

**HAWAI'I COUNTY POLICE COMMISSION
SPECIAL MEETING
REGULAR SESSION MINUTES
JANUARY 16, 2004
OHANA KEAUHOU BEACH RESORT**

CALL TO ORDER

Chair Hara called the meeting to order at 9:00 a.m.

ROLL CALL

Present:	Horace S. Hara, Chair	Also Present:	Lawrence Mahuna, Police Chief
	Dwight K. Manago, Vice Chair		Harry Kubojiri, Deputy Chief
	Paul M. de Silva, Member		Henry Tavares, Captain
	James A. Frazier, Member		Lincoln Ashida, Corporation Counsel
	Phoebe M. Lambeth, Member		Josie Pelayo, Secretary
	Betsy Mitchell, Member		
	Walter Moe, Member	Absent:	John M. Bertsch Member
	Peter P. Muller, Member		

A quorum was present

APPROVAL OF AGENDA

Commissioner Lambeth motioned to approve the agenda. Commissioner Frazier seconded the motion. Discussion: Vice Chair Manago stated that he would like to add the written testimony of Thomas Russi and Christine Paul regarding Correspondence 03-122 and 03-124 onto the agenda and have it labeled as Correspondence 03-127. There were no objections, and the motion carried unanimously.

STATEMENTS ON AGENDA ITEMS

TOM RUSSI came before the commission to speak on Correspondences 03-122, 03-124, and 03-127. The commission need not take action on his correspondence. He just wanted the commission to know that Wendell Hatada, the Mayor's Executive Assistant, violated the Code of Ethics. The Mayor and Dixie said they would take care of it, and they did not. He knows the commission cannot do anything about it.

STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION) - Closed to the public
Commissioner Lambeth motioned to meet in executive session to consider discipline and charges against officers or employees of the Hawai'i County Police Department where consideration of matters affecting privacy will be involved and a closed session is requested and to consult with Corporation Counsel on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawai'i County Charter Section 13-20 (b). Commissioner Moe seconded the motion, and it carried unanimously.

Executive session convened at 9:13 a.m.

Regular session reconvened at 10:22 a.m.

MICHAEL BARSELL came before the commission to speak on his complaints HPC 03-32 and HPC 03-33. He showed the commission a video recording of Officer Danny Freeman staring at them from his vehicle. He never knew Ms. Dempster as Officer Freeman had claimed. He did not know the man who came forward and told him about the things Officer Freeman said about him. He now feels really sorry for coming forward.

APPROVAL OF MINUTES

Vice Chair Manago motioned to approve the minutes of December 19, 2003, regular and executive sessions. Commissioner Lambeth seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

(Including but not limited to work assignments, training assignments, promotions, reallocations, severance from service, automobile allowances, and appointments.) Vice Chair Manago motioned to accept Personnel Orders Nos. 2003-147 to 2003-154 and 2004-01 to 2004-02. Commissioner Lambeth seconded the motion, and it carried unanimously.

COMMUNICATIONS -

Vice Chair Manago motioned to accept the communications listed on the agenda. Commissioner Lambeth seconded the motion, and it carried unanimously.

COMMITTEE REPORT

- Budget and Finance (Hara/Manago): Vice Chair Manago reported that he attended the Police Department's budget meeting with the Mayor on January 6. They had a good meeting, and the Mayor realizes that the training and equipment budget needs to be increased. The Mayor also agreed that they should have funded training positions. They explained the need for accreditation, but the department needs to present a more detailed list of requirements. The Mayor is in favor of a new station in Puna and agreed that they do need a fully manned station in South Kona.

Chair Hara pointed out that the Mayor has conceptually agreed to the needs, but not particularly to the funding. On Wednesday, he sat in on a meeting with the Chief, his staff, and the county's budget and finance committee.

Commissioner Frazier stated that he had sat in on the meeting with Vice Chair Manago and the Mayor, and it was Vice Chair Manago's efforts and preparation that won the Mayor over.

- Office Management and Staffing (Muller/Mitchell): The committee had no report.
- Rules and Policies (Moe/Bertsch): The committee had no report. Chair Hara asked Commissioner de Silva to sit on this committee in lieu of outgoing Commissioner Moe. Commissioner Moe's replacement will be assigned to the contractual services committee along with Commissioner Frazier.

- Status of changes to the rules: No report.

- Contractual Services (de Silva/Frazier): Commissioner Frazier stated that his report had to be done in executive session because it involved confidential proposals.
- Public Relations (Hara/Lambeth): The committee had no report.

STATUS OF COMPLAINTS REFERRED TO CHIEF MAHUNA

Chair Hara asked Captain Tavares to present his report in open session by referencing only the HPC number. Captain Tavares gave an update of HPC 03-12A & B, HPC 03-27, and HPC 03-29 as summarized in the written report.

CHIEF'S REPORT

Including:

- Crime: Assistant Chief Hickcox summarized written report.
- Traffic: Assistant Chief Hickcox summarized written report.

Vice Chair Manago thanked the officers on the street for the increase in DUI arrests and decrease in fatalities.

- Personnel: Deputy Chief Kubojiri reported having 41 sworn and 8 civilian vacancies. He reported that the Mayor needed to approve filling all resultant vacancies. Their priority now is to fill the sergeant positions.
- Finance: Deputy Chief Kubojiri summarized the written report. The Chief has instructed them to look at training and equipment as a priority in the budget.

In response to Chair Hara's inquiry into whether the department could hire private contractors for projects under \$25,000 as they do at the Department of Education, Chief Mahuna stated that they have to go through Public Works.

- Commendations: Chief Mahuna reported receiving seven commendations since last meeting.
- Commanders' meeting minutes: Chief Mahuna reported that they had a good year. Their goals were obtained and morale was up. However, he is concerned that even though DUI arrests increased, they still had traffic fatalities. Commanders and their staff were commended for their efforts. They were informed that with the commission, they would be working on a more consistent disciplinary system that would ensure a better process.

Chair Hara thanked Commissioner Frazier for attending the last commanders' meeting and encouraged the other commissioners to attend. The next meeting is scheduled for January 20 at 1:30 p.m. at the Shultz Siding Conference Room on Railroad Avenue.

- Other departmental activities: Commissioner de Silva expressed concern that they still have not finalized their recommendations on the investigative procedures. It is important that they complete the recommendations independent of the Chief's input. After it is completed, they should send it to the Chief and the Mayor.

Chief Mahuna reported that the Ice Task Force on both sides of the island has been very effective. Between the two, they have initiated in excess of 300 warrants and have hit over 400 homes with ice. One of the indicators that this task force is working, is that they are getting less and less calls on their hotline. The department will be getting more dogs and will focus on the airports such as Keahole, Fed Ex, and UPS in hopes of cutting off the entry points to the island.

Commissioner Mitchell, on behalf of the Volcano Community, commended the Chief and the Ice Task Force for their work in the Volcano community. She stated that some people don't want to call the hotline for fear of reprisal. Chief Mahuna stated that all calls to the hotline are kept confidential.

UNFINISHED BUSINESS

- Correspondence 03-114, Corporation Counsel Ashida to consult with OIP on complainants and the accused giving statements in executive session. Corporation Counsel Ashida reported that he has not yet received a response from the OIP. Chair Hara stated that this would be deferred to February.
- Correspondence 03-126 and 03-118, Salary Commission's request for input into its suggestions on the compensation for the Police Chief and Deputy Chief. Chief Mahuna reported that he sent a memo to the Salary Commission's Chairman Glenn Hara regarding the proposed tier system compensation plan. With this plan, at the end of the four-year contract, the Assistant Chief will be making more than the Chief. The department head needs to be paid more than his subordinates.

Chair Hara stated that in his testimony to the Salary Commission, he suggested that they have a fixed percentage between the department heads and subordinates. Essentially, if they keep that percentage, the salary of the leadership would progress, and they wouldn't have to keep going back to the Salary Commission for a raise.

Chief Mahuna stated that they have very good individuals in staff positions. However, a senior Assistant Chief would be making \$4,000-\$5,000 more than the Chief. Money is not the total incentive, but in a structured organization like the Police Department, the Chief and the Deputy should not be making less than their subordinates. They would also have a difficult time finding applicants if this continues.

Chair Hara stated that they would support the Chief's recommendation. There were no objections.

- Follow-up to discussions at special meeting on December 8 on procedures for investigating complaints.

Commissioner de Silva stated that Commissioner Bertsch did a good job on the flowchart but did not put it in written policy form which he had requested at the previous meeting. When this is done, they should also prepare a narrative to the Mayor and Managing Director explaining the commission's oversight function and problems they have had with prior administrations.

Vice Chair Manago stated that he has reservations about the flowchart. It is like having the wolf watching the hen house. When the commission was originally setup, it was an independent group of people representing the community to oversee the Police Department. Having the Police Commission use an arm of the department (IA) to investigate its officers, takes away the commission's independence from the Police Department.

Commissioner Lambeth expressed concern that there have been times when an officer's statement to them was different from the statement given to IA.

