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May 5, 2005

David T. Horio, M.D., Administrator
State Laboratories Division
Department of Health
2725 Waimano Home Road
Pearl City, Hawaii 96782-1496

Re: Samples of Live Organisms

Dear Dr. Horio:

This letter is in response to your request for an opinion regarding whether the State Laboratories Division (“SLD”) of the Department of Health must provide samples of live organisms, specifically bacteria isolated from submitted food or patient specimens, in response to a request made under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“HRS”) (“UIPA”).

ISSUE PRESENTED

Whether samples of live organisms in the possession of a government agency are subject to disclosure under the UIPA.

BRIEF ANSWER

No. Samples of live organisms do not constitute “government records” under the UIPA and, therefore, release of these samples is not governed by its provisions.

DISCUSSION

The UIPA controls the disclosure of “government records,” defined as “information maintained by an agency in written, auditory, visual, electronic, or other physical form.” Haw. Rev. Stat. § 92F-3 (1993); *see* Haw. Rev. Stat. § 92F-11 (1993). We understand that the samples may be thought of in general terms as containing “information” in a “physical form.” However, the term “government

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record” implicitly and logically includes the definition of “record,” which is “a thing constituting a piece of evidence about the past . . . kept in writing or some other permanent form.” The New Oxford American Dictionary 1424 (2001); see Haw. Rev. Stat. § 1-14 (1993) (words of law generally given common meaning); see also Haw. Rev. Stat. §§ 428-101, 490:5-102 (Supp. 2004) (Uniform Limited Liability Company Act and Uniform Commercial Code define “record” to be “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.”). Accordingly, it is our opinion that, under the UIPA, the term “government record” must be construed to be information that is written, stated, inscribed or otherwise recorded in any medium and that the words “written, auditory, visual, electronic, or other physical form” refer to the various media or forms in which that information may be recorded. See also Commentary to § 1-105 of the Uniform Information Practices Code (“UIPC”) (noting that it is not an employee’s thoughts but his recorded notes in “physical form” that constitute a government record under the UIPC).¹

CONCLUSION

Based upon the foregoing discussion, it is our opinion that the term “government record,” as it is used in the UIPA, does not encompass samples of live organisms and, therefore, any requests received by SLD for these samples are outside the purview of the UIPA. It is only when information gleaned from these samples is recorded in a physical form maintained by a government agency that a “government record” would exist for purposes of triggering the disclosure requirements of the UIPA.

Very truly yours,

Cathy L. Takase
Staff Attorney

APPROVED:

Leslie H. Kondo
Director

¹ See State of Haw. Org. of Police Officers v. Soc’y of Prof’l Journalists-Univ. of Haw. Chapter, 83 Haw. 378, 392, 927 P.2d 386, 400 & n.8 (1996) (noting that the legislature considered the UIPC in drafting the UIPA and indicated intent that commentary to the UIPC guide the interpretation of similar provisions in the UIPA).