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The Office of Information Practices (OIP) is authorized to issue decisions under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA) pursuant to section 92F-42, HRS, and chapter 2-73, Hawaii Administrative rules (HAR). This is a memorandum decision and will not be relied upon as precedent by OIP in the issuance of its opinions or decisions but is binding upon the parties involved.

**MEMORANDUM DECISION**

**Requester:** Daniel Granillo  
**Agency:** Department of Public Safety  
**Date:** June 28, 2018  
**Subject:** Records Listed on a Log of Redactions/Withheld Documents  
(U APPEAL 15-6)

Requester is an inmate seeking a decision as to whether the Department of Public Safety (PSD) properly denied under Parts II and III of the UIPA his request for records listed on a Log of Redactions/Withheld Documents produced in response to a subpoena duces tecum (Subpoena).

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's letter of November 15, 2013 to PSD; Requester's letters of December 7, 2013 and July 18, 2014 to OIP; PSD's letter of March 19, 2014 to Requester; email correspondence from PSD to OIP on October 1, 2014 and December 20, 2017; the Department of the Attorney General's (AG) letters to OIP dated October 9, 2017 and March 19, 2018; and the AG's email of April 3, 2018, with an attachment containing a copy of the documents on the Log for OIP's *in camera* review.

**Decision**

Although the Second Circuit Court (Court) had denied a subpoena request in this case, it did not actually seal the requested records, so Requester may potentially access records under the UIPA.

Records "about" the requester are considered personal records, which are governed by Part III of the UIPA and subject to the exemptions found in section 92F-22, HRS. In this case, several exemptions apply to permit the withholding of certain personal records sought by Requester. The emails and correspondence generated by PSD staff for internal use and the Internal Memo/Incident Reports regarding investigations by PSD staff were reports that directly related to the facilities' concerns regarding the security, custody and rehabilitation of Requester and other inmates, and thus can be withheld from disclosure under section 92F-22(1)(B), HRS. Certain Correspondence Control Sheet/Routing Slips (Control Sheets) may also qualify as reports that can be withheld from disclosure under section 92F-22(1)(B), HRS, depending upon the content of handwritten notes thereon. Because several handwritten notes on the Control Sheets are indecipherable, OIP finds, for the reasons set forth, in section IV.B.1., infra, that PSD must review those Control Sheets to determine whether any portions of the handwritten notes thereon may be withheld.

The emails and correspondence between PSD and its attorneys are also personal records of Requester, but contain attorney-client privileged communications between PSD and its attorney, and thus PSD may withhold them from disclosure under section 92F-22(5), HRS.

Although it is a personal record, PSD need not disclose a letter about Requester written by a third party, which would reveal the identity of a confidential source under an implied promise of confidentiality. HRS §92F-22(2) (2012).

Other personal records are not subject to any Part III exemptions and must be disclosed to Requester.

The remaining requested records are considered "government" records subject to Part II of the UIPA, and the exceptions to disclosure found in section 92F-13, HRS. A State Employee Injury Medical Report and an envelope containing the home address of the writer may be withheld from disclosure under the privacy exception in section 92F-13(1), HRS.

### **Statement of Reasons for Decision**

The Requester in this case first sought to obtain records through the State court system. Subpoenas and other tools for discovery of records via the court system are separate methods of obtaining records or information and are distinguishable from the UIPA, which governs access by the public to government records and an individual's access to personal records. OIP Op. Ltr. No. 95-16 at 11. If a judicial decision requires withholding of a record, then the record may likewise be withheld from disclosure under the UIPA pursuant to section 92F-13(4) or 92F-22(5), HRS, as

applicable.<sup>1</sup> The threshold issue, therefore, is whether the Court had, in fact, ordered the records to be withheld in this case.

## I. Court Orders Relating to Requester's Records

On February 8, 2012, Requester served PSD with the Subpoena to produce Requester's "complete and entire" PSD file (PSD File). The AG, on behalf of PSD, moved to quash the Subpoena and submitted to the Court a log listing all withheld records responsive to the Subpoena (Log), along with a copy of those withheld documents for the Court's *in camera* review. A copy of the Log was provided to Requester's criminal defense attorney at that time. On June 3, 2013, the Court issued an order granting PSD's motion to quash the Subpoena but denying PSD's request for a protective order (Order No. 1).<sup>2</sup>

On August 25, 2014, Requester filed a motion for the Court to conduct an *in camera* review of the records that were withheld pursuant to Order No. 1. In its order dated January 9, 2015, the Court denied Requester's motion with prejudice (Order No. 2).<sup>3</sup>

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<sup>1</sup> Section 92F-13(4), HRS, provides that Part II of the UIPA "shall not requires disclosure of: . . . [g]overnment records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure[.]"

Part III of the UIPA contains a similar exemption from disclosure for a personal records that is "[r]equired to be withheld from the individual to whom it pertains by . . . judicial decision[.]" HRS § 92F-22(5).

<sup>2</sup> On June 3, 2013, the Court issued an Order Granting in Part and Denying in Part Motions to Quash and for Protective Order (Order No. 1), which stated in relevant part that

the majority of the documents in question having already been provided to Defendant, the State's motion to quash the subpoena duces tecum is GRANTED and the motion for protective order is DENIED. Any further attempts by Defendant to obtain the withheld documents will have to be made by separate motion.

The "Defendant" referred to by the Court is Requester.

<sup>3</sup> The Court issued an Order Denying Requester's Motion for *In Camera* Review on January 9, 2015 (Order No. 2). The Court found that it had

previously reviewed the documents in question *in camera*, that there is no valid reason set forth that the Court deems sufficient to revisit this issue, having already found that Defendant is not entitled to the requested documents, and further that Defendant may seek the proper relief with his appointed counsel for his upcoming 2015 hearing with the Hawaii Paroling Authority (HPA), since the rules and law require adverse materials to be provided by the HPA to Defendant and/or counsel.

Because the two Orders by the Court partially denied access to Requester's PSD file, he could not get the records he was seeking through discovery in his criminal case. Requester instead sought to obtain those records through the UIPA. Following PSD's denial of access, Requester appealed to OIP.

On PSD's behalf, the AG argued that Requester was not entitled to the records based on sections 92F-13(4) and 92F-22(5), HRS, on the theory that the records were made confidential by the Court's two Orders regarding the Subpoena. In a subsequent letter dated March 19, 2018, the AG further argued that the Court did not need to issue a protective order because Order No. 1 had granted PSD's motion to quash the Subpoena, and cited OIP Opinion Letter Number 02-03, where the defendant in a Family Court matter had served a subpoena on the Honolulu Police Department (HPD) for certain police reports and complaints. The AG argued that the facts of this appeal and OIP Opinion Letter Number 02-03 are "almost identical," and "the fact that [the Family Court's] order did not cite UIPA or HRS chapter 92F in denying access to the defendant did not prevent HPD from denying access pursuant to HRS section 92F-13 (4) and 92F-22 (5)."

In Opinion 02-03, the requester's subpoena required HPD to testify and produce police reports or complaints initiated by the plaintiff in the Family Court action. OIP Op. Ltr. No. 02-03 at 2. HPD moved to quash the subpoena. The Family Court ordered a limited release of one police report to the requester, but sealed a second police report subject to disclosure if the matter was raised at trial, and also ordered that the remaining five documents be sealed. Thus, unlike the present case, the requested records in Opinion 02-03 had been affirmatively sealed by a Family Court order. Id. at 3.

Here, the Court's Order No. 1 quashed Requester's Subpoena for the records at issue, but did not issue the protective order that PSD had sought. Furthermore, the Court stated that any future attempts by Requester to obtain the withheld records would have to be made by a separate motion. Finally, the Court in Order No. 1 did not bar Requester's future access to the records either by way of discovery through the Court, HPA proceedings, or the UIPA.

Order No. 2 made it clear that Requester could no longer pursue a request through the discovery process for the documents listed in the Log. Recognizing that the Requester could seek relief through his counsel to obtain adverse material from the HPA, the Court also did not affirmatively seal the records in Order No. 2.

Consequently, OIP finds that neither Order constitutes a judicial decision that expressly requires Requester's personal records to be withheld. Accordingly, neither section 92F-13(4) nor section 92F-22(5), HRS, applies to the facts of this case and the records cannot be withheld based on a judicial decision.

## **II. UIPA Request**

Requester's UIPA request to PSD sought the records listed on the Log. Because PSD did not respond, Requester sent a letter to OIP on December 7, 2013, to request assistance in obtaining the records listed on the Log. OIP thereafter sent a letter to PSD dated December 19, 2013, which asked that PSD respond to Requester's UIPA request.

In a letter dated March 19, 2014, PSD informed Requester that the AG had provided Requester's attorney with a copy of the Log, but that it would not provide access to the records listed in the Log. PSD's position was that the documents were "prohibited from disclosure based on Part III, §92F-22(1)(B), HRS, which exempts from disclosure 'reports prepared or compiled at any state of the process of enforcement of criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.'"

## **III. UIPA Analysis: Distinguishing an Individual's Access to Personal Records and Access to Government Records Under the UIPA**

An individual's access to his or her personal records, which is governed by Part III of the UIPA, must be distinguished from the general public's access to government records, which is subject to Part II of the UIPA. As set forth in OIP Opinion Letter Number F13-01, the framework for analysis is as follows:

- (1) What is the "personal record" of the individual requesting access under Part III of the UIPA?
- (2) Does any Part III exemption in section 92F-22, HRS, allow the withholding of access to the personal record?
- (3) What portion, if any, is a government record subject to the public disclosure requirements of Part II of the UIPA?
- (4) Does any Part II exception in section 92F-13, HRS, allow the withholding of access to a government record that is not a Part III personal record?

## **IV. Requester's Access to His Personal Records Under Part III of the UIPA**

### **A. What Are Requester's Personal Records?**

First, it must be determined whether the requested records, or portions thereof, constitute "personal records" to which Requester has the right to access under Part III of the UIPA. The UIPA defines a "personal record" as "any item, collection, or

grouping of information about an individual that is maintained by an agency.” HRS § 92F-3 (2012) (emphasis added). This includes an individual’s educational, financial, or medical records, or items that reference the individual by name or otherwise. *Id.* An agency is required to provide access under Part III to an “accessible” personal record, which generally means one that is filed by the person’s name or other identifying information, or which the agency can otherwise readily find. HRS §§ 92F-3 and -21 (2012).

Based on the *in camera* review of the documents at issue, OIP is of the opinion that the following documents listed in the Log, or portions thereof, are the personal records of Requester because they identify him by name and are “about” him. As will be discussed in the next section, these personal records must be disclosed to the Requester, unless a Part III exemption applies:

1. Emails and correspondence generated by PSD staff for internal use – exempt under section 92F-22(1)(B), HRS (enforcement reports)
2. Internal Memo/Incident Reports regarding investigations by staff – exempt under section 92F-22(1)(B), HRS (enforcement reports)
3. Correspondence Control Sheets/Routing Slips with notes of PSD employees – possibly exempt under section 92F-22(1)(B), HRS (enforcement reports)
4. Correspondence and emails from PSD counsel to PSD – exempt under section 92F-22(5), HRS (attorney-client privilege)
5. Letter from Third Party stating concerns about Requester – exempt under section 92F-22(2), HRS (confidential source)
6. Presentence Report from Adult Probation Division - disclose
7. Notification to Administration (separately addressed in OIP U MEMO 17-6) - disclose
8. Letter from Third Party requesting no contact from Requester - disclose
9. Hawaii Paroling Authority Fact Sheet - disclose
10. Hawaii Offender-Based Transaction Statistics/Computerized Criminal History (OBTS/CCH) Summary - disclose
11. Letter from PSD to Requester - disclose
12. Draft of letters from PSD to Requester - disclose
13. Facility Adjustment Hearing Processing – disclose.

**B. Do Any Part III Exemptions Allow Withholding of Access to Requester’s Personal Records?**

Second, having determined that records, or portions thereof, are an individual’s personal records, the agency may withhold the personal records from the individual only when there is an applicable Part III exemption as set forth in section 92F-22,

HRS. OIP emphasizes that only Part III exemptions, and not Part II exceptions, are considered in analyzing Part III personal records requests.

### 1. Reports During Enforcement of Criminal Laws

PSD initially replied that it was not disclosing the records listed on the Log based on the criminal reports exemption found in section 92F-22(1)(B), HRS, which provides that an agency need not disclose records that are

[m]aintained 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:

....

- (B) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.

HRS § 92F-22(1)(B) (2012).

There is no question that PSD is a criminal law enforcement agency. OIP Op. Ltr. No. 95-11 at 7. While many records prepared by PSD may fall within the criminal reports exemption of section 92F-22(1)(B), HRS,<sup>4</sup> not all records in an inmate's file automatically constitute a "report" protected from disclosure, and they must be examined on a case by case basis.

OIP has previously held that PSD may withhold a requester's Sex Offender Custody Level Review form under section 92F-22(1)(B), HRS, because it is a report prepared or compiled during the confinement or correctional supervision stage of the criminal law enforcement process. OIP Op. Ltr. No. 05-14 at 4-5. OIP has also allowed withholding of a report prepared or compiled during an inmate's confinement to determine whether to approve or deny the inmate's request to transfer to a lower security facility. OIP Op. Ltr. No. 95-11 at 7-9. In that case, OIP looked to a federal court's interpretation of a nearly identical exemption in the federal Privacy Act, 5 U.S.C. § 552a(j)(2)(C) (1988), where the federal court had reasoned that, in order for a criminal law enforcement agency (the Federal Bureau of Prisons) to withhold a report from the inmate whom it is about, the withholding must be "essential to protect internal processes by which Bureau personnel are able to formulate decisions and policies with regard to federal prisoners, to prevent disclosure of information to federal inmates that would jeopardize legitimate correctional

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<sup>4</sup> Section 92F-22(1)(A), HRS, does not apply because the reports in the Log were not "prepared or compiled for the purpose of criminal intelligence or of a criminal investigation."

interests of security, custody, or rehabilitation, and to permit receipt of relevant information from other federal agencies, and federal and state probation and judicial officers.” *Id.*, citing Turner v. Ralston, 567 F. Supp. 606 (W.D. Mo. 1983) (quoting 28 C.F.R. 16.97(b)(3) (Supp. 1992)).

Based on OIP’s *in camera* review, OIP finds that the emails and correspondence generated by staff and Internal Memo/Incident Reports regarding investigations by staff did contain information that directly relate to the facilities’ concerns regarding the security, custody and rehabilitation of Requester and other inmates. Thus, OIP concludes that the staff’s emails, correspondence, and Internal Memo/Incident Reports can be withheld from disclosure under section 92F-22(1)(B), HRS.<sup>5</sup> The documents provided for OIP’s *in camera* review also included copies of Control Sheets. Normally, these should be disclosed to Requester without any redactions. However, some of the Control Sheets contain handwritten notes or typed notes, which arguably may be considered a “report,” but OIP is unable to decipher all of the notes. Consequently, PSD should review the Control Sheets with handwritten notes to determine whether the UIPA Part III exemption in section 92F-22(1)(B), HRS, applies to some of the handwritten notes on the Control Sheets.<sup>6</sup>

## 2. Attorney-Client Privilege

Section 92F-22(5), HRS, provides an exemption from disclosure if a personal record is “[r]equired to be withheld from the individual to whom it pertains by statute or judicial decision, or authorized to be so withheld by constitutional or statutory privilege.” The attorney-client privilege is codified in Rule 503, chapter 626, HRS, and was developed to enable full and complete consultation between clients and their attorneys without concern about disclosure of those communications, except if the client consents. OIP Op. Ltr. No. F17-03 at 3. Thus, even if a document is “about” an individual and is considered his personal record, OIP has previously found that such a record may be withheld from disclosure under section 92F-22(5), HRS, if it is protected by the attorney-client privilege.

The documents provided for OIP’s *in camera* review contain emails and correspondence between PSD and its attorney, and no evidence was provided to OIP showing that the attorney-client privilege had been waived. Since these communications are between PSD and its attorney, they may be withheld from Requester as privileged material under section 92F-22(5), HRS.

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<sup>5</sup> OIP further notes that, if the same records were requested as government records under part II of the UIPA, they could be withheld as falling within the deliberative process privilege form of the UIPA’s frustration exception. See HRS § 92F-13(3).

