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Electronically Filed
FIRST CIRCUIT
1CCV-21-0001329
30-AUG-2022
12:09 PM
Dkt. 41 MSJ

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Honolulu Civil Beat Inc.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-21-1329
(Other Civil Action)

MOTION FOR SUMMARY
JUDGMENT; MEMORANDUM OF
LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT; DECLARATION OF
PATTI EPLER; DECLARATION OF R.
BRIAN BLACK; EXHIBITS 1-14; and
NOTICE OF HEARING

HEARING MOTION

JUDGE: Honorable John M. Tonaki

TRIAL DATE: NONE

HEARING DATE: October 25, 2022

HEARING TIME: 9:30 a.m.

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rules 56 and 57 of the Hawai'i Rules of Civil Procedure, and based on the accompanying memorandum of law, declarations, and exhibits and the pleadings filed in this action, Plaintiff Honolulu Civil Beat Inc. (Civil Beat) respectfully moves this Court for summary judgment against Defendant Department of Public Safety (PSD). Civil Beat seeks an order pursuant to the Uniform Information Practices Act (Modified), Hawai'i Revised Statutes chapter 92F, requiring PSD to disclose the

records that Civil Beat requested on March 31 and September 23, 2021, regarding individuals who died in Defendant's custody.

DATED: Honolulu, Hawai'i, August 30, 2022

/s/ Robert Brian Black
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

HONOLULU CIVIL BEAT INC.,

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MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

This public records case concerns two requests related to the identity of incarcerated individuals who died while in the custody of Defendant Department of Public Safety (PSD or Department). For decades, the Office of Information Practices (OIP) has held that basic information about deceased individuals is public record under the Uniform Information Practices Act (Modified), Hawai`i Revised Statutes (HRS) chapter 92F (UIPA).¹ The people of Hawai`i entrust PSD with the supervision and safety of thousands of citizens. When an incarcerated person dies in the Department's custody, PSD must openly account for that death to justify the public's continued trust in the Department's ability to serve its critical role in the criminal justice system. The first step in PSD's accountability is disclosing the identity of someone who dies in its custody and the details regarding that death. But the Department denied public access to this simple information when requested by Plaintiff Honolulu Civil Beat (Civil Beat).

Civil Beat respectfully requests that the Court grant its motion for summary judgment and order disclosure of all information that it requested.

¹ "Opinions and rulings of the office of information practices shall be admissible and shall be considered as precedent unless found to be palpably erroneous" HRS § 92F-15(b).

I. STATEMENT OF FACTS

On March 31, 2021, Civil Beat requested “all notices of inmate deaths for calendar years 2020 and 2021 under HRS 841-3” and “all reports regarding deaths in custody that occurred in 2020 and 2021 pursuant to 42 USC 13727.” Decl. of Patti Epler, dated August 29, 2022 [Epler Decl.], Ex. 1.

HRS § 841-3 provides:

As soon as any coroner or deputy coroner has notice of the death of any person within the coroner’s or deputy coroner’s jurisdiction as the result of violence, or as the result of any accident, or by suicide, or suddenly when in apparent health, or when unattended by a physician, *or in prison*, or in a suspicious or unusual manner, or within twenty-four hours after admission to a hospital or institution, the coroner or deputy coroner shall forthwith inquire into and make a complete investigation of the cause of the death.

Any person who becomes aware of the death of any person under any of the circumstances set forth above shall immediately notify the coroner or deputy coroner of the known facts concerning the time, place, manner, and circumstances of the death.

Any person who fails to report the death of a person under circumstances covered herein shall be subject to a fine of not more than \$100.

(emphasis added).

Under federal law, PSD must:

[R]eport to the Attorney General . . . information regarding the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp prison, boot camp prison that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including juvenile facility).

34 U.S.C. § 60105(a).² That report must include: “(1) the name, gender, race, ethnicity, and age of the deceased; (2) the date, time, and location of death; (3) the law enforcement agency that detained, arrested, or was in the process of arresting the

² The statutory reference in Civil Beat’s March 31, 2021 UIPA request (42 U.S.C. § 13727) “was editorially reclassified as section 60105 of Title 34, Crime Control and Law Enforcement.” 42 U.S.C. § 13727 note.

deceased; and (4) a brief description of the circumstances surrounding the death.” 34 U.S.C § 60105(b).

On September 23, Civil Beat requested “[a]ll investigation reports received from coroners in 2020 or 2021 that identify cause of death for individuals who died in the custody of the Department of Public Safety, including without limitation autopsy reports or inquest reports.” Decl. of R. Brian Black, dated August 30, 2022 [Black Decl.], Ex. 6. At a minimum, when a death must be reported to the coroner by law, the coroner must complete a form of inquest to describe the findings of its investigation.³ HRS §§ 841-3, -7(a). An autopsy may also be performed if the coroner, prosecuting attorney, or chief of police deem it “necessary in the interest of the public safety or welfare.” HRS § 841-14.

On April 9, PSD denied Civil Beat’s March 31 request to the extent that it sought the deceased’s name, stating that the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) prevented “disclosing individually identifiable health information.” Epler Decl. Ex. 2. On October 5, PSD denied Civil Beat’s September 23 request by citing HIPAA. Black Decl. Ex. 7. On November 22, PSD filed its Answer claiming that denial was justified by the UIPA privacy exception and HIPAA. Dkt. 13 at 2 ¶ 4.

³ A coroner’s findings would be reported in substantively equivalent form to:

STATE OF HAWAII
County (or City and County) of.....
CORONER’S INQUEST

An inquisition taken at..... county (or city and county)
of..... on the..... day of..... in the year 20..... before.....
coroner of the county upon the body of..... there lying dead, resulted
as follows:

That the deceased was named.....; and a native of.....;
was aged about.....; that the deceased came to h..... death, on the..... day
of..... 20....., from.....

IN WITNESS WHEREOF, the coroner has hereunto set the
coroner’s hand on this..... day of 20..... .

HRS § 841-7(a); *see* Epler Decl. Ex. 3-5.

II. STANDARD OF REVIEW

The standard of review on a motion for summary judgment is well-settled:

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence must be viewed in the light most favorable to the non-moving party. In other words, [this court] must view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion.

Kamaka v. Goodsill Anderson Quinn & Stifel, 117 Hawai`i 92, 104, 176 P.3d 91, 103 (2008).

When the non-moving party – here PSD – has the burden of proof at trial, summary judgment is proper upon a showing that the non-moving party cannot meet its burden.

Thomas v. Kidani, 126 Hawai`i 125, 130, 267 P.3d 1230, 1235 (2011).

III. UIPA PRIVACY: PSD MUST DISCLOSE WHO DIED IN ITS CUSTODY.

The Legislature enacted the UIPA’s broad disclosure mandate to “[p]romote the public interest in disclosure.” HRS § 92F-2(1).

In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public’s interest. Therefore the legislature declares that *it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decisions, and actions of government agencies – shall be conducted as openly as possible.*

HRS § 92F-2 (emphasis added); Conf. Comm. Rep. No. 112-88, in 1988 House Journal at 817 (“open government is the cornerstone of our democracy.”). In furtherance of the Legislature’s presumption of public access to government records, the UIPA provides: “All government records are open to public inspection unless access is restricted or closed by law.” HRS § 92F-11(a). In other words, disclosure is the default. *State of Haw. Org. of Police Officers v. City & County of Honolulu [SHOPO v. City & County]*, 149 Hawai`i 492, 504, 494 P.3d 1225, 1237 (2021) (“UIPA requires disclosure unless an exception applies.”).

If there is any dispute about access: “The agency has the burden of proof to establish justification for nondisclosure.” HRS § 92F-15(c). Thus, an agency must prove that each nondisclosure of information is justified by one of the five exceptions to access in HRS § 92F-13. “[B]road, general assertions are generally insufficient to meet this burden of proof.” OIP Op. No. F15-01 at 4. And as OIP has explained in numerous opinions, “the UIPA’s affirmative disclosure provisions should be liberally construed, its exceptions narrowly construed, and all doubts resolved in favor of disclosure.” *E.g.*, OIP Op. No. 05-16 at 6-7.⁴

The UIPA privacy exception permits agencies to withhold information if disclosure “would constitute a clearly unwarranted invasion of personal privacy.” HRS § 92F-13(1). The Legislature expressly refused the more expansive privacy exception under the prior law that had “received almost uniform criticism” because, in part, it appeared “to give primacy to personal privacy interests.” H. Stand. Comm. Rep. No. 342-88, in 1988 House Journal at 969-70; S. Stand Comm. Rep. No. 2580, in 1988 Senate Journal at 1094 (rejecting broader exclusion of any records “which invade the right of privacy,” explaining that “[s]uch records will only be closed if there is a ‘clearly unwarranted’ invasion of privacy”). Even as to potential constitutional privacy challenges to the narrowed UIPA exception, the Legislature emphasized the

⁴ The U.S. Supreme Court has explained the fundamental purpose of freedom of information in the context of the federal Freedom of Information Act.

The Act’s “basic purpose reflected ‘a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.’” “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” There are, to be sure, specific exemptions from disclosure set forth in the Act. “But these limited exemptions do not obscure the basic policy that *disclosure, not secrecy, is the dominant objective of the Act.*” Accordingly, these exemptions “must be narrowly construed.”

John Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989) (emphasis added) (citations omitted).

“compelling state interest in open and accessible government.” S. Stand Comm. Rep. No. 2580, in 1988 Senate Journal at 1094.

Under the UIPA privacy exception asserted in its Answer, PSD first must prove that the deceased individual has a significant privacy interest in the requested information. *SHOPO v. City & County*, 149 Hawaiʻi at 515, 494 P.3d at 1248 (“even a scintilla of public interest warrants disclosure of public records when there is no significant privacy interest on the other side of the ledger”). If there is a significant privacy interest in specific information, PSD then must prove that the privacy interest outweighs the public interest in disclosure of the information. HRS § 92F-14(a) (“Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual.”).

PSD fails at the first step of the analysis because there is no significant privacy interest in disclosing the fact that an individual has died. *E.g.*, OIP Op. No. 05-18 at 3-4 (explaining that the only individual privacy concerns that survive death are reputational interests).⁵ Deceased status is not comparable to any of the examples of significant privacy interests identified in UIPA.⁶ HRS § 92F-14(b). To the contrary, the fact that a person has died is information required by statute to be made public. HRS § 338-18(d). The State maintains indices of vital events, including deaths, that “shall be

⁵ Family members may have privacy interests in preventing “disclosure of *graphic details* surrounding their relative’s death.” OIP Op. No. F15-01 at 11 (emphasis added). But such concerns are not implicated by the mere disclosure that an individual has died.

⁶ Death also is not “highly personal and intimate” information that would trigger a constitutional or common law privacy analysis. *See State of Haw. Org. of Police Officers v. Soc’y of Prof’l Journalists*, 83 Hawaiʻi 378, 398, 927 P.2d 386, 406 (1996). The Hawaiʻi Supreme Court quoted examples of qualifying information from the Restatement:

Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man’s [or woman’s] life in his [or her] home, and some of his [or her] past history that he [or she] would rather forget.

Id.

made available to the public.” *Id.*; accord HAR 11-117 ch. 8B § 2.6(C) (“An abbreviated copy of a death certificate may be issued to any person or organization requesting it.”).

Nevertheless, even if the deceased individual had a significant privacy interest in the fact that he or she died, disclosure of the records here would not constitute a *clearly unwarranted* invasion of personal privacy. For example, OIP has repeatedly held that the public interest in disclosure of death-related records outweighs privacy interests when — as here — a death investigation is required by law. *E.g.*, OIP Op. No. F15-01 at 8-9 (when “coroner has a statutory duty to inquire into and make a complete investigation of the cause of death of any person,” “the public has a legitimate interest” in disclosure of reports “prepared in connection with the performance of this statutory duty”); *see also* OIP Op. No. 91-32. That public interest extends to the toxicology and psychiatric information in autopsy reports. OIP Op. No. F15-01 at 8-9 (toxicology reports); OIP U Memo. No. 21-02 [Black Decl. Ex. 8] at 5-6 (psychiatric information). OIP has never held that agencies may withhold the identity of a deceased individual when there is a statutory duty to investigate that person’s death.

Moreover, autopsy reports have been public for decades, even before the Legislature adopted the UIPA. OIP Op. No. F15-01 at 9; *Peer News LLC v. City & County of Honolulu*, 143 Hawai‘i 472, 484, 431 P.3d 1245, 1257 (2018) [*Peer News II*] (recognizing that the Legislature’s adoption of the UIPA was not intended to “close off records that were historically available to the public under Hawai‘i law”); Conf. Comm. Rep. No. 112-88, in 1988 House Journal at 818 (“It is not the intent of the Legislature that this section be used to close currently available records, even though these records might fit within one of the categories in this section.”). Thus, “the Legislature was aware of the public nature of medical examiner records at the time it enacted the UIPA and could have expressly exempted them from public disclosure, but did not do so.” OIP Op. No. F15-01 at 9; *see also Peer News LLC v. City & County of Honolulu*, 138 Hawai‘i 53, 69, 376 P.3d 1, 17 (2016) [*Peer News I*] (“The legislature is presumed to know the law when it enacts statutes, including this court’s decisions, and agency interpretations.”).

Here, Civil Beat requested reports that are required by law. The PSD notices to the coroner and the coroner investigation reports are required by State law because the

deceased individuals died “in prison.” HRS §§ 841-3, -7(a), -14. And federal law requires the reports on the deaths of individuals who die in State custody. 34 U.S.C. § 60105(a). At the most basic level, the public has a substantial interest in whether PSD is properly performing its statutory duty to report deaths to State and federal authorities. *E.g.*, OIP Op. No. 89-04 at 6-7 (disclosing names of individuals on waitlist for Hawaiian Home Lands because it will shed light on “an agency’s performance of its statutory duties”). But the public interest in disclosure here goes deeper because these records concern people who died while detained by a government agency.

PSD must be publicly accountable for how it operates the State prisons and the conditions in which incarcerated individuals are confined. *See, e.g.*, PSD Policy No. COR.01.14, Corrections Mission and Goal ¶ 4.5 (eff. March 17, 2010), *available at* <https://dps.hawaii.gov/wp-content/uploads/2012/10/COR.01.14.pdf> (PSD goal: “To operate humane facilities with employees *who are held accountable* for upholding the human and civil rights of [the incarcerated individuals in its custody]” (emphasis added)). The public has a strong interest in evaluating whether PSD effectively and humanely performs its role in our criminal justice system as the State agency that secures, houses, cares for, and prepares for reintegration into society incarcerated individuals. Opening up basic information concerning deaths in PSD custody to public scrutiny “is the only viable and reasonable method of protecting the public’s interest.” HRS § 92F-2. PSD must be accountable to the public regarding deaths that occur in its custody if the public is to have confidence that PSD upholds the human and civil rights of the State’s incarcerated population.

It is the declared State policy that government action “shall be conducted as openly as possible.” *Id.* The public interest in disclosure of information surrounding an incarcerated individual’s death outweighs any privacy interest. PSD has not met its burden to prove that disclosing the information requested by Civil Beat would constitute a clearly unwarranted invasion of privacy. Thus, the requested records cannot be withheld under UIPA’s privacy exception.

IV. HIPAA DOES NOT BAR DISCLOSING THAT AN INCARCERATED PERSON DIED.

Death is not protected health information. “HIPAA and the [HIPAA] Privacy Rule only apply to records pertaining to a covered entity’s provision of health care to an individual, and *not to a covered entity’s other functions.*” OIP Op. No. 12-01 at 8-9 (footnotes omitted) (emphasis added) (reiterating advice from the U.S. Department of Health and Human Services (DHHS), Office of Civil Rights, Region VI). The records at issue here ultimately concern the investigation by the coroner (who is not covered by HIPAA) into the death of the incarcerated person—not PSD’s provision of health care to that person.⁷

Moreover, PSD does not treat death as protected health information. People who are not healthcare professionals within a PSD correctional facility know when someone in custody dies within that facility. Despite not performing any functions covered by HIPAA, the wardens and watch captains get notice of a death that occurs in their facility. Black Decl. Ex. 9 ¶ 5.1-5.3 at 2-3; Ex. 10 ¶¶ 11-12 at 5 (admitting that Institutions Division personnel do not provide health care or perform functions covered by HIPAA). And while medical records are secured separately from other institutional records, PSD admits that numerous records outside the Health Care Division mention an incarcerated person’s death, including investigation reports, logbooks, directories, residency lists, and employment records. *Id.* Ex. 11 ¶ 5 at 4; Ex. 11 ¶ 14 at 4-5. These documents are accessible to corrections employees in divisions that do not perform functions covered by HIPAA. *E.g., id.* Ex. 12 ¶ 14 at 5; Ex. 10 ¶¶ 11-12 at 5.

⁷ Through HIPAA, Congress sought “to improve ‘the efficiency and effectiveness of the *health care system* by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information.’” 65 Fed. Reg. 82,463, 82,469 (Dec. 28, 2000) (emphasis added). Thus, the HIPAA Privacy Rule only applies to a “covered entity” — defined as a “health plan,” “health care clearinghouse,” or “health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.” 45 C.F.R. § 160.103. Solely for purposes of its motion for summary judgment, Civil Beat assumes that PSD is a “covered entity.”

