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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) pursuant to sections 92F-27.5 and 92F-42, HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Christine Paul Russi
Agency: Commission on Judicial Conduct
Date: April 21, 2022
Subject: Date Stamped Copy of Complaint (U APPEAL 20-40)

REQUEST FOR OPINION

Requester¹ sought a decision as to whether the Commission on Judicial Conduct (CJC) properly denied her request for a date stamped copy of a complaint she filed under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA).

Unless otherwise indicated, this decision is based solely upon the facts presented in a letter from the CJC to Requester dated December 19, 2019; Requester's email to OIP with attachment and attached email thread dated February 7, 2020; a letter with enclosures from OIP to the Department of the Attorney General (AG) as representative of the CJC for this appeal dated August 9, 2021; and a letter from the AG to OIP dated August 23, 2021.

¹ In this opinion, the term "Requester" refers to Ms. Russi, or both Ms. Russi and her late husband, Mr. Tom Russi.

QUESTION PRESENTED

Whether, under the UIPA, the CJC properly denied access to a date stamped copy of the complaint filed by Requester.

BRIEF ANSWER

Yes. Records of the nonadministrative functions of the courts are not subject to the UIPA as they are not included in the UIPA's definition of "agency." HRS § 92F-3 (2012) (setting forth the UIPA's definitions). CJC proceedings involve discipline of justices and judges and, as such, are nonadministrative functions of the courts. CJC is therefore not required under the UIPA to disclose the requested record.

FACTS

The CJC receives complaints against Hawaii justices and judges; makes preliminary evaluations; conducts investigations and hearings; recommends dispositions to the Hawaii Supreme Court (HSC) concerning allegations of judicial misconduct or physical or mental disability of judges; and issues advisory opinions. Rules of the Supreme Court of the State of Hawaii (RSC) Rule 8.2(a) (2005).

Requester submitted a complaint to the CJC dated June 24, 2019. Requester made a record request to the Judiciary dated October 1, 2019, for a date stamped copy of that same complaint (Date Stamped Complaint). The record request was forwarded from the HSC to the CJC, which denied it in a letter dated December 19, 2019. In its denial, the CJC stated that its proceedings are confidential under RSC Rule 8.4.² Requester appealed the denial to OIP.

DISCUSSION

The threshold issue here is whether records pertaining to CJC proceedings are part of the administrative or nonadministrative functions of the courts. If the CJC's proceedings are nonadministrative functions of the courts, then the UIPA does not apply to its records pertaining to those proceedings.

The UIPA, Hawaii's open records law, applies to government records that are maintained by an "agency." As defined in the UIPA, "agency" means any unit of State and county government including any "department; institution; board;

² RSC Rule 8.4(a) states that "[a]ll proceedings involving allegations of misconduct or disability of a judge shall be kept confidential until and unless the Supreme Court enters an order for the imposition of public discipline or the judge requests the matter be made public."

commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county[.]" with one notable exception: the UIPA's definition of "agency" excludes the "nonadministrative functions" of the State courts. HRS § 92F-3.

Based on the UIPA's definition of "agency," OIP previously opined that only records relating to the administrative functions of the Judiciary are subject to the UIPA. See OIP Op. Ltr. No 93-8 (finding at page 13 that records containing Hawaii State Bar examinee scores, graded answers, and the correct answers are records relating to the nonadministrative functions of the HSC and not governed by the UIPA because "matters associated with the admission of attorneys primarily involve the exercise of a judicial, as opposed to an administrative, function").

Regarding discipline of judges, the HSC has similarly concluded that:

[t]he authority to promulgate rules and keep records with regard to judicial qualification and discipline matters (1) fall [sic] within the scope of the court's power to adjudicate, and (2) is inherently intertwined with such adjudicative power. Therefore, the rules and records are not subject to HRS chapter 92F nor OIP review.

In re Honolulu Cmty.-Media Council, 121 Haw. 179, 215 P.3d 411, 412 (2009).

Based on the CJC's duties as set forth in RSC Rule 8.2, OIP finds that the CJC performs a nonadministrative function of the courts because it has jurisdiction over fitness of judges, as delegated to it by the HSC. Accordingly, OIP concludes that complaints submitted to the CJC against judges are not subject to the UIPA based on the definition of "agency," which excludes the nonadministrative functions of the courts, and the clear instruction from the HSC. OIP therefore concludes that the CJC acted properly in denying access to the complaint under the UIPA, and OIP is without authority to go on to determine whether the CJC's denial of a copy the Date Stamped Complaint was proper under the applicable court rules.³

³ The CJC cited to RSC Rule 8.4 as protecting the Date Stamped Complaint from public disclosure. The Hawaii Constitution at Article VI, section 7, states that the HSC "shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law." RSC Rule 8.4 is an HSC rule authorized by the Constitution and RSC Rule 8.4(a)'s confidentiality provisions have the force and effect of law. Therefore, OIP notes that even if records of CJC proceedings were "records" as defined in and subject to the UIPA, it appears the Date Stamped Complaint would still be protected from disclosure by sections 92F-13(4) and 92F-22(5), HRS, which allow agencies to deny access under the UIPA to records protected by law or court order from disclosure.

RIGHT TO BRING SUIT

Requester is entitled to file a lawsuit for access under Part II of the UIPA within two years of a denial of access to government records. HRS §§ 92F-15, 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) (2012).

Requester is entitled to seek assistance directly from the courts under Part III of the UIPA. HRS §§ 92F-27(a), 92F-42(1). 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(f).

If the court finds that the agency knowingly or intentionally violated a provision under Part III of the UIPA, the agency will be liable for: (1) actual damages (but in no case less than \$1,000); and (2) costs in bringing the action and reasonable attorney's fees. HRS § 92F-27(d). The court may also assess attorney's fees and costs against the agency when a requester substantially prevails, or it may assess fees and costs against Requester when it finds the charges brought against the agency were frivolous. HRS § 92F-27(e).

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 opinion 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

/s/ Carlotta Amerino
Carlotta Amerino
Staff Attorney

APPROVED:

/s/ Cheryl Kakazu Park
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Director