March 25, 1991

MEMORANDUM

TO: The Honorable Michael S. Nakamura
Chief of Police, City and County of Honolulu

FROM: Hugh R. Jones, Staff Attorney

SUBJECT: Public Access to Police Blotter Information

This is in reply to a letter dated January 10, 1990 from former Chief of Police Harold Kawasaki, to the Office of Information Practices ("OIP") requesting an advisory opinion concerning the public's right, if any, to inspect and copy "police blotter" data maintained by the Honolulu Police Department.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), information set forth in "police blotter[s]" maintained by the county police departments, must be made available for public inspection and copying.

BRIEF ANSWER

Under the UIPA, "[e]xcept as provided by section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours." Under the UIPA, a "government record" means "information maintained by an agency in written, auditory visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1990).

With respect to police blotter data concerning identifiable juvenile offenders, its disclosure is prohibited by section 571-84(e), Hawaii Revised Statutes, and under the UIPA, the county police departments should not make the same available for inspection or copying. See Haw. Rev. Stat. § 92F-13(4) (Supp. 1990).

With respect to police blotter data concerning adult offenders, we conclude that none of the UIPA's statutory exceptions to public access set forth at section 92F-13, Hawaii Revised Statutes, applies to this information. Accordingly, such data must be made available for inspection and copying upon request by any person. Haw. Rev. Stat. § 92F-11(b) (Supp. 1990).

Specifically, although chapter 846, Hawaii Revised Statutes, prohibits the dissemination of "criminal history record information," including identifiable records and notations of arrest, this statutory prohibition on disclosure does not apply to police blotter data that is chronologically compiled. Similarly, police blotter data is not protected from disclosure by federal laws applicable to criminal history record information.

Additionally, as our research discloses, most authorities agree that because "secret arrests" are illegal under our form of government, an arrest is a public, not a private event. As such, arrested individuals have neither a significant nor a constitutional privacy interest in the circumstances surrounding their arrest. Because there is substantially more than a "scintilla" of public interest in the disclosure of police blotter data, and the absence of a significant privacy interest in these records, their disclosure would not constitute "a clearly unwarranted invasion of personal privacy" under the UIPA.

Lastly, this opinion does not address the question of public access to an individual's personal history and arrest record, or "rap sheet," which consists of the criminal history of the individual, insofar as it shows each previous arrest and other data relating to the individual and the crimes the individual has been suspected of committing. In this advisory opinion, we confine our conclusions only to "police blotter" information, which is chronologically compiled.

FACTS

Nearly every police department in the nation, in some fashion or another, creates and maintains a document that represents the first official recording of an arrest and typically includes a description of the arrest and the arrestee. This document is commonly referred to as the "police blotter," but may also be referred to as an "arrest log" or "logbook."[1] Police blotters, and the recordkeeping process, vary substantially among police departments nationwide. See generally, U.S. Department of Justice, Original Records of Entry p. 1-7 (Nov. 1990).

All four county police departments in Hawaii also create and maintain a "police blotter." In the past, the police department of the City and County of Honolulu ("HPD") entered the following information into a logbook after the arrest of any individual: date and time of arrest; the name, residence, age, sex and nationality of the arrested person; the name of the arresting officer; the nature of the offense; a chronological number assigned to the arrest; and a report number. The time and manner of release, such as cash or bond, as well as any additional remarks about the arrested individual's release, may also be added at a later date.

On February 5. 1991, the HPD "retired" its manually compiled police blotter, or arrest log. In its place, the HPD now enters the arrest data into a computer database, and computer printouts have replaced the logbook. Apparently, the logbook will be displayed in the police museum.

We understand that the HPD's past practice has been to permit representatives of the press to inspect its police blotter, but not to permit access to the blotter by the general public. However, the HPD will provide information contained in the blotter to the public if a specific request is made, such as a search for a missing person. Additionally, the HPD has an "Arrested Persons Adults" telephone number through which the HPD

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[1]A "police blotter" has been characterized as "a book or an index which contains a permanent, chronological record of every official act that comes before the police officer in charge of the desk. Such an index is a skeleton report of a precinct's or a station's activities for a given period of time." Arthur J. Sills, "The Police Blotter and the Public's Right to Know," FBI Law Enforcement Bulletin 38 (June 1969).

will provide the public with limited information from the blotter, provided that a caller provides the name of a specific individual.

The Maui County Police Department has a media room where press representatives may view a "police bulletin," which contains information concerning individuals who have been arrested and charged, but not the names of juveniles who have been taken into custody. Likewise, the Kauai County Police Department issues a daily press bulletin, which includes information concerning arrested individuals, except for juvenile detainees. The Hawaii County Police Department does not have a "blotter" per se, but maintains daily bulletins listing arrests and related information. An edited version of the daily blotter is available for press representatives to pick up in the department's media room. Like those of other county police departments (except for the HPD), the Hawaii County Police Department's bulletin does not contain the names of juveniles that have been arrested. Apparently, the Hawaii County Police Department's bulletin is not made available for inspection by the general public.

Former Chief of Police Harold Kawasaki, in his letter requesting an advisory opinion, indicated that various governmental agencies and members of the public have requested access to the HPD's police blotter. Former Chief Kawasaki requested the OIP to provide an advisory opinion regarding whether, under the UIPA, the HPD police blotter must be made available for inspection and duplication by the general public.

DISCUSSION

I. INTRODUCTION.

The issue of public access to police blotters compiled by police departments has been the subject of widespread judicial and legal commentary. A recent publication from the U.S. Department of Justice notes that historically, public access to police blotters was not always a certainty, with widely varying practices from state to state. However, according to the U.S. Department of Justice:

[P]olice blotter information, at least to the extent

> that it is chronologically arranged and not name-indexed, is [now] available to the public in nearly every jurisdiction. Over two-thirds of the States make police blotter data publicly available by virtue of statute law . . . [i]n four States, attorney general's opinions make police blotter data publicly available. Court decisions applying constitutional or common law precepts authorize public access to police blotter data in seven jurisdictions. Only three States fail to cite authority that expressly requires public access to police blotter data, and even in those States, it appears that police blotter data is available by tradition, if nothing more.

U.S. Department of Justice, Original Records of Entry p. 16 (Nov. 1990) (hereinafter "Records of Entry").[2]

In Hawaii, the issue of public access to police blotter data must be resolved with reference to the State's recently enacted public records statute, the UIPA. Under the UIPA, "[e]xcept as provided by section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours." Haw. Rev. Stat. § 92F-11(b) (Supp. 1990). The term "government record" means "information maintained by an agency in written, auditory, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1990).

Given the nature of the various police blotters maintained by the county police departments, and circumstances surrounding their compilation, three of the UIPA's statutory exceptions to required agency disclosure are deserving of close examination. We shall examine these UIPA exceptions separately below.

II. GOVERNMENT RECORDS PROTECTED FROM DISCLOSURE BY STATUTE.

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[2]An independent survey and review of state statutes by the Reporters Committee for Freedom of the Press lists Hawaii as a jurisdiction in which police blotter data is made public by statute. See Reporters Committee for Freedom of the Press, Police Records: A Guide to Effective Access in the 50 States & D.C. (1987) (reprinted in Records of Entry at p. 69). This publication, however, does not indicate which Hawaii statute specifically guarantees public access to police blotter data.

The UIPA does not require agencies to disclose "[g]overnment records which, pursuant to state or federal law . . . are protected from disclosure." Haw. Rev. Stat. § 92F-13(4) (Supp. 1990). Indeed, under the UIPA, it is a criminal offense for any officer or employee of an agency to intentionally disclose or provide a copy of a government record, or any information explicitly described by specific confidentiality statutes, with actual knowledge that disclosure is prohibited. Haw. Rev. Stat. § 92F-17 (Supp. 1990).

Our research discloses that juvenile arrest records of any police department are explicitly made confidential by section 571-84(e), Hawaii Revised Statutes, except to those whose official duties are concerned with the administration of chapter 571, Hawaii Revised Statutes. Accordingly, police blotter data concerning identifiable minors should not be disclosed to the public by the county police departments.

With respect to arrest records concerning adult offenders, chapter 846, Hawaii Revised Statutes, entitled "Hawaii Criminal Justice Data Center; Civil Identification," does establish certain limitations on the dissemination of "criminal history record information." Under chapter 846, Hawaii Revised Statutes, "criminal history record information" means:

> [I]nformation collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of <u>arrests</u>, detentions, indictments, and other formal criminal charges, and any disposition therefrom, sentencing, formal correctional supervisory action, and release; . . . .

Haw. Rev. Stat. § 846-1 (1985) (emphasis added).

Pursuant to section 846-9, Hawaii Revised Statutes, the dissemination of "nonconviction data," such as records of arrest not followed by conviction, is limited to specified agencies and persons. However, by virtue of section 846-8, Hawaii Revised Statutes, the dissemination limitations of chapter 846, Hawaii Revised Statutes, do not apply to criminal history record information contained in:

> (2) <u>Original records of entry such as police blotters</u> maintained by criminal justice

> agencies, compiled chronologically and required by law or long-standing custom to be made public if such records are organized on a chronological basis.

Haw. Rev. Stat. § 846-8(2) (1985) (emphasis added).

The above provision was taken almost verbatim from regulations adopted by the U.S. Department of Justice concerning state and local criminal history record information systems. See 28 C.F.R. § 20.20(b)(2) (1990).

The commentary to these federal regulations indicate that chronologically compiled police blotters were exempted from the dissemination limitations for important public policy reasons:

> Section 20.20(b) and (c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public's right to know.
>
> Section 20.20(b)(2) attempts to deal with the problem of computerized police blotters. 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.

41 Fed. Reg. 11717 (1976) (emphasis added).

Additionally, both chapter 846, Hawaii Revised Statutes, and federal regulations provide:

> Nothing in this chapter shall prevent a criminal justice agency from disclosing, to the public, criminal history record information related to the

> offense for which an individual is currently within the criminal justice system, including the individual's place of incarceration: . . . .

Haw. Rev. Stat. § 846-8 (Supp. 1990); see also, 28 C.F.R. § 20.20(c) (1990).

Federal regulations permit the U.S. Department of Justice to disclose:

> (i) The defendant's name, age, residence, employment, marital status, and similar background information.
>
> (ii) The substance or text of the charge, such as the complaint, indictment, or information.
>
> (iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.
>
> (iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.

28 C.F.R. § 50.2(b)(3) (1990).

Thus, neither chapter 846, Hawaii Revised Statutes, nor federal law prohibit the disclosure of police blotter information. We now turn to an examination of the UIPA's personal privacy exception.

III. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY.

Agencies are not required by the UIPA to disclose "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-13(1) (Supp. 1990). Under the UIPA, the "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. § 92F-14(a) (Supp. 1990).

Under this balancing test, "if a privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a funding of a clearly unwarranted invasion of personal privacy." H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988); S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988) ("[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure").

Our research discloses that authorities are nearly unanimous in concluding that individuals do not have a significant, or constitutional privacy interest, in police blotter information. Under both the American and the English judicial system, secret arrests are unlawful, indeed repugnant. Newspapers, Ind. V. Breier, 279 N.W.2d 179, 189 (Wis. 1979) ("it is fundamental to a free society that the fact of arrest and the reason for arrest be available to the public"); Morrow v. District of Columbia, 417 F.2d 728, 741-42 (D.C. Cir. 1969) ("that arrest books be open to the public is to prevent any 'secret arrests,' a concept odious to a democratic society"). As such, in a 1974 lecture, Chief Justice William Rehnquist declared that an arrest should not be considered a private event:

> An arrest is not a "private" event. An encounter between law enforcement authorities and a citizen is ordinarily a matter of public record, and by the very definition of the term it involves an intrusion into a person's bodily integrity. To speak of an arrest as a private occurrence seems to me to stretch even the broadest definitions of the idea of privacy beyond the breaking point.

William H. Rehnquist "Is an Expanded Right to Privacy Consistent With Fair and Effective Law Enforcement?" University of Kansas Law School, Nelson Timothy Stephens Lectures, Part I (Sept. 26-27, 1974).

In view of the public character of an arrest, the Supreme Court has held that access by the press and the public to information about an arrest does not implicate any constitutionally protected right to privacy:

> Davis claims constitutional protection against the disclosure of the fact of his arrest on a shoplifting charge. His claim is based, not upon any challenge to the State's ability to restrict his freedom of action in a sphere contended to be "private" but instead on a claim that the State may not publicize a record of an official act such as an arrest. None of our substantive privacy decisions hold this or anything like this, and we decline to enlarge them in this manner.

Paul v. Davis, 424 U.S. 693, 713 (1976).

Other courts have noted the absence of a significant privacy interest in events surrounding an individual's arrest. In Tennessean Newspaper, Inc. v. Levi, 403 F. Supp. 1318 (M.D. Tenn. 1975), the court noted that individuals effectively waive their privacy rights concerning circumstances surrounding their arrest:

> [T]he privacy concerns which would be invaded by the disclosure of [arrest records] are not sufficient to warrant the application of the balancing test. Disclosing information about persons arrested . . . does not involve substantial privacy concerns . . . .
>
> [I]ndividuals who are arrested or indicted become persons in whom the public has a legitimate interest, and the basic facts which identify them and describe generally the investigations and their arrests become matters of legitimate public interest. [footnote omitted] The lives of these individuals are no longer truly private . . . this right [of privacy] becomes limited and qualified for arrested or indicted individuals who are essentially public personages.

Levi, 403 F. Supp. At 1321 (emphasis added).

Similarly, in Fraternal Order of Police Lodge No. 5 v. City of Philadelphia, 812 F.2d 105, 117 (3d Cir. 1987), the

court emphasized that records of arrest are not entitled to constitutional privacy protection, stating "because it is unlikely that anyone could have a reasonable expectation of privacy that an arrest will remain private information, we hold that arrest records are not entitled to privacy protection." See also, Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Ct. of Civ. App. Tex. 1975), no reversible error, 536 S.W.2d 559 (Tex. 1976); Newspapers, Inc. v. Breier, 279 N.W.2d 179, 187 (Wis. 1979).

Based upon the foregoing authorities, we conclude that the disclosure of police blotter data maintained by the county police departments does not implicate a "significant privacy interest," and that there is substantially more than a "scintilla" of public interest in the disclosure of this information. Accordingly, in our opinion, the disclosure of police blotter data would not constitute "a clearly unwarranted invasion of personal privacy" under the UIPA.

IV. FRUSTRATION OF LEGITIMATE GOVERNMENT FUNCTION.

The UIPA does not require agencies to disclose government records that, by their nature, must remain confidential in order for the government to avoid the frustration of a legitimate government function." Haw. Rev. Stat. § 92F-13(3) (Supp. 1990). In OIP Opinion Letter No. 89-17 (December 27, 1989), we discussed the application of this UIPA exception and established, based upon the Act's legislative history, that it applies to certain "[r]ecords or information compiled for law enforcement purposes." See S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988).

The willingness of courts, federal administrative agencies, and state legislatures to view police blotter information as "public" obviates any finding that the disclosure of the same could reasonably impede or interfere with a prospective law enforcement proceeding against an arrested individual. Most, if not all, the information set forth in a police blotter is already within the possession and knowledge of the arrested person. Similarly, all county police departments in Hawaii currently provide the press with nearly all the information contained in their blotters.

While we conclude that the disclosure of police blotter

information would not frustrate a legitimate government function, we do not suggest that investigatory records underlying the arrest may not be withheld under this UIPA exception. The disclosure of certain investigatory records may reasonably interfere with a potential law enforcement proceeding, reveal the identities of confidential sources, or reveal confidential investigatory techniques and procedures. We merely conclude in this opinion that public access to police blotter information would not frustrate a legitimate government function under the UIPA.

Lastly, the conclusions set forth above do not extend to an individual's "rap sheet" or personal history and arrest record. A "rap sheet" consists of an individual's criminal history, insofar as it shows each previous arrest and other data relating to the individual and the crimes the individual has been suspected of committing. Unlike chronologically compiled "police blotter" information, a rap sheet is a name-indexed "dossier" on an individual's criminal record. We express no opinion herein concerning public access to an individual's rap sheet since the issue is not raised by the facts presented.

CONCLUSION

We conclude that the disclosure of police blotter data concerning identifiable juvenile offenders is prohibited by section 571-84(e), Hawaii Revised Statutes, and under the UIPA, should not be disclosed by the county police departments. Haw. Rev. Stat. § 92F-13(4) (Supp. 1990).

With respect to police blotter data concerning adult offenders that are maintained by the county police departments, access to this information is neither closed nor restricted by law, and under the UIPA, must be made available for inspection and copying "upon request by any person." Haw. Rev. Stat. § 92F-11(a) and (b) (Supp. 1990). Specifically, in our opinion, this information is not protected from disclosure by State or federal law, and its disclosure would not constitute a clearly unwarranted invasion of personal privacy, nor result in the frustration of a legitimate government function. Haw. Rev. Stat. § 92F-13(1), (3) and (4) (Supp. 1990).

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HRJ:sc

Prepared with the assistance of former staff attorney Martha L. Young.

APPROVED:

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