

DEPARTMENT OF THE ATTORNEY GENERAL
Response/Notice in Response to Request for Access to Government Record(s)
(UIPA, Part II Disclosure Form 3)

TO: Ms. Sharona Coutts **FROM:** Michelle Nakata
Name of Requestor Department Contact Person

Phone No.: (808) 587-3050

RE: YOUR ATTACHED REQUEST FOR ACCESS TO GOVERNMENT RECORD

- INABILITY TO DISCLOSE:** We are unable to disclose the record(s) you request because:
- We need more information to determine if we have the record you request. Please call our Department Contact Person (see above).
 - Our Department does not maintain the record(s) you request.
 - We are not aware that any state agency maintains the record(s) you request.
 - The record(s) you request may be maintained by _____ whose address is _____
 - Your request requires a summary or compilation of information from records that are not readily retrievable.

- FULL OR PARTIAL DENIAL OF REQUEST:** Access to the government records you request in the entirety or as to the parts described below is denied because the provisions of Haw. Rev. Stat. § 92F-13, or other laws cited below:

Laws	Part To Which Access Is Denied
_____	_____
_____	_____
_____	_____
_____	_____

- EXTENUATING CIRCUMSTANCES/INCREMENTAL DISCLOSURE:** Because of the circumstances described in the attached Statement of Extenuating Circumstances/Incremental Disclosure, record(s) to be disclosed will be MAILED FAXED, or may be INSPECTED or PICKED-UP at _____, in _____ increments, at twenty business day intervals, after we receive each of your prepayment(s) of _____ % of the fees indicated above.
- INSPECTION:** Record(s) to be disclosed may be inspected at _____, five (5) business days after we receive your prepayment of 50% of the UIPA Subtotal indicated in the attached Statement of Fees. The balance will be assessed at inspection.
- [X] E-MAILED
- COPIES:** Copies of records to be disclosed will be MAILED FAXED, or may be PICKED-UP at _____, as soon as we receive 50% of the UIPA Subtotal and 100% of the Other Subtotal indicated in the attached Statement of Fees. The balance will then be due.

**DEPARTMENT OF THE ATTORNEY GENERAL
Statement of Fees**

Searching:	\$2.50 x <u>0.25</u> (quarter hour or fraction)	<u>0.63</u>	
Reviewing:	\$5.00 x <u>0.25</u> (quarter hour or fraction)	<u>1.25</u>	
Segregating:	\$5.00 x <u>0</u> (quarter hour or fraction)	<u>0</u>	
Pass-Throughs of actual charges for			
Non-Department Searches (see attached invoice) _____			
Subtotal			<u>1.88</u>
less UIPA No Charge			<u>(30.00)</u>
less Waiver			<u>()</u>
UIPA Subtotal			<u>0</u>
Copying @ 5¢ per page x _____ pages		<u>0</u>	
Postage		<u>0</u>	
Outstanding/Unpaid Fee Balances		<u>0</u>	
Pass-Throughs of actual charges for			
Non-Department reproduction of			
disclosable records (see attached invoice		<u>0</u>	
Other _____		<u>0</u>	
Other Subtotal			<u>0</u>
Total Fees			<u>0</u>

Statement of Extenuating Circumstances/Incremental Disclosure

Because your records request is voluminous and we needed additional time to address one or more of the following extenuating circumstance(s), the records to be disclosed will be made available to you in increments.

- Privacy and other Outstanding Confidentiality Issues -- We need to consult with another person to determine whether the record is exempt from disclosure under Haw. Rev. Stat. ch 92F.
- Large or Extensive Request -- The request requires extensive efforts to search, review, or segregate the records, or otherwise prepare the records for inspection and copying.
- Need Additional Time to Respond -- We require additional time to respond to the request in order to avoid an unreasonable interference with our other statutory duties and functions.
- Disaster, Strike, or Other Emergency -- The following natural disaster or other situation beyond our control prevented us from sending a notice or responding to your request within ten (10) business days:

NEIL ABERCROMBIE
GOVERNOR



DAVID M. LOUIE
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

May 28, 2013

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
Congress of the United States
House of Representatives
2138 Rayburn House Office Building
Washington D.C. 20515-6216

The Honorable Trent Franks
Chairman, Subcommittee on the Constitution and Civil Justice
Congress of the United States
House of Representatives
2138 Rayburn House Office Building
Washington D.C. 20515-6216

Re: Committee on the Judiciary's Request for Information

Dear Representatives Goodlatte and Franks:

This letter is in response to your letter dated May 7, 2013, to David M. Louie, Attorney General, wherein you requested information on the civil rights of newborns.

