HONOLULU Star-Advertiser

October 2, 2017 | 84° | Check Traffic

Editorial| Our View

Open hearings should be norm

Posted September 14, 2017
September 14, 2017

CRAIG T. KOJIMA / CKOJIMA@STARADVERTISER.COM

Honolulu Police commissioners Loretta Sheehan and Eddie Flores during commission meeting in January.

The importance of open hearings is a key value of our democracy. The public can't have a voice in government without having eyes and ears on it, to understand what government is doing on its behalf — or to its detriment.

Openness is assumed to be the right stance, unless government can make a strong case why it is not.

This is the principle behind the petition filed jointly to the Hawaii Supreme Court by Oahu Publications Inc., parent company of the Honolulu Star-Advertiser, and Honolulu Civil Beat.

The particular argument being made correctly asserts that the public should have access to proceedings before the Honolulu Police Commission — in this case, hearings to decide officers' requests for the city to pay their attorney's fees. The larger point is that government agencies holding quasi-judicial proceedings, such as the commission's, should conduct their business as openly as possible.

The court challenge was filed to keep open proceedings involving Honolulu Police Department officers seeking the fees. According to the complaint, officers Ming-Hung "Bobby" Nguyen and Daniel Sellers were among those involved in a conspiracy to wrongly arrest and prosecute a relative of Katherine Kealoha, the wife of retired HPD Chief Louis Kealoha.

If the court finds in favor of the media companies, and it should, then the police commission and others conducting quasi-judicial hearings would be held to a higher standard of review before closing the hearings to the public.

The arguments before the court cite precedence in state and federal rulings that reinforce the public-access claim. These include the state high court's order to unseal the transcripts of a 2013 hearing in the murder trial of federal agent Christopher Deedy. In addition, a 2005 state ruling is being cited, in which the court upheld a plaintiff's right to an open hearing in a court setting applied to an administrative proceeding.

Attorneys also reference a 1986 U.S. Supreme Court ruling that found that quasi-judicial administrative hearings are "subject to a qualified right of public access."

The sum of all this is that public access should extend to a hearing that parallels the judicial structure, unless there's an convincing argument that privacy concerns or some other circumstance outweigh the public right to know. The court should impose

a requirement that the commission engage in a “balancing test” to see which interest should prevail.

The commission decided July 19 that Nguyen and Sellers had a right to due process through an open hearing but that the two officers could waive that right and the commission could close the hearing.

Ultimately Nguyen opted for an open hearing but the commission opted to close the Sellers proceeding. The error in that action was that the decision to open or close should not rest solely with the plaintiff. The commission failed to consider whether the public interest in transparency should come out ahead.

It should. The public pays taxes to support city government, including its attorneys’ salaries. If the commission wants to direct taxpayer dollars toward the officers’ expenses, it has a duty to do so in full view of Honolulu residents — it’s their money.

This is a question of trust, even more than money. The public trust in the HPD — as well as the commission, which has a long history of looking out for police interests — has taken a beating in recent years. The Kealoha controversy was only the latest episode.

Moving this fees discussion back into the sunshine, as well as other aspects of police work, would go a long way toward restoring trust. The commission still has miles to go before the people whom it is supposed to represent will believe their interests are getting top consideration.