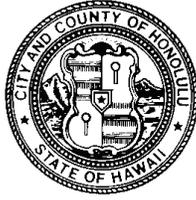


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR &  
LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Formatted Transcribed Meeting

Date and Place: March 18, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael A. Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A. S. DeCaires, Investigator  
Lisa P. Parker, Legal Clerk III  
Kristine I. Bigornia, Legal Clerk I  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Donna Y. L. Leong, Corporation Counsel  
Catherine Maki, Administrative Service Officer, (COR)  
Noel T. Ono, Assistant Director (DHR)  
Lila T. Tom, Division Chief, Classification & Pay (DHR)  
Jennifer Tobin, Branch Chief, Benefits, Research & Technician  
Branch (DHR)  
Vera Onouye, Division Chief, Employment and Personnel  
Services

[REDACTED]

Absent: Hon. Victoria Marks (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner

Transcriber: Gloria C. Takara

## **I. CALL TO ORDER**

## **II. FOR DISCUSSION: Status of the Minutes of the Open Session of the February 18, 2015 (being transcribed and formatted)**

## **III. OLD BUSINESS**

### **A. Confirming the date and time for the April 22, May 13, and June 24, 2015 meetings and setting a meeting during the week of July 20, 2015.**

Chairwoman: [...] 11:30, is that still good for everyone?

Ms. Amano: May I suggest that we defer this matter to when the other two Commissioners can be here as well?

Chairwoman: Okay.

Ms. Amano: Because they need to check their calendars and like everybody else. Because especially we're going to discuss a new meeting date in July which they know nothing about. And, I would recommend that we pick dates that can go as far to the end of the year as possible.

Chairwoman: Okay.

Ms. Amano: So, if we just defer it, then we can see—

Chairwoman: Well, let's just do April 22<sup>nd</sup>.

Mr. Lilly: Yeah. The ones that have already been set, I think—

Ms. Amano: They're set already.

Mr. Lilly: Yeah, but just reconfirming it.

Ms. Amano: I'm good.

Chairwoman: All right. So, no issues on April 22<sup>nd</sup>; reconfirming May 13<sup>th</sup>, and reconfirming June 24<sup>th</sup>. So, we'll defer—

Mr. Totto: Is it June 22?

Chairwoman: It's stated June 24<sup>th</sup> here.

Mr. Lilly: I have it down as June 24<sup>th</sup>.

Mr. Totto: Yeah, thanks.

Chairwoman: Okay. So, we'll defer the July date. Okay. So, going into new business, Administrative News.

#### **IV. NEW BUSINESS - A. For Discussion: Administrative News (1-2)**

Mr. Totto: Yeah. Let me start with the note on the complaints requiring investigation. Based on the number we've received so far in this fiscal year, fiscal '15, we anticipate having 125 cases, complaints filed that require investigation. This is the highest number we've ever had. It's 40% over the average for the last five years. It's 16% over last year's number. So, again it shows you the popularity of the Commission for taking a look at potential ethics violations. But it will require a lot of work by staff and any other resources we can garnish [sic]. But, I did just want to talk about that—garner, excuse me, not garnish.

The website's statistics have to be updated. I was unable to get the update and so the next item is the status of the Permitted Interaction Group Regarding Commission Lawyers' Salaries. So, I'll leave that to Vice Chair Lilly and Commissioner Amano.

#### **IV. NEW BUSINESS - Administrative News 3 – Report of Permitted Interaction Group Activities re Commission Lawyers' Salaries**

Mr. Lilly: You have your email handy. We had a real productive meeting with Donna Leong.

Ms. Amano: I can summarize from my notes. I guess, taking them in two parts with regard to the Assistant salary, I guess, this has already been for the budget for this coming year. And, I'm not sure what happened at the meeting that you had with the County Counsel. So—

Mr. Totto: Nothing. I mean, there was no change.

Ms. Amano: I don't know if you addressed that or not?

Mr. Totto: No, we didn't.

Ms. Amano: Oh, okay, because we thought you might.

Mr. Totto: No.

Ms. Amano: Okay. So, that's where it is, but with regard to your own salary, you know, our thinking—First of all, Ms. Leong thought that there might be an easier way to take care of this matter by way of delegation from Mayor to the Ethics Commission subject to the budget. And, so, I think the Commission has to discuss whether you want to go that route, you want to go that route temporarily, you want to go to charter amendment route, which would—There is some ideas about to go forward there. So, I think, that's what the Commission has kind of decide, and also Ms. Leong was kind enough to offer a Sunshine Law training to the entire Commission if we chose to undergo that. So, those are the three essential pieces.

Mr. Lilly: I might add that Ms. Leong was working on an opinion that I haven't seen yet. I don't know if it's ready, but the expected outcome was that she would inform the Mayor that he had the authority to delegate to the Commission the authority to set. We have authority to set your salary anyway, but that's within the charter, but to also set Ms. Wong's salary, so subject to the budgetary constraints.

So, I'm going to be interested from Ms. Leong what the status of that is and we think that if it's appropriate that separate from that, we should consider going to the City, particularly to see Mr. Soon, perhaps Commissioner Amano might do that to see if we could get a charter amendment so that Council would be under the salary Commission. But we would need to have the City back that. And, I understand that there's maybe some receptivity to that. So, that's sort of the next step should we do that.

Ms. Amano: So, I was hoping that we could, the group could get some direction from the Commission today and if you want to pursue it, we'll go forward and meet with Mr. Soon.

Mr. Lilly: So, on the first—Ms. Leong do you have any update on your suggestion?

Ms. Leong: Thank you, Vice Chair Lilly.

Mr. Lilly: And, I do want to say we had a very cordial meeting. It was very productive from my standpoint, and I think we covered a lot of items and learned a great deal. I'm still learning about personnel.

Ms. Leong: For the record, Donna Leong Corporation Counsel. I want to thank Vice Chair Lilly and Commissioner Amano for meeting with me and taking the time to discuss this issue with me. I just wanted to maybe embellish on some of the things that Commissioner Lilly and Amano said.

