

WELCOME TO THE ETHICS COMMISSION MEETING

Please sign in at the testimony table.

As a courtesy, please silence your cell phone.



Date: November 15, 2017

Time: 11:30 a.m.

Place: Kapālama Hale

925 Dillingham Boulevard
1st Floor Conference Room

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ORDER OF BUSINESS

I. Call to Order, Public Notice, Quorum



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II. NEW BUSINESS

II.A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution



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II.A. CHAIR'S REPORT

2. For Action: Approval of Open Session Minutes of September 20, 2017
3. For Action: Approval of Executive Session Minutes of September 20, 2017

[exec/session if needed, HRS §92-5(a)(4)]



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II.B. EXECUTIVE DIRECTOR AND LEGAL COUNSEL'S (EDLC) REPORT

1. Staff Work Reports Summary



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II.B.1. STAFF WORK REPORTS - HIGHLIGHTS LEGAL CLERK III

- Administering city purchasing credit card (pCard)
- Processing case intake, requests for advice, misc. correspondence, litigation support, meeting materials, other
- Coordinating conference room, motorpool car use
- Reviewed materials for online training; attended ethics online training coordinators session
- Processed documents for scanning, archiving
- Attended team building training



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II.B.1. STAFF WORK REPORTS – HIGHLIGHTS LEGAL CLERK I

- Assisting IT dept. (DIT) with training refinements; attended 3 training coordinator sessions; launching, managing board/commission member training
- Archiving files, cases, filings; 14 ready to scan
- Updating, redesigning, refreshing website
- Assisting field investigations, case management; handling desk investigations
- Updating financial disclosure, lobbyist forms; drafting SOPs



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II.B.1. STAFF WORK REPORTS – HIGHLIGHTS

Law School Interns (2)

- Project – Advisory Opinion Compendium Database
 - ✓ 143/203 opinions summarized



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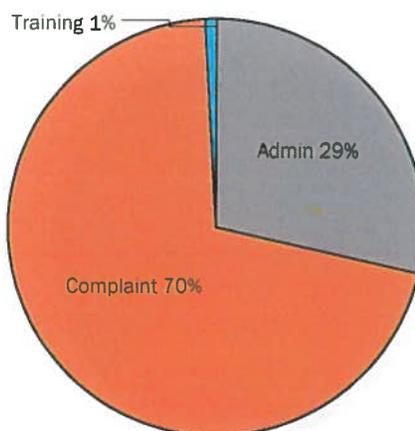
II.B.1. STAFF WORK REPORTS – HIGHLIGHTS INVESTIGATOR

- Managing case load (interviews, investigation, research/analysis, reporting)
- Developing triage/intake, case management process, process flowcharts, procedures
- Researching case management databases
- Taking online training – pivot tables
- Attended team building training



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II.B.1. STAFF WORK REPORTS SUMMARY INVESTIGATOR – SEPTEMBER TO NOVEMBER 2017



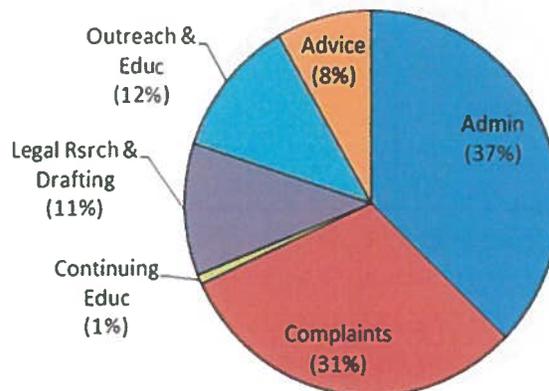
II.B.1. STAFF WORK REPORTS – HIGHLIGHTS ASSOCIATE LEGAL COUNSEL (ALC)

- Finalizing DIT ethics training application
- Managing cases, requests for advice, reporting
- Conducting case investigations, strategy, training Investigator and Legal Clerk I
- Prepping cases for probable cause hearings
- Handling ongoing admin responsibilities
- Attended team building training



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II.B.1. STAFF WORK REPORTS SUMMARY ASSOCIATE LEGAL COUNSEL – SEPTEMBER TO NOVEMBER 2017



II.B. EDLC REPORT (cont'd)

2. Statistics

a. Website Sessions

- September 2017 - 431
- October 2017 - 535



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II.B. EDLC REPORT (cont'd)

2. Statistics (cont'd)

b. Complaints and Requests for Advice, FY2018 (by quarter)

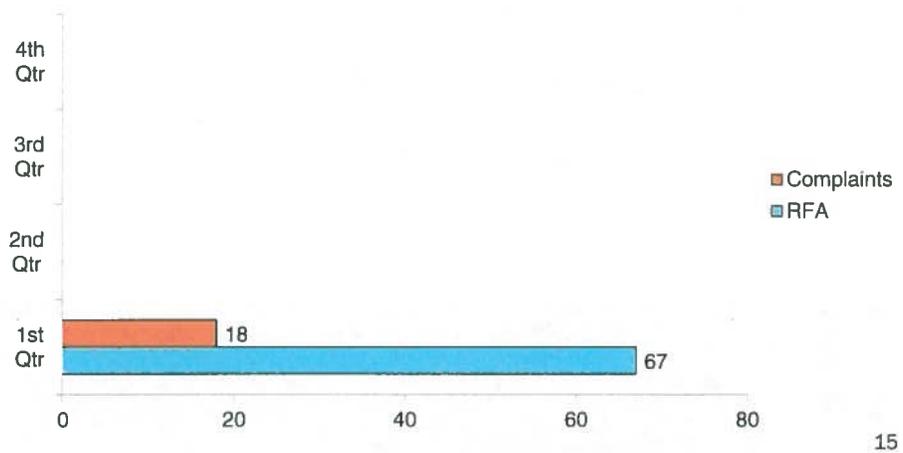
- i. Complaints, FY2015 - FY2018 (by quarter)
- ii. Requests for Advice, FY2015 - FY2018 (by quarter)



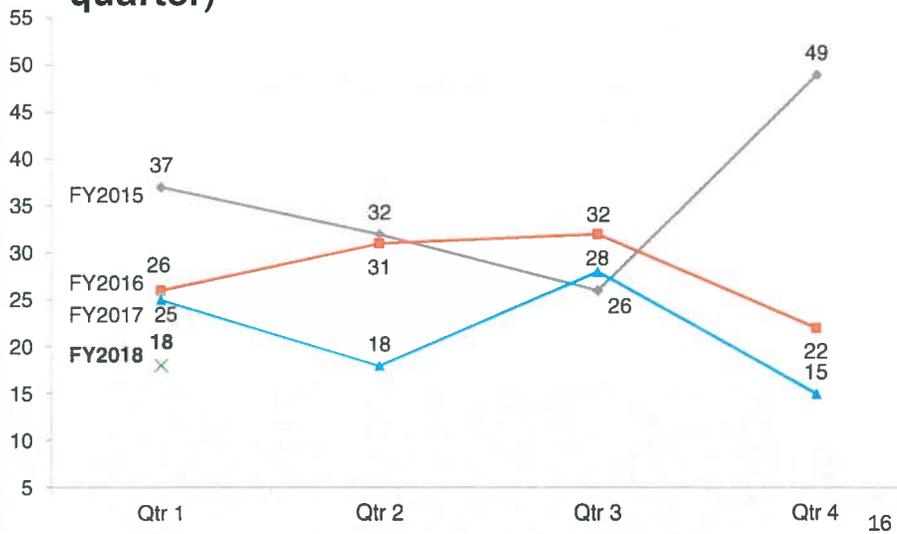
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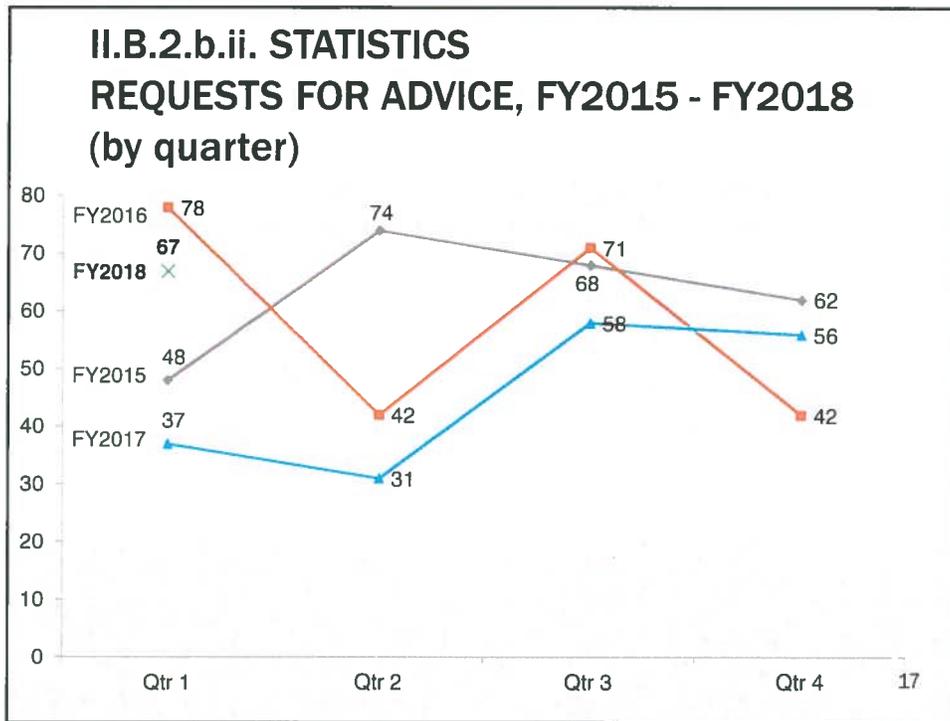
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**II.B.2.b. STATISTICS
COMPLAINTS AND REQUESTS FOR ADVICE,
FY2018 (by quarter)**



