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DEPARTMENT OF THE ATTORNEY GENERAL
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August 12, 1996

Professor Gerald Kato
Society of Professional Journalists
Student Chapter
University of Hawaii at Manoa
Crawford Hall 208
2550 Campus Road
Honolulu, Hawaii 96813

Dear Mr. Kato:

Re: Access to Timesheets of Deputy Attorneys General

This is in reply to a letter from Jahan Byrne, to the Office of Information Practices ("OIP") requesting an advisory opinion concerning whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), timesheets prepared by deputy attorneys general in connection with a complaint your organization made to the Attorney General under part I of chapter 92, Hawaii Revised Statutes, must be made available for inspection and copying. Mr. Byrne is the former President of the Society of Professional Journalists, University of Hawaii Chapter at Manoa ("SPJ").

ISSUE PRESENTED

Whether, under the UIPA, timesheets prepared by State deputy attorneys general in connection with a complaint filed with the Department of the Attorney General ("Department") by the SPJ alleging possible violations of the State's open meetings law by the University of Hawaii Board of Regents ("University") must be made available for public inspection and copying after information describing the nature of legal work performed by the deputies has been segregated from the timesheets.

BRIEF ANSWER

Yes. Only two of the UIPA's exceptions to required agency disclosure of government records in section 92F-13, Hawaii

OIP Op. Ltr. No. 96-3

Professor Gerald Kato
August 12, 1996
Page 2

Revised Statutes, would arguably permit the Department to withhold access to copies of the timesheets after information describing the nature of legal services or activities performed has been segregated from the timesheets.

Under sections 92F-13(3) and (4), Hawaii Revised Statutes, an agency is not required to make available for inspection and copying government records covered by the attorney-client privilege or attorney work-product doctrine. While several legal authorities have found that records, such as billing sheets and time tickets and timeslips that reveal the nature of the documents prepared, issues researched, or matters discussed could reveal the substance of confidential discussions between attorney and client, courts and other authorities have found that itemized billing statements that do not contain detailed entries that advise, analyze or discuss privileged communications, or that describe the attorney's services only in general terms, are not protected by the attorney-client privilege or the attorney work-product doctrine.

Additionally, under the UIPA, an agency is not required to disclose "[r]ecords or information compiled for law enforcement purposes" that "must remain confidential in order to avoid the frustration of a legitimate government function." Haw. Rev. Stat. § 92F-13(3) (Supp. 1992); S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988). Even assuming that the timesheets have been compiled for law enforcement rather than administrative purposes, in applying Exemption 7 of the federal Freedom of Information Act for guidance, as we have in previous opinion letters, we do not believe that disclosure of the timesheets involved in this case would frustrate a law enforcement function. Under the facts presented in this case, the statute of limitations has run on an action under section 92-11, Hawaii Revised Statutes, and the Department has indicated that a law enforcement proceeding in response to the SPJ's complaint is neither pending nor prospective.

For these reasons, and because none of the other exceptions in section 92F-13, Hawaii Revised Statutes, would permit the Department to withhold access to the timesheets in this case, it is our opinion that after the segregation of the activity groups and codes, these government records must be made available for inspection and copying "upon request by any person." Haw. Rev. Stat. § 92F-11(b) (Supp. 1992).

FACTS

By letter dated October 29, 1993 to former Attorney General Robert A. Marks, the SPJ alleged that the University of Hawaii

Professor Gerald Kato
August 12, 1996
Page 3

("University") committed possible violations of the State's open meetings law, part I of chapter 92, Hawaii Revised Statutes, in connection with its selection of a new University President.

In a telephone conversation with Deputy Attorney General Charleen M. Aina on February 12, 1993, among other things, Mr. Byrne requested to receive a copy of timesheets she prepared for work associated with the SPJ's open meetings law complaint. By letter to Jahan Byrne dated March 12, 1993, Deputy Attorney General Charleen M. Aina provided the SPJ with the Department's instructions concerning the preparation of timesheets by deputy attorneys general. However, the Department denied Mr. Byrne's request for copies of Ms. Aina's timesheets stating:

I realize that your facsimile today may have been prompted in part by my not having yet followed up with a copy of our timekeeping instructions which you requested when we last talked on February 12, and I apologize for being sidetracked. A copy of the material is enclosed. Soon after we spoke, I did consult with the Attorney General about the possibility of your receiving copies of my timesheets since your complaints were received, and as I anticipated when we spoke on the 12th, we believe that they are not subject to disclosure under Haw. Rev. Stat. ch. 92F.

As we have explained on various occasions over the years, while this office welcomes and needs the public's assistance to properly enforce the Sunshine Law, Haw. Rev. Stat. ch. 92, as a matter of sound law enforcement policy and practice, we do not ordinarily disclose the status or progress of our law enforcement investigations to members of the public. Consistent with this, unless the person who brings a situation to our attention serves as a witness to secure an indictment, the public, including persons who bring situations to our attention, learns about these situations only after an indictment is obtained and judicial proceedings are initiated. Thus, as I believe I explained specifically during a telephone conversation with you soon after receiving your October 29, and November 2,

Professor Gerald Kato
August 12, 1996
Page 4

1993 letters, we will not tell you how your complaints are, will or have been handled.

Letter from Charleen M. Aina to Jahan Byrne (March 12, 1993).

Chapter XI of the Legal Services Procedure Manual, Department of the Attorney General, State of Hawaii (Aug. 1, 1992) ("Legal Services Procedure Manual"), requires all deputy attorneys general to complete timesheets for each working day, concerning the nature and time spent working on legal matters. A copy of the Department's timesheet form is attached as Exhibit "A."

In Column No. 1 of the timesheet form each deputy is required to enter either the "AG#" or keyword, which is generated by the Department's case information system. Column No. 2 of the timesheet form requires each deputy to enter an "activity group" code that corresponds to the type of work being performed, for example, "L" for litigation, "A" for advice and counsel, "B" for legislation, "M" for miscellaneous, and "F" for firm.

