

Shelton Jim On, Chair
Honolulu Ethics Commission
925 Dillingham Blvd., Ste. 190
Honolulu, Hawai`i 96817

**RE: Hiring Deliberations Concerning Honolulu Ethics Commission
Executive Director and Legal Counsel (Executive Director)
May 29, 2026 Meeting; Agenda Item Nos. III & IV**

Dear Chair and Members:

My name is Ben Creps. I am a staff attorney at Public First Law Center, a Hawai`i non-profit organization dedicated to promoting open government in Hawai`i.

Public First strongly urges the Commission to discuss all of the May 29 agenda items concerning candidates for Executive Director of the Honolulu Ethics Commission in *open session*. We take no position on the candidates.

According to the agenda, the Commission intends to receive presentations from and interview candidates and deliberate and vote on candidate selection and compensation. The agenda anticipates a closed session for those discussions under HRS § 92-5(a)(2), the “personnel-privacy” exemption. The personnel-privacy exemption would *not* justify holding the entirety of those discussions in secret. The Hawai`i Supreme Court has held that going behind closed doors simply because the board is discussing personnel matters contradicts the plain text of HRS § 92-5(a)(2).

Section 92-5(a)(2) applies *only* where “where consideration of matters affecting privacy will be involved.” HRS § 92-5(a)(2); *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). The information to be discussed must be “highly personal and intimate.” *E.g., 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.*

The residents of Honolulu have a legitimate interest in observing the selection process and understanding why the Commission selected a particular candidate for such a critical watchdog position at the City. For example, the candidates’ vision for the Commission or position is not highly personal and intimate.

There is no good reason to hold these important discussions behind closed doors. At a minimum, the Commission must ask the position of the candidates on a closed meeting.



And we call on all candidates to request an open meeting. A closed-door approach only erodes public trust in the process and the final selection.

There are legal consequences for violating the Sunshine Law.

- **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. In this context, if the Commission closes the doors on the public in selecting the Executive Director, the Commission’s final selection will be subject to reversal in court, forcing a new selection process.
- **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. Given the clarity of the law, an award of fees would be particularly appropriate under the circumstances here.
- **Criminal Violation.** HRS § 92-13 provides that “[a]ny person who wilfully violates any provisions of this part shall be guilty of a misdemeanor.” You cannot hold an executive session simply because you want to do so or because you have done so in the past. Knowing that there are severe limitations on closing the doors to the public when hiring the next Executive Director, failure to hold an open session is an intentional violation of the Sunshine Law that would expose Commission members to criminal prosecution.
- **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.”

It bears repeating the Hawai`i Supreme Court’s admonition: “Board members are required to understand the requirements of the Sunshine Law and act in good faith in accord with its spirit and purpose.” *CBLC*, 144 Hawai`i at 476, 445 P.3d at 57. In rejecting the Honolulu Police Commission’s arguments, the supreme court held that “a board will not violate the Sunshine Law by holding an open meeting.” *Id.* at 477, 445 P.3d at 58. Because the Legislature sought to encourage open meetings, the negative legal consequences under the Sunshine Law thus only occur when the Commission shuts out the public.

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Thus, we respectfully ask the Commission to embrace the spirit of transparency and accountability in the Sunshine Law and vote against an executive session for these important discussions. *Id.* (“Because the decision to close a meeting is discretionary, board members should thoughtfully weigh the interests at stake before voting.”). Other boards have successfully discussed personnel matters publicly for important government positions, including the State Law Enforcement Standards Board, Hawai‘i County Police Commission, Maui Police Commission, and Kauai Police Commission.¹

Alternatives exist to balance any practical concerns with the requirements of the Sunshine Law. We have worked with several boards on options.

Public First is committed to developing collaborative solutions that promote transparency and responsiveness in government. We are more than happy to discuss these issues and potential solutions further with you or your designees. In the end, in light of all the effort invested in this process, it makes little sense to jeopardize the outcome, expose the Commission to potential liability, and setback the incoming Executive Director by starting that person’s tenure under a cloud of secrecy.

Thank you for the opportunity to testify.

¹ Other government boards have conceded violating, or been held to have violated, the Sunshine Law by discussing personnel matters in secret, including the Board of Directors of the Agribusiness Development Corporation, the Defender Council, and the Honolulu Police Commission.