<sup>6</sup> OIP is specifically referring to the following for PSD’s review: one Control Sheet dated October 7, 2011, and the Control Sheets at Bates-stamped pages 26, 62, 67, 72, 119, 125, 412, 429, 567, 597, 685, 903, and 972.



### 3. Confidential Source

The writer of a signed handwritten letter advised PSD of the writer's concerns about the Requester's actions toward other inmates. Under an exemption provided in Part III of the UIPA, an agency need not disclose to an individual his personal records that would reveal the identity of a confidential source who is under an express or implied promise of confidentiality. HRS § 92F-22(2).

OIP has previously found that when a requester would be able to determine who made a confidential statement, the statement may also be redacted, but only if: (1) the witness received an express or implied promise of confidentiality, and (2) redaction of the statement is necessary to protect the witness's identity. OIP Op. Ltr. No. 01-04 at 7. In the present case, OIP finds that redaction of nearly all of the handwritten letter is necessary to protect the witness's identity. As PSD has not provided any evidence of the existence of any express promise of confidentiality, we next examine whether there may be an implied promise of confidentiality.

In OIP Opinion Letter Number 95-4, OIP found that a promise to keep names confidential was implied when an express request for confidentiality explicitly referred to a possible threat of retaliation as the basis for the request. OIP stated that

in assessing whether an implied promise of confidentiality exists, we refer to federal cases applying the FOIA exception under which a federal agency is not required to allow public inspection and copying of law enforcement records that "could reasonably be expected to disclose the identity of a confidential source." 5 U.S.C. § 552(b)(7)(D) (1988). In several FOIA cases applying this exception, a promise of confidentiality was found to be implied where employees were providing information about their superiors for a law enforcement investigation. See Brant Const. Co. v. United States Environmental Protection Agency, 778 F.2d 1258, 1264 (7th Cir. 1985) (implicit request for confidentiality was found in view of the information source's subordinate position as subcontractor and concern expressed about retaliation); United Technologies Corp. v. National Labor Relations Board, 777 F.2d 90, 94 (2d Cir. 1985) ("[a]n employee-informant's fear of employer retaliation can give rise to a justified expectation of confidentiality"); L & C Marine Transport, Ltd. v. United States, 740 F.2d 919, 924 (11th Cir. 1984) (confidentiality of employee witnesses was implied in view of "great leverage that employers hold over workers and the possibility for retaliation surrounding an OSHA investigation").

In the present case, the individual writing to PSD expressed concern about Requester's actions in prison and mentioned that there could be possible retaliation and injury by Requester. Given the prison setting, the possibility that the Requester could recognize the third party's handwriting and signature, and the writer's concern about retaliation or injury caused by Requester, OIP finds that the writer had an expectation of confidentiality in bringing this custodial and security information to PSD's attention and that an implied promise of confidentiality exists with respect to this letter. OIP thus concludes that the third party's entire handwritten letter regarding concerns about the Requester may be withheld from the Requester.

### **C. What Personal Records Listed in the Log Must be Disclosed to Requester?**

#### **1. Presentence Report**

Among the documents provided for OIP's *in camera* review was the Presentence Report from the Judiciary Adult Probation Division (PSI). PSD has not asserted any exemptions that protect the entire PSI here. To the contrary, an AG's Memo, updated on March 31, 2015, and entitled "Release of Presentence Report to Inmates" that was previously provided by PSD to OIP stated that "the fundamental advice is that the PSI must be produced," subject to the redaction of certain information as designated in the AG's Memo. Based upon sections 706-604(2) and 806-73(b)(8), HRS, the AG's Memo advised that PSIs are to be disclosed to defendants or their counsel for criminal sentencing and for setting minimum terms of incarceration. Consistent with the AG's Memo, OIP thus concludes that Requester's PSI should be disclosed to him, subject to the redaction of sensitive or confidential personal information as designated in the AG's Memo.

#### **2. Notification to Administration Regarding Inmate Transfer**

The Notification to Administration Regarding Inmate Transfer (IM), which was a document reviewed *in camera* at Bates-stamped page 1438, concerned the Requester's transfer between correctional facilities on October 18, 2012. This same document was specifically addressed by OIP in U MEMO 17-6 concerning the same Requester, and OIP found that the entire IM must be disclosed to him. Therefore, consistent with our prior opinion, OIP concludes that the IM must be provided to Requester without redactions.

