

**HAWAI'I COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
SPECIAL MEETING, AUGUST 13, 2004
WAIMEA CIVIC CENTER**

CALL TO ORDER

Vice Chair Dwight Manago called the meeting to order at 9:00 a.m.

ROLL CALL

Present:	Dwight K. Manago, Vice Chair	Also Present:	Lawrence K. Mahuna, Police Chief
	John M. Bertsch, Commissioner		Elroy Osorio, Assistant Chief
	Paul M. de Silva, Commissioner		James Day, Major
	James A. Frazier, Commissioner		Fay Nishibayashi, Accountant
	Pudding Lassiter, Commissioner		Lincoln Ashida, Corporation Counsel
	Betsy Mitchell, Commissioner		Josie Pelayo, Secretary
	Peter P. Muller, Commissioner		

Absent: Horace S. Hara, Chair

APPROVAL OF AGENDA

Commissioner Frazier motioned to approve the agenda with corrected typos. Commissioner Mitchell seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS - Open to the public

Corporation Counsel Lincoln Ashida explained the difference between open and executive sessions.

OFFICER CHRISTOPHER GALI, HPC 04-26: Stated that this complaint is the result of Reuben Chun's DUI arrest in November 2001. He took the original tape to court for his testimony. He placed the evidence on the prosecutor's table and presented his testimony. This was not a trial. It was a motion to suppress. The prosecutor had a copy of the original tape and did not ask if it was the original tape. At no time did he say it was the original tape. He held onto the tape because almost every month they had a hearing. Several months ago he received a call from Patricia Oliveira, investigator for the prosecutor. Apparently, Mr. Chun's counsel had hired a person to check if the tape was tampered with. He thought the tape that went into the exhibit was the original, and upon checking, it was not. He told her that he would have to check at home for the tape, being that in May of 2003, he was transferred to Kona, and he cleaned out his desk in his Hilo office. He found the tape at home. The expert found no tampering of the tape. Mr. Chun's complaint states that he held the tape at home for over two years, which is not true. He had it in his custody when he took it back and forth to court. At times he did have it at home, especially on his days off. Instead of going back to the station, he would go directly home. When he transferred to Kona, he had it at home for about a year.

He was in his police subsidized vehicle when he first observed Mr. Chun at the intersection of Kilauea Avenue and Puainako Street. His right tires were off the roadway and over the white line. Mr. Chun made a wide left turn and his right side tires ran over the reflectors on the roadway. He made a traffic stop and smelled alcohol on Mr. Chun's breath. Mr. Chun was given a sobriety test and failed. He arrested Mr. Chun for driving under the influence.

His procedure is to make a copy of the tape for the prosecutor prior to turning it into evidence. He only made one copy. He took the original out of evidence when he went to court. For a while he went to court about every month, so he held onto the tape. He believes he was in error, and should have turned the tape in after every court date.

ROBERT HICKCOX, HPC 04-29: This case involved information they received about an individual coming in from the mainland with heroin. When they first made the case and the arrest, they contacted DEA who took all their evidence and reports. DEA has not returned all the evidence. The case was sent to the federal prosecutor who decided not to prosecute the case. It is unusual for the case to be declined. They are now compiling all the information for the state prosecutors, and this is an ongoing case. It might have taken long because of miscommunication between the federal prosecutor and the US Attorney's office. They had about five officers there. Three individuals were arrested. A female party had heroin in her handbag. Another person had heroin in a cavity of his person. X-rays found containers in one of the male parties. DEA took all the evidence. The US Attorney told them that it would be a federal prosecution.

THEODORE GASPAR, HPC 04-29: He was the person who initially received the information about three parties. He confirmed that one of the persons was on the flight. That was his whole involvement. He was not involved in the arrest. He was only the intermediary. The parties were arrested.

Commissioner de Silva thought it was dangerous for the commission to ask questions and to make conclusions on an ongoing case.

REUBEN CHUN, HPC 04-26: The bulk of what he has to say is in the documents he submitted. Officer Gali followed him in an unmarked car from the shopping center. They went to court numerous times and it has not yet been settled. He is concerned about missing times on the tape. He was not deficient in his driving. He has doubts about the credibility of the videotape itself. The officer violated the procedure for handling evidence. He believes it was in 2002 when he was reviewing the transcripts that he noticed there was an index counter discrepancy. Around May of this year he found that the tape was not in the evidence.

Commissioner de Silva stated that it was his understanding that if any charges are filed against a police officer; it has to be done within one year of the incident.

