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Hawaii News

Ethics panel's 'suffocating' media policy is rare among isle agencies

By [Gordon Y.K. Pang](#)

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The new written media policy adopted by the Honolulu Ethics Commission, which effectively silences the staff and board, is a rarity among state agencies and some mainland counterparts, an informal survey shows.

And critics here say it flies in the face of good governance.

Carmille Lim, executive director of Common Cause Hawaii, said the new policy appears politically motivated and in line with the desires of the Caldwell administration.

"I think the administration and the Ethics Commission are prioritizing public relations and public image over public service," Lim said, adding that the commission should rethink its decision at its next meeting.

"The agencies that I know who have media policies empower the executive director and staff to communicate on behalf of the group," Lim said. "So I think it's very odd for the Caldwell administration to be suffocating a staff from doing what is a public service: to help educate the media and citizens as a whole."

The commission is within its right to limit what its executive director can say, said media attorney Jeffrey Portnoy. But in this case "they're throwing the baby out with the bath water," he said.

Few state and county agencies or ethics panels on the mainland have written media policies.

And among those that do, few specifically bar their board or commission members, executive directors or staff from speaking to the media as is the case in the Honolulu Ethics Commission policy.

Only three government entities locally that were queried by the Honolulu Star-Advertiser have written media policies: the state Judiciary, the Kauai County administration and the Honolulu Board of Water Supply.

The Judiciary's two-page "Media Policy and Procedures" says employees "should refrain from expressing to representatives of the news media their opinion on, or interpretation of, any criminal or civil matter before the court including the results of any trial or other action taken in open court."

Three recently appointed members of the Ethics Commission are former judges, including the person who created the new policy, retired Circuit Judge Riki May Amano.

The commission voted 5-1 June 24 to adopt a policy that severely restricts what Executive Director Chuck Totto and his staff — and any of the seven commission members themselves — can communicate with the media, including any attempts to explain, clarify or give context to advisory opinions that the panel issues, without permission from the commission.

By contrast, the state Ethics Commission has no written media policy, nor do Hawaii, Maui and Kauai counties' ethics boards.

J Yoshimoto, attorney for the Hawaii County Ethics Board, said, "Board members may interact with the media and are expected to comply with rules regarding confidentiality contained in the board's rules as well as applicable provisions in the Hawaii County Code."

The ethics boards for Maui and Kauai counties said how their members interact with the media is governed by their respective county administration's policies.

Regarding Maui Ethics Board members, "none of them have ever been told not to talk to the media," Maui County spokesman Rod Antone said. "They speak for themselves, not for the board, unless the board has authorized them to be the spokesperson," although they are reminded about confidentiality laws and rules.

The Kauai County "media response process" calls for "staff and members" to "not proactively distribute information or initiate discussions with media representatives concerning county issues" before first consulting with the county communications office.

At Honolulu Hale neither the City Council nor the Caldwell administration has written media policies.

Jesse Broder Van Dyke, Caldwell's communications director, said that, in general,

media inquiries sent to city departments are routed to the public information officer, "who then will draft a response and have statements reviewed for accuracy before responding."

A spokeswoman for the Board of Water Supply said its policy is "really outdated" and in need of an update, and a copy was not released to the Star-Advertiser. The policy "basically ... states that all media inquiries are to be coordinated via the Communications Division," BWS information officer Shawn Nakamoto said. Depending on the request, four information specialists and top board executives may also respond, Nakamoto said.

Cindy McMillan, Gov. David Ige's communications director, said "off the top of my head," she is not aware of any written news media policies among state agencies.

The staff of the Honolulu Ethics Commission, as the commission was deliberating a written policy, sought out the policies of ethics panels across the mainland.

The results varied greatly, according to documents provided by the commission.

The New York City Conflicts of Interest Board, City of Chicago Board of Ethics and City of San Diego Ethics Commission have no media policy and put no restrictions on their executive director in terms of speaking to reporters.

Media queries about ethics matters in the City of Corpus Christi, Texas, and City of Minneapolis, like Maui and Kauai counties, are handled by the city manager or city administration's media relations staff.

One municipality appears to have as restrictive a policy as the one for the Honolulu Ethics Commission when it comes to interpreting opinions. Denver Board of Ethics Staff Director Michael Henry said the panel has no written policy.

However, "I always tell any media people that the opinion should speak for itself and I do not want to interpret or synthesize any written opinion," he said.

ADOPTION of the Honolulu policy came a month after city Corporation Counsel Donna Leong chastised Totto for suggesting to the Star-Advertiser that votes cast by former City Councilman Nestor Garcia should be nullified. Garcia was fined for not disclosing possible conflicts of interests when voting on issues that would benefit lobbyists who gave him free golf and meals.

Garcia was investigated because former Councilman Romy Cachola, after he was fined by the commission in September, alleged that he was being unfairly singled out when he knew of at least five colleagues who also received free meals and golf from the same lobbyists. Cachola and his attorney, Michael Green, went further, suggesting that all the votes the Council members made on rail and other projects benefiting the lobbyists should be nullified.

Leong, in submitting testimony to the Ethics Commission supporting a written media policy, reminded commissioners that Totto in September also told news reporters that Cachola's votes should be nullified. It's not up to the commission to determine whether a violation nullifies Council votes, she said.

Totto's remarks were an example of why the commission needs to adopt its media policy, especially regarding comments "outside the scope of the advisory opinion."

Amano, in explaining her then-proposed policy to colleagues at a May 13 meeting, said the commission's advisory opinions should be able to stand alone without any interpretation by Totto, the commission staff or commission members.

Retired Judges Victoria Marks and Allene Suemori, who like Amano were appointed by Mayor Kirk Caldwell in the last year, voted for Amano's media policy, as did commission members Stephen Silva and Stanford Yuen, who were appointed by former Mayors Mufi Hannemann and Peter Carlisle, respectively. Commission Chairwoman Katy Chen was the lone "no" vote, while Vice Chairman Michael Lilly, who like Chen had voiced concerns the policy would be too onerous, was out of state and did not vote.

Draft media policies prepared by the staff that were less restrictive were not heard.

While judges typically do not elaborate on decisions they make, a panel such as the Ethics Commission is a very different body, said Lim of Common Cause.

"The mission of the Ethics Commission is to serve the public by raising awareness and educating people on how certain elected officials are behaving," she said. "So if commission staff is not allowed to do that, the commission is contradicting itself."

Portnoy, himself a former Ethics Commission member, said it's clear to him that the creation of a media policy is tied to Leong's unhappiness with Totto's comments to the media.

"It's unfortunate that an intramural dispute between the executive director and the board leads to restrictions on the ability of the media to obtain prompt and accurate understanding of decisions of the Ethics Commission," he said.