

HONOLULU POLICE COMMISSION  
City and County of Honolulu  
State of Hawaii  
Minutes of the Regular Meeting  
March 6, 2019

CALL TO ORDER                      Chair Sheehan called the meeting to order at 2:00 p.m. on Wednesday, March 6, 2019, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT                                Loretta A. Sheehan, Chair  
Shannon L. Alivado, Vice-Chair  
Karen Chang, Member  
Jerry Gibson , Member  
Steven H. Levinson, Member  
Carrie K. S. Okinaga, Member  
  
James K. S. Yuen, Executive Officer  
Denise W. Wong, Deputy Corporation Counsel  
Erin Marie Yamashita, Secretary

ALSO PRESENT                      John D. McCarthy, Acting Chief of Police  
Jonathon B. Grems, Deputy Chief of Police

ASCERTAINMENT OF QUORUM                      Counsel Wong ascertained that a quorum was present

CHIEF OF POLICE REPORT

Acting Chief McCarthy thanked Commissioner Okinaga for attending the promotion ceremony on March 1, 2019. Effective April 7, 2019, there will be a new assistant chief, Darren Chun; four new majors, Roland Turner, David Nilsen, Stephen Gerona, and Walter Ozeki. Three of the majors are already serving as acting majors in the Records, Finance, and Criminal Investigation Divisions and will remain in those divisions. Captain Gerona will be assigned to the Major Events Divisions. The two new captains are Shellie Paiva and Robert Towne and will be assigned to the Community Affairs Division and District 7 respectively.

Questions and Comments from Commissioners

Chair Sheehan had a question concerning the recent shooting and asked if the incident would be reviewed by the Law Enforcement Officer Independent Review Board (LEOIRB) and if any reviews have been conducted. Acting Chief McCarthy said the Board reviews all law-enforcement, officer-involved fatal shootings throughout the state. Once the investigation is completed it is forwarded to the LEOIRB for their review. Acting Chief McCarthy informed commissioners the only shooting that has been reviewed is the one involving Officer Bronson Kaliloa.

Chair Sheehan then asked Acting Chief McCarthy if he saw the Police Commission having a role in examining officer-involved shooting or fatalities. Acting Chief McCarthy said he could not see the Police Commission playing a role because the oversight board was created statutorily and structured to provide recommendations to the respective county prosecuting attorneys.

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APPROVAL OF MINUTES

Commissioner Chang made a motion to approve the February 6, 2019, meeting minutes. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

None.

NEW BUSINESS

Report on Actions Taken at the Executive Session of January 23, 2019

Commissioner Gibson reported during the January 23, 2019, meeting commissioners approved the December 19, 2018 executive session meeting minutes. He then made a motion to accept the report.

Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Consideration of the Request for Legal Counsel from Officer Richard S. Townsend

Commissioner Levinson reviewed the request for legal counsel submitted by Officer Richard S. Townsend for 1RC15-1-10460. He explained what the complaint alleged and that that the insurance company is suing the City as the employer and Officer Townsend for reimbursement of the costs that Allstate incurred in paying off its insured party.

Based upon the complaint, Commissioner Levinson feels it is apparent Officer Townsend was doing his job when the collision occurred. The Department of the Corporation Counsel has also recommend Officer Townsend's request be granted in its memorandum dated February 21, 2019. Commissioner Levinson then made a motion to approve Officer Townsend's request for legal representation. Commissioner Gibson seconded the motion.

Discussion: None.

Vote: Unanimous.

A letter will be sent to Officer Townsend informing him of the Commission's decision.

### UNFINISHED BUSINESS

#### Discussion on Creation of Rules or Policies for the Discipline of the Chief of Police

Commissioner Okinaga circulated the updated guideline document, which included the addition of a preamble suggested by Chair Sheehan. Commissioner Okinaga said the document provides current and future commissioners as well as the current and future chiefs with guidelines on processing personnel matters involving the chief of police.

Chair Sheehan asked if the guidelines were subject to a process similar to the rule making process and if the Commission had guidelines. Staff informed Chair Sheehan there were guidelines in the past. Commissioner Levinson said he is aware of guidelines that touched upon requests for legal counsel by officers; however, those guidelines have been superseded by the administrative rules. He also said that he is unaware of anything in the Charter that prohibits commissioners from promulgating guidelines that are discretionary in terms of whether commissioners follow the guidelines and to what extent they are followed.

Commissioner Okinaga explained the reason for guidelines is that the chief is the employee and accountable to the Commission and without guidelines there would be no process or guidance in dealing with certain situations. The document is intended to guide with flexibility that the chief is accountable to the Commission.

Chair Sheehan then asked if a timeline or a specified period of time would be necessary in the self-reporting section of the guidelines.

Commissioners asked if the chief had seen the draft of the guidelines and if she offered any comments. Commissioner Okinaga said Chief Ballard did see the draft and her comments, which were more technical, were taken into account.

Chair Sheehan asked commissioners to review the draft before the next meeting and said she would come up with language concerning timely self reporting and timely action by the Commission, and a will be scheduled on the next meeting agenda. Commissioner Gibson requested an additional verbiage "in writing" to Item V, after "shall notify." Commissioners agreed with Commissioner Gibson.

Commissioners also discussed how any discipline, removal or suspension would be handled and how Chapter 91 of the Hawaii Revised Statutes would be applied to the Commission's actions as well as any exceptions. Commissioners asked Counsel Wong to look into the legality of the Commission's action and what parts have to be a matter of public record; what has to be kept confidential if/when action is initiated as well as when hearings and decision making would be conducted (open session or executive/closed session). Any comments or questions should be submitted to staff for distribution.

#### Evaluation of the Chief of Police

Chair Sheehan announced the Commission has finished its evaluation of Chief Ballard for 2018. It is her understanding, from speaking with Chief Ballard, is that Chief Ballard did not wish to review her evaluation prior to completion; Chief Ballard did not wish to make or include a responsive statement as part of her evaluation, and Chief Ballard was waiving her privacy interest in her evaluation and any privacy interest in the data reviewed (data commissioners used).

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### Evaluation of the Chief of Police (Continued)

Acting Chief McCarthy said the way Chair Sheehan characterized the discussion was exactly the way he understood. He then requested the item be deferred until Chief Ballard returns in order to give Chief Ballard a chance to receive the evaluation and to make comments to the media.

Commissioners agreed with Acting Chief McCarthy and deferred the agenda items to the March 20, 2019 meeting.

Chair Sheehan explained it was not made clear to commissioners that persons being interviewed could request their identities be kept confidential. Commissioners followed up with persons interviewed and informed the person interviewed that they could request their identities be kept confidential. There were some persons interviewed who said they would like to remain anonymous.

Chair Sheehan explained the balancing test the Commission must conduct and that she would be making a motion to redact the names of any police officers commissioners interviewed. Chair Sheehan then explained officers have a privacy interest, which she would like to respect and believes allowing people to remain anonymous or speak confidentially allows them to provide truthful statements without fear of incrimination or appearing to try to pander to their boss. The police officers, in particular, have a special interest because they work with Chief Ballard and their comments or any action Chief Ballard may take in the future, either positive or negative, could be viewed as a response to their participation in the evaluation.

Chair Sheehan made a motion for any government record containing the officers' identities be redacted and not released to the public. Commissioner Gibson seconded the motion.

Discussion: Commissioner Levinson, in addition to the considerations by Chair Sheehan, pointed out that Chief Ballard had indicated she would rather not know the names of the police officers who provided input in order to insulate herself from any implicit bias that she might exhibit toward them in the future either favorably or unfavorably.

Vote: By a unanimous vote, the motion carried.

### Executive Officer's Report

EO Yuen reported 16 complaints have been received to date. There are 22 pending investigations, which includes 10 from 2018, three complaints received were referred to the HPD's Professional Standards Office, and one complaint was withdrawn.

EXECUTIVE SESSION

At 2:32 p.m., Commissioner Levinson 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 Okinaga 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 3:25 p.m.

HRS 52D-8 ADJUDICATIONS

Contested Case Hearings for Louis M. Kealoha, Chief of Police (Ret.)

Cr. No. 17-00582 JMS-RLP (First Superseding Indictment)

Cr. No. 18-00068 JMS-RLP (Second Superseding Indictment)

The contested case hearings began at 3:25 p.m. and ended at 5:02 p.m. Refer to transcript for further details. Discussion and decision making was recessed until the March 20, 2019, meeting.

ANNOUNCEMENTS

Chair Sheehan announced the next meeting of the Honolulu Police Commission will be on March 20, 2019.

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ADJOURNMENT

At 5:15 p.m. Commissioner Levinson made a motion to adjourn the meeting. Commissioner Chang seconded the motion. By a unanimous vote, the motion carried.