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<sup>7</sup> "FOIA" refers to the federal Freedom of Information Act, 5 U.S.C. § 552 (2016).

### **3. Letter from Third Party Requesting that Requester Not Write to the Third Party**

A private individual wrote to PSD to request PSD's help in blocking the Requester from writing to the party. The letter from the third party is "about" both the third party and the Requester. It is a joint personal record and must be disclosed to Requester without redaction under Part III of the UIPA. OIP Op. Ltr. No. 05-10 at 4. OIP does not believe that the private individual constitutes a confidential source since the correspondence makes clear that the Requester already knows the identity of the individual who requested a stop to his letters.<sup>8</sup>

### **4. Other Personal Records that are Not Subject to Any Part III Exemption**

Several of Requester's personal records in the Log are not subject to any Part III exemptions to disclosure. Having reviewed these records, OIP finds there is no exemption to disclosure for the Hawaii Paroling Authority Fact Sheet and the Hawaii OBTS/CCH Criminal History Summary.

The letter from PSD to the Requester and drafts of two letters from PSD to Requester are about him and are his personal record. OIP finds that no exemptions in section 92F-22, HRS, allow the letter and drafts of letters to be withheld.<sup>9</sup>

The Facility Adjustment Hearing Processing forms contain a recitation of the rights that were explained to Requester at non-judicial hearings. OIP finds there is no Part III exemption to these forms.

## **V. Public Access to Government Records under Part II of the UIPA**

### **A. What Government Records are Subject to a Part II Analysis?**

Having concluded the personal records analysis under Part III, the third step is to conduct a government records analysis under Part II. Any portion that is not a personal record under Part II of the UIPA must be reviewed to determine whether Requester, as a member of the general public, would be entitled to access the government record. Part II, not Part III, applies to any portion of a record that is not the individual's personal record.

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<sup>8</sup> The letter contained no confidential information that should have been redacted. The individual's home address was on the envelope, which can be withheld, as discussed infra in the section on government records.

<sup>9</sup> OIP notes, however, that if this had been a government record request under Part II of the UIPA, the drafts could have been withheld under the deliberative process privilege. OIP Op. Ltr. No. 92-26 at 7. But because the drafts are personal records about the Requester and no Part III exemptions apply, the drafts must be disclosed to him.

We start by identifying the government records at issue. Based on our *in camera* review, OIP determined that the following are government records subject to Part II of the UIPA:

1. Internal Policies – separately addressed in OIP Opinion Letter Number F18-03
2. Employee Injury Medical Report
3. Envelope Containing the Home Address of the Writer
4. Blank pages.

**B. Do any Part II Exceptions Allow the Withholding of Government Records?**

When applying Part II of the UIPA to information in a government record that does not constitute a personal record, an agency may withhold such portion of the record from public access only when it falls within an exception to required public disclosure, as set forth in section 92F-13, HRS. If no Part II exception applies, the agency must publicly disclose that portion of the government record. Part III personal record exemptions are not applicable in an analysis of government records.

**1. Clearly Unwarranted Invasion of Personal Privacy**

The documents provided for *in camera* review include an Employee Injury Medical Report (Medical Report) for an employee of the State of Hawaii Department of Corrections (the predecessor to PSD). The report indicates that the employee was involved in an incident with an inmate which resulted in the employee seeking medical attention. Section 92F-13, HRS, provides five exceptions that allow an agency to withhold a government record from public access. In the instant case, the applicable exception is for “[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.” HRS § 92F-13(1) (2012). As OIP previously stated in OIP Opinion Letter Number F13-01,

Part II’s “clearly unwarranted invasion of personal privacy” exception involves a balancing of the individual’s privacy interest against the public interest in disclosure, and this exception only applies when the individual is found to have a significant privacy interest in the record and this significant privacy interest is not outweighed by the public interest in disclosure. HRS § 92F-14(a) (2012) (stating that the privacy exception does not apply if the public interest outweighs the individual’s privacy interest); see OIP Op. Ltr. No. 10-05 (applying the balancing test to a worker’s compensation claim). According to the legislative history of the UIPA, the Legislature intended that the privacy exception shall not apply when the privacy interest is not significant, explaining that “if a privacy interest is not ‘significant,’ a scintilla of public interest in disclosure will preclude a finding of a

clearly unwarranted invasion of personal privacy.” H. Conf. Comm. Rep. No. 112-88, 14<sup>th</sup> Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988); S. Conf. Comm. Rep. No. 235, Haw S.J. 689, 690 (1988)).

