

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
May 2, 2018

CALL TO ORDER Chair Sheehan called the meeting to order at 2:00 p.m. on Wednesday, May 2, 2018, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Loretta A. Sheehan, Chair
 Steven H. Levinson, Vice-Chair
 Shannon L. Alivado, Member
 Karen Chang, Member
 Jerry Gibson, Member (Exited at 3:35 p.m.)
 Max J. Sword, Member

 George P. Ashak, Acting Executive Officer
 Denise W. Wong, Deputy Corporation Counsel
 Erin Marie Yamashita, Secretary

EXCUSED Richard T. Grimm, Member

ALSO PRESENT Susan Ballard, Chief of Police
 John D. McCarthy, Deputy Chief of Police
 Jonathon B. Grems, Deputy Chief of Police
 Lynne Uyema, Senior Police Legal Advisor
 Lt. William Beckley, Criminal Investigation Division

ASCERTAINMENT Counsel Wong ascertained that a quorum was present
OF QUORUM

CHIEF OF POLICE REPORT

Identity Theft Presentation

Chief Ballard introduced Lt. William Beckley of the Criminal Investigation Division who provided commissioners with a presentation on identity theft.

Lt. Beckley provided commissioners with information about the types of identity theft, who is at risk, what people can do to protect their information, and provided ID theft statistics. He also explained jurisdictional responsibilities among law enforcement agencies.

Commissioners appreciated and thanked Lt. Beckley for his presentation.

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

Chief Ballard reminded commissioners Police Week begins May 13, 2018. She also distributed the flyer and sign-up form for the HPD Retirees and Ohana Reunion on August 16, 2018.

CHIEF OF POLICE REPORT (Continued)

Excluded manager interviews (rank of captain and above) will be held in order to fill vacancies.

The accreditation review with CALEA is complete. There were about seven issues brought up by the assessors that will be addressed. Chief Ballard will accept the gold standard re-accreditation in July.

Chief Ballard also shared HB2071, which establishes a law-enforcement standards board, has passed and was sent to the governor. She explained that initially the bill was for a working group; however, now it is a committee to decide minimum standards. Chief Ballard expressed her concern because the committee will have 20 members and all county police chiefs are required to serve on the board while other departments are allowed to send designees. HPD will not lower its standards and the state agencies may not be able to meet standards set by CALEA, which all county police departments currently possess.

There was discussion on who would fund the board, where the training centers would be located, and what qualifications a person would have to have for certification by the board. Chief Ballard informed commissioners that all county police chiefs will be writing to Governor Ige requesting the veto Bill 2071.

Commissioners thanked Chief Ballard for the update and requested she continue to keep them informed on the status and to let Chair Sheehan know if HPD would require the assistance of the Commission.

Questions and Comments by Commissioners

Vice-Chair Levinson asked what the status was on Mr. Gordon Knowles' request for the return of his firearms. Chief Ballard indicated she believes they returned the firearms to him.

APPROVAL OF MINUTES

Commissioner Chang made a motion to approve the April 4, 2018, meeting minutes. Commissioner Sword seconded the motion.

Discussion: None.

Vote: Commissioners Sheehan, Levinson, Sword, and Gibson voted in favor of the motion. Commissioner Alivado recused herself because she was not in attendance at the April 4, 2018 meeting.

PUBLIC TESTIMONY

None.

NEW BUSINESS

Report on Actions Taken at the Executive Session of March 21, 2018

Commissioner Sword reported that at the Executive Session of March 21, 2018, commissioners approved the February 21, 2018, executive session minutes. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Commissioner Individual Reports on Commission Business

Chair Sheehan reported she and Commissioner Sword participated in a phone interview with the CALEA assessors. She also attended the CALEA public hearing where three persons attended.

Commissioner Sword reported he submitted his questions for the interview for the next executive officer. The questions will be reviewed by the Department of Human Resources.

Chair Sheehan reported she was informed last week of the City Council's Executive Matters and Legal Affairs (EMLA) Committee meeting on May 1, 2018. City Council Resolution 17-308, which concerns the appointment of commissioners and politicizes the role of the Chief of Police, was on the agenda. Because the City Council meeting was between the HPC's meeting dates, she called Commissioner Levinson and asked for his opinion on the resolution, and sent a letter to the EMLA Committee with copies to each commissioner.

Chair Sheehan and Commissioner Sword spoke prior to the meeting and he told her he was unappreciative of some of the comments in the letter. Chair Sheehan apologized and said she did not include the paragraph concerning the settlement with the previous chief to upset anyone. She also expressed her appreciation to Commissioner Sword as a valuable member of the Commission.

During the EMLA Committee meeting on May 1, 2018, a CD-1 was distributed without Chair Sheehan's knowledge. Chair Sheehan then provided her testimony on the CD-1 as did the Managing Director. Chair Sheehan then explained there are two parts to the resolution. The first being changing the appointment authority for the HPC. The Mayor would no longer appoint the police commission—four members would be selected by City Council and three by the Mayor. The second part of the resolution changes the ability to hire and fire the Chief of Police, and provides appointment and firing to the Mayor. The CD-1 of Resolution 17-308 was passed out of committee.

Commissioners further discussed the procedures of the letter submitted to the EMLA committee. Commissioner Alivado shared her concern that the letter reflected the agreement of two members of the Commission, which could be prohibited by the Sunshine Law as it may allude to a commitment to a vote by two board members. After discussion commissioners agreed that in the future if a commissioner would be submitting his/her personal testimony, they do so using their personal stationery and the HPC stationery only be used if the Commission as a whole will be taking a certain position.

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Commissioner Individual Reports on Commission Business (Continued)

Vice-Chair Levinson agreed and stated that he did not see the actual letter until after the fact, and the letter should have been submitted as Commissioner Sword described. He also stated that he thought about the issue of two commissioners discussing an issue because the Sunshine Law permits two commissioners to discuss a subject relating to Commission business but it does not allow a commitment to one another for voting. Vice-Chair Levinson shared that in his view the testimony Chair Sheehan gave did not relate to Commission business, rather it was comment on legislative action that the City Council was proposing, and the idea was to communicate his views as well.

Vice-Chair Levinson added that it is clear to him that the subject was not an agenda item for action to be taken by the Commission at a meeting and appreciated the comments by Commissioner Alivado who then said she also does not agree with the CD-1 version of the resolution but the tone of the letter was strong.

There was further discussion on the importance and purpose of a police commission, investigation of complaints, and other duties of the Commission described in the City Charter and Hawaii Revised Statutes. After much discussion, Chair Sheehan stated the letter should not have been sent on HPC letterhead because it had not been vetted by members of the commission, and anyone who would like to comment or testify should do so, if they want to.

Commissioners also discussed and agreed that a letter be sent to City Council Chair Martin requesting the postponement of Resolution 17-308, CD-1 at the May 9, 2018 City Council Meeting in order for commissioners to finalize its position on the resolution. If the request to postpone is denied, commissioners may attend and testify individually because they were not able to meet before the meeting to discuss the Commission's position on the resolution.

Consideration of Requests for Legal Counsel

Vice-Chair Levinson informed commissioners the first three requests for legal counsel items are for civil matters. The Department of the Corporation Counsel (COR) has provided commissioners with memos dated April 20, 2018, recommending that each of the three requests be granted. He also pointed out that the memos are labeled by COR as "confidential and privileged attorney communication/do not circulate." He then noted, for the record, that it is his (Vice-Chair Levinson's) view that there is no attorney/client relationship between COR and the Commission with respect to requests for legal representation from police officers to the Commission, and the Commission is required by State Statute to consult with COR when a request is made. COR, in its discretion, may provide input but it is not within the "four corners" of the attorney/client relationship and should be a matter of public record and provided to the police officer, so the police officer knows COR's reasoning in taking its position.

Vice-Chair Levinson noted that each of the three memoranda in the Kon, Rahe, and Cravalho matters engage in some course and scope of employment analysis with a footnote in each of the memos noting that inasmuch as the Mayor has not yet approved the new Rule 11, COR is properly proceeding under the old Rule 11. Further, the course and scope of employment, built into the old Rule 11, is illegal because it narrows the scope of the statute which it seeks to implement. HRS 52D-8 and -9 addresses instances when an officer is sued for acts done in the performance of duty as a police officer, which is broader than acts done in the course and scope analysis.

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Consideration of Requests for Legal Counsel (Continued)

Commissioners are currently proceeding under Rule 11 but by virtue of the action the Commission has taken in proposing the new rule which reflects the Commission's collective judgement that the "course and scope of employment" analysis is illegal, and even if the Commission continues to operate under the old Rule 11, commissioners will not take course and scope of employment analysis into consideration in making determinations.

Vice-Chair Levinson stated that he has reviewed the complaints against each of the three police officers and is persuaded that each of the officers is being sued for acts done in the performance of duty as a police officer, and he agrees with COR's bottom-line recommendation granting legal counsel.

With respect to the request from Corporal Nihipali, which is a criminal complaint originating in State Court, Vice-Chair Levinson said the commissioners have no way of knowing by reading the criminal complaint the exact reason for the charges of petty misdemeanor of harassment or whether Corporal Nihipali is being sued for acts done in the performance of duty as a police officer. He agrees with COR that the matter should be set for a contested case hearing. Vice-Chair Levinson also stated that in the absence of any basis for making the determination as to whether he is being sued for acts in the performance of duty as a police officer, Corporal Nihipali has the burden of persuasion and proof.

Chair Sheehan mentioned commissioners could request the agency that brought the charges or filed the complaint to provide commissioners with the reason was the officer was being charged to which Vice-Chair Levinson said he felt it would be highly unlikely that the Prosecutor's Office would appear at the contested case hearing to provide and explanation.

Lieutenant Darryl T. Kon (Ret.), Civil No. 18-00088

Vice-Chair Levinson made a motion to approve the request for legal counsel for Lieutenant Darryl T. Kon (Ret.), Civil No. 18-00088. Chair Sheehan seconded the motion.

Discussion: Commissioner Alivado disclosed she recognized one of the named officers in the complaint but it was not Lieutenant Kon.

Vote: By a unanimous vote, the motion carried.

Sergeant James Rahe, Civil No. 18-00088

Vice-Chair Levinson made a motion to approve the request for legal counsel for Sergeant James Rahe, Civil No. 18-00088. Chair Sheehan seconded the motion.

Discussion: Commissioner Alivado disclosed she recognized one of the named officers in the complaint but it was not Sergeant Rahe.

Vote: By a unanimous vote, the motion carried.

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Lieutenant Robert A. Cravalho (Ret.), Civil No. 18-00100

Vice-Chair Levinson made a motion to approve the request for legal counsel for Lieutenant Robert A. Cravalho (Ret.), Civil No. 18-00100. Commissioner Sword seconded the motion.

Discussion: Chair Sheehan recused herself from consideration, as she may be a potential witness.

Vote: Commissioners Sword, Levinson, Chang, and Alivado voted in favor of the motion. Chair Sheehan recused herself.

Corporal Kiff Datsun M. Nihipali, 1DCW-18-0000063

Vice-Chair Levinson made a motion that the request for legal counsel from Corporal Kiff Datsun Nihipali in 1DCW-18-0000063 be set for a contested case hearing.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Letters will be sent to those requesting legal counsel informing them of the Commission's decisions.

EXECUTIVE OFFICER'S REPORT

Acting Executive Officer Ashak reported as of May 2, 2018, the Commission has received 30 complaints compared to 37 in 2017. Eight complaints are pending, twelve were referrals to PSO, and there are 16 pending requests for legal counsel four of which were addressed today.

As for the office report, Acting Executive Officer informed commissioners one investigator will be retiring effective June 1, 2018 and he is still on schedule to retire August 1, 2018.

ADDITION OF ITEM TO EXECUTIVE SESSION AGENDA

Vice-Chair Levinson noted an inadvertent omission on the agenda for the executive session, and there are actually four complaints for commissioners to discuss. He then made a motion to add the review of complaint HPC No. 18-017 as Item VIII, D-4 to the agenda. Commissioner Sword seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

EXECUTIVE SESSION

A 3:51 p.m., Commissioner Sword 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.

