

HONOLULU POLICE COMMISSION  
City and County of Honolulu  
State of Hawaii  
Minutes of the Regular Meeting  
September 7, 2017

CALL TO ORDER                      Chair Sword called the meeting to order at 2:00 p.m. on Thursday, September 7, 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 (Exited at 3:50 p.m.)  
Eddie Flores, Member (Exited at 3:50 p.m.)  
Steven H. Levinson, Member  
Loretta A. Sheehan, Member  
  
Daniel W. S. Lawrence, Executive Officer  
Duane W. H. Pang, Deputy Corporation Counsel  
Erin Marie Yamashita, Secretary

ALSO PRESENT                      Cary N. Okimoto, Acting Chief of Police  
William R. Axt, Acting Deputy Chief  
Alan K. Bluemke, Acting Deputy Chief  
Lynne Uyema, Legal Advisor

ASCERTAINMENT                      Counsel Jayaram ascertained that a quorum was present  
OF QUORUM

CHIEF OF POLICE REPORT

Acting Chief Okimoto reviewed upcoming events, which the Honolulu Police Department (HPD) will participate in:

- September 13, 2017, 10:30 a.m. Second Quarter Awards Ceremony
- September 7, 2017, 9 a.m. District 7 Coffee With a Cop at Discovery Bay
- September 15, 2017, District 3 Pedestrian Safety Sign Waving at Waiiau Elementary School
- September 23, 2017, Child Safety Event (Educational Booths and Proper Car Seat Installation)

Traffic Statistics

There have been 28 fatalities to date compared to 38 in 2016 and 34 in 2015 during the same time. Twelve out of the 28 fatalities involved speeding, so enforcement will continue.

During the month of August 2017, officers issued 3,186 speeding citations, 2,289 seat belt citations, 346 pedestrian citations, and 2,039 mobile electronic device citations, and made 373 OVUII arrests.

During the month of August 2017, there were 231,703 automated license plate reader detections that included 14 stolen vehicles, five recovered vehicles, 24 recovered license plates, and the recovery of one wanted vehicle.

Questions from Commissioners

Commissioner Levinson requested clarification on the letter from Acting Chief Okimoto to Council Chair Menor concerning HPD asset forfeiture funds. Commissioner Levinson noticed the bulk of the monies result from federal activity and wanted to know if Acting Chief Okimoto knew the amount of revenue generated by asset forfeitures through the state system. Acting Deputy Chief Axt responded and stated that the funds from state asset forfeitures was less and estimated the amount as less than 10 percent of all the asset forfeiture funds.

Commissioner Levinson shared that while serving on the circuit court he never presided over an asset forfeiture proceeding but he, personally, has some serious concerns about the process being pre-conviction. He just wanted to know that the state is not the source of the overwhelming bulk of the monies.

Commissioner Sheehan requested clarification on a recent article which indicated delays to the body camera pilot project. Acting Chief Okimoto informed commissioners the project is not delayed and is moving forward and explained that HPD continues to work with two vendors in order to analyze which camera best suits HPD's needs. There have been some issues with the quantity of cameras and storage and distribution of videos, but a timeline has been issued to the vendor to work out the issues.

Acting Chief Okimoto further explained HPD does not want to use the body cameras in actual cases right now because it is unclear of how the Prosecutor's Office or other agencies will accept and transmit evidence because in addition to the citation as part of evidence, you potentially have a video. Procedures on how will the video be transmitted to the prosecutor and how will the prosecutor going to transmit the video to a defense attorney for discovery purposes is currently being discussed the Prosecutor's Office; however, there is some dissatisfaction with one vendor on how the gap will be bridged with the Prosecutor's Office.

Commissioner Sheehan then asked how the pilot project would be implemented to which Acting Chief Okimoto answered the current plan is to use the solo bike officers and officers in District 1. With regard to a timeline it would be one to two months; however, HPD is still working with the company and will test functionality (how the camera works, quality of pictures, and durability) with recruits. HPD is just not at the point with the currently company that it is ready to put the body cameras out in an enforcement situation.

Acting Deputy Chief Bluemke also informed commissioners that they are working on moving up the second vendor.

Commissioner Levinson then referred to an article in the Star Advertiser from August 12, 2017, concerning social service workers working with police officers. He commended officers for their work when interacting with residentially challenged people. He was inspired and learned that more of police work is social work. Acting Chief Okimoto thanked Commissioner Levinson for his comments and agreed that enforcement is not the answer and the answer is for the community and social groups to collaborate in helping individuals.

Commissioner Costales, also a graduation of the Citizens Police Academy, echoed Commissioner Levinson's words and encouraged commissioners who have not had a chance to participate in the Citizens Police Academy to do so.

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### APPROVAL OF MINUTES

Commissioner Costales made a motion to approve the July 19, 2017, meeting minutes. Commissioner Flores seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

### PUBLIC TESTIMONY

#### Officer Denny Santiago

Officer Santiago, a 21-year veteran of the Honolulu Police Department attended the meeting in order to emphasize his two letters sent to commissioners.

Concerns shared by Officer Santiago include double standards, retaliation, false arrests, illegal search and seizure, and falsifying police reports and that the HPD now wants to use administrative investigations to cover up because administrative investigations are confidential and the person who initiated a complaint will not know the outcome of the investigation.

Officer Santiago encouraged commissioners to take a closer look into what is going on in HPD with regard to retaliation. Officer Santiago stated that retaliation was happening within HPD before the target letters were issued, and help from the commissioners is needed because people are taking care of their friends.

He informed commissioners he has had criminal cases made against him and that when he initiated complaints, no criminal cases were opened, just administrative investigations so the outcome would be confidential.

Officer Santiago feels commissioners should ask harder questions—was an applicant for chief involved in the mailbox case, if not did they do anything when news stories were being reported. He also wants commissioners to consider if they would like a chief who was there during the wrongdoing. He then stated officers will be hateful of him, this may be the end of his career as a police officer, and that he cannot let things go on any longer.

Officer Santiago suggested a mechanism be in place where an officer can provide information to commissioners for screening administrative investigations. He provided an example of a complaint in which no witnesses were contacted, and HPD said he lied even after he provided video evidence and that commissioners should review the investigations, even if they are redacted.

Commissioner Sheehan asked if he is suggesting the Commission exercise its subpoena power to which Officer Santiago answered in the affirmative and that he would provide commissioners with certain investigations to review.

Vice-Chair Thompson asked Officer Santiago if he ever went to his union for assistance. Officer Santiago informed commissioners he did and the union will not represent him because part of his complaint involves another union member and represents that union member but not him.

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### Officer Denny Santiago (Continued)

Commissioner Sheehan informed Officer Santiago he does have the option of going to the FBI to which Officer Santiago stated he has gone to the FBI.

Chair Sword thanked Officer Santiago for attending the meeting and commissioners would discuss the matter further and will review the letters he sent to them.

### NEW BUSINESS

#### Report on Actions

Commissioner Levinson reported that at the Executive Session of July 5, 2017 the Commission took action on five cases involving five officers.

At the Executive Session of July 5, 2017, the Commission took action on two cases involving two officers.

Complaint number HPC 17-023, involved one complainant and one officer. The complaint of partiality complaint against the officer was not sustained. The complaint of conduct unbecoming an officer was sustained.

Complaint number HPC 17-027, involved one complainant and one officer. The complaint of overbearing conduct was sustained.

The minutes of the May 17, 2017, executive session were also approved.

Commissioner Levinson then made a motion to accept the report. Vice-Chair Thompson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

### UNFINISHED BUSINESS

#### Selection Process for the next Chief of Police

Executive Officer Lawrence informed commissioners the written examination was administered on August 26, 2017. Twenty-four applicants took the examination and test materials were forwarded to EB Jacobs for review. The review of examination is complete and members of EB Jacobs are prepared to brief commissioners via phone.

Prior to the phone conference, Commissioner Sheehan asked if commissioners would be able to review the test. EO Lawrence suggested speaking with the consultants first.

Mr. Rick Jacobs and Mr. Joe Hinish of EB Jacobs then joined the meeting via phone. Chair Sword then introduced members of the Commission in attendance.

Selection Process for the next Chief of Police (Continued)

Mr. Jacobs suggested Mr. Hinish begin and requested he explain about the written assessment content, he would then speak about the evaluation strategies to the responses, and finally Mr. Hinish would then review the results.

Mr. Hinish explained the phase one assessment consisted of eight essay-type questions. Of the eight six required a narrative response from the candidate and they each had a three-page limit (no requirement to use all three pages) to provide their answers. Two of the questions were bulleted list responses with a two-page limit to provide their answers.

Questions related to preparedness for being a chief, preparedness for being the next chief in Honolulu, indicating how the candidate would address specific current problems in Honolulu, indicating how they would respond as a chief to hypothetical scenarios relevant to Honolulu; topics impacting the relationship between the Honolulu community and the Police Department and acknowledging two personal limitations that they felt would be important at the chief level and to provide some information about how they will deal with those limitations. There were no questions by commissioners.

Mr. Jacobs then explained that a panel of four individuals with extensive law enforcement expertise was convened. All of the panel members served high-level assessment processes, all members have served as chiefs and have served in municipal police departments, state police departments, served as consultants to police departments as well as the IACP with one member being a state association president. One panel member had served in a high ranking law enforcement role in Hawaii.

The eight essays were split into two sets of four, two assessors scored the first set of four and two assessors scored the second set of four. Each assessor independently scored the 24 candidates using nine rating scales. Eight scales followed the competency model developed after Mr. Hinish's visit for the stakeholders job analysis. The eight competency ratings were done on a nine-point scale with nine being the high and one the low. The ninth rating was an overall five-point scale that asked about the level of readiness for each candidate to be the chief with five being exceptional, four being promising, three being average.

Commissioner Sheehan requested clarification on the competency model developed when meeting with stakeholders and ask for an example because she did not understand what was meant and how the rating scales worked. It was explained that one of the competencies is the ability to communicate, the second would involve teamwork and each rating scale had a definition of what that competency represented with the lowest score being a one and the highest of nine with examples of behaviors at the lowest, mid, and highest levels.

An example provided by Mr. Jacobs was written communication and the ability to express themselves logically. Examples were provided to the assessors who scored the written assessment of what would be considered poor, well, excellent, etc., and each assessor would read the response and then rate the person on based those scales.

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### Selection Process for the next Chief of Police (Continued)

Vice-Chair Thompson asked what states the assessors reside or work in. Mr. Jacobs answered one served as a chief of police in a location in Hawaii and the other three were chiefs in Pennsylvania. Commissioner Costales shared her concern and wanted to know if the assessors scoring the written assessment were appointed to their positions of chief of police by a mayor and if they were subject to a process similar to Honolulu. Mr. Jacobs responded that in many cities in Pennsylvania the mayor does appoint the chief of police; however, an assessment process is held and that one of the assessors consults with the IACP and assists in the assessment of candidates for chief of police positions.

Commissioners Sheehan and Costales each shared their concern that the ethnicity and gender of the assessors were white and male. Mr. Jacobs also provided commissioners with current job statuses of the assessors.

Commissioner Sheehan also asked if any of the assessors worked in rural communities and what the population of the communities were. Mr. Jacobs stated two of the assessors would be considered rural (smaller than Honolulu), one is not tied to any one jurisdiction, and he was unsure of the fourth.

Commissioner Sheehan requested clarification on the scoring of a question related to teamwork. It was explained assessors were provided with a scale ranging from low to high and the degree to which they communicated their plan for attacking a problem—the degree for bringing in other people or did not acknowledge they would bring in other people, the degree to which they wanted to build a team around whatever the problem might be.

Mr. Hinish provided general information of the results and the printouts provided to commissioners. He explained how the results were computed and examined by individual assessors, and the overall results were quite similar to each individual assessor's personal results.

Mr. Hinish explained each candidate was randomly assigned an identification number between 101 and 124, which is the only identifying information on the printout, so names and characteristics remain anonymous for the report. The method of calculation was also explained.

Commissioner Levinson stated the difference between unit score and weighted score was a function of the fact that in the case of the weighted score the number reflects the input of the stakeholders consulted and wanted to know who the stakeholders were. Mr. Hinish apologized as he did not have the list with him and asked EO Lawrence to respond.

EO Lawrence informed commissioners Mr. Hinish met with retired members of HPD, the Institute for Human Services, ACLU, Domestic Violence Action Coalition, Public Defender, Hawaii Tourism Association, Waikiki Improvement Association, State Attorney General, Prosecutor, Governor's office, Mayor and Managing Director, SHOPO, and Mr. Peter Apo. Commissioner Costales asked if any federal agencies were met with to which EO Lawrence informed commissioners they declined.

Selection Process for the next Chief of Police (Continued)

Mr. Hinish then provided commissioners with a detailed explanation of the handout and explained how the applicants were ranked, how the scores were computed, and answered any questions relating to calculations of scores from commissioners.

Mr. Hinish provided commissioners with three possible options for commissioners to consider candidates moving onto the next phase, the assessment center.

Option One

Consideration of the top nine candidates. Two significant considerations when determining this option are the rated score the number of assessors who had the candidate in the top ten of their list. It was explained the largest gap in the weighted score listing, excluding the very last candidate appears between candidate 107 and 111, a greater than three point difference, or a natural gap in the scores. The second consideration is the last column which is the number of assessors who had the candidate in the top ten of their list, every candidate from 107 and above has at least three of the four assessors, if not all four, putting them in the top 10. The remaining candidates all have a two or lower in this column. From a numbers standpoint the two findings are compelling.