With regret the opinion of Corporation Counsel about the setting of salaries, the Ethics Commission staff is not quite ready. However, the primary analysis has been done, and we will be issuing an opinion to all interested department agencies and the Commission to the effect that it is the Mayor as the appointing authority of the employees of the City, who has authority to set the salaries of the Ethic Commission's staff.

I'm cognizant of the charter gives the City Council the authority to set the salary of the executive director of the Commission and in an ordinance the Commission—the City Council has asked the Commission to set the specific salary, so that's how the executive director's salary is set.

As I mentioned to you, I have heard that there was a brief conversation between Chief of Staff, Roy Soon, and executive director Totto with regard to a potential way to address the setting of the salaries. I have heard that—it was reported to me that Chief of Staff, Staff Soon had suggested a Salary Commission might be setting the salary that would be charter amendment. In discussing this with the Chief of Staff he clarified that he would not reference the Salary Commission. He did say, however, that the Charter Commission amendment might have to be requested in order to change that structure. And, I would say that is a potential mechanism by which the Ethics Commission could be give the authority to set the salaries of the Ethics Commission step. However, as I discussed with you a way that would be, in my mind, easier is, would be for the Mayor to delegate to the Ethics Commission his authority to set the salaries of the Ethics Commission's step. He does that in other situations such as, for example, for the deputies corporation counsel, he delegates to me the authority to set their salaries, and he could do that the same subject to budget restrictions. It's also to budget restrictions as I set forth in my (inaudible) memo to the Commission. But it's subject to the budget restrictions. He does that in the Mayor's directive that is issued to the (inaudible) June of each year.

So, that would be, in my mind, easier and it would affect, it could be effective, commence July 1<sup>st</sup> of this year, which is the next fiscal year.

The Charter Commission has met once, I believe they are meeting again today, their second meeting. Their meetings will not conclude and the recommendations to the Office of Elections will not be submitted until August of 2016. So, any charter amendment would be voted—proposal would be voted upon in the General Election in November of 2016, which means that amendment would not be effective until the following—I don't know because with that General Election or, you know, January 1<sup>st</sup> of 2017. I think it depends on the language of the charter amendment. They may not make it effective until the following fiscal year because it's difficult mid-stream in a fiscal year to change methodology.

So, all due respect to the Chief of Staff, I would suggest that the Mayor's directive might be faster, easier, it doesn't require the election of a General Election to affect that change. I will inform you he has authorized me to do so that I spoke with the Mayor about this concept, about delegating to the Ethics Commission through the Mayor's directive commencing the next fiscal year, the authority to set the salaries of the Ethics Commission's staff, and he is willing to consider that.

Can I ask you when you—you say step, are you including the exec?

Ms. Amano: That's entirely separate.

Ms. Leong: Right. Because under the charter.

Ms. Amano: Right.

Ms. Leong: That authority is given to the City Council which is then by ordinance delegated to (inaudible)—

Ms. Amano: Okay.

Ms. Leong: Classification. I mean the excluded—It would probably be the excluded exempt employees currently just Roy's position.

Ms. Amano: So, when he says staff, are you including or not including Kurt?

Ms. Leong: I am including Kurt.

Ms. Amano: Okay. That's all I needed.

Ms. Leong: And, in fact, the other staff people, except for your PSC contract are civil service.

Ms. Amano: Yeah.

Ms. Leong: So, his directive does not touch that because that's covered by collective bargaining.

Ms. Amano: Okay.

Ms. Leong: So, we're basically talking about excluded exempt employees not including Mr. Tutto, as executive director.

Ms. Amano: Understand.

Ms. Leong: That would be covered by the Mayor's directive.

Chairwoman: And, how long would be the directive be in effect? Like, is it for one fiscal year and it has to be addressed again or what?

Ms. Leong: The directive is about four, five pages long. And, so it covers excluded exempt employees and there are a whole bunch of different excluded exempt employees which I'm so glad that human resources department is here because they could explain to you all the different categories of excluded exempt. In my cute little world, it's the deputies, the deputies corporation counsel, and it is different from every fiscal year because it is basically the document based upon which he measures HR and budget. These are the budget restrictions and the HR—

Chairwoman: So, every year the Ethics Commission would have to get a new directive from the Mayor?

Ms. Leong: As I do.

Chairwoman: And, if the Mayor doesn't give the directive—

Ms. Leong: He retains the authority to set the salaries because he is the appointing authority. So, that would be my suggestion. As I said, the Mayor is willing to do this. He would—he has authorized me to tell you that he is willing to

do that. So, that's an alternative to the charter amendment that had been suggested to.

Mr. Lilly: I appreciate that because, I think if the Mayor does that, as you know we passed a resolution last time, that it is our position that we have the authority to set the salaries, and so if the Mayor does delegate that setting salaries of staff to the Commission, then it avoids any kind of conflict between how we view our authority and some people in administration view it. So, I think it's a positive and constructive thing if he does that, then we don't have to address the conflict of how we view it.

The second part of it is really should be pursued the charter amendments so the staff is under the Salary Commission and really, I think we need to make a decision at one time, or we could do it today, whether we want to pursue that.

Ms. Leong: My (inaudible), even Commissioner Stephen Silva wanted to say something.

Mr. Silva: The way it's set now, if it's going to be an annual thing, we're going to go through this battle over and over again?

Mr. Lilly: Whether it's a battle or not, that remains to be seen. But—

Mr. Silva: I know. Could we do it both ways? Put the Mayor's thing down now and put the charter one in second, put two requests—

Mr. Lilly: Yeah. That's the idea—

Mr. Silva: And then by the 16<sup>th</sup> it'll become—hopefully—

Mr. Lilly: Right, exactly.

Ms. Leong: Let me say, you know, as my authority that's delegated to me by the Mayor is subject to budget restrictions, so would the Ethics Commission.

Ms. Amano: Yeah.

Ms. Leong: They're all subject—So, you know, you would be given certain parameters as I am, and we are subject to that.

Mr. Lilly: So, that's how we view it, Commissioner Silva—

Mr. Silva: Yeah.

Mr. Lilly: We like the idea—I mean, I like the idea that the Mayor may delegate to us, so that avoids any kind of conflict in our resolution—

Mr. Silva: For now—

Mr. Lilly: For now. But should we pursue the charter amendment, that's the issue, and would you like to address that?

Mr. Totto: Yeah, if I could. I think it's a good idea to pursue the charter amendment because one of the problems, we have a pricing, a significant pricing differential between the associated legal counsel as an SR-26 whose top pay is set now about \$85,000. She's not at that, but that's the top pay you can reach and significantly below what an (inaudible) corporation counsel deputies make. So, it's apples and oranges. We go the Salary Commission and presumably that can be removed. It'll be apples and apples. I think it's—So, for the ALC position, I think it's appropriate to focus on the Salary Commission. As for the EDLC position, I think it's also appropriate to focus on a charter amendment for the Salary Commission. Because I've been here 15 years. My salary has never been easy to determine. I'm supposed to be on a range, the EM-7 range, which I think if I recall is about \$90-140,000 range, and personally I felt that I should be within reasonable range of what other attorneys in the City are doing at my responsibility level and so on for what they're getting paid because to me it makes a lot of sense to have an attorney, even though I do a lot of management administration who I'm the one attorney outside of the normal scope of attorneys, except for maybe for Lynn, but she's civil service. Sorry to pick on you and that makes all the difference in the world because I believe it is a civil service position. Is that correct?

So, for sake of uniformity, and also I've never had an easy time trying to get pay increases and it's also very difficult. If my range is higher than what the directors get, it really doesn't make sense to have me on range like that. I say why not—I should be in with all the rest of the lawyers.

So, Salary Commission, I think would be good for both the ALC position and my position. So, the type of language we probably put is, you know—It's easy to make an amendment along those lines, to cover the attorneys that work in the this office.

The idea about the short-term asking for the Mayor to do the delegation, if I heard Ms. Leong correctly, she said that could be effective July 1, I would ask that could it be effective earlier than that because we will have this fiscal year '15 situation where—I'm speaking out for in the ALC position, where we file it all the directions that were given. We complied with every request. We went through every step that we were aware of at the time and the Commission, at least from certainly from the ALC and the EDLC's point of view, the Commission had apparent authority to increase our salary yet and to use fiscal year '15 savings to do that. So, anything—

(pause)

Jack of all trades, master of—I can at least (inaudible) off the floor—

Ms. Leong: You're a young man.

Mr. Totto: I'll need a massage later, but—

Mr. Lilly: Is that a possibility, Ms. Leong?

Ms. Leong: I thought about that, and the reason I didn't suggest that because it seemed to me that the executive assistant to the Mayor's letter to the Ethics Commission and her appearance at the last meeting is basically the position of the Mayor. She acted on his behalf with his authority. She fully understood the situation and is apprised of the various Commission meetings on the subject what had happened, and it just seemed to me she had waived the whole thing and it was basically the budgetary restriction that she imposed on the Commission.

You know, if the Commission had unlimited funds and she might have made a different decision, but weighing everything it seems to me on that behalf of the Mayor, she already made the decision.

Ms. Amano: Can I ask when the revised position description for Laurie has been done?

Mr. Totto: No, it has not. It's still the ALC, Associated Legal Counsel. Because at this point, according to Ember Shinn's memo it wouldn't make any difference. She could be the associate or assistant director of the Commission and that would be an EM position according to the memo as I read it, Ember Shinn's memo, that would mean she have to go in to whatever the entry level step is and that she would only be allowed to have

increases equal to and at the same time as other EM, whatever she said, unless an EM-3 would be allowed. So, I don't think there's anything to gain there.

Ms. Leong: Correct. I thought heard HR say that there is something to gain.

Mr. Totto: If they would like to explain that, I'm not sure—

Mr. Lilly: That's how I heard it that if we submitted a revised position description that showed that her responsibilities were higher—

Mr. Totto: Right.

Mr. Lilly: ...that she could be reclassified at a higher level.

Mr. Totto: Correct. If she's reclassified at a higher level, my understanding is that if it is entry level, she go in at \$75,000, which is less than she's paid now. And, I've asked this, an email to DHR, and I haven't had any responses, so maybe you all can fill us in.

Mr. Ono: Just to clarify, I think at the last meeting when we talked about, remember I came up and said a few words. Chuck talked about the revision of the position description. That is a process so you would write the job description and send it to us and we classify it. But, you know, there's problems with the process in that, first of all, you have to change in the job of what she's doing now and based on her current job description and we have to show a change. The change has to be a substantive one where she no longer means the concept of the class, but working at a higher, perhaps greater scope of complexity in the job. ‘

Now, but then, you know, like Chuck explained the SR, there's limited— You're looking really beyond, looking at a bay as comfortable as doing an attorney kind of thing, it's really not going to address it. The payroll will then kick in even if we were classification division, Lila, then deem that it is higher then it currently is, including the SR. Now, it's an not automatic thing where it would be an EM. We will still have to determine whether it would be an EM.

And, again, it will automatically kick in as to what compensation actually going to pay. So, if your intent is really to compensate Ms. Wong at a higher salary (inaudible) to other attorneys, then this process may not necessarily work. And, that's thing, there is a process, but it doesn't always

work to what you want. And, that's why I kind of try to caution you that, just because we're talking about (inaudible) job description, it's not an automatic thing—even she gets it, the money making (inaudible) of the raise, so you're still a little setback to square one, you're all going to be unhappy of how the process works, you're not going to be happy. So, I think—

Mr. Totto: I'll call you then.

Mr. Ono: Then I'm not going to be happy. But, you know, there is a process and, you know, we're always willing to discuss it. We've had these conversations with Mr. Totto.

Mr. Totto: Yeah. And they're doing a good job of showing me how—You know, again, it is apples and oranges, and the best thing to do is try to get them to the coverage by the Salary Commission, I think, and be treated as the attorneys in the City and, you know, go from there. I agree with Deputy Director Ono, but there is a difficulty. Number one, you don't know what the process is going to come out, if it's an equation that they have to work on and it's highly dependent on what we put on that description and justify to the staff of DHR and then we still may end up where she's an SR-28 or EM-3 or whatever, where the salaries are still not the same as they are for the attorneys, for the deputy corp counsel and deputy prosecuting attorneys and even the Office of Counsel Services.

Mr. Ono: I don't think that—by adding, prior higher level duties to Ms. Wong, it's—could be taking away from perhaps Mr. Totto's duties or—essentially you have a small organization, so if you take away too much duties from the boss position, it could seriously potentially impact him and we may knock him down to EM-5.

Ms. Tom: Noel Ono did not discuss this with me, okay.

Mr. Ono: No. I'm just telling how it works. That's generally how classification works. So, not that it's going to happen, of course, because I probably need Ms. (inaudible) position to do that. You know, theoretically if you do remove duties from the boss level and you take away some of the decision making or some of those kind of thing, it could impact. I mean, that's the kind of thing we look at, all the different practice, not that it would happen here, but, you know—

Ms. Leong: So, Commission, really, if I may, just couple things occurred to me. One, is I just think that just from the general personnel perspective—And, Noel can tell me I'm totally wrong in this because like you I'm so totally learning the City personnel stuff, but it seems to me a dangerous precedent to change a position description in order to retroactively justify a salary increase, just dangerous from a personnel perspective, not even talking about any particular person. Just on policy basis.

The other point I'd like to make is as the executive assistant to the Mayor, stated in her memo, she is not thinking appropriate comparison to compare the salaries of the legal staff here and I'm taking out the executive director's authority because that's not comparable to deputy corporation counsel, just legal. But it's not appropriate to compare with the deputies because if you were to that truly, you would have to understand, and I feel I'm restating what I said back in November of 2014. You would have to understand my thought process, my methodology in adjusting the salaries of the deputies at corp. And, they would have to show the comparison between who they are, what they do, what my organization is, all the stuff that they deal with and compare it against the—

Mr. Lilly: We did some of that.

Mr. Lilly: Mr. Tutto did that. We did that.

Mr. Lilly: But we analyzed that. We compared, we analyzed and we came to a decision in this Commission as to her salary based on an assessment that was predicated on information that we got from the City.

Mr. Lilly: He had a great deal of information. This wasn't done in a vacuum— This Commission didn't do it in a vacuum. We assessed a great of information that Mr. Tutto had acquired to compare the level of work that our associate legal counsel did compared it with other attorneys.

Mr. Tutto: So it's clear. I'm not suggesting that we are going to burn dog every attorney, corporation counsel. I look at it more like corporation counsel, Office of Counsel Services, the prosecuting attorney, they all have very different jobs that they do for the City, but they are legal jobs. You might say, well, Office of Counsel Services only deals, you know, only drafts resolutions and bills. They don't really do much in a way of giving advice or they certainly don't litigate anything or go to administrative hearings. Each one is different. And, I would foresee that our office would be looked at as we don't have to be identical. Just like the prosecutor's office. I

know of, at least, traditionally, I don't know about Keith Kaneshiro, but I know Carlisle, they would bring deputies in regardless of experience, they bring in pretty much at the same price, at a low rate. I shouldn't say price, at the same salary and then as they advance and if they advance in their skills and expertise and move higher into different types of cases that they've tried, their salaries went along with that.

And, so there were different ways that each area sets things up. But I was hoping that within the budget range that the Commission would have the authority to determine the appropriate salaries for the ALC and for myself and who knows if we ever get another attorney.

Mr. Lilly: Unfortunately, it's kind of moot because we have two different opinions about that. One, is Ms. Shinn's and one is this Commission.

Mr. Totto: I'd like to address what Ms. Leong said. You recall that Ms. Shinn stated she did not look at anything that occurred before the Caldwell administration. That's January of 2013. And half of the time we were working under directions from corporation counsel and from the Department of Human Resources at that point, and, again, that just goes back to say. I think it's a reasonable request to ask the Mayor if he would also delegate to this Commission a review of Ms. Wong's salary. Because I really think it's unfair should reduce her salary at the same time, the corporation counsel, the Office of Counsel Services and the prosecuting attorney's office deputies are all getting increases. I mean, we're going in the opposite direction. But, you know, I can be as compassion as I want to about this, it's up to the Commission whether you think it's appropriate to at least ask the Mayor to look at that. Because I really don't think Ms. Shinn was fully informed.

Mr. Ono: I agree with that.

Mr. Totto: I think at this point, if the Commission wants to give some direction to the group, they can do that or if it wants to rely on the two Commissioners having heard the discussion. You know, it's really up to them if they would like specific direction or just kind of a general—

**Mr. Silva: Well, I think we can resolve that we ask that he include in his delegation authority for this past fiscal year. That's my motion we request that he include in the delegation this fiscal year.**

**Chairwoman: Is there a second?**

**Mr. Lilly: I second.**

**Chairwoman: All in favor?**

**All present Commissioners except for Amano: Aye.**

**Chairwoman: Did you vote?**

**Ms. Amano: No. Did you hear me vote?**

**Chairwoman: No. I just want to make sure.**

Ms. Amano: Seems to me the resolution already gives the authority to do what we need to do. The question is does the Commission want to do that? Because I hear what the corp counsel has already done. I hear what the Mayor is offered through her effective July 1<sup>st</sup>. I mean, if we want to support the idea our exec is proposing, then we should just go talk to the Mayor here and just tell this is what we want and see if he is going to say yes or no. That's what it is. I mean, it's not fast.

Mr. Lilly: Well, the resolution does, I mean, it makes that request.

Ms. Amano: The resolution—

Mr. Lilly: The resolution that just actually got passed that request that he include that as part of—Because he hasn't done it yet. And, Ms. Leong hasn't actually sent her opinion up, I gather, although there's been some informal discussion.

Ms. Amano: Well, what is your motion?

