

November 5, 1990

Mr. Desmond J. Byrne  
International Tourism Research  
P. O. Box 10447  
Honolulu, Hawaii 96816

Dear Mr. Byrne:

Re: Public Access to Financial Information Concerning  
Royal Hawaiian Insurance Company, Ltd.

This letter is a follow-up to our telephone conversation on October 18, 1990, concerning your request to inspect information about Royal Hawaiian Insurance Company, Ltd. ("RHIC"), maintained by the Insurance Commissioner.

In your letter to the Office of Information Practices ("OIP") dated October 10, 1990, you indicated that the RHIC is the surety for the performance of an airport lease between the Department of Transportation and the Duty Free Shoppers Limited Partnership ("Duty Free Shoppers"). As we understand it, it is your desire to inspect information maintained by the Insurance Commissioner which indicates whether the RHIC has adequate financial resources to meet its obligations as surety, in the event that Duty Free Shoppers defaults in the performance of its contractual obligations.

As you know, the RHIC is a "captive insurance company" formed or licensed under article 19 of chapter 431, Hawaii Revised Statutes. As a condition of being granted a license as a captive insurance company authorized to engage in the business surety insurance, the RHIC was required to provide the Insurance Commissioner with the commercial and financial information required by section 431:19-102, Hawaii Revised Statutes, including, but not limited to, the amount and liquidity of its assets relative to the risks to be assumed.

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With respect to your request to inspect information maintained by the Insurance Commissioner concerning the RHIC, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA") provides that an agency is not required to disclose "[g]overnment records which, pursuant to a state or federal law . . . are protected from disclosure." Haw. Rev. Stat. § 92F-13(4) (Supp. 1989).

Section 431:19-102.5, Hawaii Revised Statutes, which became effective June 7, 1989, restricts public access to certain information maintained by the Insurance Commissioner submitted by captive insurance companies. It provides in relevant part:

§431:19-102.5 Confidential treatment. All nonpublic financial information of a captive insurance company and of its parent or its member organizations, or a risk retention captive insurance company, disclosed to the commissioner pursuant to section 431:19-102 shall be given confidential treatment and shall not be made public by the commissioner, except to insurance departments of other states, without the prior written consent of the captive insurer or parent company or member organization or risk retention captive insurer to which it pertains. In the event that the commissioner determines that the interest of the policyholders, shareholders, or the public will be served by making the information public, then after giving the captive insurance company and its parent or member organizations or risk retention captive insurer which would be affected thereby three days notice of intent, the commissioner may make public all or any part thereof in such a manner as the commissioner deems appropriate.

For purposes of this section, "nonpublic financial information" means information regarding a person's financial condition that prior to disclosure to the commissioner pursuant to section 431:19-102 is not a public record as defined in rule 1001(5) of section 626-1 . . . .

Haw. Rev. Stat. § 431:19-102.5 (Supp. 1989) (emphases added).

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Under the Insurance Code, the term "person," as used above, includes a "company, insurer, association, organization, group, reciprocal or interinsurance exchanges, partnership, business, trust, or corporation." Haw. Rev. Stat. § 431:1-212 (Supp. 1989).

Based upon the foregoing provisions, it is would appear that access to the information you seek is "restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1989). Although the Insurance Commissioner may make "nonpublic financial information" available to the public when the Commissioner determines that the interests of the public would be served thereby, it would appear that this determination is left to the discretion of the Commissioner.

Should you have any questions regarding the matters set forth above, please do not hesitate to contact me by telephone at 586-1400.

Very truly yours,

Hugh R. Jones  
Staff Attorney

HRJ:sc  
cc: Robin K. Campaniano  
Insurance Commissioner, DCCA

Dewey Kim  
Deputy Attorney General

APPROVED:

Kathleen A. Callaghan  
Director