

**HAWAI'I COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
JULY 18, 2003
OHANA KEAUHOU BEACH RESORT**

CALL TO ORDER

Vice Chair Manago called the meeting to order at 10:10 a.m.

ROLL CALL

Present:	Dwight K. Manago, Vice Chair	Also Present:	Lawrence Mahuna, Chief
	John M. Bertsch, Member		Harry Kubojiri, Deputy Chief
	Paul M. de Silva, Member		Thomas Hickcox, Assistant Chief
	James A. Frazier, Member		Charles Chai, Assistant Chief
	Phoebe M. Lambeth, Member		Henry Tavares, Captain
	Betsy Mitchell, Member		James O'Connor, Detective
	Peter Muller, Member		Melvin Yamamoto, Detective
			Lincoln Ashida, Corporation Counsel
			Josie Pelayo, Secretary

Absent: Horace S. Hara, Chair
Walter Moe, Member

A quorum was present.

APPROVAL OF AGENDA

Commissioner Lambeth moved to approve the agenda. Commissioner Frazier seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS -Open to the public

Corporation Counsel Ashida advised the members of the public that they could address the commission in either open session, that's before the public, or in a closed session, in private without the public present.

Tom Anthony stated that three of them were there for the reconsideration of Complaints HPC 03-13A and 13B, and they are all familiar with the complaints. Their testimony would amount to allegations about the continued series of abuse by police officers, and this might incite retaliation. He requested that all three of them be present together in the room to give testimony. If they were not allowed to be in the room together, they would like to testify in open session.

Commissioner Bertsch stated that, generally, it's good practice for them to hear individual statements without collectively having everyone else listen to the other testimonies.

Commissioner Lambeth moved to vote on the request to allow all three of them in the room together. Vice Chair Manago called for the vote, and it was unanimous to allow all three together in the room while they gave testimony in executive session.

CRAIG KAHUI gave a written statement to the commissioners. He stated that in November of last year his car was stolen in Hilo; they live in Kona. The police recovered it, and he was told to pick it up. His brother-in-law, who lives in Hilo, picked the car up and brought it to his home where he parked it and locked it. When he got the car back a week later, he noticed drug paraphernalia in plain view on the front seat. This showed shoddy police work. There was black dust all over the car. He called the police, and Officer Joe Feliciano and another police officer came. They took some pictures, and he assumed they searched the vehicle. Upon reaching home that evening, he and his sons cleaned out the car. On the visor they found a crack pipe, and in the glove compartment they found more drug paraphernalia. He wants to bring this to the attention of the police department because citizens like him shouldn't be driving around with drug paraphernalia in their car. He feels that he was victimized twice, once by the person who stole his car and then again by the police department who didn't do a good job.

Mr. Kahui was interrupted. Corporation Counsel Ashida apologized and stated that they thought Mr. Kahui was speaking on an agenda item, but he was not. Under Hawaii state law, people can testify only on matters listed on the agenda. The commission is interested in hearing his concerns, but he needs to follow procedure.

Mr. Kahui stated that he called the secretary and told her that he would submit a letter for the agenda, but was unable to prepare it until today.

Commissioner Lambeth stated that towards the end of the agenda, it states, "Statements from the Public," and it's confusing.

Commissioner Muller asked to allow Mr. Kahui to finish his statement.

Mr. Kahui stated that he would like to complete his statement because he lives in Kona and wouldn't be able to attend another meeting. His allegations are serious. When they discovered the drug paraphernalia, he called the captain on the watch. He told them to come and pick it up. They never came, so they threw it away because he couldn't be managing the illegal stuff. Had he been stopped on the way home, he would have been in trouble. Considering our community's problems with ice, they should have at least considered it.

It is now July, and he hasn't gotten a police report. He called police records and learned that the person who stole his car had ten moving violations, including the stolen car. None of them were for drugs. Last week he called the watch captain again to find out the status of his case. The captain said he would call him back, but did not. The bottom line is that they owed him a courtesy call. He understands that the commission is working on this problem of communicating with victims.

