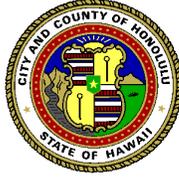


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

September 18, 2015

TO: CHAIR KATY CHEN, VICE CHAIR MICHAEL LILLY AND
MEMBERS OF THE ETHICS COMMISSION

FROM: CHARLES W. TOTTO, EXECUTIVE DIRECTOR AND LEGAL COUNSEL,
AND LAURIE A. WONG, ASSOCIATE LEGAL COUNSEL

SUBJECT: AGENDA ITEMS FOR THE SEPTEMBER 23, 2015 MEETING, **OPEN SESSION**

I. CALL TO ORDER

II. OLD BUSINESS

- A. Confirming the Date and Time for the October 21, November 18, and December 16, 2015 Meetings.
- B. Setting a recurring day and time each month for the meetings during 2016.

III. NEW BUSINESS

A. **Executive Director and Legal Counsel's Report.**

- 1. General Statistics: Complaints and Requests for Advice as of the end of last month.

REQUEST FOR ADVICE & COMPLAINTS

	Total	Responses, Referral, Withdrawn or No Action	Under Review	Under Review – Net change from last report
July 1, 2012 - June 30, 2013	500	498	2	0
FY 13 TOTAL				
July 1, 2013 - June 30, 2014	489	480	9	-6
FY 14 TOTAL				
July 1, 2014 – June 30, 2015	398	347	51	+1
FY 15 TOTAL				
July 1, 2015 - June 30, 2016	73	53	20	NA
FY16 TOTAL				

2. Fiscal Year 2015 Statistics.

The FY15 charts, attached as **OPEN-1**, give you an overview of the work required by the Commission and Staff. The takeaways include:

- Charts A and C: There was a reduction in FY15 of the number of Complaints Requiring Investigation (CRIs) (Chart A) and Requests for Advice (RFAs) (Chart C). However, this did not reduce our workload because of the continuing backlog of investigations.
- Chart B shows the number of CRIs investigated, ethics violations, disciplinary taken and the number of cases where corrective action was taken.
- Chart D reflects the four most frequent ethics topics in RFAs and CRIs for FY15: (a) use of city resources for the benefit/advantage of another (83), (b) personal or family use of city government resources (40), (c) financial conflicts of interest created (66) and (d) gifts to city officers and employees (59).
- Chart E shows there was a substantial decrease in the number of city officers and employees receiving ethics training in FY 15 compared to FY 13 and FY14. This is because in FY13 –FY14, Staff rolled out the initial mandatory ethics training program for all 8,500 personnel. We hope to begin the FY16 – FY17 all-employee training in spring 2016.
- The EDLC and Legal Clerk Krissy Bigornia continue to work on an evaluation of how long it takes RFAs or CRIs to be processed at the EC.

3. Current Fiscal Year Budget Issues.

We continue to work with the Managing Director to contract with Letha DeCaires for investigative and training services.

4. Fiscal Year 2017 Budget.

The priorities for the FY17 budget include:

- The addition of a second investigator, or, alternatively, increased funds to contract for investigative services to handle the 90 CRIs expected to be submitted in FY16;
- An increase in funds for consultant services (e.g., outside counsel, expert witnesses, hearing officers) and transcription services to cover the increased expenses due to a similar or increased number of contested hearings; and
- Use of inexpensive but valuable services such as a law school student and/or college volunteer to supplement staff.

5. Ethics Training.

- As part of the Commission's biennial mandatory training program for all 8,500 city officers and employees, Staff hopes to deploy a web-based ethics training program in April, 2016; and
- We are working with the Mayor's Office and the Department of Information Technology to make the board and commission member ethics training video available on-line.

6. Staff's Priorities for FY16 – FY17.

Here is a list of priorities at this time. Staff must remain flexible because much of our work is not within our control, such as the number and complexity of RFAs and CRIs that are submitted to us. Also, this list may change as a result of EC member comments and recommendations.

- Highest Priority:
 - Develop and conduct all-employee ethics training program;
 - Timely response to RFAs and CRIs;
 - Formulate and present Notices of Alleged Violations and contested hearings as required;

- Seek sufficient resources through FY17 budget to support necessary EC activities;
- Develop an operating plan with Commission; and
- Support Charter amendment to change salary process for EC's lawyer's salaries.
- Secondary Priority:
 - Report on improving prehearing and hearing processes;
 - Ensure timely filings of financial disclosures and lobbying reports in January 2016; and
 - Draft and advocate on important and necessary ethics legislation.

B. Request for a Motion to Set the FY 2016 Associate Legal Counsel's Salary Based on the Mayor's Directive.

Summary:

Thank you to the Commission and especially the members of the Permitted Interaction Group, Vice Chair Lilly and Commissioner Amano. With your diligent work, the EC is able to pay the Associate Legal Counsel (ALC) a reasonable salary in FY16. Due to restrictions stated in the Mayor's Directive (Directive) and other reasons explained below, Staff recommends that the ALC's salary for FY16 be \$84,696 instead of the \$85,416 the Commission voted for in June 2015.

Discussion:

At the June 2015 meeting the Commission set the ALC's salary at \$85,416, subject to two conditions. First, the Mayor's Directive needed to delegate the authority to the Commission to set the ALC's FY16 salary. The Directive authorizes the EC to set the ALC's salary. The Directive is attached as **OPEN-2**.

The second condition was that there must be sufficient funding available to pay the \$85,416. Under the Directive, the FY16 total ALC and EDLC salaries may not exceed the total FY16 budgeted amount for the ALC and EDLC salaries. The ALC's budgeted pay is \$80,376. The EDLC's budgeted pay is \$112,320, for a total of \$192,698 budgeted for FY16. This budget total includes the 4% (\$4,320) pay raise passed for the EDLC at the last meeting. Although I greatly appreciate the pay increase, I have decided to decline it on the condition that the \$4,320 will be paid to the ALC as part of her FY16 salary. This will bring her FY16 salary to \$84,696 (\$80,376 + \$4,320). This amount is \$720 less than the salary set by the EC at the June 2015 meeting. (The Directive precludes using any funds other than the budgeted EDLC and ALC salaries to pay the EDLC and ALC.)

As the Commission will recall, it determined in FY14 that the pay for its attorneys was significantly lower than COR deputies and other city lawyers with similar responsibilities and similar

years of relevant experience. The salary of \$84,696 will bring the ALC's pay closer to the equity goal. Hopefully, pay equity for the EDLC will be reestablished in the FY17 budget.

The Directive removes the need for the ALC's salary to be set on a step in the SR-26 range. The ALC pay may be anywhere within the range.

Recommendation:

Staff requests that the Commission set the ALC's FY 16 salary at \$84,696 retroactive to July 1, 2015.

C. Request for a Motion to Set the FY 2016 Salary of the Executive Director and Legal Counsel Based on the Mayor's Directive.

Please refer to the discussion in Item III.B, above.

Staff requests that the FY16 salary for the EDLC be continued at \$108,000, as long as the \$4,320 pay increase authorized by the Commission at the August 27, 2015 meeting is used to fund and pay the ALC's FY16 pay.

Should you have any questions or comments, please contact Laurie or me.