PSD's current position that death is protected health information is also inconsistent with PSD's treatment of the same information in the past. PSD routinely provided the public with the names of incarcerated people that died in its custody as recently as late 2020. *Inmate dies after found unresponsive*, Maui News (Dec. 11, 2020), available at <https://www.mauinews.com/news/local-news/2020/12/inmate-dies-after-found-unresponsive/> (reporting on PSD's public disclosure of the death of Lewellyn Foster Jr.); Kevin Dayton, *Two More Hawaii Inmates Who Died At Saguaro Prison Had COVID-19, New Details Show*, Honolulu Civil Beat (Dec. 7, 2020), available at <https://www.civilbeat.org/2020/12/two-more-hawaii-inmates-who-died-at-saguaro-prison-had-covid-19-new-details-show/> (Edison Legaspi and Fiatau Mika); Kevin Dayton, *Hawaii's Longest Serving Convict, Dead at 84, Outlived His Notoriety*, Honolulu Civil Beat (Dec. 31, 2020), available at <https://www.civilbeat.org/2020/12/hawaiis-longest-serving-convict-dead-at-84-outlived-his-notoriety/> (George Shimabuku). And PSD published press releases disclosing names (and pictures) of incarcerated people that died in its custody between 2014 and 2017. Black Decl. Ex. 13. These press releases remain available for public view on PSD's website.

It is illogical, inconsistent with HIPAA's focus on the provision of health care, and contrary to PSD's past practices to permit PSD to hide the fact that a specific incarcerated person died in PSD's custody. The mere fact of death is not a health secret.

V. HIPAA DOES NOT APPLY WHEN RECORDS MUST BE DISCLOSED UNDER FREEDOM OF INFORMATION LAWS.

Because UIPA requires disclosure of the requested records, PSD cannot withhold them under HIPAA. Even if death were protected health information—it is not—a covered entity does not need authorization to disclose such information when “disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.” 45 C.F.R. § 164.512(a). “Required by law” means “a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law.” 45 C.F.R. § 164.103; 65 Fed. Reg. 82,462, 82,668 (Dec. 28, 2000) (“‘law’ is intended to be read broadly to include the full array of binding legal authority, such as constitutions,

statutes, rules, regulations, common law, or other governmental actions that have the effect of law.”)

When it proposed the HIPAA Privacy Rule, the DHHS explained procedurally how this provision intersects with freedom of information (FOI) laws. As DHHS explained, an entity that is subject to both HIPAA and FOI laws must first analyze whether the applicable FOI law would require disclosure of the requested protected health information; if no FOI exception applies, HIPAA permits disclosure under the “required by law” HIPAA exception, 45 C.F.R. § 164.512(a).

Uses and disclosures required by FOIA come within § 164.512(a) of the privacy regulation that permits uses and disclosures required by law if the uses or disclosures meet the relevant requirements of the law. Thus, a federal agency must determine whether it may apply an exemption or exclusion to redact the protected health information when responding to a FOIA request. . . . If presented with a FOIA request that would result in the disclosure of protected health information, a federal agency must first determine if FOIA requires the disclosure or if an exemption or exclusion would be appropriate. . . . Covered entities subject to FOIA must evaluate each disclosure on a case-by-case basis, as they do now under current FOIA procedures.

65 Fed. Reg. at 82,482; *accord id.* at 82,597 (“[The HIPAA Privacy Rule] will not interfere with the ability of federal agencies to comply with FOIA, when it requires the disclosure.”).

DHHS commented that it would anticipate that protected health information for living individuals generally would be protected under the FOIA privacy exemption or comparable State privacy exceptions, but distinguished records for deceased individuals. *Id.* at 82,482 (“We recognize, however, that the application of [the FOIA privacy exemption] to information about deceased individuals requires a different analysis than that applicable to living individuals because, as a general rule, under the Privacy Act, privacy rights are extinguished at death.”); *accord id.* at 82,597 (“If an agency receives a FOIA request for the disclosure of protected health information of a deceased individual, it will need to determine whether or not the disclosure comes within [the FOIA privacy exemption]. . . . If the federal agency determines that the exemption does not apply, may [sic] release it under § 164.512(a) of this regulation.”).

And DHHS made clear that the same process applied for state FOI laws, such as UIPA, particularly as it concerned autopsy reports.

These rules permit covered entities to make disclosures that are required by state Freedom of Information Act (FOIA) laws under § 164.512(a). Thus, if a state FOIA law designates death records and autopsy reports as public information that must be disclosed, a covered entity may disclose it without an authorization under the rule. To the extent that such information is required to be disclosed by FOIA or other law, such disclosures are permitted under the final rule.

Id. at 82,597; *accord id.* at 82,668 (“The rule’s approach is simply intended to avoid any obstruction to the health plan or covered health care provider’s ability to comply with its existing legal obligations.”).

In Hawai‘i, the UIPA requires disclosure of government records unless one of the exceptions applies. HRS § 92F-11(b) (“Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.”). For the exceptions, the UIPA provides that the UIPA “shall not require disclosure” of information that falls within the exceptions. HRS § 92F-13. As with the federal FOIA, if an exception applies under the UIPA, the government agency has the discretion to disclose the information, but is not required to do so; if no exception applies, disclosure is required. *SHOPO v. City & County*, 149 Hawai‘i 492, 508-09 & n.19, 494 P.3d 1225, 1241-42 & n.19 (2021) (“there are three classes of documents under UIPA: (1) documents that must be disclosed, (2) documents that may be disclosed, and (3) documents that may not be disclosed.”). HIPAA only removes an agency’s *discretion* to disclose records when an exception to mandatory disclosure applies to the information. 45 C.F.R. § 164.512(a); 65 Fed. Reg. 82,482, 82,597.

As already shown, the UIPA privacy exception does not apply to the information requested by Civil Beat. If the County Coroners must release these records, PSD cannot claim that its copies of the exact same information are exempt from disclosure because it is a “covered entity” under HIPAA. Epler Decl. Ex. 3-5; *accord Abbott v. Texas Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648, 664 n.11 (Tex. App. 2006) (“Our conclusion that the information requested in this case is not confidential under the

Public Information Act is buttressed by the fact that the reporter was able to obtain the requested information from another agency, the Texas Department of Protective and Regulatory Services, which is not a covered entity under HIPAA.”).

Moreover, the OIP Director recently testified to the Legislature that UIPA requires disclosure of a deceased incarcerated person’s name:

OIP notes that section 92F-12(a)(4), HRS, requires public disclosure of ‘directory information concerning an individual’s presence at any correctional facility,’ including the names and locations of incarcerated individuals, notwithstanding any provision to the contrary. Thus, the name of an inmate who died in custody would be public information in the same way as an inmate’s departure from a facility for other reasons.

Black Decl. Ex. 14 at 1-2.

As expressly interpreted by DHHS, HIPAA does not prohibit disclosure when a state public records law, such as UIPA, requires disclosure.⁸ Thus, for purposes of this motion under the public records law, HIPAA is irrelevant.

⁸ Other jurisdictions that have addressed this issue came to the same conclusion. *State ex rel. Adams County Historical Soc’y v. Kinyoun*, 765 N.W.2d 212, 217 (Neb. 2009) (“[45 C.F.R. § 164.512(a)] includes statutes and regulations that require the production of the information, such as Nebraska’s public records statutes.”); *State ex rel. Cincinnati Enquirer v. Daniels*, 844 N.E.2d 1181, 1184 (Ohio 2006) (“[T]he requested lead-assessment reports would still be subject to disclosure under the ‘required by law’ exception to the HIPAA privacy rule because the Ohio Public Records Law, R.C. 149.43, requires disclosure of these reports, and federal law, HIPAA, does not supersede state disclosure requirements.”); *Abbott*, 212 S.W.3d at 665 (“We disagree with the Department’s assertion that the Public Information Act does not qualify under section 164.512(a).”); see also *In re Ladd*, No. FIC 2015-0061 (Conn. Freedom of Information Comm’n 2015) (“This Commission has repeatedly concluded that the confidentiality requirements in HIPAA do not prohibit disclosure where disclosure is required by the FOI Act.”); Ga. A.G. Op. No. 2007-4 at 3 (July 11, 2007) (“If the disclosure is required by state law and not merely permissive, the state law is not preempted.”); S.C. A.G. Op. dated May 15, 2021, at 10 (“[E]ven if inmates’ names and causes of death are protected health information under HIPAA, HIPAA would not restrict the disclosure of such information as it is required to be released pursuant to state law.”); Tenn. A.G. Op. No. 15-48 at 3 (June 5, 2015) (“[W]hen Tennessee’s Public Records Act requires a covered entity to disclose [protected health information], the covered entity is permitted under HIPAA’s Privacy Rule to make the disclosure without running afoul of HIPAA as long as the disclosure complies with the Public Records Act.”).

CONCLUSION

Based on the foregoing, Civil Beat respectfully requests that the Court grant summary judgment for the Plaintiff and order PSD to disclose the requested records.

DATED: Honolulu, Hawai'i, August 30, 2022

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DECLARATION OF PATTI EPLER

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1. I am the Editor and General Manager for Honolulu Civil Beat Inc. (Civil Beat). I make this declaration in support of Civil Beat's Motion for Summary Judgment based on review of records kept in the ordinary course of business for Civil Beat and public records.

2. Attached as Exhibit 1 is a true and correct copy of the March 31, 2021 e-mail from Kevin Dayton, a reporter for Civil Beat, to Toni Schwartz at the Department of Public Safety.

3. Attached as Exhibit 2 is a true and correct copy of the April 9, 2021 Letter from Laurie Nadamoto, Litigation Coordination Officer for Department of Public Safety, to Mr. Dayton.

4. Attached as Exhibit 3 is a true and correct copy of the autopsy report for Brian Kimo Ogorman, an incarcerated person who died in Department of Public Safety

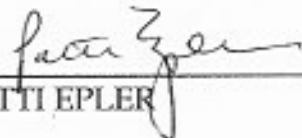
custody, as disclosed by the City & County of Honolulu Department of the Medical Examiner in response to a public records request by Mr. Dayton.

5. Attached as Exhibit 4 is a true and correct copy of the autopsy report for Lewellyn Foster Jr., an incarcerated person who died in Department of Public Safety custody, as disclosed by the Maui Police Department in response to a public records request by Mr. Dayton.

6. Attached as Exhibit 5 is a true and correct copy of the autopsy report for Edmund Kong, an incarcerated person who died in Department of Public Safety custody, as disclosed by the Hawai'i County Police Department in response to a public records request by Mr. Dayton.

I, PATTI EPLER, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, August 29, 2022


PATTI EPLER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-21-1329
(Other Civil Action)

DECLARATION OF R. BRIAN BLACK

DECLARATION OF R. BRIAN BLACK

1. I am the attorney for Plaintiff Honolulu Civil Beat (Civil Beat). I make this declaration in support of Civil Beat's Motion for Summary Judgment based on personal knowledge and public records.

2. Attached as Exhibit 6 is a true and correct copy of my September 23, 2021 letter to Max N. Otani, Director of Defendant Department of Public Safety.

3. Attached as Exhibit 7 is a true and correct copy of the October 5, 2021 e-mail to me from Defendant's Office of the Director.

4. Attached as Exhibit 8 is a true and correct copy of the State of Hawai'i Office of Information Practices (OIP) July 31, 2020 memorandum decision, U Memo. No. 21-02, disclosed by OIP in response to a public records request.

5. Attached as Exhibit 9 is a true and correct copy of the Department of Public Safety's Policy on Notification of Next of Kin/Local Authorities for the Oahu Community Correctional Center, No. 7.10.A10 (eff. Nov. 7, 2018), as disclosed by Defendant in discovery.

6. Attached as Exhibit 10 is a true and correct copy of the Department of Public Safety's Amended Response to Plaintiff Honolulu Civil Beat Inc.'s First Requests for Admission, dated May 26, 2022.

7. Attached as Exhibit 11 is a true and correct copy of the Department of Public Safety's Response to Plaintiff Honolulu Civil Beat Inc.'s First Requests for Admission, dated March 2, 2022.

8. Attached as Exhibit 12 is a true and correct copy of the Department of Public Safety's Response to Plaintiff Honolulu Civil Beat Inc.'s Second Set of Interrogatories to Defendant, verified March 8, 2022.

9. Attached as Exhibit 13 is a true and correct compilation of news releases and corresponding Internet announcements associated with the deaths of Jonathan Namauleg, Andrew Sarita, Christopher Homer, and Wesley Chong, extracted from Defendant Department of Public Safety's website (dps.hawaii.gov) on June 9, 2022.

10. Attached as Exhibit 14 is a true and correct copy of written testimony by Cheryl Kakazu Park, OIP Director, for the March 2, 2022 hearing of the House Committee on Finance, as published on the website of the Hawai'i State Legislature at https://www.capitol.hawaii.gov/Session2022/Testimony/HB2171_HD2_TESTIMONY_FIN_03-02-22_.PDF.

I, R. BRIAN BLACK, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, August 30, 2022

/s/ R. Brian Black
R. BRIAN BLACK

Exhibit 1

From: Kevin Dayton kdayton@civilbeat.org
Subject: Request for Public Records from Honolulu Civil Beat
Date: March 31, 2021 at 4:34 PM
To: Schwartz, Toni E Toni.E.Schwartz@hawaii.gov

KD

Aloha, Toni,

In my continuing effort to convince the Department of Public Safety to promptly release the names of deceased inmates who die in state custody, please consider this my request for all notices of inmate deaths for calendar years 2020 and 2021 under HRS 841-3.

Please also provide all reports regarding deaths in custody that occurred in 2020 and 2021 pursuant to 42 USC 13727, including the completed DOJ Form DCR-1A or equivalent and any reported updates to submitted forms.

Thank you for your assistance.

Best Regards,

Kevin Dayton
Honolulu Civil Beat
kdayton@civilbeat.org
(808) 960-5007

Exhibit 2

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

1177 Alakea St.
Honolulu, Hawaii 96813

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

April 9, 2021

Kevin Dayton
Honolulu Civil Beat
kdayton@civilbeat.org

Re: Request for Inmate Death Information

Dear Mr. Dayton:

This is in response to your email on March 31, 2021, requesting "all notices of inmate deaths for calendar years 2020 and 2021 under HRS 841-3" and also "all reports regarding deaths in custody that occurred in 2020 and 2021 pursuant to 42 USC 13727, including the completed DOJ Form DCR-1A or equivalent and any reported updates to submitted forms."

HIPAA restrictions prevent the Department of Public Safety (PSD) from disclosing individually identifiable health information. PSD will be redacting all identifying information from the documents. If you wish to proceed, the following is applicable:

Pursuant to HRS §92F, and the Office of Information Practices Administrative Rules, §2-71-19, when a person requests access to a government record under Part II of Chapter 92F, HRS, the agency may charge the requester:

- (a) (1) Fees for searching, reviewing, and segregating the record; provided that these fees shall be assessed in accordance with this chapter; and
- (b) An agency may require a requester to prepay the following before an agency begins the search for and review of records in order to respond to a request for access:
 - (1) Fifty per cent of the total estimated fees for searching, for reviewing, and segregating records when the estimated fees exceed \$30;
 - (2) One hundred per cent of the estimated fees under paragraph (a) for other services to prepare and or transmit the record; and
 - (3) One hundred per cent of the estimated fees from previous requests, including abandoned requests, in accordance with subsection (d).

Accordingly, in any request for information to PSD, the following charges apply for responsive documents: 1) \$2.50 for each 15-minute period of search time; 2) \$5.00

Kevin Dayton
April 9, 2021
Page 2

for each 15-minute period of review time and segregation; and 3) \$0.50 per page for documents copied/digitized

The information that you seek is not readily available and will require a search, review, and segregation time. The estimated cost related to your request will incur about 1 hour of search time, 6 hours of review and segregation time excluding copying cost at this time, which results in an estimated cost of \$100.00 after applying the \$30.00 waiver and. Please remit your pre-payment amount of \$50.00 in a check made payable to the Director of Finance. Upon receipt of your payment, PSD will begin processing your request. You will be notified of your final balance with payment due prior to releasing the information.

Sincerely,

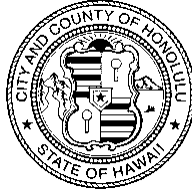
A handwritten signature in black ink, appearing to read "Laurie Nadamoto", with a long, sweeping horizontal stroke extending to the right.

Laurie Nadamoto
Litigation Coordination Officer

Exhibit 3

DEPARTMENT OF THE MEDICAL EXAMINER
CITY AND COUNTY OF HONOLULU
650 IWILEI ROAD, SUITE 205 • HONOLULU, HAWAII 96817
TELEPHONE: (808) 768-3090 • FAX: (808) 768-3099 • INTERNET: www.honolulu.gov/med

RICK BLANGIARDI
MAYOR



MASAHIKO KOBAYASHI, M.D., Ph.D.
MEDICAL EXAMINER

AUTOPSY REPORT
Case No. 2022-0687 - OGORMAN, Brian Kimo

RE: Brian Kimo OGORMAN

DATE/TIME OF PRONOUNCEMENT: 03/02/2022, 07:48PM

**DATE, TIME, AND PLACE OF EXAMINATION: 03/03/2022
09:00AM
MEDICAL EXAMINER'S FACILITY**

BRIEF HISTORY:

According to the information presently available, the following are the circumstances surrounding the death of Brian K. OGORMAN. The decedent was a 43-year-old Caucasian male. He was an inmate of Halawa Correctional Facility, in Aiea, Hawaii. Reportedly, he was found unresponsive in his cell on March 2, 2022. He was transported to Pali Momi Medical Center, where his death was pronounced shortly after arrival. There were no signs of foul play.

Because of the circumstances surrounding the death, the decedent was transported to the Department of the Medical Examiner for postmortem examination.

FINDINGS/PATHOLOGIC DIAGNOSIS:

1. Autopsy pathologic findings include:

- A. Skin lesions consistent with needle track marks of the extremities.
- B. Chronic hepatitis.

