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April 25, 2005

VIA FACSIMILE NO. 956-2109

Ruth I. Tsujimura, Esq.
Associate Vice President for Legal Affairs
and University Deputy General Counsel
University of Hawaii
2515 Dole Street, Law 203
Honolulu, Hawaii 96822

Re: University of Hawaii Campus Security Records
RFA-G (05-004)

Dear Ms. Tsujimura:

At your request, this letter is written to confirm our opinion conveyed to you orally regarding the disclosure of certain records maintained by the University of Hawaii Campus Security ("Campus Security"). On behalf of the University of Hawaii ("UH"), you had requested an opinion from the Office of Information Practices ("OIP") regarding whether Campus Security is required under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"), to disclose a report of a possible sexual assault that includes the written report of a Campus Security officer with an attached photograph of the person alleged to have committed the assault and three statements prepared by witnesses (collectively the "report"). We understand that the person who is the alleged victim of the assault has requested access to the report.

ISSUE PRESENTED

Whether Campus Security must disclose the report made of an alleged sexual assault to the alleged victim under the UIPA.

BRIEF ANSWER

We find generally that the report should be disclosed to the requester, who is the alleged victim, under part III of the UIPA because the report is the personal record of the requester and none of the exemptions to disclosure provided under part III apply. However, the report is a joint personal record, i.e., it is also a personal record of the alleged assailant and of each of the witnesses, and certain personal information in the report is only "about" these individuals and not "about" the requester. This personal information that is not "about" the requester is not subject to disclosure as a personal record of the requester under part III of the UIPA. Instead, disclosure of this information must be analyzed as a general record request under part II of the UIPA. Because we find under part II that disclosure would result in a clearly unwarranted invasion of the personal privacy of the other parties to the report, it is our opinion that this personal information may be redacted from the copy of the report made available to the requester.

FACTUAL BACKGROUND

From our *in camera* review of the report, it appears that the alleged assault occurred in September, 2002 and was reported to Campus Security by one of the witnesses whose statement is attached to the report. You advised us that the alleged victim, who is identified in the report only by first name, did not wish to pursue the matter, and consequently, no further action was taken by UH, the Honolulu Police Department ("HPD") or the Department of the Prosecuting Attorney. You also advised us that UH considers this matter to be closed and that no further action will be taken by UH relating to this incident.

We also spoke with Captain Donald Dawson of Campus Security who advised us that Campus Security has no official law enforcement powers and that the report is intended for use by UH in internal matters, such as student conduct hearings and statistical purposes. Captain Dawson also stated that the report is not shared with HPD, and where an incident involves a criminal violation, HPD does its own investigation.

DISCUSSION

Because the requester is the alleged victim, we look first to whether the report must be disclosed under part III of the UIPA governing the disclosure of personal records. A "personal record" is a record that contains information "about" the requester. Specifically, the UIPA defines "personal record" to mean "any item, collection, or grouping of information about an individual that is maintained by an agency" including "items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the

individual, such as a finger or voice print or a photograph." Haw. Rev. Stat. § 92F-3 (1993). While you initially questioned whether the report is a personal record of the requester given that the alleged victim is identified in the report only by first name, you also advised us that there is no dispute that the requester is the person identified in the report as the alleged victim. Because the report is thus clearly "about" the requester, we find that the report is a personal record of the requester under part III of the UIPA.

Under part III, an agency must allow a requester access to his or her personal record unless the record or the information contained in the record falls within one of the exemptions to disclosure listed in section 92F-22, HRS.[1] With respect to the report, only two of the exemptions appear to be of any relevance and to merit consideration.

The first exemption provides that an agency may deny access to personal records:

> [m]aintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
>
> (A) Information or <u>reports prepared or compiled for the purposes</u> of criminal intelligence or <u>of a criminal investigation</u>, including reports of informers, witnesses, and investigators . . . .

Haw. Rev. Stat. § 92F-22(1)(A) (1993) (emphasis added). Based upon the information provided to us, it is our understanding that Campus Security creates its reports for internal UH purposes and not for the use of HPD should a criminal investigation be opened. Accordingly, even assuming for purposes of this opinion that Campus Security is "an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime," we do not find that the report was "prepared or compiled for the purposes . . . of a criminal investigation[.]"[2] It is our opinion, thus, that section 92F-22(1)(A), HRS, does not allow UH to withhold the report from the requester.

The second exemption allows an agency to withhold access to personal records:

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[1] For personal record requests made under part III, the exemptions to disclosure under part II of the UIPA, contained in section 92F-13, HRS, are inapplicable.

[2] <u>Cf.</u> OIP Op. Ltr. No. 94-3 (finding daily activity reports prepared by campus security guards, under circumstances specified therein, to be subject to withholding from a general record request under section 92F-13(3), HRS.

> [t]he disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.

Haw. Rev. Stat. § 92F-22(2) (1993). In this case, you have not provided us with any indication that the witnesses whose handwritten statements are part of the report were given express or implied assurances of confidentiality. Upon our inquiry, Captain Dawson stated that the witnesses were not given assurances that their identities or statements would be kept confidential. Absent any assertion that the statements were given with an express or implied promise of confidentiality, we do not believe that the witness statements here fall within this exemption.

Accordingly, we conclude that the report, generally, is a personal record of the requester and that none of the personal records exemptions allow the withholding of the report from the requester. It is our further opinion, however, that certain portions of the report are not considered to be part of the requester's "personal record," as defined in the UIPA, and that such portions of the report are subject to redaction prior to the report being disclosed to the requester.

We have previously opined that, where a record is a joint personal record, i.e., it is "about" two or more persons, there is a presumption that the entire record is accessible by each of those persons as a personal record, subject to the exemptions in section 92F-22, HRS. See OIP Op. Ltr. No. 03-18. If, however, it is shown that certain information contained in the record is not "about" the requester, but rather is "about" other individual(s) named in the record, the presumption is rebutted and request for that information is not considered a personal record request of the requester under part III of the UIPA. Id. at 9. In such case, the information that is not "about" the requester is viewed as a general record request under part II of the UIPA and is subject to the exceptions contained in that part at section 92F-13, HRS, including the privacy exception which allows an agency to withhold a record where disclosure would be a clearly unwarranted invasion of an individual's personal privacy. See Haw. Rev. Stat. § 92F-13(1) (1993). In other instances in which certain information "about" another individual also relates to or is intertwined with information about the requester, such information must be considered to be part of the personal record of each and is not subject to redaction for a request made by either party.

In this case, the report must also be considered to be the personal records of each of the witnesses and of the alleged assailant as their names and other information about them appear throughout portions of the report. Certain information contained in the report that is both "about" the witnesses or the alleged assailant and "about" the requester comprises the personal record of the requester and, therefore, must be disclosed to the requester without segregation in accordance with part III of the UIPA. For example, the names of the witnesses and the alleged

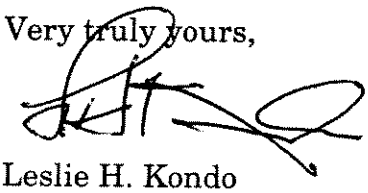
assailant, as well as the alleged assailant's photograph, relate to and are intertwined with the portions of the report that are "about" the requester and, therefore, cannot be redacted from the copy of the report that is made available to the requester.[3]

Other information, however, such as the home addresses and residence telephone numbers of the witnesses and the alleged assailant, are not "about" the requester because they are not related to or intertwined with the substance of the report. This specific information is, therefore, not part of the personal record of the requester. See Haw. Rev. Stat. § 92F-3. A request for access to this information, thus, must instead be considered to be a general record request by the requester under part II of the UIPA, subject to the exceptions to disclosure contained in that part. Viewing the request in this manner, it is our opinion that the disclosure of this information would be a clearly unwarranted invasion of the personal privacy of the witnesses and the alleged assailant and that, accordingly, this information may be withheld under section 92F-13(1), HRS.[4] See OIP Op. Ltr. No. 94-3 at 11-13 (segregation of information under section 92F-13(1)). For the same reason, it is our opinion that the social security numbers, dates of birth, ages, sexes, occupations and employer information of the witnesses may also be withheld.

CONCLUSION

We find, under the facts stated above, that UH must disclose the report to the requester under part III of the UIPA, but that under part II of the UIPA certain personal information of the other parties to the report may be redacted prior to disclosure to the requester.

Very truly yours,



Leslie H. Kondo
Cathy L. Takase

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[3] We emphasize that this opinion is limited to the question regarding disclosure of the report under part III, the personal records section of the UIPA. This opinion should not be read to mean that the report must be disclosed without redaction of, for instance, the alleged victim's and alleged assailant's names in response to a general record request made under part II of the UIPA. In response to such a request, we believe that UH should redact information such as the identity of the parties to the record where disclosure would constitute a clearly unwarranted invasion of personal privacy. See Haw. Rev. Stat. § 92F-13(1); OIP Op. Ltr. No. 94-3 (segregation of individually identifiable information under section 92F-13(1)); see also OIP Op. Ltr. No. 05-03 (agency generally should exercise its discretion to withhold a record that may implicate an individual's constitutional right to privacy).

[4] See generally OIP Op. Ltr. No. 05-03 (exercise of agency discretion); *supra* note 3.