In Column No. 3 of the timesheet form, deputy attorneys general are required to enter "activity codes" that more clearly identify the specific activity being performed by the deputy, for example, "A DP" for appearance at deposition, "A LH" for appearance at legislative hearing, and "M C" for meeting with client. A copy of the "activity group" codes and "activity codes" is attached as Exhibit "B." Column No. 4 of the Department's timesheet form contains space for the entry of the time spent by the deputy performing the task rounded to the nearest tenth of an hour, while Column No. 5 allows for the entry of additional information or notes or descriptive information.

Data entered on the Department's timesheets by each deputy attorney general is placed in the Department's computerized Rapid Information Retrieval System ("RIRS") which resides in the Department's Wang VS minicomputer. According to section C.1 of chapter XI of the Legal Services Procedure Manual, the failure of a deputy attorney general to enter all work-related time into the RIRS will negatively affect raises that the deputy may be eligible to receive. Specifically, "the percentage salary increase that the deputy is eligible to receive will be reduced by up to 1% for every five days of unentered time."

Once timekeeping information has been entered into the RIRS by Department personnel, the paper timesheet forms are returned to each deputy, who may either keep or discard them, unless they are related to a matter in which the Department expects to make a request for an award of attorneys fees or seek sanctions under Rule 11 of the Hawaii Rules of Civil Procedure.

The Department informed the OIP that after reviewing the SPJ's complaint, a determination was made, for whatever reason, not to take official action upon the complaint.¹ Thus, the Department has closed its file in this matter and, indeed, under section 92-11, Hawaii Revised Statutes, the statute of limitations has run upon any suit to void any final action of the University upon proof of a willful violation.

On August 29, 1993 Mr. Byrne clarified, in a telephone conversation, that the SPJ is seeking copies of timesheets prepared by deputy attorneys general in responding to the SPJ's open meetings law complaint against the UH, after information identifying the activity groups and activity codes have been segregated, or removed, from the timesheets. In other words, the SPJ is specifically interested in how much time was spent by deputy attorneys general in response to its complaint; it is not interested, at this time, in ascertaining the specific activities in which the deputies were engaged.

In a memorandum dated September 30, 1993, Deputy Attorney General Charleen M. Aina provided the OIP with copies of timesheets that, to the best of her recollection, record the time she spent engaged in activities relating to meetings by the University of Hawaii to select a new president.

DISCUSSION

I. INTRODUCTION

The UIPA requires each agency, upon request by any person, to make government records available for inspection and copying during regular business hours, Haw. Rev. Stat. § 92F-11(b) (Supp. 1992), unless exempted by section 92F-13, Hawaii Revised Statutes. 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 (Supp. 1992).

At the outset, it is useful to set forth a few principles that guide our resolution of the issue raised by this opinion request. Our construction of the UIPA must be guided by the policy favoring disclosure and its exceptions to required agency disclosure must be narrowly construed. See OIP Op. Ltr. No.

¹Under section 92-12(a), the attorney general and the prosecuting attorney are authorized to enforce the open meetings law.

Professor Gerald Kato
August 12, 1996
Page 6

93-10 at 2, n.1 (Sept. 2, 1993).² This rule of construction, however, is not determinative. Indeed, although the UIPA was intended as a general matter to promote openness in government, see section 92F-2, Hawaii Revised Statutes, the UIPA also recognizes competing interests, and the need for some governmental records to remain confidential. See Haw. Rev. Stat. §§ 92F-2, 92F-13, and 92F-14 (Supp. 1992) and (Comp. 1993).

With these principles in mind, we turn to an examination of whether, under any of the exceptions in section 92F-13, Hawaii Revised Statutes, timesheets or timekeeping information maintained by the Department in response to the SPJ's open meetings law complaint may be withheld from inspection and copying.³ Only two exceptions in section 92F-13, Hawaii Revised Statutes, would arguably permit the Department to withhold access to the timesheets involved in the facts of this case.

²As the United States Supreme Court has noted, the purposes of freedom of information laws are to facilitate public access to government information and "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." John Doe Agency v. John Doe Corp., 493 U.S. 146, 151 (1989). Consistent with these purposes, the strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents. Id.; see also Haw. Rev. Stat. §§ 92F-11(b) and 92F-15(b) (Supp. 1992).

³Timesheets possessed by deputy attorneys general, or timekeeping information entered into the Department's RIRS constitute "government records" because: (1) this information exists in written, electronic, or other physical form; (2) the information is "maintained" by the Department; and (3) the Department is an "agency" subject to the UIPA. In several OIP opinion letters, we concluded that an agency "maintains" information for purposes of the UIPA, if an agency "holds, possesses, preserves, retains, stores, or administratively controls" the information in question. OIP Op. Ltr. No. 91-5 (Apr. 15, 1991), OIP Op. Ltr. No. 91-25 (Dec. 11, 1991), OIP Op. Ltr. No. 91-29 (Dec. 23, 1991), OIP Op. Ltr. No. 92-11 (Aug. 8, 1992), OIP Op. Ltr. No. 92-15 (Aug. 14, 1992), OIP Op. Ltr. No. 92-17 (Sept. 2, 1992), and OIP Op. Ltr. No. 92-25 (Dec. 22, 1992). Even though timesheets are returned to each deputy attorney general after the information has been entered into the RIRS, we believe that the Department retains administrative control over the timesheets. See OIP Op. Ltr. No. 91-5 at 7 (Apr. 15, 1991) (information is "maintained" if it is possessed or controlled in any way by an agency).

II. FRUSTRATION OF A LEGITIMATE GOVERNMENT FUNCTION

Under section 92F-13(3), Hawaii Revised Statutes, an agency is not required by the UIPA to disclose "[g]overnment records that, by their nature, must be confidential in order to avoid the frustration of a legitimate government function."

We have previously opined that under this exception, and section 92F-13(4), Hawaii Revised Statutes, an agency may withhold access to government records that are within the scope of the attorney-client privilege recognized by Rule 503, Hawaii Rules of Evidence, chapter 626, Hawaii Revised Statutes, or records protected by the attorney work-product doctrine. OIP Op. Ltr. No. 91-23 (Nov. 8, 1991); see also OIP Op. Ltr. No. 93-15 (Sept. 30, 1993) (section 92F-13(4), Hawaii Revised Statutes, applies to information that is privileged under the Hawaii Rules of Evidence).

A. Attorney-Client Privilege

Rule 503(b) of the Hawaii Rules of Evidence provides:

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative, or (2) between his lawyer and the lawyer's representative, or (3) by him or his representative or his lawyer or a representative of his lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

But for an exception that is inapplicable to the facts present here, our research indicates that the attorney-client privilege generally does not extend to such matters as the identity of the attorney's client or the client's fee arrangements. Edna Selen Epstein and Michael M. Martin, The Attorney-Client Privilege and the Work-Product Doctrine at 21 (2d ed. 1989); In re Grand Jury Subpoenas, 803 F.2d 493 (9th Cir. 1986).

Professor Gerald Kato
August 12, 1996
Page 8

Several authorities have found that documents, such as billing sheets and time tickets, that reveal the nature of the documents prepared, issues researched, or matters discussed could reveal the substance of confidential discussions between attorney and client. See Gonzalez Crespo v. Wella Corp., 774 Supp. 688 (D.C. D. Puerto Rico 1991); Matter of Witnesses Before Sp., 729 F.2d 489, 495 (7th Cir. 1984); U.S. v. Sherman, 627 F.2d 189, 192 (9th Cir. 1980); In re Grand Jury Witness, 695 F.2d 359, 362 (9th Cir. 1982). In contrast, courts and other authorities have found that itemized billing statements that do not contain detailed entries that advise, analyze or discuss privileged communications, or that describe the attorney's services only in general terms, are not protected by the attorney-client privilege. See Tipton v. Barton, 747 S.W.2d 325 (Mo. App. 1988).

Likewise, in Kentucky Attorney General Opinion No. 92-14 (Jan. 30, 1992), the Kentucky Attorney General opined that bills and statements submitted to a city by a law firm were not protected from disclosure under an exception in the Kentucky Open Record Act for materials covered by the attorney-client privilege, when the documents only revealed the general nature of the services provided. The opinion concluded, however, that should the bills and statements disclose substantive legal matters, that information should be separated from the non-exempt materials, and the non-exempt materials released.

The SPJ has asked for copies of the timesheets prepared by deputy attorneys general after information describing the nature of the services or activities has been segregated from the timesheets. Accordingly, we need not decide whether descriptive information in the timesheets would reveal substantive legal matters in other than general terms. Based upon the foregoing authorities, we conclude that timesheets prepared by deputy attorneys general in this case (after descriptive information has been segregated from the timesheets) would not be within the scope of the attorney-client privilege recognized under sections 92F-13(3) and (4), Hawaii Revised Statutes.

B. Attorney Work Product Doctrine

The work product doctrine protects all documents and tangible things prepared in anticipation of litigation or trial. Haw. Rule Civ. Pro. 26(b)(3). The doctrine was designed to prevent "'unwarranted inquiries into the files and mental impressions of an attorney' and recognizes that it is 'essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.'" Simon v. G.D. Searle & Co., 816 F.2d 397, 402 (8th Cir.) (quoting Hickman v. Taylor, 329 U.S. 495 (1987)). The work-product doctrine is broader than the attorney-client privilege. In re

Professor Gerald Kato
August 12, 1996
Page 9

Murphy, 560 F.2d 326, 337 (8th Cir. 1977). If the information is not prepared "in anticipation of litigation or trial," it is not subject to work product immunity. Diversified Indus. Inc. v. Meredith, 572 F.2d 596, 603-04 (8th Cir. 1978).

There are two types of protected work product. "Ordinary" work product is subject to production only upon a showing of substantial need and inability to secure the substantial equivalent without undue hardship. In re Chrysler Motors Corp. Overnight Evaluation Program Litg., 860 F.2d 844, 846 (8th Cir. 1988). "Opinion" work product includes documents that contain mental impressions, conclusions or opinions of an attorney and is discoverable only in "rare and extraordinary circumstances." Id. at 846. Opinion work product is virtually immune from discovery. In re Grand Jury Proceedings, 473 F.2d 840, 848 (8th Cir. 1973).

Our research has disclosed only a few court decisions involving the issue whether attorney billing statements are protected by the attorney work-product doctrine. In Colonial Gas Co. v. Aetna Cas. & Sur. Co., 144 F.R.D. 600 (D. Mass. 1992), for example, the court held that documents concerning the billing and payment of fees are not protected from disclosure unless the time records and statements reveal the nature of the services provided, reasoning:

A number of these documents concern billing and payment of fees neither disclosed or billed to the defendant. Documents regarding the payment of fees, billing and time expended are generally subject to discovery. In re Grand Jury Proceedings, 680 F.2d 1026, 1027 (5th Cir. 1982) (matters involving the payment of fees generally not protected by the attorney-client privilege); see generally, 4 Moore's Federal Practice, para. 26.60[2] & n. 8 (1991) (factual circumstances surrounding the attorney-client relationship are discoverable).

Colonial Gas Co., 144 F.R.D. at 607.

Similarly, in Bierter Co. v. Blomquist, 156 F.R.D. 173 (D. Minn. 1994), the court held that attorney billing statements were materials assembled "in the ordinary course of business . . . or for nonlitigation purposes are not [protected by work product qualified immunity]." Brieter, 156 F.R.D. at 180; accord Rayman v. American Charter Fed. Sav. & Loan Ass'n, 148 F.R.D. 647, 660 (D. Neb. 1993) (attorney billing statements and timeslips not transmitting legal advice of any kind not subject to the work-product doctrine or attorney-client privilege).

Likewise, in Real v. Continental Group, Inc., 116 F.R.D. 211 (N.D. Cal. 1986), the court found that while the production of detailed itemizations that would reveal the nature of legal services provided would be protected by the work-product doctrine, the court found that "simply the number of hours billed, the parties' fee arrangement, costs and total legal fees paid do not constitute privileged information." Real, 116 F.R.D. at 214.

Based upon the foregoing authorities, and because the SPJ is seeking copies of timesheets after information concerning the nature of the legal services provided has been segregated from the timesheets, the timesheets would not be protected from disclosure by the attorney work-product doctrine.

C. Records or Information Compiled for Law Enforcement Purposes

In Senate Standing Committee Report No. 2580, dated March 31, 1988, the Legislature set forth examples of information that may be withheld by an agency if its disclosure would result in the frustration of a legitimate government function. Among other examples, the Legislature included "[r]ecords or information compiled for law enforcement purposes." Id.

We shall assume for purposes of this opinion that timesheets prepared by deputy attorneys general in response to the SPJ's complaint letter constitute records or information "compiled for law enforcement purposes," even though this information was arguably prepared for the agency's administrative purposes only.⁴

In determining whether the disclosure of records or information compiled for law enforcement purposes would result in the frustration of a legitimate government function, in previous opinion letters, we have applied Exemption 7 of the federal

⁴The Department's Legal Services Manual states, "[t]he performance of legal assignments in the most efficient and effective manner is a main goal for the department . . . [i]t is therefore imperative that this department carefully manage time spent on legal matters." The General Office Manual of the Department of the Attorney General at III-7 (Rev. 11/94) states:

DEPARTMENTAL TIMEKEEPING SYSTEM

The Department's timekeeping system serves a number of related functions. The most important relate to the accountability of the Department's lawyers to their clients and the management of the Department.

Professor Gerald Kato
August 12, 1996
Page 11

Freedom of Information Act, 5 U.S.C. § 552(b)(7) (1988) ("FOIA") for guidance.⁵ Exemption 7 of FOIA permits federal agencies to withhold:

[R]ecords or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority . . . and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation . . . information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F)

⁵Our reliance upon FOIA's Exemption 7 for guidance in construing the UIPA's exception for law enforcement records is consistent with decisions by courts in other states when construing open records law exceptions for law enforcement records. See, e.g., Citizens for Better Care v. Dep't of Public Health, 215 N.W.2d 576 (Mich. 1974); Lodge v. Knowlton, 391 A.2d 893 (N.H. 1978) (in absence of legislative standards, FOIA's Exemption 7 adopted for guidance); see also H.R. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988) ("[w]ith regard to law enforcement records, your Committee considered the concerns from the police department and the press, and deleted this from the subparagraph in its entirety, adopting similar language from the federal [FOIA]"). We do not believe the Legislature intended to give categorical protection to all records or information compiled for law enforcement purposes. Had it meant to do so, it could have expressly provided an exemption for law enforcement records in section 92F-13, Hawaii Revised Statutes.

Professor Gerald Kato
August 12, 1996
Page 12

could reasonably be expected to endanger the life or physical safety of any individual.

5 U.S.C. § 552(b)(7) (1988) (emphasis added).

Additionally, in 1986, Congress created an entirely new mechanism for protecting certain especially sensitive law enforcement matters under a new subsection (c) of the FOIA which provides:

Whenever a request is made which involves access to records described in subsection (b)(7)(A) and --

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

5 U.S.C. § 552(c) (1988) (emphasis added).

When an agency receives a request for records covered by section (c) of FOIA, the agency may notify the requester that there exist no records responsive to the person's FOIA request:

The (c)(1) exclusion now authorizes federal law enforcement agencies under specified circumstances, to shield the very existence of records of ongoing investigations or proceedings by excluding them entirely from the FOIA's reach. To qualify for such exclusion from the FOIA, the records in question must be those which would otherwise be withheld in their entireties under Exemption 7(A). Further, they must relate to an "investigation or proceeding [that] involves a possible violation of

criminal law." Hence, any records pertaining to a purely civil law enforcement matter cannot be excluded from the FOIA under this provision

Next, the statute imposes two closely related requirements which go to the heart of the particular harm addressed through this record exclusion. An agency determining whether it can employ (c)(1) protection must consider whether it has "reason to believe" that the investigation's subject is not aware of its pendency and that, most fundamentally, the agency's disclosure of the very existence of the records in question "could reasonably be expected to interfere with enforcement proceedings."

Obviously, where all investigatory subjects are already aware of an investigation's pendency, the "tip off" harm sought to be prevented through this record exclusion is not of concern.

U.S. Department of Justice, Office of Information and Privacy, Freedom of Information Act Guide & Privacy Act Overview at 222-223 (Sept. 1992) (emphases added).

Turning to Exemption 7(A) of FOIA, the application of this Exemption requires a two-step analysis focusing upon: (1) whether a law enforcement proceeding is pending or prospective; and (2) whether release of information about it could reasonably be expected to cause some articulable harm.

With regard to the first step of the Exemption 7(A) analysis, the legislative history as well as judicial interpretations of congressional intent make clear that Exemption 7(A) was not intended to "endlessly protect material simply because it [is] in an investigatory file." NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 232 (1978). Rather, Exemption 7(A) is temporal in nature and, as a general rule, may be invoked as long as the proceeding remains pending, or so long as the proceeding is fairly regarded as prospective or as preventative.⁶

⁶Exemption 7(A) of FOIA may also be invoked where: (1) an investigation, although in a dormant stage, "is nonetheless an 'active' one which will hopefully lead to a 'prospective law enforcement proceeding,'" see National Public Radio v. Bell, 412

(continued...)

Professor Gerald Kato
August 12, 1996
Page 14

See Seegull Mfg. Co. v. NLRB, 741 F.2d 882, 886-87 (6th Cir. 1984); Barney v. IRS, 618 F.2d 1268, 1273-74 (8th Cir. 1980) (once enforcement proceedings are "either concluded or abandoned, exemption 7(A) will no longer apply").

In our opinion, disclosure of timesheets in this case maintained by the Department or deputy attorneys general in connection with the SPJ's complaint at this time could not "reasonably be expected to interfere with enforcement proceedings," since: (1) the statute of limitations under section 92-11, Hawaii Revised Statutes, has run, and (2) the Department has confirmed that no enforcement proceeding is prospective or contemplated.

There may well be circumstances under which the disclosure of timesheets prepared by deputy attorneys general in connection with a civil or criminal law enforcement investigation could interfere with enforcement proceedings, by among other things, tipping off investigatory subjects (who are otherwise unaware of the pendency of such an investigation), of the existence of an investigation. However, the threat of such interference is not present based upon the facts in this case, especially where the subject of the investigation, the University, should have been aware of the existence of the SPJ's complaint. See Exhibit "C."

Based upon the foregoing authorities, it is our opinion that copies of timesheets prepared by deputy attorneys general as a result of the complaint filed by the SPJ dated October 29, 1992, are not records or information compiled for law enforcement purposes, "which must be confidential in order to avoid the frustration of a legitimate government function." Haw. Rev. Stat. § 92F-13(3) (Supp. 1992).

Additionally, because: (1) the disclosure of such timesheets, in our opinion, would not otherwise frustrate a legitimate government function, (2) such records are not specifically protected from disclosure by State or federal law, see section 92F-13(4), and (3) disclosure of the timesheets would not constitute a clearly unwarranted invasion of personal privacy, it is our opinion that these government records must be available for inspection and copying upon request by any person,

⁶(...continued)

F. Supp. 509, 514 (D.D.C. 1977), or (2) after an investigation is closed, the disclosure could be expected to interfere with a related, pending enforcement proceeding. New England Medical Ctr. Hosp. v. NLRB, 548 F.2d 377, 386 (1st Cir. 1976); Freedburg v. Dep't of the Navy, 581 F. Supp. 3, 4 (D.D.C. 1982).

Professor Gerald Kato
August 12, 1996
Page 15

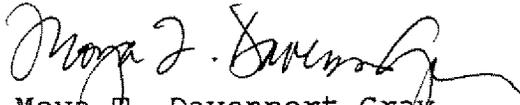
after information describing the nature of the legal work performed has been segregated from the timesheets.

CONCLUSION

For the reasons set forth above, after information describing the specific nature of the work performed by a deputy attorney general has been segregated from timesheets related to the processing of the SPJ's complaint dated October 29, 1992, the OIP concludes that timesheets must be made available for inspection and copying upon request by any person, since we find that none of the exceptions in section 92F-13, Hawaii Revised Statutes, would authorize the Department to withhold access to the same.

If you should have any questions regarding this opinion, please contact me at 586-1400.

Very truly yours,


Moya T. Davenport Gray
Director

Hugh R. Jones
Staff Attorney

MTDG/HRJ:sc
Attachments

c: Jahan Byrne

Honorable Margery S. Bronster
Attorney General

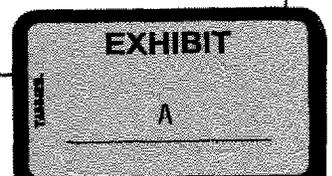
Charleen M. Aina
Deputy Attorney General

ATTORNEY: _____

DATE: _____

DAY: S M T W TH F SA

	AG # OR KEYWORD	ACTIVITY GROUP	ACTIVITY CODE	TOTAL TIME	NOTES/DESCRIPTION OF SERVICE
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					



ACTIVITY GROUPS & CODES

ACTIVITY GROUPS

L = Litigation

A = Advice & Counsel

M = Miscellaneous

B = Legislation

F = Firm

P = Paralegal (*Legal Assistant*)

ACTIVITY CODES

(Who/What/Where/Why)

A Appearance

AD Alternative Dispute Resolution
AH Administrative Hearing
CT Court Hearing
DP Deposition
LH Legislative Hearing
O Other
P Public

C Clerical

D Documents

BD Own bill (drafting/editing)
BR Others' bills (review/editing)
D Non-legis, own drafting/editing
GR Drafting Gov's Reports
R Review/editing non-legis docs by others
T Drafting testimony
V Drafting veto docs

M Meetings

A As counsel to ch 91 or 92 hrg or mtg
C With client including phone calls
D With other DAGS
F Member of committee or at other meeting where matters other than ones with AG # are discussed
M Member of committee (AOR, LRC) where matters with AG # are discussed
O Other
P As presenter

O Other

P Preparation

AD Alternative Dispute
AH Administrative Hearing
CT Court
DP Deposition
LH Legislative Hearing
M Meeting
O Other
P Public Appearance
TE Trainee
TR Trainer

R Research

F Fact gathering, all means except discovery
L Legal including library work, Westlaw

S Supervision

F Form
S Substance

T Training

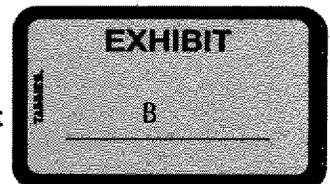
C Client
TE As trainee
TR As trainer

V Travel

(CODES FOR FIRM USE ONLY)

G General

CS Community Service
AT Administrative
LV Leave of Absence
NW News Media Contact



DEFINITION OF ACTIVITY GROUPS & CODES

L LITIGATION

Any work activity related to the preparation and presentation of a matter to an independent decision-maker such as a judge, administrative hearings officer, or a regulatory board. The key element in litigation activities is the need to use advocacy skills in an effort to persuade the decision-maker to favor the position advanced by the attorney.

A ADVICE & COUNSEL

Any work activity which does not immediately relate to the preparation or presentation of a matter to an independent decision-maker. For instance, reviewing documents for legal sufficiency or form, interpreting statutes for client agencies, and advising regulatory boards and commissions are examples of nonlitigation activities. Some work activities may be difficult to distinguish from litigation activities because of the environment the work takes place. For example, in a contested case hearing before a regulatory board, a deputy may be assigned to advise the board while another deputy is responsible for presenting an agency's case. The time for the deputy advising the board would be considered nonlitigation activity since the function of that deputy is as an advisor rather than as an advocate.

M MISCELLANEOUS

Work performed FOR A CLIENT with NO SPECIFIC MATTER TYPE. Examples include informational presentations or training for the client, potential claims to a client, meetings with agencies to keep them informed of current or pending legal work, etc.

B LEGISLATION

Includes all legislative activities such as bills, resolutions, etc. Any legislative activity performed at the request of any member of the legislature, including the Legislative Sibling Program, should be logged to the client "Legislator." Reports to the Governor should be logged to client "Governor". Testimony, research, etc. that have criminal/enforcement benefits (*e.g. DUI bills*) for the State as a whole should be logged to client "State - Criminal". AG specific bills should be logged to client "AG". If you are drafting/reviewing bills, preparing testimony/resolutions, etc. for your client, log to the specific client.

F FIRM

All firm time activities. Examples include general AG training, clerical activities not supporting a client matter, community service, leaves of absence, supervisors' meeting, etc.

P PARALEGAL

Work that can be delegated by the attorney and pre-hearing proceedings.

APPEARANCE CODES

- A AD Appearance at Alternative Dispute proceeding. Time spent before an arbitrator, mediator, and other alternative personnel to court and administrative hearings. Includes pre-trial and pre-hearing proceedings.
- A AH Appearance at Administrative Hearing. Time spent before a hearing officer, commission, board or administrative law judge or decision maker. Includes pre-trial and pre-hearing proceedings.
- A CT Appearance at Court. Time spent before a judge and/or jury as a decision maker. Includes motion hearings, and settlement and pre-hearing conferences, and appearances in appellate courts.
- A DP Appearance at DePosition.
- A LH Appearance at Legislative Hearing. Time spent attending or testifying at legislative hearings.
- A O Appearance at Other proceeding.
- A P Appearance at Public meeting, gathering, proceeding.

CLERICAL CODE

- C Time spent doing what a secretary or clerk should do, excluding word processing if the DAG prefers to draft at the computer, but including photocopying, deliveries, typing, etc. Timekeeping is clerical.

DOCUMENTS CODES

- D BD Document Bill Drafting; creating and editing bills.
- D BR Document Bill Review; reviewing, approving, or editing bills created by someone else.
- D D Document Drafting/editing; documents include *own* correspondence, pleadings, discovery material, briefs, memos, leases, conveyances, contracts, mortgages, bid specifications, etc., but not legislative material.
- D GR Document Governor's Reports; creating, editing reports to Governor on passed bills.
- D R Document Review, approval as to form, or editing; documents include correspondence, pleadings, discovery material, briefs, memos, leases, conveyances, contracts, mortgages, bid specifications, etc., BUT NOT legislative material, *created by someone else*.
- D T Document Testimony; preparing testimony about a bill.
- D V Document Veto; preparing statement of objections and proclamation.

MEETING CODES

- M A** Meeting Advising board or commission during a chapter 91 or 92 type hearing.
- M C** Meeting with Client, including telephone calls.
- M D** Meeting with other DAGs.
- M F** Meeting w/in Firm; time spent as a member of a committee or at a meeting, but does not include discussing matters with AG #'s, e.g., Management Committee, Supervisors' Mtg, Training Committee, Division Mtg.
- M M** Meeting as Member of committee discussing matters with AG #'s. (*AORC, LRC, and Division Meeting*). This includes reading/discussing the matter time.
- M O** Meetings, not Otherwise described above but not legislative hearings.
- M P** Meeting as Presenter; time spent making a presentation to a committee like AOR, LRC, but not to testify before legislative committee.

OTHER CODE

- O** Other; for items not covered elsewhere, e.g. case review, settlement review, investigations of potential claims; preventive law, mtgs w/ agencies to keep them informed of current/pending legal work.

PREPARATION CODES

- P AD** Preparation for Alternative Dispute resolution proceeding; outlining argument, rehearsing presentation, preparing witnesses (*even if witness is client*), and reviewing the files and notes, just before proceeding.
- P AH** Preparation for Administrative Hearing; outlining argument, rehearsing presentation, preparing witnesses (*even if witness is client*), and reviewing the files and notes, just before hearing.
- P CT** Preparation for Court; outlining argument, rehearsing presentation, preparing witnesses (*even if witness is client*), reviewing files and notes, just before hearing.
- P DP** Preparation for DePosition.
- P LH** Preparation for Legislative Hearing.
- P M** Preparation for Meeting (*excluding AORC, LRC, and division meeting preparation*).
- P O** Preparation Other; non-specific preparation activities relating to preparing to present a matter before a hearing (*court, administrative, alternative dispute resolution*) other than described above.
- P P** Preparation for Public appearance.

- P TE** Preparation for training as a TrainEe; time spent preparing for the informational presentation/training as a trainee, for client or firm.

- P TR** Preparation for training as a TrainER; time spent preparing for the informational presentation/training as a trainer, for client or firm.

RESEARCH CODES

- R F** Research-Facts; fact gathering activities including investigations by Investigations Division but not formal discovery procedures or activities.

- R L** Research-Legal; time spent in library, w/book, on Westlaw, etc., but not drafting or in meetings.

SUPERVISION CODE

- S F** Supervisor's time spent meeting, reviewing, editing, or discussing deputies' work as to Form.

- S S** Supervisor's time spent meeting, reviewing, editing, or discussing deputies' work as to Substance.

TRAINING CODES

- T C** Training Client; actual spent making the informational presentation or training of client or client agencies.

- T TE** Training as a TrainEe; time spent in training/conference activities as a trainee or attendee.

- T TR** Training as a TrainER; time spent in training/conference activities as a trainer.

TRAVEL CODE

- V** TraVel; work-related travel for discovery, hearings, conferences, meetings, training, etc. for clients or firm. (*For firm time travel only - log only the time which falls within normal work hours, e.g. 8:30 - 5:15*)

GENERAL CODES (Used only with FIRM activity group code)

- G CS** Community Service; time spent in a non-leave status which benefits the public, including time spent as court annexed arbitrator, bar association work and judicially created committees.

- G AT** All Administration Time except committee/meeting time, e.g., reading advance sheets, assignments, mail routing.

- G LV** LeaVe of absence; includes, vacation and sick days, and administrative, military, death in family leaves.

- G NW** NeWs media contact; includes press release drafting and review, press conferences and preparation for them.

CLIENT DEPARTMENT'S GENERIC AG NUMBER

Generic AG Numbers are used when a brief response is necessary to a client's question or inquiry relating to matters with **NO AG #**, e.g. general inquiry, potential legal action, brief advice on a matter, etc., or multiple case/matters discussed within a short period of time, e.g. fifteen minutes.

Note: "YY" represents the current calendar year, and will change to reflect each new calendar year. For example, in calendar year 1989, YY = 89, whereas calendar year 1990, YY =90.

<u>Client Department/Office</u>	<u>AG No.</u>	<u>Keyword</u>	<u>Client Department/Office</u>	<u>AG No.</u>	<u>Keyword</u>
Agriculture	YY-98000	GN-DOA	Personnel Services	YY-98750	GN-DPS
Accounting & General Services	YY-98050	GN-DAGS	Taxation	YY-98850	GN-TAX
Attorney General	YY-98100	GN-AG	Transportation	YY-98900	GN-DOT
Budget & Finance	YY-98200	GN-B&F	University of Hawaii	YY-98950	GN-UH
Business & Economic Dev.	YY-98150	GN-DBED			
Commerce & Consumer Affairs	YY-98250	GN-DCCA	City & County of Honolulu	YY-99350	GN-HONOLULU
Corrections	YY-98350	GN-DOC	County of Hawaii	YY-99400	GN-HAWAII
Defense	YY-98300	GN-DOD	County of Kauai	YY-99450	GN-KAUAI
Education	YY-98400	GN-DOE	County of Maui	YY-99500	GN-MAUI
General Public - Civil	YY-99100	GN-GPCI			
General Public - Criminal	YY-99150	GN-GPCR			
Governor	YY-98450	GN-GOV			
Hawaiian Affairs	YY-99300	GN-OHA			
Hawaiian Home Lands	YY-98500	GN-HHL			
Health	YY-98550	GN-DOH			
Human Services	YY-98800	GN-DHS			
Judiciary	YY-99050	GN-JUD			
Labor & Industrial Relations	YY-98600	GN-DLIR			
Land & Natural Resources	YY-98650	GN-DLNR			
Legislature	YY-99000	GN-LEG			
Lieutenant Governor	YY-98700	GN-LGOV			
			<u>For Legislative Division Only</u>		
			Leg. Bills - Review & Referral	YY-99200	GN-REFERRAL
			Leg. Bills - Final Review	YY-99250	GN-FINAL

ADDENDUM #1 TO TIMEKEEPING CODES (REVISED 12/89)
LEGISLATION

INTRODUCTION

Because the demands on legislative matters occur primarily in a selected period of time with stringent deadlines, timekeeping on these matters should be made as simple as possible, while still attempting to capture time spent on legislative matters. Therefore, for timekeeping purposes only, these guidelines are set forth.

GENERAL INFORMATION

Generally, legislative matters fall into three phases: the Administrations' proposal phase, the bill phase and the passed bill phase. All three general phases involve a referral process within our department, i.e. legislative deputy, to division supervisor, to deputy for assignment.

Legislative activities where the agency you service may call you on legislative matters on their own, should be charged to that agency. The generic numbers YY-99200 (Leg. Bills - Review and Referral) and YY-99250 (Leg. Bills - Final Review) are to be used by Legislative Attorney Coordinator only.

1. ADMINISTRATION'S PROPOSAL PHASE

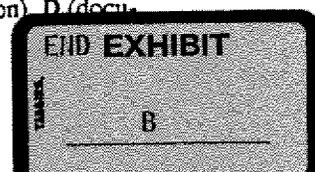
- a. Refers to potential bills/resolutions initiated by a governmental agency that may become part of the Administration's package to the Legislature.
- b. Time spent on this activity is charged to the specific agency initiating the proposal. Use the generic client code when spending a brief time on a matter or matters. Use the created AG # when spending .3 hours or more on the matter or matters.
- c. For proposals that may be initiated by an agency, but in your opinion are for the "public interest", such as DUI proposals, then client is STATE-CRIMINAL or non-criminal matters to STATE-CIVIL.
- d. The majority of timekeeping codes in this phase is B (legislation), D (documents), BR (document bill review/approving, etc.) or BD (document bill drafting)
- e. For Supervisor's, when doing a quick referral of the assignment or review, use the appropriate agency's generic number, B (legislation), D (documents), BR (document bill review/approving, etc.).

2. BILL PHASE

- a. Refers to actual bills/resolutions, regardless of its source that has an actual bill or resolution number, generated by the legislature.
- b. Time spent on this activity is charged to Legislature. Use the GN-LEG code when spending a brief time on a matter(s). Use the bill/resolution # as a keyword when spending .3 hours or more on a single bill/resolution.
- c. For Supervisor's, when doing a quick referral of the assignment or final review, use GN-LEG, B (legislation), D (documents), or BR (document bill review/approving, etc.)

3. PASSED BILL PHASE

- a. Refers to the Governor's reports on legislatively passed bills and includes the statement of objections and proclamations.
- b. Use the GN-GOV code when spending a brief time on this bill. Use the bill/resolution # when spending .3 hours or more on a single/resolution.
- c. Generally, for this phase the activity codes would be B (legislation), D (documents), GR (creating, editing reports to Governor) or V (preparing statement of objections and proclamations.)
- d. For Supervisor's, when doing a quick referral of assignment or final review, use GN-GOV, B (legislation), D (documents), or BR (document bill review/approving, etc.)



SPJ

SOCIETY OF
PROFESSIONAL
JOURNALISTS

October 29, 1992

COPY

The Honorable Robert Marks
Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Dear Attorney General Marks:

The Society of Professional Journalists-University of Hawaii at Manoa Chapter is extremely concerned with the current secrecy surrounding the search for president of the University of Hawaii.

The UH Board of Regents has denied us access to the names of the presidential applicants, semifinalists and finalists. In addition, it has refused to inform the public of the time and location of its November 4, 1992 meeting in which it will interview the finalists. That meeting is a reconvening of a meeting held October 15, 1992 at Bachman Hall on the UH-Manoa campus.

We believe the regents' refusal to provide us with the names of the 75 presidential applicants, the 11 semifinalists and the four finalists violates the provisions of Chapter 92F, Hawaii Revised Statutes.

Further, we believe that the regents' refusal to provide us with the time and location of their November 4, 1992 meeting violates the provisions of Chapter 92, HRS. It also violates the Chapter 92 guidelines that the Department of the Attorney General provides to members of state boards and commissions.

COMPLAINT ONE

Shortly after the regents recessed their October 15, 1992 meeting, regent chairman H. Howard Stephenson told me that the time and location of the November 4, 1992 reconvened meeting "ha[d] yet to be determined." If that is a truthful statement, then I believe the regents have violated the Sunshine Law. Part VI, section A, of the AG's guidelines states in part:

Student Chapter
University of Hawaii
at Manoa

Crawford Hall 208
2550 Campus Road
Honolulu HI 96822

Tel. 808 / 956-8881
Fax. 808 / 956-3396

EXHIBIT

C



SOCIETY OF
PROFESSIONAL
JOURNALISTS

Attorney General Robert Marks
October 29, 1992
page 2

“If a meeting is continued to a later date, the board must announce at the present meeting the date, time, place of the continuation of the meeting and also the items to be considered at that continued meeting.”

It would seem that if the meeting location and time were not announced at the October 15th meeting, then the November 4th continuation of the meeting constitutes an illegal meeting under the provisions of the Sunshine Law.

COMPLAINT TWO

On August 20 and 21, 1992 the BOR Screening and Advisory Committee on the Selection of the President of the University of Hawaii met at Tokai University to review the vitae of the 75 presidential applicants. Chairman Roy Takeyama recessed the meeting until September 24, 1992. I understand from two members of the screening and advisory committee that the location of the continued meeting, the Ilikai Hotel, was not announced prior to the recessing of the meeting on August 21st. Again, it would seem that if the location was not announced at the August 21 meeting, then the September 24th continuation of the meeting constitutes an illegal meeting under the provisions of the Sunshine Law.

COMPLAINT THREE

The regents have refused to provide the names of UH presidential applicants, semifinalists, and finalists. We believe that the names of these persons are a matter of public information under the Uniform Information Practices Act, Chapter 92F, HRS. Many of the semifinalists were from the Mainland, and as such, traveled to Hawaii to be interviewed by the BOR Screening and Advisory Committee on the Selection of the President of the University of Hawaii. (These interviews were held in late September at the Ilikai Hotel.)

State money was used to pay for their travel to Hawaii and their hotel accommodation while here, and so we believe, as recipients of state moneys, their names should be made public.

We are asking you to investigate these complaints as soon as possible. However, if the regents do not provide to us the time and location of their November 4, 1992 meeting by November 2, 1992 at noon, it is our intent to file a motion in Circuit Court to



SOCIETY OF
PROFESSIONAL
JOURNALISTS

Attorney General Robert Marks
October 29, 1992
page 3

obtain a temporary restraining order preventing the meeting's continuance. We would also ask the court to compel disclosure of this information in compliance of the Sunshine Law.

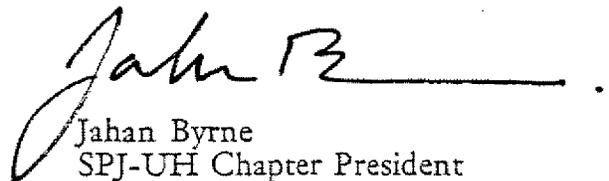
Further, if the regents do not provide us with the names of the finalists for the UH presidency by November 2, 1992 at noon, we intend to file a motion in Circuit Court under the provisions of §92F-15, HRS, to compel disclosure of the names.

It would be a tragic occurrence if we were to prevail and the UH presidential search process was invalidated by the court. Over six months of work and over \$40,000 would be wasted, all because the Board of Regents couldn't follow some simple provisions of the state's Sunshine Law.

It is unfortunate, unnecessary and illegal for the Board of Regents to surround the UH presidential search with such secrecy. It is also unfortunate that your department is bending the rules of the Sunshine Law to permit the regents to have a presidential search process and a series of meetings that are secret to the public. What you should be doing is requiring the Board of Regents to conform to the provisions of the Sunshine Law.

The actions of the Board of Regents and the complicity of your department prove that even in Hawaii, sunshine can be scarce.

Very truly yours,


Jahan Byrne
SPJ-UH Chapter President

cc: The Honorable John Waihee III
Governor, State of Hawaii

H. Howard Stephenson
Chairman, UH Board of Regents

JB:mo

