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July 8, 2003

The Honorable Lawrence K. Mahuna
Police Chief
County of Hawaii, Police Department
349 Kapiolani Street
Hilo, Hawaii 96720-3998

Re: Police Reports

Dear Chief Mahuna:

This is in response to your request to the Office of Information Practices ("OIP") dated April 23, 2003 for an opinion on the above-referenced matter.

ISSUE PRESENTED

Whether evidence provided to a police department by complainants which constitutes a personal record under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), that is maintained in a pending police investigation file is protected from disclosure to the complainants who provided the evidence by section 92F-22(1)(A), Hawaii Revised Statutes.

BRIEF ANSWER

Yes. Section 92F-22(A)(1), Hawaii Revised Statutes, allows police departments to deny personal record requests for access to pending criminal investigation records. This section is permissive, however, and an agency may choose to disclose records rather than to invoke an exemption to disclosure.

FACTS

Two members of the public made a joint criminal complaint to the County of Hawaii Police Department ("Department"). The Police Report that was generated as a result of that complaint included an Incident Report, documents submitted by the complainants which consisted of correspondence between them and various government officials, a Hawaii Police Department Statement Form signed by both complainants, and narrative and supplemental reports of the assigned Police Officer.

While the investigative file was still with your Department¹, one of the complainants made a request for a copy of the Police Report. The Department advised the requester that, as the investigation was still ongoing, the record request was denied. The requester was subsequently given a copy of the Incident Report, documents submitted by the complainants, and the Hawaii Police Department Statement Form. You asked whether the type of documents provided by the complainants to the Department may generally be withheld in similar situations under section 92F-22(1)(A), Hawaii Revised Statutes.

DISCUSSION

The UIPA governs access to government records² generally and includes specific provisions on the treatment of personal records³ and personal record requests.

The UIPA requires an agency⁴ that maintains any accessible personal record to make that record available to the individual to whom it pertains in a reasonably

¹ The case was eventually forwarded to the Honolulu Police Department for completion as the alleged incident occurred within its jurisdiction.

² "Government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (1993).

³ "Personal record" means "any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical, or employment history, or 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).

⁴ "Agency" means "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 nonadministrative functions of the courts of this State." Haw. Rev. Stat. § 92F-3 (1993).

prompt manner and in a reasonably intelligible form. Haw. Rev. Stat. § 92-21 (1993). An agency must permit an individual access to his own personal record within ten working days⁵ following the date of receipt of a record request. Haw. Rev. Stat. § 92F-23 (Supp. 2002).

This general rule of disclosure is subject to five exemptions, and you inquired about the applicability of only the following:

§ 92F-22 Exemptions and limitations on individual access. An agency is not required by this part to grant an individual access to personal records, or information in such records:

- (1) Maintained 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 reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; . . .

Haw. Rev. Stat. § 92F-22(1)(A) (1993).

Section 92F-22, Hawaii Revised Statutes, does not focus on whether records are submitted to an agency by the person requesting access (such as a complaining party). Rather, the statute's focus is on the record maintained by the agency, not the original source of the records. Accordingly, as long as requested records relate to a criminal investigation, the OIP believes that evidence provided by a complaining party is information falling within section 92F-22(1)(A), Hawaii Revised Statutes. Moreover, it is apparent that the exemption set forth in section 92F-22(a), Hawaii Revised Statutes is intended to protect the police's ability to conduct its investigation without public interference. While arguably it would seem unlikely that the complainant who provided the information and records to the police could put an ongoing investigation into jeopardy by his or her receipt of the same information and records, the OIP will not substitute its judgment for that of the legislature. Thus, generally speaking, such records may be withheld from personal record requesters.

⁵ This ten day disclosure requirement may be extended for "unusual circumstances." Haw. Rev. Stat. § 92F-23 (Supp. 2002).

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The OIP, however, notes that section 92F-22, Hawaii Revised Statutes, is permissive, i.e. the agency receiving a personal record request relating to an ongoing investigation has the discretion to disclose the requested records even if an exemption applies. It does not *require* that agencies withhold records or information listed therein from personal record requesters. An agency may choose to waive section 92F-22, Hawaii Revised Statutes, and, as the Department did, may choose to disclose records to a personal record requester that otherwise fall into that section's list of records that need not be disclosed.⁶

CONCLUSION

Section 92F-22(A)(1), Hawaii Revised Statutes, allows police departments to deny personal record requests for evidence contained in pending investigation files. Section 92F-22, Hawaii Revised Statutes, however, is permissive, and an agency may choose to disclose records rather than invoking any exemptions to disclosure therein.

Very truly yours,



Carlotta Dias
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

CMD: ankd

⁶ Should a member of public provide the Department with evidence that does not fall into the definition of "personal record" in section 92F-3, Hawaii Revised Statutes, and later asks for a copy under the UIPA, the Department should instead look to section 92F-13, Hawaii Revised Statutes, to determine whether withholding of disclosure is appropriate.