2. Toxicology (femoral blood):

- A. Lorazepam = 16 ng/mL.
- B. Olanzapine = 9.9 ng/mL.
- C. Hydroxyzine = 73 ng/mL.
- D. Naloxone = Presumptively positive.

3. Recent medical history (3/2/22):

A. Methadone clinic:

- 1) The decedent came in daily to receive methadone 80 mg.
- 2) Admit: 7/3/19.
- 3) Last dose given: 2/16/22.
- 4) Discharge: 2/26/22 due to no show.

B. Records from Halawa Correctional Facility (2/17/22 – 3/2/22):

- 1) 2/17/22: Opioid or methadone use not specifically documented.
- 2) 2/25/22: The decedent indicated he was withdrawing from methadone and last use was about a week ago.
- 3) 2/26/22:
 - a) COWS scores – 4, with stomach discomfort, agitation, anxiety, and tremor.
 - b) Start hydroxyzine, clonidine, Pepto-Bismol, and ondansetron.
- 4) Admitted to infirmary on 2/27/22 due to agitation and withdrawal symptoms.
- 5) 2/27/22:
 - a) After eating dinner, he apparently hit his head on toilet and was bleeding.
 - b) Pali Momi Medical Center:
 - i) He states he slipped, fell backwards, and hit his head on the floor.
 - ii) 5 cm laceration. Stapled.
 - iii) Head CT: Negative for acute intracranial pathology.
- 6) 2/28/22:
 - a) Body tremors, restlessness and diaphoretic.
 - b) Lying covered with safety smock. Slightly shaking.
 - c) Ate a few bites of dinner.
 - d) Complained of headache.
 - e) Activity intolerance.
- 7) 3/1/22:
 - a) Activity intolerance. Lying on floor, nude, talking consistently. Having tremors. Appears to be having visual hallucinations. Does not respond.
 - b) Did not eat breakfast, lunch, or dinner. His juice cup was partially full as if he was trying to drink it.
 - c) Lethargic, diaphoretic.

- d) Start lorazepam, ibuprofen, and dicyclomine.
- 8) No recent complaints of nausea and vomiting.
- 9) CIWA score for alcohol withdrawal: less than 10, below threshold of reporting (2/25/22 – 3/2/22 daily).
- 10) COWS score for opiate withdrawal: 4, below threshold of reporting (2/28/22 only on the records). Records for the other days could not be obtained.
- 11) Recently worsened tremor, paroxysmal sweats, agitation, and anxiety (3/1/22 – 3/2/22).

C. Infirmary records (3/2/22):

- 1) 3/2/22 (11:24 signed (actual observation time is unknown)):
 - a) Lying directly on the cement/tile without any clothes on. Did not appear to have the judgment to move himself to a warmer, softer surface. He was suggested to move off the floor to lie on his blanket, but he did not acknowledge. He appeared to be trembling either from the cold or withdrawal.
 - b) Medications: Hydroxyzine, clonidine, Pepto-Bismol, Zofran, lorazepam, ibuprofen, and dicyclomine on the records.
- 2) 3/2/22 (17:25 signed): Constant body shaking. Urinated on himself. Cooperative, agree to take scheduled medications.
- 3) 3/2/22 (17:55 signed): Start olanzapine tablet for questionable drug/methadone withdrawal psychosis.
- 4) 3/2/22 (18:08 signed):
 - a) Observed lying naked at a corner of the cell.
 - b) Shaking and tense.
 - c) He was called but he did not initially acknowledge. He was minimally engaged but receptive.
- 5) 3/2/22 (21:14 signed):
 - a) Consumed water with medication but did not eat meals.
 - b) Reportedly hallucinating, seeing things, and talking to himself.
 - c) Mumbling to himself, diaphoretic. No hallucination noted during the encounter.
 - d) Sitting upright, remains tense with tremors.
 - e) Responded to simple questions.
 - f) Denies suicidal ideation.
 - g) Last use of methadone on “2/16?” reported. He acknowledged withdrawal symptoms but denied recent substance use, including methamphetamine or ethanol.

- h) Reported not feeling well and stated "I just need to sleep."
- i) Cooperative but had difficulty responding due to tremors.
- j) Briefly engaged but requested to rest. Responses were logical and appropriate.
- k) Suicide watch not warranted. Status to be adjusted to safety watch.

6) 3/2/22 (21:15 signed):

- a) Continued to have tremors, diaphoretic, chills unresponsive to lorazepam.
- b) New onset psychosis, diaphoretic, chills, worsening mental status.
- c) Unresponsive to conventional withdrawal treatment.
- d) Unable to get vital signs due to tremors.
- e) Got order to send him to Queens ER (17:45).

7) 3/2/22 (22:20 signed):

- a) Suicide watch maintained, hourly rounding done.
- b) He was helped to sit up for medication. He was able to swallow medication without incident.
- c) Picking on his food and moving around the cell by crawling.
- d) Alert and oriented to self. Talking.
- e) Obvious tremors to upper and lower extremities. Unable to take blood pressure due to tremors.
- f) Took a shower today via wheelchair with help.
- g) Restless and mumbling.

8) 3/2/22 (3/3/22 00:00 signed):

- a) ~17:45 - Doctor is giving orders to send him to Emergency Room due to increase of withdrawal symptoms, unresponsive to lorazepam and other treatments. Increase in tremors and mental status.
- b) ~18:05 - AMR called. Oxygen saturation was 92-94% room air. Oxygen tank is taken to infirmary.
- c) ~18:20 - Unresponsive, receiving cardiopulmonary resuscitation. AED did not advise shock.
- d) ~18:36 EMS arrived. Automated CPR machine applied.
- e) ~19:01 Departed.

9) 3/2/22 (4/12/22 13:48 signed):

- a) Laying on floor, tremors, has urine on self.
- b) He was not able to eat, stand up, or sit down due to tremors.
- c) Pulse 92, unable to get blood pressure due to tremor.
- d) Order of lorazepam 2 mg.

- e) Continues to have tremors, unresponsive to lorazepam, diaphoretic, child, unresponsive to conventional withdrawal treatment, worsening mental status.
 - f) Order to send him to Queens Hospital.
 - g) Required emergency medical attention, CPR.
- 10) On the medication administration records, ibuprofen, olanzapine, clonazepam, hydroxyzine, clonidine, ondansetron, dicyclomine, and lorazepam were used on 3/2/22.
- 11) No daily records available for the amount of food and fluids he took.

D. EMS:

- 1) At patient: 18:34.
- 2) Pulseless, apneic.
- 3) Initial electrocardiogram: Asystole.
- 4) Saline and naloxone given.
- 5) Multiple bouts of return of spontaneous circulation.
- 6) Blood glucose: 32 (18:57).

- a) Dextrose given → 98 (19:11).

E. Pali Momi Medical Center:

- 1) Bradycardic, hypotensive, lost pulses.
- 2) Cardiopulmonary resuscitation with return of spontaneous circulation.
- 3) Kept cording.
- 4) Electrocardiogram strip from EMS noted to have depressions diffusely and peaked T waves. Hyperkalemia suspected.
- 5) Laboratory data (point of contact testing):

- a) Sodium = 161.5 mmol/L.
- b) Potassium = 8.19 mmol/L.
- c) Chloride = 111 mmol/L.
- d) Calcium = 1.98 mmol/L.
- e) Magnesium = 4.2 mg/dL.
- f) Lactate = 19.20 mmol/L.
- g) Glucose = 620 mg/dL.
- h) Troponin T = 33 ng/L.

4. Past medical history includes:

- A. Anxiety disorder.
- B. Depression.
- C. Post-traumatic stress disorder.
- D. Panic disorder.

- E. Seizure disorder.
- F. Attention deficit hyperactivity disorder.
- G. Lumbar radiculopathy.
- H. Polysubstance use:
 - 1) Methamphetamine and heroin mentioned.
 - 2) Reportedly on methadone maintenance therapy: No medical records of methadone use available.
- I. No known history of psychiatric disorders.
- J. Hawaii Prescription Drug Monitoring Program records suggest:
 - 1) Long term use of buprenorphine or buprenorphine-naloxone throughout 2021 and in January 2022.
 - 2) Benzodiazepines (diazepam or clonazepam) have been prescribed in 2021 and January 2022.
 - 3) No records of prescription of methadone.
 - 4) No records after 1/24/22.

CONCLUSION:

Based on the autopsy findings and investigative and historical information available to me, in my opinion, Brian K. OGORMAN, a 43-year-old male, died as a result of cardiac arrhythmia (irregular heart beat) that was apparently due to hyperkalemia (a high level of potassium in the blood). The etiology of hyperkalemia was uncertain. Other significant conditions included opioid withdrawal.

An autopsy examination revealed skin lesions consistent with needle track marks and microscopic findings indicative of chronic hepatitis; however, there were no obviously lethal natural disease processes or traumatic injuries. Toxicology testing on the blood showed presence of prescription medications (lorazepam, olanzapine, and hydroxyzine) and naloxone given by EMS. Testing for synthetic cannabinoids and other major drugs of abuse was negative.

Available investigative information and medical records were reviewed. The decedent had been incarcerated and recently exhibited rapid deterioration with tremor, activity intolerance, apparent hallucinations, diaphoresis, and loss of appetite. He was treated for opioid withdrawal in the infirmary. It appears that he stopped eating on the day before his death although detailed information as to how much food and fluid he had been taking was unavailable. While he was prepared to be transported to a hospital, he became unresponsive with cardiac arrest. At the emergency department, there were elevated levels of sodium and potassium in the blood. It was also recognized that the electrocardiogram obtained by EMS was showing signs of hyperkalemia.

Hyperkalemia is known to cause serious arrhythmia. Based on the clinical information and lack of autopsy findings, it appears that his cardiac arrest was likely due to arrhythmia associated with a high level of potassium in the blood.

His conditions were deteriorating with apparent opioid withdrawal. He had been reportedly using methadone and buprenorphine, long-acting opioids, prior to incarceration. Medical literature indicates that symptoms of methadone withdrawal may last for weeks. Opioid withdrawal is generally not considered to be a lethal condition although some medical literature suggests it is a life-threatening condition. Due to the temporal proximity, it is possible his opioid withdrawal caused or contributed to his hyperkalemia; however, the causal relationship between opioid withdrawal and hyperkalemia could not be clearly explained. Literature search failed to find articles suggesting hyperkalemia as one of the serious complications of opioid withdrawal. The signs and symptoms he demonstrated prior to his death might include those from his electrolyte disturbance.

Based on the available medical history, possible aggravating factors of hyperkalemia may include dehydration suggested by hypernatremia, which might be associated with insufficient intake of fluid during opioid withdrawal. Medical literature also suggests ibuprofen may cause hyperkalemia although it appears he took only one dose of ibuprofen in the morning on the date of his death. Due to his activity intolerance, he might have rhabdomyolysis that an autopsy examination may not detect. It has also been reported that opioid withdrawal caused stress-induced (takotsubo) cardiomyopathy, which might make him more susceptible to arrhythmia.

A low level of blood glucose (hypoglycemia) was also found by EMS. Severe hypoglycemia may cause significant deterioration; however, the significance of this condition in his death was unclear. Medical literature states that patients who had cardiopulmonary arrest may demonstrate either low or high glucose level in the blood. At the hospital, after glucose administration and cardiopulmonary resuscitation, there was a markedly high level of blood glucose. The decedent did not have a medical history of diabetes mellitus or insulin use.

The manner of death is classified as natural.

CAUSE OF DEATH:

a) **Cardiac arrhythmia**

Due to, or as a consequence of:

b) **Hyperkalemia of uncertain etiology**

CONTRIBUTING CAUSE/OTHER SIGNIFICANT CONDITIONS:

Opioid withdrawal

MANNER OF DEATH: The manner of death is, in my opinion, **Natural**.

Masahiko Kobayashi, M.D., Ph.D.
Medical Examiner

**POSTMORTEM EXAMINATION
Department of the Medical Examiner
City and County of Honolulu**

This autopsy is performed by Masahiko Kobayashi, M.D., Ph.D., Medical Examiner, with the assistance of Mr. Jess Kim, at the Department of the Medical Examiner, Honolulu, Hawaii, on 03/03/2022.

The body is identified by a Medical Examiner's tag attached to the right great toe. The body has been completely disrobed and is not accompanied by clothing items.

EVIDENCE OF MEDICAL INTERVENTION:

An endotracheal tube protrudes from the mouth. An intravascular line inserts at the left lateral elbow. An interosseous line inserts at the left proximal lower leg. Another intravascular line inserts at the right medial ankle. Electrocardiogram pads are present on the body.

Multiple small brown abrasions are present on the medial chest. Subsequent autopsy of the chest reveals minimally hemorrhagic fractures involving the right 2nd – 5th and left 3rd and 4th ribs anterolaterally and the sternum at the level of the 4th intercostal space.

EXTERNAL EXAMINATION:

The body is that of a well-developed, adequately-nourished, adult male, measuring 75 inches tall, weighing 157 pounds, and appearing the stated age.

Rigor mortis is fully developed in the extremities. There is dorsal, fixed lividity.

The scalp hair is dark brown to black and up to 6 inches in length. Present on the left temporo-occipital region is a 3 cm, horizontally oriented stapled injury with associated deep scalp hemorrhage. The eyes are open. The irides are hazel/brown with clear corneas and pale conjunctivae with brown discoloration along the palpebral fissures. Facial stubble is present. The teeth are natural and in fair condition. There is a blue, thin, 1.5 x 0.7 cm piece of solid material attached to the palate. The tongue and palate is discolored blue.

Present on the bilateral forearms, hands, and lower legs are multiple areas of blue and purple discoloration, crusted skin lesions, and scarring consistent with needle track marks.

Identifying marks and surface features include: a tattoo of a cartoon character on the right deltoid area and left deltoid area. There are multiple irregular curvilinear scars on the lumbar area.

The remainder of the external examination of the body is unremarkable, and there is no evidence of acute significant injury.

INTERNAL EXAMINATION:

Head: The scalp is retracted and the cranial vault is opened. There is an approximately 5 cm area of deep scalp hemorrhage in the left temporo-occipital region. The calvaria, basilar skull, and dura are unremarkable. There is no epidural or subdural hemorrhage. The brain weighs 1,600 g. The leptomeninges are transparent, and there is no subarachnoid hemorrhage. The cerebral arteries at the base of the brain are widely patent. The cerebral hemispheres, cerebellum, and brainstem are normally formed and symmetrical. On sectioning, there is no evidence of intraparenchymal hemorrhage, infection, tumor, or trauma.

Body: The body is opened with a Y-shaped incision. The organs occupy their usual positions and relationships. The body cavities have smooth surfaces except for the right thoracic cavity with focal adhesions. The cavities contain no abnormal fluid. The skeletal muscles and axial skeletal system appear unremarkable.

Neck: The tongue is atraumatic. There is no evidence of infection, tumor, or trauma. The airway is patent.

Cardiovascular system: The heart weighs 345 g. The epicardial surface is smooth and glistening. The coronary arteries are normally distributed and show mild atherosclerotic changes associated with 25 – 50% stenosis of left anterior descending artery proximally. The myocardium is uniformly red-brown with normal thickness. The endocardium is smooth. The valves are pliable and normally formed. Opening of the aorta reveals minimal atherosclerosis.

Respiratory system: The right lung weighs 500 g and the left lung weighs 310 g. The pleural surfaces are smooth and glistening except for focal areas of adhesions on the right lung. On sectioning, the parenchyma is soft with mild congestion. There is no evidence of infection, tumor, or trauma. The airways and pulmonary vessels are unobstructed. No thromboemboli are grossly identified.

Gastrointestinal system: The esophagus is unremarkable. The stomach contains approximately 200 cc of dark-red blood. The gastric mucosa is unremarkable without ulcer or tears. The serosal surfaces of the small and large bowels are unremarkable. The appendix is present.

Liver and pancreas: The liver weighs 1,650 g. The capsule is smooth. On sectioning, the parenchyma is soft and red-brown to red-tan, and there are no focal abnormalities. The gallbladder is unremarkable. The pancreas is normal in size, and sectioning reveals unremarkable parenchyma.

Genitourinary system: The right kidney weighs 180 g and the left kidney weighs

185 g. The capsules strip with ease revealing smooth cortical surfaces. On sectioning, the cortices are red-brown and unremarkable. The collecting systems are not dilated. The bladder is unremarkable and contains approximately 50 cc of urine. The prostate gland is unremarkable.

Endocrine system: The thyroid and adrenal glands are unremarkable.

Lymphoreticular system: The spleen weighs 240 g with a smooth capsule and unremarkable parenchyma. Lymph nodes are not prominent.

MICROSCOPIC:

Slides

1. Heart (left anterior and posterior ventricular walls).
2. Heart (left lateral ventricular wall and septum).
3. Lungs.
4. Liver, kidney.
5. Brain.
6. Skin (left forearm).
7. Skin (left lower leg).
8. Heart (left ventricular anterior wall).
9. Heart (left ventricular lateral wall).
10. Heart (left ventricular posterior wall).
11. Heart (septum).
12. Heart (right ventricular anterior and posterior walls).
13. Lungs.
14. Lungs.
15. Liver, spleen, thyroid.
16. Heart (upper septum).
17. Heart (upper septum).
18. Heart (upper septum).
19. Pancreas, adrenal gland, pituitary.
20. Kidney.
21. Brain.
22. Brain.
23. Brain.
24. Brain.
25. Brain.
26. Brain.
27. Brain.

Heart: No significant histopathologic changes are present.

Lung: No significant histopathologic changes are present.

Liver: Many portal areas appear widened with mild to moderate lymphocytic infiltration and foci of interface hepatitis. There appear to be focal bridging fibrosis. There is minimal to mild fatty liver disease with some hepatocytes showing micro- and macro-vesicular steatosis.

Kidney: No significant histopathologic changes are present. No obvious myoglobin casts are present.

Spleen: No significant histopathologic changes are present.

Pancreas: No significant histopathologic changes are present.

Adrenal gland: No significant histopathologic changes are present.

Thyroid: No significant histopathologic changes are present.

Pituitary: No significant histopathologic changes are present.

Skin: Within the dermis are multiple granulomas with multinucleated giant cells. Many of them contain foreign bodies that include pieces of dark material and also birefringent crystals. There are also focal areas of dermal hemorrhage, presence of brown pigment-laden macrophages, and a small area of proliferation of apparent skin adnexal cells.

Brain: No significant histopathologic changes are present.

AUTOPSY PHOTOGRAPHS: Digital photographs are obtained.

TOXICOLOGY:

Pali Momi Medical Center hospital blood:

Lorazepam = 16 ng/mL.

Olanzapine = 9.9 ng/mL.

Hydroxyzine = 73 ng/mL.

Femoral blood: Naloxone = Presumptively positive.

Synthetic cannabinoids screen was negative.

(Comment: Naloxone was given by EMS. We failed to collect the vitreous fluid for electrolyte testing.)

See attached report of Medical Examiner Laboratory and NMS Labs.

Exhibit 4



Autopsy Report

Patient Name: **FOSTER JR, LEWELLYN**
Med. Rec. #: **AAHD0894**
DOB: **3/8/1984 (Age: 36)**
Gender: **M**
Physician(s): **Rachel A. Lange, MD (36554)**

Client: **CLH - Clinical Labs**
Location: **FOP (O)**

Accession #: **MAF20-281**
Expiration Date: **12/9/2020**
Autopsy Date: **12/15/2020**
Reported: **2/2/2021 14:59**

Police Case Number: **MPD 20-044284**
Autopsy Restrictions: **None**

PATHOLOGIC DIAGNOSES:

DATE OF DEATH: **December 09, 2020**

DATE, TIME AND PLACE OF EXAMINATION:

Tuesday, December 15, 2020
09:00 am
Maui County Police Department Morgue

BRIEF HISTORY: The decedent is a 36-year-old man who was found hanging in his jail cell at Maui Community Correctional Center. According to investigative reports, video surveillance showed him to enter the cell alone, followed shortly after by another inmate who then calls for assistance. A ligature constructed from a braided sheet was recovered from the cell. He was taken to the Emergency Department, where he was diagnosed with anoxic brain injury and died two days later.

FINDINGS:

1. Ligature abrasion of anterior neck
 - A. Anoxic brain injury, anamnestic:
 - i. Cerebral edema
 - B. No internal neck injuries
2. Status post organ donation

CONCLUSION: Based on these autopsy findings and the investigative and historical information available to me, in my opinion, this 36-year-old man died from asphyxia due to hanging.

IMMEDIATE CAUSE OF DEATH: **Hanging**

MANNER OF DEATH: The manner of death is, in my opinion, suicide.

COMPLETION DATE OF DEATH CERTIFICATE: **December 16, 2020**

Electronically Signed Out By Rachel Lange, MD

AUTOPSY PROTOCOL

This autopsy is performed by Rachel Lange, M.D. with the assistance of Ms. Ailina Alfonsi.

EXTERNAL EXAMINATION: The body is received in a body bag labeled "Foster, L" and police report number 20-044284. A hospital identification bracelet is around the right wrist. The body is that of a well-developed, well-nourished, 192 pound, 69 inch man whose appearance is consistent with the stated age of 36 years. The body has undergone organ donation.

The scalp is atraumatic. The straight, dark brown hair is 1/4 inch long over the crown. There is a 1/4 inch mustache and beard. The eyes have brown irides and translucent corneae. The sclerae and conjunctivae are pale, without petechiae, hemorrhage or icterus. The nose and facial bones are palpably intact. The ears are normally placed and unremarkable. The oral cavity has natural teeth which are in fair condition. The oral mucosa is atraumatic.

There is injury of the neck described below. The trachea is palpable in the midline. The chest and abdomen are well-developed. The abdomen is flat and soft. The posterior torso is unremarkable. The external genitalia are of a normal adult man. The penis is circumcised. The testes are descended. The upper and lower extremities are well-developed and symmetrical.

POSTMORTEM CHANGES: The body is cold. There is minimally evident purple livor mortis on the posterior body surfaces. Rigor mortis is moderate in the jaw and extremities. The body has undergone organ donation. A loosely sutured incision is running down the midline of the anterior torso; it is intersected by an incision across the abdomen at the level of the umbilicus. Internally, the kidneys are absent.

IDENTIFYING MARKINGS: There is a faint, vertically-oriented, linear scar overlying the proximal sternum; subsequent internal examination reveals remote cardiac surgery. There are multiple tattoos on the body: multiple skulls covering the right and left shoulders and arms; "MAMO" on the left side of the chest; a skull with jester hat on the right side of the abdomen; a "Playboy" bunny on the left side of the abdomen; "FOSTER" across the upper back; "KEPOLO" across the lower back; multiple demonic faces covering the entire back; skull, dice and Ace cards covering the lower right leg; and an hourglass and skull on the lower left leg.

NEEDLE TRACKS/PUNCTURE WOUNDS: None.

MEDICATIONS WITH THE BODY: None.

MEDICAL INTERVENTION: There are orogastric and endotracheal tubes in place. Intravenous catheters are in the right antecubital fossa, right wrist and right side of the groin. A Foley catheter is in the urethra.

EVIDENCE OF INJURY: A dried red linear abrasion runs horizontally on the anterior neck, above the laryngeal prominence. It ranges from 1/4 to 1/2 inch wide and is without a discernible pattern. Internally, there are no injuries of the strap muscles, hyoid bone, tracheal or laryngeal cartilages, or cervical vertebrae.

INTERNAL EXAMINATION

Head/Central Nervous System: The reflected scalp is atraumatic. The calvarium is intact. There is no epidural or subdural hemorrhage. The brain weighs 1630 grams. The leptomeninges are thin and delicate. There is edema with flattening of the gyri and narrowing of the sulci. The cranial nerves are unremarkable. The cerebral vessels are without aneurysms or atherosclerosis. Sections through the cerebral hemispheres show slight dusky discoloration of the gray matter and softening of the parenchyma. There are no focal lesions of the gray matter, white matter or deep nuclei. The ventricles are of normal caliber. Sections through the brainstem and cerebellum are unremarkable.

Neck: See above. The upper airway is without obstructions.

Body Cavities: See above. The body is opened in the usual manner. The organs are otherwise in their usual situs. The serosal surfaces are smooth and glistening. The pleural and peritoneal cavities are without hemorrhages or adhesions. The diaphragms are intact and normally elevated. The abdominal wall pannus is 1-1/2 inch thick.

Cardiovascular System: The heart weighs 440 grams. The epicardial surface is smooth and glistening. The coronary arteries arise from the usual locations and follow a right dominant distribution. There is no coronary atherosclerosis. The myocardium is red-brown, homogeneous and firm without pallor, hemorrhage, softening or fibrosis. The left ventricle wall is 1.7 cm thick; right ventricle 0.5 cm; septum 1.6 cm. There are endothelialized sutures in the right atrium in the fossa ovalis, in the junction of the right and left cusps of the pulmonic valve, and above the aortic valve cusps. There is slight thickening of the aortic valve cusps and mitral valve leaflets. The aorta arises and branches normally and is without atherosclerosis.

Respiratory System: The right and left lungs weigh 720 and 480 grams, respectively. The pleural surfaces are smooth and glistening. The bronchi are lined by smooth, tan mucosa and are without obstructions. The pulmonary parenchyma is atelectatic and congested; there are no masses or consolidations. The pulmonary arteries are without thromboemboli.

Hepatobiliary System: The liver weighs 1520 grams. The capsule is smooth and intact. The parenchyma is brown and firm. The gallbladder contains approximately 10 mL of green bile without stones. The extrahepatic biliary tree is unremarkable.

Lymphoreticular System: The spleen weighs 180 grams and has a smooth, intact capsule. The dark red parenchyma is firm and has an unremarkable red and white pulp. The lymph nodes throughout the body are unremarkable.

Gastrointestinal Tract: The esophagus and gastroesophageal junction are unremarkable. The stomach contains approximately 150 mL of brown fluid with a large bolus of congealed, green-brown, pasty material. The gastric mucosa has the usual rugal folds. The small and large intestines are unremarkable. The appendix is present and unremarkable.

Urinary System: See above. The bladder is without urine. The prostate is not enlarged.

Endocrine System: The thyroid gland, adrenal glands and pancreas are unremarkable.

Musculoskeletal System: The skeleton is well-developed and without deformities. The supporting musculature is well-developed and symmetrical.

Toxicology: Heart blood, hospital blood, and vitreous fluid are submitted for toxicologic studies.



NMS Labs

200 Welsh Road, Horsham, PA 19044-2208
Phone: (215) 657-4900 Fax: (215) 657-2972
e-mail: nms@nmslabs.com

Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

CONFIDENTIAL

Toxicology Report

Report Issued 01/04/2021 11:01

To: **147403**
Pan Pacific Pathologists
99-193 Aiea Heights Drive

Aiea, HI 96701

Patient Name FOSTER JR, LEWELLYN
Patient ID MAF20- 281
Chain NMSCP89581
Age 36 Y DOB 03/08/1984
Gender Male
Workorder 20399550

Page 1 of 3

Positive Findings:

Compound	Result	Units	Matrix Source
Caffeine	Positive	mcg/mL	001 - Hospital Blood

See Detailed Findings section for additional information

Testing Requested:

Analysis Code	Description
8052B	Postmortem, Expanded, Blood (Forensic)

Specimens Received:

ID	Tube/Container	Volume/ Mass	Collection Date/Time	Matrix Source	Labeled As
001	Lavender Vial	1.2 mL	12/07/2020 14:30	Hospital Blood	MAF20-281
002	Green Vial	1.2 mL	12/07/2020 14:45	Hospital Serum or Plasma	MAF20-281
003	Lavender Vial	1 mL	12/07/2020 22:10	Hospital Serum or Plasma	MAF20-281
004	Gray Vial	4.85 mL	12/11/2020 14:07	Hospital Blood	MAF20-281
005	Gray Vial	4.85 mL	12/11/2020 14:07	Hospital Blood	MAF20-281
006	Gray Vial	4.85 mL	12/11/2020 14:07	Hospital Blood	MAF20-281
007	Red Vial	7.2 mL	12/11/2020 14:07	Hospital Blood	MAF20-281
008	Red Vial	7.2 mL	12/11/2020 14:07	Hospital Blood	MAF20-281
009	Red Vial	7 mL	12/11/2020 14:07	Hospital Blood	MAF20-281
010	Gray Vial	1.5 mL	12/15/2020 09:30	Heart Blood	MAF20-281
011	Gray Vial	1.5 mL	12/15/2020 09:30	Heart Blood	MAF20-281
012	Red Vial	8.25 mL	12/15/2020 09:30	Heart Blood	MAF20-281
013	Red Vial	3 mL	12/15/2020 09:30	Vitreous Fluid	MAF20-281

All sample volumes/weights are approximations.
Specimens received on 12/24/2020.

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MAF20-281 NMS_1.jpg



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Workorder 20399550
Chain NMSCP89581
Patient ID MAF20- 281

Page 2 of 3

Detailed Findings:

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
Caffeine	Positive	mcg/mL	0.40	001 - Hospital Blood	LC/TOF-MS

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

1. Caffeine (No-Doz®) - Hospital Blood:

Caffeine is a xanthine-derived central nervous system stimulant. It also produces diuresis and cardiac and respiratory stimulation. It can be readily found in such items as coffee, tea, soft drinks and chocolate. As a reference, a typical cup of coffee or tea contains between 40 to 100 mg caffeine.

The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

Sample Comments:

001 Physician/Pathologist Name: Rachel Lange MD
001 County: MAUI
001 Alternate Case ID: 20-044284
001 Autopsy ID: MAF20- 281

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded thirteen (13) months from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed. Chain of custody documentation has been maintained for the analyses performed by NMS Labs.

Workorder 20399550 was electronically signed on 01/04/2021 10:10 by:

Denice M. Teem, B.S., D-ABFT-FT
Certifying Scientist

Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 8052B - Postmortem, Expanded, Blood (Forensic) - Hospital Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Barbiturates	0.040 mcg/mL	Gabapentin	5.0 mcg/mL
Cannabinoids	10 ng/mL	Salicylates	120 mcg/mL

-Analysis by Headspace Gas Chromatography (GC) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Acetone	5.0 mg/dL	Ethanol	10 mg/dL

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MAF20-281 NMS_2.jpg



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Workorder 20399550
Chain NMSCP89581
Patient ID MAF20- 281

Page 3 of 3

Analysis Summary and Reporting Limits:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Isopropanol	5.0 mg/dL	Methanol	5.0 mg/dL

-Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of compound classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified compound class are included. Some specific analytes outside these classes are also included. For a detailed list of all analytes and reporting limits, please contact NMS Labs.

Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnotosedatives, Hypoglycemics, Muscle Relaxants, Non-Steroidal Anti-Inflammatory Agents, Opiates and Opioids.

NMS v.21.0

MAF20-281 NMS_3.jpg

STATE OF HAWAII

20-044284

County of Maui

CORONER'S INQUEST

An inquisition taken at the Maui County Police Department Morgue, County of Maui, on the 15th day of December in the year 2020, before Dr. Rachel LANGE, Medical Examiner or Deputy Coroner of said County upon the body of Lewellyn FOSTER JR., there lying dead, resulted as follows:

That the deceased was named Lewellyn FOSTER JR. and a Native of Hawaii, was aged about 36, that he came to his death on the 09th day of December, 2020, from asphyxia due to hanging. The manner of death is Suicide.

In Witness Whereof, the said Coroner has hereunto set his hand on this 5th day of February, 2021.


Detective Mark HADA e-10855
DEPUTY CORONER

District of Wailuku

Exhibit 5



Autopsy Report

Patient Name: **KONG, EDMUND**
Med. Rec. #: **AAFX1669**
DOB: **[REDACTED]** (Age: 48)
Gender: **M**
Physician(s): **Soe Win, MD (30304)**

Client: **CLH - Clinical Labs**
Location: **OAP (O)**

Accession #: **HAF18-155**
Expiration Date: **8/20/2018**
Autopsy Date: **8/28/2018**
Reported: **10/9/2018**

Reason for Autopsy: **Coroner's Case**
Autopsy Restrictions: **None**
Pathologist(s)/Prosector(s): **LINDSEY HARLE, MD**

FINAL PATHOLOGIC DIAGNOSES:

DATE OF DEATH: **August 20th, 2018**

DATE, TIME AND PLACE OF EXAMINATION:

**Tuesday, August 28th, 2018
10:00 a.m.
Hilo Medical Center Morgue**

BRIEF HISTORY: The decedent is a 48-year-old male who, according to police report, was found unresponsive in his cell in custody. According to medical records, he was found by his cellmate on August 20th, with emesis noted around his mouth. He was transported in asystole to the hospital and resuscitation was attempted. The decedent had reportedly complained of abdominal pain the day prior to his death. He was reportedly last seen normal approximately 20 minutes prior to EMS arrival. In the hospital, the decedent was noted to have large volume coffee ground emesis drained from the oro-gastric tube. Imaging of the abdomen showed pneumoperitoneum and free fluid within the abdomen. EKG was notable for ST segment elevation. Chest imaging showed small scattered, bilateral, patchy infiltrates involving the posterior lung fields. Differential diagnosis on hospital admission included sepsis due to bowel perforation versus gastric content aspiration versus myocardial infarction. Due to his poor prognosis, the patient was terminally extubated and pronounced on August 20th, 2018.

FINDINGS:

1. Acute gastric perforation
 - A. Ruptured gastric wall ulceration
 - B. Peritonitis
 - C. 500 mL free abdominal fluid
2. Remote myocardial infarct
3. Pulmonary emphysematous change

CONCLUSION: Based on the autopsy and the investigative information available to me, in my opinion, this 48-year-old male died as a result of acute gastric perforation.

IMMEDIATE CAUSE OF DEATH: **Acute gastric perforation**

Regulatory Statement:

The following statement may be applicable to some of the reagents/antibodies used in diagnosing the above report. This test was developed and its performance characteristics determined by Pan Pacific Pathologists, LLC. It has not been observed or approved by the U.S. Food and Drug Administration. The FDA has informed that such claims are required and necessary. This test is used for clinical purposes. It should not be regarded as investigational or for research. This laboratory is certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) as qualified to perform high complexity clinical laboratory testing.

MANNER OF DEATH: The manner of death is natural.

Electronically Signed Out By Lindsey Harle, MD

Gross Description:

AUTOPSY PROTOCOL

This autopsy is performed by Dr. Lindsey Harle with the assistance of Mr. John Bello and witnessed by Detective BJ Sagon and evidence specialist Mary Midkiff of the Hawaii County Police Department.

EXTERNAL EXAMINATION: The body is identified by a morgue ID bearing the decedent's name on the right great toe. The body is received unclad. The body is that of a normally-developed, thin adult male who appears compatible with the stated age of 48 years. The body is 65 inches in length and weighs 120 pounds. The body is in the very early stages of decomposition as evidenced by green discoloration over the abdomen.

Rigor: Absent.

Lividity: Posterior, pink and fixed except in areas exposed to pressure.

Temperature: Cool after refrigeration.

