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March 23, 2004

Ms. Marsha E. Kitagawa
Public Affairs Director
Office of the Administrative Director-
Public Affairs Office
The Judiciary, State of Hawaii
417 South King Street, Room 206C
Honolulu, Hawaii 96813-2902

Re: Disclosure of Court Abstracts

Dear Ms. Kitagawa:

On January 20, 1999, you wrote to the Office of Information Practices ("OIP") to ask whether the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), requires public access to court abstracts and miscellaneous criminal abstracts of the Traffic Violations Bureau of the District Courts. The Judiciary has provided information to OIP concerning court abstracts, but not miscellaneous criminal abstracts (which are apparently rarely used). Thus, with the Judiciary's agreement, this opinion is limited to the court abstracts.

ISSUE PRESENTED

Are court abstracts subject to the UIPA?

BRIEF ANSWER

No. The court abstracts are part of the nonadministrative functions of the courts, and hence are not maintained by an "agency" subject to the UIPA.

FACTS

In a memorandum dated February 3, 2000, the Honorable Marcia J. Waldorf provided OIP with background information regarding the creation of court and public abstracts. The abstracts are created by Judiciary employees in the Traffic Violations Bureau from data maintained in the Judiciary's TRAVIS system, which includes both public and non-public data. In addition to records of court proceedings, the data include citations and reports generated by the police. The District Courts use the court abstracts in litigation "to impose sentences and bail, to assess fines, and to require attendance at programs such as drivers education or counseling." The parties to an action, such as the individual concerned, the Office of the Public Defender, and the Prosecutor's Office, can obtain copies of the court abstracts. Probation officers, too, have access to the court abstracts. Judiciary employee access is limited to those with special status, and varies by job description.

In a memorandum dated January 29, 2004, the Honorable Rhonda L.L. Loo explained further that "Judges do rely on court abstracts as an index of the complete court record. Actual documents are available, however are normally not necessary given the completeness of the information contained within the court abstract." Parties to an action have the opportunity to point out inaccuracies or omissions in the court abstracts.

DISCUSSION

I. NON-ADMINISTRATIVE RECORDS OF THE COURTS ARE NOT SUBJECT TO THE UIPA

The UIPA governs the public's right to inspect and copy records maintained by an agency. See Haw. Rev. Stat. §§ 92F-3 (definitions of "government record" and "personal record"), 92F-11 (access to government records), and 92F-21 (access to personal records) (1993). The UIPA specifically defines "agency" to exclude "the non-administrative functions of the courts of this State." Thus, the UIPA does not apply to records associated with the non-administrative functions of the courts. OIP Op. Ltr. No. 90-4 at 5 (Jan. 29, 1990).

OIP has considered the distinction between administrative and nonadministrative functions of the courts in several prior opinions. OIP Opinion Letter Number 90-4 concluded (at page 5) that "nonadministrative records of the courts, generally speaking, are those records which are provided to the court incident to the adjudication of a legal matter before that tribunal." The opinion went on to observe that the compilation of certified driver abstracts involves ministerial action by the person preparing them, and that the certified driver abstracts are not furnished to the court incident to the adjudication of a legal matter before the court. OIP Op. Ltr. No. 90-5 at 5-6 (Jan. 29, 1990). In the present case, OIP notes that court abstracts, although similarly ministerial in initial preparation, are distinguished from the certified driver abstracts in that the court abstracts are prepared for use by the court in adjudication of legal matters. The possibility of challenge to the court abstracts by parties involved may be another distinguishing feature, as it suggests that the contents of court abstracts may be subject to later adjudication.

OIP Opinion Letter Number 93-8 cited a Connecticut case, Rules Committee of the Superior Court of Connecticut v. Freedom of Information Commission, 472 A. 2d 9 (Conn. 1984), for the proposition that the administrative functions of the courts "exclude matters involved in the adjudication of cases." OIP Op. Ltr. No. 93-8 at 6 (Aug. 2, 1993). Following that line of analysis, OIP Opinion Letter Number 95-20 focused on whether a record was used by the courts in the adjudication of a case and was part of the court's adjudicatory files. OIP Op. Ltr. No. 95-20 at 6-7 (Aug. 21, 1995).

II. COURT ABSTRACTS ARE NONADMINISTRATIVE RECORDS OF THE COURTS

Court abstracts are provided to the court (albeit by the court staff) incident to the adjudication of a legal matter before the court, and are part of the adjudicatory file. Judges rely on the court abstracts, often to the exclusion of the underlying documents, in deciding sentences, bail, fines, and other requirements. Although the initial preparation of the court abstracts is ministerial, the abstracts are subject to challenge within the context of a litigation and therefore may require adjudication to determine what information is properly included therein. Even if the preparation of the court abstracts were considered wholly ministerial, it is OIP's opinion that the

court's use of the abstracts in adjudication is more significant than the ministerial manner of their preparation by court staff. OIP's focus in prior opinions has been primarily on the extent to which a record is involved in the adjudication of cases. In OIP Opinion Letter Number 90-4, the ministerial preparation of certified driver abstracts appears to have been significant because the records were not provided to the court incident to the adjudication of a legal matter: the ministerial preparation indicated that the records could not be considered nonadministrative under the alternate theory that their preparation required the exercise of judgment or discretion by the court. See OIP Op. Ltr. No. 90-4 at 5-6 (Jan. 29, 1990). When a record is provided to the court, and used by the court, for adjudication of a legal matter, OIP is of the opinion that the fact that the record may have been prepared in a ministerial fashion is not significant. In the present case, the court abstracts, which are prepared for and used in the adjudication of cases, are nonadministrative records of the courts notwithstanding the fact that their preparation could be considered ministerial.

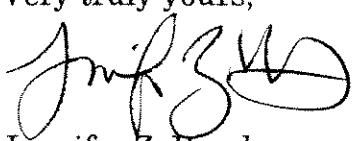
OIP has noted before that the purpose of the exclusion from the UIPA of nonadministrative court records was to preserve the existing "practice of granting broad access to the records of court proceedings." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689-609 (1988), quoted in OIP Op. Ltr. No. 90-4 at 4 (Jan. 29, 1990). In this case, consistent with the purpose of the exclusion, the Judiciary does have its own practices for granting (or denying) access to the court abstracts, which limit access to the parties to an action, probation officers, and selected Judiciary employees. The fact that probation officers are permitted access to the court abstracts does not alter the court abstracts' character as nonadministrative records of the court, since the probation officers' access is essentially access to an adjudicative file as permitted by court rule and for a purpose related to the adjudication, namely, the probation officer's role in ensuring that an individual meets the conditions set out by the court in sentencing based on the court abstract.

CONCLUSION

Court abstracts are provided to the court incident to the adjudication of a legal matter before the court, are used by the court in that adjudication,

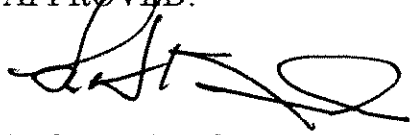
and are part of the adjudicatory file. Thus, the court abstracts are nonadministrative records of the courts, and as such are not subject to the UIPA.

Very truly yours,



Jennifer Z. Brooks
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

JZB:ankd