy and completion of the information in the requested records, or charge a requester for its time and costs incurred in doing so.

3. Yes. PSD is able to retrieve Offendertrak records and provide them in CSV[1] format, and doing so does not require PSD to review individual entries to determine which ones meet the specifications of the request. Thus, a specified set of fields for all inmates in Offendertrak for a specified year or years is readily retrievable.

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[1] CSV is an acronym for comma separated variable.

> Also called "comma delimited," CSV is a text-based data format that separates fields with a comma and ends with a line break (although a few implementations support line breaks within the record). Widely used as a data exchange format, spreadsheets as well as many other business applications can read and write comma delimited files.

PCMag, Encyclopedia (definition of CSV), https://www.pcmag.com/encyclopedia/term/csv (last visited April 11, 2023).

4. Yes. Based on the UIPA's privacy exception, PSD may redact personal contact information of inmates and third parties, information revealing the marital and familial status of inmates and third parties, and program or facility names or other information showing the specific location where an inmate fully released from PSD custody will be living. See HRS § 92F-13(1) (2012) (setting out exception for information whose disclosure would be a clearly unwarranted invasion of personal privacy). However, PSD has not established that the UIPA's frustration exception applies to information in the "Release To" field, so it cannot withhold information on that basis. See HRS § 92F-13(3) (2012) (setting out exception for information whose disclosure would frustrate a legitimate government function).

FACTS

I. U APPEAL 20-18

PSD's Correction's Division oversees the incarceration of Hawaii inmates in facilities both in Hawaii and on the mainland. PSD, Corrections Division, https://dps.hawaii.gov/about/divisions/corrections/ (last visited March 30, 2023). Inmates include not only individuals who have been convicted of a crime, but also pretrial detainees. See ACLU of Hawaii, As Much Justice as You Can Afford (January 2018), https://dps.hawaii.gov/about/divisions/corrections/, at 13-15 (explaining Hawaii's bail and pretrial detention process).

Since 1999, PSD has used a correctional database system called Offendertrak to track inmate data. Hawaii State Auditor, Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services (Report No. 10-10) (December 2010), https://files.hawaii.gov/auditor/Reports/2010/10-10.pdf. The Offendertrak system has given rise to questions about and criticism of its accuracy and effectiveness, including by Requester as a Star-Advertiser reporter. Id.; Sophie Cocke, Hawaii inmate data tracking system review costs near $1.4M, takes 4 years, https://www.staradvertiser.com/2019/06/30/hawaii-news/hawaii-inmate-data-tracking-system-review-costs-1-3m-takes-4-years/.

In a request dated July 17, 2019 (July 17 Request), Requester asked PSD for:

> a dataset generated from Offendertrak with the following fields covering the time period Jan. 1, 2000 - Dec. 31, 2018:
>
> FIELD NAME AND DESCRIPTION:
>
startdt	Start Date (day entered facility)
enddt	End Date (day left facility

Fiscal.Year	Fiscal Year (7/1/## -- 6/30/##)
LoS	Length of Stay
firstfac	First Facility (e.g., OCCC)
firstat	First Status (e.g., Pre-Trial Felon)
lastfac	Last Facility (e.g., Halawa)
laststat	Last Facility (e.g., Sentenced Felon)
senstartdt	Sentence Start Date (includes credit)
mandreldt	Mandatory Release Date
parmindt	Parole Minimum Release Date
maxreldt	Maximum Release Date
sentmanover	Sentence Manual Overide [sic]
Msentstartdt	New Sentence State [sic] Date
Mmandreldt	New Mandatory Release Date
Mparmindt	New Parole Minimum Date
Mmaxreldt	New Maximum Release Date
reldisp	Release Disposition (e.g., Died or Paroled
relto	Released to (e.g., Family)[.]

In its response dated July 31, 2019, PSD gave Requester a fee estimate of "more than $1,000,000" for "187,500 work hours" of search, review, and segregation time. See HAR § 2-71-31 (setting out fees for an agency's search, review, and segregation time in responding to a UIPA request). PSD's estimate included time it planned to spend verifying the requested Offendertrak data against the information in each inmate's institutional file, which Requester had not asked for. PSD did not state what information it anticipated withholding or what its legal basis for doing so was.

Requester appealed PSD's response to OIP. OIP discussed PSD's plan to verify all Offendertrak data before disclosure with the AG, which represents PSD in this appeal, and PSD subsequently advised Requester in a letter dated October 30, 2019, that it would provide the requested information after review and segregation, but asked that any publication referencing the information "include a caveat that 'It is understood that PSD has not independently verified this information and does

not claim that all of the information is accurate, as PSD's procedures requires a manual review.'" PSD's new estimate of its search, review, and segregation fees was given as $290 after applying the public interest fee waiver. PSD again did not specify what information it anticipated withholding or what its legal basis for doing so was. However, the AG advised OIP that PSD planned to redact information from the "Release To" field.

PSD, through the AG, responded to this appeal on November 22, 2019 (Response). In its Response PSD argued that it was entitled to redact information from the "Release To" field under the UIPA's exceptions for information whose disclosure would be a clearly unwarranted invasion of an individual's privacy and for information whose disclosure would frustrate a legitimate government function. HRS § 92F-13(1) and (3). PSD provided a representative sample of responsive data for OIP's *in camera* review, both with and without PSD's proposed redactions to the "Release To" field.

After PSD's Response, Requester modified her request to PSD on November 25, 2019, to "omit the 'released to' field, while adding a field with the name of the inmates." Since PSD had argued the "Release To" field was the one requiring it to spend time in review and segregation of information, Requester indicated in her modified request that she understood PSD could provide her the remaining requested fields without the need for review or segregation.[2] However, in a series of emails between PSD and Requester from December 10 to 16, 2019, PSD instead argued that including inmate names would require "the review of 1 million lines of information" by the Hawaii Criminal Justice Data Center (HCJDC)[3] to determine if any named individuals had an arrest or conviction expunged. Notwithstanding OIP Opinion Letter Number 89-14 (Opinion 89-14), which, as Requester advised PSD, had concluded that the names and locations of correctional facility inmates were

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[2] OIP's understanding is that Requester modified her request so that she could obtain most of the requested information while awaiting the outcome of this appeal, and did not intend the modification as a withdrawal of her appeal regarding the "Release To" field.

[3] HCJDC is:

> responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data from all criminal justice agencies, including, the collection, storage, and dissemination of criminal history record information by criminal justice agencies 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 in support of the right of the public to be free from crime and the fear of crime.

HRS § 846-2.5 (2014).

required to be made public upon request, PSD asserted that it must obtain HCJDC's review of every inmate's name at a cost of $5.00 per name plus additional time for PSD's search, review, and segregation. This further dispute was thus an additional issue to be resolved by OIP's decision in this appeal.

Because PSD's response to this appeal was submitted before Requester modified her request and PSD subsequently asserted that names of correctional facility inmates could not be publicly disclosed unless each was individually checked against HCJDC's records, OIP asked the AG, on behalf of PSD, to update its response to address that argument. The AG, on behalf of PSD, provided a supplemental response to this appeal on March 17, 2023 (Supplemental Response), arguing that PSD properly withheld the names of inmates under the UIPA's exception for information whose disclosure would frustrate a legitimate government function. HRS § 92F-13(3).

II. U APPEAL 19-25

Requester made a written request to PSD dated March 9, 2019, for "names of 2018 inmates who were held beyond their release date; their scheduled release dates; and when they were actually released" (March 9 Request). PSD responded to that and a related request in a letter dated March 13, 2019. PSD argued that there was no responsive record with the names of all inmates who were over-detained in 2018, and that it was unable to prepare a record in response to the March 9 Request because the information was not readily retrievable in the form requested. PSD based its position on section 92F-11(c), HRS, which states that "[u]nless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records."

Most of the issues arising from the March 9 request and another related request were resolved by OIP Memorandum Decision 22-3, issued June 16, 2022. However, the issue of whether PSD must disclose the names, scheduled release dates, and actual release dates for all 2018 inmates, and not just seven allegedly "over detained" inmates whose cases were under investigation by PSD, was consolidated and combined with U APPEAL 20-18 and is therefore being resolved in this opinion, since both appeals involve the names, scheduled release dates, and actual release dates of 2018 inmates as maintained in Offendertrak. See HAR § 2-73-15(g) (allowing OIP to consolidate appeals that have similar issues or facts, or similarly situated parties).

DISCUSSION

I. Inmate Names May Not Be Withheld

A. Change in Law Allows Reconsideration of an OIP Precedent

The UIPA mandates disclosure of "directory information concerning an individual's presence at any correctional facility," notwithstanding "any provision in [the UIPA] to the contrary," such as the UIPA's exceptions. HRS § 92F-12(a)(4). As Requester correctly noted, Opinion 89-14 concluded that this provision required PSD to disclose the names and locations of inmates, as contained in an inmate roster, as "directory information concerning an individual's presence at any correctional facility." OIP Op. Ltr. No. 89-14 at 6. OIP reaffirmed this precedent in OIP Opinion Letter Number 01-03 (Opinion 01-03). OIP Op. Ltr. No. 01-03 at 4. PSD did not argue for reconsideration of these existing OIP precedents, or even acknowledge their existence, in its response to this appeal. Nonetheless, because PSD's position regarding disclosure of inmate names is inconsistent with those precedents, OIP will consider PSD to be implicitly seeking reconsideration of existing OIP precedents.

OIP's rules provide that:

> Reconsideration of either a final decision or of a precedent shall be based upon one or more of the following:
>
> (1) A change in the law;
>
> (2) A change in the facts; or
>
> (3) Other compelling circumstances.

HAR § 2-73-19(d). PSD did not argue that one of those factors applied. However, OIP notes that PSD's Supplemental Response raised section 706-622.5, HRS,[4] which allows a court to order expungement of a conviction in specified

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[4] A person convicted of a drug offense under section 329-43.5, HRS, for the first or second time may be sentenced to probation to undergo and complete a substance abuse treatment program, and on completion of the program may apply (or have a probation officer apply) for expungement of the record of conviction. HRS § 706-622.5 (Supp. 2022). A person convicted under section 712-1249, HRS, for possession of three grams or less of marijuana with no other criminal charge may likewise move for expungement of the conviction. Id.

circumstances, and although not specifically raised by PSD, sections 706-622.8[5] and 706-622.9,[6] HRS, also allow a court to issue an expungement order for a conviction in specified circumstances and thus are of potential relevance to PSD's expungement argument.

Section 706-622.5, HRS, was enacted in 2002, and sections 706-622.8 and 706-622.9, HRS, were both enacted in 2006. Thus, all three statutes represent a possibly relevant change in the law since OIP issued Opinions 89-14 and 01-03 requiring public disclosure of inmate names. OIP will therefore reconsider the question of whether PSD can withhold inmate names from public disclosure under the UIPA to the extent necessary for due consideration of PSD's argument that PSD may redact any names subject to an expungement order and that the possibility of such an order authorizes PSD to charge a requester for PSD's time and costs in researching each inmate's status via HCJDC.

B. UIPA Mandates Disclosure of Correctional Directory Information Without Application of UIPA's Exceptions

The UIPA's legislative history confirms that section 92F-12(a), HRS, sets out "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 relevance to correctional directory information, that section states:

> (a) Any other provision in this chapter to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:
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> . . .
>
> (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility[.]

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[5] A person sentenced for a first-time drug offense prior to July 1, 2004, who would otherwise meet the requirements for expungement of a conviction set out in section 706-622.5, HRS, may apply to court for expungement of the record of conviction. HRS § 706-622.8 (2014).

[6] A person convicted for the first time of a felony property offense under chapter 708, HRS, may be sentenced to probation to undergo and complete a substance abuse treatment program, and on completion of the program may apply (or have a probation officer apply) for expungement of the record of conviction. HRS § 706-622.9 (Supp. 2022).