Skin: Unremarkable.

Hair: The head hair is brown and white and measures less than 1 cm in length. There is brown and white facial hair on the upper lip, chin, and cheeks. The remaining body hair is in a normal male distribution.

Scalp: Shows no obvious injuries.

Ears: Unremarkable.

Eyes: The corneas are cloudy. The color of the irides and pupillary diameter cannot be determined. The sclerae and conjunctivae show no petechiae.

Nose: Unremarkable.

Oral cavity: Remotely edentulous with pale gums. A scant amount of granular, brown-black fluid is present surrounding the mouth.

Chest/Abdomen/Back/Upper and Lower Extremities: A faint, approximately 2 cm area of erythema with an adjacent 1.5 x 0.1 cm area of erythema is on the mid chest. This may represent artifact of resuscitative efforts. A 2 cm faint red-brown contusion is on the right mid lateral chest.

Genitalia: Are those of a normal adult male.

IDENTIFYING MARKINGS:

A linear, vertical, approximately 15 cm scar is on the mid lower back.

Two linear, diagonal scars are on the right lateral thigh, measuring approximately 10 and 5 cm, respectively.

NEEDLE TRACKS/PUNCTURE WOUNDS: None grossly evident.

MEDICATIONS WITH THE BODY: None present.

EVIDENCE OF TREATMENT: Two hospital ID bands are on the right wrist bearing the decedent's name. An intraosseous line is present on the left anterior lower leg. A Foley catheter is in place. EKG pads are present on the torso and upper extremities. Intravascular access lines are in the bilateral antecubital fossa and left lateral wrist. Taped gauze is on the right posterior wrist and right anterior forearm.

EVIDENCE OF INJURY: None grossly visible.

INTERNAL EXAMINATION

Head/Central Nervous System: Reflection of the scalp shows the usual scattered reflection petechiae. The calvarium is intact. There is no epidural, subdural or subarachnoid hemorrhage. The brain weighs 1270 grams. There is no herniation. The leptomeninges are smooth and glistening and the gyri demonstrate the usual orientation and configuration. The vessels at the base of the brain are normally located; there is no significant atherosclerosis. Serial sections of the brain show the usual anatomical landmarks of the cerebrum, mid brain, cerebellum, pons and medulla to be intact with no focal lesions. The lateral ventricles are unremarkable. Removal of the dura from the base of the skull shows the usual anatomical features without evidence of injury or focal lesion. The foramen magnum is intact and the first portion of the spinal cord viewed through the foramen magnum is unremarkable. The atlantooccipital joint is normally aligned.

Neck Organs: The strap muscles of the neck are intact with no evidence of injury. The trachea is midline. The soft tissues and bony structures of the neck reveal no evidence of injury or focal lesion. The hyoid bone is intact.

Body Cavities: The body cavities are opened in the usual manner. Approximately 500 mL of red-brown fluid are present within the abdominal cavity. The pleural and peritoneal surfaces are smooth and glistening and the pericardium is unremarkable. The mediastinum and retroperitoneum are unremarkable. The leaves of the diaphragm are intact and all organs are anatomically located. There is no internal evidence of injury within the thoracic or abdominal cavities.

Cardiovascular System: The heart weighs 320 grams. The epicardium is intact. The chambers demonstrate the usual shape and configuration with no gross hypertrophy. The coronary arteries are normally located with no atherosclerosis. Cut surfaces of the myocardium shows an irregular, approximately 1.5 cm area of fibrosis and fatty in change in the posterior right ventricle, consistent with remote infarct. The valves are intact with the usual anatomical relationships. The aorta is intact and exhibits no significant atherosclerosis. The major vessels of the abdomen are unremarkable.

Respiratory System: The larynx, trachea and bronchi are unobstructed with smooth, tan mucosal surfaces. The right and left lungs weigh 590 and 530 grams, respectively and show apical bullous emphysematous change. Cut surfaces show deep red-purple parenchyma with no evidence of natural disease or injury. There is no consolidation or mass lesion. The pulmonary vessels are free of thromboemboli.

Hepatobiliary System: The liver weighs 1050 grams and has a smooth, glistening surface. The capsule is intact. Cut surfaces show red-brown parenchyma with no focal lesions. The gallbladder is empty. The gallbladder wall is edematous and measures up to approximately 0.5 cm in thickness. There are no mass lesions or focal abnormalities noted. The biliary tree follows the usual course and shows no focal abnormalities.

Lymphoreticular System: The spleen weighs 50 grams and has a smooth, intact capsule and an unremarkable parenchyma. The lymph nodes are unremarkable.

Urinary System: The right and left kidneys weigh 100 grams each. The capsules strip with ease from the smooth, red-brown cortical surfaces. There is fair cortico-medullary differentiation. The pelves and ureters are unremarkable. The bladder is intact. The urinary bladder is empty and the mucosal surface is pale tan and smooth.

Gastrointestinal Tract: The esophagus is unobstructed with smooth, tan-pink mucosa. The stomach lies in a normal position and is empty. An ovoid, clean-edged, 1.5 cm full thickness defect is noted in the greater curvature; biopsy sections are taken for histological analysis. The serosal surfaces of the small and large bowel show petechial hemorrhages and dusky red-brown discoloration consistent with peritonitis and ischemia. A clean based, white-tan, firm, nodular area of ulceration is overlying the pancreas. This appears to be contiguous with the stomach. Biopsies are taken for histologic analysis.

Endocrine System: The thyroid, adrenals and pancreas show no evidence of natural disease or injury.

Musculoskeletal System: The bony skeleton and musculature of the thoracoabdominal cavity show no evidence of natural disease or injury. The bone marrow where visualized is unremarkable.

Toxicology: Femoral blood and antemortem hospital blood are collected.

Radiographic Studies: Full body radiographs are pending review.

Microscopic description: Representative sections of the major organs are retained in formalin and submitted as follows:

Block 1: Gastric wall defect
Blocks 2-3: Ulcer overlying pancreas, originating from the stomach

Sections show marked autolysis of the gastric mucosa and pancreas with patchy, focal acute neutrophilic infiltrates on the gastric serosa and omental adipose tissue. There is no evidence of malignancy.

Microscopic Description:

Case Discussion:

Hawaii Police Department Death Report Number: C18023024-HL.



NMS Labs

3701 Welsh Road, PO Box 433A, Willow Grove, PA 19090-0437
Phone: (215) 657-4900 Fax: (215) 657-2972
e-mail: nms@nmslabs.com
Robert A. Middleberg, PhD, F-ABFT, DABCC-TC, Laboratory Director

CONFIDENTIAL

Supplemental Report

Report Issued 10/08/2018 07:00

Last Report Issued 09/16/2018 17:01

To: 20C
Clinical Labs of Hawaii- Toxicology
Attn: Tessie Walsh
99-193 Alea Heights Drive
Alea, HI 96701

Patient Name KONG, EDMUND
Patient ID HAF18-155
Chain 99839
Age 48 Y DOB [REDACTED]
Gender Male
Workorder 18256066

Page 1 of 3

Positive Findings:

None Detected

See Detailed Findings section for additional information

Testing Requested:

Analysis Code	Description
9096B	Alcohol Screen, Blood (Forensic)
8052B	Postmortem, Expanded, Blood (Forensic)

Specimens Received:

ID	Tube/Container	Volume/ Mass	Collection Date/Time	Matrix Source	Miscellaneous Information
001	Lavender Vial	0.75 mL	08/20/2018 12:05	Hospital Blood	
002	Green Vial	0.4 mL	08/20/2018	Hospital Plasma	TIME ON SAMPLE 1225
003	Green Vial	0.4 mL	08/20/2018	Hospital Plasma	TIME ON SAMPLE 1258
004	Pink Vial	2 mL	08/20/2018	Hospital Blood	TIME ON SAMPLE 1435
005	Green Vial	0.1 mL	08/20/2018	Hospital Plasma	TIME ON SAMPLE 1437
006	Pink Vial	0.35 mL	08/20/2018	Hospital Blood	TIME ON SAMPLE 1600
007	Green Vial	1 mL	08/20/2018	Hospital Blood	TIME ON SAMPLE 1600 1624
008	Green Vial	0.25 mL	08/20/2018	Hospital Plasma	TIME ON SAMPLE 1600 1624
009	Clear Vial	0 mL	08/20/2018	Fluid	TIME ON SAMPLE 1435

All sample volumes/weights are approximations.

Specimens received on 09/01/2018.

NMS v.18.0

HAF18-155 NMS LABS Toxicology



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Workorder 18256066
Chain 99839
Patient ID HAF18-155

Page 2 of 3

Detailed Findings:

Examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded thirteen (13) months from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed. Chain of custody documentation has been maintained for the analyses performed by NMS Labs.

Workorder 18256066 was electronically
signed on 10/07/2018 19:01 by:

Erik Flail, B.A.
Certifying Scientist

Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 50012B - Benzodiazepines Confirmation, Blood - Hospital Blood

-Analysis by High Performance Liquid Chromatography/ Tandem Mass Spectrometry (LC-MS/MS) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
7-Amino Clonazepam	5.0 ng/mL	Flurazepam	2.0 ng/mL
Alpha-Hydroxyalprazolam	5.0 ng/mL	Hydroxyethylflurazepam	5.0 ng/mL
Alprazolam	5.0 ng/mL	Hydroxytriazolam	5.0 ng/mL
Chlordiazepoxide	20 ng/mL	Lorazepam	5.0 ng/mL
Clobazam	20 ng/mL	Midazolam	5.0 ng/mL
Clonazepam	2.0 ng/mL	Nordiazepam	20 ng/mL
Desalkylflurazepam	5.0 ng/mL	Oxazepam	20 ng/mL
Diazepam	20 ng/mL	Temazepam	20 ng/mL
Estazolam	5.0 ng/mL	Triazolam	2.0 ng/mL

Acode 52198B - Cannabinoids Confirmation, Blood - Hospital Blood

-Analysis by High Performance Liquid Chromatography/ Tandem Mass Spectrometry (LC-MS/MS) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
11-Hydroxy Delta-9 THC	1.0 ng/mL	Delta-9 THC	0.50 ng/mL
Delta-9 Carboxy THC	5.0 ng/mL		

Acode 8052B - Postmortem, Expanded, Blood (Forensic) - Hospital Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Barbiturates	0.040 mcg/mL	Salicylates	120 mcg/mL
Cannabinoids	10 ng/mL		

NMS v.18.0

HAF18-155 NMS LABS Toxicology



CONFIDENTIAL

Workorder 18256066
Chain 99839
Patient ID HAF18-155

Page 3 of 3

Analysis Summary and Reporting Limits:

-Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of compound classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified compound class are included. Some specific analytes outside these classes are also included. For a detailed list of all analytes and reporting limits, please contact NMS Labs.

Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnotosedatives, Hypoglycemics, Muscle Relaxants, Non-Steroidal Anti-Inflammatory Agents, Opiates and Opioids.

Acode 9096B - Alcohol Screen, Blood (Forensic) - Hospital Blood

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt Limit</u>	<u>Compound</u>	<u>Rpt Limit</u>
Acetone	5.0 mg/dL	Isopropanol	5.0 mg/dL
Ethanol	10 mg/dL	Methanol	5.0 mg/dL

NMS v.18.0

HAF18-155 NMS LABS Toxicology

Exhibit 6

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
info@civilbeatlawcenter.org

VIA ELECTRONIC MAIL

September 23, 2021

Max N. Otani, Director
Department of Public Safety
1177 Alakea Street
Honolulu, Hawai'i 96813

RE: Public Records Requests for Coroner Reports

Dear Director Otani:

I represent Honolulu Civil Beat in connection with public records requests for information concerning the death of incarcerated persons in Department of Public Safety correctional facilities, including its March 31, 2021 request. Future correspondence regarding these requests should be sent to the Civil Beat Law Center for the Public Interest.

On behalf of Civil Beat, please provide:

All investigation reports received from coroners in 2020 or 2021 that identify cause of death for individuals who died while in the custody of the Department of Public Safety, including without limitation autopsy reports or inquest reports.

Pursuant to HRS § 92F-42(13), Civil Beat requests waiver of fees because disclosure of this information would serve the public interest. This information directly relates to the Department's operations because it concerns individuals who died in the Department's custody, and the information is not readily available in the public domain. Also, Civil Beat is a well-known news reporting organization that intends to disseminate information from these records to the general public.

Please take notice that the Department has an obligation to preserve all documents responsive to the March 31, 2021 request and this instant request pending the outcome of any disputes. All normal document retention or destruction policies must be suspended to preserve these records for a judicial determination. Failure to preserve the records may expose the Department and responsible officials, personally, to sanctions or liability for bad faith nondisclosure of records.

Max N. Otani, Director

September 23, 2021

Page 2 of 2

Regards,

A handwritten signature in blue ink, appearing to read "R. Brian Black". The signature is stylized with a large, sweeping "R" and a long, horizontal stroke.

R. Brian Black

cc: Department of the Attorney General

Exhibit 7

From: PSD.Office.of.the.Director psd.office.of.the.director@hawaii.gov

Subject: RE: [EXTERNAL] Request for Records

Date: October 5, 2021 at 12:02 PM

To: R. Brian Black brian@civilbeatlawcenter.org, PSD.Office.of.the.Director psd.office.of.the.director@hawaii.gov

Cc: hawaiiag hawaiiag@hawaii.gov

Aloha Mr. Black,

We are unable to respond to your request for coroner reports received in 2020 to 2021 for individuals who died while in the custody of the Department of Public Safety. As a covered entity, the Department of Public Safety does not appear to have an exception under HIPAA that would allow it to disclose such reports (which include protected health information) to the public without the authorization of the decedents' personal representative.

Hawaii Department of Public Safety

Office of the Director

Phone: (808) 587-1288

Fax: (808) 587-1282

Email: psd.office.of.the.director@hawaii.gov

Mail: 1177 Alakea Street, 6th floor

Honolulu, HI 96813

Website: DPS.Hawaii.gov

Social media: www.Facebook.com/HawaiiPSD

www.Twitter.com/HawaiiPSD

-----Original Message-----

From: R. Brian Black <brian@civilbeatlawcenter.org>

Sent: Thursday, September 23, 2021 12:18 PM

To: PSD.Office.of.the.Director <psd.office.of.the.director@hawaii.gov>

Cc: hawaiiag <hawaiiag@hawaii.gov>

Subject: [EXTERNAL] Request for Records

Aloha, please see the attached request.

Regards,

R. Brian Black

Executive Director

Civil Beat Law Center for the Public Interest

700 Bishop Street, Suite 1701

Honolulu, HI 96813

(808) 531-4000

Exhibit 8



DAVID Y. IGE
GOVERNOR

**STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES**

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.oiip.hawaii.gov

CHERYL KAKAZU PARK
DIRECTOR

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: Julie Mae
Agency: Hawaii County Police Department
Date: July 31, 2020
Subject: Autopsy Report

Requester seeks a decision as to whether the Hawaii County Police Department (POLICE-H) properly denied her request for a copy of an autopsy report under Part II of the UIPA.

Unless otherwise indicated, this decision is based solely upon the facts presented in Requester's email to OIP with attachments dated January 15, 2019; and a letter with exhibits and the requested documents for *in camera* review to OIP from the County of Hawaii Department of the Corporation Counsel on behalf of POLICE-H dated February 20, 2019.

Decision

The autopsy report (Autopsy Report), which includes a toxicology report, contains medical information and psychiatric information including the presence of alcohol, drugs, or other substances. Based on the precedent set in OIP Opinion Letter Number F15-01, the subject of the Autopsy Report (Decedent) retains a privacy interest in his medical information after death. However, based on the analysis set out in that opinion, the public interest in disclosure of the Autopsy Report outweighs the privacy interest of the Decedent therein, so disclosure would not constitute a

clearly unwarranted invasion of Decedent's personal privacy and the Autopsy Report may not be withheld on that basis. HRS §§ 92F13(1), 92F-14(a) (2012).

Surviving family members sometimes have privacy interests in information about a deceased individual that outweigh the public interest in disclosure of all or a portion of an autopsy or toxicology report. Here, however, the Autopsy Report does not contain graphic or similarly sensitive information that surviving family members would have a significant privacy interest in that could warrant withholding access to the Autopsy Report to protect their interests.

Statement of Reasons for Decision

Requester made a request to POLICE-H for a copy of the Autopsy Report.¹ POLICE-H responded in a letter dated December 5, 2018, which stated:

- x Other: We are in receipt of your request for a police report, which we had received on 12/3/18. We are unable to provide the requested police report. Please submit a new request and attach the following documents. A letter signed by the next of kin authorizing you to receive a copy of the requested report and a legal document verifying that party as the next of kin. Please be aware that not all report(s) may be released and the information released within the report(s) may be redacted.²
- x Other: Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Code of Regulations 45CFR164.512(e)(1)(i) [sic], the following documents

¹ When a person dies as a result of an accident or under certain other circumstances described by law, the coroner or deputy coroner is required to make "a complete investigation of the cause of the death" and to perform an autopsy of the decedent's remains if, in the opinion of the coroner, an autopsy is "necessary in the interest of the public safety or welfare." HRS §§ 841-3, -14 (2014). POLICE-H is the "designated coroner" for Hawaii County.

