PUBLIC FIRST
LAW CENTER

November 18, 2026

Mr. Frank Tam, Chair
Maui Police Commission
mauipolicecommission@mpd.net

RE: Executive Session Agenda Items Regarding Chief Pelletier

Dear Chair Tam and members of the Maui Police Commission:

I write to respectfully request that the Commission reconsider its plans to exclude the public from significant portions of its upcoming meeting. Five years ago, we reached out to the Maui Police Commission regarding very similar Sunshine Law compliance issues. Public First Law Center appreciates the Commission's past willingness to address such concerns constructively and proceed openly. We are hopeful that we can continue this collaborative approach moving forward.

The Commission's November 18, 2026 agenda anticipates an executive session for multiple agenda items concerning Chief of Police John Pelletier (agenda items 6c-f). The Commission appears to be relying on the personnel-privacy and attorney consultation exceptions.[1] Those exceptions are far narrower than the Commission's agenda seems to recognize.

I. The personnel-privacy exception HRS § 92-5(a)(2) does not apply to matters involving Chief Pelletier.

The personnel-privacy exception applies when the board is considering the hire, evaluation, dismissal, or discipline of an officer or employee *where matters affecting privacy are involved.* Personnel matters cannot be discussed privately solely because they are personnel matters. Given the high-profile nature of the issues that the Commission will be discussing, the exception simply does not apply here.

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[1] The agenda lists other exceptions that, while perhaps relevant to other executive session items, have no application to the items about Chief Pelletier. Boards must make clear which exceptions apply to *each* agenda item, not a diverse group of agenda items. OIP Op. No. F25-01 at 16-17 (Honolulu Police Commission violated Sunshine Law by listing all exceptions relevant to all agenda items for executive session—in the same manner as the Commission has done for the November 18 meeting—rather than specifying the exempt purposes for each executive agenda item).

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In 2019, the Hawai'i Supreme Court explained that "not all personnel discussions are exempt from the open meeting requirement." *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & County of Honolulu [CBLC]*, 144 Hawai'i 466, 479, 445 P.3d 47, 60 (2019). A board may only close out the public if the information to be discussed is "highly personal and intimate." *Id.* at 478-81, 445 P.3d at 58-62. In the absence of such an interest, "personnel matters should presumptively be discussed in an open meeting." *Id.*

Inquiries into the actions of high-ranking public officials such as Chief Pelletier are matters of significant public concern—not highly personal and intimate affairs. And there is absolutely no privacy concern when, as here, the Chief has openly discussed the issues in a press conference. *E.g., id.* at 482, 445 P.3d at 63 ("a person cannot claim a legitimate privacy interest in information that has already been made public").

The residents of Maui have an interest—protected by the Sunshine Law—in observing how the Commission discusses and handles its concerns about the highest-ranking county law enforcement officer. HRS § 92-1 ("[I]t is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible."). The Sunshine Law does not require that the Commission go into executive session just because an exception applies. *Id.* at 477-78, 445 P.3d at 58-59 ("a board will not violate the Sunshine Law by holding an open meeting"). Each Commission member has a duty to preserve the public's right to know what is happening when voting on whether to go into executive session. *Id.* at 477, 445 P.3d at 58 ("Because the decision to close a meeting is discretionary, board members should thoughtfully weigh the interests at stake before voting."). These important discussions should not occur behind closed doors.

Lastly, based on his press conference, Chief Pelletier wants these issues discussed publicly. The personnel-privacy exception never applies when the subject of the inquiry asks for an open meeting. HRS § 92-5(a)(2). Even if the Commission thinks that these matters are private, it must give Chief Pelletier the option for an open meeting and cannot rely on the exception at all if he wants it open.

II. Attorney consultation HRS 92-5(a)(4) is narrowly limited.

The attorney consultation exception is "far narrower than the attorney-client privilege." *CBLC*, 144 Hawai'i at 489, 445 P.3d at 70. "Reviewing courts, as well as boards and commissions, should understand that an attorney is not a talisman, and consultations in executive session must be purposeful and unclouded by pretext." *Id.*

When the Commission asks its attorney questions about its powers, duties, privileges, immunities, and liabilities, it may close the doors to the public to get answers. But as soon as the attorney answers the questions, the Commission must return to an open meeting to discuss courses of action and vote. *Id.* at 489, 445 P.3d at 70.

Also the Commission is not required to go into executive session for every legal question. Please consider carefully whether attorney consultation needs to be secret because the public benefits equally from learning what the Commission can or cannot do legally when investigating the Chief and the process for such an investigation. Regardless, if the Commission does close the doors, we strongly urge the Commission to keep that executive session strictly confined to the attorney's advice, not as a pretext for actual discussion of conduct and options.

III. Public access to Commission meetings is critical.

As noted, the Sunshine Law gives boards a lot of discretion to hold meetings openly. It is less forgiving when a board improperly closes a meeting. The Legislature set significant negative legal consequences for violations. Please consider these consequences when proceeding on November 18.

- **Voidability.** HRS § 92-11 provides that when a government board disregards the requirement that meetings be "open to the public," the final action of the board is voidable. If the Commission exceeds the narrow exceptions on November 18, whatever actions it takes concerning Chief Pelletier will be subject to potential reversal in court solely on Sunshine Law grounds, creating a cloud over the validity of the Commission's proceedings until resolved by a court.

- **Fees and Costs.** In addition to the substantial taxpayer expense for the Commission's attorneys to defend the Commission's decision to exclude the public, HRS § 92-12(c) provides that a prevailing challenger to that improper closure may recover attorney's fees and costs. The Commission can avoid exposing the County to tens of thousands of dollars in liability by simply holding an open meeting.

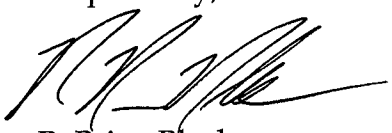
- **Criminal Violation.** "Any person who willfully violates any provisions of this part shall be guilty of a misdemeanor." HRS § 92-13. The Hawai'i Supreme Court has spoken clearly on these exceptions. Discussing these agenda items entirely in secret would be an intentional violation of the Sunshine Law.

- **Summary Removal.** HRS § 92-13 further provides that if a Commission member is convicted, that person "may be summarily removed from the board unless otherwise provided by law."

The public is interested in observing the process by which the Maui Police Commission investigates the Chief of Police. The community wants to understand not only the decision-making process and the reasons underlying any final decisions, but also how you—as the community's representatives in civilian oversight of the police department—approach these issues. The Sunshine Law gives the public broad rights of access to observe discussions and proceedings that impact their community.

Public First is committed to developing collaborative solutions that promote transparency and responsiveness in government. In that spirit, I am willing to discuss these issues further. Although I cannot attend the Commission's meeting in person due to other commitments that day, I am available to discuss these issues with Commission members before the meeting and can be available by phone at some points during the day on November 18 if there are questions. In the end, it would be an unfortunate waste of judicial and taxpayer resources if this Commission insists on pursuing a path of secrecy that blatantly disregards the principles of the Sunshine Law.

Respectfully,



R. Brian Black
Executive Director