Option Two

Consideration of the top eight candidates. Points noted in option two—if you look in the overall category column, the top eight candidates all scored at a four or higher on the overall scale. The rest of the candidates scored below a four on this scale. A score of four equates to promising. Based on the information contained in the assessment materials reviewed by the assessors, the assessor panel is confident that the next chief resides within the top eight candidates. From a law enforcement and experienced standpoint these two statements are compelling.

Option Three

Consideration of the top ten candidates. Points noted in making a decision is that they wanted a criteria where every candidate made it into the top ten of at least one assessor on every set of questions. At least one assessor that scored first set of questions and one scored the second set of questions placed candidates in the top ten.

Commissioner Costales noted commissioners were provided with a number of out of state applicants and now the number has been reduced to 24 and if all the candidates took the test in Hawaii. Mr. Hinish informed commissioners that the test was only administered in Honolulu.

Commissioner Sheehan wanted to know if it would be possible for her to review the tests. Mr. Hinish and Mr. Jacobs had no objections for commissioners reviewing the test and that is a matter which should be decided among commissioners. Commissioner Sheehan then asked for clarification on the scoring of candidate 116. Mr. Hinish provided an explanation of the scoring.

Commissioner Sheehan then requested to share her two proposals and asked for feedback. Her first proposal was to make the cut off at 11 or 14 because when the overall category was considered there were 11 people who scored 3.75 or above and 14 people who were 3.25 or above.

Selection Process for the next Chief of Police (Continued)

Her concern with the suggested options is that people who have a 3.75 are eliminated. Mr. Hinish responded that the actual scale has the candidate at an acceptable level, and a value of two is below the standards expected and a value of one is not qualified, so a value close to three is a little bit different to what might have been suggested as average. Commissioners were also made aware that the assessors noted there was a point in which a noticeable difference in candidates occurred when reviewing relative strength and relative indication of likelihood of success. Taking into consideration the lower number of candidates in phase two is always a part of the decision because the assessors in phase two will have more time with each candidate.

Mr. Jacobs added that when looking for a chief of police "average" is not something you would like to consider and that person with on the higher end of the scale, someone who averaged a 4 or 3.75. There is a sufficient number of candidates with eight or nine for phase two would certainly give a talented pool of three or four moving on to interviews.

Commissioner Levinson noted that looking at candidate 107 who is ranked as nine, his sense is that notwithstanding that all four raters placed that candidate within the top ten and given the fact that the weighted score is lower than the unit score, the fact that the person is ranked as nine it means in all likelihood four of the raters placed that candidate near the bottom of the top ten. Mr. Hinish agreed that it would be a reasonable conclusion.

Commissioner Costales expressed concern that commissioners are looking at numbers on a spreadsheet of a written exam scored by four white males and looking at the headings of each category did not indicate what the questions were and said it would help her in making a decision if she knew the essay questions. Chair Sword stated that he has no problem with commissioners viewing the questions and that it would help associate something with spreadsheet.

Commissioner Flores requested Mr. Hinish and Mr. Jacobs provide their input of which option they would recommend. Mr. Hinish responded that considering all the information they have privy too, not only meeting with stakeholders but setting up a project and planning, they recommend nine candidates (Option One).

The consultants requested commissioners consider the process and wanted to make commissioners aware that the written responses from the candidates will be filed along with the score of the assessors. Those invited to phase two will go through a series of oral exercises and written exercises which will yield additional scores and additional written products from the candidates and the assessors' scores. Candidates will also be asked to self-evaluate themselves after every exercise to give insight as to whether they thought they did well, really well, and what they thought they could have improved for comparison to the assessors.

The end goal is once the decision has been made as to who the finalists are, EB Jacobs will complete assembly of dossiers for each of the finalists. Information will include the individual's responses to the phase one questions, the assessors scores for the phase one questions, the assessors scores for the oral exercises from phase two, the written products from the candidates in phase two, the assessors scores for phase two, and possibly a video of one exercise from phase two.



Selection Process for the next Chief of Police (Continued)

Providing commissioners with this information will allow commissioners to review in-depth information about each individual in making the final decision on selecting the next chief of police.

Chair Sword thanked Mr. Jacobs and Mr. Hinish for providing their report and asked if there were any further questions or comments from commissioners.

Commissioner Sheehan stated that she would like to have more information as she does not know the test questions, she does not know the method that was used to score the test, and she does not know anything about the experts who work in rural communities in Pennsylvania. She understands the process must move forward and the work of the consultants and values the consultant's recommendation, but is concerned with going forward with a lower number of candidates.

Commissioner Costales agreed with Commissioner Sheehan with regard to reviewing the questions because it would make her more comfortable in her decision making.

Commissioner Levinson stated the Commission is already very far behind the initial timeline, and commissioners agreed to proceed with the assistance of a consultant and the qualifications of the consultant are unimpeachable. Commissioners will have access to the test and commissioners will be able to review the questions. He further explained he does not want to wait until the next meeting to take any additional substantive action, which will cause the process to fall even farther behind. Commissioner Levinson suggested commissioners make a decision regarding how many candidates will move on to the phase two assessment. The test is what it is and there are results. Personally, Commissioner Levinson would go with the first option, top nine, because at least with respect to all but two of the candidates, all four of the assessors placed the candidates within the top ten and there is a significant drop.

Commissioner Flores agreed with Commissioner Levinson and also stated the process has taken too long. The consultant is very competent and agrees with option one.

Chair Sword also agrees with Commissioners Levinson and Flores, and reminded commissioners they will have a chance to review all information about in making a determination of how many finalists will be interviewed.

Chair Sword then entertained a motion for option one, which is the top nine candidates based on the recommendation of the consultants. Commissioner Flores then made the motion with a second by Commissioner Levinson.

Discussion: Commissioner Costales agrees with the recommendation but would still like to see the questions. Commissioner Sheehan also stated commissioners could also review the answers completed by those taking written exam. Commissioner Levinson then stated the Commission would not be able to proceed in any way until September 20, 2017, which he does not want to do. Commissioner Sheehan feels commissioners should read and see what is happening beyond worksheets and numbers and read the answers. Commissioner Levinson agreed and pointed out the statistics suggest that it is a safe bet to do what Commissioner Sheehan just described with the top nine candidates.

Selection Process for the next Chief of Police (Continued)

In order to be clear on what is being voted on Chair Sword indicated commissioners would go with the top nine candidates (option one).

Vote: Unanimous.

EO Lawrence will contact Mr. Hinish in order to notify candidates of their status.

Proposed Amendments to Honolulu Police Commission Rule 10 and Rule 11

Commissioner Levinson requested Chair Sword explain the process put in motion concerning Rules 10 and 11. Counsel Pang informed commissioners a request for legal services to review the proposed drafts of Rules 10 and 11 was submitted from the Commission, to Corporation Counsel and apologized for the delay in responding. He became involved in the process after it had began and has proposed some amendments that are being reviewed by Ms. Leong and Commissioner Levinson.

Commissioner Levinson shared that in late July Chair Sword suggested he meet with Corporation Counsel Donna Leong in one-on-one discussions in the hope of reaching an agreement regarding proposed amended Rule 11. On July 28, 2017, Commissioner Levinson met with Counsel Leong and Counsel Jayaram and re-explained his view of Rule 11 to Counsel Leong. They agreed to meet again but have not yet met in person but have been corresponding via e-mail with proposed revisions to the draft amended Rule 11. He is hopeful to hear from Counsel Leong soon and he is cautiously optimistic on coming to an agreement.

EXECUTIVE OFFICER'S REPORT

Executive Officer Lawrence reported as of September 7, 2017, the Commission has received 58 complaints to date and that the number of the complaints last year during this time was 61 complaints. Of the 58 complaints, there are nine pending investigations, 18 complaints have been referred to the HPD's Professional Standards Office, one complaint was withdrawn, and four complaints were serviced with the Honolulu Police Commission's Public Service Report.

Commissioner Sheehan requested the status of the survey to which EO Lawrence informed commissioners he did receive feedback from the Department of Human Resources. Commissioner Sheehan then suggested the survey may be helpful in the selection process for a new chief to which EO Lawrence responded that the process could not move that quickly.

EXECUTIVE SESSION

AT 3:31 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.

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EXECUTIVE SESSION (Continued)

Vice-Chair Thompson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION

The Commission returned to the open session at 4:06 p.m.

ADJUDICATIONS

Officer Minh-Hung P. Nguyen, Civil No. 16-00659 JMS-KSC, Commissioner Levinson  
Statement Regarding Vote to Deny

The matter began at 4:08 p.m. and ended at 4:31 p.m.

ANNOUNCEMENTS

Chair Sword announced the Honolulu Police Commission will meet on September 20, 2017 at 2 p.m. and September 28, 2017 at 9 a.m.

ADJOURNMENT

At 4:33 p.m. Commissioner Levinson made a motion to adjourn the meeting. Commissioner Sheehan seconded the motion, by a unanimous vote, the motion carried.