

# MINUTES

Civilian Review Board  
Bascom Room, Eugene Public Library  
100 West Tenth Avenue Eugene, Oregon

July 12, 2016  
5:30 p.m.

**PRESENT:** Eric Van Houten, *Chair*; Lindsey Foltz, *Vice-Chair*, Maurice Denner, Heather Marek, Chris Wig, Richard Roseta, Civilian Review Board Members; Vicki Cox, Mark Gissiner, Leia Pitcher, Police Auditor's Office; Ben Miller, Assistant City Attorney; Lt. Carolyn Mason, Eugene Police Department; Majeska Seese-Green, guest.

**ABSENT:** Steven McIntire

Chair Van Houten convened the meeting at 5:31p.m.

## I. AGENDA AND MATERIALS REVIEW

No additions or deletions were made. Ms. Pitcher noted that an attachment would be added to the April minutes including Ms. Marek's motion to amend the February minutes (the motion had not passed).

## II. PUBLIC COMMENT

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

Ms. Marek said she would also be audio recording the meeting.

## III. MINUTES APPROVAL- Minutes from April 12, 2016 and June 14, 2016

Ms. Marek requested some amendments to the April minutes. On page four she wanted the minutes revised to say that she was co-chairing a work group, rather than an anti-discrimination workshop. Additionally, the April minutes stated Ms. Marek said the Human Rights Commission would prepare a report that would include comments from the LGBTQ community, and Ms. Marek wanted to add that the report would also include comments from Eugene's communities of color.

Ms. Marek clarified with regard to the first sentence on page three of the April minutes that she had not made any changes to the February minutes to give the other members an opportunity to look over the proposed changes.

Ms. Foltz stated that Mr. McIntire had emailed in the following proposed changes: On page one of the April minutes, use of the word 'may' in Section Four was supposed to refer to the article instead of the section. Mr. McIntire clarified he would support clarification to Chapter Three, not Chapter Two. Halfway down page three, Mr. McIntire requested that "he read Article Seven of the bylaws and noted that it did not occur" be changed to "was not accurate" rather than "did not occur." In the June minutes, at the bottom of page two in the last sentence, Mr. McIntire suggested it should say the "City Council" was considering using court reporters for recording meetings, rather than the Police Commission. Mr.

McIntire requested that the last sentence said, “He thought the cost of that service could be used for other things.”

Mr. Wig moved to approve the April 2016 and June 2016 minutes as amended.

Mr. Denner seconded. The motion passed unanimously, 6:0.

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

Mr. Van Houten stated that the CRB would be moving towards Robert’s Rules of Order as a mandate in the New Year.

Ms. Marek announced she didn’t have information on the Human Rights Commission (HRC) because she was absent from their June, 2016 meeting. She reported that the HRC was going into planning sessions soon, and didn’t think there would be a lot of news coming up this summer. Ms. Marek stated that the recent incidents in Baton Rouge, Falcon Heights and Dallas highlighted the need for having good relationships between the community and its police force.

Mr. Wig mentioned that like, Ms. Marek, he had been thinking heavily about these incidents as well, and events of that magnitude made him think about the work of the CRB still to be done. Mr. Wig believed the most recent case in Dallas showed there were glaring holes in the process of the Interagency Deadly Force Investigations Team that could compromise public trust in the EPD team should an incident like that happen in Eugene.

Ms. Foltz read some thoughts aloud she’d written before the meeting. She said it had been a heartbreaking week due to the tragic loss of black lives and police lives, including those in Dallas, and that the worst fears of families were coming true in frightening and unsettling ways. She asked that CRB members go to the Campaign Zero website to get familiar with its content on proposed national, state and local reforms. Ms. Foltz said she would like to see the Auditor’s Office gather more data to inform an early intervention plan, and that the community was in a good position to create the Blue Team system and go a step further with tracking of trends.

Mr. Van Houten welcomed Rick Roseta to the board. Mr. Roseta stated he had recently retired and was grateful for the opportunity to participate.

