

## MINUTES

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

June 14, 2016  
5:30 p.m.

PRESENT: Eric Von Houten, Chair; Lindsey Foltz, Vice Chair; Maurice Denner, Steven McIntire, Chris Wig, Civilian Review Board members; Vicki Cox, Mark Gissiner, Leia Pitcher Police Auditor's Office; Sgt. Larry Crompton, Eugene Police Department.

ABSENT: Heather Marek Civilian Review Board member.

Chair Van Houten convened the Civilian Review Board (CRB) at 5:30 p.m.

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

There were no changes to the agenda.

### **II. PUBLIC COMMENT**

Mr. Van Houten noted Majeska Seese-Green would be recording tonight's CRB meeting.

### **III. MINUTES APPROVAL—April 12 and May 10, 2016**

#### **April 12, 2016**

Approval of the April 12, 2016 minutes was deferred to a future meeting.

#### **May 10, 2016**

Mr. Wig, seconded by Mr. Denner, moved for approval of the May 10, 2016 minutes as submitted. The motion passed unanimously, 5:0.

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

Mr. McIntire said the last Police Commission meeting was a joint meeting with the Human Rights Commission. They had a presentation on the Spokane Community Court which Eugene was hoping to model their Community Court which is scheduled to open in September 2016. The court was currently funded for three years, and the community would seek funding beyond that point. The intent of the program was reduce the number of people who continually circled through the system, with ongoing mental health, Department of Licensing (DOL) and other issues. The car camping ordinance was up for renewal and the City of Eugene was working with St. Vincent de Paul. He expressed disappointment that the City Council was considering authorizing up to \$300,000 to record verbatim minutes from both the City Council and the Civilian Review Board meetings. He

thought the cost was not justifiable, was fiscally irresponsible and that any such funds could be used for other purposes.

Mr. Denner expressed regret over the recent events in Orlando, Florida. It showed we have a distance to go. He noted there were two months of open and closed cases in the agenda packet. He was concerned about the calls for service. The public did not understand the process when charges were filed. He asked if it would be possible for the Eugene Police Department (EPD) Public Information Officer (PIO) to get information to the media to help better inform the public.

Mr. Wig shared Mr. McIntire's excitement with the Spokane Community Court model. He had worked in Drug Court, which was an alternative court intended to involve people in positive social activities and reduce repeated contacts. The tragic events in Orlando were in everyone's hearts and thoughts. He noted domestic violence was a precipitating event for many other behaviors and touched many families. It was important to find a way to combat male rage and feelings of entitlement.

Mr. Van Houten welcomed Mr. Wig and Mr. McIntire for another term on the CRB. In light of the Orlando events, it was important to honor other people's opinions and beliefs. He was concerned that we as a culture were losing the ability for healthy discord.

## **V. CASE REVIEW: RELATED TO AN EMPLOYEE'S HANDLING OF EVIDENCE (A SUSPECTED STOLEN MOTORCYCLE)**

Ms. Pitcher offered a PowerPoint presentation entitled *Case Summary—Civilian Review Board—June 14, 2016* and facilitated a discussion on the case before the CRB.

### Summary of Facts

- Officer E stopped a motorcycle for a taillight violation. The driver did not have insurance or registration paperwork, Records were unable to locate a record for the license number, and Officer E was unable to find a VIN on the vehicle.
- Officer A responded to the stop to assist Officer E. Officers seized the motorcycle for a VIN inspection and had it towed to the City Shops. Officer A secured it in a locked area out of the elements.
- Approximately two days later, Officer A was advised by a supervisor in the Forensics Unit as well as Sergeant B that the policy had changed, and that the motorcycle should have been towed to the Evidence Control Unit (ECU).
- Officer A was concerned about incurring tow charges, so he attempted to contact another supervisor to get approval for the second tow. They spoke approximately two days later, and that supervisor also advised Officer A to have the motorcycle towed.
- Officer A stated that he intended to have the motorcycle towed to the proper facility when he returned to work following the weekend. Officer A stated that he was dispatched to a call immediately after briefing and unable to get the motorcycle towed during business hours.
- The following day – 10 days after the motorcycle was seized – the owner of the motorcycle called regarding its status. Sergeant B discovered at that time that the motorcycle had not yet been brought to ECU.
- Also on that day, Officer A contacted retired EPD Sergeant G, who responded to the City Shops to assist Officer A. G volunteered to attempt to restore the VIN by applying a mild chemical agent. G was unsuccessful in recovering the VIN.

- Officer A then contacted Forensic Evidence Specialist H who processed the motorcycle at the City Shops, recovering a partial VIN.
- Officer A then had the motorcycle towed to ECU and made arrangements to have it stored inside, out of the elements.
- Sergeant B entered this matter into Blue team for classification and follow up.

#### Allegations

1. **Vehicle Tows and Inventories** – that Officer A failed to secure the vehicle (motorcycle) at ECU, in violation of policy, instead storing it at the City Shops.
2. **Evidence and Property Handling** – that Officer A failed to properly process evidence (a motorcycle) when he asked a retired EPD employee, not under contract with the City or registered as a volunteer, rather than FEU, to attempt to recover the VIN.

#### Recommended Adjudication

1. **Vehicle Tows and Inventories**
  - EPD chain of command: Unfounded
  - Auditor’s Office: Sustained
  - Chief’s Adjudication: Sustained
2. **Evidence and Property Handling**
  - EPD chain of command: Unfounded
  - Auditor’s Office: Sustained
  - Chief’s Adjudication:
    - Originally Dismissed
    - Amended adjudication: Unfounded

#### Issues for CRB Discussion

- Complaint Intake and Classification
  - Internally reported following inquiry from motorcycle owner as to its status and location
  - Classification: Allegation of Misconduct
    - Mr. Denner had no problem with the original complaint against Officer A. He did have questions about Officer B. He asked if Officer E should also be responsible for the motorcycle when it was towed to the wrong location.
    - Sgt. Crompton said Officer A became the primary officer. The evidence policy was fairly new. Officer A was familiar with the old police and had not impounded vehicles under the new policy.
    - Mr. Denner said the policy requires that a Supervisor approve a vehicle impound. He asked if the Supervisor had been contacted and if the impound had been approved.
    - Sgt. Crompton said in the past, a Supervisor had to approve an impound, but that changed with the new policy.
    - In response to Mr. Van Houten, Mr. Gissiner said a Blueteam report had not been made until the citizen complained. Mr. Van Houten said it was important for clear communication and appreciated the nuance of the phrase “authorize”.
    - Sgt. Crompton said the new policy, as written, was subjective. Use of the term “authorize” was intended to prevent errors. He opined the way the policy was written should be reviewed in the future.

- Complaint Investigation and Monitoring
  - Mr. Denner said during Officer A's interview with the Sergeant, there was an indication that a supplemental report would follow. He asked if that happened. Sgt. Crompton confirmed the supplemental report was prepared.
  - Mr. Denner asked if any additional charges were filed against the operator of the motorcycle as a result of the supplemental report.
  - Sgt. Crompton said when it was confirmed that the motorcycle was stolen, several felony charges were filed. The driver of the motorcycle was looking at a 13 month sentence for stolen parts and motorcycle frame.
  - In response to Mr. Denner, Sgt. Crompton said a search warrant was not written. Under Oregon Revised Statutes (ORS), a search warrant was not needed in this case. He added that getting search warrant could be time consuming, taking 4 to 8 hours. Based on ORS, the search warrant was not needed based on a motor vehicle exception and seizure was allowed when the vehicle identification number (VIN) was obliterated.
  - Mr. Wig said the report was very thorough.
  - Mr. Van Houten was concerned that the motorcycle was stored in a facility that was not secure. He noted Officer A did not like the Lincoln Street site for motorcycle storage and asked why the new location was not preferred by the officers. He thought the officer was being upfront with his concern that the new location was a bad place.
  - Sgt. Crompton said because of a pending lawsuit, the officer was cautious and wanted to ensure the motorcycle was not stored where it would be subject to the outdoor elements. EPD needed to have a clear and direct location where property could be stored.
- Relevant Department Policies and Practices
  - 510 Vehicle Tows and Inventories
  - 804 Evidence and Property Handling
    - Mr. McIntire said Policy 804 called for care being taken to ensure the change of custody was followed. It appeared different officers had different opinions about the security of the site.
    - Sgt. Crompton said the policy had changed a lot over time. The retired officer who Officer A contacted and asked to help him had been a mentor to Officer A and Officer A had sought his advice in the past.
    - Mr. McIntire said the ambiguous language in the policy should be clearer. He noted part of the delay of moving the motorcycle to the correct evidence storage area was delayed because Officer A was concerned about an extra towage fee after hours.
    - Sgt. Crompton said due to the pending law suit, Officer A wanted have total responsibility rather than turning moving the motorcycle over to another officer. He wanted to get permission before incurring extra towing costs.
    - Mr. McIntire said the report indicated that a retired sergeant had better a data base due to his work in the insurance industry that EPD had.
    - Sgt. Crompton said he had not looked into that because it was not relevant to the investigation. He noted the retired officer did have access to a large database through his contacts.
    - Mr. McIntire noted the retired EPD office had helped Officer A in the past. He asked why Officer A had not started with the EPD forensics unit.

- Sgt. Crompton said Officer A had a long term professional relationship with the retired officer and trusted his expertise. The retired officer was not able to recover the partial VIN because, although he used the correct chemical, he did not have access to a strong version of it. The forensics unit did have access to the stronger chemical and was able to recover a partial VIN.
  - Mr. Wig said Officer A said using the retired officer would provide insulation from liability.
  - Mr. Gissiner said the retired officer was not working as an EPD volunteer or contractor, and there could have been liability issues if the retired officer had been injured. The retire officer could serve as a contractor with a \$1/year contract or as a volunteer. Bringing in someone to manage evidence, regardless of his level of expertise, was a poor decision. A defendant expects purity in the handling of evidence.
  - Mr. Wig agreed with Mr. Gissiner. He asked if the retired officer thought using him would provide insulation due to his expert witness status.
  - Sgt. Crompton said the retired officer volunteered for many agencies who did not have internal experts due to his expert status. However, EPD had internal experts. Officer A was comfortable with the retired officer because he was certified by the courts as an expert witness. He did not expect any favors in exchange of his volunteer work. He did the work because he loved to do it.
  - In response to Ms. Pitcher, Sgt. Crompton said the forensics evidence unit would have been authorized to complete the process for recovering the VIN in the field, whereas the retired officer did it in the evidence storage area.
  - Mr. Van Houten said there appeared to be a lack of communication because Officer A had not communicated to the supervisor about what was happening.
- Policy and/or Training Considerations
  - Mr. Denner said EPD needed to ensure that street level employees received training on the new policy and to establish a clear training record for street level employees.
  - Ms. Foltz said the policy should be clear that people who did not have an affiliation with EPD did not have access to evidence without supervision of an EPD employee. She did not agree with the Police Auditor that the second allegation was not founded.
  - Mr. Van Houten said mistakes were caused by lack of communication by the officers. There was a lot of gray area in policing due to human nature. It was important for EPD to avoid those gray areas.
  - Mr. McIntire said Policy 804.4 was too ambiguous, asserting if five people read the policy, there would be five different interpretations. Officers needed to receive adequate training on the policy. There should be a policy related to using external people. Use of the retired officer invited unnecessary scrutiny.
- Adjudication Recommendations
  - Amended final adjudication
    - Mr. Wig agreed with Chief Kern’s adjudication. He agreed with Mr. Gissiner’s adjudication but the policy did not cover what happened. The policy needed to be fixed. To hold Officer A responsible for violating the policy when it was a common practice in EPD was arbitrary.
    - Mr. Gissiner said Policing 101 called for integrity in storing property. The action was cultural rather than a policy issue. Precision in evidence gathering was a

fundamental principal of policy and the criminal justice system. Ms. Foltz agreed with the Police Auditor's interpretation of the policy that the officer did not adequately protect the property when a casual civilian bystander was allowed to handle evidence. The complaint should be sustained.

- Mr. Van Houten agreed that the policy was open to interpretation. He disagreed with Chief Kerns' interpretation. The CRB had seen many property custody issues. He asked if EPD would have felt differently if a person who was not a former EPD employee had handled the evidence.
  - Sgt. Crompton said the retired officer had been helping officers for years, which was part of the decision to call upon him to assist with this case.
  - Mr. Van Houten said the adjudication should be based on policy rather than from a personal perspective. EPD needed to reduce the risk to the officer and use a first line of quality defense.
  - Mr. McIntire said both allegations should have been sustained.
  - Mr. Denner concurred with Mr. Wig, but he did not completely disagree with Mr. Gissiner's adjudication.
- Additional Comments/Concerns
  - Mr. Denner said there was a fine line between the officer initiated investigation and a formal investigation. The senior officer should have made the decision to tow the motorcycle to the appropriate evidence storage facility. Both officers were detailed to an event in northwest Eugene which distracted them from following through with the tow. EPD needed a policy with clear guidelines.
  - Ms. Foltz said the retired officer operated in a community of trust, but as a community member, she did not have that trust in the retired officer. Officer A violated policy when he had the motorcycle towed to the wrong facility and it took a long time to rectify the error. The reasons for the delay were flimsy.
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## **VI. BREAK**

The CRB took a short break.

