

**HAWAII COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
NOVEMBER 21, 2003
WAIMEA CIVIC CENTER**

CALL TO ORDER

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

ROLL CALL

Present:	Horace S. Hara, Chair	Also Present:	Lawrence Mahuna, Chief
	Dwight K. Manago, Vice Chair		Thomas Hickcox, Assistant Chief
	John M. Bertsch Commissioner		James O'Connor, Detective
	Paul M. de Silva, Commissioner		Melvin Yamamoto, Detective
	James A. Frazier, Commissioner		Lincoln Ashida, Corporation Counsel
	Phoebe M. Lambeth, Commissioner		Josie Pelayo, Secretary
	Betsy Mitchell, Commissioner		
	Walter Moe, Commissioner		
	Pete Muller, Commissioner		

A quorum was present.

APPROVAL OF AGENDA

Commissioner Lambeth motioned to approve the agenda. Commissioner Muller seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS - Open to the public

Chair Hara explained the difference between open and closed session.

OFFICER VAN REYES came before the commission in response to Complaint HPC 03-27 filed against him by Mr. Kerry Long. It came about after Mr. Long went to the station to complain about barking dogs in the Puueo area. He realized that yelling at Mr. Long was uncalled for, so he immediately talked to his captain and sergeant about it and then apologized to Mr. Long.

STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION) - Closed to the public

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 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.

The commission convened into executive session at 10:20 a.m., and reconvened back into regular session at 12:00 noon.

MR. KERRY LONG came before the commission in response to his complaint HPC 03-27. When he complained at the station about the barking dogs, he was told to speak to his community-policing officer. When he did, Officer Van Reyes threatened to arrest him. The officer did apologize, but he was traumatized by the incident. He believes the officer needs more education.

NEW BUSINESS

Correspondence 03-97, presentation by the Department of Civil Service on the receipt, use, and handling of sensitive materials.

Corporation Counsel Ashida stated that it is important that the commission be advised on how to handle sensitive materials. This is covered under HRS 92-F. His recommendation and preference, to ensure security, would be: 1) reproduction would not be allowed or be limited as much as possible and 2) the commission needs to decide on documents being viewed on site or leaving the Police Department. He is referring to personnel records, not I.A. reports.

Civil Service Director Mike Ben came before the commission and stated that he would be speaking about personnel files. The personnel file should be shared only on a need-to-know basis with those who have authority to make decisions. The personnel file is confidential information. Commissioners who take possession of the file have the obligation to protect that information. They need to be careful about what they discuss in a public forum. They should not find charges and allegations in a personnel file, only actual disciplinary action taken.

Corporation Counsel Ashida stated that in HRS 92-F, there is an added layer of protection for police officers. The public should not know that an officer received a 10-day suspension or a written reprimand. They can only get termination information. They may receive disciplinary information on other civil servants, but not on police officers. The Chief agreed that the commission would get the I.A. reports, but they have to be careful not to release any of the information to the public domain.

Chair Hara stated that he would like to have the records on a "need-to-know" basis. If there is a dire need for them to know, then they will handle it sensitively. Otherwise, if they don't need to know, they don't need to see it.

Commissioner de Silva stated that he would like the department to screen the personnel file and then advise them on whether or not they are entitled to it. He doesn't want them in his presence without someone telling him that he should look at them. They will make a request on a specific case-by-case basis.

Lunch recess was called at 12:20 p.m., and the commission reconvened at 2:00 p.m.

Commissioner Muller and Corporation Counsel Ashida were not present for the afternoon session.

STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION) - Closed to the public

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 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). Vice Chair Manago seconded the motion, and it carried unanimously.

The commission convened into executive session at 2:02 p.m., and reconvened back into regular session at 2:40 p.m.

APPROVAL OF MINUTES

Vice Chair Manago motioned to approve the minutes of October 17, 2003, regular and executive sessions. Commissioner de Silva seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Commissioner Lambeth motioned to accept Personnel Orders Nos. 2003-118 to 2003-136. Vice Chair Manago seconded the motion, and it carried unanimously.

COMMUNICATIONS

Commissioner Lambeth motioned to accept the communications as listed. Commissioner Moe seconded the motion, and it carried unanimously.

COMMITTEE REPORT

- Budget and Finance (Hara/Manago): Vice Chair Manago reported that he had a meeting scheduled with the Mayor to discuss the budget, but it was postponed to a later date.
- Office Management and Staffing (Muller/Mitchell): The committee had no report.
- Rules and Policies (Moe/Bertsch)
 - Procedures for processing complaints (continued from October meeting)
 - Revisions to rules and regulations

Commissioner Bertsch reported that there would be a special meeting on December 8 to discuss the rules and procedures.

Chair Hara reported that the meeting would start at 9 a.m. instead of 10:00 a.m. They will also be discussing the chief's annual evaluation. Each commissioner should work on the evaluation form and be prepared to discuss it at the meeting.

- Contractual Services (de Silva/Frazier): Commissioner Frazier reported that the closing date for investigative proposals is November 28. The commission will conduct interviews after reference checks are done. Commissioner Frazier motioned that the Chair send a letter to the purchasing director to extend the investigative contract on a month-to-month basis for 90 days. Commissioner de Silva seconded the motion, and it carried unanimously.
- Public Relations (Hara/Lambeth): The committee had no report.

CHIEF'S REPORT

Chair Hara stated that since they have the written reports, and he would like a report on only the highlights.