Corporation Counsel Ashida asked if discipline must be meted out within one year of the incident.

Chief Mahuna stated, generally yes, but there are exceptions to the rule, or from the time it was discovered.

Corporation Counsel Ashida stated that an administrative investigation must commence within the one-year period, not discipline.

Commissioner de Silva read the SHOPO contract on statute of limitations. "No employee may be subjected to an administrative investigation of a complaint that has been filed more than one year from the date of the alleged incident unless otherwise provided by law. However, administrative investigations involving criminal misconduct may be initiated at anytime within the criminal statute of limitations as provided by law." The commission could refer it to investigation on the rule on newly discovered evidence.

Vice Chair Manago stated that this refers to the commission's Rule 8, 1b, newly discovered evidence which by reasonable diligence could not have been discovered in time.

OFFICER GALI stated that he believes it was in April of this year that Pat Oliveira from the Prosecutor's office called stating that they did not have the tape in the evidence room. He checked at home and found it with other things from his office. He turned it in to the police station on a Friday, in April of this year. Sometimes when he went straight home from court, he kept the tape. When he went back to work, he secured it in his desk. In May of last year when he was promoted and transferred, he cleaned out his desk, and put all his property in a box. The original and the copy are different tapes. He went to court more than five times.

STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION)

Commissioner Frazier motioned to meet in executive 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 Muller seconded the motion, and it carried unanimously.

Recess was called at 10:05 a.m.

Executive session convened at 10:11 a.m.

Regular session reconvened at 10:26 a.m.

APPROVAL OF MINUTES

Commissioner Frazier motioned to approve the regular minutes of July 16, 2004. (Executive session was not held.) Commissioner Lassiter seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Nos. 2004-079 to 2004-093 (*Including but not limited to work assignments, training assignments, promotions, reallocations, severance from service, automobile allowances, and appointments.*) Commissioner de Silva motioned to accept the personnel orders. Commissioner Muller seconded the motion, and it carried unanimously.

COMMUNICATIONS

Commissioner Frazier motioned to accept communications as listed. Commissioner de Silva seconded the motion.

Discussion: Vice Manago asked for the Chief Mahuna's opinion on Dr. Alan Pratt's recommendations on fleet vehicles.

Chief Mahuna stated that they conducted their own investigation. The Police Chiefs on Maui and Kauai were sad to have a fleet program. Officer pride in the vehicles is marginal. They did a cost study of each vehicle, and found that a lot Mr. Pratt's visibility study is very old, from 1973. This fear, visibility of police officers seems to be relegated to a small section of West Hawaii. He has never received any complaints on the visibility of subsidized vehicles from East or Central Hawaii residents. Council Member Aaron Chung has a resolution on smart cars. It's a good idea, but they don't have the trunk radio system that can support this technology. A good trunk system would cost about \$45 million. If the county had the money to support the infrastructure of these cars, including the three car pools, he might be convinced. But, they don't have that kind of money to invest in state of the art technology. What they have now is working right now. The majority of Honolulu's fleet is 1,365 subsidized vehicles. Of the 600 vehicles that are county-owned, half are paddy wagons, solo bikes, and vehicles not used in general patrol. Our county doesn't have the money to invest in the state of the art technology. What is working right now is the subsidized vehicles. The \$45 million he mentioned is only for the infrastructure for the two-way radio system in the smart cars, not for the fleet of vehicles. To purchase the cars, they are looking in the range of \$12-14 million. There would be no state or federal subsidy. The county would be responsible for the cost.

Corporation Counsel Ashida stated that the only way to facilitate that would be to increase property taxes, and that is a decision owned by the County Council alone. He inquired whether there had been any documented reported complaints made against the police department or its officers for not having marked vehicles in the magnitude of the Lisa Au incident in Tantalus on Oahu years ago.

Chief Mahuna stated that it was nothing like that. In the past eight years, they have had two complaints, one of which was a police officer trying to make a vehicle stop. The individual went to the nearest police station. It was a dark, and it was an isolated circumstance. The officer did not cite that individual for failing to stop. He believes the subsidized vehicles lend themselves very well to a community policing type of atmosphere. They have had problems with their minimal county-owned fleet. Repair costs are very high. What they have right now works. Mr. Chung has not communicated with him on this matter.

The motion to accept communications carried unanimously.

