

**HAWAI'I COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
SEPTEMBER 12, 2003
HILO HAWAIIAN HOTEL**

Chief Mahuna presented the Pookela Award to Pastor Alan Townsend of the Hilo Church of God for his efforts in bringing together state and county agencies to stage a series of water-fun activities for Teen Mania 2003.

CALL TO ORDER

Chair Horace Hara called the meeting to order at 10:05 a.m.

ROLL CALL

Present: Horace S. Hara, Chair
Dwight K. Manago, Vice Chair
Paul M. de Silva, Member
James A. Frazier, Member
Betsy Mitchell, Member
Peter Muller, Member

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

Absent: John M. Bertsch, Member
Phoebe M. Lambeth, Member
Walter Moe, Member

APPROVAL OF AGENDA

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

STATEMENTS ON AGENDA ITEMS (open session): None.

Corporation Counsel Ashida explained the difference between open and closed sessions.

STATEMENTS ON AGENDA ITEMS (executive session)

Commissioner de Silva 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). Commissioner Muller seconded the motion, and it carried unanimously.

The commission convened into executive session at 10:10 a.m. and reconvened back into open session at 10:25 a.m.

APPROVAL OF MINUTES

Vice Chair Manago motioned to approve the minutes of August 22, 2003, regular and executive sessions. Commissioner Mitchell seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Commissioner Mitchell motioned to accept Personnel Orders Nos. 2003-099 to 2003-106. Vice Chair Manago seconded the motion, and it carried unanimously.

COMMUNICATIONS

Vice Chair Manago motioned to accept the communications as listed. Commissioner Muller seconded the motion.

Discussion:

- Correspondence 03-80, copy of letter from OIP to Thomas Russi and Christine Paul and Correspondence 03-81 from Christine Paul to Honolulu Police Chief Donohue: Vice Chair Manago motioned to defer the two correspondence to the October meeting. Commissioner Frazier seconded the motion, and it carried unanimously.
- Correspondence 03-82, from Corporation Counsel informing of an OIP training session on Friday, October 3, 2003: Chair Hara asked the members to attend this very informative presentation.
- Correspondence 03-85, from Donna Saiki of the Leleiwi Community Association requesting intervention with regards to the homeless and hooligans moving into the area: Chair Hara, with the approval of the members, referred this to Chief Mahuna and asked for a response by the next meeting in order for him to respond to Mrs. Saiki.

The motion carried unanimously.

COMMITTEE REPORTS

- Budget and Finance (Hara/Manago): Vice Chair Manago reported that they would be receiving a draft of the department's 5-year vision plan. Input should be given to the chief by mid-November. The chief will make his recommendations to the mayor and county council.
- Office Management and Staffing (Muller/Mitchell): No report.
- Rules and Policies (Moe/Bertsch)
 - Draft of procedures for requesting information from the Police Department: Chair Hara stated that this relates to Commissioner de Silva's request from the previous meeting and will defer it to new business.
 - Flow chart of procedures for processing complaints: Chair Hara asked to have this deferred to the October meeting when Commissioner Bertsch is present. There were no objectives.
- Contractual Services (de Silva/Frazier)
 - Review of revised specifications for RFP for investigative services: Commissioner Frazier stated that they needed to approve the modifications to the specifications

before submittal. Vice Chair Manago motioned to submit the specifications as amended. Commissioner Muller seconded the motion, and it carried unanimously.

- Public Relations (Hara/Lambeth): Chair Hara stated that with regards to arrests in major crimes such as home invasions and robbery of senior citizens, he has had many calls from concerned citizens, feels that the department should inform the public when the suspects are apprehended. Many of our senior citizens are in their '80s and '90s and live alone, and this would put them at ease.

Chief Mahuna stated that when they have 100% confirmation of the responsible persons, he would like to give a press conference with television coverage. Regarding the recent home invasion incident in South Kona, they searched the area for two hours by helicopter but did not find the suspects.

CHIEF'S REPORT

- Crime: Major Kawauchi summarized the written report. Chair Hara stated that he would like them to discuss some of the high profile crimes and the status of these crimes like they do in the Maui Police Commission meetings. Members of the community have questioned him about incidents, and he would like to be able to respond.

- Traffic: Major Day summarized the written report. With regards to the home invasion in Kona, it involved two individuals. The person who saw them knows what they looked like. They wore army type fatigues, indicated that they were the police, bound the victim with duct tape, and searched the residence and took money. Captain Shiroma will issue a press release this afternoon informing the public that they do not do business in army fatigues and with duct tape.

They have had a string of burglaries spreading from North to South Kona. They did a search warrant on one house and hopefully will recover some of the stolen property. They recovered a Toyota truck that the suspects have been using in the burglaries. They know the suspects, and there may be more than one ring working in the area.

The DUI funds have been depleted, but they still have funds for seatbelt enforcement.

Commissioner Muller stated that ever since the Puainako extension was completed, there has been a lot of speeding on Ainako Drive. Major Day will look into it.

Commissioner Frazier stated that the chief has been participating in Jake-Brake, and they appreciate the help with noise abatement.

Commissioner Mitchell stated that on Sunday at the farmers' market, two children got lost in the forest. They didn't call the police or 911 and was later chastised for that. Their fire department found the children later. Captain Day stated that she should have called, and they would have prioritized it and responded.

- Personnel: Assistant Chief Chai summarized the written report. The 62nd recruit class is now training on the road with seasoned officers, and a new recruitment has already begun. Two applicants who left the department and are interested in returning, and two others are interested in transferring from the Maui PD.
- Finance: Assistant Chief Chai summarized the written report
- Commendations: Chief Mahuna reported having seventeen commendations since the last meeting.
- Commanders' meeting minutes of August 27, 2003: Chief Mahuna reported that at the last meeting, the administrative thrust was to preclude them from using the carotid chokehold. A chief's memorandum went out removing it from their training curriculum, and it will not be part of their repertoire of non-lethal force. A misapplication of the carotid chokehold could have some very lethal consequences.
- Other Departmental Activities: Chief Mahuna reported that they are presently in looking into the visibility of police cars, police stations, and signage. The signage will make all stations visible and direct people to the receiving desks. They are also looking at changes in the uniforms, types of blue lights, decals, and a hybrid fleet.

UNFINISHED BUSINESS

- Correspondence 03-56, copy of letter from Connie Molarius to police department requesting information on an assault case (deferred at July meeting): Chair Hara asked that Chief Mahuna follow-up and respond to Ms. Molarius.
- Review of draft of revisions to General Orders 302 and 804: Commissioner de Silva stated that he read the General Orders on use of force, and it is very good. He appreciates the department's sensitivity to one person's thoughts that it should be reviewed. He likes it, and it goes even further than most departments.

NEW BUSINESS

Requesting information from police department: Chair Hara stated that this is in regards to Commissioner de Silva's motion at the previous meeting requesting information from the police department. During the meeting in Waimea, they did not have much time to look at the five items and would like to have discussion.

Vice Chair Manago asked for Corporation Counsel's opinion on whether personnel records could be made available to them.

While waiting for Corporation Counsel's response, Chair Hara read an excerpt from General Orders 303, C. 17, and stated that he had questions on whether members of the commission could sit in as observers, but according to General Orders, that's not part of the proceedings.

Corporation Counsel Ashida stated that they needed to discuss numbers 3 and 5 of the motion further. On number 5, requesting complete personnel files, this may present some problems because not everything in the personnel files may be necessary for the commission to do its job.

On number 3, requesting IA investigative reports for each and every case of misconduct referred to the department by the commission, they will need further discussion. The commission needs to decide what their role and function is in the entire process of reviewing complaints.

Commissioner de Silva stated that from the statistics they received, he has concerns about the system but would like to suspend judgment until they hear from the Administrative Review Board. In looking at the statutes, it clearly entitles them to get information from the police department which would help them in their oversight functions. The charter has a provision saying that they shouldn't interfere with the administrative affairs of the police department, but if they read that provision a little more carefully, it starts with an exception, and the exception says, "except for the purposes of inquiry." In the statistics they received, last year only about 18% of the cases they sent to the department resulted in a finding of misconduct. He wondered whether the time they spend might not be useful. The charter says that they should submit their findings to the department, and the effectiveness of this policy of submitting their findings to the department depends on what they do about it.

Chair Hara stated that when they refer a case to the chief, they want to know the disposition or outcome of the IA or the ARB findings.

Chief Mahuna stated that he believes that police commission's duties and responsibilities, based on the charter, are confusing in certain respects. He feels that the actual discipline of a police officer is an administrative affair and connected reports that result in that discipline are an administrative function.

Commissioner de Silva stated that unless they are given information on how the disciplinary system works, there's no way they can perform any oversight function. It is their business to examine the department's policy, and the only way they can examine it is to see how it works. It's not a formula for some uranium bomb. He can't see how getting the IA report or knowing what happens in the ARB interferes in the administration of the department.

Chief Mahuna stated that if the reports were made available to the police commission, then there is no separateness of the police commission and the police department. He does not see the relevance of the Internal Affairs report or an officer's personnel file in the commission's determination of findings of fact. The basis of how one comes to determine whether or not a specific violation of the General Orders or a specific violation has occurred, is independent of the material that the commission is asking for.

Commissioner de Silva stated that that is why he qualified the motion by saying that it would be for specific requests.

Chief Mahuna stated that the personnel file does not come into play in the ARB's determination of whether or not they are going to sustain or not sustain a complaint. It is considered when progressive discipline is employed. They could talk to him about how he arrived at a discipline. Investigations are done like any investigation. They are done by an administrative inquiry or an administrative investigation. He utilizes the ARB and their recommendation because they look at the whole picture, the evidence, and if the charge or allegation is sustainable.

Commissioner de Silva questioned why they threw out 65% of the referred cases. They have an oversight function to find out what happens in the department, to see whether it's good, and if not, to make suggestions. He doesn't agree with the chief's point of view, but reasonable people can differ.

Chief Mahuna stated that the separateness of the commission and the police department and its administrative function is essential in the department in their goals and objectives. They should leave it up to corporation counsel to see if the documents are necessary for the commission's inquiry.

Commissioner de Silva stated that he would certainly listen to their attorney's advice, but it doesn't mean they have to agree with it because they can always go to court and find out.

Chair Hara stated that he is concerned about sustained complaints that the commission refers to the chief, and would like to get an explanation for the IA or ARB's findings.

Commissioner de Silva asked for responses to each of the things in the motion so that they would have the chief's position on record.

Chair Hara stated that he would like to give the chief and corporation counsel more time to consider this and that they provide the commission with the requested information at the next meeting. There were no objections by the commissioners, and Chief Mahuna felt that he could provide a written response by the next meeting.

Corporation Counsel Ashida stated that he appreciated the additional time because if they could not agree or if there were disagreement in the position that the commission took with the department, he might be in conflict because he cannot represent both. He might be required to assign two staff attorneys, one to the commission and one to the police department to look at the issues independent of whatever opinions he may have rendered previously.

Vice Chair Manago motioned to defer this matter to October. Commissioner Frazier seconded the motion.

Discussion:

On inquiry by Commissioner Frazier, Chair Hara stated that the police department receives the complaints after the commission refers it to them. He also stated that they are deferring this matter to the October meeting in order for the chief and corporation counsel to provide their written responses.

The motion carried unanimously.

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 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). Commissioner Muller seconded the motion, and it carried unanimously.

The commission convened into executive session at 12:00 noon and then reconvened back into regular session at 12:45 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

Investigation and Deliberation of Complaints

- 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 Muller motioned to refer the complaints to the investigator. Vice Chair Manago seconded the motion, and it carried unanimously.
- Complaint HPC 03-21: Complainant complained about the manner in which an officer spoke to him when he complained about a noisy neighbor. Commissioner Muller motioned to refer the complaint to the chief for his review and disposition. Vice Chair Manago seconded the motion, and it carried unanimously.
- Complaint HPC 03-22: Complainant complained about the manner in which an officer conducted an investigation following a vehicle accident. Vice Chair Manago motioned to refer the complaint to the investigator. Commissioner Muller seconded the motion, and it carried unanimously.
- Complaint HPC 02-36: Complainant alleged that during their arrest, officers did not follow proper procedures, failed to obey laws, and refused to give them additional clothing. Akal investigated the complaint. Vice Chair Manago motioned to exonerate the officer on the charges of standard of conduct and performance of duty. Commissioner Frazier seconded the motion, and it carried unanimously.
- Complaint HPC 02-37: Complainant alleged that during their arrest, an officer was threatening to her dog. Akal investigated the complaint. Commissioner Muller moved to exonerate the officer on the charges of standard of conduct, performance of duty, and overbearing conduct. Vice Chair Manago seconded the motion, and it carried unanimously.

- Complaint HPC 02-38: Complainant alleged that they were targeted by the police, mistreated, and falsely arrested. Akal investigated the complaint. Vice Chair Manago motioned to exonerate the officer on the charges of standard of conduct and performance of duty. Commissioner Frazier seconded the motion, and it carried unanimously.
- Complaint HPC 02-39: Complainant alleged that an officer failed in his duties, was overbearing towards his dog, and refused to allow him to change his clothes. Akal investigated the complaint. Commissioner Mitchell motioned to exonerate the officer on the charges of standard of conduct and performance of duty. Vice Chair Manago seconded the motion, and it carried unanimously.
- Complaint HPC 02-40: Complainant alleged that she was falsely arrested and mistreated while in custody. Akal investigated the complaint. Vice Chair Manago motioned to exonerate the officer on the charges of standard of conduct and performance of duty. Commissioner Mitchell seconded the motion, and it carried unanimously.
- Complaint HPC 02-41: Complainant alleged that an officer was overbearing when he threatened her dog, and violated provisions of his performance of duty when his subordinates did not follow procedures. Akal investigated the complaint. Commissioner Muller motioned to exonerate the officer on the charges of standard of conduct and performance of duty. Vice Chair Manago 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 October 17, 2003, at 10:00 a.m., at the Ohana Keauhou Beach Resort.

ADJOURNMENT

The meeting was adjourned at 12:50 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR