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GOVERNOR

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LESLIE H. KONDO
DIRECTOR

November 17, 2005

VIA FACSIMILE NO. (808) 935-7855

Mr. Kevin Dayton
The Honolulu Advertiser
P.O. Box 241
Hilo, Hawaii 96721

Re: Request for Emergency 911 Tape (U RFA-P 05-039)

Dear Mr. Dayton:

You requested access to the audio tape of an emergency 911 telephone call or the transcripts of that call ("911 tape"), in which the death of a four-month old child was reported to the Hawaii County Police Department ("HCPD"). HCPD denied your request, and you sought assistance from the Office of Information Practices ("OIP"). This letter constitutes our opinion concerning HCPD's denial of your request under the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes ("HRS") (the "UIPA").

ISSUE PRESENTED

Whether HCPD may withhold from disclosure a 911 tape involving a 16-year old minor suspect who has been charged with second degree murder in the Family Court.

BRIEF ANSWER

Yes. The UIPA allows an agency to withhold a government record from disclosure where the record is made confidential by State law. Under Hawaii law, all police department records relating to proceedings brought in the Family Court are confidential, with limited exceptions. None of these exceptions allow disclosure

of the 911 tape to you and, therefore, HCPD may withhold the 911 tape under the UIPA.

FACTS

From various media reports, we understand that on October 12, 2005, HCPD received an emergency 911 telephone call from a male caller concerning an "accidental stabbing" at a Kailua-Kona address. Authorities responding to the 911 call discovered the body of a 4-month old infant who had suffered a fatal stab wound. The infant's 16-year old mother was arrested and charged in Family Court with second degree murder in connection with the stabbing death of her son.

You requested access to the 911 tape from HCPD. According to you, HCPD denied your request on the basis that the prosecutor had "claimed" the 911 tape as evidence and because the 911 tape was very "graphic."

You then appealed HCPD's denial of your record request to OIP. You cited section 571-84.6(c), HRS, as supporting your position that the 911 tape cannot be withheld. You noted that Hawaii County had provided you with copies of the 911 tapes relating to the case of an abused 9-year old child earlier this year and an airplane crash over a year ago. You also provided us with a copy of an Order entered on March 27, 1992, by the Third Circuit Court in Burnham Broadcasting Company dba KHON-TV, et al. v. County of Hawaii, Civil No. 92-061, that required HCPD and the Hawaii County Fire Department ("HCFD") to allow access in accordance with the UIPA to the tape records related to the Dana Ireland murder.

In response to your appeal, HCPD, through the Department of the Corporation Counsel, argues that, because the 911 tape involves a minor, it is confidential by statute, and therefore, the UIPA supports HCPD's withholding of the record in response to your request.[1]

DISCUSSION

The UIPA generally provides that a government record must be made accessible to a requester unless an exception to that general requirement exists. Haw. Rev. Stat. § 92F-11 (1993). For general government records, the UIPA sets forth the exceptions to disclosure in section 92F-13. The exception relied upon by HCPD, section 92F-13(4), provides that an agency may withhold "[g]overnment

[1] The bases articulated to you by HCPD as justifying its withholding of the 911 tape were not reiterated by the Department of the Corporation Counsel and, therefore, are not addressed here. However, we remind HCPD that the only exceptions to disclosure of general government records are set forth in section 92F-13, HRS.

records which, pursuant to State or federal law including an order of any State or federal court, are protected from disclosure[.]" Haw. Rev. Stat. § 92F-13(4) (1993).

HCPD asserts that section 571-84(e), HRS, is the State law that protects the 911 tape from disclosure. That section renders all police department records relating to proceedings filed in the Family Court, with certain limited exceptions, confidential. Specifically, the statute provides as follows:

> The records of any police department and of any juvenile division or section thereof, relating to any proceedings authorized under section 571-11 **shall be confidential** and shall be open to inspection and use only by persons whose official duties are concerned with this chapter, except as provided in subsections (d) and (f), sections 571-88 and 571-72(b), or as otherwise ordered by the court.[2]

Haw. Rev. Stat. § 571-84(e) (Supp. 2004) (emphasis added).

In this case, based upon the information that you provided to us and the various media reports, it is our understanding that the minor accused of the murder has been charged in the Family Court in accordance with section 571-11, HRS, and that the Family Court has not waived the confidentiality of HCPD's records, including the 911 tape, relating to the incident. Accordingly, we are of the opinion that the requested 911 tape, which is an HCPD record, is made confidential by section 571-84(e) and may be withheld from disclosure under the UIPA.

In your letter to us, you cited section 571-84.6(c) as supporting your position that the 911 tape is public. That section provides that "all legal proceedings" involving a minor who is 16 years of age or older and who is charged with certain types of felonies, one of which is murder in the second degree, are open to the public unless otherwise directed by the Family Court. By its express terms, section 571-84.6(c) applies to "legal proceedings," not to records maintained by HCPD. Accordingly, we do not interpret section 571-84.6(c) to require that HCPD's records involving a 16-year old or older minor defendant be open to the public.

Lastly, you provided us with a copy of the Third Circuit Court's Order requiring disclosure of HCPD's and HCFD's tapes, which we assume includes 911 tapes, related to the Dana Ireland murder. The Dana Ireland matter, however, did not involve a minor defendant. Thus, section 571-84(e) was not relevant to and, therefore, not considered by the Court in its decision regarding disclosure of the

[2] We note that the grant of confidentiality provided by section 571-84(e) is subject to exceptions stated therein, but we find that none of the stated exceptions are applicable to the present matter.

Dana Ireland tapes. In contrast, as discussed above, section 571-84(e) requires HCPD to maintain the confidentiality of the records relating to the matter involved here because the defendant is a minor and no court has ordered otherwise.

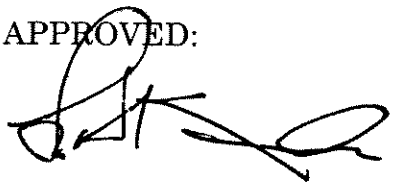
CONCLUSION

We find that, because State law requires confidentiality of the requested 911 tape in this instance, HCPD's withholding of access is in accordance with the UIPA.

Very truly yours,

Wintehn K.T. Park
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

WKTP: nkb

cc: Brandon Gonzales