

## **MINUTES**

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

May 12, 2015  
5:30 p.m.

**PRESENT:** Bernadette Conover, Chair; Eric Von Houten, Vice Chair; Maurice Denner, Steven McIntire, George Rode, Debra Velure, Civilian Review Board members; Leia Pitcher, Vicki Cox, Police Auditor's Office; Sgt. Dale Dawson, Sgt. Ryan Nelson, Eugene Police Department.

**ABSENT:** Chris Wig, member.

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

### **I. AGENDA AND MATERIALS REVIEW**

Ms. Conover deemed the agenda approved.

### **II. MINUTES APPROVAL—April 14, 2015**

Ms. Conover deemed the minutes as submitted 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**

Ms. Velure said she had been following the Oregon Legislature which was considering legislation related to in-car video and audio taping by police officers and the public.

Ms. Conover asked CRB members to forward their comments related to Mr. Gissiner's performance by the weekend.

Mr. Van Houten thanked the police officers for their work and service, which was fraught with challenges in many different scenarios.

Mr. Rode had attended the Police Commission retreat on May 2.

There was no Human Rights Commission report due to Mr. Wig's absence.

**V. CASE REVIEW—Allegation related to investigation of a crime, investigation showed that EPD employee impermissibly gained consent to search and failed to upload in-car video in a timely manner.**

Summary of Facts

- Reporting Party complained that Suspect tried to initiate a fight with him; RP's wife called 911, and Officer A was dispatched to the dispute.
- Officer A contacted the Suspect and the Reporting Party.
- Reporting Party, who is legally blind, complained to our office that Officer A inappropriately and rudely questioned him about his disability. RP also was concerned that Officer A did not take enforcement action; RP perceived that this may have been due to his ethnicity.
- ICV was not initially available for the incident. After the allegation was opened, Officer A uploaded relevant ICV.
- The interaction between Officer A and Reporting Party occurred off camera, but a portion of their interaction could be heard.
- After informing Reporting Party that insufficient evidence existed that Suspect had committed a crime, Officer A returned to speak to Suspect.
- Suspect had been waiting in front of the vehicle, and the ICV included both audio and visual recording of this interaction.
- The ICV included Officer A asking Suspect for consent to search his backpack.
- Officer A advised Suspect that either he could give consent to search the backpack or go to jail. Officer A did not have probable cause to arrest Suspect at this time.
- Allegations related to ICV uploading and search and seizure were added during the course of the investigation.

Allegations

- **Performance** – that Officer A inappropriately questioned Reporting Party regarding his disability and failed to investigate completely or take appropriate enforcement action. • During the adjudication phase, this was split into two separate allegations: one focused on questioning related to RP's disability, and one that Officer A failed to investigate completely, possibly due to bias.
- **Search and Seizure** – that Officer A impermissibly coerced Suspect's consent to search his backpack.
- **ICV** – that Officer A violated policy by failing to upload ICV related to this incident at the end of his shift.

Recommended Adjudication

- Performance – Questioning
  - Supervising Sergeant: Within Policy
  - Supervising Lieutenant: Within Policy
  - Supervising Captain: Within Policy
  - Supervising Assistant Chief: Within Policy
  - Police Auditor: Within Policy
  - Chief of Police: Within Policy
- Performance – Bias
  - Supervising Sergeant: Unfounded
  - Supervising Lieutenant: Unfounded
  - Supervising Captain: Unfounded
  - Supervising Assistant Chief: Unfounded
  - Police Auditor: Unfounded

- Chief of Police: Unfounded
- Search and Seizure
  - Supervising Sergeant: Sustained
  - Supervising Lieutenant: Sustained
  - Supervising Captain: Sustained
  - Supervising Assistant Chief: Sustained
  - Police Auditor: Sustained
  - Chief of Police: Sustained
- In-Car Video
  - Supervising Sergeant: Sustained
  - Supervising Lieutenant: Sustained
  - Supervising Captain: Sustained
  - Supervising Assistant Chief: Sustained
  - Police Auditor: Sustained
  - Chief of Police: Sustained
- Issues for CRB Discussion
  - Complaint Intake and Classification
    - RP contacted Auditor by Phone
    - Classification: Allegation of Misconduct
    - Additional allegations added during investigation
  - Mr. Wig's notes indicated the supervisor was correct in dividing the case into two parts. The investigation was thorough.
- Complaint Investigation and Monitoring
  - Mr. McIntire said the officer showed an unsatisfactory knowledge of the law. He should not threaten to arrest the suspect if the suspect refused to allow a search of the backpack, especially when the officer knew at the time he had no lawful grounds for an arrest.
  - Mr. Denner agreed with Mr. McIntire. He also felt the geographic context of the stop affected the officer's behavior. Based on his experience working at the Looking Glass New Roads program, clients expected to be hassled by the police. He was bothered by the fragmented recording of the conversation between the complainant and the involved officer. He also noted that, during the complainant's intake interview with the Auditor's Office, Ms. Cox did a good job listening to the call and understanding the caller's concerns.
  - Ms. Conover questioned if the complaints filed by the supervisor and the complainant should have been treated as one complaint or filed separately.
  - Ms. Pitcher said under the circumstances, she would combine the complaints.
  - Sgt. Nelson said the officer had probable cause to arrest the suspect for disorderly conduct, than the search would have been allowed.
  - Mr. Denner questioned the timeliness of the interview with Officer A.
  - Ms. Pitcher said the timeliness of reporting had been discussed at length because it was a performance issue.
  - Mr. Rode said with tempers flaring, the officer needed to take control of the situation. In the end, the complainant was polite and the officer did a good job of calming the situation. The Police Auditor's office did a good

- job of classifying the case, and identifying two other areas of concern through its investigation.
      - Ms. Velure appreciated that the officer took the extra steps but the complainant now has a citation on his record. She was troubled that the allegation was sustained.
      - Mr. McIntire said Sgt. Scott Vinje, who investigated the case, questioned the complainant in a manner that may have put him on the defensive.
      - Ms. Pitcher noted she had participated in the interview with the complainant and had not perceived any defensiveness.
      - In response to Mr. Van Houten, Ms. Pitcher said Officer B was new to EPD but had previously worked in a different law enforcement agency.
    - Relevant Department Policies and Practices
      - 1101.1.B.9 Unsatisfactory Performance
      - 322.6 Consent
      - 301.4 In-Car Video
    - Mr. Rode questioned if the EPD policy called for badgering people into allowing searches.
    - Sgt. Nelson said officers could ask for consent but should not badger people. However, the complainant could be arrested if he committed an arrestable offense.
    - Mr. Denner questioned the range of the microphone in the car recording.
    - Sgt. Nelson said the quality of the audio recording would be impacted by the terrain and other audio interferences.
    - Mr. Denner was concerned about what could have been done to the ICV before it was uploaded. He would advise the officer to upload the ICV in a timelier manner.
    - Sgt. Nelson stated it was not possible for an officer to edit a recording in the car, or before it was uploaded.
- Policy and/or Training Considerations
  - Mr. Wig's notes said it was important for officers to talk with people with whom they had disagreements.
  - Mr. McIntire was concerned that an officer with eight years of experience did not clearly understand the search and seizure law, and that the officer coerced the reporting party.
  - Mr. Van Houten said the complainant appeared to be good at pushing buttons to agitate the officer. Officers were trained in ramping down the intensity of interactions.
  - Mr. Denner said a training consideration was how to talk appropriately with youth and other people, to keep the intensity from rising. The kid did have anger management training, which should have reinforced good behavior.
  - Mr. Rode observed Officer A and the complainant had a humane conversation at the end of their encounter. The officer needed to understand that 'no means no' when he asked to look at the backpack and the complainant did not want the officer to look at it. The complainant knew his rights.
- Adjudication Recommendations
  - Dividing first allegation into two

- There was consensus by the CRB to agree with the adjudication recommendations.
- Additional Comments/Concerns
  - Mr. McIntire agreed with the Supervising Sergeant about separating the complaints. The officer should be careful with what he says when requesting cooperation from a suspect, as such an approach may lead one to question his credibility.
  - Mr. Rode said everyone did a good job.
  - Ms. Pitcher noted the investigating sergeant saw the ICV and was able to identify two additional issues that needed to be addressed.
  - Ms. Conover was concerned that the ICV was not uploaded in a timely manner and with a bad search.
  - Mr. Denner said it was not clear from the ICV how Officer A identified the complainant. It was also not clear who called 9-1-1 to report the incident.
  - Sgt. Nelson said Officer A should have gotten identification from the reporting party. However, sometimes verbal identification was the only identification available.

## VI. BREAK

The CRB took a short break.

## VII. CASE REVIEW—Internally reported allegation that employee engaged in horseplay, causing injury to an employee of another agency and failed to report consequent damage to EPD vehicle.

### Summary of Facts

- Internally reported following incident at the range during training.
- Supervisor A was driving in a City vehicle on a road at the range. Officer B, Deputy D, and a civilian K9 instructor were walking along the road in the same direction.
- Supervisor A drove his vehicle close to the walkers in order to splash them with water. As he passed, Deputy D jumped onto the hood of the vehicle.
- Supervisor A sped up slightly and then braked quickly, causing Deputy D to fall from the hood onto the ground.
- Deputy D immediately complained of pain; X-rays revealed a fractured ankle.
- When Supervisor C went to use the vehicle, he found a long scratch on the hood. Supervisor A later stated that he had observed the scratch but neglected to report it.

### Allegations

- **Judgment** – that Supervisor A failed to use good judgment when he engaged in horseplay using a motor vehicle, contributing to the injury of another.
- **Unsatisfactory Performance** – that Supervisor A failed to report damage to the vehicle from the incident.

### Recommended Adjudication

- Judgment
  - Supervising Lieutenant: Sustained
  - Supervising Captain: Sustained
  - Supervising Assistant Chief: Sustained

- Police Auditor: Sustained
- Chief of Police: Sustained
- Performance
  - Supervising Lieutenant: Sustained
  - Supervising Captain: Sustained
  - Supervising Assistant Chief: Sustained
  - Police Auditor: Sustained
  - Chief of Police: Sustained

#### Issues for CRB Discussion

- Complaint Intake and Classification • Internally reported
  - Ms. Conover agreed with the intake and classification.
- Classification: Allegation of Misconduct
- Complaint Investigation and Monitoring
  - Mr. Wig said the investigation by Sgt. Dawson was thorough and excellent.
- Relevant Department Policies and Practices
  - 1101.1.B.17 Judgment
  - 1101.1.B.9 Unsatisfactory Performance
    - Mr. Wig said the horseplay with a vehicle was very dangerous.
    - Mr. McIntire said Sgt. A told the deputy he would report the incident to Chief Kerns, but he could not tell if the supervisor waited to file the report until the deputy followed up with a phone call.
    - Sgt. Dawson said the EPD expectation was that this type of incident should not happen. In response to Mr. McIntire, Sgt. Dawson said the injury incident should have been reported immediately. The Blue Team was notified within about two hours, but the lieutenant could have been notified immediately by telephone.
    - Mr. Denner said waiting a couple of hours to report the incident may be reasonable, but waiting a couple of days was not reasonable.
    - Ms. Conover had no concerns regarding the reporting of the incident.
    - Mr. Van Houten noted this was the second case the CRB had reviewed in three or four months regarding horseplay by employees. He asked about training, and what needed to be done to stop this behavior.
    - Sgt. Dawson said both incidents were with the SWAT team, and the supervisors had reinforced the importance of stopping the horseplay.
    - Ms. Conover noted groups often participated in bonding activities.
    - Sgt. Dawson said supervisors had made it clear that horseplay was not acceptable behavior.
    - Ms. Conover was concerned that the supervisor was in a position that people looked up to and was engaging in inappropriate behavior.
    - Mr. McIntire said supervisors should be held to higher standards and set a poor example by engaging in horseplay.
- Policy and/or Training Considerations
  - Mr. Van Houten appreciated Sgt. Dawson's transparency. He thought the officers occasionally needed to let off steam when they were not in the field as one way to build comradery,
  - Mr. Denner said he had worked in a large school district, before moving to Eugene, where he saw little feedback given to supervisors about their behavior. The issue should be addressed by EPD before someone was seriously injured. It was important to focus on improvements at every level in the EPD.

- Ms. Conover thought the supervisor was filling multiple roles, serving as a quarterback in the field and a coach on the sideline.
- Adjudication Recommendations
  - Mr. Wig notes indicated he agreed with the adjudication.
- Additional Comments/Concerns
  - Mr. Wig was troubled by the supervisor's behavior and thought he should have made better decisions.
  - Ms. Conover hoped the CRB would not have more cases involving behavior of supervisors.
  - Mr. Rode said team building was important for the EPD, and there was a fine line between harmless horseplay and behavior that resulted in people being injured.
  - In response to Ms. Conover, Sgt. Dawson said there was a gouge in the hood of the vehicle that was a result of the horseplay.
  - Mr. Van Houten commended Sgt. Dawson for a great report.

## **VIII. AUDITOR REPORT**

Ms. Pitcher said Mr. Gissiner recently participated in an American Bar Association webinar on civilian oversight. Staff had not heard from the City Council about upcoming CRB appointments. There were some interesting cases that the CRB would review in the future.

## **IX. ADJOURN**

The meeting adjourned at 7:00 p.m.

*(Recorded by Linda Henry)*