² When a requester seeks records containing information about another individual that fall under the UIPA's privacy exception, the UIPA requires agencies to disclose the records upon a signed consent from the individual whose privacy interest is at stake. See HRS § 92F-12(b)(1) (2012) (requiring agencies to disclose "[a]ny government record, if the requesting person has the prior written consent of all individuals to whom the record refers"); OIP Op. Ltr. No. 10-05 at 2 (finding that records "could not be withheld based on the privacy exception where all persons mentioned in the records had consented in writing to their disclosure"). While consent of surviving family members may be required prior to disclosure of records that would not otherwise be public, because disclosure of the Autopsy Report is required under the UIPA, as explained in section II, infra, it cannot be preconditioned on a signed release.

are required prior to the release of the autopsy report: 1) legal document appointing you as Personal Representative of the decedent's estate and 2) document signed by yourself authorizing the release to you of the decedent's medical records.³

Requester thereafter filed this appeal.

I. OIP's Treatment of Autopsy and Toxicology Reports

POLICE-H invoked section 92F-13(1), HRS, as allowing it to withhold the Autopsy Report in its entirety. This exception to public disclosure under the UIPA allows agencies to withhold "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." HRS § 92F-13(1) (2012). To determine whether disclosure would be a clearly unwarranted invasion of personal privacy, the UIPA sets forth a balancing test which provides that "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." HRS § 92F-14(a) (2012).⁴

Historically, OIP treated privacy interests as extinguishing upon a person's death. OIP Opinion Letter Number 91-32 (Opinion 91-32) discussed the applicability of the UIPA's exceptions to disclosure set out in section 92F-13, HRS,⁵ to information contained in autopsy reports and found that the UIPA required public disclosure of autopsy reports so long as disclosure would not interfere with a pending or prospective law enforcement investigation.⁶ OIP Op. Ltr. No. 91-32 at 6. OIP concluded that deceased individuals did not have a recognizable privacy interest in

³ POLICE-H is a non-covered entity under HIPAA. The portion of its response to the record request which required Requester to provide, pursuant to HIPAA, "1) legal document appointing you as Personal Representative of the decedent's estate and 2) document signed by yourself authorizing the release to you of the decedent's medical records" was not a proper response under the UIPA because, as explained in sections I and II, *infra*, the Autopsy Report is public and not subject to HIPAA's nondisclosure requirements for medical information.

⁴ The public interest to be considered is whether disclosure of information sheds light upon an agency's performance of its statutory duties and upon the actions and conduct of government officials. *E.g.*, OIP Op. Ltr. No. 89-4. Under this balancing test, if an individual's privacy interest in a government record is not "significant," then the record must be disclosed if there is a "scintilla" of public interest. OIP Op. Ltr. No. 95-24 at 10 (citing H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988); S. Conf. Comm. Rep. No. 235, Haw S.J. 689, 690 (1988)).

⁵ POLICE-H only argued that section 92F-13(1), HRS, was applicable here.

⁶ POLICE-H did not claim there was a pending or prospective law enforcement investigation.

their autopsy reports, as the right to privacy is generally extinguished upon the individuals' death. OIP Op. Ltr. No. 91-32 at 9.

In 2014, OIP revisited the longstanding precedent in Opinion 91-32 because the legal standard that privacy interests of an individual are extinguished upon death had changed over time, particularly with the passage of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and the rules promulgated under HIPAA, 45 C.F.R. Parts 160 and 164 (HIPAA rule or Privacy Rule).⁷ After reconsidering the question of whether an individual's privacy interest may survive after death, OIP concluded that reputational privacy interests do continue after death but decrease with the passage of time. OIP Op. Ltr. No. 03-19 (finding an agency may withhold records under the UIPA's privacy exception after the death of the individual, but to a lesser extent than with a living individual, and as affected by the subsequent passage of time).⁸ OIP Opinion Letter Number F15-01 (Opinion F15-01) set forth a detailed analysis of privacy interests of deceased individuals as they relate to autopsy reports and toxicology reports attached thereto using this newer standard under which privacy interests may survive after death.

II. Public Interest in Disclosure Outweighs Surviving Privacy Interest of Decedent So Disclosure is Required

POLICE-H's response to this appeal claimed Decedent continues to have a privacy interest in the medical information in the Autopsy Report. In OIP Opinion Letter Number 03-19, OIP advised that agencies not directly covered by HIPAA (like POLICE-H) that hold comparatively recent health records of deceased persons

⁷ The federal Department of Health and Human Services' (HHS) responses to comments, which accompanied publication of the HIPAA final rule, provide that "to the extent that death records and autopsy reports are obtainable from non-covered entities, such as state legal authorities, access to this information is not impeded by this [HIPAA] rule." 65 Fed. Reg. 82462, 82597 (Dec. 28, 2000). HHS further stated:

HIPAA does not provide HHS with statutory authority to regulate coroners' or medical examiners' re-use or re-disclosure of protected health information unless the coroner or medical examiner is also a covered entity. However, we consistently have supported comprehensive privacy legislation to regulate disclosure and use of individually identifiable health information by all entities that have access to it.

Id. at 82687.

⁸ At the time OIP Opinion Letter Number 03-19 was issued, the Privacy Rule protected health information for as long as an institution maintained the records. A 2013 amendment limited the period of protection for individually identifiable health information about a decedent to 50 years following the date of death of the individual. Privacy Rule, 45 C.F.R. §§ 164.502(f), 160.103 (2013).

should limit disclosure of those records similarly to what the HIPAA rules would require, based on the UIPA's privacy exception. OIP Op. Ltr. No. 03-19 at 8. OIP adopted the following test for determining whether the privacy exception to disclosure applies for information about a deceased individual:

First, for records less than 80 years old, an agency must balance the passage of time against the sensitivity of the information involved to determine how strong the remaining privacy interest is. Second, the agency must balance that privacy interest against the public interest in disclosure, as provided by section 92F-14, Hawaii Revised Statutes. If the public interest in disclosure outweighs the now-reduced privacy interests of the deceased individual, the record may not be withheld under the privacy exception.

Op. Ltr. No. 03-19 at 14 (footnotes and citation omitted).

Applying the two-part test here, POLICE-H asserted that Decedent's privacy interest is significant because (1) he was relatively young, (2) the Autopsy Report includes psychiatric information⁹ and information about intoxicant use; (3) the date of death in 2016 was recent, and (4) the described condition of the body at the time it was found¹⁰ all outweigh any public interest in disclosure. Opinion F15-01 found at page 8 that the presence and level of alcohol or drugs would, arguably, constitute information relating to an individual's medical condition. Following this precedent, OIP finds here that, given the recency of Decedent's passing and the sensitive nature of medical information under section 92F-14(b)(1), HRS,¹¹ Decedent retains a diminished but still significant privacy interest in the Autopsy Report.

The second step in the test is to balance the still significant privacy interest of Decedent against the public interest in disclosure. The Autopsy Report was prepared as part of an investigation required by statute to be conducted by government employees for certain types of deaths. POLICE-H is the "designated coroner" for Hawaii County has a statutory duty to inquire into and make a complete investigation of the cause of death of any person as the result of an accident. HRS § 841-3 (2014). The toxicology reports were prepared in connection with the performance of this statutory duty, and, therefore, the public has a

⁹ There is one short sentence on page 1 of the Autopsy Report summarizing Decedent's psychiatric history.

¹⁰ "Graphic" information in autopsy reports is generally considered during discussion of privacy interests of surviving family members. See section III, *infra*.

¹¹ Section 92F-14(b)(1), HRS, states that "[i]nformation relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation" is information in which the individual has a significant privacy interest.

legitimate interest in their disclosure as set out in more detail in Opinion F15-01. OIP Op. Ltr. No. F15-01 at 8-9.¹²

Applying the balancing test at section 92F-14(a), HRS, and following the precedent in Opinion F15-01, OIP finds that the public interest in disclosure of the Autopsy Report, including the above-described medical information, is considerable, and outweighs the reduced but still significant privacy interest of Decedent. Thus, disclosure of the Autopsy Report would not constitute a clearly unwarranted invasion of Decedent's personal privacy. OIP therefore concludes that the UIPA requires POLICE-H to disclose the Autopsy Report.

III. Privacy Interest of Decedents' Family Members

OIP next considers the privacy interests of Decedents' surviving family members. POLICE-H's position is that disclosure of the Autopsy Report would have a negative impact on the Decedent's surviving family members for various reasons including the fact that it contains a graphic description of the condition of the body, implies criminal activity, and could bring disrepute upon the family.

First, OIP discusses the standard set in Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 124 S. Ct. 1570, 158 L. Ed. 2d 319 (2004) (Favish) (holding that Exemption 7(C) of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(7)(C),

¹² Opinion F15-01 noted that its finding that toxicology reports for two deceased motorists were public was supported by comments in the Report of the Governor's Committee on Public Records and Privacy (1987) (Governor's Committee Report), a four-volume report setting forth a review, testimony, and recommendations about Hawaii's records law in effect before the UIPA. The Governor's Committee Report played an important role in the Legislature's drafting of the UIPA, and OIP consults it when appropriate. As recognized in OIP's opinion,

the Governor's Committee Report includes a summary of a discussion about medical examiner records and states that "[t]his material is maintained by the counties and at this point is considered public record" though "at least one Committee member has experienced difficulty in obtaining these reports, at least in sensitive cases." Id. Vol. I Governor's Committee Report 131 (1987). Hence, it would appear that the Legislature was aware of the public nature of medical examiner records at the time it enacted the UIPA and could have expressly exempted them from public disclosure, but did not do so. Significantly, as the Legislature declared when it established the UIPA, "it is not the intent of the Legislature that this section [setting forth exceptions to access] be used to close currently available records, even though these records might fit within one of the categories in this section." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess. Haw. S.J. 689, 691 (1988); H.R. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988).

OIP Op. Ltr. No. F15-01 at 9.

recognizes “family members’ right to personal privacy with respect to their close relative’s death-scene images”). Favish at 170. With respect to Favish, OIP has stated:

Favish supports family members’ privacy interest in preventing “disclosure of graphic details surrounding their relative’s death,” but not a blanket restriction on disclosure of any information about a deceased person: “Our holding . . . would allow the Government to deny these gruesome requests **in appropriate cases.**” Favish, 541 U.S. at 170-71 (emphasis added). Because the record at issue does not include any photographs or other images of the victim, or any “graphic details” surrounding the victim’s death, Favish is inapposite.

OIP Op. Ltr. No. F15-01 at 10-11, citing OIP Op. Ltr. No. 05-16 at 13.

The Autopsy Report contained one sentence describing the condition of Decedent’s face at the time the body was found which POLICE-H asserted is “graphic.” Having reviewed the Autopsy Report *in camera*, OIP first notes that portions, particularly the first page of the 7-page report, were difficult or impossible to read. That being said, the Autopsy Report contains typically factual information that would be in an autopsy or toxicology report. It does not contain photographs or other images, or any “graphic details” surrounding Decedent’s death, so OIP cannot find a heightened privacy interest of surviving members as set forth in Favish.

Second, OIP has previously recognized that surviving family members **may possibly** have a privacy interest in records that may reveal a decedents’ alleged illegal conduct. OIP Op. Ltr. No. F15-01 at 12 (emphasis added). However, OIP has not heretofore found this privacy interest to be “significant.” Id. POLICE-H argued that, based on the toxicology results and “pathological diagnosis, there is alleged criminal activity and the amount of illegal substances . . . tends to bring disrepute on [Decedent]’s family and negatively portray his surviving family members.” POLICE-H has the burden of proof to justify nondisclosure under section 92F-15(c), HRS, and has not provided any legal authority for finding that disclosure of the Autopsy Report would constitute a clearly unwarranted invasion of the surviving family members’ privacy by bringing them disrepute. OIP’s *in camera* review of the Autopsy Report does not show there is information that would bring disrepute upon the surviving family of Decedent. Accordingly, OIP finds that surviving family members of Decedent do not have a significant privacy interest in information in the Autopsy Report, which was prepared in connection with a death that the coroner had a statutory duty to investigate. Because OIP does not find a “significant” privacy interest, OIP does not reach the balancing test of section 92F-14(a), HRS. As OIP found in section II, supra, there is more than a “scintilla” of public interest in the Autopsy Report, and OIP therefore concludes that disclosure would not constitute a clearly unwarranted invasion of the personal privacy of Decedent’s family. Id. at 14.

Right to Bring Suit

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) (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.

SPECIAL NOTICE: During the COVID-19 pandemic, Hawaii's Governor issued his Supplementary Proclamation on March 16, 2020, which suspended the UIPA in its entirety. The suspension was continued until May 31, 2020, by the Governor's Sixth Supplementary Proclamation dated April 25, 2020. On May 5, 2020, the Governor's Seventh Supplementary Proclamation (SP7) modified the prior suspension of the UIPA in its entirety and provided that the UIPA and chapters 71 and 72, Title 2, HAR, "are suspended to the extent they contain any deadlines for agencies, including deadlines for OIP, relating to requests for government records and/or complaints to OIP." SP7, Exhibit H. On May 18, 2020, the Governor's Eighth Supplementary Proclamation (SP8) at Exhibit H, continued the modified suspension of the UIPA provided in SP7. On June 10, 2020, the Governor's Ninth Supplementary Proclamation (SP9) at Exhibit H, continued the modified suspension of SP8, Exhibit H. On July 17, 2020, the Governor's Tenth Supplementary Proclamation (SP10) at Exhibit G, continued the modified suspension in SP9, Exhibit H.

The UIPA's Part IV sets forth OIP's powers and duties in section 92F-42, HRS, which give OIP authority to resolve this appeal and have been restored by SP7 through SP10, except for the deadlines restriction. Thus, for OIP's opinions issued while SP10 is still in force, agencies will have a reasonable time to request reconsideration of an opinion to OIP, but a request for reconsideration shall be made by an agency no later than ten business days after suspension of the UIPA's deadlines are lifted upon expiration of SP10 after August 31, 2020, unless SP10 is terminated or extended by a separate proclamation of the Governor. Agencies wishing to appeal an OIP opinion to the court under section 92F-43, HRS, have a reasonable time to do so, subject to any orders issued by the courts during the pandemic, and no later than thirty days after suspension of the UIPA's deadlines is lifted upon expiration of SP10 after August 31, 2020, unless terminated or extended by a separate proclamation of the Governor.

OFFICE OF INFORMATION PRACTICES




Carlotta Amerino
Staff Attorney

APPROVED:



Cheryl Kakazu Park
Director

Exhibit 9

	DEPARTMENT OF PUBLIC SAFETY HEALTH CARE DIVISION POLICY AND PROCEDURES OAHU COMMUNITY CORRECTIONAL CENTER	EFFECTIVE DATE: 11/07/2018	POLICY NO.: 7.10.A10
		SUPERSEDES (Procedure No. & Date): 7.10A.09 (1/25/08)	
SUBJECT: NOTIFICATION OF NEXT OF KIN/LOCAL AUTHORITIES		Page 1 of 5	

1.0 PURPOSE

To establish guidelines of notification procedures to be followed in the event of the death, serious illness or injury of an inmate at the Oahu Community Correctional Center (OCCC).

2.0 SCOPE

This Policy and Procedure shall apply to the Oahu Community Correctional Center.

3.0 REFERENCES, DEFINITIONS AND FORMS

.1 References

- a. Hawaii Revised Statutes; Section 26-14.6, Department of Public Safety; and Section 353C-2, Director of Public Safety, Powers and Duties.
- b. National Commission on Correctional Health Care, Standards for Health Services in Jails, (2014).

.2 Definitions

- a. Serious Illness/Injury: The "seriousness" of an illness/injury of an inmate is to be determined by the chief physician or responsible physician or the health authority. Generally, a serious illness/injury is one that is life threatening or likely to cause permanent disability.
- b. Responsible Physician: Physician II or facility medical authority.
- c. Medical Director: Physician and Director of Medical Services, Health Care Division/ Corrections.
- d. Mental Health Branch Administrator: Psychiatrist or Psychologist and Director of Mental Health Services, Health Care Division/Corrections.

HEALTH CARE DIVISION OAHU COMMUNITY CORRECTIONAL CENTER P & P M	SUBJECT: NOTIFICATION OF NEXT OF KIN/LOCAL AUTHORITIES	POLICY NO.: 7.10.A10
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- e. Health Authority: The physician, clinical section administrator, or agency responsible for the provision of health services at OCCC.
- f. Medical Examiner: A public officer whose chief duty is to determine by inquest or other means the causes of death not obviously due to natural causes.
- g. Postmortem Examination (Autopsy): An examination of a body after death to determine the cause of death or the character and extent of changes produced by the disease.

4.0 POLICY

- .1 There shall be prompt and sensitive notification of next of kin in the event of a death or serious illness or injury.
- .2 Next of kin shall be notified in a compassionate manner by specified trained staff.
- .3 Discovery of the death of an inmate shall be handled and documented with awareness of the possibility of suspicious circumstances.
- .4 The medical examiner's office shall be notified of all deaths.

5.0 PROCEDURES

- .1 In the event of the death of an inmate or serious illness or injury, and after appropriate and necessary emergent medical intervention, medical disposition shall be determined by the on-site or on-call physician and medical staff shall notify and inform:
 - a. Watch Captain;

HEALTH CARE DIVISION OAHU COMMUNITY CORRECTIONAL CENTER P & P M	SUBJECT: NOTIFICATION OF NEXT OF KIN/LOCAL AUTHORITIES	POLICY NO.: 7.10.A10
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- b. Chief Physician;
 - c. Medical Director;
 - d. Health Care Division Administrator and/or Clinical Services Branch Administrator;
 - e. Clinical Section Administrator;
 - f. Office of the Medical Examiner in case of death.
- .2 The Watch Captain shall notify:
- a. OCCC Warden;
 - b. Honolulu Police Department (HPD), as appropriate; and
 - c. Others as deemed necessary.
- .3 The OCCC Warden shall notify:
- a. Institutions Division Administrator (IDA); and
 - b. Others as deemed necessary.
- .4 Media inquiries shall be referred to or cleared by the office of the Director.
- .5 Notification of Next of Kin:
- a. This shall be accomplished as soon as practical after a physician determines that an inmate is deceased or has suffered a serious illness or injury.