HRS § 92F-12(a)(4). Because correctional directory information is public notwithstanding any other UIPA provision to the contrary, the UIPA's exceptions to disclosure at section 92F-13, HRS, do not apply to correctional directory information. OIP further sees no reason to alter its previous conclusion, based on an extensive examination of the UIPA's legislative history, that "the Legislature intended at a minimum that the inmate's name and location be made available" as correctional directory information. OIP Op. Ltr. No. 89-14 at 5. OIP is therefore constrained to reject PSD's argument that disclosure of inmate names would frustrate a legitimate government function due to the possibility that a named inmate had received an expungement order, because the UIPA's frustration exception cannot be applied to correctional directory information including inmate names.

PSD did not argue that the various statutes authorizing expungement of a conviction or arrest, or delayed acceptance of a no contest or guilty plea, directly require confidentiality of inmate names, and the UIPA exception authorizing an agency to withhold information made confidential by another statute is, like the frustration exception, inapplicable to correctional directory information. HRS §§ 92F-12(a)(4); 92F-13(4). Nonetheless, if another statute mandates confidentiality for information that the UIPA mandates be made public, that creates a potential conflict of laws. OIP will therefore consider whether such a confidentiality statute applies to inmate names and if so, whether it is in conflict with the UIPA.

C. Statutes Authorizing Expungement of Conviction or of Arrest and Delayed Acceptance of Pleas Are Not Confidentiality Laws

PSD raised section 706-622.5, HRS, as a possible way a former inmate's conviction could be expunged, and as OIP noted above, sections 706-622.8 and -622.9, HRS, are also possible ways for a conviction to be expunged. PSD also raised the possibility that charges against a defendant could be dropped through the defendant's successful completion of the court-ordered conditions for a delayed acceptance of guilty plea or of nolo contendere plea (respectively DAG and DANC). HRS § 853-1 (2014). For the purpose of this opinion, OIP assumes that Offendertrak includes records of pretrial detainees whose charges were dropped either through a DAG or DANC or for other reasons and of convicted inmates whose convictions were subsequently expunged. OIP will examine whether any of the statutes relating to DAG, DANC, or expungement is a confidentiality law that may conflict with the UIPA's mandate for disclosure of correctional directory information.

Section 853-1, HRS, allows a court to defer proceedings without accepting a defendant's voluntary plea of guilty or nolo contendere, sets conditions for the deferral, and requires the court to discharge the defendant and dismiss the charge

against the defendant upon the defendant's successful completion of the deferral period. It allows a defendant to apply for expungement (presumably of the arrest and charge, since there would be no conviction) a year after dismissal of the charge. It notably does **not** require any sort of confidential treatment regarding the defendant or the charge. OIP has previously concluded that section 853-1, HRS, is not a confidentiality law, but a successfully completed DANC constitutes nonconviction data. OIP Op. Ltr. No. 99-2 at 4. OIP reiterates that conclusion here. Since a charge dropped through a DAG or a DANC will ultimately represent nonconviction criminal history for the purpose of chapter 846, HRS, OIP will discuss the possible implications of that below in section D.

Sections 706-622.5, -622.8, and -622.9, HRS, similarly set out procedures wherein an individual who has actually been convicted of an offense can ultimately obtain a court order expunging the offense, but do not in themselves set forth any confidentiality requirements. These sections are therefore not confidentiality laws potentially in conflict with the UIPA. As with the DAG and DANC process, though, when an individual successfully follows the procedure and obtains an expungement order, the offense for which the individual's conviction was expunged will ultimately become nonconviction criminal history for the purpose of chapter 846, HRS, the implications of which OIP will discuss.

Section 831-3.2, HRS, sets out procedures wherein a person arrested or charged but not convicted of an offense, or eligible for redress for a wrongful conviction, may obtain an expungement certificate from the AG. Once such a certificate has been issued, the person must be treated as not having been arrested and photographic and fingerprint cards relating to the arrest held by state or county law enforcement agencies must be "forwarded for placement of the arrest records in a confidential file." HRS § 831-3.2(b), (c), and (g) (Supp. 2022). The statute places limits on when records held in the confidential file may be shared, and further authorizes the person to request that court files related to the expunged arrest or charges be sealed. HRS § 831-3.2 (d) and (f). Section 831-3.2 is a confidentiality law, as it specifically provides for confidential treatment of arrest records held post-expungement by the AG.[7] However, section 831-3.2's confidentiality requirement is

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[7] Section 831-3.2, HRS, also formed the basis for OIP's conclusion in OIP Opinion Letter Number 03-09 that disclosure of mug shots taken in connection with an expunged arrest would frustrate the purpose of the expungement statute. That opinion specifically addressed a situation where the confidentiality statute did not directly apply because its terms were not strictly met, as explained therein, which is why the frustration exception applied rather than the UIPA's exception for records confidential by law. Mug shots, unlike correctional directory information, are not a type of information whose disclosure is mandated under subsection

limited to arrest records, as defined therein, and nothing in the statute addresses correctional directory information. Thus, section 831-3.2 is not a confidentiality law applicable to correctional directory information, and does not present a potential conflict with the UIPA's disclosure mandate for such information. Here, too, though, information about an offense for which a person was not convicted (with or without expungement of the arrest record and charge) would ultimately be nonconviction criminal history as will be discussed further below.

D. Section 846-9, HRS, Does Not Override UIPA's Disclosure Mandate for Correctional Directory Information

As discussed above, there are several scenarios in which an individual could appear in PSD's Offendertrak system as a current or former inmate without having a conviction for the relevant offense, either due to having had a conviction expunged or because the individual was a pre-trial detainee who was not ultimately convicted of the offense. OIP will therefore discuss chapter 846, HRS, and its potential applicability to individually identifiable correctional directory information.

1. Structure and Purpose of Chapter 846, HRS

Chapter 846, HRS, establishes the HCJDC, a division of the AG, as the State's central repository of criminal history record information[8] and governs the disclosure of criminal history record information including nonconviction data[9] from that repository. This statutory scheme is intended to:

92F-12(a), HRS, and thus the UIPA's exceptions could be invoked as a basis to withhold them.

[8] "Criminal history record information" is defined as:

> information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, and other formal criminal charges, and any disposition arising therefrom, sentencing, formal correctional supervisory action, and release; but does not include intelligence or investigative information, identification information to the extent that such information does not indicate involvement of the individual in the criminal justice system, and information derived from offender-based transaction statistics systems which do not reveal the identity of individuals.

HRS § 846-1 (2014).

[9] "Nonconviction data" is defined as:

> 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 in support of the right of the public to be free from crime and the fear of crime.

HRS § 846-2.5(a) (2014). It achieves that purpose by limiting dissemination of "nonconviction data" to specified recipients, mainly criminal justice agencies and those working with them. HRS § 846-9 (2014). However, it specifically does not apply to criminal history record information in various contemporaneous records of an ongoing criminal proceeding, such as court records and police blotters, or to information including place of incarceration for an individual "currently within the criminal justice system." HRS § 846-8 (2014).

Chapter 846, HRS, is an exception to the general rule that once information in government records is public it remains public, regardless of the passage of time and of where the information is stored: nonpublic information can become public information over time, but public information usually stays public. There are many instances in which information that is not initially public can become public with the passage of time; for instance, most information relating to an ongoing investigation[10] or procurement[11] becomes public only after the investigation or procurement has concluded, information in executive session minutes[12] may become public once its disclosure would no longer frustrate the purpose of the executive session, and nonpublic information about a recently deceased person[13] may eventually become public after enough years have gone by and any privacy interests

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> arrest information without a disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

HRS § 846-1.

10 E.g., OIP Op. Ltr. No. F20-04 at 13-16.

11 E.g., OIP Op. Ltr. No. 09-02 at 3-4.

12 See HRS § 92-9(b) (2012) (executive meeting minutes may be withheld "so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.")

13 E.g., OIP Op. Ltr. No. 03-19 at 13-14.

therein have diminished. Chapter 846 is unusual in doing the opposite: information that was once public record while criminal proceedings against an individual were ongoing or had ended with a conviction becomes nonpublic "nonconviction data" after the proceedings have ended with no conviction or with a conviction that was later expunged. Consistent with its purpose of balancing "the right of the public and press to be informed" against individual privacy rights, though, chapter 846 does not require going back and redacting individually identifiable information from contemporaneously created public records resulting from an individual's contact with the criminal justice system, but instead focuses on ensuring that nonconviction data is not reported to the general public through the HCJDC database or similar criminal history records.

2. OIP Has Recognized Section 846-9, HRS, as a Confidentiality Statute

Section 846-9, HRS, limits the dissemination of nonconviction data to a limited list of persons. OIP has previously recognized section 846-9 as a confidentiality statute that may provide a basis for withholding records under the UIPA's exception for records protected by state or federal law, set out in section 92F-13(4), HRS. E.g., OIP Op. Ltr. No. 95-11 at 5-6. Because the definition of criminal history information includes "formal correctional supervisory action, and release," this limitation on dissemination potentially applies to Offendertrak information insofar as it constitutes nonconviction data.

Chapter 846, HRS, does not apply to criminal history record information in various contemporaneous records of an ongoing criminal proceeding, such as court records and police blotters, or to information including place of incarceration for an individual "**currently** within the criminal justice system." HRS § 846-8 (emphasis added). While the exclusion explicitly encompasses correctional directory information for current inmates (or former inmates still on probation or parole and thus still within the criminal justice system), it does not explicitly encompass such information for former inmates whose contact with the criminal justice system has concluded. Thus, the information at issue here is arguably nonconviction data to which section 846-9, HRS, applies.

But even assuming that section 846-9, HRS, applies to the information at issue here, it would not automatically be recognized under the UIPA as authorizing the information to be withheld. The UIPA has an exception to disclosure for records protected by state or federal law, but like the UIPA's other exceptions, it does not apply to correctional directory information or other categories of information mandated to be public notwithstanding the UIPA's exceptions. Section 92F-13(4), HRS, the UIPA's exception for information made confidential by state or federal law, thus cannot be used as a basis for withholding information mandated to be

public by section 92F-12(a), HRS. OIP must therefore treat section 846-9 as a law in conflict with section 92F-12(a)(4), HRS: section 92F-12(a)(4) mandates public disclosure of correctional directory information, while section 846-9 arguably limits the dissemination of such information for former inmates no longer within the criminal justice system who were never convicted of the relevant offense or whose conviction was later expunged. OIP will therefore examine whether the two laws are reconcilable, and if not, which must be favored. See OIP Op. Ltr. No. 00-02 at 10-11 (analyzing potential conflict between mandatory disclosure of records under section 92F-12(a) and confidentiality requirement in another statute).

3. Chapter 846, HRS, Does Not Preempt the UIPA's Disclosure Mandate for Correctional Directory Information

a. Effect Can Be Given to Both the UIPA and Chapter 846, HRS

Section 1-16, HRS, states that "[l]aws in pari materia, or upon the same subject matter, shall be construed with reference to each other." HRS § 1-16 (2009). "[W]here there is a 'plainly irreconcilable' conflict between a general and specific statute concerning the same subject matter, the specific will be favored. However, where the statutes simply overlap in their application, effect will be given to both if possible, as repeal by implication is disfavored." Mahiai v. Suwa, 69 Haw. 349, 356-57 (1987) (citations omitted).

Assuming that chapter 846, HRS, applies to correctional directory information, at least insofar as it concerns individuals no longer within the criminal justice system, the UIPA and chapter 846 are laws *in pari materia*. OIP is of the opinion that they are not "plainly irreconcilable," though, and that the purpose of both laws can be given effect.

The purpose of section 92F-12(a), HRS, is to ensure that the records listed therein "as a matter of public policy, shall be disclosed." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988). This purpose would not be given effect if an agency was required to withhold the name of any inmate who at the time of the request was no longer within the criminal justice system and who had either not been convicted or whose conviction had been expunged. PSD asserts that a requirement to withhold such names would require it to research every requested inmate name, at a huge expenditure of time.[14] OIP has concluded

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[14] PSD stated in its Supplementary Response that "[i]n the past PSD received notifications of expungements from the courts and the [AG], but cannot say that it knows of all expungements of convictions." PSD did not directly state that it would remove the names of former inmates with expunged convictions from its records, but OIP understood

in the past that an agency could not charge a requester for review and segregation time necessitated by the agency's own decision to mix confidential information into a record mandated to be public by law. OIP Op. Ltr. No. 00-02 at 13. In this case, however, even if PSD were barred from charging Requester for the fees arising from its own failure to remove nonconviction data concerning former inmates from its Offendertrak system, the time required would by itself effectively deny public access to the majority of identifiable Offendertrak data that does not constitute nonconviction data, because PSD's incremental disclosure of the records as authorized under the UIPA[15] would mean records that the UIPA intended to "as a matter of public policy . . . be disclosed" without the need for review or redaction would instead be released only slowly and incrementally.

However, the purpose of chapter 846, HRS, to balance "the right of the public and press to be informed" against "the right of privacy of individual citizens" would still be given effect with disclosure of the correctional directory information as required under the UIPA, because the correctional directory information is consistent with the sort of contemporaneously created information already clearly excluded from chapter 846 to achieve its intended balance. Contemporaneously created records of an individual's contact with the criminal justice system at a particular moment, such as wanted posters, police blotters, court records, and pardon announcements, are explicitly excluded from chapter 846 even though the same information, as part of a record listing an individual's criminal history, could be nonconviction data not subject to public disclosure. HRS § 846-8. As OIP has explained regarding arrest records,

> although arrest records that are organized and maintained under an individual's name (rap sheets) are protected as nonconviction data when no conviction resulted, arrest records in the form of chronologically compiled police blotter information are not so protected and must be disclosed upon request.

OIP Op. Ltr. No. 07-04 at 4 (citations omitted). Just as a police blotter is a record of what arrests were made at a particular moment, not a useful way to look up what criminal history may be associated with a particular individual, so too the correctional directory information is a record of who was in custody where at a particular moment, not a useful way to look up an individual's criminal history.

PSD's statement to imply that it would update Offendertrak in some way in response to such a notification.

[15] When requested records are voluminous, subsection 2-71-15(b), HAR, allows an agency to make them available in monthly increments until such time as the request is completed.

The correctional directory information in Offendertrak was created as a contemporaneous record of the sort explicitly excluded from chapter 846, HRS, in other instances. Although correctional directory information for inmates no longer in the criminal justice system was not explicitly excluded, its disclosure as mandated by the UIPA is consistent with chapter 846's general scheme wherein the limitation on dissemination of nonconviction data limits what shows up in a criminal history record check, but does not require agencies to go back and redact contemporaneously created public records of an individual's contact with the criminal justice system. OIP notes also that just as the strong public interest in not having secret arrests supports the ongoing public nature of police blotter information, there is a strong public interest in not having secret imprisonments that supports the public nature of correctional facility directory information. See, e.g., OIP Op. Ltr. 07-04 (discussing public interest against secret arrests as set out in prior OIP and court opinions).

For these reasons, OIP concludes that chapter 846, HRS, is not "plainly irreconcilable" with the UIPA's disclosure mandate for correctional directory information. Such disclosure is consistent with the purpose and structure of chapter 846 even though chapter 846 does not have a specific exclusion for correctional directory information relating to inmates who are no longer within the criminal justice system.

b. To the Extent the Laws Are Irreconcilable, the UIPA Is More Specific

Even if OIP found the UIPA's disclosure mandate for correctional directory information to be "plainly irreconcilable" with chapter 846, HRS, OIP would next be required to examine which statute was more specific and therefore favored. Mahiai v. Suwa, supra. The confidentiality requirement of chapter 846 applies to criminal history record information that constitutes nonconviction data, and encompasses "identifiable descriptions and notations of arrests, detentions, indictments, and other formal criminal charges, and any disposition arising therefrom, sentencing, formal correctional supervisory action, and release[.]" HRS § 846-1. The UIPA's disclosure mandate, by contrast, is limited to "directory information concerning an individual's presence at any correctional facility," a small subset of the criminal history record information covered by chapter 846. OIP therefore concludes that the UIPA's disclosure mandate for correctional directory information is more specific than the confidentiality requirement of chapter 846, and thus is favored under the above-described canons of statutory construction.

The legislative history of the UIPA also supports a conclusion that the UIPA was intended to mandate disclosure of correctional directory information notwithstanding the requirements of chapter 846, HRS. Although the statutes

allowing expungement of a conviction as discussed above had not yet been adopted at the time the Legislature was considering adoption of the UIPA, correctional directory information for former pretrial detainees who were never convicted already existed and was thus arguably subject to chapter 846's limitation on disclosure of nonconviction data. The Report of the Governor's Committee on Public Records and Privacy (Governor's Committee), created prior to adoption of the UIPA to examine the current state of the law and provide recommendations for legislation, 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). The Governor's Committee was well aware of chapter 846 when recommending public disclosure of inmate names, and specifically noted that the then-current law governing records, chapter 92E, HRS, exempted criminal history records protected by chapter 846. Vol. I Report of the Governor's Committee on Public Records and Privacy 20 (1987). As OIP discussed in Opinion 89-14 at page 7, the Governor's Committee considered whether the names of inmates should be publicly available:

> [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.

Id. at 139 (1987). Thus, the Legislature's adoption of the UIPA including its explicit mandate for public disclosure of correctional directory information was done with knowledge and consideration of the more general confidentiality requirements of chapter 846.

