

MINUTES

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

March 10, 2015
5:30 p.m.

PRESENT: Bernadette Conover, Chair; Eric Von Houten, Vice Chair; Maurice Denner, George Rode, Debra Velure, Chris Wig, Civilian Review Board members; Leia Pitcher, Vicki Cox, Mark Gissiner, Police Auditor's Office; Sgt. Scott Vinje, Eugene Police Department.

ABSENT: Steven McIntire, member.

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

I. AGENDA AND MATERIALS REVIEW

Ms. Conover the agenda was approved.

II. MINUTES APPROVAL—February 10, 2015

Mr. Rode offered the following correction to page 6, paragraph 3, sentence 1:

Mr. Rode was ~~bothered~~ **concerned** by third party complaints and said they should not be reviewed by the CRB except in extreme conditions.

Mr. Van Houten offered the following correction to page t, paragraph 4, sentence 2:

Ms. Conover, ~~Mr. Van Houten~~, Mr. Rode and Mr. Denner agreed to serve on the committee.

Ms. Conover deemed the minutes as amended approved by acclamation.

III. PUBLIC COMMENT

There was no one who wished to offer public comment.

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

Mr. Rode reported the Police Commission (PC) had requested that CRB meetings be recorded so PC members could review them. The PC had discussed use of cameras in public places and decided to review the issue at a future meeting. PC members were saddened by the death of David Frohmayer.

Mr. Van Houten said there had been a bit of public comment over the past months regarding the CRB accepting third party complaints. His opinion was that the board needed to remain consistent in its process, trust the Auditor, Assistant Auditor, and staff to complete their jobs to the best of their abilities, and that included reviewing relevant information that aligned with the ordinance and policies. He was aware that the CRB was putting a task force together to offer some clarity to the process, however he wanted to be clear that he believed the CRB should continue to be open to the public. Additionally, regarding the most recent complaints that had been mentioned in public comments by Carol Berg-Caldwell and Majeska Seese-Green, after reviewing information with the Auditor, the Assistant Auditor and CRB Chair, there was not sufficient rationale to support bringing these cases for public review. “I recognize that this is a different message from me than my comments at the February meeting.” He made that decision based on three important pieces:

- To review the Auditor’s decision about cases to bring forward or not—is simply something the CRB had not done in the past.
- There was not good rationale to do it in this case.
- The CRB had an opportunity to bring this case to light when it reviewed closed cases and it did not. He did not have enough information to alter the CRB’s process, one that had been highly successful in some very challenging cases over the past years.

Mr. Wig reported he had attended the February 17, 2015 Human Rights Commission (HRC) meeting. The HRC was currently focused on reorganizing, recruiting new members and electing a new chair and vice chair. The HRC had reviewed an ordinance related to intimidation with a focus on homelessness. Recruitment for the Human Rights Analyst position was under way. The next meeting was scheduled for March 17, 2015.

Ms. Velure recognized David Frohnmayer and the many roles in public service he had filled in Oregon. He had been the Dean of the University of Oregon (UO) School of Law when she had attended the Law School.

V. TRAINING: DISCUSSION OF EPD’S DATA COLLECTION INITIATIVE FOR GAINING UNDERSTANDING OF STOPS BY POLICE OFFICERS

Mr. Gissiner said the City of Eugene contracted with a company to develop a process in to collect data based on demographics. Data collection based on demographics was already done by the City of Portland. He directed CRB members to page 8 in a document entitled Portland Police Bureau Stops Data Collection 2013 Annual Report. He reviewed Table 4, Reasons for Searches of Drivers Citywide.

Ms. Conover inquired if the PC was looking at developing a data collection policy.

Mr. Rode thought the PC would look at policies at the national level and take care to ensure people were not offended by a City of Eugene policy.

Mr. Denner said it was important for the PC to carefully consider any policies. He noted the City was putting EPD officers in neighborhoods with higher crime rates and it was likely that would result in more traffic stops.

Mr. Gissiner hoped the new program would provide transparent data and that the City would learn from the City of Portland’s experience.

VII. CASE REVIEW—Investigation of An Officer’s Use of Force During an Arrest

Ms. Conover asked CRB members to exercise caution in their discussion because a member of the public was videotaping tonight’s meeting.

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

Summary of Facts

- Officer A and Officer E were dispatched to a building regarding a burglary. The officers contact the person who complained about the burglary and then found the involved subject, who appeared to be asleep in the basement of the building.
- Officer A called out to the subject and tried to wake him. Officer A and Officer E eventually stood the subject up, at which point he began to resist. Officer A placed a single handcuff on the subject, but was unable to secure the other side.
- According to dispatch records, the officers arrived at the location at 0220. At 0224, the advised dispatch that they were in a fight and requested emergency cover. At 0226, they advised dispatch that they had the subject in custody.
- At one point during the fight, the subject reportedly pushed Officer A onto the stairs and was on top of the officer. Officer A told Officer E that he could not breathe.
- Officer A and Officer E used focused blows, Officer E used his ASP baton. The two officers were able to push the subject in to a chair and hold him until cover officers arrived.
- Officer C arrived and utilized his Taser, which was ultimately effective and Officer A and Officer E were able to move the subject to the ground, though he was still resisting handcuffing. Officer A reported that he was able to pull the subject’s left hand close enough for Officer E to attached and close the handcuffs.
- Officer A stated in his report that he was not sure if the subject was completely handcuffed when Officer A punched him in the buttock/lower back area.
- Following the incident, Officer A and two other officers on scene reported to their supervisor that Officer A appeared to have punched the subject after the handcuffs were on. Officer A stated that he was still in the fighting mindset, and he wanted the supervisor to know what had occurred.

Allegations

- **Use of Force** – that Officer A used force on a suspect after the suspect was in custody and was no longer an immediate threat.

Recommended Adjudication

- Use of Force
 - Supervising Sergeant: Sustained
 - Supervising Lieutenant: Sustained
 - Supervising Captain: 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

- Self-reported to EPD chain of command.
- Classification: Allegation of Misconduct
 - Mr. Wig stated it was a testament that the system was working as intended, with Officer A self-reporting and other officers reporting the incident.
 - In response to Ms. Velure, Mr. Gissiner had no problem with the intake and classification.
 - Mr. Rode concurred with Mr. Wig. He noted Officer A and Officer E were exhausted after fighting with the subject. The report was very thorough.
 - Ms. Conover agreed that self-reporting by Officer A was a good outcome.
 - Mr. Van Houten concurred with CRB members' comments, noting the reporting by Officer A and Officer E was consistent.

Complaint Investigation and Monitoring

- Mr. Wig was satisfied with the investigation and monitoring.
- Ms. Velure was satisfied with the investigation and monitoring.
- Mr. Denner noted Sgt. Vinje attempted to reach the subject three times.
- Sgt. Vinje said he eventually reached the subject but the subject did not wish to comment.
- Mr. Rode thought the investigation was thorough.
- Ms. Conover appreciated Officer A self-reporting.
- Mr. Van Houten was impressed with the level of honesty by the officers. The level of intensity of the interaction of Officer A and Officer E with the subject was evident in the video.

Relevant Department Policies and Practices

- 901.1. Use of Force
 - Ms. Velure inquired about the use of a closed fist versus an open palm by the officers when striking the subject. She inquired if use of a closed fist was considered excessive use of force.
 - Sgt. Vinje said the use of a closed fist versus an open palm was not about the level of force, but an officer safety issue. Use of a closed fist resulted in a higher incidence of broken bones in officers' hands than use of an open palm. He noted use of a closed fist was considered an appropriate use of force.
 - Mr. Denner stated Policy 901.1D addressed diffusing situations. He had done ride-alongs with officers and had not seen the amount of time officers spent diffusing situations addressed in their reports.
 - Mr. Wig opined the narrow confines of the space where the officers interacted with the subject were perceived as unsafe for the officers.
 - Ms. Pitcher noted officers had attempted to waken the sleeping subject and the subject started fighting when the officers picked him up.
 - Mr. Rode thought the officers used good judgement in how they handled the subject. He was glad the officer used an open palm rather than a closed fist.
 - Ms. Conover questioned why a UO police officer was riding working with the EPD.

- Mr. Gissiner said Chief Kerns had agreed to allow EPD officers to serve as Field Training Officers (FTO) for UO recruits.
- Mr. Van Houten noted the subject went from “0 to 60” quickly. He had worked with young adults who often woke up highly aggressive.

Policy and/or Training Considerations

- Mr. Wig thought a closed fist or an open palm hit was harsh either way. He asked if punching was more damaging.
- Sgt. Vinje said EPD had been training in this area and officers were given the option of using either method, which depended on individual situations. In some situations, officers were fighting for their lives and they did what they had to do to control arrestees.
- Mr. Gissiner said his office had raised concerns about the safety for officers and arrestees when a closed fist was used. He added head strikes were reviewed by the Blue Team.
- In response to Mr. Denner, Sgt. Vinje said officers did carry pepper spray and it could have been used in this situation.

Adjudication Recommendations

- Mr. Wig said the facts of the case were not in dispute. He hoped the forthrightness of the officers would be considered in any disciplinary action.
- Ms. Velure agreed with Mr. Wig.
- Mr. Denner agreed with Mr. Wig. However, he was concerned that the officer now had a disciplinary folder that did not exist before this incident. This was the transparency the CRB was looking for. He was concerned the discipline would remain permanently on the officer’s record.
- Mr. Gissiner said expunging of personnel records was a collective bargaining issue.
- Mr. Rode agreed with Mr. Wig. He thought the system worked fine in this case.
- Ms. Conover agreed with the adjudication recommendation.
- Mr. Van Houten agreed with the adjudication recommendation.

Additional Comments/Concerns

- There were no additional comments/concerns.

VI. BREAK

The CRB took a short break.

VIII. AUDITOR REPORT—Discussion of Review of Third Party Complaints, CRB Vacancies, ABA Presentation, Future Meetings

Mr. Gissiner said the City’s annual recruitment for boards and commissions was underway. Ms. Conover, Mr. Rode and Ms. Velure’s terms were ending. The City Council would appoint members on June 8, 2015 for terms that would begin July 1, 2015. He would participate in an

American Bar Association Strategies for Success webinar facilitated by Darryl Stevens, representing the Major Cities Chiefs Association.

Mr. Gissiner said the next CRB meeting was scheduled for April 14, 2015.

CRB members discussed third party complaints.

Ms. Conover said the current practice was for the CRB chair and vice chair to review complaints with the Police Auditor's office to identify cases for review by the CRB. She questioned whether it was appropriate for someone not directly involved in an incident to file a complaint.

Mr. Rode said Ms. Conover and Mr. Gissiner served as gatekeepers for determining which cases the CRB should review. He wished the case identification process to continue as it had in the past which worked well for the CRB.

Mr. Wig stated CRB members were citizen members. If members of the public was not comfortable with approaching Mr. Gissiner, they could contact the CRB chair or any CRB members. Third party complaints were just as valid as those filed by people who thought they had not been treated fairly by the EPD, but they were not more valid. He noted the CRB could review any case that had been filed.

Mr. Van Houten reiterated his comments that the CRB review system was working better than it ever had been.

Ms. Conover said a citizen had raised an issue which the CRB had not addressed. The CRB needed to develop a process for third party complaints.

Mr. Rode said if a citizen brought a concern to him, if he thought the concern was valid, he would raise the issue with Mr. Gissiner.

Mr. Gissiner said he could provide a list of third party complaints to CRB members on a monthly basis, and the CRB could decide if it wanted to review any of the complaints.

Ms. Velure wanted to see third party requests for CRB case review to be a standing agenda item.

Mr. Wig offered a different perspective. He suggested a subcommittee could review third party complaints and report back to the CRB with recommendations on whether those complaints should be reviewed by the CRB.

Ms. Conover said the CRB should review whether it should move forward with changing the protocols for case selection or articulate more clearly how case selection occurred. She would bring the issue back to the CRB at the April meeting for further discussion.

IX. ADJOURN

Mr. Gissiner requested that the CRB meet in a brief Executive Session regarding his performance evaluation immediately following the CRB meeting.

The meeting adjourned at 7:16 p.m.