



City of Eugene CIVILIAN REVIEW BOARD

It is the mission of the Civilian Review Board to provide fair and impartial oversight and review of internal investigations conducted by the City of Eugene Police Department involving allegations of police misconduct, use of force and other matters. The Board will strive to build trust and confidence within the community and to ensure that complaints are handled fairly, thoroughly and adjudicated reasonably. The Board will encourage community involvement and transparency in order to promote the principles of community policing in the City of Eugene.

Meeting Agenda: Civilian Review Board
Thursday, November 16, 2017 - 5:30 p.m.
Harris Hall, Lane County Public Service Building
125 East 8th Avenue
Contact: Vicki Cox, 682-5016

<u>ITEM</u>	<u>TIME (Starting)</u>
1. Agenda and Materials Review	5 minutes (5:30 pm)
2. Public Comment	5 minutes (5:35 pm)
3. Minutes Approval (Minutes from August meeting)	5 minutes (5:40 pm)
4. Comments from Board Members, Human Rights Commission Liaison and Police Commission Liaison	10 minutes (5:45 pm)
5. Election of Human Rights Commission Liaison	5 minutes (5:55 pm)
6. Case Review: Allegation of a Violation of the City's Respectful Work Environment Policy	50 minutes (6:00 pm)
7. Break	10 minutes (6:50 pm)
8. Training Topic: Objectives and Challenges of Implementation of Civilian Oversight	30 minutes (7:00 pm)
9. Community Engagement Update: Public Safety Forum	10 minutes (7:30 pm)
10. Auditor Report	10 minutes (7:40 pm)
11. Adjourn – Next Meeting December 12, 2017	(7:50 pm)

MINUTES

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

October 10, 2017
5:30 p.m.

PRESENT: Chris Wig, Chair; Rick Roseta, Carolyn Williams, Steve McIntire, Maurice Denner, Heather Marek, Civilian Review Board members; Leia Pitcher, Beatrice Hernandez, Mark Gissiner, Vicki Cox, Police Auditor's Office; Chief Pete Kerns, Sergeant Larry Crompton, and Lt. Ron Tinseth, Eugene Police Department; Bonnie Souza, Human Rights Commission liaison to the CRB.

ABSENT: Jim Hargreaves, Civilian Review Board

Mr. Wig convened the Civilian Review Board (CRB) at 5:30 p.m.

1. AGENDA AND MATERIALS REVIEW

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

2. PUBLIC COMMENT

Majeska Seese-Green provided comment. She introduced herself as the director of a non-profit called A Community Together (ACT). She said she usually attended Civilian Review Board (CRB) meetings and she was concerned that there was no official audio recorder. Ms. Seese-Green said she generally brought a recorder and at the last one she did not. She said something was not reflected in the minutes, involving a second case review of an officer using derogatory language and flipping off the suspect. She said it was mentioned during the review that there was an additional aspect to the complaint, which was a conspiracy to drive travelers out of town by police or City of Eugene staff. Ms. Seese-Green said Mr. Wig referred to it not being a part of the oversight system, and Ms. Pitcher noted a memo. Ms. Seese-Green said other City staff were involved, in the case, it was not just Eugene Police Department (EPD). She was concerned that it did not show up at all in the minutes, and she was wondering if it was a confidential memo, because a member of public or person reading a meeting packet would have no idea the complaint was it from a homeless person. Ms. Seese-Green said she was the only person in the public who knew that. She said many in the community were seeing a "conspiracy," and she said ACT encouraged people to go to the Auditor's office, however, she now worried certain types of complaints were being swept under the rug.

3. MINUTES APPROVAL — September 2017

Mr. Wig said he had a correction on page 4 of the September minutes under adjudication. It read, that the witness with same story said he could not remember, but it was the police officer who did not remember.

MOTION: Mr. Roseta, seconded by Mr. Denner, moved to approve the September 2017 Civilian Review Board (CRB) Meeting minutes, with the suggested changes. The motion carried, unanimously.

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

Ms. Marek, Human Rights Commission liaison, had not attended a meeting in a while and so did not have a report. Audience member Ms. Souza, Human Rights Commission, was not at the last meeting either.

Mr. Wig thanked Ms. Souza for a memo she provided on underserved communities in Eugene. Ms. Souza said it was also on the website. Ms. Marek thanked Ms. Seese-Greene for her comments and highlighted the value of recording these meetings, especially since the CRB mission is to increase transparency; having those recordings available would serve those interests. Ms. Marek hoped it was something CRB would consider in future.

Mr. Denner asked Sergeant Crompton if he would be promoted. Mr. Crompton said he would be going on contract. Mr. Denner said he was very appreciative of the memos and reports Mr. Crompton had written in his current role.

Mr. McIntyre was at a planning session out of state at the last Police Commission meeting and did not have a report.

Ms. Pitcher reported she was at the Police Commission meeting. There was a presentation from the police chief recruiters. Ms. Pitcher said she recruiter was starting public meetings that week, and one recruiter was already in town. She said there was also an update to the Community Justice Systems Plan. Mr. Wig wondered whether community courts could be added as a training topic. Ms. Pitcher added it to her running list of trainings for a future meeting.

Mr. Wig thanked Ms. Seese-Green for her comments. He said in his four years on CRB he has often invited people to come and comment on what CRB can improve on, and generally they do not.

5. ELECTION OF OFFICERS AND COMMISSION LIASONS

Ms. Pitcher said CRB did not have a vice chair, while Mr. Wig had been serving as chair. Ms. Marek was serving as Human Rights Commission liaison, and Mr. McIntyre was serving as Police Commission liaison. Ms. Pitcher said every October, the CRB reelects chair, vice chair, and the liaison positions.

Mr. Wig opened the floor for nominations for the position of chair. Mr. McIntire motioned to nominate Mr. Wig, seconded by Mr. Roseta. The motion was approved by acclamation.

Mr. Wig asked for nominations for the position of vice chair. Mr. Roseta nominated Ms. Marek, who declined.

Mr. Wig made a motion to nominate Mr. Denner, seconded by Ms. Williams. The motion was approved by acclamation.

Mr. Wig asked for nominations for Human Right Commission liaison. Ms. Marek commented that the Human Rights Commission liaison was a very informative and interesting position. She said she had not given the position justice because she had not been in past couple months. Ms. Marek noted she did not expect her schedule to improve this year. The nomination was put off until a future meeting.

Mr. Gissiner said the position on the Human Rights Commission is a liaison one which did not need a vote, however, a placement on the Police Commission was a vote placement by City Council.

Mr. Wig asked for nominations for Police Commission liaison. Mr. McIntire said he would act as liaison for another year. Mr. Roseta made a motion to appoint Mr. McIntire to the open position with the Police Commission. Mr. Denner seconded the motion, which was approved by acclamation.

6. TRAINING TOPIC: NACOLE CONFERENCE REPORT

Mr. Denner provided a report and an accompanying PowerPoint presentation on the National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference, which he attended in September. Mr. Denner said different strands of the conference reflect different areas of concern, and he did not attend all sessions, such as the oversight of prisons and prison employees. Mr. Denner reflected that he went to NACOLE in 2006 when the Police Commission was first considering how to do civilian review and what model to use.

Mr. Denner said the 2006 conference was more “international” in attendance and flavor. In addition, changes have occurred in the movement to advance oversight since 2006. There are now far more auditors, monitors, quality control, and nonsworn after action people across the country.

Mr. Denner noted that in 2006, the FBI and Justice department were just exposing the huge volume of unprocessed DNA evidence from rape investigations across the country. Now, in 2017, people are seeing the prosecutions and convictions from this old evidence. Consent decrees were imposed in a few cities where egregious civil rights violations occurred. Some of those decrees were successful in promoting reform; some jurisdictions were not successful and remain under the federal microscope.

Mr. Denner said that the Taser Company had one product to introduce to the less lethal market and they were beginning to be aware of in-custody deaths during “hysterical episodes” when less lethal force was applied. Now Taser International markets a variety of products including a line of “body worn cameras” (BWC), some of which are in use by EPD.

Mr. Denner shared that there were also some emerging trends. More young sworn police leaders were embracing the civilian oversight responsibilities in their communities. In addition, technology was making people more aware of the remarkable incidents that law enforcement responds

toward. Sometimes that is positive, more often it was not affirming, and always there was a focus on sensational. Mr. Denner said there was a “movement afoot” that focused on “mindfulness and a Zen-like call to duty for sworn personnel (Cambridge, Mass. was a leader in this field). He said that also emerging was a call for “reforming the reformers.” Where civilian oversight had not provided desired changes in police culture, or where egregious events had occurred in spite of civilian oversight, groups were protesting the oversight structure in favor of more authority for non-sworn overseers. Mr. Denner said that legal cases continued to take issues to court where civil rights violations and human rights abuses had occurred. Mr. Denner believed that they were seeing a maturity in oversight, and as the systems mature they seek to improve or see the need to improve their processes. There was also a distinctly negative group that did not want to support law enforcement in any way; they believed that oversight structures are another layer of cover-up to police misconduct. Here people regularly challenged auditors and officers at the conference. He said another element was a negative group that though everyone from the city has been coopted from someone else – so civilian review or city review was just another cover up.

Mr. Denner said that every community in the country was struggling with lack of services for people impacted by homelessness and poverty, lack of adequate mental health services and lack of understanding of mental health issues. Most every department was “short-handed.” He said that staff ratios in Eugene, Lane County, and Oregon were more off balance than other areas. Mr. Denner noted that new technology would exaggerate the need for more staff, sworn and non-sworn, and training to make appropriate use of the technology. He said there was an increase in the need to show people that there was a frustrating and negative impact on employees when un-supported and generic accusations are made about “cops.”

Mr. Denner said the use of cell phone photos and the internet to “expose” misconduct has an unsettling effect on police culture. He said that officers and support staff were also exposed to a regular experience of secondary trauma, where they are called upon to respond to traffic accidents, domestic violence, persons experiencing psychotic episodes. Mr. Denner said he hoped the new chief would come to Eugene with a “vision” to address the needs of employees.

Mr. Denner reported that two adjacent and overlapping jurisdictions (Spokane and Spokane County) had taken different paths to oversight. There is no one “right way,” to incorporate oversight and build public trust. Pete Holmes, City Attorney for City of Seattle, gave the keynote address at NACOLE. In Seattle, the office included a division to provide legal counsel for officers accused and/or sued for misconduct. Mr. Holmes began his career with an appointment in 2002 to Seattle Police Department’s first Civilian Oversight board (Chair from 2003 to 2008).

Mr. Denner said additional questions he had while at NACOLE were that he wondered who in the Auditor’s Office was doing official tweets, and if anyone monitored twitter? He said that Spokane does that. Mr. Denner also wondered if the new chief and new members of the command staff have collective bargaining experience. Ms. Pitcher suggested he ask the recruiter.

Mr. Denner share notes on cases that Evaluated Use of Force from a legal perspective. Those included *Manuel v. City of Joliet*, No. 14-9496. In this case, an individual who had been arrested was held in jail

for seven weeks – based upon allegedly fabricated evidence to find probable cause he had committed a crime. The case may raise a Fourth Amendment claim to contest the legality of his pretrial confinement.

Ms. Marek asked how the case was settled. Mr. Denner said there was no compensation for Manuel, it was deemed more like a systematic error. He said those kinds of cases do not generally go far up the legal chain, or they are never found out, so that is why people are detained for longer than needed.

Mr. Denner shared his notes on *United States v. Patrick*, 842 F.3d 540 (7th Cir. 2016). The case discusses the "Stingray" program for cell-tower location tracking under the Fourth Amendment, with a strong dissent. Mr. Denner explained device "stingray" which tracks phone calls at specific collection point. The technology exists to allow to break calls down by phones used, and numbers connected. He reported the stingray case was not yet decided. He said it may be tied up forever because people cannot understand all the technology implications. It is difficult to discern when a warrant is appropriate for a specific phone number.

Mr. Denner said that in *Commonwealth v. Fulgiam*, the issue was whether text messages on a remote server were subject to the warrant requirement. He said things would linger in court for longer as they sort through technology.

Mr. Denner shared New York City and Las Vegas County comments on Use of Force. New York Review boards look for FADO, where:

- F is Force,
- A is Abuse of Authority,
- D is Discourtesy,
- O is Offensive language.

Mr. Denner said the evidence gathered included statements from parties, physical evidence collected, and video. One of the standards applied was a "timely investigation." In New York State, evidence may include comments made to or reported by medical staff.

Mr. Denner shared that in Las Vegas, the sheriff dispatched a supervisor to all calls with a threat or possibility of Use of Force. Las Vegas Police Department (PD) has a protocol that delays responses until sufficient back-up and supervisors are on scene before engaging in contact with armed subjects. Mr. Denner said that one of their training videos showed an officer and her back-up withdrawing from an area with a potentially armed subject who was not threatening. In addition, Las Vegas PD released video footage between 24-48 hours. Their reasoning was that public would be exposed by news media or private photographs, some that may conflict with the true experience.

Mr. Denner moved on to the topic of body worn cameras (BWC), and gave reports from Denver, Spokane and Washington, D.C. He said while many communities are still debating whether or not to have body-worn cameras (BWC), Washington, DC, Denver, and Spokane had been in the forefront of their adoption. All three police departments had full BWC patrol deployment and had approximately two years of insight and data to share.

Mr. Denner said that policy research in these cities indicated 44% of uses of force were not recorded. And, 24% of “equipment failures” occur during Use of Force incidents. Mr. Denner said Washington,

Mr. Gissiner asked a clarifying question regarding the statistic noting that 44% of cases were not recorded. Mr. Denner responded the cases are recorded by the police department, but not recorded by audio or video.

Mr. Denner said that in Spokane, review always was completed by a Use of Force commission (sworn team). He reported that prior to the police department adopting BWC, testing of BWC included a “group” of nay-sayers. He said that training in Use of Force included training on report writing. In addition, two records specialists were added and trained with the new equipment.

Mr. Denner said the police department emphasized the need to inform and educate the public perspective. People expect a “bird’s eye view of incidents.” He noted that BWC had a limited perspective of incidents. Issues raised involving BWC included data storage, release of records and redaction of personal identifiers, and additional training requirements. Spokane included “report writing,” in their training of Use of Force and BWC. They also had specially trained two or more “records specialists,” to preserve footage and remove personally identifying descriptors and photos. The presenter stressed the need to inform the public and explain perspective issues. There was no discussion of the “cost in dollars” that they charge for release of footage. It was also noted that Axon camera does not have a “voice mute” feature.

Mr. Denner said that at the conference, they discussed a publication “Beyond Patrol, Exploring the Perceptions of Police Body-Worn Cameras among Officers in Specialized Units.” The report was completed by Arizona State University. Mr. Denner said CRB members could request a copy from himself.

Mr. Gissiner said that in Spokane, the police chief and auditor convene a Use of Force review board when an issue comes up. Mr. Gissiner asked if there was any debate on whether officers were allowed to view footage before writing reports. Mr. Denner said he was wanted to hear about that at the conference but it did not come up. He knew that in Spokane, they allow officers to view footage, but not in Spokane County. In Las Vegas, they allow officers to view footage after the report is written.

Mr. Denner explained that the County of Las Vegas, Nevada made video footage from Use of Force available within 24 hours of an incident, except when an investigation might be compromised. The Las Vegas PD experience was that if they did not get footage out in the open, the public would get it from cell-phones. Also, in Las Vegas, a supervisor was dispatched to any call that may result in the Use of Force. Mr. Denner said it appeared that “sanctity of life” was the cornerstone of their policing and police policy.

Mr. Denner said that in Las Vegas, Use of Force was evaluated based upon specific sets of facts, including threat, evasion, and resistance. Additional factors included drugs/alcohol, available time to resolve an issue, other officers present, and proximity to weapons. He said that reports on Use of Force specifically ask the officers to report the tools that were available, why the particular tool or weapon was

chosen, and to reflect on training, policy, and best practice. Mr. Denner shared that Use of Force is a “field Sargent-led” training.

Mr. Denner reported that police departments are beginning to realize the importance of trauma informed care. He reported that over the last decade a variety of events had shaken the Cambridge Police Department to its core, including the local and national response to the 2009 arrest of Harvard Professor Henry Louis Gates and the central role the department's officers played in the Boston Marathon Bombing and its aftermath, including the murder of a Massachusetts Institute of Technology police officer, a regional lockdown and day-long manhunt, and the dozens of CPD officers who participated in the eight-hour overnight shootout in Watertown, MA.

Mr. Denner said that combined with the trauma that is common in policing, these events made the need for addressing trauma in all aspects of policing clear. Using elements of trauma-informed care, psychological first aid, mindfulness, and resiliency, a multidisciplinary team spent a year researching and developing a workshop that could overcome barriers and provided needed insight and tools for improved officer resiliency and wellness – and better policing. They developed a unique multi-day training to allow officers to understand trauma, how it affects the people they encounter, and how it affects them and their actions and behavior. Mr. Denner said the course also emphasized being healthy, compassionate and understanding, while recognizing how everyone suffers trauma, albeit not necessarily in the same way. At the conclusion of the first five-day training, officers and community participants debriefed and agreed that this was radical and cutting-edge training that will help officers and the community, particularly with trauma and resiliency. One participating officer reflected that it “took away my own skepticism and bias and helped me be more compassionate.” Another said that “if this can save one officer's life, then this program will be a success.”

Mr. Denner said the course was a “commercial” program and its effectiveness was not scientifically studied. Studies were in progress in a couple of jurisdictions. A police Captain from Oregon, Richard Georling was going to do the Cambridge training.

Mr. Denner told CRB he left NACOLE with a feeling of pride that the Eugene PD and the City’s auditing system in Eugene was making progress. The annual reports by the Auditor and staff shed a light on police conduct. He said there was a “walk-in” system in place for the public to lodge complaints or make inquiries about the police. Mr. Denner said the Auditor’s office and CRB has also experienced an increasing level of respect by officers for the process. Mr. Denner reported that there was a three-level system in place with the Police Commission providing civilian perspective on policy, and CRB providing commentary on investigations of misconduct, and the Auditor’s monitoring (daily) of Blue-Team. Mr. Denner thought the Eugene system was effective and made policing in Eugene more transparent. He said the Auditor’s staff also now includes a fluent Spanish speaker, which could help Spanish-speakers be more comfortable in reporting misconduct.