Mr. Van Houten left at 7:05 p.m.

## **VII. DISCUSSION ITEM: BOARDS AND COMMISSIONS STIPEND**

Vice Chair Foltz chaired the meeting.

Ms. Foltz asked the CRB to consider asking the City Council to create a stipend for people who had barriers to serving on boards and commissions. It would not need to be a large amount. She had noticed that the same people served continuously year after year. She asked for feedback from CRB members.

Ms. Pitcher stated there were 4 CRB members remaining at the meeting, which constituted a quorum. She noted the topic had been identified as a Discussion Item on the agenda, but the CRB could take action if it chose to do so. She supported Ms. Foltz's proposal.

Mr. McIntire noted the CRB struggled with diversity with its membership. He would support Ms. Foltz's proposal if it would help eliminate barriers to people serving on the CRB.

Mr. Denner thought a stipend may be a good idea for some people. He noted people received a small compensation when they served on jury duty. He noted in the past, the proposal for compensation for the Eugene City Council and Mayor had been supported by the public. He thought the stipend would be an incentive for some people and he would encourage flexibility. He suggested the Police Auditor could compensate those who needed compensation and who asked for it. He thought not everyone would ask for the compensation.

Ms. Pitcher said she had served on a board that under federal law, 51 percent of the board members were required to be consumers. A stipend for child care and transportation had helped diversity the board.

Mr. Gissiner thought it was a good idea and proposed moving the proposal forward. He opined approximately 100 people served on various City of Eugene boards and commissions.

Ms. Foltz suggested a pool could be established, with an assessment per seat for all boards and commissions. People would be allocated a stipend based on an application basis. She suggested moving the idea forward to another board, such as the Human Rights Commission (HRC), and then moving the proposal forward jointly to the City Council.

Mr. Denner suggested another group would be the Police Commission (PC) as a way to help build a structure for the proposal.

Ms. Pitcher said she could approach the HRC and PC staff with the idea.

Ms. Foltz said it would take time for the idea to move forward and suggested it could be implemented with the next boards and commissions recruitment cycle.

Mr. McIntire said his employer encouraged employees to volunteer in the community and offered flexibility scheduling to support that. He asserted the City Council should make this happen.

Mr. Wig thought this was a good idea. He thought there may be time to look at the supplemental budget for funding the program.

In response to Ms. Foltz, Mr. Gissiner said the CRB Annual Report would be sent to the City Council in July 2016.

Mr. McIntire, seconded by Mr. Wig, moved that the Police Auditor forward a request to the City Council for providing a stipend for board and commission members as a way to encourage diversity on the CRB. The motion passed unanimously, 5:0.

Ms. Foltz and Ms. Pitcher agreed to meet to draft the proposal for submittal to the City Council.

Ms. Foltz noted it was 7:30 pm. She noted consensus to extend the meeting.

## **VIII. AUDITOR REPORT**

Mr. Gissiner reported the Budget Committee had considered audio recordings and court stenographers for all City Council meetings and all board and commission meetings. When an estimate of \$200,000 to

\$250,000 annual was received, the City Council approved having a stenographer transcribe City Council and CRB meetings, accompanied by audio recordings. This was approved for the fiscal year beginning July 1, 2016 by the budget committee but not formally approved by Council. He added a court stenographer could be at the July 2016 CRB meeting. The funding for this service was in the City Council/City Manager's budget as recommended by the budget committee.

Mr. Gissiner said four people were being interviewed for the part time Community Engagement Coordinator. There was funding in the budget for a limited duration position for one year. He noted most civilian oversight agencies in the U.S. had Community Engagement Officers.

Mr. Gissiner stated the complaint filed by the NAACP involving a use of force was near completion.

## **IX. ADJOURN**

The meeting adjourned at 7:45 p.m.

*(Recorded by Linda Henry)*