Commissioner Levinson 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 4:26 p.m.

ANNOUNCEMENTS

Chair Sheehan announced the next meeting Honolulu Police Commission will be on May 16, 2018 at 2 p.m.

ADJOURNMENT

At 4:26 p.m. Vice-Chair Levinson made a motion to adjourn the meeting. Chair Sheehan seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

IDENTITY THEFT

A PRESENTATION BY THE
HONOLULU POLICE
DEPARTMENT

AGENDA

- What is ID Theft?
- Who is at risk?
- ID Theft Statistics
- How identity thieves get your information?
- What to do if you're a victim?
- Simple steps to protect your identity.

ID THEFT

- NAME
- DATE OF BIRTH
- SOCIAL SECURITY NUMBER
- MOTHER'S MAIDEN NAME
- ADDRESS
- PERSONAL INFORMATION IS USED BY ANOTHER TO COMMIT FRAUD

Who's Most at Risk?

- Kids under the Age of 19
 - Children are 51 times more likely to become identity theft victims than adults.
 - Children don't accrue credit history until later in life, giving thieves years to rack up debt.
- Senior Citizens
 - Typically have nest eggs and likely carry little debt.
 - Don't typically check credit and are more susceptible to phone scams.

Who's Most at Risk?

- Victims of Theft (i.e. stolen wallet, mail, car and home break-ins)
 - Valuable personal information compromised.
- Residents of Florida, California, Nevada, & DC
 - Older resident age may play a factor.
 - People want t live there.

COMMON FORMS OF FRAUD

- BANK FRAUD
- LOAN FRAUD
- CREDIT CARD FRAUD
- PHONE OR UTILITIES FRAUD
- GOVERNMENT DOCUMENTS OR BENEFITS FRAUD
- PHISHING SCAMS

How Big of a Problem Is Identity Theft?

- According to the Federal Trade Commission (FTC), identity theft topped its national list of consumer complaints for the 15 consecutive year in 2014
- The numbers, and the damage, are staggering:

How Big of a Problem Is Identity Theft?

- 17 Million Americans were victims of identity theft (2014 numbers)
- \$25 Billion Worth of financial losses to the country
- \$2,000 Dollars lost on average per victim
- 24 Average number of hours spent trying to recover from identity theft consequences
- 2 Victims per second in America

ID THEFT STATISTICS FOR HONOLULU

CASE TYPE	2017	2018
		Jan 1 to Apr 10
FORGERY	885	314
CREDIT CARD OFFENCES	1,992	488
ID THEFT	525	100
UPCPI	442	109
TOTAL:	3,844	1,011

HOW THIEVES OBTAIN YOUR INFORMATION

- Burglaries/Theft (personal checks, credit cards, etc.)
- Theft of mail (pre-approved applications)
- Trash (Discarded personal documents)
- Internet hacking
- Use of credit/debit card at commercial establishments
- Social Media

IF YOU ARE A VICTIM

- Note the date/time of discovery
- Report crime to the police immediately
- Notify your financial institutions and cancel credit cards and bank accounts
- Notify the three major credit bureaus to place a fraud alert on your credit report: Equifax, Experian, and TransUnion

IF YOU ARE A VICTIM

- Notify Federal Trade Commission
- Contact the businesses/creditors and alert them of the ID theft (police report number)
- Monitor your financial statements and credit reports
- Provide copies of documents containing fraud activity to the police to assist with the investigation

PROTECT YOUR IDENTITY

- Deposit outgoing mail at the post office (inside) or give it directly to your mail carrier
- Shred or tear up unwanted documents that contain your personal information before you discard them
- Review your credit reports annually
- Be vigilant over personal accounts
- Never give personal information over the phone or internet

CRIMINAL INVESTIGATION DIVISION

FINANCIAL CRIMES DETAIL
LT. William Beckley
723-3703

QUESTIONS

MAHALO