OIP therefore reaffirms its conclusion in prior opinions that correctional directory information, including the name and location of all persons incarcerated under PSD's jurisdiction either currently or in the past, must be disclosed without exception. E.g., OIP Op. Ltrs. No. 89-14 at 6 and 01-03 at 4. PSD must therefore disclose the requested inmate names without redaction, regardless of the possibility that the named inmates include either pretrial detainees not subsequently convicted or convicted inmates who later had their convictions expunged.

II. PSD May Not Charge Requester or Delay Responding to Verify Information in Requested Records

PSD argued at various points that it could (1) require Requester to pay search, review, and segregation fees for its time spent verifying information in its Offendertrak system against inmate files and (2) require Requester to pay search, review, and segregation fees plus its costs for checking the criminal history

information maintained by HCJDC about inmates in its Offendertrak system. Although OIP's decision herein makes PSD's argument that it must check HCJDC records moot and PSD is not currently arguing that it is entitled to charge Requester for its time spent verifying Offendertrak information against other files, OIP will nonetheless address these arguments to ensure they do not become a renewed point of dispute in connection with this or a future request.

The UIPA "requires agencies to provide access to those records that are actually maintained." Nuuanu Valley Association v. City & County of Honolulu, 119 Haw. 97, 194 P. 3d 531, 538 (2008). The UIPA "does not create a statutory legal duty . . . to maintain [government records] in accurate, relevant, timely, and complete condition at all times." Molfino v. Yuen, 134 Haw. 181, 187, 339 P. 3d 679, 685 (2014). An agency is not liable for negligence when it provides the records it maintains in response to a request even if those records are inaccurate or incomplete. Id. OIP therefore concludes that PSD has no duty under the UIPA to ensure the accuracy and completeness of information in its Offendertrak system or its other records. Because it has no duty to do so, PSD cannot delay responding to a record request to verify the accuracy and completeness of the information in the requested records, or charge a requester for its time and costs incurred in doing so.

The UIPA does authorize agencies to redact information in some circumstances, and factual background is often relevant to determination of whether a UIPA exception applies. OIP recognizes that an agency's time spent reviewing requested records to identify any information that falls within an exception to disclosure may justifiably include some amount of factual inquiry to determine whether a potentially applicable exception does apply to the identified information. However, the UIPA does not authorize an agency to conduct extensive peripheral research about the information in a file looking for reasons to withhold it or to use a record request as an opportunity to audit the accuracy of its records at a requester's expense. If a UIPA request brings to an agency's attention that some of its files may be inaccurate or out of date, the agency can of course undertake to update those files, but its UIPA response must be based on the files as they currently are maintained. Again, an agency cannot delay its UIPA response while it audits the accuracy and completeness of requested records or charge a requester for its time spent in doing so.

III. Requested Information for All 2018 Inmates from PSD's Offendertrak System Is Readily Retrievable

In response to Requester's March 9 Request, PSD argued that there was no responsive record with the names of all inmates who were over-detained in 2018, and that it was unable to prepare a record because the information was not readily retrievable in the form requested. See HRS § 92F-11 (providing that an agency is

not required to prepare a compilation or summary of records unless the information is readily retrievable). As noted above, the issue of whether PSD must disclose the names, scheduled release dates, and actual release dates for all 2018 inmates, and not just seven allegedly "over detained" inmates whose cases were under investigation by PSD, overlaps with the general question addressed in this appeal of whether PSD must release inmate names and other requested information fields from Offendertrak for inmates from 2000 through 2018.

PSD did not argue that the requested information was not readily retrievable in connection with Requester's July 17 Request, and it is not clear whether PSD intended to make this argument with respect to a request for all 2018 inmates or whether PSD's intent was simply to argue that it was not obligated to determine which specific Offendertrak records involved an overstay. OIP agrees that PSD was not obligated to review each 2018 Offendertrak record field by field to determine which 2018 inmate records involved an overstay, because the time required to do that would make it not "readily retrievable." Requester's alternative was instead to request all inmate records for that year (as she has done) and do her own comparison. However, insofar as PSD intended to argue that the Offendertrak record of the names, scheduled release dates, and actual release dates for all 2018 inmates was not "readily retrievable," OIP cannot agree. OIP finds that PSD is able to retrieve Offendertrak records and provide them in CSV format, as it has done with the records provided for OIP's *in camera* review in connection with the July 17 Request, and doing so does not require PSD to review individual entries to determine which ones meet the specifications of the request. OIP therefore concludes that the names, scheduled release dates, and actual release dates for all 2018 inmates in Offendertrak are readily retrievable and must be disclosed.

IV. PSD May Redact Selected Information from Offendertrak's "Release To" Field

A. The UIPA's Privacy Exception Applies to Selected Information

PSD argued that the UIPA's privacy exception authorized it to withhold names and other information regarding individuals, businesses, and programs that an inmate was released to. See HRS § 92F-13(1) (authorizing an agency to withhold information whose disclosure would constitute a clearly unwarranted invasion of privacy). OIP has previously concluded that information in an inmate roster that "say[s] nothing concerning their 'presence at any correctional facility' or the conduct of [PSD]" is not correctional directory information and thus may be subject to the UIPA's privacy exception where appropriate. OIP Op. Ltr. No. 89-14 at 5. OIP agrees that the privacy exception applies to some information in Offendertrak's "Release To" field, but finds that PSD's proposed redactions also included

information that does not fall under the UIPA's privacy exception or any other exception and must be disclosed.

1. Privacy Interest of Family Members or Other Individuals

First, OIP will consider whether an individual[16] named in the "Release To" field has a significant privacy interest[17] in being so named. PSD argued that individuals named in the "Release To" field "have a significant privacy interest in not being publicly associated with law enforcement investigations." OIP has indeed recognized an individual's significant privacy interest in not being publicly associated with law enforcement investigations. E.g., OIP Op. Ltr. No. 95-21 at 18-23. However, naming an individual as a person an inmate is being released to is not the same thing as naming that individual as a witness or other person associated with a law enforcement investigation. The fact that a person may be hosting a recently released inmate in no way serves to associate that person with whatever past law enforcement investigation ultimately resulted in the inmate's incarceration. OIP therefore concludes that an individual named in the "Release To" field does not have a significant privacy interest as a witness or other third party associated with whatever law enforcement investigation led to the inmate's incarceration, and the information may not be withheld under the UIPA's privacy exception.