OIP Op. Ltr. No. F13-01 at 19-20.

Section 92F-14(b), HRS, lists examples of government records in which an individual has a significant privacy interest. Regarding an individual’s medical information contained in government records, the statute provides

(b) The following are examples of information in which the individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility.

HRS § 92F-14(b)(1) (Supp, 2017) (emphasis added).

In the instant case, the Medical Report contains the employee’s description of the event causing the injury, a nurse’s assessment of the injury, and the treatment provided to the employee. Under the UIPA, an individual has a significant privacy interest in this type of medical information covering history, diagnosis, condition, treatment as contemplated under section 92F-14(b)(1), HRS.

OIP finds that this significant privacy interest of the injured employee outweighs the public interest in disclosure of an injured employee’s medical condition and treatment. As a result, OIP concludes that the UIPA’s privacy exception at section 92F-13(1), HRS, applies to the Medical Report and thus the Medical Report need not be disclosed.

## **2. Home Address on Envelope**

The envelope addressed to PSD setting forth the home address of a third party did not contain any reference to the Requester and so is not his personal record. Under Part II, disclosure of this other individual’s home address on the envelope would be a clearly unwarranted invasion of the individual’s personal privacy, so the home address listed on the envelope may be withheld under section 92F-13(1), HRS. OIP Op. Ltr. No. 05-10.

### **C. Government Records (Blank Pages) Listed in the Log that Must be Disclosed to Requester**

There are no exceptions under section 92F-13, HRS, which would allow the withholding of the blank pages. The blank pages should be disclosed.

#### **Conclusion**

In summary, OIP makes the following conclusions regarding the personal and government records sought by Requester, except for Internal Policies that are separately discussed in OIP Opinion Letter Number F18-03.

PSD may withhold:

1. Emails and correspondence generated by PSD staff for internal use
2. Correspondence and emails between AG and PSD
3. Letter from a third party stating concerns about Requester's actions in prison
4. Internal Memo/Incident Reports regarding investigations by PSD staff
5. An envelope which contained a third party's home address
6. Employee Injury Medical Report.

PSD must disclose:

1. Hawaii Paroling Authority Fact Sheet
2. Hawaii OBTS/CCH Criminal History Summary
3. Letter from a third party requesting no contact from Requester
4. Letter from PSD to Requester
5. Draft of letters from PSD to Requester.
6. Facility Adjustment Hearing Processing
7. Notification to Administration
8. Blank pages.

PSD must disclose the following, subject to the directives herein:

1. Correspondence Control Sheets/Routing Slips by PSD Employees
2. Presentence Report from the Adult Probation Division.

#### **Right to Bring Suit**

For personal records, Requester is entitled to seek assistance directly from the courts after Requester has exhausted the administrative remedies set forth in section 92F-23, HRS. HRS §§ 92F-27(a), 92F-42(1) (2012). An action against the

agency denying access must be brought within two years of the denial of access (or where applicable, receipt of a final OIP ruling). HRS § 92F-27(e).

For government records, Requester is entitled to seek assistance from the courts when Requester has been improperly denied access to a government record. HRS § 92F-42(1) (2012). An action for access to records is heard on an expedited basis and, if Requester is the prevailing party, Requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F-15(d), (f), and -27(e) (2012).

For any lawsuit for access filed under the UIPA, Requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012).

This decision constitutes an appealable decision under section 92F-43, HRS. An agency may appeal an OIP decision by filing a complaint within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS. The agency shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b) (2012). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

#### OFFICE OF INFORMATION PRACTICES



Donald H. Amano  
Staff Attorney

APPROVED:



Cheryl Kakazu Park  
Director