Commissioner Bertsch inquired into whether they could ask questions since Mr. Kahui will not be able to attend another meeting.

Corporation Counsel Ashida stated that the whole requirement of the Sunshine Law requiring that only agenda items be discussed is so that the public has notice of what is

being discussed and anybody who is interested or wants to provide input can come to the meeting.

Vice Chair Manago stated that they would disperse with any questions.

STATEMENTS ON AGENDA ITEMS – Closed to the public (executive session)
Corporation Counsel Ashida stated that they did not need to state the reason for going into executive session. Commissioner Lambeth moved to meet in executive session. Commissioner Bertsch seconded the motion, and it carried unanimously

The commission convened into executive session at 10:25 a.m.

The commission reconvened back into open session at 11:45 a.m.

APPROVAL OF MINUTES

Commissioner Lambeth moved to approve the minutes of June 20, 2003, regular and executive sessions with the noted amendment. Commissioner Muller seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Commissioner Mitchell moved to accept Personnel Orders 2003-074 to 2003-083. Commissioner Frazier seconded the motion, and it carried unanimously.

COMMUNICATIONS

Commissioner Lambeth moved to accept the communications as listed. Commissioner Frazier seconded the motion.

Discussion:

Correspondence 03-59, invitation to the HSLEOA conference. Vice Chair Manago asked that the commissioners inform Ms. Pelayo if they were attending.

Correspondence 03-53, from Connie Molarius requesting information on an assault case. Commissioner Lambeth moved to put this on September's meeting agenda as requested by Ms. Molarius. The motion was seconded by Commissioner Bertsch and carried unanimously.

Correspondence 03-60, regarding a dangerous dog attack. Vice Chair Manago asked Chief Mahuna to look into the forms being used, as the complainant stated that they were outdated.

Correspondence 03-61, letter from Rod Thompson regarding the large police presence during the Fourth of July. Vice Chair Manago stated that the department is to be commended for assessing the situation. They discussed the Fourth of July with other agencies and were proactive. It was better to have more officers than not enough.

Chief Mahuna stated that it is better to over plan. His staff and the mayor did what they felt was needed. It took away from the typical Fourth of July, but they looked at potential injury and loss of life.

Commissioner Mitchell thanked Chief Mahuna for allowing the community policing officers to participate in their Fourth of July Volcano parade.

Correspondence 03-62, investigative services agreement. Commissioner Frazier reported that he spoke with the purchasing director and was informed that the deadline is flexible.

The motion to accept the correspondence as listed carried unanimously.

COMMITTEE REPORTS

- Budget and Finance: Vice Chair Mango reported that the 2003-04 budget had been accepted, and they now need to work on the 2004-05 budget.
- Office Management and Staffing: The committee had no report.
- Rules and Policies: Draft of procedures for processing complaints. Commissioner Bertsch reported that they have a holdover document that may have lost interest in. He provided a flowchart showing the direction they normally take and the new suggestion. Commissioner de Silva stated that he would like to postpone this until the next meeting in order for Chair Hara to participate in the discussion. Commissioner Lambeth moved to defer this matter. Commissioner Bertsch seconded the motion, and it carried unanimously.
- Contractual Services: Commissioner de Silva stated that he submitted a written report of the meeting that he and Chair Hara attend along with representatives of Akal Investigations. He would like to address this matter when the chair is present.
- Public Relations: Commissioner Lambeth reported that on Tuesday, July 15, they attended the graduation of fourteen recruits.

CHIEF'S REPORT

- Vice Chair Manago stated that if there were no objections, he would like to dispense with the Chief's reports since they have the written reports. There were no objections and no questions.
- Other Departmental Activities. Chief Mahuna reported on the following departmental activities:

SRO: Funding was approved for the six SRO positions. The position will focus on reduction of drugs and gang related activities with a community policing philosophy. An evaluation will be done every three months. School selection will be based on drug and gang related statistics. This may reintroduce the cadet program.