OIP has, however, recognized a significant privacy interest in an individual's familial[18] or marital status. E.g., OIP Op. Ltr. No. 91-15 at 18-19. While OIP did

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[16] OIP has long held that the concept of a privacy interest applies only to natural persons. E.g., OIP Op. Ltr. No. 89-5 at 7-8. A business or other organization such as a halfway house or care home thus does not have a potential privacy interest in being named as an inmate's destination upon release. However, OIP considers an inmate's potential privacy interest in such information below.

[17] The UIPA's privacy exception applies when an individual has a significant privacy interest in information that is not outweighed by the public interest in disclosure. HRS § 92F-14(a) (2012). OIP does not find an unusually strong public interest in the "Release To" category generally, so in this context the existence of a significant privacy interest is sufficient to establish that the UIPA's privacy exception applies.

[18] The concept of familial status typically arises in a fair housing context and refers to whether a person has **minor children** at home. For instance, the Hawaii Civil Rights Commission's administrative rules define familial status as:

> the presence of children under eighteen years old in a family, including, but not limited to, a person having custody and domiciled with a minor child or children; a person domiciled with a minor child or children who has written

not see statements of marital or familial status in the "Release To" field in OIP's *in camera* review of selected Offendertrak information, it is possible that some "Release To" entries include both an individual's name and information revealing marital or familial status, such as "Jane Doe (wife) and young children." In such a case, based on the UIPA's privacy exception PSD may properly redact the marital or familial status, but not the individual's name, to avoid revealing that Jane Doe is married (marital status) and has minor children at home (familial status). The entry would then appear as "Jane Doe XXXXXXXXXXXXXXXX," as discussed in subsection C below.

An individual also has a significant privacy interest in personal contact information such as a home address or personal phone number or email address. E.g., OIP Op. Ltr. No. F16-04 at 6. OIP did not see such information in its review of selected Offendertrak information, but if such information does appear in other "Release To" entries, PSD may redact it based on the UIPA's privacy exception.

2. Privacy Interest of Inmate

OIP next looks at whether and to what extent an inmate or former inmate has a significant privacy interest in information in the "Release To" category. It is necessary here to distinguish an inmate leaving a correctional facility for some form of supervised release, such as parole, from an inmate leaving a correctional facility with no further correctional supervision, such as someone whose full sentence has run. Where an inmate is out on parole or other form of supervised release, to the extent that the inmate's participation or presence in a particular facility is a condition of the parole, that facility's name is information concerning the inmate's presence in the correctional system and thus is correctional directory information that cannot be withheld under the UIPA's privacy exception. HRS § 92F-12(a)(4).

For inmates who are either no longer subject to correctional supervision or whose supervised release is not conditioned on the inmate's presence at a particular facility, the inmate has a significant privacy interest in the name of a program,

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or unwritten permission from the legal parent, such as a hanai relationship; a person who is pregnant; or any person who is in the process of securing legal custody of a minor child or children.

HAR § 12-46-302 (definition of "familial status"). Since the privacy interest in marital and familial status arises primarily from the potential for such information to form a basis for discriminatory behavior, OIP concludes that the privacy interest in familial status applies only to information about whether an individual is pregnant or has minor children in the home. The privacy interest in familial status does not apply to information about a person's family relationships with adults or with children not living in the same home, such as information showing the person has a sister, a father, or a nephew.

halfway house, or other facility the inmate is going to. That information reveals the location where the inmate will be living and may also reveal information about the inmate's mental or physical health, and thus may be withheld under the UIPA's privacy exception. If any entries include a street address, phone number, email address, or other personal contact information, that information may also be withheld based on the privacy exception. However, general nondetailed information about where an inmate will be living, such as a state or island name, does not reveal the location of an inmate's new home in the same way as does a home address or specific facility name, and such general information may not be withheld based on the privacy exception.

Inmates, like third parties named in the "Release To" field, have a significant privacy interest in their marital and familial status. Using the example discussed above regarding a third person's privacy interest, an entry such as "Jane Doe (wife) and young children" would also reveal that the inmate is married and will be living in a home with minor children. Thus, the inmate's privacy interest provides another basis under the UIPA's privacy exception for redacting the information revealing the inmate's marital or familial status, and the entry may be redacted as discussed above. However, since an inmate does not have a privacy interest in the fact that an inmate has adult relatives or family generally, the privacy exception does **not** authorize PSD to redact entries such as "Family,"[19] "[D or Doe] Ohana," or a description of relationship such as "father" or "sister." An inmate likewise does not have a privacy interest in being connected to a non-family third party, such as a PSD employee or law enforcement officer either named or described. Such information cannot be withheld under the privacy exception.

In some instances the "Release To" field indicates that an inmate died, sometimes naming a location of death such as named correctional or medical facility or a type of location ("hospital") or a named state, and PSD proposed redacting that information. OIP notes that the "Release Disposition" field, disclosure of which PSD is not contesting, also indicates that the inmate has died, and an inmate's death in custody and the location of that death is generally subject to public disclosure, either as information concerning the inmate's presence in the correctional system and thus correctional directory information or on the basis that the public disclosure interest in deaths within the correctional system outweighs

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[19] In this opinion, OIP uses as examples in its privacy and redaction discussion some actual entries from the records OIP reviewed *in camera*. The phrases quoted in this opinion are unconnected to the name of the inmate concerned, and because this request involves 18 years' worth of entries and the examples chosen do not identify inmates, other individuals, or facilities, OIP does not believe it would be reasonably possible for a reader to connect a quoted phrase to a particular inmate or use it to identify a facility. OIP therefore believes this use does not reveal any information PSD has argued to protect, and is consistent with OIP's *in camera* review of the records.

any remaining privacy interest of a deceased inmate in the fact and location of death. HRS §§ 92F-12(a)(4), 92F-13(1) and 92F-14(a); see also HRS § 353-40 (public reporting requirement for inmate deaths including name and location, effective January 1, 2024). PSD therefore may not redact entries such as "Died," "Died at Hospital," or "Died in Mainland at [facility]" from the "Release To" field.