COMMITTEE REPORT

- **Budget and Finance** (Hara/Manago): Vice Chair Manago reported that they are now accepting recommendations for next year's budget. They have to start early because they have to make their recommendations to the Mayor. The commission could vote on going to the County Council. Recommendations could be brought to him.
- **Office Management and Staffing** (Muller/Mitchell): No Report.
- **Rules and Policies** (Bertsch/de Silva): No Report.
- **Contractual Services** (Frazier): Commissioner Frazier reported that they received a summary from the investigator along with the secretary's report of lapsed time. He recommended that the Chair send a letter putting the investigator on notice that the contract has time limits, and that they would like to see improvements. Corporation Counsel Ashida stated that he would be willing to prepare the letter. Vice Chair Manago stated that from March to July, they referred nine complaints to the investigator but have not received any investigative reports. This is a concern because they only have one year to act on these complaints. There were no objections to Corporation Counsel writing the letter to the investigator.
- **Public Relations** (Hara/Lassiter): No report.

CHIEF'S REPORT

Including:

- **Crime:** Major Day reported that the written report is for fiscal year starting in July. In one month they handled 6,487 calls.

Commissioner Frazier inquired whether there were any trends or peaks and valleys that they could see over the fiscal year. They could do this for the past year in order to understand the business. Major Day will work on it.

- **Traffic:** Major Day summarized the written report.

Commissioner Frazier stated that he would like to see a report that shows under age DUI arrests.

Major Day reported that they are doing really well with seatbelt usage and may be number one in the nation.

- **Personnel:** Assistant Chief Osorio distributed a new promotion list of lieutenants. They have 53 sworn vacancies.
- **Finance:** Accountant Kay Nishibayashi reported that because of the vacancies, expenditures were lower than targeted.
- **Commendations:** Chief Mahuna reported receiving eleven commendations since the last meeting.
- **Other Departmental Activities:** Chief Mahuna reported that with the new promotion of lieutenants, one of them would work strictly on accreditation assessment. During the past month they met with Congressman Souther, Congressman Ed Case, and the Special Agent Delgado in charge of the Los Angeles Division of the Drug Enforcement Agency. They were quite pleased with the department's ice task force efforts. They have done such a good job, that they will be teaching the County of Kauai the method of ice task forcing.

They are still looking into the cadet program. They want to get to the students while they are in high school and in the interim period before they reach 21 years of age, before gangs and drugs ruin their background.

The CPO program is not dead, but they have had to use their CPOs to supplement watches.

He has great hope for the SRO program.

Vice Chair Manago asked Chief Mahuna to look into the letter they received from someone complaining about excessive drinking at the Wailoa boat ramp.

- **Commanders' Meeting Minutes:** No discussion.

UNFINISHED BUSINESS

- Follow-up to Council Member Leningrad Elarionoff's presentation to the commission on July 16, 2004, on character building. Vice Chair Manago stated that Mr. Elarionoff wanted someone to attend the conference and bring information back to the police department. In his opinion, the commission has more important issues to concentrate on. Commissioner de Silva motioned to table the matter. Commissioner Muller seconded the motion, and it carried unanimously.

- Correspondence 04-42, copy of letter from Commissioner Paul de Silva to Mayor Kim giving his opinion relating to the possible settlement of the police union's complaint filed with the HLRB on March 17, 2004. No discussion.
- Recommendations for Improvement to the Disciplinary System of the Hawai'i County Police Department. Commissioner de Silva stated that he is concerned because they started work on this last year, and nothing has happened. In March, Mr. Ashida made pertinent comments.

Vice Chair Manago stated that each member of the commission must look very carefully at the revised rules and Corporation Counsel's recommendations. They need to go over it very thoroughly along with the original rules. He wants everyone to know what he or she is voting on because this will affect all of them.

Vice Chair Manago reported that he had a conversation with the Chief regarding complaints. Right now, they get a complaint, they sustain it, it goes to the Chief or Internal Affairs, but they don't know what happens to the complaint. It actually dies. There is no full circle. He asked the Chief if the commission would be able to get the disposition and disciplinary findings of each case. He has seen this in the minutes of the Honolulu Police Commission. The Chief will discuss this with Corporation Counsel.

Commissioner de Silva stated that that is what they have tried for months and finally came up with an answer, and that's where they are now. For Vice Chair Manago to talk to the Chief and suggest that he do certain things is not what the commission may think. He asked if they should have a special meeting.

Commissioner Bertsch suggested that they have an ad hoc committee meeting and invite anyone that wants to attend. They've been talking about this since November of last year, and they're just generating more paperwork.

Commissioner de Silva motioned that they have a special meeting of the entire commission to discuss both the recommendations to the Chief and the rule changes. Commissioner Frazier seconded the motion.

Discussion: Commissioner Bertsch stated that, as a point of reference, an ad hoc committee could sit down collectively anytime without publicizing and going through the normal procedure of a special meeting. They might have more liberty to schedule a meeting.

Commissioner de Silva stated that if they have a choice between their own convenience and letting the public know what they are doing, the latter is far more important. He prefers having people present under the Sunshine Law.

The motion to have a special meeting carried unanimously.

Ms. Pelayo pointed out that they would need to announce the date and location of the meeting at a previous meeting, otherwise they would have to place a notice in the newspaper.

- Prohibitive practices complaint filed by SHOPO. SHOPO believes that it is ill advised and premature for the police commission to adopt new rules and procedures. Commissioner de Silva stated that he just wants to know what's going on.

Corporation Counsel stated that he doesn't think a hearing has been set. It is in limbo right now. SHOPO is waiting for a response from them and has indicated that they would withdraw the complaint if the commission agrees that they will not attend ARB hearings in the future.

Commissioner de Silva stated that this would mean that the Chief would be permanently barred from accepting their recommendation that they have an observer attend the ARB hearing, to which Corporation Counsel said, "Yes."

Commissioner de Silva asked if the Chief could later change the rule and have an observer in on the ARB by first notifying the union, listening to their input, and then making the change.

Corporation Counsel Ashida stated that he is not advising the Chief. It is his understanding that anytime there is a change like that, the Chief would be required under the collective bargaining agreement and general labor law to confer with the union. But, it is within his prerogative to make whatever changes he deems appropriate. SHOPO is seeking a decision by the Chief to prevent the commission from attending the hearing. The Chief has been working together with the commission for some time to cooperatively arrive at some good practice that everybody can live with. Hopefully, the labor union can live with it also. They are at a critical point right now. In light of the complaint filed by SHOPO, his recommendations have not changed.

- Inquiry into the alleged attendance of two Hawai'i County Police Commissioners attending a proceeding of the Administrative Review Board. No discussion.
- Review of draft of revised rules. Vice Chair Manago stated that this would be done at a special meeting.

EXECUTIVE SESSION

Vice Chair Manago stated they would be going into executive session to discuss the complaints and that the Chief has requested an executive session to discuss

compensation issues. Chief Mahuna stated that it is personnel issue of the chief's report.

Commissioner Frazier motioned to meet in executive 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 Lassiter seconded the motion, and it carried unanimously.

Executive session convened at 12:00 noon.
Lunch recess was called at 12:32 p.m.
Executive session reconvened at 2:10 p.m.
Regular session convened at 2:40 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

Investigation and Deliberation of Complaints.

HPC 04-21: Complainant alleged that an officer committed perjury. Complaint was deferred in order for complainant to obtain additional court transcripts.

Commissioner Lassiter motioned to not sustain the complaint. Commissioner Muller seconded the motion, and it carried unanimously.

- HPC 04-26: Complainant alleged that an officer mishandled evidence and covered it up for years. Commissioner Frazier motioned to sustain the charge only on the handling of the evidence. Commissioner Lassiter seconded the motion, and it carried unanimously.
- HPC 04-27: Complainants alleged that when their baby was taken away from them, two officers were rude. Commissioner Frazier motioned to exonerate the officers on the charge of conduct towards the public. Commissioner Muller seconded the motion, and it carried unanimously.
- HPC 04-28: Complainants alleged that during their arrest, officers were rude and used force and profanity. Commissioner Mitchell motioned that complaint is unfounded. Commissioner Bertsch seconded the motion, and it carried unanimously.
- HPC 04-29: Complainant alleged that he turned his girlfriend in for drugs, but the case was dropped and she did not receive the drug rehab that he had expected. Commissioner Muller motioned to exonerate the officers on the charges of standard of conduct, performance of duty, obedience to laws, commission of a criminal act, and truthfulness. Commissioner Frazier seconded the motion, and it carried unanimously.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS – None.

ANNOUNCEMENTS

- Collection of files and documents – Done.
- Vice Chair Manago announced that the next monthly was scheduled for September 10, 2004, 9:00 a.m., at the Hawaii Naniloa Resort, Palm Lounge. He also announced that they would be having a special meeting on August 26, 2004, at 9:00 a.m., at the Waimea Civic Center to work on the recommendations for investigations and the revised rules.

ADJOURNMENT

The meeting was adjourned at 2:55 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR