

**HAWAII COUNTY POLICE COMMISSION  
REGULAR SESSION MINUTES  
FEBRUARY 20, 2004  
WAIMEA CIVIC ENTER**

**CALL TO ORDER**

CHAIR HARA called the meeting to order at 9:00 a.m.

**ROLL CALL**

Present: Horace S. Hara  
Dwight K. Manago, Vice Chair  
Paul M. de Silva, Member  
James A. Frazier, Member  
Phoebe M. Lambeth, Member  
Walter Moe, Member  
Peter P. Muller, Member

Also Present: Lawrence Mahuna, Police Chief  
Charles Chai, Assistant Chief  
Henry Tavares, Captain  
Lincoln Ashida, Corporation Counsel  
Josie Pelayo, Secretary

Absent: John M. Bertsch, Member  
Betsy Mitchell, Member

A quorum was present.

**APPROVAL OF AGENDA**

Commissioner Lambeth motioned to approve the agenda. Vice Chair Manago seconded the motion, and it carried unanimously.

**STATEMENTS ON AGENDA ITEMS** - Open to the public.

JOHN CARROLL, attorney for Brian Dominy, Complaint HPC 03-35, stated that Mr. Dominy was a defendant who was charged with cruelty to animals. Mr. Dominy was at his home when a dog came onto his property and attacked his peacocks in a pen, causing seven of them to be killed. He yelled at the dog, but the dog kept attacking the birds. He went over and kicked the dog, and the dog went away and lay there. He called the owner who they took the dog away. The dog died, and the people came up and harassed him, called him a murderer, and threatened to kill him. He called the police, and they came up and talked to the person next door. Officer Manning asked him if he kicked or killed the dog. He said he did, and with no further investigation arrested Mr. Dominy and took him to jail. They did not listen to anything Mr. Dominy had to say and did nothing to further the investigation. In court, the prosecutors dismissed the case on their own motion. It was clear that he was not guilty of anything. It was very clear that the persons who owned the dog were guilty of at least two crimes, but they were not charged. Officer Manning or the other police officers did not question witnesses. Officer Manning was the next-door neighbor of the person who owned the dog.

BRIAN DOMINY came before the commission and stated that Officer T. Manning falsely arrested him and violated his constitutional rights and several General Orders. His peacocks and birds were in an enclosure when he saw the dog trying to pull one of the birds out of the fence. He did not intend to kill the dog when he kicked it. He told Officer Manning that he acted in a defensive manner. While at the station, they accused him of being a liar. Under the advice of rights, he was not interviewed.

Chair Hara stated that because the complaint was not received within 60 day, they could refer the complaint to the Chief.

**STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION) – None**

**APPROVAL OF MINUTES**

Commissioner Lambeth motioned to approve the minutes of January 16, 2004, regular and executive sessions. Vice Chair Manago 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 the Personnel Orders Nos. 2004-003 to 2004-012. Commissioner Muller seconded the motion, and it carried unanimously.

**COMMUNICATIONS**

Commissioner Frazier motioned to add Correspondence 03-132, SHOPO's response to the commission's request for personnel files, onto the agenda, and to accept the communications as listed. Commissioner Muller seconded the motion, and it carried unanimously.

Commissioner de Silva motioned to approve the request for records in Correspondence 03-129. Commissioner Muller seconded the motion. Discussion: Corporation Counsel Ashida stated that the case is settled and there is no reason for confidentiality. The motion carried unanimously.

**COMMITTEE REPORT**

- **Budget and Finance** (Hara/Manago)  
Vice Chair Manago stated that the police department would be reviewing the budget with the County Council on March 15. They have recommendations to increase the budget for training and funded training positions. They are also looking at the accreditation process. For CIPs, they are looking at fully manned stations in Puna and South Kona.
- **Office Management and Staffing** (Muller/Mitchell) - No report.
- **Rules and Policies** (Bertsch/de Silva) - No report.
- **Contractual Services** (Frazier/Moe): Commissioner Frazier announced that Purchasing has been notified of the commission's decision on a new contractor.
- **Public Relations** (Hara/Lambeth) - No report.

## **CHIEF'S REPORT**

Including:

- **Crime:** Assistant Chief Chai reported that they received final approval to add two more ice task force positions. This will include a task force at the Kona airport. These monies will come from a special grant provided by U.S. Senator Dan Inouye.

Hilo police responded to a fire in Hawaiian Paradise Park where a charred body was found. It was initially reported as an accident, but an autopsy reported that foul play might have been involved, and it was reclassified as a murder case.

Over the past several months, they have had problems with students at Keaau Middle School bringing weapons onto campus. Staff and the prosecutors have made presentations at the school, and they have not had any incidents since.

- **Traffic:** Assistant Chief Chai reported that accidents on the highways have caused five deaths. Regarding the incident involving an officer on Alii Drive, they brought in a consultant to reconstruct the accident.

Chief Mahuna stated that they do not normally notify next of kin over the telephone. Their policy is to say that a critical accident occurred and ask the family to come to the hospital. This is to prevent upheaval such as driving to the hospital at 100 mph. Their procedure is to notify the family member(s) at the hospital where a physician there could administer medication in case of an emergency reaction such as a seizure or a heart attack. They don't normally have face-to-face contact between the victim and family if the body is in bad condition. They give the family the option of other identification methods such as dental records. In this specific incident, a physician at the Kona Hospital, not by the police department, made the release to the family. There might have been a violation on the part of dispatcher and IA will investigate.

Commissioner Lambeth stated that is impossible to believe that the hospital made the notification because they don't normally do that.

Chief Mahuna stated that he has never experienced this before. He can only presume that they were rushing or may have forgotten or may have thought the person was an investigator.

- **Personnel:** Major Osorio summarized the written report. The vacancy announcement for Assistant Chief has been posted.
- **Finance:** Major Osorio summarized the written report.
- **Commendations:** Chief Mahuna reported having 12 commendations since the last meeting.
- **Other departmental activities:** Chief Mahuna requested an executive session to brief the commission on ongoing investigations.

### **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 stated that all proceedings before a board where action is taken must be in public. The exception is if the individual is a police officer. When there is a request for executive session, the commission should make a determination on a case-by-case basis. Chief Mahuna just asked for an executive session to brief the commission on ongoing investigations, and the commission will not be taking action on it.

Tiffany Edwards of West Hawai'i Today inquired whether the commission could meet in executive session to discuss a complaint if an officer requests it prior to the meeting but then doesn't show up.

Corporation Counsel Ashida stated that they could, and the commission would make the determination on whether or not to meet in executive session.

Lane Wick of Hawai'i Island Journal stated that there are laws that allow meetings behind closed doors, but when it's done, it precludes the public's trust.

Commissioner de Silva stated that they can be assured that if it should be done in open session, it will be done in open session.

Corporation Counsel Ashida stated that when the Chief gives his report in executive session, it is normally for ongoing criminal investigations.

Tiffany Edwards stated that for critical incidents, they want information released in an official manner.

- **Follow-up to discussions at special meeting on February 12, 2004, on procedures for investigating complaints.** Commissioner de Silva prepared the final draft of "Recommendations for Improvement to the Disciplinary System of the Hawaii County Police Department."

Chair Hara stated that with regards to Correspondence 03-132, from SHOPO, he did not request that SHOPO and its attorney to be present. It was only an invitation to be part of the discussion. He was quite perturbed with the tone of Mr. Springer's letter.

Gabriel Malani, SHOPO's business agent, stated that he understood it to be an invitation, not a request, and that Mr. Springer must have read about the meeting in the newspaper.

Commissioner de Silva stated that the charter is very plain when it says that the chief shall have additional powers, duties, and functions as required by the police commission. It's difficult for him to read the provision that says that they can't interfere

with the administration because almost all of the chief's duties are administrative. At the last meeting it bothered him that some people, stated that the commission's primary job is to investigate misconduct. The charter does not say that. It lists lots of things they are supposed to do. One is oversight, and provisions have been added. The other is to consider how the administration should change by giving the chief certain powers and duties. So, it really concerns him when people say that their primary job is to investigate misconduct.

Chair Hara stated that in his tenure on the police commission, this is the first time that they've had a member with the legal background of Commissioner de Silva. He is able review the charter and the rules and policies and make it clear so that the people who follow them in the future would have a better road map to use for their roles and responsibilities. It is their intent to make it clear so that it doesn't waiver on interpretation. He believes that Commissioner de Silva put commentaries in each item so that there's some rationale to each item.

Commissioner Frazier stated that the success of Commissioner de Silva's work has been contributed to by the openness of the police department. There were challenges that he addressed, and that openness was very valuable to guide the document.

Chair Hara stated that if they accept the recommendations, it will be forwarded to the Chief, the Mayor, and the Managing Director.

Commissioner Frazier motioned that the recommendations be finalized as those of the commission for action. Commissioner de Silva seconded the motion. Discussion: Vice Chair Manago inquired as to whether the Chief would then respond to their recommendations, to which Chair Hara stated, "Yes." The motion carried unanimously.

### **NEW BUSINESS**

Correspondence 03-128, Lisa J. Sims-Hulsey requests that her case be re-opened.  
No motion was made.

- Correspondence 03-131, from Commissioner de Silva regarding the Hawai'i County Police Commission's powers as stated in the County Charter.  
Commissioner de Silva stated that this is just for the commissioner's information.

### **EXECUTIVE SESSION**

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 would 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). Vice Chair Manago seconded the motion.

Corporation Counsel Ashida inquired into whether the officer in Complaint HPC 03-31 was contacted regarding the deferral of the complaint and whether he requested a closed meeting. Ms. Pelayo stated that the officer was informed of the meeting, but she did not

receive a response. Vice Chair Manago stated that at the previous meeting, the officer requested a closed session. Chair Hara stated that the complaint was deferred because they could not get a quorum vote.

Ms. Pelayo stated that the officer in Complaint HPC 03-35 did not respond to her notification. Corporation Counsel Ashida recommended that they discuss HPC 03-35 in open session unless they have a question pertaining to the commission's duties, liabilities, and responsibilities which would be directed to him.

The motion carried unanimously.

The commission convened into executive session at 11:08 a.m. and reconvened back into regular session at 11:47 a.m.

**Complaint HPC 03-31:** Complainant alleged that an officer misused his position and intimidated her when he spoke to her while off-duty and led her to believe that he was on duty. (Deferred at previous meeting due to lack of quorum.) Commissioner Manago motioned to refer the complaint to the investigator. Commissioner Lambeth seconded the motion, and it carried unanimously.

**Complaint HPC 03-35:** Complainant was arrested for cruelty to animals and complained about the procedures and process during his arrest. The complainant and his attorney gave a statement in open session. Vice Chair Manago motioned to decline further investigation because the complaint was not received within 60 days of the incident. Commissioner de Silva seconded the motion, and it carried unanimously.

**STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS** – None.

**ANNOUNCEMENTS**

Chair Hara announced that the next monthly meeting is scheduled for March 19, 2004, at 9:00 a.m., in the Hawai'i County Council Room in Hilo.

Chief Mahuna announced that the next staff meeting is scheduled for February 24.

**ADJOURNMENT**

The meeting was adjourned at 12:00 noon.

SUBMITTED:

APPROVED:

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JOSIE PELAYO, SECRETARY

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HORACE S. HARA, CHAIR