Vice Chair Manago clarified his interpretation of the flowchart. The flowchart showed that they would be using Internal Affairs, which is an arm of the police department, to investigate officer misconduct, instead of a private investigator. The Police Commission was set up to be a completely independent group of people representing the community. When complainants file a complaint it is important that they know that the Police Department has nothing to do with the investigation.

Commissioner de Silva stated that the people that are doing the actual investigation that the Administrative Review Board is going to listen to, are the ones who do it last, and that is the Internal Affairs Unit. If they're going to investigate anyway, the commission should let them do it. The commission could then review the investigation to see if it needs any supplementation. This would serve a dual purpose, one to eliminate unnecessary expense and time and the second to perform an oversight function over the quality of the work of the IAU. He has questions about the IAU and ARB procedures. He suggested that they ask the department to provide them with all the files for the past year of the ARB procedures so that they could see for themselves what is in the files. The commission would have more of an opportunity to see that there's fairness if they do it last. He wants to be sure that the IAU is doing a fair and unbiased job, and the commission can't tell that if they do a secret investigation.

Chair Hara stated that he would like to see a clear delineation between the department's investigation and the commission's investigation. As a citizen, he would like to have his case heard entirely by citizens rather than by the department, who if they wanted to, could skew the findings. There is that suspicion.

Chair Hara asked Commissioners de Silva and Bertsch of the rules and policies committee to prepare the written procedures.

Commissioner de Silva suggested that they have a special meeting to continue working on the procedures.

A special meeting was scheduled for February 12.

Deputy Chief Kubojiri invited all the commissioners to the Police Department to view the files of the past year.

NEW BUSINESS

Police Commission's meeting schedule for 2004: Commissioner Muller motioned to accept the schedule. Commissioner de Silva seconded the motion, and it carried unanimously. Commissioner Lambeth stated that the 9:00 a.m. starting time is very difficult, especially with the school traffic.

Lunch recess was called at 12:10 p.m.

The meeting reconvened at 1:15 p.m.

EXECUTIVE SESSION

Vice Chair Manago motioned to meet in executive session to consider discipline and charges against officers or employees of the Hawai'i County Police Department where consideration of matters affecting privacy will be involved and a closed session is requested; to consult with Corporation Counsel on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawai'i County Charter Section 13-20 (b); and to review proposals for investigative services. Commissioner Muller seconded the motion, and it carried unanimously.

The commission convened into executive session at 1:16 p.m.

The commission reconvened into regular session at 1:50 p.m.

Vice Chair Manago exited.

ACTION ON EXECUTIVE SESSION MATTERS

- Investigation and Deliberation of Complaints
Complaint HPC 03-30: Complainant alleged that an officer did not have the correct information when he left a message at her home and that caused alarm to her family. Commissioner Lambeth motioned to exonerate the officer on the charges of Performance of Duty, Commission of a Criminal Act, Misuse of Position, and Conduct Towards the Public. Commissioner Muller seconded the motion, and it carried unanimously.

Complaint HPC 03-31: Complainant alleged that an officer misused his position and intimidated her when he spoke to her. Commissioner Moe motioned to refer the complaint to the commission's investigator for further investigation. There was no second, and the motion died. Commissioner Muller motioned to exonerate the officer. Commissioner de Silva seconded the motion. Commissioners Muller, de Silva, and Hara voted aye. Commissioners Frazier, Moe, and Mitchell voted nay. The motion died without a quorum vote. The complaint was deferred to the next meeting.

Complaint HPC 03-32: Complainants alleged that an officer lied about them. Commissioner Lambeth motioned to sustain the charges of Standard of Conduct, Truthfulness, Impartial Attitude, and Conduct Towards the Public. Commissioner Moe seconded the motion, and it carried unanimously.

Complaint HPC 03-33: Complainants alleged that an officer has been stalking them. Commissioner Lambeth motioned to sustain the charges of Standard of Conduct; Obedience to Laws, Written Orders, Policies; Commission of a Criminal Act; Misuse of Position or Office, Truthfulness; and Conduct Towards the Public. Commissioner Moe seconded the motion, and it carried unanimously.

Complaint HPC 03-34: Complainant alleged that an officer assisted two people in removing his son from his mother's home, although he had a court order giving him custody. Commissioner Muller motioned to refer the complaint to the commission's investigator for further investigation. Commissioner Lambeth seconded the motion, and it carried unanimously.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS - None

ANNOUNCEMENTS

Chair Hara announced that the next monthly meeting was scheduled for February 20, 2004, at 9:00 a.m., at the Waimea Civic, next to the Police Station, and that there would be a special meeting on February 12 at the Aupuni Center Conference Room at 9:30 a.m. to further discuss the commission's investigative procedures.

ADJOURNMENT

The meeting was adjourned at 2:05 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR