

## MINUTES

Civilian Review Board  
Whiteaker Community Center  
Eugene Public Library, 100 West 10<sup>th</sup> Avenue, Bascom Room  
Eugene, Oregon

April 11, 2017  
5:30 p.m.

PRESENT: Eric Van Houten, Chair; Maurice Denner, Rick Roseta, Heather Marek, Chris Wig, Civilian Review Board members; Leia Pitcher, Beatrice Hernandez, Police Auditor's Office; Human Rights Commission; Sergeant Crompton

Mr. Van Houten convened the Civilian Review Board (CRB) at 5:31 p.m.

### **1. AGENDA AND MATERIALS REVIEW**

Ms. Pitcher suggested the CRB discuss item number 7, Case Review: Allegation of Misconduct that Officer Violated Policies During Investigation at Assisted-Living Facility first, and item number five, policies to recommend to the Police Commission review, after the break.

### **2. PUBLIC COMMENT**

No one present wished to provide public comment.

### **3. MINUTES APPROVAL— March, 2017**

Mr. Van Houten deemed the minutes approved by acclimation.

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

Mr. Van Houten noted some in attendance were recording tonight's CRB meeting. He added that while he appreciated the interest in the events that transpired in the CRB, it was important to note that these recordings were not official transcripts of the meeting. The recordings had not been authenticated for accuracy or completeness, nor had they been approved by the CRB. The recording of meetings was a matter previously brought before the CRB and the board, as a body, did not approve the recordings of meetings. These recordings were the personal property of the individual who created them and were not sanctioned by the City of Eugene, the Auditor's office or the CRB.

Mr. Denner commented on the quality of the case report written by Sergeant Crompton He thought it was well written and that Sergeant Crompton did a great job. Mr. Denner requested that in addition to profile data about people involved in a case, the first page of the report also include the date of the last performance review for officers involved. This information would help the Civilian Review Board members better understand the level of an officer's awareness of policies and procedures.

Ms. Marek agreed with Mr. Denner's suggestion. She was recording tonight's CRB meeting and the audio recording could be accessed online at [www.tinyurl.com/crbaudio](http://www.tinyurl.com/crbaudio). Ms. Marek reported that she was not in attendance of the last Human Rights Commission (HRC) meeting. However, she did talk to some

that were in attendance. She said the meeting focused on the Eugene Protection for Individuals Ordinance. An ad hoc committee was compiled to put forth recommendations for ordinance. While only some recommendations were adopted, the city was considering how the other recommendations would affect different departments.

Mr. Van Houten recognized his respect and appreciation for the leadership of Chief Kerns, who planned to resign as the Chief of Police for the Eugene Police Department. He noted that Chief Kerns would be greatly missed as a leader in the community and it was a pleasure to have been able to work with him.

Mr. Wig echoed Mr. Van Houten's sentiments about Chief Kerns. He requested an update and more information on the progress about biased based policing and the collection of data around that subject.

Ms. Pitcher reported that Mr. McIntyre discussed code of conduct issues at the last police Commission meeting. The rest of the Police Commission meeting entailed a presentation on school resource officers and how the program worked, and the upcoming retreat on May 6, 2017.

## **5. Case Review: Allegation of Misconduct that Officer Violated Policies During Investigation at Assisted-Living Facility**

### Summary of Facts

- Officer A was dispatched to an assisted-living facility to investigate alleged sex abuse involving residents. He contacted the director of the facility and later returned to contact the involved residents.
- Officer A was approached by Reporting Party when he entered the facility (Reporting Party's father was one of the involved residents). RP attempted to give Officer A a note asserting that his father would be invoking his right to remain silent.
- Officer A activated his ICV after his contact with RP was already in progress, and he muted his mic at a series of different points during the contact.
- RP alleged that Officer A was belligerent and rude toward RP, RP's family, and the director of the facility. He also alleged that Officer A threatened RP and his family when they attempted to assert their right to remain silent.
- An additional allegation was added related to Officer A's operation of ICV.

### Allegations

- **Constitutional Rights:** That Officer A failed to "observe, respect, and protect the constitutional rights" of RP and RP's father when he attempted to coerce them into speaking with him against their express wishes to assert their right to remain silent.
- **Courtesy:** That Officer A was discourteous towards RP, RP's father, and the facility director.
- **ICV:** That Officer A improperly muted his ICV during this contact.

### Recommended Adjudication

- Constitutional Rights
  - EPD chain of command: Insufficient Evidence
  - Auditor's Office: Insufficient Evidence
  - Chief: Insufficient Evidence
- Courtesy

- EPD chain of command: Sustained
- Auditor's Office: Sustained
- Chief: Sustained
- ICV
  - EPD chain of command: Sustained
  - Auditor's Office: Sustained
  - Chief: Sustained

#### Issues for CRB Discussion

- Complaint Intake and Classification
  - Intake through Auditor's Office
  - Classification: Allegation of Misconduct

Mr. Roseta found no fault with intake. He did believe the son had any constitutional claim and found no evidence that the officer attempted to get a statement from the suspect at any time.

Mr. Van Houten did not have remarks about intake and classification. He concurred with the actions.

Ms. Marek found it appropriate to bring the courtesy and ICV allegations. She agreed with Mr. Roseta in that the constitutional claim implicated the right that was brought up because he was never in custody. She asked about the process for bringing those allegations as most require legal analysis. She did not see what standard was being applied by the auditor to decide whether or not it had been violated. Other right may have been implicated, such as due process or rights under the Oregon constitution.

In response, Ms. Pitcher each case was different. She said there were a lot of conversations around allegations of misconduct. The first consideration is if the allegations were true, what policies were violated. This was sometimes both case law and policy violation. With use of force, case law was followed. When this case came in, the alleged was that the officer was trying to coerce the father to speak. However, it took the investigation to find out that perhaps the facts as alleged were not exactly what occurred. The relevance of each allegation is discussed in each case. During the analysis of this case, Ms. Pitcher reported that the auditors concentrated on policy language as this was what this administrative investigation was focused on. She welcomed feedback from the CRB members.

Ms. Marek thought that without case law explanation of what would have been a constitutional violation, it would have been impossible to know whether a constitutional right was violated.

#### Complaint Investigation and Monitoring

- Relevant Department Policies and Practices
  - 1101.1.B Code of Conduct
    - Constitutional Rights
    - Courtesy
  - 446.4 In-Car Video

Mr. Denner commented on how well the report was written. He added that Sergeant Crompton's interviews were thorough and telling. Mr. Denner worried that sometimes with serious complaints the opportunities to right the wrong can be lost. He felt that efforts beyond a letter from the auditor's office were required.

Sergeant Crompton reported that he talked with the woman from the current case. He made sure that damage done was corrected through his conversation with her.

Ms. Marek thought the interview questions were helpful. She thought that is there was going to be a policy that dealt with whether legal rights were violated, then by necessity there had to be a rigorous legal analysis. If a rigorous legal analysis was not possible then this should not be a policy.

Mr. Van Houten appreciated Sergeant Crompton's writing and interview style. It was clear that the interviewees were at ease and comfortable having conversations with him. Mr. Van Houten recognized Sergeant Crompton's ability to resist taking the bait to get defensive about the department's policies and practices, and siding with the officer. He added that Sergeant Crompton did a good job communicating with Officer A and getting him to acknowledge his own mistakes.

Mr. Wig stated that Sergeant Crompton did a very good job with three different interactions with three different people throughout the investigation. He thought Sergeant Crompton could navigate difficult interviews with grace and the ability to balance getting information needed while allowing the interviewees to feel validated and protected.

Mr. Roseta agreed that Sergeant Crompton did an excellent job. He thought letting the party talk was enlightening because he could get things that were bothering him off his chest throughout the interview.

Ms. Pitcher told Mr. Denner that the auditor's office was working on making sure the reporting parties were contacted and told about the resolution.

Mr. Denner asked if employees were made aware of complaints filed against them before the investigation began. The officer in this case did not seem aware of the complaint before the investigation began and that the in car video policy was not clear to the officer.

Mr. Crompton said that typically employees received a synopsis of the complaint. He said the officer was a trainer for in car video (ICV) practices and procedures, which made his lack of knowledge about the policy even more egregious. However, Sergeant Crompton noted that a large percentage of the EPD were not aware of the newer ICV policy. Future trainings were planned to address this.

Ms. Pitcher reported that the code of conduct was under review and ICV policy had changed since this incident took place. The main complaint Ms. Pitcher heard from employees about the ICV policy was that it was unworkable because to have it on for every investigative encounter or for all situations described in the policy, did not comport with how the actual instrument was used.

Ms. Marek thought upholding constitutional rights was integral to police practices. However, the standard was very broad. It seemed as if there were more specific policies that could get at the same issues, which might give more guidance to the officers and were more practical to enforce. She added that EPD policy needed to reflect higher standards that promote trust with the community. She thought there needed to be a higher standard than constitutional rights and the policy needed to be more specific and not so dependent on a legal analysis.

- Policy and/or Training Considerations

Mr. Roseta thought the ICV use training needed to be discussed. He also wanted to discuss whether, in the context of interviewing, it was policy to have the recorder off in a situation where protected information might be discussed, such as in this case during the officer's conversation with the care unit manager.

In response, Ms. Pitcher said that if recording ever ended up in court or in the public records request, protected information could be redacted. The policy as written states that the conversation be recorded and then protected information could be redacted, if needed.

Mr. Van Houten said the burden of upholding HIPPA was the responsibility of the health care unit director, not that of the officer.

Mr. Wig asked if the manager knew that the ICV was muted while talking to the officer.

Sergeant Crompton said the officer muted the ICV before entering the manager's office.

Mr. Wig noted that while he did not think it was the officer's intent to mute the recorder to intimidate the manager, it could have been perceived that way. Therefore, the policy should state that all should be recorded and protected information could be redacted later, if needed.

Ms. Pitcher added that the officer turned the recorder on to protect himself because the conversation escalated. Of concern was the time of initiating recording.

Mr. Denner added that the stimulus for the officer turning on the recorder the first time was that he recognized that he was being recorded by the reporting party. This suggested that as these policies were reviewed, it was important to train officers to be conscious of the fact that they were most likely being recorded.

Ms. Marek said Oregon legislature stated people have the right to record as long as it was out in the open. She hoped that trainings were taught about that law and to understand it was not necessarily done for confrontational purposes, but rather citizens exercising their rights.

Mr. Wig stated that the purpose of ICV was to gather evidence; protection to officers or citizens was secondary.

Sergeant Crompton said the ICV was a newer concept and newer officers were more comfortable with it, whereas more veteran officers were not as aware of the new policy. The way it was sold to them was by showing how ICV could work to protect the officer in addition to documenting evidence.

Ms. Marek said she was most disturbed that the officer was dealing with a member of a vulnerable population and recognized that the man would not have the cognitive ability to be questioned and then proceeded to ask questions. She there might have been a training implication in conducting an investigation with vulnerable populations. She also emphasized the importance of de-escalation training.

Mr. Denner mentioned that there was a concurrent investigation underway with DHS, which may

have put the facility manager on edge and that officers needed to be sensitive to that.

Mr. Roseta echoed Mr. Denner's comment. He said investigations from DHS and Family and Human Services were very serious and this could have altered the manager's emotional state. The officer's comments could have been misconstrued and over reacted to.

- Adjudication Recommendations

Mr. Roseta agreed with all the adjudication recommendations. He thought the attitude of the officer needed some changing. He also agreed that the ICV policy was violated.

Mr. Wig asked why insufficient evident was determined.

Ms. Pitcher said the policy was vague and it difficult to determine if constitutional rights were violated. It seemed as if the reporting party interpreted the officer's comments as threatening even though he officer did not mean it to be threatening.

