

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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**Advisory Opinion No. 2003-4**

**I. Summary**

An employee of the Department of the Prosecuting Attorney violated the fair and equal treatment provision of the city ethics laws when, during an argument with a neighbor, the employee made it appear that she was calling in an official request to run license plate checks on a neighbor's vehicles.

**II. Facts**

This matter arises out of a dispute between neighbors. Employee is employed with the Department of the Prosecuting Attorney (PAT). Employee and [her husband] own a parcel of land [location]. Complainant and [her boyfriend] are tenants on an adjoining lot. Complainant and her boyfriend have had a series of disputes with Employee and her husband, stemming primarily from the work the latter are doing on their land.

On [date], the tensions between the parties erupted. Employee's husband and Complainant's boyfriend had a physical confrontation either on or directly in front of the property Complainant and her boyfriend rent. The confrontation was loud enough to catch the attention of another neighbor [name] (Witness), who came to the scene shortly after the fighting had stopped.

At some point after the physical confrontation had ended, Employee and Complainant exchanged words. Employee then made a call on a cellular telephone to a close personal friend [name].

What Employee said prior to and during the phone call to the friend is at the root of the complaint in this matter. Complainant alleges that just before Employee made the phone call Employee said, "You don't know who I am." At the time, Employee was wearing a polo-type shirt, which bore PAT's official seal. Complainant took Employee's statement as an implied threat. Then, according to the complaint, Employee took out a cell phone and placed a call. Employee did not announce who was being called, but during the phone call Employee requested license plate checks on the three vehicles parked at Complainant's residence. Complainant

alleges that Employee read off the license plate numbers of all three vehicles during the phone call.

Employee admits wearing the PAT shirt at the time of the incident. Employee also admits that she may have said words to the effect of, “You don’t know who I am.” But Employee denies that this statement was intended to be an implied threat. Employee maintains that that the statement was made in response to Complainant’s barb that all of the neighbors disliked Employee and her husband. Employee contends that the statement was simply meant to express dismay at such unfounded judgments.

Employee flatly denies that she made any requests to run license plate checks during the phone conversation or that she said anything that could reasonably have been misconstrued as a request for license plate checks. Employee maintains that during the short phone conversation with her friend Employee simply gave a brief report on what was happening. Employee’s friend, who was interviewed during the Commission’s investigation, supports Employee’s version of the conversation.

Employee’s cell phone records for [date], which she supplied to the Commission during its investigation, indicate that Employee called the friend during the time of the incident. The records also show that Employee did not make any phone calls to anyone other than her friend.

Witness, who was present when Employee made the phone call, was also interviewed during the Commission’s investigation. She also signed a written statement, which was submitted to the Commission. In her written statement and during her oral interview, Witness stated that she heard Employee say something to the effect of, “You don’t know who I am” or “You don’t know who you’re messing with.” She stated that Employee then made a phone call, during which Employee made a request to “do a check” or “check this” and proceeded to read off the license plate numbers of two or three of the vehicles parked at Complainant’s residence.

### **III. Question presented**

The question in this matter is: Has a PAT employee violated the city ethics laws if, during a non-work-related dispute with a neighbor, she made it appear that she was requesting official license plate checks on vehicles owned by an adversary?

### **IV. Analysis/Findings**

Based on the information gathered in the Commission’s investigation, the Commission finds that the material allegation of the complaint – *i.e.*, that Employee used the apparent authority of her position with PAT to attempt to intimidate Complainant and to gain an advantage in their dispute – is true. In making this determination, the Commission weighed all of the relevant evidence and found Witness’ version of events particularly credible and persuasive. Of all the witnesses interviewed during the Commission’s investigation, she appeared to be the least biased. In fact, she repeatedly expressed her reluctance to become involved in this matter and conveyed her concerns that her involvement would negatively affect her relationship with her neighbors, particularly Employee and her husband. Despite her

concerns, Witness told the Commission staff that she was absolutely certain that she heard Employee request license plate checks on Complainant's vehicles.

In addition to Witness' statements, other evidence corroborates key facts in the complaint. This evidence includes the undisputed facts that Employee made a phone call during the incident and that Employee was wearing a shirt bearing PAT's seal at the time of the incident.

Revised Charter of Honolulu (RCH) § 11-104, which reflects the city's fair and equal treatment policy, provides:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

Employee would have violated RCH § 11-104 had she actually run license plate checks on the cars parked at Complainant's residence. Employee, however, did not do so. Rather, Employee simply called a personal friend, with no ability or authority to perform license plate checks, and feigned an official-sounding inquiry. In effect, Employee bluffed Complainant.

The question before the Commission, then, is whether Employee's bluff constituted a violation of RCH § 11-104. Stated otherwise, does the fact that Employee did not actually have license plate checks run, but only acted as if she had, remove her conduct from the proscriptions of RCH § 11-104?

We conclude that it does not. Employee used the authority of her position to try to intimidate Complainant. The evidence shows that Employee presented herself in such a way that a person in Complainant's position would reasonably have believed that Employee was using her official position to gain an advantage in their dispute. Whether Employee actually had license plate checks run is not determinative; at most, it goes to the degree of the violation of RCH § 11-104.

Employee clearly intended to use the feigned inquiries – which appear to have been quite believable – to gain an upper hand in the dispute with Complainant. Further, Employee was aided in accomplishing that unfair advantage by the apparent authority of her position with PAT. Although Employee did not expressly state that she was a PAT employee, she was wearing an official-looking Honolulu Prosecutor's shirt, which conveyed that message and gave credibility to the license plate checks that she purportedly called in.

These facts bring Employee's conduct within the prohibitions of RCH § 11-104, which prohibits city employees from using their official positions to secure advantages not available to every other person. Employee violated this fair and equal treatment provision by attempting to use her position and apparent access to non-public information to intimidate Complainant into backing down in their dispute and to compel the sort of deference to authority that is not otherwise given to an ordinary citizen.

## **V. Recommendation**

Although we have determined that Employee violated RCH § 11-104, in making a recommendation as to the appropriate discipline, we are mindful of the circumstances that led to the offending conduct. First, at the time of the incident, Employee's husband had just been involved in a physical confrontation with Complainant's boyfriend and emotions were running understandably high. Employee's actions, while not excusable, were taken during a very tense situation.

Second, Employee did not actually call in a license plate check on any of the vehicles parked at Complainant's residence, although Employee acted as if she had. Employee therefore never subjected Complainant (or anyone else) to any official inquiries or actions.

Third, Employee did not explicitly state that she was with PAT; the polo shirt worn at the time, which bore PAT's seal, conveyed that message. Again, while this does not excuse her conduct, Employee did show some restraint. Moreover, we believe that PAT should accept some degree of responsibility for permitting its employees to wear shirts, even while off-duty, that might suggest to others that they are on official business.

In light of the foregoing, we make the following recommendations:

1. Employee should be counseled regarding the inappropriateness of her actions.
2. PAT should address its employees regarding the use (and misuse) of their positions as City and County of Honolulu employees. In particular, PAT should remind its employees of the importance of complying with the fair and equal treatment policy as set forth in RCH § 11-104.
3. PAT should consider implementing a policy which sets appropriate limits on when, where and under what circumstances its employees are permitted to wear apparel bearing PAT's official seal in light of § 2-31.1(b), Revised Ordinances of Honolulu (limitations on the use of official departmental seal or logotype).

The preceding recommendations, of course, are not intended to foreclose the Honolulu Prosecutor's Office from taking any other action that it deems appropriate.

Dated:

September 15, 2003

/S/

ROBIN DAVID LIU, Chairperson  
Ethics Commission