Ice Task Force: They received approval to reallocate the six PO III positions.

Cellblock: The new cellblock was opened on July 15. Sworn personnel should be out by the end of August when Wackenhut takes over.

Communication System: A vendor has been awarded the contract, and they are in the process of getting an environmental impact study.

Status of 2003 goals: Chief Mahuna summarized his written report.

UNFINISHED BUSINESS - None

NEW BUSINESS

Correspondence 03-62 from Bill Gray of County Purchasing, requesting the commission's directive on the current investigative services agreement. Commissioner Frazier reported that he spoke to Bill Gray. They are flexible, and it is not necessary that the commission take action at this time.

Lunch recess was called at 1:25 p.m. The meeting reconvened at 2:15 p.m.

EXECUTIVE SESSION

Commissioner Lambeth moved to meet in executive session. Commissioner Frazier seconded the motion, and it carried unanimously.

The commission convened into executive session at 2:20 p.m.

The commission reconvened into open session at 2:30 p.m.

- Review of complaint and investigative procedures. (It started in executive session, but then was moved to open session).

Internal Affairs Detectives Yamamoto and O'Connor gave a Power Point presentation on determining officer misconduct. He explained the procedures and the misconduct classifications. A copy of the slide presentation was given to the commission.

Captain Tavares stated that their goal is to complete 70% of their investigations within 30 days. Detective O'Connor stated that with the SHOPO agreement, they have to serve an officer with a disciplinary notice within a year of the incident.

Commissioner de Silva stated that he would like to know how often the department agrees with their decision. It is important to know the reasons for the department's decisions. Captain Tavares stated that they would report back to the commission on their findings and whether or not the officer received discipline.

Corporation Counsel Ashida stated that he received an OIP opinion that the commission could have, in executive session, any person that could assist in their

deliberation. Thinking out loud he asked if there were any issues with having an I.A. detective present when an officer gave a statement to the commission in closed session. The law states that so long as that person can assist the commission. Captain Tavares stated that they would have to give the officer Garrity and advise him of his rights. Corporation Counsel Ashida stated that it is made clear in Josie's letter to the officer that his statement is voluntary. The officer doesn't have to show up.

Detective Yamamoto recommended that the commission use other terms when informing the complainant and the accused officer of the commission's decision. Conflict might occur when they do an investigation and do not concur with the commission's decision. Detective O'Connor stated that an example is if the commission exonerated an officer. They review every report that comes to their office. They might find a problem and do an investigation. Through their investigation, they might find that a violation had been committed and then send it to the ARB. The union could grieve that the officer had already been exonerated. Now, they are looking at a double jeopardy issue. He suggested that the commission change its verbiage and could include, "We're going to send it to the chief for further action."

Vice Chair Manago stated that verbiage is very important, and that they need to take a look at sustained, not sustained, exonerated, and unfounded. The Honolulu Police Commission has only three categories--exonerate, sustain, and not sustain. Commissioner Bertsch suggested that they change the wording to "has merit" and "has no merit."

- Status report of complaints referred to Akal.
CRAIG FUJIHARA stated that he is from the Honolulu office of Akal and oversees the investigations. He will be e-mailing a status report to Josie every Friday. He will also send a bi-weekly report with the amount of hours and a monthly report.

Commissioner Frazier stated that he didn't get much out of the report, and would like to work on it. Commissioner de Silva asked that they add the date of the incident, the date received by the investigator, and the planned completion date. Commission Bertsch asked if all that information--weekly, bi-weekly, and monthly reports were necessary.

Al Bee introduced himself as Akal's new investigator for the Police Commission. He retired from the Honolulu Police Department after 26 years. He was a motorcycle officer, vice officer, and detective. He retired in 1991 as a lieutenant watch commander in Kalihi. He spent the last four years as a law enforcement officer at the Hilo International Airport. He moved to the Big Island because he had property in Kurtistown. He has friends who are retired police officers at the airport, but he doesn't socialize with police officers here. He gave Ms. Pelayo his resume.

Commissioner Bertsch asked that Mr. Yamasaki and Mr. Chun return their police identification.

Commissioner Lambeth moved to return to executive session. Commissioner Bertsch seconded the motion, and it carried unanimously.

The commission convened into executive session at 4:25 p.m.

The commission reconvened back into open session at 5:15 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

- Request for reconsideration of Complaints HPC 03-13A and 03-13B. No motion was made. The request died.

- Investigation and deliberation of complaints.

Complaint HPC 02-13: Complainant alleged that an officer choked her son during his arrest, officers failed to submit reports of the incident, unlawfully held his son, and illegally impounded his vehicle. Akal investigated the complaint.

Commissioner Lambeth moved to exonerate the three named officers on all classifications. The motion was seconded by Commissioner Bertsch and carried unanimously.

Complaint HPC 02-16: Complainant alleged that a sergeant had him arrested based on false information. Akal investigated the complaint. Commissioner Bertsch moved to exonerate the sergeant on the charges of performance of duty, obedience to laws, and commission of a criminal act. Commissioner Frazier seconded the motion, and it carried unanimously.

Complaint HPC 02-46: Complainant alleged that an officer violated traffic codes, used vulgar language, and threatened to cite them if their vehicles were on the roadway. Akal investigated the complaint. Commissioner Muller moved to not sustain the charges of standard of conduct, performance of duty, obedience to laws, commission of a criminal act, misuse of position or office, truthfulness, overbearing conduct, and conduct towards the public. Commissioner Bertsch seconded the motion, and it carried unanimously.

Complaint HPC 02-62: Complainant alleged that during her arrest, an officer punched her 11-year old son on his cheek. Akal investigated the complaint. Commissioner Lambeth moved to not sustain the charges of obedience to laws, commission of a criminal act, malicious use of physical force, mistreatment of person in police custody, and excessive use of physical force. Commissioner Frazier seconded the motion, and it carried unanimously.

Complaint HPC 03-09: Complainant alleged that when she called the police station to make a complaint, an officer made inquiries relating to her past drug use. Commissioner de Silva moved to not sustain the charges of standard of conduct, performance of duty, impartial attitude, and conduct towards the public. Commissioner Muller seconded the motion, and it carried unanimously.

Complaint HPC 03-12A and 12B: Complainant alleged that following an altercation, an officer sprayed him with pepper spray, although the fighting had stopped. Commissioner Lambeth moved to defer to the next meeting as requested by the complainants. Commissioner Bertsch seconded the motion, and it carried unanimously.

Complaint HPC 03-14A and 14B: Complainant was involved in a traffic stop. He alleged that two officers accused him of being a car thief. Commissioner Lambeth moved to exonerate the two officers on the charges of standard of conduct, impartial attitude, excessive use of physical force, overbearing conduct, and conduct towards the public. Commissioner Bertsch seconded the motion, and it carried unanimously.

Complaint HPC 03-16: Complainant alleged that an officer accused her of squatting and auto theft, although she had permission to stay at the residence and drive the vehicle. Commissioner Muller moved to exonerate the officer on the charges of standard of conduct, performance of duty, obedience to laws, commission of a criminal act, falsification of records, malicious use of physical force, misuse of position or office, use of intimidation in legal proceeding, truthfulness, impartial attitude, and overbearing conduct. Commissioner Frazier seconded the motion, and it carried with Commissioner Lambeth abstaining.

STATEMENTS FROM THE PUBLIC - None

ANNOUNCEMENTS

Vice Chair Manago announced that the next monthly meeting is scheduled for August 22, 2003, at 10:00 a.m., at the Waimea Civic Center.

ADJOURNMENT

The meeting adjourned at 5:25 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

DWIGHT K. MANAGO, VICE CHAIR