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Honolulu

Lawsuit: Police Commission Broke The Law With Secret Meetings

Hawaii's Sunshine Law requires the public's business — including the decision to pay the outgoing police chief \$250,000 — must be done openly, a legal challenge contends.

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By Nick Grube    / January 26, 2017

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The Honolulu Police Commission violated state law when it met behind closed doors to discuss Chief Louis Kealoha's employment, including agreeing to allow him to retire with an added payment of \$250,000, a lawsuit filed Thursday alleges.

The suit, filed in Circuit Court by The Civil Beat Law Center for the Public Interest, asks that the commission's Jan. 18 vote on the settlement with Kealoha be invalidated because the commission did not follow Hawaii's Sunshine Law by meeting secretly to consider whether the chief should be let go in the face of a federal corruption investigation that has focused

on Kealoha, his deputy prosecutor wife, Katherine, and a number of other Honolulu police officers.

Brian Black, executive director of the the law center, says the Sunshine Law allows for the commission's decision to be nullified.

"It's really the only provision in the Sunshine Law that gives the Sunshine Law teeth," Black said. "When you have a situation where there's been a violation of the Sunshine Law that is sufficient enough to meet the voidability requirements then that's how to make sure that boards and commissions know that they have to follow the law because otherwise their decisions will get vacated."



A new lawsuit alleges that the Honolulu Police Commission violated the state's Sunshine Law when approving a payout for HPD Chief Louis Kealoha.

In December, Kealoha [voluntarily placed himself on paid leave](#) after he received a letter from the U.S. Justice Department notifying him that he was [suspected of breaking federal law](#). The DOJ began investigating the Kealohas after [allegations surfaced in 2014](#) that they had used police resources to frame a family member to settle a personal score over money.

The commission first took up the situation involving the chief at a Jan. 4 meeting but announced beforehand that any discussion about Kealoha would be held in executive session. Commission Chairman Max Sword said it was a personnel issue that couldn't be discussed publicly.

But Black warned commissioners at the time that discussing an employee as important as the Honolulu police chief did not have to be done in executive session. And, he said then, the commission would be violating the Sunshine Law, which requires government meetings to be open to the public except in the rarest of circumstances.

Black said it was a matter of weighing the public's interest versus the chief's privacy interest.

The lawsuit filed Thursday reiterates those points in asking the court to overturn the deal the commission worked out behind closed doors. It also seeks to underscore the importance of the Sunshine Law by asking for mandatory Sunshine Law training for commissioners and other city officials.

"In the end, it comes down to providing the public with meaningful access to boards and commissions across the state," Black said.



Brian Black, of the Civil Beat Law Center for the Public Interest, warned police commissioners weeks ago that they were breaking state law.

Sword said Thursday he had not received a copy of the lawsuit and so he couldn't comment on it.

According to the lawsuit, commissioners and other city officials made numerous public statements and assertions that showed a basic misunderstanding of how the Sunshine Law works and its intent to keep citizens informed about the decisions that affect them.

The commission did not reach a decision on Kealoha at its Jan. 4 meeting and held at least two more closed sessions before eventually announcing the agreement publicly on Jan. 18. Even the commission's 5-1 vote to approve the deal was done in secret.

Sword maintained throughout the process that a personnel matter had to be considered in executive session and that commissioners could be subject to criminal charges if the chief's personnel matters were discussed in public.

But the lawsuit filed Thursday says that the commissioners mistakenly believed that the Sunshine Law required personnel matters to be discussed in private. In fact, the law states that a board "may" choose to move into executive session, but is not required to do so, even for personnel matters.



Police Commission Chairman Max Sword has continually defended the commission's decision to hold closed-door meeting to discuss the chief's future.

The lawsuit alleges the commission was also incorrect when Sword told his colleagues that they could be prosecuted for talking about the chief's personnel matters in public. Black said that's simply not the case and that the commission and its attorneys, who are assigned from the city's Department of Corporation Counsel, had again "erroneously interpreted the Sunshine Law."

"If Commission members do not understand their obligations to hold open meetings or feel compelled to unnecessarily close a meeting to the public," Black wrote, "the Sunshine Law is not serving the people of Hawai'i as intended."

The main thrust of his argument, however, is that the commission continually ignored the public's interest when considering the chief's retirement deal. Black said that privacy interest in any personnel matter must be weighed against the public's right to know.

In Kealoha's case, Black argued that much of the commission's discussion should have been conducted during an open meeting because the chief oversees one of the largest police departments in the country and is responsible for the safety of more than 900,000 residents and millions of visitors who come to the island each year.

Black said the public also has a "compelling interest" to know why and how the commission — which is the only body that can hire or fire a chief — came to its decision regarding Kealoha's retirement, especially considering that decision involved public money.

"The police chief is different from any other government employee," Black said. "The chief of police is a position that has so much authority over and so much responsibility for the people of Hawaii that when the commission is going to be reviewing that person's performance the public should have access."

"But I think a lot of the specifics of what's happening with Chief Kealoha are not really as relevant as to the issues that have been raised," he added. "This has more to do with the fundamental interpretation of the Sunshine Law and how it applies to the overall context of evaluating the chief of police."

When the court might make a decision on the case is unclear. But Kealoha is set to retire on March 1. Part of his retirement agreement states that he must pay back the \$250,000 cash settlement if he's convicted of a felony in six years.

"How quickly this gets resolved is up to the city and the commission," Black said.

The Civil Beat Law Center for the Public Interest is an independent nonprofit organization created with funding from Pierre Omidyar, who is also CEO and publisher of Civil Beat.

Read the lawsuit here:

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