

MINUTES

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

August 8, 2017
5:30 p.m.

PRESENT: Chris Wig, Vice Chair; Carolyn Williams, Jim Hargreaves, Steve McIntire, Heather Marek, Civilian Review Board members; Mark Gissiner, Beatrice Hernandez, Police Auditor's Office; Bonnie Cannon, Human Rights Commission; Chief Kerns, EPD

ABSENT: Maurice Denner, Rick Roseta, Civilian Review Board members

Mr. Wig convened the Civilian Review Board (CRB) at 5:35 p.m.

1. AGENDA AND MATERIALS REVIEW

No changes were suggested. Mr. Wig deemed the agenda approved by acclamation.

2. PUBLIC COMMENT

No one present wished to provide public comment.

3. MINUTES APPROVAL— June 2017

MOTION: Mr. McIntire, seconded by Ms. Marek, moved to approve the June 2017 Civilian Review Board (CRB) Meeting minutes as presented. The motion carried, unanimously.

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

Each of the CRB members introduced themselves and spoke briefly about why they were motivated to join the CRB.

Mr. McIntire noted that he had served on the CRB for seven years and as the Police Commission liaison for two years. He felt the CRB had a great impact on the community and police force and he felt it serving in these two ways would be a great way to give back to the community. He said that there was not a Police Commission meeting during August, so he did not have anything to new to report.

Ms. Williams introduced himself and explained that she was glad to be involved with the CRB as she found it a good way to give back to the community through civic engagement.

Ms. Marek introduced herself and explained that she just finished taking the Bar Exam. Her work focused on policing and she felt the CRB made the community safer for civilians and police officers. She

specifically valued the transparency, and accountability the CRB provided for the community. Ms. Marek also served as the Human Rights Commission (HRC) liaison. She reported that the HRC recently completed a report on marginalized voices in the Eugene area. The report was compiled from a yearlong study focusing on underrepresented groups in the community and their experiences. The report provided excellent feedback on marginalized groups' experiences interacting with the police. The full report could be found on the HRC website. Additionally, Ms. Marek reported that she was recording this evening's CRB meeting and she planned to post the audio recording online at www.tinyurl.com/crbaudio.

Mr. Hargreaves said he was a lifelong Eugene resident with twenty years of experience as a Circuit Court judge. Additionally, he spent some years as a consultant, helping courts in the United States as well as developing countries. Recently, he spent one year consulting as a trial judge in Kosovo. He added that he wanted to serve on the CRB because he believed he could offer his expertise and he believed in civilian oversight of the police force.

Mr. Wig worked as the program director that worked with the drug court and noted that many of his clients reported good interactions with the local police force, which he attributed to the Eugene Police Department community outreach team efforts. Additionally, Mr. Wig participated in interviews of two EPD Captain candidates. He thought both candidates were impressive with different sets of strengths and competencies. Mr. Wig added that any recordings of the CRB meetings were not sanctioned by the CRB itself, but board members and community members alike were welcome to make recordings of the meetings for their own personal use.

5. Case Review: Review of Internal Complaint Related to Use of Pepper Spray

Summary of Facts:

- Officer A responded, with several other employees, to a loud party call. Following the call, Officer A approached Sergeant C, pushed the mute button on the supervisor's ICV microphone, and indicated that he had deployed pepper spray into the windows of the back of the house.
- Supervisor C later confirmed with Officer A that he had sprayed his pepper spray. To comply with EPD procedures surrounding allegations of misconduct, he did not question Officer A further, but instead routed his concerns through Internal Affairs and the Auditor's Office.
- The investigation showed that the occupants of the house shut all windows and doors. Officer A did not have contact with any residents.
- Officer B was with Officer A at the perimeter of the house. Officer B did not witness Officer A deploy pepper spray.
- Officer A stated in his interview that he sprayed pepper spray for approximately one second into the bushes and mulch; he did not offer a reason why. He explained that his later actions with Supervisor C were intended to be a joke.
- There was no evidence of pepper spray at the residence the next day. None of the residents knew about or complained about any use of pepper spray by police.
- The internal investigation showed that none of the windows of the residence near where Officer A was standing would be easily reached by pepper spray.

Allegations:

1. **OC Spray:** That Officer A deployed OC (pepper) spray in or near a residence in a manner that was unauthorized and outside the scope of the intended use.
2. **Audio and Video Recording:** That Officer A turned off Supervisor C's ICV microphone without an authorized strategic or tactical purpose.
3. **Judgment:** That Officer A used poor judgment by deploying OC spray and muting a supervisor's ICV microphone.

Recommended Adjudication:

1. OC Spray
 - EPD chain of command: Sustained
 - Auditor's Office: Sustained
 - Chief: Sustained
2. Audio and Video Recordings
 - EPD chain of command: Sustained
 - Auditor's Office: Sustained
 - Chief: Sustained
3. Judgment
 - EPD chain of command: Unfounded
 - Auditor's Office: Unfounded
 - Chief: Unfounded

Issues for CRB Discussion:

- Complaint Intake and Classification
 - Internal Complaint
 - Classification: Allegation of Misconduct

Ms. Marek was impressed that this case was initiated by a sergeant. She thought this was valuable because in past case reviews, the CRB had expressed concern about how colleagues on the police force responded to each other. The fact that this was reported by a sergeant showed that the police officers valued and followed the policies and procedures in place.

Ms. Williams agreed with Ms. Marek's comments.

Mr. McIntire asked why judgement adjudication was added to the investigation.

In response, Mr. Gissiner stated that initially, it seemed as if the pepper spray was shot into the home so it seemed to be a much more serious case. After investigating the scene, it was discovered that the pepper spray was not shot into the house, but rather into the bushes near the house to irritate the tenants when they would not let the police officers enter.

Mr. Wig was satisfied with the complaint intake and classification. He was impressed with the swiftness with which Supervisor C brought the complaint forward. This was a testament to the leadership on the EPD police force and indicated that procedures were being followed and people knew what to do in such an incident.

- **Complaint Investigation and Monitoring**

Mr. McIntire asked why the officer in question initially said he sprayed the pepper spray at the window of the house, but later, during the investigation, the officer said he sprayed it in the bushes; was any reasoning for this change in the story found throughout the investigation?

Mr. Gissiner said there was no indication as to why the officer's answer changed. However, a thorough site investigation was conducted at the scene of the incident and found no indication of pepper spray having been sprayed at the window.

Mr. Wig was impressed with the element of customer service throughout the investigation. Specifically, he was impressed that investigators contacted the residents of the house and went to the site the next day. This type of service could prevent misunderstandings in the future. He was also impressed that the case went from a being filed to complete in under six months.

Mr. Hargreaves did not have any comments on complaint investigation and monitoring. He thought the investigation was done well and made sense.

Ms. Marek was dissatisfied with Officer A's responses. She would have liked to see more investigation regarding his reasoning for using a weapon.

Ms. Williams agreed with the other CRB members' responses. She indicated that what really happened was still unclear. She asked why an adjudication recommendation regarding integrity was not brought in.

Mr. Gissiner said integrity was a very strong allegation and was used only in very serious cases.

- **Relevant Department Policies and Practices**
 - **803 OC Spray**
 - **1202 Audio and Video Recordings**
 - **1101.1.b.17 Judgment**

Mr. Wig stated that the speed and efficiency that was taken by EPD in reporting and investigating this case showed that policies around pepper spray and audio recording were followed, except by officer A.

Ms. Marek was concerned that Officer A thought it would be funny to use the pepper spray, which was a weapon. She wondered how seriously pepper spray was taken by officers. She said Officer A's actions could not be imputed to the entire police force, but perhaps additional training considerations around pepper spray should be considered.

- **Policy and/or Training Considerations**

Nothing additional.

- **Adjudication Recommendations**

Mr. Hargreaves said the overall picture of what happened did not make sense; even if Officer A did not spray at the window, it was still unclear as to why he would use the pepper spray at all. The fact that the officer thought it was funny showed poor judgment; additionally, he had no authority to turn off his supervisor's microphone. Mr. Hargreaves thought Officer A showed juvenile conduct and poor judgment. He thought the judgment adjudication should have been sustained on all accounts.

Ms. Marek agreed with Mr. Hargreaves; Officer A's actions displayed more than simple misuse of a weapon; the fact that he thought it would be funny to use the pepper spray in this manner showed poor judgement or lack of integrity.

Mr. Gissiner added that in the code of conduct judgment was ambiguous, making it difficult to apply. He asked Mr. McIntire if the Police Commission had addressed this policy in their review of the code of conduct, yet.

Mr. McIntire believed it had been reviewed and verbiage from the Portland Police Department code around judgment.

Chief Kerns said use of violation of judgment was very broad and did not seem fair; EPD was reluctant to use this because of its ambiguity.

Ms. Williams thought Officer A's actions were juvenile. She thought the case was handled well overall, but also thought the violation of judgment should have been sustained.

Mr. McIntire could see arguments in favor of both determining the violation of judgment as sustained and unfounded. If Officer A would have directed the pepper spray toward the window, he thought the violation should have been sustained.

Mr. Wig read comments submitted by Mr. Denner by email. Mr. Denner stated that he concurred with the adjudications; however, he thought judgment should have been sustained.

Mr. Wig agreed with the CRB members' comments. He agreed with Mr. McIntire that there were good arguments for both sustaining and finding the violation of judgement as unfounded.

- **Additional Comments/Concerns**

Ms. Williams asked some clarifying questions about adjudications.

Mr. Gissiner suggested that the four adjudication determinations be reviewed at an upcoming CRB meeting.

6. Case Review: Review of Inquiry (Third Party Complaint on Use of Force) and Incident Review (Related to an EPD Vehicle Collision)

Inquiry:

- Auditor's Office received a third-party complaint related to uses of force during arrests.
- The assigned supervisor reviewed the related police reports and recordings of the incidents in question; nothing in his review indicated that the involved employees had violated policy.
- The supervisor contacted the reporting party and explained his review of the incidents and the reasons for the officers' actions.
- Classification: Inquiry

Incident Review:

- Reporting Party complained that his girlfriend was involved in a vehicle crash with an EPD vehicle and that medics were not called.
- The crash was also internally reported, per policy.
- The assigned supervisor reviewed related police reports and in-car video of the incident. That review indicated that, following the crash, a responding officer determined that RP's girlfriend (the driver of the car) was likely impaired.
- A DUI investigation followed, during which the driver indicated that she had no injuries.
- The investigation showed that the involved employees followed policy during and after the crash. After conferring with the Auditor, the complaint was closed.
- Classification: Incident Review

Mr. Denner's comments were read by Mr. Wig. Mr. Denner was satisfied with the gathering of evidence and agreed that there was no evidence of differential treatment.

Mr. Hargreaves noted that it seemed as if the focus of the complainant was the large number of officers responding to the incident and it seemed as if the investigation did not address this as thoroughly as it should have. However, he was pleased that the complainant was satisfied with the investigation.

Mr. Wig thought the perception of level of force used was subjective. The complainant was a person who had very little socioeconomic privilege and her experiences may have led her to believe she witnessed an excessive use of force. Overall, Mr. Wig appreciated the investigation efforts.

Ms. Marek was also concerned that the complainant's main concern, excessive use of force and police presence was not thoroughly addressed. She found the video indeterminate. The underlying issue was whether excessive use of force was deployed; the investigation should have focused on his and determined what amount of force was needed in this situation and whether the officers on scene were in violation. She felt it was important to note the complainant's satisfaction with the investigation, but thought it was concerning that she showed satisfaction even though her main concern was not addressed. She agreed with Mr. Wig; use of force might seem overwhelming to some based on their experiences and perspectives.

Ms. Williams thought perhaps so many police officers responded due to the location of the incident; it was in a location where many incidents tended to happen. Overall, she thought the investigation was handled very well. She was impressed with how the officers handled the situation and spoke to the people involved in the incident and the complainant.

Mr. Hargreaves was also concerned that the complainant's main concern was not addressed.

Mr. McIntire agreed with Mr. Denner's comments. He added that he was satisfied with the investigation; the officer's actions were within policy of a DUI investigation.

Ms. Williams agreed; the driver indicated no injuries were sustained.

Ms. Marek thought more information should have been provided on the policies and procedures to be followed during a collision investigation. It was difficult to determine if the officers' actions were within policy without further information provided to the CRB members. She was also concerned that the suspect's criminal background was irrelevant to this investigation and should not have been included in the memorandum for this inquiry. She thought including this type of irrelevant information might discourage civilians from coming forward with complaints and concerns.

Mr. Hargreaves thought the video evidence clearly showed that there was no injury to anyone involved in the accident so there was no need to call an ambulance. He added that the driver was not the one who complained, but rather her boyfriend, which was concerning because it was clear that she was not injured therefore there was no basis for the complainant's story.

7. BREAK

The CRB took a brief break from 6:54 p.m. to 7:06 p.m.

8. Training Topic: Auditor's Annual Report

Mr. Gissiner provided the CRB with a PowerPoint presentation entitled: *2016 Annual Report Summary: Office of the Independent Police Auditor; City Council; May 8, 2017.*

Mr. Gissiner's PowerPoint Presentation covered the following topics:

- 2016 Complaints and Classification,
- Specific Sustained Allegations,
- Discipline for Specific Sustained Allegations and,
- Commendations

He reported that the EPD staff prepared all use of force reports and a representative from the EPD staff planned to present the full use of force report for 2016 to the CRB during the CRB regularly scheduled meeting in September. He added that 196 uses of force was roughly two percent of all arrests and custody contacts.

Mr. Wig appreciated item number two under progress and results for 2016 goals addressed use of deadly force investigation team. Deadly force second biggest liability to public safety in Eugene. He asked why this was not also in the goals for 2017. He wondered if this would hinder improvement.

Mr. Gissiner there was no change in current procedure. Several years ago, the Oregon Legislature felt it was beneficial to let agencies investigate officer involved shootings and decided that each county could create a model, with approval by the Justice Department. Lane County decided to create a model in which the state patrol oversaw the investigation with representatives from other police forces from around the county serving on the investigation team and one EPD detective as an observer. Mr. Gissiner preferred Deschutes County's model in which the primary agency of the shooting conducted the criminal investigation with one outside officer from another agency to monitor the fairness and unbiasedness of that investigation.

Mr. Wig referred the complaints by number of employees found on page six of the full report. He noted that eighty percent of EPD employees had two or less complaints; however, one person received eleven complaints alone.

Mr. Gissiner said there were also some EPD officers who had a lot of contact with the public and never received complaints. He added that it was far less likely to get a complaint about a woman officer, and this contributed to why many police departments were working to diversify around gender representation.

Mr. Gissiner commended the work that Auditor Office employees Ms. Hernandez and Ms. Cox did daily. They put together the statistics for reports such as this and they also received and helped walk-ins at the auditor's office.

9. Auditor's Report

Mr. Gissiner reported that a public safety meeting in Spanish was being organized. Several public safety organizations would be available to answer questions and provide information to the Spanish speaking community. The Latino community statistically likely underreports public safety concerns and studies have found that they may be more fearful of reporting events. This meeting was organized in hopes to provide a comfortable environment in which to discuss public safety organizations and how they work.

10. ADJOURN

Mr. Wig adjourned the CRB meeting at 7:33 p.m.

(Recorded by Emily Mathis, LCOG)