Mr. Denner thanked CRB for the opportunity to travel to Spokane and attend NACOLE.

Mr. Roseta asked how the format for Spokane and Spokane County were different from Eugene’s civilian review process. Mr. Denner said Spokane County had an ombudsman, who was

accountable to the county commissioners, yet worked fairly independently. He said that in the City of Spokane, the commission reported to the Mayor. He said a main difference was who they were reporting to and how they gathered information. Mr. Denner said both had websites for the bylaws. Mr. Denner said Spokane County was interesting because there are ethnic and racial disparities, as there were multiple Native American reservations and a large Native American population. He said that civil rights issues that pushed them into the system they were using.

Ms. Pitcher said she would send instructions to sign up for the NACOLE newsletter.

7. COMMUNITY ENGAGEMENT UPDATE

Ms. Hernandez provided a quick update on projects she had been working on. Ms. Hernandez was creating and administering a survey on community satisfaction of the Eugene Police Department. To date, she had received 300 responses for an online survey. She reported the vast majority of responses were from older, white females. During the next couple of months, she wanted to target the Hispanic population, as she wanted to hear from groups who generally do not provide feedback. Ms. Hernandez thought one reason she did not hear from more populations in the community was because it was administered online. She noted there was a paper copy, but it had not been well disbursed enough. Ms. Hernandez wanted to go to organizations with Spanish-speaking populations and distribute surveys. She hoped for even more responses the following month.

Ms. Hernandez was also planning a public safety forum that would be completely in Spanish. She said its purpose was to provide a safe and open space for a sector of the community who may be hesitant to access city services. Ms. Hernandez said the forum would be held at River Road Elementary.

Ms. Gissiner said the forum would involve the City, the Human Rights Commission, and the Police Auditor. He said they would present on normal public safety things people from the Eugene often take for granted, but those from a different country or culture may be unknowing of what steps to take in certain safety situations.

Ms. Hernandez said they will hire additional translators, because the only person who spoke Spanish was herself. She noted there would be a moderator for the event, Alex Reyna, a local radio host. Ms. Hernandez said he was active on social media, and would attract many people because his followers have trust in him. In addition, Mr. Reyna was going to transmit the event live on his Facebook page. Mr. Wig noted he had worked with Mr. Reyna before, and said Mr. Reyna was a huge asset to the event. Mr. Wig said Mr. Reyna's presence spoke on the importance of the event.

Ms. Hernandez shared there would be an anonymous box for questions if attendees were uncomfortable to ask a question. She said she would be designing a flyer soon, and would share it with CRB.

Mr. Wig asked if EWEB planned to participate. Mr. Gissiner said no, because the event was a soft launch, meant to build trust. He thought it would be a good idea in the future, though. Ms. Gissiner said the main goal was to have people from all cultures feel comfortable, and hopefully there would be limited authoritarian appearing staff at the forum.

8. BREAK

CRB went on break from 6:46 p.m. to 6:56 p.m.

9. CASE REVIEW: REVIEW OF ALLEGED MISUSE OF A TASER

Summary of Facts

- Officer A and Officer B were dispatched to a call of a suspicious subject who had frightened the caller. Officer B contacted the person and was concerned by his responses to her questions. Officer B knew that Officer A was some distance away and did not try to detain the person.
- Officer A arrived and asked Officer B if she was comfortable standing by with the person; she stated that she was not. Officer A believed the person to be under the influence of a stimulant and was concerned by his behavior.
- Officer A directed the person to sit down, and the person refused. Officer A stated that he would be pepper sprayed if he did not sit down. The person responded by saying, “If you pepper spray me, I will kick your ass.”
- Officer A put his pepper spray away and transitioned to a Taser. He pointed the Taser at the person and warned that if he did not sit down, he would be tased. The person still did not sit down, and Officer A deployed the Taser, with the probes striking the person in the lower abdomen.
- 38 seconds passed between Officer A verbally contacting the subject and Taser deployment.

Allegations

1. Use of the Taser: That Officer A’s use of the Taser against this person was not reasonable based on the totality of the circumstances.

Recommended Adjudication

1. Use of Taser
 - EPD chain of command: Within Policy
 - Auditor’s Office: Within Policy
 - Chief: Within Policy

Issues for CRB Discussion

1. **Complaint Intake and Classification**
 - **Officer A’s conduct was questioned as part of the Use of Force Review; the video was then reviewed by Auditor and internal affairs (IA)**
 - **Classification: Allegation of Misconduct**

Mr. Gissiner said that the way policy was written, Officer A’s actions met policy but Mr. Gissiner did not feel it met the standards of *Graham v. Connor*. He said that since the internal case review, he had met with an EPD policy representative and the city attorney. Mr. Gissiner said he would assist in writing a draft for an updated Taser policy.

