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October 23, 2002

Mr. Walter M. Ozawa  
Deputy Administrative Director of the Courts  
The Judiciary, State of Hawaii  
Ali'iolani Hale  
417 South King Street  
Honolulu, Hawaii 96813

Re: Adjudicative Records of the Judiciary,  
Administrative Driver's License Revocation Office

Dear Mr. Ozawa:

This is in response to your request for an opinion from the Office of Information Practices ("OIP") on the above-referenced matter.

**ISSUE PRESENTED**

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the government records maintained pertaining to the non-administrative functions of the Judiciary, Office of the Administrative Director of the Courts, Administrative Driver's License Revocation Office ("ADLRO"), are subject to the UIPA.

**BRIEF ANSWER**

No. While all Hawaii State and county government records are subject to the UIPA, the UIPA's definition of agency excludes the "non-administrative functions of the courts of this State." Haw. Rev. Stat. § 92F-3 (1993). As the law which establishes the driver's license revocation process assigns its review of evidence and decision-making duties to an officer of the Judiciary, and as

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the ADLRO's principal function is adjudicative, access to the ADLRO's non-administrative records is not governed by the UIPA.

### FACTS

By letter dated February 15, 2001, the ADLRO requested a formal opinion from the OIP as to whether the ADLRO is an "agency" whose records are subject to the UIPA.

The ADLRO came into existence on August 1, 1991, after a law was passed by the Legislature providing for the immediate driver's license revocation of a suspected alcohol-impaired driver. That law has been amended and is now codified at chapter 291E, Hawaii Revised Statutes ("License Revocation Law"). The adjudicative functions of the ADLRO are assigned to the "director." Haw. Rev. Stat. § 291E-37, 291E-38 (Supp. 2001). "Director" is defined as "administrative director of the courts or any other person within the judiciary appointed by the director to conduct administrative reviews or hearings or carry out other functions related to administrative revocation." Haw. Rev. Stat. § 291E-1 (Supp. 2001).

When a driver who is suspected of being alcohol-impaired is arrested for the offense of operating a vehicle under the influence of an intoxicant,<sup>1</sup> the driver is issued a notice of administrative revocation. Haw. Rev. Stat. § 291E-33(a) (Supp. 2001). The notice of administrative revocation also

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<sup>1</sup> **§291E-61 Operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or
- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

Haw. Rev. Stat. § 291E-61 (Supp. 2001).

serves as a 30-day temporary driver's license<sup>2</sup> to allow time for a review and hearing process. Haw. Rev. Stat. § 291E-37 (Supp. 2001). The procedure for the revocation of a driver's license starts with the receipt by the administrative director of the courts, or by the director's designee, of a copy of either the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation, along with other documents and records. Haw. Rev. Stat. § 291E-36 (Supp. 2001). The issuance of the notice of administrative revocation is automatically reviewed. Haw. Rev. Stat. § 291E-37 (Supp. 2001). The person who received the notice of administrative revocation ("Respondent"),<sup>3</sup> is entitled to submit written information as to why the driver's license should not be revoked. *Id.* The ADLRO either rescinds the notice of administrative revocation or mails a written review decision to the Respondent indicating that the Respondent's license is revoked and that the Respondent has the right to request an administrative hearing. *Id.* When an administrative hearing is requested, based upon the evidence presented at that hearing, a written decision is issued by the director, or the director's designee, that either affirms or reverses the decision to revoke the Respondent's license. Haw. Rev. Stat. § 291E-38 (Supp. 2001). If the administrative revocation is sustained at that hearing, the Respondent is entitled to file a petition for judicial review. Haw. Rev. Stat. § 291E-40 (Supp. 2001).

In a case involving an alcohol related offense, the director's written review decision is required to be mailed to the Respondent eight days after the date the notice of administrative revocation was issued.<sup>4</sup> Haw. Rev. Stat. § 291E-37(a)(1) (Supp. 2001). In a case involving an alcohol related offense, if an administrative hearing is requested, a hearing is required to be scheduled to commence no later than 25 days from the date the notice of administrative revocation was issued.<sup>5</sup> Haw. Rev. Stat. § 291E-38(a)(1) (Supp. 2001).

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<sup>2</sup> "The notice shall serve as a temporary permit, unless, at the time of the arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession." Haw. Rev. Stat. § 291E-33(a) (Supp. 2001).

<sup>3</sup> "Respondent" means "a person to whom a notice of administrative revocation has been issued following an arrest for a violation of section 291E-61 or following the collection of a blood or urine sample from the person, pursuant to section 291E-21, because there was probable cause to believe that the person has violated section 291E-61." Haw. Rev. Stat. § 291E-1 (Supp. 2001).

<sup>4</sup> In a case involving a drug-related offense, the written review decision is required to be mailed to the Respondent 22 days after the date the notice was issued. Haw. Rev. Stat. § 291E-37(a)(2)(Supp. 2001).

<sup>5</sup> In a case involving a drug-related offense, the hearing is required to be scheduled to commence 39 days after the date the notice was issued. Haw. Rev. Stat. § 291E-38(a)(2) (Supp. 2001).

By means of a letter dated September 4, 2002, the ADLRO advised the OIP that the records of the ADLRO are maintained as required by section 602-5.5, Hawaii Revised Statutes, pursuant to an Order Governing Retention and Disposition of Judiciary Records filed in the Office of the Supreme Court of the State of Hawaii on December 10, 1999.

## DISCUSSION

### I. DEFINITION OF "AGENCY"

Under the UIPA, "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11 (1993). A government record is "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (1993). Thus, the UIPA applies only to government records maintained by an agency, which is defined by the UIPA as:

any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau, office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated or managed by or on behalf of this State or any county, **but does not include the non-administrative functions of the courts of this State.**

Haw. Rev. Stat. § 92F-3 (1993) (emphasis added).

To determine whether the word "courts," as used in the limitation to the UIPA's definition of "agency" set forth in section 92F-3, Hawaii Revised Statutes, includes offices such as the ADLRO, which are placed by the Legislature in the Judiciary,<sup>6</sup> the OIP must refer to the rules of statutory construction.

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<sup>6</sup> The government of Hawaii is "one in which the sovereign power is divided and allocated among three co-equal branches." *Trustees of Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154, 170-171, 737 P.2d 446, 456, *cert. denied*, 484 U.S. 898, 98 L.Ed.2d 192, 108 S. Ct. 234 (1987). Section 1 of article III of the State Constitution vests the legislative power in a legislature, section 1 of article V of the State Constitution vests the executive power in the governor, and section 1 of article VI of the State Constitution vests the judicial power in the courts.

## II. NON-ADMINISTRATIVE JUDICIARY RECORDS ARE EXEMPT FROM THE UIPA

Section 92F-3, Hawaii Revised Statutes, is ambiguous in that it is possible to infer that the term "courts" refers either to only those courts specifically enumerated in section 1 of article VI of the State Constitution,<sup>7</sup> or applies in its broadest sense to all units of the judicial branch of government. To resolve this ambiguity, the OIP must look to the rules of statutory construction.

The Supreme Court of Hawaii has stated:

When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

. . . .

This court may also consider "the reason and spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning."

Korsak v. Hawaii Permanente Medical Group, Inc., 94 Haw, 297, 303, 12 P.3d 1238, 1244 (2000).

The OIP is guided by the recommendations of the Governor's Committee on Public Records and Privacy ("Governor's Committee"), which the Legislature relied upon in drafting the UIPA.<sup>8</sup> The Report of the Governor's Committee on Public Records and Privacy ("Governor's Committee Report"), contains a comprehensive discussion of the reasons for exclusion of Judiciary records. The Governor's Committee Report indicates that "**the application of**

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<sup>7</sup> "The judicial power of the State shall be vested in one supreme court, one intermediate appellate court, circuit courts, district courts and in such other courts as the legislature may from time to time establish." Haw. Const. art. VI, § 1.

<sup>8</sup> See S. Stand. Comm. Rep. No. 2580, 14<sup>th</sup> Leg., 1988 Reg. Sess. Haw. S.J. 1093, 1095 (1988).

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... [the UIPA] to the **Judiciary** should effect (sic) primarily administrative records." Governor's Committee Report, Vol. 1, 94-5 (1987) (emphasis added). According to the Governor's Committee, the primary reason to exclude records of the Judiciary from the UIPA was based on the fact that the UIPA confers a right to correct and amend factual errors, misrepresentations and misleading entries contained in personal records.<sup>9</sup> The Governor's Committee noted that:

In the context of a judicial case, the record is established through a series of proceedings and filings. The total record provides the views of all parties, and once all appeals are exhausted, the record is complete. The notion of correcting the record through an additional process simply does not apply in specific judicial proceedings.

Governor's Committee Report, Vol. 1, 95 (1987).

Thus, by excluding the Judiciary's non-administrative records from the UIPA, conflict with judicial procedures is avoided. It is essential for appeals courts to not be required to correct adjudicative records, because appeals courts "cannot consider matters outside the record which could not have been considered by the trial court at the time its judgment was rendered." Honolulu v. Toyama, 61 Haw. 156, 158 n. 1, 598 P.2d 168, 170, n. 1 (1979).

Although the UIPA itself references "courts," the UIPA's legislative history references the "Judiciary." That legislative history indicates that the non-administrative records of the Judiciary were excluded from the UIPA to "preserve the current practice of granting broad access to the records of court proceedings," and that "**the records of the Judiciary which will be affected by this bill are the administrative records.**" 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. 1017, 1018 (1988) (emphasis added).

Both the Governor's Committee Report and the UIPA's legislative history refer to exclusion of adjudicative records of the Judiciary from the UIPA. The OIP thus opines that the term "courts" in section 92F-3, Hawaii Revised Statutes, refers to all units housed in the judicial branch of government. Thus, the government records maintained by any unit within the Judiciary that adjudicates cases would not be subject to the UIPA, unless the

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<sup>9</sup> See Haw. Rev. Stat. § 92F-24(a) (1993).

records are administrative records. The OIP therefore opines that the UIPA does not apply to the non-administrative records of the Judiciary, regardless of whether those records specifically relate to the courts listed in section 1 of article VI of the Constitution of the State of Hawaii or to other units housed within the Judiciary.

An analysis of the ADLRO's functions will determine whether it maintains non-administrative records, which are not subject to the UIPA. If the ADLRO's functions are adjudicative, then access to its non-administrative records is governed by Judiciary statutes and rules.

### III. DRIVER'S LICENSE REVOCATION IS AN ADJUDICATIVE FUNCTION

In connection with a challenge to the placement of the ADLRO in the Judiciary, the Hawaii Supreme Court has adopted the following test:

When a party challenges a statutory scheme that assigns the performance of a particular task to the judiciary, "the test is whether the statute 'authorizes the courts to perform a **function so closely connected with and so far incidental to strictly judicial proceedings** that the courts in obeying the statute would not be exercising executive or nonjudicial powers.'"

In performing the tasks assigned through the Administrative Revocation Program, officers of the judiciary are required to determine whether the police have proven that: "(1) reasonable suspicion existed to stop the vehicle; (2) probable cause existed to believe the arrestee was driving under the influence; and (3) by a preponderance of the evidence, the arrestee did in fact drive under the influence." . . . In other words, "the reviewing and hearing officers . . . are decision makers who review the evidence."

**The task of reviewing evidence and determining matters such as the existence of reasonable suspicion, probable cause, and proof of facts by a preponderance of the evidence are clearly judicial in nature . . .**

Biscoe v. Tanaka, 76 Haw. 380, 878 P.2d 719 (1994) ("Biscoe") (emphasis added) (citations omitted).

Thus, the Supreme Court has held that the tasks assigned to the ADLRO reflect judicial functions.

An analysis of previous opinions of the OIP concerning Judiciary records reveals that the OIP has consistently opined that records of the Judiciary associated with the review of evidence and decision-making are exempt from the UIPA.<sup>10</sup> In the OIP Opinion Letter Number 95-20, traffic citations maintained by the Traffic Violations Bureau of the District Court of the First Circuit, were found exempt from the UIPA, as the traffic citation is a "charging document or complaint which initiates the court proceeding against the individual cited, and thus, is specifically concerned with the adjudication of the case." OIP Op. Ltr. No. 95-20 at 7 (Aug. 21, 1995). Similarly, in the OIP Opinion Letter Number 93-11, the OIP opined that "court files connected with pending or closed Circuit court cases and proceedings are non-administrative records of the Judiciary and, . . . [the] right to inspect and copy these records is not governed by the provisions of the UIPA." OIP Op. Ltr. No. 93-11 at 3 (Sept. 14, 1993). And, in the OIP Opinion Letter Number 93-8, the OIP concluded that the records of the Board of Examiners of the Hawaii Supreme Court are not governed by the UIPA, as the Board's principal function of determining whether an applicant is qualified for admission to the Hawaii State Bar is judicial in nature. OIP Op. Ltr. No. 93-8 at 16 (Aug. 2, 1993).

On the other hand, the OIP has opined that Judiciary records associated with executive or ministerial duties of that branch of government are subject to the UIPA. In the OIP Opinion Letter Number 92-3, the OIP concluded that the Judicial Selection Commission, which is attached to the Judiciary, does not exercise a judicial function, as its functions of recommending candidates for judicial office and reviewing petitions are executive in nature. OIP Op. Ltr. No. 92-3 at 8 (Mar. 19, 1992). Similarly, in the OIP Opinion Letter Number 90-4, the OIP determined that abstracts of individuals' motor vehicle operating records compiled by the various district courts, or in the case of the Oahu District Court, the Traffic Violations Bureau, were subject to the UIPA. OIP Op. Ltr. No. 90-4 at 6 (Jan. 29, 1990). The OIP opined that, although some information contained in the abstracts reported the disposition of legal proceedings, the records were determined to be administrative in nature as

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<sup>10</sup> The OIP has previously described the Judiciary's non-administrative records as "those records which are provided to the court incident to the adjudication of a legal matter before that tribunal" such as "charging documents, complaints, motions, pleadings, clerks minutes, legal memoranda, exhibits, orders and decisions." OIP Op. Ltr. No. 90-4 at 6 (Jan. 29, 1990).

they compiled data, and did not involve the exercise of judgment or discretion by a court. Id.

The principal function of the ADLRO is judicial in nature, as was noted in Biscoe. And, the legislative history of the License Revocation Law states that before the ADLRO was established, it would often take seven or eight months for the license revocation process to work its way through the courts.<sup>11</sup> The legislative history of the License Revocation Law establishes that the Legislature's intent was to replace the prolonged court process involved in revoking a driver's license with a expeditious procedure that could take place while the driver was awaiting trial on criminal charges.<sup>12</sup> The fact that this procedure is termed "administrative" does not mean that the Legislature intended that all of the ADLRO's records be subject to the UIPA. Rather, the Legislature stated its intent that the License Revocation Law operate to quickly revoke the driving privilege while guarding against the potential for erroneous deprivation of the driving privilege. Id. The Legislature did this by creating the ADLRO, placing it in the Judiciary, and providing for due process protections. Essentially, the Legislature created a program within the Judiciary to shorten the time to make a determination as to license revocation from seven or eight months to less than 30 days. The present codification of that law continues that shortened time frame, by requiring, for alcohol related offenses, that the director complete a review within eight days, and, if a

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<sup>11</sup> Thus, in 1990, the Legislature determined that it was necessary to:

establish a quick, administrative procedure for revoking of the licenses of drunk drivers while they are awaiting trial on criminal DUI charges.

...

[t]he main benefit of administrative revocation is that it allows the State to remove a drunk driver's license before the culmination of a lengthy prosecution under the criminal statute. Currently, a person charged with driving under the influence must be allowed to continue driving until he or she is found guilty in a court of law. This process takes an average of seven or eight months in Hawaii, and even longer, and while this process is going on, the dangerous driver, who quite likely is an inveterate repeat offender, remains on the road.

Your Committee believes that it should be a clear policy of this State that persons found guilty of drunk driving should be prohibited from driving as quickly as possible. Administrative revocation will get such persons off the road in thirty days, in most instances.

S. Conf. Comm. Rep. No. 137, 15<sup>th</sup> Leg., 1990 Reg. Sess., Haw. S.J. 825 (1990).

<sup>12</sup> Id.

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hearing is requested, schedule the hearing within 25 days of the date of the issuance of the notice of administrative revocation.

The OIP therefore concludes that the ADLRO's statutory function that generates the documents contained in the ADLRO's case files is adjudicative in nature and is not simply ministerial or administrative. As concluded above, the UIPA does not apply to the non-administrative records of the Judiciary. Thus, as to the Judiciary, the UIPA applies solely to administrative records. The OIP therefore opines that the UIPA does not apply to non-administrative records of the ADLRO.

### CONCLUSION

Given that the primary function of the ADLRO is judicial in nature, the records pertaining to the ADLRO's adjudicative functions are not subject to the UIPA. The ADLRO is thus an agency for the purposes of the UIPA, only as to its records concerning its administrative functions.

Very truly yours,



Susan R. Kern  
Staff Attorney

APPROVED:



Moya T. Davenport Gray  
Director

SRK: ankd