

**HAWAI'I COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
AUGUST 22, 2003
WAIMEA CIVIC CENTER**

CALL TO ORDER

Chair Hara called the meeting to order at 10:00 a.m.

ROLL CALL

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

Also Present: Lawrence K. Mahuna, Chief
Thomas Hickcox, Assistant Chief
Charles Chair, Assistant Chief
Henry Tavares, Captain
Lincoln Ashida, Corporation Counsel
Josie Pelayo, Secretary

APPROVAL OF AGENDA

Commissioner Frazier moved to add Correspondence 03-79 onto the agenda as it responds to Correspondence 03-66 and 03-78, to amend Complaint HPC 02-62 to read 02-64, to defer Correspondence 03-68 to October's meeting, and to remove presentation by the ARB. Commissioner de Silva moved to place Correspondence 03-72 under New Business. Commissioner Lambeth seconded the motions, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS - Open to the public

Lincoln Ashida stated that members of the public have the right to give a statement to the commission open session, before the public, or in closed session with only the commissioners and staff present.

KATHLEEN BRANCO came before the commission and spoke on Complaints HPC 03-12A and 12B. She stated that she was there during the incident, and that her complaint is against the officer who was there. Her son, Duane Branco, was attacked by another boy. There was a scuffle, but by the time the officers arrived, the fight was over, and the boy that hit her son ran away. There was a lot of shouting and commotion, but the officer didn't need to use the pepper spray. The other police officers didn't use pepper spray and were all trying to calm things down. The officer then grabbed her son and shoved him to the pavement. This bodily force was not necessary. Her son had a hard time breathing and she asked the officer for a medic because her son has asthma, but he said, "No." She told another officer that her son was having trouble breathing, and he called a medic. The officer wouldn't let her son take his cuffs off to wash his face. The next day, her son's face was burnt. When she asked why her son was arrested, he told her that it was because he didn't listen to him. In the police report, he contradicted himself, by stating that her son made a bodily gesture.

She had to ask for his badge number twice, but he said it so fast that she had to ask him to write it down. He then told her he didn't have any paper. He later wrote his name and

badge number on a magazine subscription postcard, which she thought was very unprofessional.

DUANE BRANCO came before the commission and stated that it wasn't his fault. Three guys followed him, and they ended up at the park. When the cop came, the other guys ran away. The cop sprayed him with pepperspray. After that the officer pushed him so hard to the ground that rocks stuck to his knees. When he went to the station he had difficulty breathing and had lumps in his throat, so he asked the officer for help; he did nothing. . The officer wouldn't let him wipe the pepperspray off his face. He received attention from the medic after he had been in jail for a really long time. During the incident, the officer didn't say anything or give instructions. He doesn't know how close the officer was when he sprayed him with pepperspray.

KATHLEEN BRANCO stated that she was there, and everyone was close, about three feet away. With all the commotion they couldn't understand what people were saying.

EXECUTIVE SESSION

Commissioner Lambeth moved 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 Bertsch seconded the motion, and it carried unanimously.

Chair Hara requested that Corporation Counsel remain in the meeting.

The commission convened into executive session at 10:24 a.m.

Regular session reconvened at 11:00 a.m.

APPROVAL OF MINUTES

Vice Chair Manago moved to approve the minutes of July 18, 2003, regular and executive sessions. Commissioner Frazier seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Vice Chair Manago moved to accept Personnel Orders Nos. 2003-084 to 2003-098. Commissioner Moe seconded the motion, and it carried unanimously.

COMMUNICATIONS

- Vice Chair Manago moved to accept the communications as listed. Commissioner Muller seconded the motion, and it carried unanimously.

COMMITTEE REPORTS

- Budget and Finance (Hara/Manago)
Chair Hara reported that the commission has requested new equipment, and the same request has also been placed on the new budget in case they don't get it now.

- Office Management and Staffing (Muller/Mitchell) – The committee had no report.
- Rules and Policies (Moe/Bertsch) - Draft of procedures for processing complaints. Commissioner Bertsch summarized his written suggestions and flowchart. The only thing new would be that the complaint would be sent to the Chair or Vice Chair for review, and they would be empowered to do a cursory review for merit and decide whether or not to refer the complaint to the investigator. The investigator would be provided a copy of the complaint and invited to the meetings so that he could be given directions and not waste time on irrelevant investigations. He believes the commission has the right to have pertinent information to make their decision.

Chair Hara stated that they should review the proposal and act on it at the next meeting.

Chair Hara stated that Commissioner de Silva would be going over this request for information under new business.

- Contractual Services (de Silva/Frazier): Report of meeting with Akal on June 27, 2003. Commissioner Frazier stated that this was deferred at the last meeting in order for them to get input from the Chair. Chair Hara stated that Commissioner de Silva's written report was accurate.
- Public Relations (Hara/Lambeth) – No report.

CHIEF'S REPORT

Chair Hara stated that since they reviewed the written report, it was not necessary for staff to go over it. Instead, they will answer any questions the commissioners might have.

- Crime
- Traffic
- Personnel
 - Assistant Chief Chai stated that the vacancies include the SRO and drug task force.
 - Chair Hara thanked Assistant Chief Paiva for leadership and support of the commission and wished him a happy retirement.
- Finance
- Commendations
- Other Departmental Activities
 - Commanders meeting minutes of July 15, 2003
 - Traffic Enforcement Unit demonstration on use of radar.

Chief Mahuna reported that the next commanders' meeting has been changed to Wednesday at 1:30 p.m. in the training room.

Chief Mahuna that in response to Commissioner de Silva's concerns, they have extensively modified General Orders 302 and 804. The changes fall in line with Commissioner de Silva's suggestions. Copies will be will be given to the commissioners for their review, comments, and changes.

Chair Hara stated that just prior to the meeting, Councilman Elarionoff gave him a memo requesting information on the use of emergency vehicles. He gave Chief Mahuna the memo and asked him to responded to the concerns.

Chief Mahuna reported on the new Puna station. They are now looking at a property on Route 11 in which they could cohabitate with the Fire Department and be more visible to the public. Commissioner Moe encouraged them to consider a Route 130 site.

Officer Eric Cerezo of the Traffic Enforcement Unit gave a demonstration on the use of radar and laser.

Lunch recess was called at 12:45 p.m.

The meeting reconvened at 2:20 P.M.

EXECUTIVE SESSION

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

The commission convened into executive session at 2:25 p.m.

The commission reconvened into regular session at 3:00 p.m.

UNFINISHED BUSINESS

Correspondence 03-62, from County Purchasing Agent Bill Gray informing that the current investigative services agreement expires November 20, 2003, and requests directive.

Commissioner Frazier reported that in prior discussions, the commission felt that it was appropriate to solicit bids for contract services, but they wanted to wait for input from the Chair. The committee recommended that they go to bid for services.

Chair Hara stated that this means that they will let the present contract run its course, ending November 20, 2003.

Commissioner de Silva moved to notify the County to submit an RFP for a new contract year, and have Akal Investigations run the duration of the existing contract. Commissioner Moe seconded the motion, and it carried unanimously.

NEW BUSINESS

- Rescheduling of the September 26 meeting to September 12 at the Hilo Hawaiian Hotel.
Commissioners Bertsch and Lambeth informed that they would not be able to the meeting on September 12. Commissioner Lambeth moved to reschedule September's meeting from September 26 to September 12. Commissioner Muller seconded the motion, and it carried unanimously.
- Correspondence 03-70, from the Honolulu Police Commission inquiring about a meeting during the HSLEOA conference.
Chair Hara stated that according to the agenda, no meeting is scheduled. Commissioner Frazier stated that he would like to discuss problems with ice.
- Correspondence 03-74, from Chair Hara to Chief Mahuna regarding discussion of General Orders which covers internal and external complaints.

Chair Hara stated that General Orders 301 and 302 is explicit that commanders are to handle complaints. However, one of the commissioners felt that if the police department handled all complaints and none went to the police commission, they would not be serving the public. There was also a concern that they might be sweeping complaints under the rug. When someone makes a complaint to the police department, that person could be given the option of referring it to the commander or going to the police commission, or both.

Vice Chair Manago stated that at the last commanders' meeting the Chief stated that he would like to have the more serious complaints going to the police commission, and have his commanders handle others. People in Hilo can go to the commission's office, and Josie can explain the process. However, in Kona, there is no one to listen to the complainants and explain the process. Sometimes all that's needed is for someone to listen and try to fix the problem. They need to listen more, service the people, and fix the problem. Commanders need to take responsibility for their command. G.O.s state that they are to take responsibility for their subordinates. When there is complaint, the commander should talk to the complainant, give that person the option of having them handle it or going to the police commission. If they handle it, they should always get back to that person.

Commissioner Bertsch disagreed. He stated that if a person files a complaint and talks to the sergeant, that process empowers what direction that complaint would go. He fears that there is an ability to screen the complaint at the desk, and there may be a perception of impropriety. They should look at how a complaint is handled at the first point of contact. They should immediately give the person a handout listing all options. He is not comfortable about leaving it at the discretion of the person at the desk.

Chair Hara reported that the Honolulu Police Commission has a brochure that explains the Internal Affairs Department.

Chief Mahuna stated that they could not stop those instances where the patrol officer or the sergeant is the first contact. They are rewriting the General Orders, and it will be incumbent on the desk person to report to the commander. External complaints have been addressed. He sees the value of a brochure. If the public does not trust the police department, and they don't have another avenue, they are truly at a loss. They are trying to have their commanders take responsibility and having people act within their mission and core values.

Commissioner Bertsch stated that they need checks and balances. They need a fair and clear-cut process, and the person at the desk has to explain the process.

Chair Hara stated that they will have the ARB presentation in open session at the October meeting.

- Correspondence 03-75, from Commissioner Paul M. de Silva requesting discussion of General Orders 804, Use of Force.

Chair Hara state that the department has made revisions for the commission's review, and copies will be distributed.

- Correspondence 03-72, from Commissioner Paul M. de Silva concerning the need to evaluate the handling of complaints of misconduct.

Chair Hara reported that he received the Chief's written response to Commissioner de Silva's concerns, and copies will be distributed. Commissioner de Silva stated that he was impressed to hear that the Chief had already worked on this.

EXECUTIVE SESSION

Commissioner de Silva moved to meet in executive session to discuss Complaint HPC 03-08 which was discussed at the previous meeting. Commissioner Muller seconded the motion and the carried unanimously.

The commission convened into executive session at 3:50 p.m.

The commission reconvened into regular session at 4:10 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

Investigation and Deliberation of Complaints.

Complaint HPC 02-64: Complainant was involved in a traffic stop. She alleged that she had the proper paperwork and that the officer's speeding caused the incident. Akal investigated the complaint. Commissioner Lambeth moved to exonerate the officer on the charges of standard of conduct, performance of duty, falsification of

records, truthfulness, impartial attitude, overbearing conduct, and conduct towards the public. Vice Chair Manago seconded the motion, and it carried unanimously.

Complaint HPC 03-12A and 12B: Complainants alleged that following an altercation, an officer sprayed him with pepper spray, although the fighting had stopped (deferred at previous meeting). Commissioner de Silva moved to send a letter to the officer advising him that the police commission feels that his presence would be very important on the disposition of the case and that each commissioner be provided all investigative reports on this officer. Vice Chair Manago seconded the motion, and it carried unanimously.

Complaint HPC 03-17: Complainant alleged that officers broke into her home and ordered her to turn her music down. Commissioner Bertsch moved to exonerate the officer on the charges of commission of a criminal act and overbearing conduct. Commissioner Muller seconded the motion, and it carried unanimously.

Complaint HPC 03-18: Complainant's vehicle was stolen, and she complained about how the officer conducted the investigation. Vice Chair Manago moved to exonerate the officer on the charge of performance of duty. Commissioner Moe seconded the motion, and it carried unanimously.

Complaint HPC 03-19: Complainant alleged that an officer spoke to her in an abrupt and offensive manner regarding her dogs. Commissioner Bertsch moved to exonerate the officer on the charge of conduct towards the public. Commissioner Muller seconded the motion, and it carried unanimously.

Complaint HPC 03-20A, B, and C: Complainants alleged that an officer was involved in a high speed chase of their children who were riding ATVs on a private dirt road, and then made one of them wash his vehicle. Commissioner Frazier moved to sustain the charges of performance of duty, misuse of position, and overbearing conduct. Commissioner Muller seconded the motion, and it carried unanimously.

STATEMENTS FROM THE PUBLIC - None

ANNOUNCEMENTS

Chair Hara announced that the next monthly meeting is scheduled for September 12, 2003, at 10:00 a.m., at the Hilo Hawaiian Hotel.

ADJOURNMENT

The meeting was adjourned at 4:14 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR