

Honolulu

Two Police Commissioners Say Secret Hearings For Cops Are Improper

Officers want Honolulu taxpayers to foot their legal bills in a corruption lawsuit, and the commission is scheduled to decide behind closed doors.

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By Nick Grube    / July 19, 2017

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The Honolulu Police Commission is scheduled to hold closed-door hearings Wednesday to decide whether taxpayers should pay the legal fees of two officers who were sued in relation to an ongoing U.S. Justice Department corruption investigation tied to former Chief Louis Kealoha.

But legal experts, including the only two lawyers who sit on the commission, say the public and the media should not be barred from the proceedings.

They say doing so could be a violation of both the U.S. and Hawaii constitutions.



Cory Lum/Civil Beat

Police Commissioner Steven Levinson is perplexed over why officials think they can make certain decisions about whether officers deserve taxpayer-funded legal counsel in secret.

“You can probably anticipate some discussion on the subject,” said Commissioner Steven Levinson, a former associate justice on the Hawaii Supreme Court. “I have no idea why it was designated a closed session. ... The issue is not going to get swept under the rug.”

Honolulu police officers Minh-Hung “Bobby” Nguyen and Daniel Sellers want the city to pay for their legal defense in a [lawsuit filed against them](#) in 2016 by Gerard Puana, who says he was framed by Kealoha and his city prosecutor wife, Katherine, for the theft of their mailbox.

Puana’s allegations, which [came to light in 2014](#), sparked a federal criminal investigation that has since expanded beyond the Kealohas to include other members of the law enforcement community.

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In his lawsuit, Puana accused Nguyen and several other officers, including Silva, Walter Calistro and Dru Akagi, of mishandling evidence, falsifying police reports and otherwise failing in their investigative duties to insure he was prosecuted for the theft of their boss's mailbox.

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Puana also accused Nguyen and Sellers of helping Katherine Kealoha “unlawfully” enter his home in 2011 while he was in jail to allegedly steal money and other items.

On Wednesday, the commission is expected to hold two contested case hearings in which Nguyen and Sellers make their pitch to have [taxpayers foot their legal bills](#) in the lawsuit.

But Levinson and others were taken aback when they saw that the commission agenda described those hearings as closed to the public.



Loretta Sheehan is one of the two commissioners worried about holding secret hearings.

The Hawaii Supreme Court [ruled in 2004](#) — when Levinson was an associate justice — that such proceedings, sometimes described as quasi-judicial administrative hearings, should be open except in the most extreme circumstances.

“It is my opinion that contested case hearings cannot be closed to the public, and that it is illegal to close them to the public,” said Commissioner Loretta Sheehan, a practicing attorney and a former federal prosecutor with the U.S. Attorney’s Office.

“The press and the public both have a right to access under the First and Fourteenth Amendments to the U.S. Constitution, and also Article 1 Section 4 of the state constitution.”

She added that there has to be a compelling reason to keep the public in the dark, and in this case, she said, she does not see one.



“The Hawaii Supreme Court held that contested case proceedings are supposed to be open to the public. That’s it. What else is there to say?” — Brian Black, Civil Beat Law Center for the Public Interest

The Police Commission has been conducting such proceedings in secret for many years.

Levinson and Sheehan, both of whom were appointed last year, began raising questions about the practice with their colleagues and the city attorneys assigned to the commission.

They thought they had resolved the issue, so Wednesday’s agenda notation came as a surprise.

Police Commission Executive Officer Dan Lawrence referred all questions to Commission Chairman Max Sword, who is in charge of placing items on the agenda. Sword did not respond to a request for comment.

Brian Black is the executive director for the Civil Beat Law Center for the Public Interest, a nonprofit legal firm that specializes in public records and open government.

He agreed with Levinson and Sheehan’s assessments, and described the closure of contested case hearings as a First Amendment issue. He said that if the Police Commission continues to hold contested case hearings in private it could open itself up to litigation.

Black has already [sued the commission](#) for alleged Sunshine Law violations related to its decision to negotiate Louis Kealoha's \$250,000 retirement deal in secret.

“The Hawaii Supreme Court held that contested case proceedings are supposed to be open to the public. That’s it. What else is there to say?” Black said. “It doesn’t make sense that the Honolulu Police Commission is proceeding as if that’s not the case.”



Brian Black, of the Civil Beat Law Center for the Public Interest, says the Police Commission is opening itself to future litigation if it closes hearings that have long been considered public.

Nguyen and Sellers aren't the only officers awaiting contested case hearings.

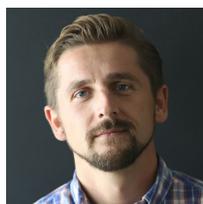
Louis Kealoha, too, has asked for taxpayers to cover for his defense expenses in the Puana lawsuit. His contested case hearing has been delayed, however, due to his [attempt to get Sheehan disqualified](#) from taking part in the decision because of perceived bias.

Kealoha's concerns, as well as Sheehan's response, have been forwarded to the Honolulu Ethics Commission for a decision.

The Police Commission has already approved providing legal counsel for Dru Akagi, who is one of the other officers named in Puana’s lawsuit.

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