PSD proposed redacting information showing that an inmate left state custody to serve a federal sentence, sometimes including a release date for the federal sentence, or that an inmate was extradited to another state, sometimes including the name of a correctional facility in that state. OIP finds that such information is information concerning the inmate's presence in the correctional system and thus concludes that it is correctional directory information, and to the extent such entries also include information that is not correctional directory information (such as the expected release date for a federal sentence) it still must be disclosed because no UIPA exception authorizes it to be withheld. HRS § 92F-12(a)(4); OIP Op. Ltr. No. 89-14 at 6.

PSD proposed redacting information showing an inmate's release date, such as "[date] Released to Parole" or "Late Entry, [date] – Actual Release Was [date]." Information showing an inmate's actual release date and parole status is information concerning the inmate's presence in the correctional system and OIP therefore concludes that it is correctional directory information that must be disclosed. HRS § 92F-12(a)(4). Other associated information, such as the date a late entry was made (differing from the inmate's actual release date), must also be disclosed because the privacy exception and other UIPA exceptions do not authorize it to be withheld.

B. PSD Has Not Established That the UIPA's Frustration Exception Applies

PSD also argued that it was entitled to redact information from the "Release To" field based on the UIPA's exception for information whose disclosure would frustrate a legitimate government function. HRS § 92F-13(3). PSD cited OIP opinions involving application of the UIPA's frustration exception to ongoing investigations, but did not explain in what way the information in the "Release To" field could relate to or interfere with civil or criminal law enforcement proceedings. PSD also generally asserted that identifying a substance abuse treatment program or mental health treatment program by name would "result in actions detrimental to the programs." PSD failed to provide any factual justification or to further substantiate this bare assertion. OIP notes that named facilities revealed in its *in camera* review have public websites and publish their addresses and their missions online. OIP must conclude that PSD has failed to meet its burden to establish that

disclosure of information from the "Release To" field would frustrate a legitimate PSD function.

C. PSD's Proposed Redactions Are Improperly Done

Finally, OIP observed many instances in which PSD's proposed redactions were not only excessive in terms of the information redacted (as discussed above), but also improperly done. OIP's administrative rules specifically require an agency to:

> segregate information from a requested record in such a way so that it is reasonably apparent that information has been removed from the record. An agency shall not replace information that has been segregated with information or text that did not appear in the original record.

HAR § 2-71-17. For electronic records, OIP's online redaction guidance recommends substituting Xs for deleted text to meet this requirement, such that a social security number would be rendered as XXX-XX-XXXX. OIP, Quick Review: The ABCs of Redaction (April 2013), https://oip.hawaii.gov/wp-content/uploads/2021/11/Apr13-ABCs-of-Redaction.pdf.

PSD's proposed redactions include complete deletions of entries with nothing to indicate that a deletion was made; alterations to entries including abbreviations of text or text added to or replacing the original text. For instance, where an original entry read "DIED IN HOSPITAL," PSD proposed deleting the entry entirely. Even if the redaction were appropriate (OIP has concluded that it is not, as discussed above), it should have been done by replacing the text with "XXXXXXXXXX" to indicate that text of approximately that length was redacted. The same is true of the many other entries PSD deleted entirely.

PSD proposed changing an original entry of "FAMILY" to instead read "PAROLE." Even if the redaction of "FAMILY" were appropriate (OIP has concluded that it is not, as discussed above), the redaction should have been done by replacing the text with "XXXXXX," making clear that the entry was redacted, instead of replacing it with "PAROLE." The same is true of the many other entries in which PSD replaced references to the place or circumstances of an inmate's parole with "PAROLE."

Similarly, PSD proposed replacing an original entry of "FEDERAL SENTENCE" with "FEDERAL SENT." Even if PSD had a UIPA justification for redacting the end of the word sentence (which it does not), the redaction should have been done by replacing the deleted "ENCE" with "XXXX."

In the future, PSD should take care to follow the legal requirements, with reference also to OIP's guidance, both in its redaction of the "Release To" field for the request at issue here and in its redaction of other records as authorized for other future requests. Based on OIP's conclusions herein, of the Offendertrak fields Requester seeks, the only one PSD may redact is the "Release To" field, and then only if Requester renews her request for that field as redacted pursuant to this opinion. Thus, if Requester renews her request for that field OIP expects PSD's fee estimate to be approximately the $290 it estimated previously for redaction of the "Release To" field. If Requester chooses instead to omit that field from her request and pursue only the fields listed in her modified request of November 25, 2019, which OIP has concluded are fully public, OIP expects PSD's fee estimate to be $0 after application of the $60 public interest fee waiver. See HAR §§ 2-71-19, -31, and -32 (setting out authorized fees for search, review, and segregation time and a partial fee waiver for requests in the public interest).

RIGHT TO BRING SUIT

Requester is entitled to file a lawsuit for access within two years of a denial of access to government records. HRS §§ 92F-15, 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if Requester is the prevailing party, Requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F-15(d), (f) (2012).

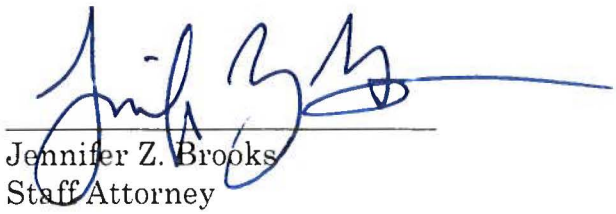
For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

This decision constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES



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