- Crime: Assistant Chief Hickcox stated that a report on the status of unsolved homicides was submitted to the commission.
- Traffic: No additional report.
- Personnel: No additional report.
- Finance: No additional report.

- Commendations: Chief Mahuna reported receiving seven commendations.

Chief Mahuna reported that they have had 30 traffic fatalities compared to 22 last year. As a result they are doing public service announcements and putting out smart trailers. Most of the accidents have been caused by excessive speed and inattention. Alcohol and illicit drugs have contributed to some of the fatalities. The ice task force is fully staffed, and has already received about 90-100 calls of ice houses. Most of their CPO and SRO positions will be filled by January.

- Commanders' meeting minutes: Chair Hara stated that he attended the recent meeting, and it was very insightful. He recommended that the others attend future meetings.
- Other departmental activities: None.

UNFINISHED BUSINESS - None.

NEW BUSINESS

- Correspondence 03-108.1, from Commissioner Paul de Silva, draft of his personal views on the Police Commission and proposed improvements to the disciplinary system of the Police Department.

Commissioner de Silva stated that the report is his personal opinion, and no one asked him to write it. However, he no longer believes in it because everybody has more ideas, and they can start working on it from the beginning. He explained that the reason he addressed it to the Mayor and the Managing Director was because the Charter states that they should be informed of recommended improvements

Chair Hara asked the commissioners to review the notes that Commissioner de Silva put together for meeting on December 8.

- Review of chief of police evaluation form and rating scale: Chair Hara asked the commissioners to review the Chief's report on his goals for the year and to put serious thought on his evaluation. On December 8, they will tally the evaluations and discuss it.

Commissioner Bertsch reminded the commissioners to send him their recommendations on changes to the rules.

INVESTIGATION AND DELIBERATION OF COMPLAINTS (EXECUTIVE SESSION)

Commissioner Lambeth motioned 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). Vice Chair Manago seconded the motion and it carried unanimously.

The commission convened into executive session at 3:06 p.m., and reconvened back into open session at 3:42 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

- **Reconsideration of Complaint 03-24:** Complainant alleged that during a seatbelt roadblock, officers responded in a sarcastic and unprofessional manner. Complaint exceeded the 60-day limitation for filing a complaint. Commissioner de Silva motioned that reconsideration be denied because the complainant had an acceptable explanation for the delay. Commissioner Moe seconded the motion, and it carried unanimously.
- **Complaints HPC 03-12A and B:** Complainant alleged that the spraying of pepper spray on him was unwarranted. Vice Chair Manago motioned to sustain the charge of Obedience to Laws, Written Orders, and Policies. Commissioner Moe seconded the motion, and it carried unanimously.
- **Complaint HPC 03-22:** Complainant alleged that officers were bias and untruthful when investigating his auto accident. Commissioner Bertsch motioned to not sustain the charges of Performance of Duty, Truthfulness, and Impartial Attitude for the two named officers. Commissioner Moe seconded the motion, and it carried unanimously.
- **Complaint HPC 03-25A, B, C, D, E, and F:** Complainants alleged that officers were called to the establishment that they were leaving and mistook them for the suspect and arrested them. They also alleged that an officer maced them while they were on the ground and handcuffed. Commissioner Frazier motioned that the charges of Performance of Duty, Malicious Use of Physical Force, Mistreatment of Person in Police Custody, Excessive Use of Physical Force, Overbearing Conduct, and Conduct Towards the Public by the two named officers were unfounded. Commissioner Moe seconded the motion, and it carried unanimously.
- **Complaint HPC 03-26:** Complainant alleged that during her arrest, an officer used excessive and malicious force. Commissioner Lambeth motioned to exonerate the officer on the charges of Commission of a Criminal Act, Malicious Use of Physical Force, and Conduct Towards the Public. Commissioner de Silva seconded the motion, and it carried unanimously.
- **Complaint HPC 03-27:** Complainant alleged that he made a complaint at the police station about a barking dog, and shortly thereafter an officer went to his home and threatened to arrest him. Vice Chair Manago motioned to sustain the charges of Standard of Conduct; Performance of Duty; Obedience to Laws, Written Orders, Policies; Misuse of Position or Office; Overbearing Conduct; and Conduct Towards the Public. Commissioner Frazier seconded the motion, and it carried with a nay vote by Commissioner Bertsch.

Commissioner Bertsch requested that the commission reconsider its decision because not all of the charges pertained to the complaint. No motion was made.
- **Complaint HPC 03-28:** Complainant alleged that during his arrest, an officer mistreated him and falsified records. Vice Chair Manago motioned to defer the complaint to the December 19 meeting, after the meeting on procedures for investigating complaints which is scheduled for December 8. Commissioner de Silva seconded the motion, and it carried unanimously.

- **Complaint HPC 03-29:** Complainant alleged that an officer was untruthful and had no probable cause for his traffic stop. Commissioner Lambeth motion to refer the complaint to the Chief because the complaint was received beyond the 60-day limit. Vice Chair Manago seconded the motion, and it carried unanimously.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS - None

ANNOUNCEMENTS

Chair Hara announced that they will be having a special meeting on December 8, 2003, at 9:00 a.m., at the Hilo Hawaiian Hotel to further discuss the commission's function concerning police discipline and to review the chief of police evaluation.

The next monthly meeting is scheduled for December 19, 2003, at 10:00 a.m., in the Hawai'i County Council Room.

ADJOURNMENT

The meeting was adjourned at 3:55 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR