

MINUTES

Civilian Review Board
Sloat Room—Atrium Building—99 West Tenth Avenue
Eugene, Oregon

February 10, 2015
5:30 p.m.

PRESENT: Bernadette Conover, Chair; Eric Von Houten, Vice Chair; Maurice Denner, Steven McIntire, George Rode, Debra Velure, Chris Wig, Civilian Review Board members; Leia Pitcher, Vicki Cox, Mark Gissiner, Police Auditor's Office; Cindy Coleman, Sgt. Dale Dawson, Lt. Nate Reynolds, Rick Weber, Eugene Police Department.

ABSENT: None.

Chair Conover convened the CRB at 5:30 p.m.

I. AGENDA AND MATERIALS REVIEW

Ms. Conover deemed the agenda approved.

II. MINUTES APPROVAL—December 9, 2014

Mr. McIntire, seconded by Mr. Van Houten, moved for approval of the December 9, 2014 Civilian Review Board minutes as submitted. The motion passed unanimously, 7:0.

III. PUBLIC COMMENT

Carol Berg-Caldwell said she asked the CRB to review third party complaints at its last meeting. She had filed complaints in December but she had not witnessed the incidents. She recently met with Mr. Gissiner about her concerns and provided some documents she had given to the Police Commission. She thanked Mr. Gissiner for listening to her concerns.

Majeska Seese-Green said as a follow-up to Carol Berg-Caldwell, she urged the CRB to review a case which warranted review. She appreciated getting information from Mr. Gissiner when they met.

IV. COMMENTS FROM BOARD MEMBERS, HUMAN RIGHTS COMMISSION LIAISON AND POLICE COMMISSION LIAISON

Mr. Rode reported the Police Commission had discussed ensuring a safe environment for everyone, including police officers and people filming police interaction with the public, especially when a person was being arrested. The Police Commission had talked about maintaining a safe distance between people filming the event and the people directly involved in the event. It depended on each situation and how many officers were involved.

Mr. Van Houten responded to Ms. Berg-Caldwell and Ms. Seese-Green's comments. There was a policy in the Police Union/Auditor negotiated protocols that addressed third party complaints.

Mr. Denner had not heard any discussions about the rights of the accused when third party complaints were filed. When officers used hands on techniques, many people assumed a person was guilty. He opined the courts would ultimately decide this issue.

Mr. Wig reported he had not attended the January 2015 Human Rights Commission (HRC) meeting but he had reached out to a HRC member who advised him there was nothing to convey to the CRB. The HRC was currently addressing homelessness and rights of unhoused people. He had recently been the victim of a crime. He had an excellent experience with Officer Kyle Evans, who had responded to his mugging and had been very professional.

Ms. Conover suggested the CRB may want to discuss the protocol for reviewing third party complaints.

Mr. Rode asserted if someone felt violated by an action of an officer, they should make a complaint. A third party who had not witnessed the incident in question should not file a complaint except in special circumstances. A third party could advise others of their right to go to the CRB with their concerns.

V. TRAINING: DISCUSSION OF TRAINING ON "ALTERNATIVE" WEAPONS

Lt. Reynolds introduced Sgt. Dale Dawson, who was replacing Sgt. Scott Vinje in Internal Affairs (IA). Sgt. Dawson said he had been a police officer since 1991 and had joined the Eugene Police Department in 2002. He was promoted to sergeant two years ago and volunteered to serve in IA.

Lt. Reynolds introduced Rick Weber. Mr. Weber had joined the EPD five months ago as a Program Coordinator, after serving in the Air Force for 20 years.

Lt. Reynolds introduced Cindy Coleman. Ms. Coleman said she had worked in EPD for 20 years and in IA for 14 years.

Lt. Reynolds offered a PowerPoint presentation entitled Disguised and Hidden Weapons—Civilian Review Board—February 2, 2015, which illustrated techniques used by people to disguise and hide a variety of weapons including guns, knives, Tasers, swords and other weapons.

Lt. Reynolds said it was important when working with people to keep the situations calm.

