

MINUTES

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

May 9, 2017
5:30 p.m.

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

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

1. AGENDA AND MATERIALS REVIEW

MOTION: Mr. Wig, seconded by Mr. Roseta, moved to change agenda item 5 to *Training Topic: Chief Kerns - Corrective Action*. The motion carried unanimously.

2. PUBLIC COMMENT

Majeska Seese-Green, A Community Together (ACT), said was concerned about the statement read by Mr. Van Houten during the April CRB meeting regarding audio recordings. She was particularly concerned with the wording of the line that stated, "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." She was understood that the CRB discussed the precluding staff from official audio recordings of CRB meetings, not the public. The way it was written in the minutes made it appear this rule pertained to the public, as well, which had legal implications. She thought this was an issue of transparency.

3. MINUTES APPROVAL— April 2017

Mr. McIntire noted the following errors:

- His name was misspelled throughout the document. It read *Mr. McIntyre* and should read *Mr. McIntire*
- Page 3, the following correction should be made:
 - He requested **and** update and more information on the progress about biased based policing and the collection of data around that subject.
- Page 4, the following correction should be made:
 - Mr. Roseta found no fault with intake. He did **not** 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 deemed the April 2017 minutes approved by acclamation.

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

Mr. Denner's recollection of the discussion about audio recordings did not preclude a member, press, or audience member from recording. He did not believe that the CRB restricted the press or individual members from making audio recordings of the CRB meetings.

Mr. McIntire was present when the CRB discussed the issue of audio recordings. The discussion was about whether the CRB was going to record the meetings as an official transcript.

Mr. McIntire reported on the Police Commission meetings. He said the Police Commission was working on the conduct policy. During a planning session in which the group discussed ideas for the work plan. Three ideas were discussed:

- Use of force regarding de escalation
 - Mr. McIntire shared a quote from the LA Police Department's revised policy on de-escalation; he thought the wording was well written and succinct;
- Biased based policing
 - There was an intention to move forward with a second study on the topic because there were some difficulties around technology and insufficient participants during the first study; and
- In Car Video

Mr. McIntire said there would be further discussion on these issues, the planning session, and work plan prioritization, and emerging issues at the next Police Commission meeting. He could not attend the meeting, so he asked if another CRB member could attend in his absence. He planned to submit written comments.

Mr. Van Houten thanked Ms. Seese-Green for her comments. He clarified that the CRB did not approve, or sanction audio and video recordings. The CRB did not approve accuracy factuality of recordings because they were not sanctioned by the CRB itself. It was never an intent to limit anyone's ability to record audio or video. The CRB strived for transparency, as Oregon State law allowed. He also highlighted the importance of protecting the police force.

Mr. Wig announced that May was National Drug Court Month and shared some facts about local treatment court. He said he worked to provide substance abuse counseling and treatment to treatment court clients at Emergence for the past two and a half year and was promoted to program director seven months ago. He said this year, National Drug Court Month arrived amid new interest in criminal justice reform. National, state and local leaders were looking to reform the criminal justice system to see how best to address equity concerns, as well as reduce costly over reliance on incarceration. Sentencing and prison reform was a start, but to reduce substance abuse, crime and recidivism while saving money for taxpayers, Drug Court needed to continue. More research had been published on the effects of drug courts than virtually any other criminal justice programs combined. In 2012, the U.S. Government Accountability Office submitted a report to the Congress confirming Drug Courts reduced substance abuse, crime and save money. Nationally, Drug Courts returned to the community up to twenty seven dollars for every dollar invested. Drug Courts reduce crime by up to 50 percent, and the longest study to date showed reductions lasted an astounding 14 years. Moreover, studies showed that the more serious an individual's drug addiction and the longer his or her criminal record, the better the Drug Courts worked. This approach not only diverted individuals from a life of drug abuse and crime, but also was proven to reduce use of jail or prison beds and family conflicts associated with domestic violence and child abuse. Drug Courts represented a path that would not only save critical money for taxpayers, but save the lives of neighbors and troops suffering the ravages of addiction and mental illness. This year's National Drug

Court Month celebration signaled that the time had come to reap the economic and societal benefits of expanding this proven budget solution to all in need.

5. Training Topic: Chief Kerns - Corrective Action

Chief Kerns provided information on progressive disciplinary action. Corrective action ranged from 1) those which do not constitute discipline, which included coaching, document and counseling 2) and to those that do, which include written reprimand, suspension. The collective bargaining agreement and Policy 10.20 on internal affairs processes governed how to administer discipline. The process with adjudications is as follows: when the investigation was complete and was approved by the lieutenant, it went to the first line supervisor, who prepared an adjudication recommendation that went up the chain of command. The auditor's office then made a recommendation and the Chief of Police made the final adjudication decision. If discipline was sustained the case went back to the first line supervisor who met with Human Resources. The Human Resources professional review facts from the case and compared then to all other cases that the city maintain to see what discipline had resulted from this kind of conduct in the past. The supervisor then prepared a disciplinary recommendation and it was sent up the chain of command and ultimately the Chief of Police made the final decision on disciplinary action. Any discipline administered could be grieved. Non-represented employees had a similar grievance process called a complaint process, which ended with the city manager. The disciplinary process involved due process, in which timelines were provided by the collective bargaining agreement. First, the employee and the union received a letter of recommended discipline ten days before needing to respond back in writing and speak with the supervisor in person. Discipline was then administered and the union or non-represented employee could proceed with the grievance process. Chief Kerns added that some requested a discipline matrix be used when deciding disciplinary action. However, Chief Kerns said cases were complex and typically involved multiple actions so, a matrix might not apply to all cases.

Mr. Roseta asked if a due process hearing was required in due process situations.

Chief Kerns said as per the collective bargaining agreement, the hearing was the meeting with the supervisor. The employee could make their case both in writing and at the meeting with the supervisor. Some cases have gone to arbitration.

Mr. McIntire asked if studies had been done on the use of a discipline matrix.

Chief Kerns said most studies were done in major cities. Eugene Police Department (EPD) staff considered a variety of ways discipline matrices were implemented and EPD's history of disciplinary practices in order to identify potential patterns. They found that there were not consistent patterns because fact sets in cases were so varied.

Mr. McIntire asked what was done to mitigate inconsistency in disciplinary actions.

Chief Kerns said the supervisors deliver the discipline, but the disciplinary decision was only approved by one person. He said consistency did not seem to be a common complaint. The most common complaint was around predictability. The EPD did not have to take disciplinary action very often, making it difficult to predict disciplinary action.

Mr. Van Houten asked about suspension with and without pay. He wondered how decisions were made about whether someone received pay while suspended.

Chief Kerns said all suspension was without pay. Before a case was adjudicated, there were times when an employee was put on administrative leave with pay. Decisions were made at the point of adjudication; an employee was put on administrative leave in the case of criminal cases with probable cause or sustained adjudications that lead to termination.

Mr. Van Houten asked how annual performance evaluations were taken into consideration in disciplinary action.

Chief Kerns stated that supervisors could examine everything that occurred with that employee in the previous year. If the employee received corrective action earlier in the year and there was no repeat of that behavior, the supervision could choose whether to mention it. He thought the whole evaluation system within EPD needed revision. This was part of EPD's strategic plan and he was confident improvements would be made.

Ms. Marek arrived at 6:06 p.m.

Mr. Van Houten asked if there was training for officers who had recently moved into supervision positions.

In response, Chief Kerns said training was inadequate. In the past, a forty hour supervisor training course was required, but due to funding cuts in 2008/2009, the course was no longer implemented. Currently, the EPD relied on mentorship from Sergeants and Lieutenants to train new supervisors. Chief Kerns thought a new first line supervisor training program was needed, but currently there was no way to implement it. He mentioned that a command leadership training day, which involved leadership and administrative training was implemented quarterly. He also added that advanced training by the FBI national academy and an annual northwest leadership training in Vancouver, Washington was offered to Lieutenants. While EPD provided these training opportunities, Chief Kerns did not think they were adequate.

Mr. Denner asked if there was a time limit of the performance review cycle that put newly promoted sergeant or lieutenant officers on a shorter track to their first review.

Lieutenant Ron Tinseth said there was a one year probation period.

Chief Kerns added that EPD offered a career development opportunity for those interested in becoming a sergeant or lieutenant.

Mr. Denner asked if there were many applicants for higher level positions.

Chief Kerns said consistently fewer than ten officers applied for sergeant and lieutenant positions. He thought because there was not a mandatory shift rotation policy, many times officers tended to get comfortable in their current positions and did not want to change positions. The more movement in shifts an officer experienced, the more likely they were to apply for promotion. He added that during the last contract bargaining, mandatory shift rotations were bargained for detectives and all special assignments.

Ms. Marek asked if the collective bargaining agreement preclude the ability to consider recurring unsubstantiated allegations.

Chief Kerns said if disciplinary action was not taken, then the allegation was not taken into consideration. Decisions were narrowly focused on the facts of the current case. The only time outside allegations were taken into consideration was when previous discipline was not stale.

Mr. Wig asked if there were ever situations in which there were patterns of recurring allegations that had insufficient evidence.

Chief Kerns said occasionally this did happen. When it did, it was handled internally and was the responsibility of the supervisor to address this behavior and coach the officer.

Mr. Denner thought discipline went back to training; he wondered how training could be structured in a way that helped lessen behavior patterns that resulted in disciplinary action.

Chief Kerns said the value in the current system was that police auditor staff actively examined cases for patterns. When patterns were identified, in-service, policy and training were implemented to address said patterns. He emphasized the importance of ensuring training was developed only for patterns that were common, not for the patterns of one officer. He added that a policy review program was implemented in which policies were reviewed cyclically in briefings.

6. BREAK

The CRB took a brief break from 6:22 p.m. to 6:33 p.m.

7. CASE REVIEW: Service Complaints

Mr. Van Houten stated the following would be the CRB's annual review of service complaints. Five cases identified by the police auditor's office would be reviewed.

Ms. Pitcher offered a PowerPoint presentation entitled *Case Summaries—Civilian Review Board—May 9, 2017* and facilitated a discussion on each case before the CRB.

Complaint #1 Summary of Facts

- Officer A stopped a vehicle under suspicion of DUII. He learned the driver was affected by a medical condition, and that he had recently met his passenger, who had offered to help him get home. However, the vehicle was traveling in the wrong direction to get to the driver's home.
- Officer A began to suspect that the passenger may be taking advantage of the driver and asked for his identification. RP complained at that point that he was being harassed due to his race, and Officer A requested a supervisor respond.
- The supervisor explained the officer's actions to the RP.
- Further investigation indicated that the officer's instincts may have been correct, as RP had a record of robbery.
- The supervisor recorded the complaint in Blue Team and recommended that it be closed. Our office concurred.
- Classification: Inquiry

Ms. Marek observed that in this account, as with other cases, the supervisor that wrote the report mentioned the criminal background of the complainant. She emphasized that someone with a

criminal background could still have a justified complaint. She felt the complainant's criminal background was not relevant to this case.

Mr. Wig asked how often service complaints were internally generated, such as this one.

Ms. Pitcher stated that twenty one percent of total complaints were internally generated.

Mr. Wig asked who the reporting party (RP) was in that case.

Ms. Pitcher answered, stating the involved citizen or civilian was the RP.

Mr. Gissiner commented that there is now a state law mandated process for an allegation of discrimination by an officer to be reported by the supervisor and that the complainant be interviewed by the state agency.

Mr. Van Houten echoed Ms. Marek's comments; he thought the criminal record of the complainant had nothing to do with the allegation.

Mr. Gissiner said the intent of Blue Team was to collect information for internal use. Every supervisor wrote the information in different ways, and some included longer narratives such as included in this case.

Mr. McIntire said the complainant's background was helpful in setting the context; however, it should not be used. He was disappointed that a race allegation was added in after the fact.

Mr. Denner was pleased with the conduct of the officer and the supervisor. He disagreed with Mr. Van Houten; he thought that while including the information that the officer examined the criminal background of the complainant in the report exaggerated the potential of racial profiling, it also explained the behavior of the individual in a way that the supervisor could better understand the situation and whether or not profiling did occur.

Mr. Roseta thought the case was handled very well and he thought having the Blue Team information available provided further insight to the case.

Complaint #2

- RP contacted the Auditor's Office to complain about how Officer A handled a situation related to ownership of a macaw.
- RP had received the bird from friends when they became unable to care for the bird. At some point after that, the friends wanted the bird back and called EPD to report that RP had stolen the bird. Officer A contacted RP and told her to return the bird.
- Supervisor A contacted RP and discussed ownership of the bird and attempted to explain that the matter was civil. The supervisor advised the employee that RP also complained that he had not returned calls.
- Classification: Service Complaint/Performance

Mr. Roseta wanted to know why the officer called the complainant's friends. He thought this case was a civil matter and was handled appropriately.

Mr. Gissiner said this was an unusual incident but both parties involved were very upset.

Mr. Denner said occasionally officers had to deal with less threatening and less dire matters, but it was what many officers dealt with every day. Often, officers made a best effort, but one of the parties might not end up happy. He thought the officer handled the call with respect for the people involved in the situation.

Ms. Marek was unsure why the officer got involved and called the other party and told them to return the bird. She felt this was a civil matter and was up to a judge to decide who had ownership of the bird.

Complaint #3

- RP called the Auditor's Office to complain about how officers handled a dispute between her and her daughter.
- The assigned supervisor spoke with the involved employees and the RP. He found that the officers had not found sufficient evidence to support probable cause for an arrest, and had instead remained at the location while the daughter moved her things to keep matters peaceful.
- The supervisor explained the officers' actions to RP to her apparent understanding, and the complaint was closed.
- Classification: Service Complaint/Performance

Mr. Wig commented that probable cause was not documented in any case materials.

Mr. Denner asked if the law stated that when a case potentially involved domestic violence, was custody mandatory?

Ms. Pitcher said the Family Abuse Prevention Act stated that cases involving domestic violence incidents required a mandatory arrest. In this case, there was no evidence of injury, so an arrest was not made.

Mr. Denner appreciated that when this case went up the chain of command, the supervisor went to the additional step of reviewing the In Car Video (ICV).

Complaint #4

- RP called the Auditor's Office to inquire as to why officers had entered his residence the night before.
- The assigned supervisor reviewed the dispatch records and related reports. He found that there had been a 911 call from a woman who lived in the apartment next to RP's; she had complained that there was an ongoing and active dispute in that apartment.
- Upon their arrival, officers noted a significant amount of blood in the entryway. Repeated knocks and announcements were not answered. Officers then entered the residence.
- The supervisor made several attempts to contact the RP but was unsuccessful.
- Classification: Policy Complaint

Mr. Roseta thought Ms. Cox handled the call very well. He thought the officers did a good job with this case.

Mr. Denner was concerned about how many people reviewed this case. He added that he hoped the officers on the scene ensured the woman was safe. The way the RP explained the scene to the 911 dispatcher indicated the scene was active. He thought that this needed to be investigated further.

Ms. Pitcher said the reports indicated that the woman denied any physical altercation and medical treatment.

Mr. McIntire thought this was a clear example of the Community Caretaking Act used effectively.

Mr. Van Houten thought the officers seemed within their jurisdiction.

Mr. Wig agreed with Mr. Roseta's comments.

Complaint #5

- RP called the Auditor's Office to complain about how he was treated during a call to his home. He stated that they laughed at him when he had a seizure and were confrontational with him.
- The assigned supervisor reviewed in-car video and found that officers had not acted in the way described and had not violated policy.
- The supervisor made several attempts to contact the reporting party but was unsuccessful.
- Classification: Inquiry

Mr. Gissiner emphasized the value of ICV in this case. Without the use of ICV, this would have resulted in a full internal affairs investigation.

Ms. Marek agreed that this was a good illustration of why the ICV recordings were valuable to all involved.

Mr. Van Houten was concerned about the inability to contact the RP after the investigation.

Mr. McIntire agreed with Mr. Van Houten's concern.

Mr. Denner thought the officers were very thorough about announcing their tactile mute during the call. He thought the officers did a great job.

Mr. Roseta said the last portion of the ICV indicated that mental health was an important aspect of this case; the civilian involved did not realize that there were nine people (officers and Emergency Medical Technicians) who attempted to aid the civilian and he did not realize it.

Mr. Denner thought the thoroughness of all five cases stood out to him. He thought some of the supervisors went beyond expectations. He thought the memorandum included in the last case was short and not very thorough. It made him wonder if enough time was utilized throughout the investigation. The whole point of Civilian Review and supervisor review was to improve processes. He was frustrated that the supervisor did not put the time necessary into the memorandum.

8. AUDITOR REPORT

Mr. Gissiner reported on the following:

- CRB membership applications: a committee was selected to review the application for the CRB; eighteen applications were received. A public meeting was held to discuss and select applicants for interview. Five applicants were selected and that information was sent to City Council. Interviews began in city chambers next Monday.
- The auditor's office met with City Council on May 8, 2017.
 - Staff provided a great written annual case report presented to Council by Mr. Gissiner; a copy of which would be sent to the CRB.
 - Beatrice Hernandez provided a community engagement report; she did an excellent job. City Council was very impressed with her work. Some of the projects Ms. Hernandez had been working on were: a two-minute audio/video about the complaint process in Spanish and English, developing an anonymous survey of immigrant community members and organizations to gather information about interactions with the police.
- Mr. Gissiner was elected Board President of Huerto de la Familia (The Family Garden), a 501c-3 serving families in Lane County to assist them in growing their own food through family gardens.

10. ADJOURN

Mr. Van Houten adjourned the CRB meeting at 7:29 p.m.

(Recorded by Emily Mathis)