HEALTH CARE DIVISION OAHU COMMUNITY CORRECTIONAL CENTER P & P M	SUBJECT: NOTIFICATION OF NEXT OF KIN/LOCAL AUTHORITIES	POLICY NO.: 7.10.A10
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- b. Personnel trained or experienced in crisis intervention and counseling as specified by the OCCC Warden shall do notification.
- c. The designated staff member will consult the inmate's active file to determine the next of kin to be notified. Intake personnel should obtain this information from every inmate at the time of admission.
- d. Next of kin shall be notified in a compassionate manner by telephone or personal visit. No opinion or conclusions shall be included in this discussion other than those based on facts provided by the attending physician or investigating officer.
- e. In the case of serious illness or injury, special hospital visitation privileges may be arranged by the hospital caseworker through the OCCC Security or case manager. If visitation is directed to the OCCC infirmary, a written authorization from the Warden is required. Then arrangement of the visit will be between the case manager and the Health Care Section.
- f. The OCCC Warden shall send a letter to the next of kin within 48 hours of notification in case of the death of an inmate. The letter shall contain:
 - 1. Expressions of appropriate concern for the situation;
 - 2. Disposition of personal assets and/or property, if appropriate, as it pertains to institutional policy.
 - 3. Legal provisions regarding autopsy; and
 - 4. Instructions for disposition of the body.
- .6 In the case of an expected death of a chronically ill patient in the infirmary of the Health Care Section where no resuscitative efforts are planned, the body is not to be removed or disturbed without the permission of the medical examiner and all catheters, tubes, and intravenous lines are to be left in place.

HEALTH CARE DIVISION OAHU COMMUNITY CORRECTIONAL CENTER P & P M	SUBJECT: NOTIFICATION OF NEXT OF KIN/LOCAL AUTHORITIES	POLICY NO.: 7.10.A10
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- .7 An administrative review shall be conducted by the Health Care Division Administrator to assess the correctional and emergency response actions that surrounds the death. To be completed within 30 days.
- .8 A clinical mortality review shall be conducted or facilitated by the Medical Director to assess the clinical care provided and any situations up to the death. To be completed within 30 days.
- .9 A psychological autopsy is recommended within 30 days for each successful suicide to review factors that may have contributed to the event. To be conducted or facilitated by the Mental Health Branch Administrator.
- .10 Results of the mortality review shall be shared with the treating personnel. Corrective action to be taken when necessary.

APPROVED:

Clinical Services Administrator Date

APPROVED:

Responsible Physician Date

Exhibit 10

HOLLY T. SHIKADA 4017
Attorney General of Hawai'i

CRAIG Y. IHA 7919
LISA M. ITOMURA 5003

Deputy Attorneys General
Department of the Attorney
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Attorneys for Defendant
Department of Public Safety

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-21-0001329 JMT

DEFENDANT DEPARTMENT OF PUBLIC
SAFETY'S AMENDED RESPONSE TO
PLAINTIFF HONOLULU CIVIL BEAT
INC.'S FIRST REQUESTS FOR
ADMISSION

DEFENDANT DEPARTMENT OF PUBLIC SAFETY'S
AMENDED RESPONSE TO PLAINTIFF HONOLULU CIVIL BEAT
INC.'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT

Defendant Department of Public Safety (hereinafter "PSD"), by and through its attorneys, Holly T. Shikada, Attorney General, and Craig Y. Iha and Lisa M. Itomura, Deputy Attorneys General, provides an amended response to Plaintiff Honolulu Civil Beat Inc.'s ("Plaintiff") "First Requests For Admission" ("First Admissions"), dated February 1, 2022. Said amended response to requests for admission are attached hereto.

The responses are based on information known to PSD's attorneys as of the date of this response. As further reserved below, discovery and investigation are continuing and PSD reserves its right to make use of or introduce in evidence at trial any information disclosed or developed through investigation or discovery subsequent to the date of this response.

GENERAL RESPONSES AND OBJECTIONS

1. PSD objects to all of the requests for admission in Plaintiff's First Admissions to the extent that they ask for the disclosure of privileged communications, including attorney-client privilege, information that is protected work product, and information concerning documents and tangible things prepared in anticipation of litigation or trial.

2. PSD objects to each request to the extent that it is unreasonably burdensome, oppressive, or vexatious, in that the information so acquired would be of little or no relevance to the issues in this case, and/or would place an unreasonable and oppressive burden on PSD in expenditure of time, costs, and money.

3. PSD objects to each request that is so broad, vague, ambiguous, uncertain, or unintelligible that it cannot determine the nature of the response sought, and it therefore is unable to respond.

4. PSD objects to each request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

5. PSD objects to each request to the extent that it requests the production of documents for which the required good cause or substantial need, as dictated by applicable statutes, court rules, and case law, has not been shown.

6. PSD does not concede that any of its responses will be admissible evidence at trial. Further, PSD does not waive any of its objections, whether or not stated herein.

7. PSD states that discovery and investigation in this case are ongoing. Any and all answers to Plaintiff's First Admissions are based only on information and documents available to PSD at the time that its responses and objections were prepared.

8. PSD reserves the right to amend, modify, supplement, alter, or change responses to any of the Admissions as may be appropriate. Further, PSD reserves the right to make any use of, or to introduce at any hearing and at trial, information or documents related to these requests but discovered subsequent to the date of these responses, including, but not limited to, any such information or documents obtained in further discovery herein.

9. PSD's responses and/or agreement to furnish information in response to any individual request shall not be deemed to constitute an admission as to the relevancy of that request or as to the relevancy of the information or documents sought, nor is it intended to waive any right by PSD to object to its admissibility at any stage of this proceeding.

10. PSD reserves all objections or other questions as to the competency, relevance, materiality, privilege, or admissibility of PSD's responses herein, in any subsequent proceeding in or trial of this or any other action for any purpose whatsoever.

Without waiving any of the foregoing objections which PSD incorporates by reference in its response and/or objection to each of the following individual requests as if fully set forth therein, PSD further submits its updated responses and objects to the individual requests as follows.

DATED: Honolulu, Hawai'i, May 26, 2022.

/s/ Lisa M. Itomura
LISA M. ITOMURA
Deputy Attorney General

Attorney for PSD

REQUESTS FOR ADMISSION

11. Admit that the Institutions Division within PSD's Correctional Division does not provide health care to incarcerated people.

Admit X

Deny

12. Admit that the Institutions Division within PSD's Correctional Division does not perform functions covered by HIPAA.

Admit X

Deny

HOLLY T. SHIKADA
Attorney General of Hawai'i

4017

CRAIG Y. IHA
LISA M. ITOMURA
Deputy Attorneys General
Department of the Attorney
General, State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
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Attorneys for Defendant
Department of Public Safety

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-21-0001329 JMT

CERTIFICATE OF SERVICE RE:
DEFENDANT DEPARTMENT OF PUBLIC
SAFETY'S AMENDED RESPONSE TO
PLAINTIFF HONOLULU CIVIL BEAT
INC.'S FIRST REQUESTS FOR
ADMISSION

CERTIFICATE OF SERVICE RE: DEFENDANT
DEPARTMENT OF PUBLIC SAFETY'S AMENDED RESPONSE TO PLAINTIFF
HONOLULU CIVIL BEATS INC.'S FIRST REQUESTS FOR ADMISSION

I hereby certify that DEFENDANT DEPARTMENT OF PUBLIC SAFETY'S
AMENDED RESPONSE TO PLAINTIFF HONOLULU CIVIL BEAT INC.'S FIRST
REQUESTS FOR ADMISSION was duly served on the following party or parties by placing in

the U.S. first class mail, duly addressed and postage paid, at his/her last known address stated
below on May 27, 2022:

ROBERT BRIAN BLACK, ESQ.
Civil Beat Law Center For the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813

Attorney for Plaintiff

DATED: Honolulu, Hawai'i, May 27, 2022.

/s/ Lisa M Itomura
LISA M. ITOMURA
Deputy Attorney General

Attorney for PSD

Exhibit 11

HOLLY T. SHIKADA 4017
Attorney General of Hawai'i

CRAIG Y. IHA 7919
LISA M. ITOMURA 5003

Deputy Attorneys General
Department of the Attorney
General, State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone No. (808) 586-8379
Facsimile: (808) 586-1372

Attorneys for Defendant
Department of Public Safety

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-21-0001329 JMT

DEFENDANT DEPARTMENT OF PUBLIC
SAFETY'S RESPONSE TO PLAINTIFF
HONOLULU CIVIL BEAT INC.'S FIRST
REQUESTS FOR ADMISSION

DEFENDANT DEPARTMENT OF PUBLIC SAFETY'S
RESPONSE TO PLAINTIFF HONOLULU CIVIL BEAT
INC.'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT

Defendant Department of Public Safety (hereinafter "PSD"), by and through its attorneys, Holly T. Shikada, Attorney General, and Craig Y. Iha and Lisa M. Itomura, Deputy Attorneys General, responds to Plaintiff Honolulu Civil Beat Inc.'s ("Plaintiff") "First Requests For Admission" ("First Admissions"), dated February 1, 2022. Said responses to requests for admission are attached hereto.

The responses are based on information known to PSD's attorneys as of the date of this response. As further reserved below, discovery and investigation are continuing and PSD reserves its right to make use of or introduce in evidence at trial any information disclosed or developed through investigation or discovery subsequent to the date of this response.

GENERAL RESPONSES AND OBJECTIONS

1. PSD objects to all of the requests for admission in Plaintiff's First Admissions to the extent that they ask for the disclosure of privileged communications, including attorney-client privilege, information that is protected work product, and information concerning documents and tangible things prepared in anticipation of litigation or trial.

2. PSD objects to each request to the extent that it is unreasonably burdensome, oppressive, or vexatious, in that the information so acquired would be of little or no relevance to the issues in this case, and/or would place an unreasonable and oppressive burden on PSD in expenditure of time, costs, and money.

3. PSD objects to each request that is so broad, vague, ambiguous, uncertain, or unintelligible that it cannot determine the nature of the response sought, and it therefore is unable to respond.

4. PSD objects to each request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

5. PSD objects to each request to the extent that it requests the production of documents for which the required good cause or substantial need, as dictated by applicable statutes, court rules, and case law, has not been shown.

6. PSD does not concede that any of its responses will be admissible evidence at trial. Further, PSD does not waive any of its objections, whether or not stated herein.

7. PSD states that discovery and investigation in this case are ongoing. Any and all answers to Plaintiff's First Admissions are based only on information and documents available to PSD at the time that its responses and objections were prepared.

8. PSD reserves the right to amend, modify, supplement, alter, or change responses to any of the Admissions as may be appropriate. Further, PSD reserves the right to make any use of, or to introduce at any hearing and at trial, information or documents related to these requests but discovered subsequent to the date of these responses, including, but not limited to, any such information or documents obtained in further discovery herein.

9. PSD's responses and/or agreement to furnish information in response to any individual request shall not be deemed to constitute an admission as to the relevancy of that request or as to the relevancy of the information or documents sought, nor is it intended to waive any right by PSD to object to its admissibility at any stage of this proceeding.

10. PSD reserves all objections or other questions as to the competency, relevance, materiality, privilege, or admissibility of PSD's responses herein, in any subsequent proceeding in or trial of this or any other action for any purpose whatsoever.

Without waiving any of the foregoing objections which PSD incorporates by reference in its response and/or objection to each of the following individual requests as if fully set forth therein, PSD further responds and objects to the individual requests as follows.

DATED: Honolulu, Hawai'i, March 2, 2022.

/s/ Lisa M. Itomura
LISA M. ITOMURA
Deputy Attorney General

Attorney for PSD

REQUESTS FOR ADMISSION

1. Admit that when an incarcerated person in PSD's custody dies, there are other incarcerated people who are aware of that person's death.

Admit _____

Deny _____

OBJECTION: PSD objects to this interrogatory on the ground that it is vague and ambiguous, does not define the term "aware of that person's death," does not define a time period for "awareness," and are therefore unable to admit or deny this request.

/s/ Lisa M. Itomura
LISA M. ITOMURA

2. Admit that the Health Care Division within PSD's Correctional Division provides health care to incarcerated people.

Admit X _____

Deny _____

3. Admit that the Health Care Division within PSD's Correctional Division performs functions covered by HIPAA.

Admit X _____

Deny _____

4. Admit that the Health Care Division within PSD's Correctional Division is PSD's designated health care component for the PSD correctional system.

Admit _____

Deny X _____

5. Admit that PSD maintains incarcerated people's paper and electronic medical records securely and separately from other institutional records.

Admit X _____

Deny _____

6. Admit that, in the absence of HIPAA exceptions, PSD does not disclose paper and electronic medical records of incarcerated people outside of the Health Care Division within PSD's Correctional Division.

Admit X _____

Deny _____

7. Admit that the Correctional Industries Division within PSD's Correctional Division does not provide health care to incarcerated people.

Admit X

Deny _____

8. Admit that the Correctional Industries Division within PSD's Correctional Division does not perform functions covered by HIPAA.

Admit X

Deny _____

9. Admit that the Corrections Program Services Division within PSD's Correctional Division does not provide health care to incarcerated people.

Admit _____

Deny X

10. Admit that the Corrections Program Services Division within PSD's Correctional Division does not perform functions covered by HIPAA.

Admit _____

Deny X

11. Admit that the Institutions Division within PSD's Correctional Division does not provide health care to incarcerated people.

Admit _____

Deny X

12. Admit that the Institutions Division within PSD's Correctional Division does not perform functions covered by HIPAA.

Admit _____

Deny X

13. Admit that the Reentry Intake Service Centers within PSD's Correctional Division do not provide health care to incarcerated people.

Admit _____

Deny X

14. Admit that the Reentry Intake Service Centers within PSD's Correctional Division does not perform functions covered by HIPAA.

Admit _____

Deny X

HOLLY T. SHIKADA
Attorney General of Hawai'i

4017

CRAIG Y. IHA
LISA M. ITOMURA
Deputy Attorneys General
Department of the Attorney
General, State of Hawai'i
425 Queen Street
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Telephone No. (808) 586-8379
Facsimile: (808) 586-1372

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Attorneys for Defendant
Department of Public Safety

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FIRST CIRCUIT
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-21-0001329 JMT

CERTIFICATE OF SERVICE RE:
DEFENDANT DEPARTMENT OF PUBLIC
SAFETY'S RESPONSE TO PLAINTIFF
HONOLULU CIVIL BEAT INC.'S FIRST
REQUESTS FOR ADMISSION

CERTIFICATE OF SERVICE RE: DEFENDANT
DEPARTMENT OF PUBLIC SAFETY'S RESPONSE TO PLAINTIFF
HONOLULU CIVIL BEATS INC.'S FIRST REQUESTS FOR ADMISSION

I hereby certify that DEFENDANT DEPARTMENT OF PUBLIC SAFETY'S
RESPONSE TO PLAINTIFF HONOLULU CIVIL BEAT INC.'S FIRST REQUESTS FOR
ADMISSION was duly served on the following party or parties by placing in the U.S. first class
mail, duly addressed and postage paid, at his/her last known address stated below on March 2,
2022:

ROBERT BRIAN BLACK, ESQ.
Civil Beat Law Center For the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813

Attorney for Plaintiff

DATED: Honolulu, Hawai'i, March 2, 2022.

/s/ Lisa M Itomura
LISA M. ITOMURA
Deputy Attorney General

Attorney for PSD

Exhibit 12

HOLLY T. SHIKADA 4017
Attorney General of Hawai'i

CRAIG Y. IHA 7919
LISA M. ITOMURA 5003
Deputy Attorneys General
Department of the Attorney
General, State of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813
Telephone No. (808) 586-8379
Facsimile: (808) 586-1372

Attorneys for Defendant
Department of Public Safety

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-21-0001329 JMT

DEFENDANT DEPARTMENT OF PUBLIC
SAFETY'S RESPONSE TO PLAINTIFF
HONOLULU CIVIL BEAT INC.'S
SECOND SET OF INTERROGATORIES
TO DEFENDANT

DEFENDANT DEPARTMENT OF PUBLIC SAFETY'S
RESPONSE TO PLAINTIFF HONOLULU CIVIL BEAT
INC.'S SECOND SET OF INTERROGATORIES TO DEFENDANT

Defendant Department of Public Safety (hereinafter "PSD"), by and through its attorneys, Holly T. Shikada, Attorney General, and Craig Y. Iha and Lisa M. Itomura, Deputy Attorneys General, responds to Plaintiff Honolulu Civil Beat Inc.'s ("Plaintiff") "Second Set Of Interrogatories To Defendant" ("Second Set"), dated February 1, 2022. Said responses to interrogatories are attached hereto.

The responses are based on information known to PSD's attorneys as of the date of this response. As further reserved below, discovery and investigation are continuing and PSD reserves its right to make use of or introduce in evidence at trial any information disclosed or developed through investigation or discovery subsequent to the date of this response.

GENERAL RESPONSES AND OBJECTIONS

1. PSD objects to all of the interrogatories in Plaintiff's Second Set to the extent that they ask for the disclosure of privileged communications, information that is protected work product, and information concerning documents and tangible things prepared in anticipation of litigation or trial.

2. PSD objects to each request to the extent that it is unreasonably burdensome, oppressive, or vexatious, in that the information so acquired would be of little or no relevance to the issues in this case, and/or would place an unreasonable and oppressive burden on PSD in expenditure of time, costs, and money.