Sgt. Nelson added officers needed to be able to act immediately to any situation they encountered.

Mr. McIntire opined most people did not have an appreciation or knowledge about situations officers encountered daily on the streets, and the CRB needed to help citizens understand what officers regularly had to deal with.

VII. CASE REVIEW—Investigation of a Supervisor's Actions After an Officer Injury

Ms. Pitcher provided a PowerPoint presentation on the case before the CRB.

Summary of Facts

- During a break in training, Officer E injured his hand while engaged in horseplay with Officer D.
- Supervisor A was present and likely witnessed the event. Supervisor A advised Supervisor B that Officer E had injured his hand but did not state how the injury occurred.
- Supervisor B, upon learning of how the injury occurred, reviewed the text notifications from Supervisor A and was concerned that Supervisor A did not properly notify Supervisor B of the incident.
- Supervisor B was also concerned that the notifications from Supervisor A did not contain information that a reasonable employee would have provided under similar circumstances.

Allegations

- **Unsatisfactory Performance** – that Supervisor A did not properly notify Supervisor B about an incident that involved an employee breaking his hand while engaged in horseplay.
- **Judgment** – that Supervisor A’s notification to Supervisor B lacked information which a reasonable employee in similar circumstances would have provided.

Recommended Adjudication

- Unsatisfactory Performance
 - EPD Chain of Command: Sustained
 - Police Auditor: Sustained
 - Chief of Police: Sustained
- Judgment
 - EPD Chain of Command: Insufficient Evidence
 - Police Auditor: Insufficient Evidence
 - Chief of Police: Dismissed

Issues for CRB Discussion

- Complaint Intake and Classification
 - Internally reported
 - Classification: Allegation of Misconduct
 - Mr. Rode agreed with the recommended adjudication for both Unsatisfactory Performance and Judgment.
 - Mr. McIntire thought the Allegations were redundant.
 - Mr. Wig said he could have gone either way. He concurred with Chief Kern’s recommendation. There was a great deal of information in the text messages. He questioned whether failure to properly report was a genuine mistake or if Supervisor A did not know the policy. This could be classified as a Performance Issue if the supervisor did not know the policy.
 - Ms. Velure said it was not a supervisor’s role to submit or deny an injury claim, as this was a Workers’ Compensation (WC) issue.
- Complaint Investigation and Monitoring
 - Mr. McIntire said the WC element was troubling. If Officers B, D and E were not satisfied with the investigation, the issue should have been escalated to get more information. He noted everyone involved were seasoned officers.
 - Mr. Wig said if the sergeant was involved in the incident, he should not have signed off on the report.
 - Ms. Conover expected more from Supervisor A.
 - Mr. Gissiner said all injuries needed to be reported by officers. This should not be left to Risk Management to initially document what had occurred.

- Mr. Van Houten commended Sgt. Nelson for his work investigating what must have been a difficult case given the complexity and people involved.
 - Sgt. Nelson said there were expectations of employees changed as they rose in rank.
 - Relevant Department Policies and Practices
 - 1101.1.B.9 Unsatisfactory Performance
 - 1101.1.B.17 Judgment
 - Mr. Van Houten asked if questions related to horseplay came up often.
 - Sgt. Nelson said the issue was discussed at Human Resource presentation attended by officers.
 - Mr. Gissiner said horseplay had been tolerated in the police culture in the past, but the paradigm had shifted, and it was understood the people did not wrestle in the workplace.
 - Sgt. Nelson concurred horseplay was tolerated less now than in the past. The EPD expectation was that it would not occur in the workplace, but it was unlikely that it would be totally abolished. Department policy clearly did not allow horseplay.
 - Ms. Velure was concerned about the amount of texting that occurred, repeatedly conveying the same information. She asked if texting to a supervisor was accepted in lieu of other reporting means.
 - Sgt. Nelson said the EPD expected officers to report injury incidents to the next person in the chain of command. Officers should make sure the notification was complete.
 - Mr. McIntire noted Supervisor B had been involved in the incident and inquired about his role in the adjudication process.
 - Mr. Gissiner said adjudication responsibilities were assigned by the Chief.
 - Ms. Conover asked if officers felt they had support at the top of the chain of command to identify officers who should be investigated.
 - Sgt. Nelson said officers who reported questionable behavior to supervisors would be supported 100 percent by command staff.
 - Mr. Denner asked if it was clear to the supervisors involved in this incident how it should be reported.
 - Sgt. Nelson said injuries due to horseplay are not normally compensable through Workman’s Comp. Work related injuries happened regularly.
 - Policy and/or Training Considerations
 - Mr. McIntire was troubled by the description in the 801 report and thought more information could have been provided. This should be a training consideration.
 - Adjudication Recommendations
 - Mr. Rode agreed with the recommendations.
 - Mr. Van Houten agreed with the recommendations.
 - Mr. McIntire agreed with the recommendations.
 - Ms. Velure did not agree with the recommendations. The complaint should have been dismissed.
 - Mr. Denner agreed with the recommendations.
 - Mr. Wig agreed with the recommendations.
 - Ms. Conover agreed with the recommendations, noting there were multiple issues with this case.
 - Additional Comments/Concerns

- There were no additional comments/concerns.

VI. BREAK

The CRB took a short break.

VIII. AUDITOR REPORT

Mr. Gissiner provided a PowerPoint presentation entitled Police Auditor's Report to City Council: January 21, 2015 and distributed copies of the presentation to those present. He also distributed a document entitled A Coalition for Mutual Support—Benchmark Cities—2013. He facilitated a discussion by CRB members of the data in the documents.

IX. CASE SELECTION AND PROTOCOL REVIEW

Ms. Conover stated the CRB should have protocols for third party complaints. She opined third party complaints by parents on behalf of their children or by guardians of people who were incapacitated or had diminished capacity should be considered differently than third party complaints by outside parties.

Mr. Gissiner expressed privacy and confidentiality concerns for individuals related to the CRB reviewing third party complaints without the involved party being aware of the discussion. He noted neither the City ordinance language nor the union protocols addressed this issue. Ms. Pitcher asked notifications should be done to involved parties for third party complaints that go to the CRB. If a third party complaint was filed, there was a good chance the issue had already been identified internally. Mr. Gissiner added the Police Auditor's office had limited resources and was pressed to review first party complaints. The number of third party complaints had risen over time, and his office spent 100s of hours on these complaints. Review of third party complaints puts an additional burden on staff. His office needed parameters under which they would review third party complaints.

Mr. McIntire asked why third party complaints should be treated differently than first party complaints.

Ms. Velure said third party complaints should not be handled differently than first party complaints.

Mr. Wig said if the review process was not broken the CRB did not need to create rules it did not need. Deciding what cases the CRB should review was currently done by the Chair, Vice Chair and Mr. Gissiner, and they did a good job of bringing a variety of cases to the CRB. In the case of third parties videotaping police interaction with citizens, the rights of people being videotaped should be considered.

Mr. Denner agreed with Mr. Wig. He had attended an NAACP meeting where the issue of racial concerns related to police abuse of authority was raised. The CRB should be proactive and develop a statement about third party complaints.

Ms. Velure disagreed with Mr. Wig and Mr. Denner. The CRB could look at any closed case.

Mr. Van Houten was comfortable with the current review process done by Mr. Gissiner and did not want to change the procedure. The CRB could make recommendations to Mr. Gissiner, but the CRB represented the City and the community, and the CRB was no different than other community members.

Mr. Rode was concerned by third party complaints and said they should not be reviewed by the CRB except in extreme conditions. He respected the decisions made by Mr. Gissiner, Ms. Conover and Mr. Van Houten with the limited resources available to them.

There was consensus to form a committee to further review third party complaints. Ms. Conover, Mr. Rode and Mr. Denner agreed to serve on the committee. Ms. Conover and Mr. Van Houten would decide which cases would be reviewed by the CRB at its next meeting.

X. ADJOURN

The meeting adjourned at 8:10 p.m.

(Recorded by Linda Henry)