**Ms. Lilly: My motion is in that in process, that the Mayor be requested to include in that delegation for next year authority for this year. That's a request from the Commission.**

Ms. Amano: So, if we pass this motion, then who does what?

Mr. Lilly: It's a resolution from the Commission that would be delivered, right?

Mr. Tutto: Yeah. It would be for the group to determine on how to deliver that, and I think one of the ways is, like you said, ask the Mayor if he'll do that.

Ms. Amano: I think it's faster and effective if we go and talk to the Mayor under the resolution that was already establishing our group. So, we have the authority from what I can read, and—

Chairwoman: I think we'll just clarify in what the Commission is asking—

Ms. Amano: No, no, we're not. I just ask what the motion was and you said the motion would effectively be x, y, z, so that tells me that there's a document that comes out and get sent to the Mayor versus you and me making an appointment with the Mayor right now and going to talk with him about including—

Mr. Lilly: But now we can go, if that's the way you want to do it, have you and me do it as part of the (inaudible)?

Ms. Amano: Yeah.

Mr. Lilly: You and I can go to the Mayor, we could go see Mr. Soon, which may be just as effective and—

Ms. Amano: I think (inaudible)—

Mr. Lilly: And convey to Mr. Soon that our Commission has requested that the Mayor delegate for this year.

Ms. Amano: Okay.

Mr. Lilly: I mean, without this resolution, we don't have a directive from the Commission, if we want this year included.

Chairwoman: Ms. Leong only talked about last year, not this year. So, the resolution passed to have a request for this year. And we're going to have a discussion about how we want to do it if we can do it in the form of, as you just said, approaching with you two Commissioners, as part of the (inaudible).

Mr. Lilly: And, I'm happy to go meet with the Mayor with you on this issue.

Ms. Silva: Might speed up the process.

Mr. Lilly: So, we need a resolution if they meet with the Mayor on that issue.

Mr. Totto: You can leave it to the discretion of the—I hate to use that term—

Mr. Lilly: I know—

Mr. Totto: Keep calling it the (inaudible).

Chairwoman: So, we're also accepting, sorry, the Commission has to agree that—  
So, all we did was discussed the current year as part of next year, at the same time, an agreement next year's directive and then (inaudible) Salary Commission.

Mr. Lilly: Well, that's a step. Do we want to request a charter amendment be made to include staff as part of the Salary Commission.

Mr. Totto: I don't think you need to have that today. I mean, you have it as a talking point already.

Mr. Lilly: So, we got plenty of time.

Mr. Totto: Plenty of time, and I think it's appropriate to talk—for the group to talk to whomever they think is good for that.

Mr. Lilly: Okay.

Mr. Totto: And, you folks will let me know, we'll put it in the agenda for next meeting or whatever and then or we can give a little bit more information about what kind of change will have to occur in the charter and, you know, that type of thing.

Mr. Lilly: Okay. Are we done with that—

Chairwoman: So, that vote, Commissioner Amano has to record, yes or—

**Ms. Amano: Abstain.**

Chairwoman: Okay.

Mr. Lilly: Okay.

Ms. Amano: We'll wait for the resolution then before I call to make the appointment?

Mr. Lilly: Well, we don't have to. You and I can talk about it with the Mayor. I don't think we have to (inaudible). It'll be in the minutes. But it was passed, so—

Ms. Amano: Okay.

Mr. Lilly: We have people here waiting on the executive action. Do we need to go into executive session. Is that what the [REDACTED] department was here for executive—

Mr. Totto: Yes.

Mr. Lilly: Do we want to go into executive session, so they can move—How's your time?

Mr. Totto: If I can I just—

Mr. Lilly: You're okay? We don't want to hold you up—

Mr. Totto: Search for the investigator—

Mr. Lilly: Well, I didn't know if you guys were here for that. Oh, they're here for No. 5. Okay, okay.

Mr. Totto: Yeah.

Chairwoman: Okay. So, should I just skip to No. 5, then?

Mr. Silva: Yeah.

Mr. Totto: Yes.

#### **IV. NEW BUSINESS - For Discussion: Administrative News (5) Report on Filling Investigator III Position**

Chairwoman: Okay. The part on filling the Investigator III position.

Mr. Totto: And, I appreciate the DHR folks being here. And, also before we move off the issue about the attorneys' salaries, I really appreciate both the Chair, Vice Chair's work and Commissioner Amano's work in this because it takes a lot of time, it takes a lot of grace to work on these tough issues

with the administration. I really appreciate it both personally and as head of the office.

Ms. Amano: It was extremely difficult to meet with Ms. Leong. I can't tell you how difficult it was.

Mr. Totto: Okay. Now, onto Item 5, report on filling Investigator III position, and I do have a report on—So, just to remind us of background, on January 9<sup>th</sup>, DHR had sent a memo through corp explaining personal service's contract position should be only for a year for the charter and requesting us to immediately start recruiting to fill the position Investigator III with a permanent employee. At the end of January DHR was good enough to send us 47 applications for Investigator III that they had collected from a year prior. I reviewed the applications to determine whether the candidates had experience and skill in investigating allegations of employee's misconduct. Unfortunately, only three had that experience. So, I also examined for overall investigative experience. This resulted in ten potential candidates out of that group.

Because the applications were a year old, we asked the ten applicants whether they were still interested in working for the City, would they be interested in coming to work in our position and we told them about the job duties, class specifications and pay and so on. Five responded that they were interested. And, they sent us updated resumes, letter of interest and investigative report writing samples. Of the three who had experience that I mentioned before, with employee investigations, one of them withdrew at that point because he felt he wanted to stay at his current position.

Ms. Amano: So, were all three in the five?

Mr. Totto: Yes. All three were in the five.

Ms. Amano: Okay.

Mr. Totto: So, we're down to four, four candidates. And, we also been advertised on Craig's list, Hawaii Jobs Engine, the Commission's Facebook page, another Facebook page frequented by investigators and former HPD officers. This just trying to see if we could shake the tree a little bit more and see what we might be able to find. We also sent notices and the information about the job to the Police Commission, the Liquor Commission, the prosecutor's office, because they have an investigative division, and the investigative division of the attorney general's office.

