

**Op. Ltr. 94-23 Community Television Station is Not an Agency**  
This opinion was overruled by OIP Op. Ltr. 02-08.

December 13, 1994

Mr. Robert Allen Skelton  
Executive Director  
Ho'ike Kaua'i  
P.O. Box 1707  
Lihue, Hawaii 96766

Dear Mr. Skelton:

Re: Ho'ike: Kaua'i Community Television, Inc.

This is in response to your letter dated September 29, 1994 to the Office of Information Practices ("OIP") requesting an advisory opinion concerning whether Ho'ike: Kaua'i Community Television, Inc. ("Ho'ike") is an "agency" subject to the provisions of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

Ho'ike is a private, non-profit corporation which provides community broadcasting for the island of Kaua'i on cable television. Under the UIPA, the term "agency" includes "any corporation or other establishment owned, operated, or managed by or on behalf of this State or any county." Haw. Rev. Stat. § 92F-3 (Supp. 1992).<sup>1</sup>

In a previous OIP advisory opinion, we concluded that Akaku - Maui Community Television, Inc. ("Akaku") is not "owned, operated, or managed" by or on behalf of the Department of Commerce and Consumer Affairs ("DCCA") or any State or county agency. See OIP Op. Ltr. No. 93-18 (Oct. 20, 1993). In that opinion we found that Akaku is a non-profit community television broadcasting company that initially received the DCCA's

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<sup>1</sup>The UIPA provides that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1992). The term "government record" is defined in section 92F-3, Hawaii Revised Statutes, as "information maintained by an agency in written, auditory, visual, electronic, or other physical form." [Emphasis added.]

assistance in establishing operations, but that the DCCA no longer is involved with any of Akaku's activities or operations.

In addition, we found that Akaku does not perform a governmental function (although we believe that it is performing a service that benefits the public interest). Consequently, based upon these factors, we concluded that Akaku is not an "agency" as that term is defined in section 92F-3, Hawaii Revised Statutes.

Similarly, the DCCA's Cable TV Division has informed the OIP that Ho'ike, a private, non-profit corporation which provides community broadcasting on Kaua'i, does not receive any financial or other assistance from State or county government. Nor is there any government involvement in or control over Ho'ike's activities and operations. In addition, because providing "community" broadcasting is not a required function of any government agency, we do not believe that Ho'ike performs a governmental function. Accordingly, in our opinion, Ho'ike is not an "agency" as that term is defined in section 92F-3, Hawaii Revised Statutes, and therefore, is not subject to the provisions of the UIPA.

Very truly yours,

Stella M. Lee  
Staff Attorney

APPROVED:

Kathleen A. Callaghan  
Director

SML:sc

c: Sanford Inouye, Esq.  
DCCA, Cable TV Division

John Anderson  
Deputy Attorney General