3. PSD objects to each request that is so broad, uncertain, and unintelligible that it cannot determine the nature of the response sought, and it therefore is unable to respond.

4. PSD objects to each request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

5. PSD objects to each request to the extent that it requests the production of documents for which the required good cause or substantial need, as dictated by applicable statutes, court rules, and case law, has not been shown.

6. PSD does not concede that any of its responses will be admissible evidence at trial. Further, PSD does not waive any of its objections, whether or not stated herein.

7. PSD states that discovery and investigation in this case are ongoing. Any and all answers to Plaintiff's Second Set are based only on information and documents available to PSD at the time that its responses and objections were prepared.

8. PSD reserves the right to amend, modify, supplement, alter, or change responses to any of the Interrogatories as may be appropriate. Further, PSD reserves the right to make any use of, or to introduce at any hearing and at trial, information or documents related to these requests but discovered subsequent to the date of these responses, including, but not limited to, any such information or documents obtained in further discovery herein.

9. PSD's responses and/or agreement to furnish information in response to any individual request shall not be deemed to constitute an admission as to the relevancy of that request or as to the relevancy of the information or documents sought, nor is it intended to waive any right by PSD to object to its admissibility at any stage of this proceeding.

10. PSD reserves all objections or other questions as to the competency, relevance, materiality, privilege, or admissibility of PSD's responses herein, in any subsequent proceeding in or trial of this or any other action for any purpose whatsoever.

Without waiving any of the foregoing objections which PSD incorporates by reference in its response and/or objection to each of the following individual requests as if fully set forth therein, PSD further responds and objects to the individual requests as follows.

DATED: Honolulu, Hawai'i, March 2, 2022.

/s/ Lisa M. Itomura
LISA M. ITOMURA
Deputy Attorney General

Attorney for PSD

INTERROGATORIES TO DEFENDANT

12. Describe the categories of information contained in the death registry maintained by the Health Care Division and identify all individuals – by name, job title, and job description– who have access to the death registry, as referenced in PSD Policy No. COR.10.1A.10 at 4.12.

OBJECTION: PSD objects to this interrogatory on the ground that it is vague and ambiguous, does not define the terms “job title” and “job description,” and seeks information when discovery and investigation is ongoing in the instant case.

/s/ Lisa M. Itomura
LISA M. ITOMURA

Subject to the general and specific objections stated, the following is a listing of the categories: Date of Death, Name, SID #, Date of Birth, Age, Facility, Cause of Death, Date Clinical Mortality Review Completed, Administrative Review Date, Days from Death to Review, Date Discussed with Treating Staff, Psychological Autopsy Review Date, Date Autopsy Report Received, Manner of Death, and Date Autopsy Report Sent to Medical Director.

Individuals who have access to the death registry:

Gavin Takenaka, Psy.D. – Corrections Health Care Administrator

Caroline Mee, M.D. – Medical Director

Tori Ikehara, D.N.P. – Chief Nursing Officer

Sara Hashimoto, Psy.D. – Mental Health Branch Administrator

Tina Agaran – Clinical Services Branch Administrator

Jodie Paulos – Secretary IV

Merlene Picanco – Secretary II

Jan Casey – Secretary II

Position descriptions will be provided.

13. Identify the number of people on PSD’s death registry in 2020 and 2021.

Subject to the general objections stated, in 2020 the number of people on PSD’s death registry was 16 and in 2021 the number was 23.

14. Identify all documents maintained by PSD that describe an incarcerated person as deceased, including a description of which division or office within PSD maintains each document and has access to the document.

OBJECTION: PSD objects to this interrogatory on the ground that it is vague and ambiguous, does not define the terms "[i]dentify all documents" and "describe an incarcerated person as deceased," and seeks information when discovery and investigation is ongoing in the instant case.

/s/ Lisa M. Itomura
LISA M. ITOMURA

Subject to the general and specific objections stated, PSD cannot identify all documents which may include a mention of an incarcerated person as deceased, as it depends on the circumstances. For example, in the Health Care Division the documents may include but are not limited to: death registry, electronic medical records, progress notes, hospital reports, clinical mortality reviews, administrative reviews, psychological autopsies, notifications from medical examiner's office on death, medical examiner or autopsy reports, and Act 234 reports to the Governor. In the Institutions Division there may be Internal Affair investigative reports, facility investigation reports, and law enforcement reports. Each correctional facility may have logbooks, directories, residency lists, employment records and other documents that mention an incarcerated person as deceased. If the incarcerated person was working as part of the Correctional Industries Division, there may be employment records there. If the incarcerated person was referred to or participating in rehabilitative programs, the Institutions Division, the Corrections Program Services Division, or the Reentry Intake Services Centers may have program records.

15. For each Request For Admission denied, describe all factual allegations or evidence and all constitutional provisions, federal or state laws, case law, opinions of the Office of Information Practices, or other legal authority that PSD relied on or would rely on as a basis to deny the Request For Admission.

OBJECTION: PSD objects to this interrogatory on the ground that it is vague and ambiguous, does not define the term "describe in detail all factual allegations or evidence," and seeks information when discovery and investigation is ongoing in the instant case.

/s/ Lisa M. Itomura
LISA M. ITOMURA

Subject to the general and specific objections stated, the following is a listing of the bases known at this time for denying Requests For Admissions:

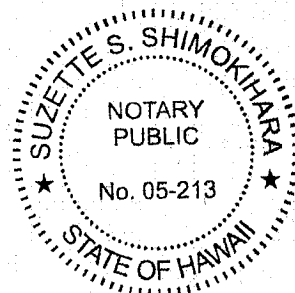
1. PSD cannot speculate whether or when incarcerated people are aware of the death of another incarcerated person in PSD custody.
4. PSD has not yet decided to be a hybrid entity under HIPAA, and so has not designated any health care components.
9. The Corrections Program Services Division does provide health care as defined by 45 C.F.R. §160.103 to individuals in PSD facilities.
10. The Corrections Program Services Division does functions covered by HIPAA.
11. The Institutions Division does provide health care as defined by 45 C.F.R. §160.103.

12. The Institutions Division does functions covered by HIPAA.
13. The Reentry Intake Service Centers do provide health care as defined by 45 C.F.R. §160.103.
14. The Reentry Intake Service Centers do functions covered by HIPAA.

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

Lucy

Suzette S. Shimokihara
Notary Public, State of Hawaii
Print Name: Suzette S. Shimokihara
My commission expires: 4/10/2025



Suzette S. Shimokihama 1st Judicial Circuit

Document Description: Defendant Department of Public Safety's

Response to Plaintiff Honolulu Civil Beat Inc.'s Second Set of Interrogatories to

Date of Doc. 3/8/22

Dentant

Suzette S. Shindler
Notary Signature

3/8/22

Date _____

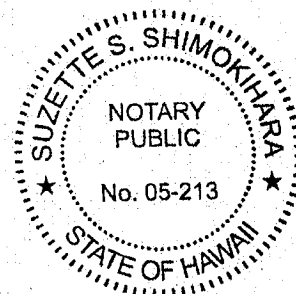


Exhibit 13



DEPARTMENT OF PUBLIC SAFETY

DAVID Y. IGE
GOVERNOR

NOLAN P. ESPINDA
DIRECTOR

FOR IMMEDIATE RELEASE

Aug. 7, 2015

HAWAII INMATE DIES IN HIS CELL AT SAGUARO CORRECTIONAL CENTER, CAUSE OF DEATH UNDER INVESTIGATION

ELOY, AZ – Saguaro Correctional Center has notified the Department of Public Safety of the death of a Hawaii inmate at their facility in Eloy, Arizona.

On Thursday, at about 3:15 p.m. (HST), Saguaro inmate Jason McCormick activated a distress button in the housing cell and advised correctional officers that his cellmate needed medical attention. Corrections Officers found 21-year old inmate Jonathan Namauleg unconscious and face-down on the floor in the cell. They immediately notified an emergency response team and medical staff who arrived within minutes to assess Namauleg and begin CPR. An ambulance arrived at 3:30 p.m. to take over CPR and transport Namauleg to a nearby hospital. The hospital pronounced Namauleg deceased at about 5 p.m. An autopsy is pending.

Eloy Police are investigating the cause of death and are treating the cell in which the death occurred as a crime scene. Department of Public Safety investigators are also being sent to Arizona to investigate the incident.

Jonathan Namauleg was serving three years for third degree arson.
41-year old Jason McCormick is serving a life sentence with the possibility of parole for second degree murder.

###

Media Contact:

Toni Schwartz
Public Information Officer
Hawaii Department of Public Safety
Office: 808-587-1358
Cell: 808-683-5507
Toni.E.Schwartz@hawaii.gov
<http://hawaii.gov/psd/>

The Safe Travels Program has ended. Please visit hawaiiicovid19.com/travel/ for more information.



State of Hawaii
Department of Public Safety

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RELEASE – HAWAII INMATE JONATHAN NAMAULEG DIES IN HIS CELL AT SAGUARO CORRECTIONAL CENTER, CAUSE OF DEATH UNDER INVESTIGATION

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[RELEASE – Saguaro Inmate Jonathan Namauleg Death 8.7.15](#)

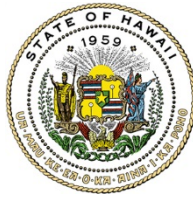
Please see attached news release for more information.



Jonathan Namauleg



Jason McCormick



DEPARTMENT OF PUBLIC SAFETY

DAVID Y. IGE
GOVERNOR

NOLAN P. ESPINDA
DIRECTOR

FOR IMMEDIATE RELEASE

Apr. 13, 2016

INMATE DEATH AT THE SAGUARO CORRECTIONAL CENTER IN ARIZONA

ELOY, AZ – The Department of Public Safety was notified last night that Andrew Sarita, an inmate assigned to the Saguaro Correctional Center in Eloy, AZ, has died. Sarita was found unresponsive in his cell by Saguaro staff during a 10:30 p.m. cell check. He was found with his bedsheet around his neck and attached to his bookshelf. Saguaro staff responded immediately to begin CPR and AED life-saving measures. Paramedics were called and arrived to assist. Sarita was pronounced dead at 11:04 p.m. The official cause of death is pending review by the Arizona medical examiner. Next of kin has been notified. As is standard procedure, the death is being investigated by Eloy Police and CCA investigators. Preliminary reports indicate no foul play is suspected.

Sarita was 27-years old and serving time for second degree Arson and first degree Terroristic Threatening.

###

Media Contact:

Toni Schwartz
Public Information Officer
Hawaii Department of Public Safety
Office: 808-587-1358
Cell: 808-683-5507
Toni.E.Schwartz@hawaii.gov
<http://hawaii.gov/psd/>

The Safe Travels Program has ended. Please visit hawaiiicovid19.com/travel/ for more information.



State of Hawaii
Department of Public Safety

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RELEASE – SAGUARO CORRECTIONAL CENTER INMATE ANDREW SARITA FOUND UNRESPONSIVE

Posted on Apr 13, 2016 in [News Releases](#)

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Please see attached news release for more information.

[RELEASE – Saguaro Andrew Sarita found unresponsive 4.13.16](#)





DEPARTMENT OF PUBLIC SAFETY

DAVID Y. IGE
GOVERNOR

NOLAN P. ESPINDA
DIRECTOR

FOR IMMEDIATE RELEASE

May 2, 2016

INMATE DEATH AT THE HALAWA CORRECTIONAL FACILITY

HONOLULU – On Saturday, at approximately 12:40 p.m., Halawa Correctional Facility inmate Christopher Horner was found unresponsive in his cell by staff. He was found hanging with a bedsheet around his neck. Facility security and medical staff immediately provided emergency assistance measures until paramedics arrived to continue lifesaving procedures. The inmate was pronounced dead at the hospital at 1:43 p.m. The official cause of death is pending review by the Honolulu Medical Examiner. Next of kin was notified last night. As is standard procedure, the death is being investigated. Preliminary reports indicate no foul play is suspected.

Horner was 38-years old and serving time for Second Degree Theft.

###

Media Contact:

Toni Schwartz
Public Information Officer
Hawaii Department of Public Safety
Office: 808-587-1358
Cell: 808-683-5507
Toni.E.Schwartz@hawaii.gov
<http://hawaii.gov/psd/>

The Safe Travels Program has ended. Please visit hawaiiicovid19.com/travel/ for more information.



State of Hawaii
Department of Public Safety

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RELEASE – HALAWA CORRECTIONAL FACILITY INMATE CHRISTOPHER HORNER FOUND UNRESPONSIVE IN CELL

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Please see attached news release for more information.

[RELEASE – HCF Christopher Horner found unresponsive 5.2.16](#)



DEPARTMENT OF PUBLIC SAFETY

DAVID Y. IGE
GOVERNOR

NOLAN P. ESPINDA
DIRECTOR

FOR IMMEDIATE RELEASE

Jun. 15, 2017

KULANI CORRECTIONAL FACILITY INMATE PRONOUNCED DEAD

HILO – At approximately 2:45 a.m., Kulani Correctional Facility (KCF) staff responded to calls for an inmate in distress in one of the housing dorms. Assigned staff began administering aid and called 911 Emergency Medical Services (EMS). During this time, inmate Wesley Chong became unconscious and unresponsive. Staff performed CPR until EMS arrived to take over at 3:36 a.m. Chong was pronounced dead by EMS staff at approximately 3:43 a.m.

As is normal procedure, Hawaii Police were notified and an internal investigation as well as law enforcement investigation are pending. His official cause of death is pending by the medical examiner's office, but foul play has been ruled out by responding law enforcement entities.

Chong was serving time for Manslaughter. He had a life sentence with the possibility of parole. His next parole hearing was scheduled for July 2017.

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The Safe Travels Program has ended. Please visit hawaiiicovid19.com/travel/ for more information.



State of Hawaii
Department of Public Safety

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Please see attached news release for more information.

[RELEASE -KCF Inmate Wesley Chong Death 6.15.17](#)



Exhibit 14

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: March 2, 2022, 1:00 p.m.
State Capitol, Conference Room 308 and via Videoconference

Re: Testimony on H.B. No. 2171, H.D. 2
Relating to Public Safety

Thank you for the opportunity to submit testimony on this bill, which would establish a Department of Law Enforcement to administer the criminal law enforcement and investigations functions of the State and would reestablish the Department of Public Safety as an independent Department of Corrections and Rehabilitation to administer the corrections, rehabilitation, and reentry of the inmate population. The Office of Information Practices (OIP) takes no position on the substance of this bill, but offers comments on the reporting requirement set out in proposed section 353-G, HRS, at bill pages 42-43.

This provision would require the Director of Corrections and Rehabilitation to report to the Governor and Legislature on the death of any inmate and the on-site death or injury of any correctional facility employee. Proposed section 353-G(d) gives the Director “the discretion to withhold disclosure of the decedent’s name or any information protected from disclosure by state or federal laws.” OIP notes that section 92F-12(a)(4), HRS, requires public disclosure of “directory information concerning an individual’s presence at any correctional facility,” including the names and locations of incarcerated individuals,

notwithstanding any provision to the contrary. Thus, the name of an inmate who died in custody would be public information in the same way as an inmate's departure from a facility for other reasons. Similarly, a government employee's first and last dates of employment are mandated to be public under section 92F-12(a)(14), and the correlation between last date of employment and the reported death of an employee at the facility on that date would effectively make the name public. OIP further notes that the list in proposed subsection (b) of information requires "the decedent's name" to be included in the report, in direct contradiction to proposed subsection (d) which gives the Director "the discretion to withhold" that same information. As written, this provision is **internally inconsistent** and, by referring to the name of the decedent in the same clause as information protected by state or federal law, **creates confusion** about whether a decedent's name withheld from a report is still publicly disclosable upon request. OIP recognizes that even if the public has the ability to find out a decedent's name through a UIPA request, including the name in the report itself may be important in some instances but unnecessary in others. **Thus, the provision is inconsistent internally and with existing law, and it should be amended if its intent is to effectively give the Director the ability to choose to include or omit this information from the report.**

To fix this inconsistency, OIP recommends that the name of the decedent be removed from the list of information required to be reported, and subsection (d) be amended to allow the director to disclose the name of the decedent or other additional information provided that the director shall not disclose information protected from disclosure by law. Specifically, OIP recommends the following changes:

- **On page 42 line 21, delete the current item “(1) The name of the decedent,” leaving a list of only six mandatory items instead of the current seven; and**
- **On page 43, replace subsection (d) with the following:**
 - **“(d) The director may disclose the decedent’s name or other information not specified in subsection (b), provided that the director shall not disclose information protected from disclosure by state or federal law.”**

Thank you for considering OIP’s testimony.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

HONOLULU CIVIL BEAT INC.,

Plaintiff,

vs.

DEPARTMENT OF PUBLIC SAFETY,

Defendant.

CIVIL NO. 1CCV-21-1329
(Other Civil Action)

NOTICE OF HEARING

NOTICE OF HEARING

TO: Craig Y. Iha
Lisa M. Itomura
Department of the Attorney General
425 Queen Street
Honolulu, Hawai'i 96813
Attorneys for Defendant

NOTICE IS HEREBY GIVEN that Plaintiff's Motion for Summary Judgment shall come on for hearing before the Honorable John M. Tonaki, Judge of the above-entitled court, in his courtroom at Kauikeaouli Hale, 1111 Alakea Street, Courtroom 5B, Honolulu, Hawai'i 96813, on October 25, 2022, at 9:30 a.m., or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i, August 30, 2022

/s/ Robert Brian Black
ROBERT BRIAN BLACK
STEPHANIE FRISINGER
Attorneys for Plaintiff Honolulu Civil Beat Inc.