Each office said they would post the notice, and we used word of mouth. These efforts produced another ten candidates, unfortunately, none of them had the experience or skill to be put on the top finalists group.

Of the four candidates, the mainland candidate withdrew just before it was for interview. He said for the money offered, he couldn't see, he couldn't justify relocating to Hawaii. So, he left it at that point. And, unfortunately, he was one of the ones who had employee investigation experience because he had been in the police department where he worked in internal investigations, internal affairs and investigations for some time.

The interview panel, so we still have the three candidates and the interview panel consisted of Laurie Wong, myself and Dan Hanagami, who is a former HPD major, and he's the chief special agent of the AG's investigation division. We conducted in depth interviews, each was at least an hour long, one of them longer—

Ms. Amano: This is for three people?

Mr. Totto: Yeah. For the three candidates. Again, only one of those three candidates, only one of them was on the prior—

Ms. Amano: I guess, my point is that nothing shook out of the woods from all the other—

Mr. Totto: I mean, we got ten more people applying, but some were young attorneys that type of thing, people really didn't have the background.

So, unfortunately, the highest scoring candidate had a 63% grade, where we had asked for 80% as the threshold but a common threshold is 70%, wasn't close. So, what we did is we each of us independently wrote up our, did our scoring and then we basically added the three together and divided by three and that's what we ended up. That was the highest grade.

One of the most disconcerting things was none of the applicants, even the one who said he had done prior employee investigations, had even a basic knowledge of employee's rights or the principle of just cause. And, those are really critical—when you're undertaking investigations, not only employees, but any government official. I'm sure DHR can confirm, understanding what the union contracts require and being sensitive to those as we conduct an investigation really important.

The other thing you might be involved isn't something that somebody can just learn. This Investigative III position is for someone who can handle the most complex cases independently and should understand the basic principles of just cause and, you know, an employee rights.

So, my next point here is you will—I plan to write to DHR and put this in writing for them because the alternative we have now is to request perhaps a recertification so we can use a personal service's contract for some period in the future. One idea that we're bouncing around, but have to talk to HR about is, I think putting together another applicant list. I don't know when they do that. I don't if it's based on demand or if there's a cycle. But we certainly work with them about how we could do that.

I think overall, Chief Hanagami was very helpful in this. His experience—I can't remember how long he's been at the AG's but quite a while. I think he has 50 investigators at the AG's. Only three of those 50 are civil service employees. And, I asked him about that and he said well because everybody who has experience in investigating an employee conduct issues is probably coming out of HPD because they did internal affairs there. Now, they have other skills besides that because it a tour of duty if you will. And they may also very good at homicides or drug related offenses or who knows because the AG has very broad powers in broad areas if they get involved in it. But the difficulty is we end up with a really small applicant pool, if you remove HPD, those are folks that need to be on personal service contracts on the 89-day hires. And, there's really not—Okay. I'll turn it over in a minute to Ms. Onouye, but that's what we found in our review.

I know that compliance and ethics industry is growing but not in Hawaii very fast, and frankly, I know HECO investigator who came from the FBI was paid almost twice the salary offer for this position. I know, government is going to be able to match private. But I wanted to give you a little bit more background about what we were finding.

Ms. Onouye: I'm the, I guess, Division Chief for the Employment and Personnel Services Division. We're tasked with recruiting for civil service positions—Oh, Vera Onouye with the Department of Human Resources. Yes. I just wanted to let you know that the applicants that we have sent over to Mr. Totto were candidates for civil service positions and we referred them to his exact position just by way to provide him with some place to start with, I guess, give him an opportunity to have folks that have been found to be qualified for investigative positions, but it wasn't

specifically necessarily for employee investigations, but they had been qualified and found qualified established to the eligible list for Investigative III jobs.

I'm sad that it didn't work out, they weren't able to find somebody that was to your liking. What we tell the departments and this happens, and it happens with us sometimes is well, we're looking for somebody that has this level of experience because we want them to hit the ground running. And, ideally, you know, we would want to find those guys. But we don't always find them. And what we do for ourselves as well as what we tell other departments to do, in the event we can't find somebody at that level you want, possibly consider a lower level position, and for some of our City agencies, they want this level of—say an engineer and only this level, and sometimes they'll go for five years without finding someone. What we have been telling the department to do and we do this ourselves is downgrade the positions to a lower level position for which more people will be found qualified and train them. And, I don't know if that will work in your situation. You sound like you have a heavy case load that it could possibly work where you can't find the population of folks that are qualified at this Investigative III level, possibly you might find them at a II or I level.

Chairwoman: Okay, thank you. I'm (inaudible) Commissioner Yuen has to leave shortly before 1. I'm sorry?

Ms. Onouye: Can I say one more thing?

Chairwoman: Okay.

Ms. Onouye: You know, as far as the Investigative III listing, we don't recruit for every year and there's no like single kind of recruitment for it. We do recruit on as a needed basis and Chuck so happens be so lucky that we have a recruitment that's ongoing right now. It will be closing tomorrow actually, but the examiners will still have to go through the list to determine the qualified candidates.

Mr. Totto: How many?

Ms. Onouye: Oh, gosh, they're so busy right now. I can't even venture a guess.

Mr. Totto: Range of time maybe?

Ms. Onouye: Hopefully within 60 days. I don't know, probably be faster than that, but I can't venture a guess at this point.

Mr. Lilly: Should we continue on a personal service contract until we find someone that's qualified?

Chairwoman: I guess, we can't find anyone. But the difficulty will be still finding somebody free of personal service's contract.

Mr. Lilly: Okay.

Chairwoman: Commissioner Silva?

Mr. Silva: Yeah. I got a question. Regarding that extension, okay, and you were talking about training somebody for the job. I think it would be ideally if we could get the extension because we're asking for another investigator and trainees at a lower level person while the higher level person can be doing the training. Because these guys can't do the training. You know what I mean, we cannot come in with the lower level person expect to resolve or solve complaints, not at a lower level. Not the way things are coming right now.

Ms. Onouye: Not right away.

Mr. Silva: I beg your pardon?

Ms. Onouye: Not right away, but eventually they work up to the –

Mr. Silva: Yeah. If you can get a lower level one working with a higher level and that higher level one can train the lower level one and eventually we can get off this contract business that's causing the problem.

Mr. Tutto: It's kind of Catch-22 in that we can have one or the other. We can't have both.

Mr. Silva: Well, how we can get—If we can't find somebody at the level III sounds like it's pretty impossible at this point. You know we're going have to wait 30 to 60 days to try and find somebody, and that list might not work out that either. To get somebody with a higher level to take care of our needs especially when he says we're 40% higher than we were, you know what I mean?

Chairwoman: Okay, thank you very much. Since Commissioner Yuen has to leave shortly, just going to make a suggestion that we move into executive session. **Can I have a motion to move into executive session.**

**Mr. Silva: Second.**

**Chairwoman: Making a motion—**

**Mr. Silva: You're making the motion—**

**Mr. Totto: So move.**

**Mr. Yuen: Second.**

**Chairwoman: All in favor—**

**All Commissioners: Aye.**

Chairwoman: We're now in executive session.

EXECUTIVE SESSION DISCUSSION REGARDING ITEMS V.A AND B  
HAVE BEEN REDACTED.

**Chairwoman: Can I have a motion to move back in to open session, please.**

**Ms. Amano: So moved.**

**Mr. Yuen: Second.**

**Chairwoman: All in favor?**

**All Commissioners: Aye.**

**IV.D. NEW BUSINESS – For Action: Request for a Motion to Approve and Adopt Staff's Proposed Guidelines on City Support of Credit Unions whose Membership Includes City Employees**

Chairwoman: So, the credit union is going to be deferred?

Mr. Totto: Yeah. We can open that up because I don't know—

Chairwoman: So, the credit union coming off?

Mr. Totto: Deferred.

Chairwoman: Deferred, sorry. Okay. So, going to Item 4(B).

**IV.A.4. NEW BUSINESS – For Discussion: Administrative News – Budget Briefing to the City Council**

Mr. Totto: Oh, I'm sorry, if we go to Item 4(A), that's the budget briefing to the City Council. Just very briefly, wanted to say that I gave them—I apologize I should have made copies of the testimony, but it's short. Testimony to Council saying basically what the difference was between our increased budget for fiscal year '16 versus '15 and also that is additional consulting/investigation monies available and then moved on to basically tell them about this growth in complaints requiring investigation and told them that having checked with the Police Commission, HPD's professional services office, that's internal affairs and the AG's investigation division that when those folks do administration investigations, they assign about 25 cases per investigator per year. So, obviously if we have 125 in a year, we're way past being able to do that, so we'll have to take do a lot of triage and prioritizing and so on and send some cases back to the department, whatever we can do. Hoping maybe somebody would take up the idea that council itself would ask us if we could use some help.

The difficulty and, I think I can say this in open discussion is the Chair of the Budget Committee is under investigation, that's in the media, has been in the media, so it would be totally inappropriate for her to say, oh, how about if I gave you couple of investigators, you know.

So, I still have ideas about going and talking to our subject matter Chair who is (inaudible) Ozawa, and I don't know if any of you know him at all, but see what he thinks.

Chairwoman: All right. Thank you.

Ms. Wong: Sorry, I think we forget the summary of the executive session motion that was past. I think we have just general terms.

Chairwoman: Oh, yes. Do I comment in this agenda?

Ms. Wong: I guess, we could just say in general terms that if you look at exec session memo agenda Item 5(B), you could just say that during exec

session the Commission considered that there was a request from the City Department asking the EC to remove and replace the a Commission staff member in an investigation and that the Commission decided not to—

Ms. Amano: Laurie, can I ask you, is this phrased by them or phrased by us? Because they were real specific that is unique to this case.

Mr. Totto: Oh, this is phrased by me because it's got to be in the open. The agenda has to be made public, so that's why I removed the person's name and the department. Again, trying to—always have this balance between confidentiality and also being specific enough so people would know.

Ms. Amano: When it says in any investigation of the department or it's personnel, that seems very, very broad.

Mr. Totto: No. That is in both letters.

Ms. Amano: And that's what they said?

Ms. Totto: Yes.

Ms. Amano: But, I thought he said it was specifically to this case.

Mr. Totto: No. Actually, both [REDACTED] letter and [REDACTED] letter does say that. I can find the language if you're interested. Because I looked at very particularly.

Ms. Amano: Well, could I just say that I thought our decision was specific to this case and these circumstances. I don't think we made—

Mr. Totto: And, I think that's appropriate to have it focused on what the discussion was about because there might be somebody at [REDACTED] who is her best friend in the world and, you know, who owes her \$500 or something, I don't know.

Mr. Lilly: I say **with respect to 5(B) that the request that of a City department asking the Ethics Commission to remove and replace the Commission's staff member in any investigation, department or its personnel was denied.**

Mr. Totto: Or under the circumstances presented, would that help?

Ms. Amano: I think it was considered and denied.

Mr. Lilly: Yeah, **considered and denied. I agree with the phrase under the circumstances the case was considered and denied.**

**IV.B. – NEW BUSINESS - For Action: Request for Motion to Approve and Adopt Staff’s Proposed News Release Policy.**

Chairwoman: Okay. So, moving on to Item 4(B) for action of request for motion to approve and adopt staff’s proposed news release policy. Everyone got a copy of that proposed news release policy which was based on wording in a previous proposal that the Commission reviewed. Is there any questions on that?

Ms. Amano: I was thinking that a policy should also address the kinds of things that would be subject to a news release or a press release and ours doesn’t say that. It does address process, but it doesn’t say these are the kinds of things would be (inaudible).

Mr. Totto: I left it general just because I didn’t know really necessarily. I could flush out to some degree by saying.

Chairwoman: We want the policy to apply in every instance? Any particular instances?

Ms. Amano: Give guidance as to what’s going to be released by press release or not. Specifically, let’s say we have a rather detailed opinion, lengthy. We want to issue that by way of (inaudible). It’s simple enough to say that the Ethics Commission issues this opinion versus something more elaborate since it’s already referring to an experience.

So, I don’t know, but that’s what I’m thinking. I don’t mean to belabor this meeting.

Chairwoman: I don’t quite understand what you’re saying (inaudible). You want the policy to articulate a particular example on how news release would like?

Ms. Amano: Well, for instance the very first paragraph says that the purpose of the news release is to summarize and communicate to the public important positions or actions taken by the Commission as well as the impact on the

public and integrity of the City government and City officials. That's very, very broad. But, I don't know.

In your mind, what is the purpose of news release?

Chairwoman: Unless to summarize that the cases that come out of the Commission and be able to articulate it in layman's term to the public so they can understand it.

Ms. Amano: So, that's something I would disagree with because an opinion has to stand for itself. And if it's not simple enough in layman's term, we didn't write it well. We need to write it in a way that is understood by everyone. From the opinion itself. And when we're are interpreting our stuff, then you're sending out perhaps two messages. We hope they don't, but it's one more thing that be interpreted.

Chairwoman: I think they had that discussion and the problem is that the media doesn't read the entire opinion and that when you issue a news release it's an opportunity to be able educate the media on the content of what's in the opinion knowing that they're not going to read the whole thing.

Mr. Lilly: The opinion just like one of your opinions as a judge. It's got all the analysis, applying the law to the facts in this case and the result. It may be very long opinion and this is an opportunity for the Commission to have a press release that helps the public as well as the media to understand all of that verbiage that it's in the opinion.

Mr. Yuen: Layman's language.

Mr. Lilly: In layman's language, exactly. Because, the reason, we have an opinion, a decision that may affect an individual but it has broad impact on the community, so we want everyone to understand the importance of this. So, our job is to also to educate. So, that's why we do it. That's what we were talking about.

When this all came up we thought this up and so we need to do a policy would help guide counsel in how to draft and distribute press releases.

Ms. Amano: What if our opinions had small summaries done in the way the language that sends that very message and the summary can be repeated in the press release if that's what you mean. But I don't like separating the two pieces.

Chairwoman: Separating, what two pieces?

Mr. Amano: Well, a summary done by—an opinion done by us. One official and one is not official. If there's interpretation issues. If you make it part of the opinion, to me it's cleaner.

I'm also not crazy about long opinions, but—

Chairwoman: So, you want the news release to state the former summary articulated in opinion?

Ms. Amano: Well, if you feel the need to educate the public because they're not going to read the formal opinion that might be one way to do it without having the conflict that I fear.

Mr. Lilly: You know the Department of Justice indicts someone, 57 indictment, they attach a press release. It summarizes the indictment. So, it's intelligible to everybody. I see that in other areas as well. When there's a complex document that's followed by a press release or a complaint that's filed with the press release. If it's a broad public concern. I don't see the press release as being the same thing as the opinion. I see it being more of a settlement, a laymen's settlement. I mean, that's my thought. We may want to defer this to until we have more Commission members here. So, I don't know if you're ready to accept what's been drafted.

Ms. Amano: I think we had further discussion. I'm always ready to accept the (inaudible).

Mr. Lilly: Well, today it has to be 100% of the jury.

Chairwoman: Right. So, there's only four—

Ms. Amano: True. So, perhaps defer would be good.

**Mr. Lilly: Well, why don't we defer to the next meeting.**

**Chairwoman: Okay. All right.**

Mr. Lilly: If you have any thoughts, you could—

Ms. Amano: I go look—

Chairwoman: Yeah, some preferred language we can articulate to—

Mr. Totto: Let me just add, if you look at No. 3, because I think one of the concerns has been who is saying what. What's the Commission saying? What's the Commission staff saying? So, I added that just to make sure that if Commission staff is saying something that is clear, this is Commission staff saying, you know, saying something the news release as opposed to Commission staff coming up with some statements and attributing to the Commission itself. So, I'm trying to—

Ms. Amano: Well, I don't think we would have any—We would not speak—

Mr. Totto: No. But just again to make—Well—

Chairwoman: Being honest, I think if you went to the press you spoke some of the assumption that you're speaking on behalf of the Commission—

Ms. Amano: I agree.

Mr. Totto: Okay.

Chairwoman: The average person isn't going to separate the two.

Ms. Amano: Legally speaking that would have to be the case anyway. That's just my opinion.

Chairwoman: That's true; yeah. Okay. Well, if there's—

Ms. Amano: Deferral would be good, then I would look for a language.

**IV.C. – NEW BUSINESS – For Action: Request for Motion to Approve and Adopt Staff's Proposed Formal Advisory Opinion Regarding the Use of City Resources for "Save our Heroes" Petition**

Chairwoman: Okay. All right. So, moving on to Item 4(C) for action of request for motion to approve and adopt status proposed formal advisory opinion regarding the use of City resources for Save our Hero's Petition. So, the proposed advisory opinion is based on memo from the last time which was considered and approved by the Commission at the last meeting. So, are there any questions to the proposed formal advisory opinion? [no response]

**Can I have a motion to approve and adopt the status proposed formal advisory opinion?**

**Mr. Silva: So moved.**

**Chairwoman: Moved. Can, I have a second?**

**Mr. Lilly: I'll second.**

**Chairwoman: All in favor, say aye.**

**All Commissioners: Aye.**

**Chairwoman: Motion is passed.** So, that concludes today's meeting. Can I have a motion to adjourn. Item 4(D) is being deferred to the following meeting. **Can I have a motion to close today's open session meeting.**

**Mr. Lilly: So moved.**

**Mr. Yuen: Second.**

**Chairwoman: All in favor.**

**All Commissioners: Aye.**

**Chairwoman: So moved.**

**VI. ADJOURNMENT**