

HONOLULU POLICE COMMISSION  
City and County of Honolulu  
State of Hawaii  
Minutes of the Regular Meeting  
February 1, 2017

CALL TO ORDER                      Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, February 1, 2017, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT                                Max J. Sword, Chair  
Cha Thompson, Vice-Chair  
Luella T. Costales, Member  
Eddie Flores, Member  
Steven H. Levinson, Member  
Loretta A. Sheehan, Member

EXCUSED                                Marc Tilker, Member  
  
Daniel W. S. Lawrence, Executive Officer  
Krishna F. Jayaram, Deputy Corporation Counsel  
Erin Marie Yamashita, Secretary

ALSO PRESENT                        Cary N. Okimoto, Acting Chief of Police  
Jerry J. Inouye, Deputy Chief  
William R. Axt, Acting Deputy Chief  
Alan K. Bluemke, Assistant Chief  
Clyde K. Ho, Assistant Chief  
Clayton G. Kau, Assistant Chief  
Richard C. Robinson, Assistant Chief  
William J. Baldwin, Major  
Larry R. Lawson, Major  
Craig T. Uehira, Major  
Lynne Uyema, Legal Advisor

ASCERTAINMENT                      Counsel Jayaram ascertained that a quorum was present  
OF QUORUM

AGENDA ITEMS

Vice-Chair Thompson made a motion to add to Agenda Item V, New Business, discussion on legislative items. Commissioner Flores seconded the motion. By a unanimous vote, the motion carried.

Vice-Chair Thompson made a motion, pursuant to HRS 92-5 (a) (4), to add to Agenda Item VI, Executive Session, an item to discuss with counsel the lawsuit against the commission filed by the Civil Beat Center for the Public Interest, as item VI E. Commissioner Flores seconded the motion. By a unanimous vote, the motion carried.

Vice-Chair Thompson made a motion, pursuant to HRS 92-5 (a) (4), to add to Agenda Item VI, Executive Session, an agenda item to discuss with counsel an appeal to the Commission's decision with respect to Sergeant Robert Jaeger, as item VI F. Commissioner Flores seconded the motion. By a unanimous vote, the motion carried.

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### CHIEF OF POLICE REPORT

Acting Chief Okimoto thanked Chair Sword and Commissioner Levinson for attending the promotion ceremony on January 25, 2017. Eleven civilian personnel, two assistant chiefs, two majors, two captains, four lieutenants, 14 sergeants/detectives, and 20 corporals were promoted. Chief Okimoto then introduced the two new assistant chiefs to commissioners, Assistant Chief Clyde Ho and Assistant Chief Richard Robinson.

### Sanctuary Cities

HPD has received calls and letters on HPD's stand on sanctuary cities inquiring if Honolulu is a sanctuary city. Acting Chief Okimoto informed commissioners Honolulu is not a sanctuary city and works with immigration organizations when officers come across someone here illegally. Officers do not consciously go out look for immigration violations as they are federal offenses.

Vice-Chair Thompson requested a report be provided to commissioners should they experience more inquiries.

### Presentation on Rape Test Kits

Assistant Chief Robinson provided commissioners with a presentation on the rape test kits. The two sections of the HPD that primarily deal with sexual assault are the Criminal Investigation Division and the Scientific Investigation Section.

Assistant Chief Robinson reviewed the flow chart of a sexual assault which was divided into three sections, case initiation, investigation, and disposition. He also explained the process of analyzing sexual assault kits, and answered questions from commissioners.

In addressing previous concerns of the backlog of tests being conducted, Assistant Chief Robinson reported that there were 150 kits sent out for immediate testing. Of the 150 kits, 52 percent (78 kits) had male DNA. This means the remainder of the kits does not contain any viable evidence.

Of the 78 sex assault kits, 44 had potential DNA and will have a technical review conducted on the kit. HPD's Scientific Investigation Section has reviewed nine cases and entered them into CODIS. Assistant Chief Robinson explained that the 44 kits do not indicate 44 "rapists" it indicates 44 male DNA profiles. What needs to be sorted out further is if the DNA is from a consensual partner who had previously had sex with the victim.

Clarification on what happens with the rape kits was requested for situations when a victim has made an initial report but does not want to proceed. Assistant Chief Robinson explained that if a victim goes to the SATC and wants to make a report the police are called. If a victim does not want to make a report of the incident, police will not be called and no report will be made, the kit will stay with the SATC, and HPD will be notified that the crime occurred.

Should a victim request to make a case, the evidence is transferred to the HPD; however, if at any point during the investigative or prosecutorial process the victim decides they no longer want to prosecute, HPD will keep their kit and not dispose of it.

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### Presentation on Rape Test Kits (Continued)

Commissioners then wanted to know if there was a mechanism in place to subpoena or obtain the rape kit/evidence from a case that has been withdrawn because the evidence may link to a serial rapists. Assistant Chief Robinson explained this issue was one of the most difficult part of discussion for the statewide task force comprised of all four county prosecutors, police departments, SATC, and victim advocates from all islands and the Attorney General. The result of the discussion was if a victim had signed a written withdrawal, the kit would not be tested. If the victim had stopped participating in the investigative process it would be considered an implied withdrawal and the kits would be tested.

The report from the Attorney General to the Legislature informed legislators of the recommendations from the working group and that members of the group would follow the recommendations. Assistant Chief Robinson also explained how funds are being obtained and used to test the rape kits as well as HPD's efforts to increase staffing in the Scientific Investigation Section.

(A copy of the presentation will be attached to the minutes.)

### Comments from Commissioners

Chair Sword would like to expand the Chief's report and to help develop protocols on how commissioners could hear from the rank and file in a safe manner in order to receive comments about the Department. Chief Okimoto responded he and the staff want to know how they are doing. They have met with SHOPO and are currently in discussion on conducting a survey in order to improve and receive suggestions.

Clarification was requested on an article in the *Star Advertiser* titled, "Funding of Police Chief's Severance Raises Dispute" and the January 19, 2017 message sent to HPD employees. Commissioners wanted to know if Acting Chief Okimoto made any reference to discussions between Kevin Sumida and Commission members. Acting Chief Okimoto responded in the negative and shared his concerns with commissioners concerning HPD's budget. A commissioner inquired whether HPD would take legal action or have to go to the City Council and request a funds transfer, and discussion of other related matters continued.

### PUBLIC TESTIMONY

None.

### NEW BUSINESS

#### Requests for Legal Counsel

Commissioner Flores made a motion to add the consideration of the recommendation by the Department of the Corporation Counsel for former officer Shannon Dresser, Civil No. 1RC16-1-4507 to the agenda. Commissioner Costales seconded the motion. By a unanimous vote, the motion carried.

Commissioner Flores then made a motion to accept the recommendation by the Department of the Corporation Counsel and approve legal counsel for former officer Shannon Dresser for Civil No. 1RC16-1-4507. Vice-Chair Thompson seconded the motion. By a unanimous vote, the motion carried. A letter will be sent to former officer Shannon Dresser informing her of the Commission's decision.

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### Requests for Legal Counsel (Continued)

Commissioner Flores made a motion to accept the recommendation of the Department of the Corporation Counsel and approve legal counsel for Officer Travis Y. Muranaka, Officer Chad H. Murphy, and Officer Royce S. Ohira for USDC Civil No. 16-00590 JMS/KJM. Commissioner Sheehan seconded the motion. By a unanimous vote the motion carried. Letters will be sent to the officers informing them of the Commission's decision.

### Discussion

Commissioner Levinson requested to share his view on the process by which the recommendations were made to the Commission concerning an officer's request for legal counsel. He shared why he felt the evaluations are mistaken and referenced Sections 52-D (8) and 52-D (9) of the *Hawaii Revised Statutes*, "Police Officers Counsel for and Determination of Scope of Duty." He is concerned about possible future cases which may reach the Hawaii Supreme Court and that it is important to follow the law and that there has been an incorrect analysis of the governing law. Chair Sword requested Deputy Corporation Counsel Jayaram report back to the Commission.

### Procedures for Future Evaluation of the Chief of Police

With regard to the evaluation form for the Chief of Police, Commissioner Levinson felt that very little information was available regarding the job performance of the Chief. He suggested that the HPC acquire a database sufficient to make an informed, legitimate assessment in connection with the annual evaluations. One of the matters Chair Sword mentioned referred to a database. He feels that commissioners will have to decide on how they will have a larger database to draw from for the annual evaluation. Chair Sword requested suggestions be forwarded to Dan Lawrence, Executive Officer, so he can compile for future discussion.

### Protocol Including Items on the Agenda

Commissioner Sheehan's proposal is that any commissioner can unilaterally place an item on the meeting agenda for the following meeting, that any commissioner seeking documents for review could approach the Commission for either a voluntary surrender of documents or for subpoenas. EO Lawrence explained that he was looking for a suggested process when requesting to add an item to the agenda. Chair Sword stated should a commissioner have a request to place an item on the agenda, he/she forward the request to EO Lawrence and he and EO Lawrence would schedule appropriately.

### Issuing Police Commission Subpoenas

Commissioners discussed the possible use of subpoenas for the processing of complaints that are filed by members of the public against police officers and the appropriateness of issuing subpoenas directed at complainants, accused officers, or any witnesses so they can be questioned by commissioners. Chair Sword requested suggestions on the process be submitted to EO Lawrence.

### Selection Process for Next Chief of Police

EO Lawrence provided commissioners with handouts and explained the differences with the two previous chief of police selection processes. The handouts included documents from the 2009 selection—solicitation of professional services for consultant, consultant specifications, minutes from the November 9, 2009, and the recruitment announcement.

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### Selection Process for Next Chief of Police (Continued)

After a brief discussion Commissioner Levinson made a motion to authorize the Executive Officer to initiate the process culminating in the identification and selection of a consultant for purposes of assisting the commission in hiring a new police chief. Vice-Chair Thompson seconded the motion, by a unanimous vote, the motion carried.

Commissioner Flores made a motion to allow the Executive Officer initiate the process with the Department of Human Resources for the advertisement. Vice-Chair Thompson seconded the motion. By a unanimous vote, the motion carried.

Chair Sword asked commissioners to think about and respond by the next meeting on the involvement of the commissioners during the selection process from beginning to end.

### Legislative Bills

Chair Sword informed commissioners there are a few bill to be aware of during this year's legislative session, reviewed each bill, and that he may provide testimony. If any commissioner has comments for SB520 please forward them to EO Lawrence.

- HB1534 Relating to Residence Requirements for Appointed Officers
- HB682 (SB520) Relating to Police Commissions
- HB1349 Relating to Training

### EXECUTIVE SESSION

At 3:40 p.m. Commissioner Flores made a motion to enter into executive session to review agenda items pursuant to HRS 92-5(a), subsections (2), (4), (5), (6) and (8): to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities; to investigate proceedings regarding criminal misconduct; to consider sensitive matters related to public safety or security; to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to state or federal law, or a court order. Vice-Chair Thompson seconded the motion. By a unanimous vote, the motion carried.

### RETURN TO OPEN SESSION

The Commission returned to the open session at 5:09 p.m.

### ANNOUNCEMENTS

The next meeting of the Honolulu Police Commission will be on February 15, 2017.

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ADJOURNMENT

At 5:10 p.m. Chair Sword adjourned the meeting.