December 10, 1996

Ms. Liane Moriyama, Administrator
Hawaii Criminal Justice Data Center
Department of the Attorney General
465 South King Street
Honolulu, Hawaii 96813

Dear Ms. Moriyama:

Re: Information About Requesters of Conviction Data Records

This is in response to your request of July 16, 1996, to the Office of Information Practices ("OIP") for written guidance regarding the above-referenced matter.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Hawaii Criminal Justice Data Center ("HCJDC") must allow public inspection and copying of printouts of its Computerized Criminal History Dissemination Log Inquiry Screen ("Inquiry Screen") which contain information about individuals who request conviction data ("Requesters"), and also contain the social security numbers of the convicted individuals.

BRIEF ANSWER

Yes. The HCJDC must allow public access to information about a Requester, including the dissemination date, Requester's name, requesting agency and dissemination reason. The OIP finds that Requesters do not have a significant privacy interest in their names set forth in the Inquiry Screen printouts, and the information, therefore, is not protected by the UIPA's "clearly unwarranted invasion of privacy" exception. However, information pertaining to the Requester's home address and home telephone number do fall within the UIPA's privacy exception and must be segregated to

protect the personal privacy interests of the Requesters. In addition, the social security number of the convicted person also falls within the UIPA's privacy exception and should be segregated to protect the personal privacy interests of the convicted person.

FACTS

The HCJDC maintains a database of individuals' criminal history information in accordance with chapter 846, Hawaii Revised Statutes. Members of the public may inspect and obtain copies of an individual's conviction data at the HCJDC's public access computer terminal ("public access terminal).[1] The HCJDC also maintains information it collects about every member of the public who inspects or obtains copies of the conviction data ("Requester") using the public access terminal. Your staff informed the OIP that the Requester enters information on the "Inquiry Screen" at the public access terminal. If the Requester knows the convicted person's social security number, the Requester inputs that information to initiate the conviction data search. However, if the Requester does not know the social security number of the convicted person, a written request must be made to the HCJDC for a name search. If any records are found from the name search, the HCJDC does not reveal the social security number to the Requester.

Based on our reading of confidential Inquiry Screen printouts the HCJDC sent to OIP for review, we understand that the Inquiry Screen requires the input of data for the following fields: "dissemination date," "requestor's name," "requesting agency," "address/phone," "city/state," "dissemination reason," "how furnished," "what furnished," "comments," "misc code," and "misc no." The HCJDC's database stores information that is entered at the Inquiry Screen, but does not verify it. For example, your staff told OIP that a requester could type in "XXXXX" in the "requester's name" section, and the program will still run.

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[1] See OIP Op. Ltr. Nos. 89-7 (Nov. 20, 1989) (gubernatorial pardons), and 95-15 (May 8, 1995) (disclosure of conviction data by Criminal Justice Agencies) which opined that conviction data are government records subject to public inspection and copying under the UIPA.

The Inquiry Screen is not used exclusively for conviction data searches, as the database at the HCJDC stores several different types of criminal history information and may be used to retrieve information other than conviction data. Depending upon the type of data sought, different fields on the Inquiry screen will be filled in or left blank by a Requester. For a conviction data search, the fields that are normally left blank include "how furnished," "what furnished," and "misc code." Since these fields are left blank, they are not relevant to this Opinion and will not be discussed.

The information to be inserted in the "misc no" (i.e., miscellaneous number) field depends upon the type of data requested. For a conviction data request, the information required is the social security number of the individual about whom the requester is seeking conviction data. In other types of searches, the information to be inserted could be a police report number.

In a telephone conversation on July 12, 1996, Mr. Albert Delrio informed the OIP that he applied for a job. In connection with this application, Mr. Delrio made a request to the HCJDC for information about members of the public who inspected or obtained his conviction data at the public access terminal.

DISCUSSION

Under the UIPA, the term "government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (1993). In previous OIP Opinion Letters, the OIP found that written requests seeking access to government records or information under the UIPA are themselves government records subject to the UIPA. See OIP Op. Ltr. Nos. 93-23 (Nov. 22, 1993) (record of who requested to see University of Hawai'i record of disciplinary action) and 90-37 (Dec. 17, 1990) (record of who requested to see the DCCA's filed complaints). Based on these prior OIP opinions, the OIP finds that, because the HCJDC maintains information about Requesters, this information is itself a government record for UIPA purposes.

The UIPA mandates that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat.

§ 92F-11 (1993). The UIPA lists the following exceptions to disclosure of government records: (1) government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy; (2) government records that would not be discoverable in a judicial or quasi-judicial action to which the State or county is or may be a party; (3) government records that must be kept confidential to avoid the frustration of a legitimate government function; (4) government records that are protected from disclosure by State or federal law, including State or federal court orders; and (5) personal files of legislative members, draft working papers of legislative committees, including unfiled committee reports and budget worksheets, and records of investigating committees of the Legislature that are closed pursuant to legislative rules. Haw. Rev. Stat. § 92F-13 (1993).

The OIP finds that only one of the above noted UIPA exceptions, the exception for government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, may apply in the facts before us. See OIP Op. Ltr. Nos. 90-37 at 3 (Dec. 17, 1990) and 93-23 at 3 (Nov. 22, 1993) (the only UIPA exception "that would arguably apply to the identity of a requester under part II of the UIPA" is the exception for a clearly unwarranted invasion of personal privacy).

There is no 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) (1993). To determine if there is a clearly unwarranted invasion of personal privacy, two competing interests must be balanced: an individual's personal privacy interest in keeping the information confidential versus the public interest in disclosure of the information. The public interest that should be considered is whether public disclosure of the information would shed light upon actions of government agencies or their officials. Public interest is not fostered by disclosure of personal information that reveals little or nothing about the actions, decisions, or operations of government agencies. OIP Op. Ltr. 95-10 at 7 (May 4, 1995) (citing OIP Op. Ltr. No. 89-16 (Dec. 27, 1989)).

Further, according to the UIPA's legislative history, if the privacy interest in a government record is not significant, only a "scintilla" of public interest in disclosure precludes a finding of a clearly unwarranted invasion of personal

privacy. OIP Op. Ltr. No. 95-10 at 5 (May 4, 1995) (citing S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988)).

Of the different types of information collected on the Inquiry Screen, the following pertain to individuals and, thus, a privacy interest attaches: "name of requester," "address/phone," and "misc no," which, in the case of a conviction data request, will be the social security number of the convicted person. The information contained in these fields are discussed separately below.

Names of Requesters

Whether the name of a person requesting information under the UIPA must be disclosed has been extensively discussed in previous OIP Opinion Letters. OIP Op. Ltr. Nos. 90-37 at 5 (Dec. 17, 1990); and 93-23 at 2 (Nov. 22, 1993). In these opinions, the OIP found that, except in rare and compelling situations,[2] an individual making a UIPA request does not have a significant privacy interest in the fact that this individual made a request to an agency. Consequently, an agency's disclosure of the name of an individual who made a request for a government record under the UIPA would not constitute a clearly unwarranted invasion of personal privacy. See id.

Applying the same analysis to the facts here, the OIP finds that Requesters do not have a significant privacy interest in their names, and the public has at least a "scintilla" of an interest in the disclosure of this information. Therefore, the UIPA's "clearly unwarranted invasion of personal privacy" exception does not apply, and the Requesters' names must be disclosed.

[2]One such "rare and compelling situation" was discussed in footnote 1 of OIP Op. Ltr. 90-5, wherein the OIP declined to disclose the name of a requester of that advisory opinion. The basis for this decision was that the name of a person would reveal who allegedly committed acts of child abuse although no charges were filed. To do so would amount to a clearly unwarranted invasion of personal privacy. OIP Op. Ltr. No. 90-5 at 1 (Jan. 31, 1990).

Home Addresses and Home Phone Numbers of Requesters

OIP Opinion Letter 93-23 also discussed the significant privacy interest that attaches to the home address and home telephone number of a requester of government records. In the facts of that letter, a request was made to view the records of requesters of information about complaints made against University of Hawai'i employees. Op. Ltr. No 93-23 held that, consistent with previous OIP opinion letters, information about the home addresses and phone numbers of these requesters falls within the "clearly unwarranted invasion of personal privacy" exception. Therefore, the OIP concluded that these requesters' home addresses and telephone numbers should be deleted from records of requests to inspect before the records are made available for inspection and copying by the public. OIP Op. Ltr. No. 93-23 at 6 (Dec. 17, 1990).

Applying the above analysis to the facts here, a Requester has a significant privacy interest in the Requester's home address and phone number. In balancing this significant privacy interest against the public interest in disclosure, there is no showing that disclosing the Requester's home address and phone number would shed any light on the operations of an agency or its employees. Therefore, public disclosure of the Requester's home address and phone number would constitute a clearly unwarranted invasion of personal privacy. Hence, this information should be segregated from the Inquiry Screen printout before the Requester's name is made available for public inspection and copying.

Social Security Number

According to the facts, for a conviction data request, the "misc no" may consist of the convicted individual's social security number. The OIP has held, in several OIP Opinion Letters, that an individual has a significant privacy interest in the individual's social security number. See OIP Op. Ltr. No. 91-18 (Oct. 15, 1991); see also OIP Op. Ltr. Nos. 89-4 (Nov. 9, 1989) (Hawaiian Homelands waiting list), 89-14 (Dec. 15, 1989) (location of confined inmates), 90-7 (Feb. 9, 1990) (former licensees), 91-1 (Feb 15, 1991) (massage therapist license application), 91-12 (Aug. 8, 1991) (Hawaii State employment applicant data), 92-20 (Oct. 13, 1992) (apprentices), and 95-2 (Jan. 19, 1995) (unsuccessful job applicants).

The social security number of the individual about whom conviction data is sought carries a significant privacy interest. When weighing this interest against the public interest in disclosure, there is no evidence that the operation of an agency or its employees will be brought to light by disclosure of such information. Therefore, the social security number of the convicted individual about whom conviction data was sought is protected by the UIPA's "clearly unwarranted invasion of personal privacy" exception and should be segregated from the Inquiry Screen printout before it is made available for public inspection and copying.

CONCLUSION

The HCJDC must allow inspection or copying of the printouts of its Inquiry Screen. The names of Requesters do not fall within a UIPA exception and must be disclosed on the Inquiry Screen printouts. Information which should be segregated before public disclosure of the printouts includes the home address and telephone number of the Requester, and the social security number of the convicted person. These items of information must be segregated because they fall within the UIPA's "clearly unwarranted invasion of privacy" exception to disclosure.

Very truly yours,

Carlotta M. Dias
Staff Attorney

APPROVED:

Moya T. Davenport Gray
Director

CMD:sc
c: Albert Delrio