**II.B.2.b.i. STATISTICS
COMPLAINTS, FY2015 - FY2018 (by
quarter)**





II.B.4. EDUCATION AND OUTREACH

a. Ethics Training Program

- Online ethics training launched
 - ✓ Conducted 3 ethics online training sessions for dept'l coordinators
 - ✓ Refining training application based on feedback



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II.B.4. EDUCATION AND OUTREACH

- a. Ethics Training Program (cont'd)
- Mindflash Ethics Training (as of Nov. 2, 2017)
 - ✓ Police Comm (4/5)
 - ✓ Clean Water (6/7)
 - ✓ Building Board of Appeals (0/7)
 - ✓ Oahu Workforce Investment Board, staff (7/19)
 - ✓ Citizens' Advisory Commission on Civil Defense (3/5)



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II.B.4. EDUCATION AND OUTREACH

- b. US State Dept, Prof'l Fellows Program
- Meeting – Ms. Tetiana Kheruvimova
- c. University of Hawaii at Mānoa,
Master's in Public Administration
- Speakership – Course : *Leadership and Ethics*



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II.B.8. EDUCATION OPPORTUNITIES

- a. Soc. of Corp. Compliance & Ethics (SCCE)
16th Annual Compliance & Ethics Institute, October
15-18, 2017 – Report
- b. Common Cause, Ethics in Government, BoxJelly and
Facebook, November 7, 2017 – Report
- c. Council on Government Ethics Laws (COGEL)
Annual Conference, December 3-6, 2017

[End – EDLC Report]



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III. EXECUTIVE SESSION

A. For Discussion:

Kealoha vs. Tutto



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III. EXECUTIVE SESSION

C. Administration of the Ethics Commission Budget and Research on the Term *Administrative Purposes* in Charter Section 11-107

For Discussion:

Assoc. Legal Counsel's Research Memo



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III. EXECUTIVE SESSION

D. For Discussion:

Request for Reconsideration of Ethics Investigation Conclusion Letter Dated October 6, 2017, pursuant to *Ethics Commission Rules of Procedure* Section 5.5(2)(b)



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IV. STRATEGIC PLANNING

For Discussion:

Draft Incorporating Comments Received on
Ethics Commission – 2027

- PIG Meeting September 27, 2017
- Draft dated November 10, 2017



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IV. STRATEGIC PLANNING

Timeline:

- ✓ *Sept. 1, 2017 – Receive comments*
- ✓ *Sept. 20, 2017 – Ethics Comm. reviews comments*
- ✓ *Sept. 27, 2017 – Permitted Interaction Grp (PIG) reviews comments, amends draft*
- ✓ *Nov. 2017 – PIG's am'd draft to Ethics Comm. (1)*
- *Dec. 2017 – Ethics Comm. reviews am'd draft (2)*
- *Jan. 2018 – Ethics Comm. adopts strategic plan (3)*



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V. ADJOURNMENT

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Ph: (808) 768-7787

Website: www.honolulu.gov/ethics Email: ethics@honolulu.gov

~MAHALO~



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Ethics Commission – 2027

This strategic plan involved a review of current practices and procedures, and sets forth a blue print for the future.

This document sets out a longer-term strategy and is based on discussions held in 2017. It is a work in progress, a flexible and directional touchstone for Commissioners and Staff. It will be revisited periodically over the next several years—2020 (year three), 2022 (year five), and 2024 (year seven)—and as key assumptions change or as internal or external conditions require. As needed, we will use it as source material to drive specific changes in direction, laws and rules, procedures and activities.

As part of this strategy, we will examine other jurisdictions and determine best practices for ethics commissions and ethics oversight. Similar jurisdictions may have similar ethics laws, oversight and enforcement responsibilities, population size, demographics, geographic size, among other factors.

Finally, we commit to properly balancing transparency and openness with necessary and legally warranted confidentiality. Critical to our success, however, is the need for appropriate resources, including adequate budget, number and type of staff, and commissioner capacity proportionate to the overall workload.

Mission Statement

To ensure that appointed officers and employees demonstrate the highest standards of ethical conduct so that the public may have trust and confidence in the integrity of government. (RCH 11-101.)

We hold the public's trust.

I. Who We Are

Chartered by law, we are the City and County of Honolulu’s ethics watchdog agency. Our job is to ensure that all of the C&C’s approximately 10,000 elected leaders, appointed officials, and employees understand and follow the ethical standards of conduct governing their work for the public.

In Fiscal Year 2017, we began to review our policies and procedures to determine where we were and then plan for the future. We filled our full complement of five budgeted staff—Executive Director and Legal Counsel, Associate Legal Counsel, Investigator, and two Legal Clerks—and assessed and debriefed our practices and began making adjustments for efficiency and effectiveness. The work is on-going, but in progress.

Skills training for Commissioners and Staff is also essential for success. While some training has been accomplished—for example, sunshine law and government records training, core computer application refresher training, and investigation training—there is much more to do.

II. What We Do

We have jurisdiction over the following:

- Conflicts of interest, including gifts
- Disclosure of personal and financial conflicts of interest
- Preferential treatment and misuse of city resources
- Registration of lobbyists

III. Why We Are Working on a Forward Facing Strategy

We are undertaking a focused review and giving intentional forethought to help shape the Commission’s future. We have a new Executive Director, a competent and hardworking Staff, and a strong set of Commissioners, all of whom are dedicated to implementing the agency’s mission. We anticipate a rising volume of work and cases of increased complexity. With this document, we want to further position ourselves so that our work is conducted with the greatest possible efficiency and integrity.

We recognize that a rising volume of work and cases of increased complexity drive a need for budget and resources proportionate to workload. Meeting this need will be one of our strategic priorities.

IV. Dashboard

Here are the metrics and vital signs we plan to use to monitor ourselves. Wherever possible, we will apply “aging” reports to evaluate workload and stay alert for backlogs, gaps, and case-handling delays. This dashboard is meant to be a management and decision support tool for Commissioners and Staff.

Trailing Indicators (*Looking Back*)

1. Requests for trainings
2. Requests for advice
3. Advisory opinions
4. Preliminary determinations (reevaluate and address via future rule-making or policy adoption)
5. Investigations
6. Complaint procedures
7. Requests for information via the Uniform Information Practices Act (UIPA), Hawaii Revised Statutes Chapter 92F
8. Hearings
9. Ethics Commission meetings that comply with Hawaii open meetings law, also known as the sunshine law, Hawaii Revised Statutes Chapter 92

Leading Indicators (*Looking Ahead*)

10. Anticipated population growth/decline in the C&C of Honolulu
11. Anticipated number of C&C employees and elected and appointed officials

12. Anticipated number of new employees and elected and appointed officials
13. Anticipated Ethics Commission budget and staff positions required to handle anticipated needs

V. Our Key Values

1. **Independence.** We will dispassionately appraise every circumstance that comes before us against pertinent laws and specific facts. We will play no political favorites, and let the chips fall where they may.
2. **Transparency.** We will strive for the greatest possible openness while honoring the rights of privacy and confidentiality. We endeavor to balance a user-friendly guidance and approach with sound procedures to vet, triage, and bring actions to enforce the City’s standards of conduct.
3. **Above Reproach.** We ourselves, as a Commission and as individuals, will continuously strive to merit the behaviors we enforce on others.

VI. The Current Situation

Here is how we evaluate ourselves at this moment:

Major Strengths	Major Weaknesses
<p>We now have a strong Staff in place and a cohesive and dedicated group of Commissioners.</p> <p>Our relationships with other agencies are continuously improving.</p> <p>We have a vastly better method of training the City’s approximately 10,000 employees to their ethical duties.</p> <p>Our monthly data collection and reporting systems are steadily improving.</p> <p>Our meetings are more efficient with good opportunities for public testimony.</p>	<p>Our budget is insufficient to our core need and rising demand. Our existing staff is not large enough to fulfill all functions; that is, investigations, prosecutions, advisory opinions, ethics training, etc.</p> <p>We need to update and clarify our rules.</p> <p>We need to update our policies and procedures.</p> <p>Staff and Commissioners lack opportunities for skills and ethics training and upward mobility and opportunities to interact with ethics commissions of other jurisdictions.</p>

	<p>The ordinances that direct and guide us require updating.</p> <p>We are not well understood by City officers, employees, and the public at large.</p> <p>We remain entangled in litigation, which casts an unnecessary shadow over our work and drains resources.</p> <p>Administrative support duties are blurry and need to be clarified.</p> <p>How we interpret and best function with sunshine law requirements is an on-going effort.</p>
<p style="text-align: center;">Opportunities</p> <p>We will eventually be audited, but we will undertake our own thinking on lessons learned and future efforts; knowledge gained from this effort will be supplemented by what external auditors recommend.</p> <p>We can define, operationalize, and make public our best practices.</p> <p>Rotation of Commissioners brings new perspectives and adds strength.</p> <p>We can utilize skilled volunteers who understand the Ethics Commission's work.</p> <p>There are opportunities to impact the ordinance and adoption of rules.</p> <p>We can position ourselves for inevitable future administrations and councils.</p> <p>We can explore coordinating ethics trainings, for mutual benefit, with other departments and agencies.</p> <p>We can explore collaborating with state and county agencies to harmonize requirements and forms.</p>	<p style="text-align: center;">Challenges</p> <p>Turnover and rotation. Potential loss of Staff and Commissioners.</p> <p>Flat resources or budget cuts if the economy dips, which is expected.</p> <p>A small number of excessively time-consuming cases that pull us away from other required work.</p> <p>Physical location. Not close to other agencies.</p> <p>Scofflaws who ignore C&C ethical requirements, then the Ethics Commission gets blamed.</p>

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VII. Assumptions About the Next 10 Years

- Ethics Commission's staffing needs will increase even as we gain efficiency, but our budget will always be determined by others.
- Our caseload will go up because:
 - C&C of Honolulu's population goes up about 10 percent every 10 years.
 - The more training and outreach we do, the more inquiries and cases are generated.
 - As the social fabric in Hawai'i changes because of demographic shifts and as O'ahu becomes more crowded and factionalized, we will receive more ethics inquiries and concerns. People are increasingly argumentative and litigious.
 - When the economy dips and city services are diminished, we will receive more ethics issues and concerns.
 - As C&C employee ranks turn over, training will need to be continuously refreshed and delivered to new cohorts of employees.
- More employees will have electronic devices, enabling greater reach for ethics training. Computerized training delivery will become easier, faster, cheaper.
- The "80/20" principle will continue to prevail; that is, 80 percent of our work and effort will always focus on 20 percent of our caseload. Some of that 20 percent will be hot potatoes with high media visibility. As social media expands, there may be increasing numbers of hot potatoes.
- We will always be in some kind of "stretch mode" and likely never have all the resources we need.
- Over the next 5-10 years, federal and state funding will reduce.

- The process of Commissioner appointments will stay the same: Mayor appoints, Council confirms.
- We will need to do more effective education and outreach to the Mayor and Council to ensure they understand what we do and to secure the funds and positions we need to operate effectively.
- The Commission may on its own initiative initiate complaints.

VIII. Priority Objectives

Objective 1: Review, update, and realign ethics programs for compliance, effectiveness, and efficiency:

Areas to be Reviewed for Changes and Priorities	Charter/ Ordinance	Substan Admin Rules	Proced Admin Rules	SOPs	Training/ Education
Financial Disclosures					
Lobbyist Registrations					
Separation of Duties (intake, investigation, prosecution, adjudication)					
Gifts					
Fair & Equal Treatment					
Conflict of Interest Disclosures					

In conjunction with the above:

- Examine procedures from Hawai'i Office of Disciplinary Counsel (ODC); Regulated Industries Complaints Office (RICO), Hawai'i Department of Commerce and Consumer Affairs (DCCA); and other ethics commissions, e.g., Austin, TX (population 947,890); City and County of San Francisco, CA (population 870,887); San Jose, CA (population 1,025,350); Jacksonville, FL (population 880,619); among others; and also review their staff-to-workload ratios.
- Review and revise, as needed the definition of "complaint" and consider disallowing anonymous complaints to proceed to

investigation without named complainant. Prior to that, it would be a “contact.”

- c. Provide opportunity to review proposed changes and offer comments and concerns.
- d. Analyze and potentially pursue having Corporation Counsel conduct prosecutions as a way of reducing internal conflicts between Commission functions.
- e. To ensure uniformity of practice and continuity to the future, develop an updatable set of policies and procedures available to the Commission, Staff, and the public. Collate existing Commission policies and procedures and develop new ones in conjunction with future changes to the ordinances and rules described above.
- f. Consider adopting as a policy that the Commission may not initiate or proceed with its own investigation if official investigations are being conducted by other tribunals.

Objective 2: Further strengthen and expand the education and training of the City and County’s ~10,000 officers, employees, and elected officials.

- a. Develop and deliver improved outreach materials (brochures, FAQs, newsletters, etc.) that describe the Commission’s work and provide offers of assistance.
- b. Conduct additional outreach to all elected and appointed officials and to all agency employees to make them fully aware of the Commission’s capabilities and to provide regular or specialized trainings.
- c. Continue to refine, track, and regularly evaluate the use training software as a core-training tool.
- d. Offer an annual training for lobbyists, possible with the State Ethics Commission so as to avoid duplication of efforts.
- e. Continue to work with the City Department of Information Technology to develop an in-house ethics training application for both domain users (honolulu.gov) and outside users.

Objective 3: Strengthen the internal capabilities and procedures of the Ethics Commission.

- a. Acquire and implement a case management data base to enable tracking, dashboard monitoring, and reporting.
- b. Acquire and implement a comprehensive compendium of Ethics Commission Advisory Opinions and Ethics Commission-related Corporation Counsel Opinions that is easy to use when conducting legal research.
- c. Develop and implement training and professional development activities for Staff and Commissioners. Potential areas to be covered include sunshine law, information technologies, and data management. Mechanisms can include:
 - i. State Public Library's Gale Courses for computer application training (MS Word, Excel, Power Point, Access, others);
 - ii. Equal Opportunity Office Internal Investigation Training;
 - iii. Reid Investigator Interview Training; and
 - iv. Attendance at Council on Governmental Ethics Laws (COGEL) and/or the Society of Corporate Compliance and Ethics (SCCE) conferences.
- d. Develop and implement a simple written policy on who speaks publicly for the Commission.

Objective 4: Above and beyond our management "dashboard," develop, implement, and use a simple set of overall effectiveness measures that will describe quantitatively the core efficacy of the Commission. The measures should reflect both inputs and outputs and the quantity and quality of both.

IX. Short Term Actions and Accelerators – Calendar Year 2017

Actions to be completed or started before the end of Calendar Year 2017 will be reported at monthly Ethics Commission meetings.