Our response to your request is as follows:

1. In 2002 Congress enacted the Born-Alive Infants Protection Act, which provides that all federal protections for persons apply to every infant born alive. Do prosecutors in your state treat the deliberate killing of newborns, including newborns who delivered alive in the process of abortions, as a criminal offense? If so, have there been any prosecutions in your state for this crime? If the answer to the previous question is yes, please provide a log of cases, excluding any personally identifying information.

Yes, prosecutors in the State of Hawaii treat the deliberate killing of newborns under the general criminal homicide statutes (§§707-701 through 707-706, Hawaii Revised Statutes).

No, the Attorney General's office is not aware of any prosecutions in our state for the deliberate killing of newborns delivered alive in the process of abortions.

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The Honorable Trent Franks
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2. Has the legislature in your state enacted laws, in addition to general laws against homicide or requiring ordinary medical treatment, specifically to protect newborns delivered alive in the process of abortions? If so, how, if at all, have these laws changed prosecutorial practices?

No, Hawaii has not enacted any such law.

3. The grand jury expressed concern about Pennsylvania law's applying a statute of limitations to infanticide by neglect that it does not apply to murder. Does your state have different statutes of limitations for culpability in the death of an infant and culpability in the death of human beings in later stages of development? If so, what is the understood rationale for that difference?

No, Hawaii does not have different statutes of limitations for culpability in the death of an infant and culpability in the death of human beings in the later stages of development.

4. Have you or your predecessors prosecuted any criminal cases in which a woman has died or suffered serious complications as a result of an abortion? If so, please provide a log of such cases, excluding any personally identifying information.

The Attorney General's office is not aware of any prosecutions in any criminal cases in which a woman has died or suffered serious complications as a result of an abortion.

5. This Gosnell case has also raised concern about the effectiveness of state laws that limit, or purport to limit, abortions late in pregnancy. If your state has such a limit, have abortions performed after the statutory limit been prosecuted in your state? If so, please provide a log of such cases, excluding any personally identifying information. If not, are there legal considerations that have prevented such prosecutions from proceeding?

The State of Hawaii does not have a law that limits abortions late in pregnancy. Section 453-16, Hawaii Revised Statutes, provides for the intentional termination of pregnancy.

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6. Please provide copies of any official written procedures or guidance that relate to the gathering of information on, or the prosecution of, newborn homicides.

The Attorney General's office is not aware of any official written procedures or guidance that relate to the gathering of information on, or the prosecution of, newborn homicides.

If you have any questions or comments, you may contact me at (808) 587-3050.

Very truly yours,



Michelle E. Nakata
Deputy Attorney General

APPROVED:



David M. Louie
Attorney General

cc: Committee on the Judiciary Majority Staff
Committee on the Judiciary Minority Staff
Representative Colleen Hanabusa
Representative Tulsi Gabbard

§453-16 Intentional termination of pregnancy; penalties; refusal to perform. (a) No abortion shall be performed in this State unless:

- (1) The abortion is performed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon; and
- (2) The abortion is performed in a hospital licensed by the department of health or operated by the federal government or an agency thereof, or in a clinic or physician's or osteopathic physician's office.

(b) Abortion shall mean an operation to intentionally terminate the pregnancy of a nonviable fetus. The termination of a pregnancy of a viable fetus is not included in this section.

(c) The State shall not deny or interfere with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion that is necessary to protect the life or health of the female.

(d) Any person who knowingly violates subsection (a) shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

(e) Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal. [L 1970, c 1, §2; am L 2006, c 35, §2; am L 2008, c 5, §18]

Revision Note

In subsection (b), "section" substituted for "Act".

Attorney General Opinions

Constitutionality of residence requirement discussed. Att. Gen. Op. 70-2.

The hospital requirement of subsection (a)(2) is not enforceable during the first trimester of pregnancy; subsection (a)(3) is unconstitutional and invalid. Att. Gen. Op. 74-17.

Law Journals and Reviews

The Abortion Decision and Evolving Limits on State Intervention, Douglas MacDougal and Wayne P. Nasser, 11 HBJ 51.

Emergency Contraception in Religious Hospitals: The Struggle Between Religious Freedom and Personal Autonomy. 27 UH L. Rev. 65.

Case Notes

On validity of abortion statutes, see Roe v. Wade, 410 U.S. 113, and Doe v. Bolton, 410 U.S. 179.

Fetus in last trimester was vested with all rights of human beings. 751 F. Supp. 168.

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