Mr. Wig's understanding was that the constitutional rights came from the reporting party thinking that he had power of attorney and his father had been questioned without his consent.

Ms. Pitcher said the allegation was focused on coercion and the attempt of talking someone out of exercising their constitutional rights.

Mr. Wig stated that he agreed with the adjudication recommendations

Mr. Van Houten agreed with all adjudication recommendations.

Ms. Marek agreed with the courtesy and ICV adjudication recommendations. However, she disagreed with the constitutional right adjudication recommendations because she thought there was evidence that he did not observe the constitutional rights of the individual. She was especially concerned that the officer initially thought the power of attorney was significant, but then proceeded to try to question the father.

Mr. Denner agreed with all the adjudication recommendations. He thought the officer should have explained the limits of power of attorney to the reporting party, if he was knowledgeable of them. If he wasn't, he should have left and researched the validity of the document that the father signed and the assertion of Miranda rights by the power of attorney.

Mr. Van Houten asked if officers had access to legal advice.

Sergeant Crompton said officers had access to legal advisors twenty-four hours a day.

- Additional Comments/Concerns

Chief Kerns was interested in discussing how the constitutional rights policy could be re-written to be more specific. There were areas where officers needed to make decisions based on their training around what was lawful. When interaction and circumstances were frequent, it was easier to be familiar with how to enact the policy. However, it would be difficult to write a policy that included all circumstances. He was interested in receiving advice on how that policy could be re-written.

## **6. Break**

The CRB took a brief break from 6:46 p.m. to 7:00 p.m.

## **7. Discussion: Policies to Recommend for Police Commission Review**

Ms. Pitcher explained that the Police Commission was completing their work plan at their annual retreat scheduled for May. Mr. McIntyre brought forth policies as they had been discussed, but the Police Commission's work was structured on their work plan, it was difficult to insert issues as they came up. Therefore, Mr. McIntyre and Ms. Pitcher planned to bring three policies as the priorities of the CRB for re-examination by the Police Commission. Ms. Pitcher then distributed the document entitled: *General Order: Code of Conduct*. This was used to review previously identified policies and areas for improvement.

Chief Kerns reported that the Police Commission already planned to work on the code of conduct. The ICV policies were also going to be revised to make Body Video and ICV policies more consistent.

The CRB identified the following as their top priorities to take to the Police Commission for re-examination:

- 800 - Use of force:
  - De-escalation (800.2): members suggested that language around de-escalation move toward language around it being required, rather than advised.
- 402 – Professional Police Contacts
  - Professional stops (402.4.2): How can data help drive policy on biased-based policing?

Mr. Denner suggested that policy on the use of personal devices be reviewed. Ms. Pitcher said this could be taken to the city attorney if this would be appropriate for the Police Commission to review because it fell under city ordinance, or if it was best as an item for review for an ad hoc committee.

Mr. Wig thought it would be helpful to get feedback on the Police Commission and CRB from communities of color. It would be useful to see how work in these two bodies was perceived.

Mr. Wig asked about the pilot program for 402.4.2 and wondered if the CRB could hear a report on the information that was collected and what conclusions were made.

Chief Kerns said a presentation on the topic could be scheduled for a future CRB meeting. He added that the use of force policy should be on the Police Commission work plan every two years because it was an ever-evolving policy.

Ms. Pitcher said to email further suggestions to Mr. McIntyre.

## **8. Deputy Auditor Report**

Ms. Pitcher reported that there were 3 openings for the CRB. Mr. Denner reapplied, and eighteen other offers were received. A sub-committee planned to meet to discuss the applicants on April 20, 2017 and recommendations would be made to the Eugene City Council. New members were planned to be seated by the July CRB meeting.

Ms. Pitcher added that a she planned to attend a training in Bend put on by the Department of Justice (DOJ) on sexual assault investigation best practices.

**9. ADJOURN**

Mr. Van Houten adjourned the CRB meeting at 7:38 p.m.

*(Recorded by Emily Mathis)*