Mr. Wig said the case came to IA through a sergeant after speaking to Officer B. Mr. Wig said he felt it was a healthy and robust internal system of review.

2. Complaint Investigation and Monitoring

Mr. Gissiner the case was difficult for the Police Auditor's office as the Taser policy was a subset of the overall Use of Force policy. He was curious whether CRB wanted to cover entire policy, or drill down to subsets. Ms. Marek asked how it would be different if they focused on only the Taser policy. Mr. Gissiner said he would lean more toward *Graham v. Connor* and the McPherson case. He said that the 9th Circuit Court had released numerous statements on Taser use that seemed somewhat inconsistent. Mr. Gissiner said the Supreme Court had not done a Taser case yet which made it more difficult to form policies. He noted that in terms of training, drilling down to the subset would be the best method, however in terms of review it might be best to look at a bigger picture.

Mr. Roseta thought focusing on the Taser policy, and discussing whether Officer A made the right choice utilizing the Taser. He noted there would be an increased danger of having other issues come up if CRB didn't look at subset.

Mr. Denner said he thought it would not hurt to have a discussion on Use of Force discussion as a future training topic. Mr. Denner wondered if Eugene PD did an analysis of why Officer A went first to pepper spray then the Taser. He did not see mention of a reason in the accusation. Mr. Denner noted there was recording and no discussion in either report. He asked whether 38 seconds was measured from the time it took him to move from his vehicle to the scene.

Mr. Gissiner said the time was from the vehicle to the scene. Ms. Pitcher said it took 38 seconds from contact with Officer A to deployment of the Taser. She said that 30 seconds after the recording begins he pulls out the Taser. Mr. Denner said at the beginning of the Use of Force policy there was specific wording for de-escalation.

Mr. McIntire asked Mr. Gissiner what sections of *Graham v. Connor* so that he could review it. Mr. Gissiner said he was not sure, but the case and its expectations were not emphasized in the Taser subset. He thought the standard should be reemphasized that Tasers were considered a high level of force. Mr. Gissiner said that he wanted to ensure that when officers are trained, they are mindful, and remember the rules of conduct. Mr. Gissiner did not think the case met a reasonable standard, but as the Taser subset was written, the case does meet the standard.

Ms. Williams appreciated how specific the classification was. She thought that other cases had been ambiguous. She noted that if the subset does not encompass what Use of Force is, that policy should be opened up and looked at.

Mr. Denner said that policy specifically restricted use of Tasers on several parts of the anatomy, and one area is the groin. He noted that the memo said Officer A aimed at the groin; Mr. Denner said in these situations, he did not expect people to have perfect aim but Officer A did say he activated the infrared signal but Mr. Denner could not see it in the recording. Mr. Tinseth said that when safety is off it automatically comes on. Mr. Gissiner said he thought that Tasers were primitive devices, and that the

effectiveness rate is only 40% at EPD. He thought if an officer aims in the direction of the torso, it will hit the general area of the torso.

Mr. Denner said because of review by sergeant and lieutenant, the case did get analyzed, and regardless of outcome, it rose the level of awareness. He felt it was a good report.

Ms. Williams said the memo spoke about policy, which was helpful for her. Ms. Marek seconded Ms. Williams, and said the memo was very clear. She said the policy had multiple factors which were helpful when following the decision making process.

Mr. Roseta said he appreciated the Auditor's office for the analysis, and for citing all the relevant cases.

3. Relevant Department Policies and Practices

- **809.4.1 Authorized Use of the Taser**

Mr. McIntyre wondered whether Officer B thought to try and de-escalate the situation and B solve things differently. He wondered about practices and policies in place. Mr. McIntyre noted that Officer A had plenty of time to deescalate, and it seemed like the officers should have had a discussion, not just a reaction. He wondered what was expected of officers arriving on scene, if they are not a primary officer, but the second arriving officer. Mr. McIntyre pointed out that after 10 minutes of being on the scene, there was not an event with Officer A. He said it was another communication issue. Mr. McIntyre was also curious about threats from the suspect. He said that if someone said a phrase that was escalating, how does the officer decide between pepper spray and a Taser; specifically, what made the escalation enough to choose the next level of force.

Mr. Gissiner said he did not feel the suspect's threat met reasonableness for a Taser. Mr. Gissiner said Mr. Denner hit the point when saying that Las Vegas sent eight officers and a supervisor when an event that could escalate happens. He noted that there should be more than one or two officers there.

Mr. Denner said that Las Vegas officers complete a training to learn to strategize before contacting the subject. In the particular case, strategizing did not happen, and possibly could not have happened due to proximity of the officers to the subject. Mr. Denner said there was not any discussion as to asking whether Officer B was okay to go to complainant's house, and if not, then deciding on an alternate course of action such as asking the subject to wait outside of the house. Mr. Denner said officers must act deliberately to manage situation, and in this case it was not obvious.