Mr. Denner shared that he was glad there was a local system that officers bought into that held them accountable, but at the same time he was struck by how polarized people were in their beliefs that there was no commonality between citizenry and law enforcement. He felt there was hope that our community could get this right, but that we needed to work on the issues dividing us. Mr. Denner proposed inviting the union to come and offer its perspective during a training since the CRB was in its tenth year and it would make sense to ask the Union how things were working. Mr. Denner raised the point that the Boise Police Department was light years ahead of EPD on reform and social issues because they had a full-time therapist on staff to connect those who needed mental help to services in the community. Additionally,

Mr. Denner remarked that when EPD Officer Randy Ellis retired, there would be a need to replace his community work with other staff efforts to collect used items for people on the streets.

Mr. Van Houten agreed that he shared profound sadness about the tragedies in Louisiana, Minnesota and Texas. He feared events like this garnered lots of media attention but that the nation was quick to move on. Mr. Van Houten stated that in many professions, one needed to report on a colleague when they failed to do their job well, and that this needed to be true among police officers as well, with an expectation for excellence always.

Ms. Pitcher reported that the Police Commission met in June. Ms. Cox stated that the group presented on their observations in Boise of the Spokane model of community restorative justice for the upcoming Drug Court program that Judge Allen was trying to implement in Eugene to help prevent repeat offenses. Ms. Cox said that the Commission also discussed the camping program with St. Vincent DePaul at that meeting.

Mr. Denner complimented Lt. Reynolds of Incident Command and the other law enforcement agencies' leadership at the Olympic Trials after overhearing a woman who had lost her phone thank an officer who had found it and brought it back to her.

## **V. TRAINING TOPIC- PUBLIC RECORDS AND PUBLIC MEETINGS**

Assistant City Attorney Ben Miller, the evening's trainer, clarified that his role was to handle in-house litigation for the City of Eugene and offer legal update trainings to the EPD, and that he would be training the CRB on confidentiality and public records. The confidentiality requirements imposed on members of the CRB were written in City Code Ordinance 20374, Section 2.244, subsection 4. That subsection specified rules on what to do when files on investigations of officer discipline were requested from the CRB. This was distinct from what the City would do in response to public records requests about employee discipline or investigation. Members of the CRB did not decide which documents would be disclosed to the public or not; the City made that decision. Irrespective of whether records ended up being released publicly, the info that CRB members obtained through the confidential review process needed to stay confidential.

Mr. Miller reported that when the City got a request for Internal Affairs (IA) records, or broader requests for information about trends or officers, the response depended greatly on the facts of each case because of statutes found in Oregon Revised Statutes 181A Subsection 830. This statute expressly prohibited a public employee from disclosing information if the investigation in question didn't result in a discipline. A sustained complaint would result in discipline. A similar statute authorized the CRB to review confidential documents. It was a narrow exception, so the fact that information was disclosed to CRB members didn't make it subject to disclosure overall. In this way, the City couldn't pick and choose who it released records to.

Lt. Carolyn Mason entered the meeting at 6:10 p.m.

The exemption in 181.830 had to do with public interest. Mr. Miller's office looked at requests on the specifics of each case and on the type of information that was being requested. Someone could petition that public interest required record disclosure, and perhaps not an entire IA file but portions of it like video records, records from a taser cam, etc. Officers also needed to be comfortable in being candid and critical about their own self examination or of other officers without fear of retribution.

The last exemption in section 192.501 subsection 12 applied to records where discipline had resulted. The materials and documents were conditionally exempt from disclosure, and the Public Body (the City) had to weigh the value of disclosure over non-disclosure.

Mr. Roseta asked whether any of these things were negotiable with the union. Mr. Miller replied that there were provisions that addressed requests that came in when employees were required to be notified. The City was required to blur out officers' faces if they were on film or body cam footage. Sometimes officers didn't really care, but the City Attorney's Office contacted them when there was an information request that involved their files and their image. This was in the Collective Bargaining Agreement.

Ms. Foltz asked if one could make the argument that it was in the public interest that these records were disclosed with the purpose of building trust. Mr. Miller replied that the legislature placed the burden on the requester to show that it was in the public interest to disclose. This would always be done in a case-by-case fashion, rather than a blanket manner.

Mr. Denner pointed out that the CRB was exposed to the names of victims and perpetrators and asked which codes spoke to their confidentiality. Mr. Miller replied that Section 2.244 Subsection 4 stated that the exemptions he discussed this evening were not specific just to the public employee but to the entire investigation, including victims and witnesses, and all of that should be kept confidential. Public comment in meetings, however, was not protected communication. Mr. Miller reiterated that the role of the CRB was to maintain confidentiality.

## **V. BREAK at 6:31 p.m.**

### **VI. CASE REVIEW: Selection of Service Complaints, Policy Complaints and Inquiries**

Mr. Gissiner reminded CRB members that there were five types of complaints the Auditor's Office received, and the ordinance required him to make the final decision regarding classification. What the CRB was asked to do was evaluate or express views of how the supervisor handled cases in service, policy and inquiry complaints. Historically, these type of complainants preferred to speak to a supervisor. Mr. Gissiner reminded the group to focus the critique or review on how a sergeant or supervisor handled a matter. Mr. Wig asked what percentage of complaints were service related overall, and Mr. Gissiner said it was around 93 percent.

Ms. Pitcher offered a PowerPoint presentation entitled Case Summary—Civilian Review Board—July 12, 2016 and facilitated a discussion on the six cases before the CRB.

### **Case #1 - Summary of Facts**

- The principal of a school contacted an EPD supervisor and asked about an incident where two students were found to be in possession of marijuana (after July 2015). The principal stated that the responding officers did not investigate and told her to destroy the marijuana.
- The complaint was initially classified as an allegation of misconduct.
- The investigation showed that EPD policies had yet to be updated following the legalization of marijuana in July 2015. Nothing in the training addressed exceptions for marijuana found in or near schools.
- The complaint was then reclassified to a policy complaint, and a supervisor addressed expectations with the involved officers.

Issues for CRB Discussion:

- Complaint Intake and Classification
- Initially classified as allegation of misconduct
- Reclassified to policy complaint
- Complaint Investigation and Monitoring
  - Relevant Department Policies and Practices
  - Policy and/or Training Considerations
  - Additional Comments/Concerns

Comments:

Mr. Roseta expressed disappointment that there was not a policy in place for this in spite of substantial lead time from the change in marijuana legislation. He was struck by the fact that there was a large amount of marijuana in question and there was not anything in the laws that made this case distinct even though it happened at a school. He also appreciated the principal's position that they wanted to send a message to students.

Lt. Mason clarified that EPD has the same policies for all members on all units, and that included School Resource Officers (SRO's). She stated there was some question about the quantity of marijuana present that caused the hiccups in the case, and that EPD's expectations were not mirrored in the policy. One thing that might be considered was that the policy said officers could destroy seized items but they gave it back.

Lt. Mason believed it was poor performance on the part of officers around the investigation. She believed the case was affected because it happened at Network Charter School, which did not fall into purview of SROs.

Mr. Van Houten mentioned he thought there could be a training consideration for charter schools about consistent police response in those environments.

Lt. Mason raised that EPD's SROs typically responded to charter schools and that was why those officers were sent.

Ms. Foltz thought it was encouraging that the principal developed rapport even after that experience, and that the officer put all of this information into the system. This demonstrated that the sergeant was able to develop community relationships in that he did not feel reticent to put it into the complaint system.

Mr. Wig clarified that the 'Within 1000 Feet of a School' law had been repealed. He opined that this case was possession versus distribution, and that the expectation would be that the students involved would receive Minor in Possession citations. Lt. Mason said that was correct.

Ms. Marek stated she was not alarmed by this case because the public was moving towards a recognition that criminalizing everything was not working, that it may have been contributing to a school-to-prison pipeline, and if an officer given a situation decided that citing a youth wasn't the best approach, she wasn't convinced it was so problematic.

## **Case #2 - Summary of Facts**

- A separate investigation included an audit of messages sent between mobile data computers (MDCs). During that review, inappropriate messages were discovered, sent between Officer A and Officer B.
  - The complaint was originally classified as an allegation of misconduct. The specific policy violations alleged were for unbecoming conduct and misuse of the MDCs.
  - The complaint was initiated outside of the timeliness limits set out in ordinance (6 months for incidents of serious misconduct; 60 days for incidents of minor misconduct).
  - The complaint was reclassified to a service complaint/conduct and sent to the employees' supervisor for follow up.

### Issues for CRB Discussion:

- Complaint Intake and Classification
- Initially classified as allegation of misconduct
- Reclassified to service complaint/conduct
- Complaint Investigation and Monitoring
- Relevant Department Policies and Practices
  - 1101.1.B.25 Unbecoming Conduct
  - 301.9 Mobile Data Computers
- Policy and/or Training Considerations
- Additional Comments/Concerns

No comment from Ms. Marek, Ms. Foltz, Mr. Wig, or Mr. Roseta.

Mr. Van Houten asked if the CRB was outside the timeline to respond to this case in terms of disciplinary action, and whether the frequency of this type of communication had been determined. Lt. Mason responded that the offense was discovered in the course of another investigation, and that the case was still in the window of disciplinary action. She stated the Internal Review Board did not explore all the officers' MDC communication to see if it was a pattern.

Mr. Van Houten asked if using the MDCs this was common practice by other officers. Lt. Mason said it was common that people used MDCs for personal info. She imagined that if EPD searched, they would likely find a lot of this type of communication, and that they had a case where EPD ended up with a lot of officers listed because of this kind of communication on MDCs. Mr. Van Houten remarked that it raised the question of the effectiveness of the policy if it was being treated as a joke.

Mr. Gissiner asserted that it would consume a lot of resources to try to discover that kind of data in a resource-challenged organization.

Mr. Denner mentioned this seemed related to community policing when they talked about broken windows and graffiti in that this wasn't an issue that went to the top levels of discipline, but it couldn't be ignored. Lt. Mason assured that just because it didn't meet the EPD's ability to investigate, it didn't go unseen. It just wasn't documented in a bigger fashion. She was sure message traffic after this was pretty quiet.

### **Case #3 - Summary of Facts**

- Reporting party called to complain about the length of time it took for officers to respond when he reported a mentally ill neighbor who was threatening him.
- The complaint was classified as policy complaint.
- The assigned supervisor spoke with the primary involved officer and the reporting party.
- The supervisor explained the call delay and why the officers took the actions they did (and did not) during the call.
- The supervisor was also able to explain to the reporting party that the officers had not given out his identity to the people who were the subject of the call, but that they had already determined it was the reporting party who complained.

#### Issues for CRB Discussion:

- Complaint Intake and Classification
- Complaint Investigation and Monitoring
- Relevant Department Policies and Practices
- Policy and/or Training Considerations
- Additional Comments/Concerns

Mr. Denner stated he saw no fault with the classification of the investigation, but that it did illustrate the staffing concerns that existed with every watch. The public expected perfection, but there may have been something else going on that prevented a prompt response.

Mr. Gissiner stated he wished supervisors would break up groups of officers after a code three, and were more assertive about getting staff spread out more quickly.

Mr. Roseta believed that despite the complainant saying he was not satisfied, there was interest shown by the supervising police and he went away feeling okay.

Ms. Marek suggested she wasn't sure there was anything else that could have been done, and that the case highlighted the need for more mental health services that could have been called upon.

Mr. Wig voiced satisfaction with the supervisor's response. According to the memo, he explained the situation to the complainant and even if he did not agree, the reporting party was able to come away from the parting stating that he understood.

Ms. Foltz reiterated the importance of mental health services in this case because sometimes the police were not the right tool for the problem, and the appropriate response should have been medical care.

Mr. Van Houten indicated he thought the supervisor did only a cursory job to support the reporting party. Mr. Van Houten did not hear of anyone giving this individual tools or de-escalation strategies when there was an opportunity to do some public good. The reporting party probably still had to deal with the issue the next day and perhaps EPD staff missed an opportunity to help him respond differently.

#### **Case #4 - Summary of Facts**

- Reporting Party complained about how officers responded to a domestic dispute in which she was involved. She stated that an officer was rude and complained that her children were interviewed without DHS being present. She also complained that her husband was not arrested.
- The complaint was classified as a service complaint/performance.
- The assigned supervisor reviewed the police report and spoke with the primary involved officer before speaking with the reporting party.
- The supervisor explained to the reporting party: (1) the laws surrounding menacing and why no enforcement action against her husband was taken; (2) that policy permitted officers to interview the children; and (3) why the officers she felt was rude was in a hurry to get a statement.
- The reporting party stated that she felt much better about the incident and thanked the supervisor for explaining things to her.

#### Issues for CRB Discussion:

- Complaint Intake and Classification
- Complaint Investigation and Monitoring
- Relevant Department Policies and Practices
- Policy and/or Training Considerations
- Additional Comments/Concerns

Mr. Wig shared that the presence of a firearm made the situation harrowing for him and concerned him greatly. He thought that the memo and the explanation about why the steps occurred was pretty comprehensive, and that the reporting party also went away from the encounter with understanding and feeling better about what had happened after receiving more info.

Mr. Gissiner said he thought the response time was over an hour to the caller, and that for a case involving someone with a rifle who was suicidal, and that the response time did not meet his standard.

Lt. Mason clarified that the call was dispatched at 20:57 and the officers arrived less than two minutes later.

Mr. Roseta indicated he thought the officer was probably trying to get to the heart of things quickly and the RP thought he was being brusque. Mr. Roseta wasn't sure what more that they could have done to make it a better resolution.

Mr. Denner saw no issues about communication. It seemed to him there was another case where an officer needed to gather information so they could consider charges before they interviewed or took someone into custody, and the RP didn't understand why the officers didn't just go after the accused party. Mr. Denner asserted that some people were really good at explaining their jobs to other people, and other people were more sequential in thought. Mr. Denner acknowledged that there was a training officer in this case, which may have complicated things.

Mr. Van Houten asked what resources were available to the woman in this situation, and if officers would document in an incident report if a woman went to Women's Space or another resource referral. Lt. Mason replied that information provided could be random because there was not a requirement to report specific things on resource referral. Lt. Mason expressed an appreciation for the idea and thought she would want to add it to the next report writing class. Ms. Foltz said she thought it was a good thing to add to reports and showed that all efforts had been made to help parties. In the end it seemed to Ms. Foltz that the RP was still very scared after the fact.

At 6:30 p.m., Mr. Van Houten noted that time was up and made a motion to extend. The motion was approved unanimously.

### **Case #5 - Summary of Facts**

- Reporting Party complained to auditor's office that an employee had repeatedly threatened to cite his wife for leash law violations, despite the fact that the dog was a certified service Animal.
- The complaint was classified as an inquiry.
- The assigned supervisor reviewed relevant laws and regulations and spoke with the reporting party's wife (who had had the contacts with the involved employee).
- The supervisor took the time to explain the rules surrounding service dogs and leashes (with certain exceptions, state law requires that control over assistance animals must be with a harness, leash, or tether).
- The reporting party was appreciative of the follow up from the supervisor and of the officer's discretion in not citing her for having the dog off-leash.

#### Issues for CRB Discussion:

- Complaint Intake and Classification
- Complaint Investigation and Monitoring
- Relevant Department Policies and Practices
- Policy and/or Training Considerations
- Additional Comments/Concerns

Ms. Foltz argued that in a circumstance where an officer was not legally allowed to ask a person what their disability was, there was no way the officer would know whether the harness would interfere with the ability of the animal to perform its task. Ms Foltz stated that in functionality, the animal wasn't running loose, and it was possible that the officer was just harassing this person. Mr. Van Houten concurred.

Mr. Denner stated he thought Ms. Foltz was making a good point, but in his opinion the officer's and supervisor's behaviors were consistent with good community policing. He indicated that the lack of a formal citation issued showed that their responses were consistent.

Mr. Roseta opined that the supervisor did a good job, that they didn't cite the RP's wife with everything they could have, and that it sounded like everything ended on a good note.

Ms. Marek said she looked up the law the officer was working with and determined that it wasn't a very thorough legal analysis. The officer stated in their letter that the RP had misinterpreted the law around her service animal incorrectly. Ms. Marek took issue with the fact that in the report, the officer put service dog in quotation marks, which seemed like a bias. Ms. Marek wondered if what the officer said to the RP could have been construed as unauthorized practice of the law or as giving legal advice. Ms. Marek was also concerned with the other officer on the street who seemed to be enforcing other rules besides trespassing on private property. Ms. Marek stated that as a community member, she had other understandings about how this event impacted the community and wondered if there were other complaints about this officer from unhoused people.

Mr. Wig shared that he thought the officers conduct was a model of police discretion about when to be really strict and when to give someone a break. He argued that the officer was very compassionate about enforcing the law. Mr. Wig added that in this case, he wished that 'unfounded' was an option for service complaints.

#### **Case #6 - Summary of Facts**

- Reporting Party complained that an officer kept telling her he didn't believe her and used misleading questions when asking her about an accident in which she stated she hit her head on a door jam.
- The complaint was classified as an inquiry.
- Preliminary investigation included review of dispatch records, police reports, and ICV.
- The preliminary investigation showed that no EPD employee had violated policy during the call, and the complaint was dismissed and closed.

#### Issues for CRB Discussion:

- Complaint Intake and Classification
- Complaint Investigation and Monitoring
- Relevant Department Policies and Practices
- Policy and/or Training Considerations

- Additional Comments/Concerns

Mr. Denner said this struck him as a classic domestic dispute training case and appreciated Ms. Cox's work in taking the call and teasing out the facts. Mr. Denner expressed no objection to the dismissal of this case and said he thought it showed how support could be provided in the way that the prior two cases did not.

Mr. Rosetta offered no objections, nor did Ms. Marek or Mr. Wig.

Ms. Foltz noted that this complaint came in on April 29, 2016 and was resolved by May 2, 2016. She stated that all of the complaints discussed so far were resolved in very timely fashion. Ms. Foltz found this case totally disturbing as a woman and that she would have been afraid for her life in this situation, but thought there was nothing wrong with how this was handled.

Mr Wig agreed with Ms. Foltz, saying this case made him feel powerless and he wished there were something more that could happen to help. He thought it was a really scary situation and hoped that the RP was seeking help for the probable trauma that occurred. Mr. Wig added he thought the letter that the Auditor's office sent to the RP was very compassionate.

Mr. Van Houten remarked he thought the communication was really well done and agreed that there was probably trauma involved.

## **VII. AUDITOR'S REPORT**

Mr. Van Houten asked the CRB to please complete the Auditor's performance review online as soon as possible.

Mr. Gissiner shared he thought some officers had seen other officers commit misconduct and not report it, and that no matter how difficult your job was, it did not entitle you to do cruel things. He stated that the Blue Team had an early intervention system piece that would likely be part of the final union contract. Mr. Gissiner believed a formalized disciplinary matrix format would be useful, and that there needed to be more community involvement in the hiring process for officers. He insisted that the most powerful people in our nation individually had to be held accountable and appreciate the power they had. Power did not entitle someone to act with malice and forethought and attack a defenseless person.

Mr. Gissiner announced that a conditional offer had been made to the Community Engagement Specialist candidate if her background check passed, and that he was really looking forward to bringing her on board.

Mr. Gissiner shared that at a City Council presentation, the Police Chief stated that the IA and audit process had a negative impact on many officers while the union members felt as if they were being fair and equitable. Mr. Gissiner concluded that if the process was more impactful than the punishment itself, maybe conduct problems lay at the punishment level. He said if he were charged with a crime and was more worried about the trial than the sentence something was not working. Mr. Gissiner also stated that

one employee apparently had twelve sustained allegations. The Auditor's Office was not involved in the disciplinary process other than to study trends. The Police Chief and City Manager were responsible for discipline, and Mr. Gissiner suggested some might argue that it was not there and was not a deterrent.

Mr. Gissiner announced that stenographer services had been approved for City Council and for the CRB, but would be postponed until December when the City Manager calculated costs and allocated funds.

#### **VIII. ADJOURN**

The meeting adjourned at 7:54 p.m.

*-Minutes by Carly Brynelson-*