Mr. Wig said he went on a ride along with Las Vegas police in the past, and they were very communicative toward one another. Ms. Williams asked whether Las Vegas officers come with sergeant when there has been use of force, or only when it is likely to happen. She said she did not think the case in question seemed like it would be a situation expected for use of force.

Ms. Marek said she thought that based off Officer A's testimony on the risk he perceived, it was not clear to her that it was constitutionally required for Officer A to use force. She noted the testimony said the subject had something in their pockets and sometimes weapons are in pocket. Ms. Marek said that statement sparked her curiosity on what would constitute an immediate threat. She thought that the policy

was inconsistent, because section one of the policy required immediate credible threat of injury, but section two said it was not required to be immediate for use of a Taser.

Mr. Roseta agreed that the policy was confusing. He knew that Mr. Gissiner had concern on whether there was a reasonable requirement for use of a Taser, but to some extent that was taken care of by 809.4.1, because it made an objective standard which called for review.

Mr. Wig said he was struck by the fact that Officer B talked to the suspect for 10 minutes. Officer A showed up and then in less than a minute, he took over the scene, and escalated the situation. Mr. Wig asked why Officer B, who had more time with the subject, was not in the primary position.

Mr. Gissiner said he did not know. He said another dilemma was which officer was considered the reasonable officer, and based on which standard. Mr. Denner asked Sgt. Crompton the standard for assigning primary and secondary. Sgt. Crompton said it was the officer assigned to the specific beat. He noted that Officer A was primary.

Mr. McIntire said it seemed odd to him, because Officer B had more data and history of the suspect to help more, and nothing escalated when it was Officer B and him. He noted that a second person may have added security, but an action was not needed. Sgt. Crompton said that during the investigation Officer B stated the suspect had engaged with the other person present, and Officer B had backed off and allowed that to happen while waiting for cover, rather than pushing someone into a physical situation. Once Officer A arrived, he stepped in.

Mr. Gissiner said nothing criminal was done by the suspect, he was only acting strange. Mr. Roseta said the suspect scared a nearby woman in her house, which was a menacing situation. Mr. Gissiner said that caused reasonable suspicion, but it was still not a crime. Mr. Wig said someone could be going door to door campaigning and not be acting illegally. He said that other than not listening to the officer, he did not know if the subject did anything illegal during the entire exchange.

Mr. McIntire said de-escalation can sometimes be the officer telling the subject that they can stay standing but please step back a foot, instead of telling the subject that the officer is in charge and giving the subject demanding orders.

Mr. Gissiner said in some cities, officer could not order someone to sit on the ground because it was demeaning to people – it made people feel vulnerable.

Ms. Williams said the situation was escalated because Officer B threatened use of the taser and the suspect said, “I don’t understand.” Immediately after, and without a response, the taser was deployed.

4. Policy and/or Training Considerations

Mr. Roseta said a good teaching tool for officers was to turn their mic on immediately. He noted that some things in the case could be more apparent if there were audio. Mr. Roseta said the only audio there was records Officer B telling the subject he was going to deploy the Taser if the subject did not sit down.

Ms. Williams said Officer B had a moment where he realized he was probably going to use the Taser, he turned it on. She noted that Mr. Denner said in Washington, D.C. the police department sends the officer back if their equipment is not working. Ms. Williams said that in this case if Officer A audio recorder was working, there would be a record.

Mr. McIntire thought it was odd that the officer on the scene the longest was not primary. He said that at minimum, unless there is a credible and immediate threat, the second officer on the scene should talk to the first officer to understand the situation. Mr. McIntire thought there needed to be more dialogue.

Mr. Denner said he appreciated referring the review back to the sergeant, and the comments the lieutenant made in the disciplinary report to chief. Mr. Denner said that defensive tactics needed to be retrained, and it was the first time he saw it in a memo, which made other supervisors aware of the need.

5. Adjudication Recommendations

Ms. Marek said she understood why Mr. Gissiner felt it was difficult to see the case as violating policy, but she felt there was a disconnect with the outcome between factual statements. Ms. Marek said the preponderance was flipped; for example, while going through the criteria for using force, she noticed none of the criteria was met. Ms. Marek said that in internal review, it was found that saying refusing to sit down is not enough for the use of a Taser. She noted that the report said the suspect had a vehement rejection to being pepper sprayed, that people were being scared in the neighborhood, and that there was a potential open container. Ms. Marek did not think that using a Taser met any of the criteria of that policy, and that Officer B's actions were not constitutional. Mr. Roseta said that Ms. Marek had a point, and he read through the policy. He said that a belief of threat of injury was not reasonable, and that the order to get on the ground was not said to prevent a threat.

Mr. Denner said that in passing, the crime of interfering with a police officer to complete their duties could be valid as the subject did refuse to obey. Mr. Denner said that if Officer B had a video with the pepper spray, Mr. Denner would have a tough time not finding that outside of policy. Mr. Denner said he supported the adjudication decision being sustained, and knew that the people sustaining it had more experience dealing with unruly people. He did note that he was not okay with the policy or what led up to it.

Mr. McIntire struggled with the same reasons as Mr. Roseta and Ms. Marek. He had a hard time seeing the ongoing threatening behavior, and questioned whether it was a reasonable action.

Ms. Williams was in agreement. Mr. Wig said the allegations should have been sustained and that Officer B should consider what levels of force were appropriate for not listening to a command. He wanted the officer to consider what other options were available to apprehend the individual, and Mr. Wig did not think that happened. Mr. Wig thought the allegation should be sustained.

6. Additional Comments / Concerns

Mr. Denner said that after reading Mr. Gissiner's memo, which said that the subject was interfering with a police officer and resisting arrest, he wondered whether those were "catch-all" allegations. He suggested adding to a future agenda the discussion of how many people are lodged under those allegations, and how many the district or city attorney is pursuing.

Mr. McIntyre said the allegations do get piled on, and he was not sure there was good tracking on the number of people categorized under those allegations. Chief Kerns said Eugene PD does train officers on the allegations and that there were times when it needed to be used and times when it did not need to be used. Mr. Gissiner said the cases often go into “other.”

Mr. Denner thought the allegations were narrow enough that data might be recoverable. He thought Eugene PD needed to be mindful, particularly if they were making accusations and putting people in custody who were not taken to trial and not given cause.

Ms. Marek appreciated Mr. Denner’s comments and thought it problematic when there was no overarching offense. She wondered why there was such a level of engagement by Officer B if there was not an offense. Ms. Marek read a quote from the McPherson Case in the 9th Circuit court that dealt with tasing a mentally ill individual. She said in sum, the purpose of detaining a mentally ill individual was to help them, not to hurt or incarcerate them.

During the meeting, Mr. Denner provided CRB with a document titled, “Oregon, Interfering with a Peace Officer.”

10. AUDITOR REPORT

Mr. Gissiner said the next CRB meeting was changed to November 16th at Harris Hall. He said the case review would involve an officer who allegedly violated the policy on a respectful workplace. Mr. Gissiner said he wanted to cover the case months ago, but could not fit it in.

Mr. Gissiner noted he was excited for the public safety forum Ms. Hernandez was planning. He said he has been happy with the community engagement strategy, but has had one complaint on signage. The complainant said the Auditor’s Office was over emphasizing commendations, instead of complaints. Mr. Gissiner said he thought the sign served its purpose, since people can find the office. Mr. Gissiner explained it was a rental property so the Auditor cannot make permanent alterations. He said the sign was reasonable under the circumstances.

Mr. Denner said he recalled a process the Police Commission went through about language at the Auditor’s Office, and it was a deliberate inclusion that the auditor be made aware of commendations and comments from public. Mr. Wig said the sign is indicative that less adversary and more working together it is a mission of the office.

11. ADJOURN

Mr. Wig adjourned the CRB meeting at 8:01 p.m.

(Recorded by Marina Brassfield, LCOG)

Eugene Police Department

October 2017 Closed Case Report

Incident type: IA Investigation
Status: Completed
Received date: May 30, 2017
Class/sub-class: Allegation of Criminal Conduct / Conformance to Laws

Disposition: Sustained

1101.1.B.5 Conformance to Laws - A non-sworn employee was arrested for DUII when not on work time.

Incident type: IA Investigation
Status: Completed
Received date: Jul 27, 2017
Class/sub-class: Allegation of Misconduct / Use of Force
Disposition: Within Policy

1. 803 Oleoresin Capsicum Aerosol: It is alleged that an officer's use of OC spray while attempting to make an arrest of a suspect was outside of policy in terms of one targeted area and the duration of the application.

Allegations:

Use of Force - 803 Oleoresin Capsicum Aerosol - Within Policy

Eugene Police Department

October 2017 Open Case Report

Incident type: Supervisor Action
Status: Completed
Received date: Oct 1, 2017
Class/sub-class: Inquiry
Disposition: Supervisor Review-Closed

RP filed a complaint concerned about how officers ignored requests to slow down, pause and not raise the volume of their voices when speaking to her, during an investigation, into her backing into the hitch of a truck. RP's hearing disability makes it hard to understand and she felt officers did not respect her hearing difference.

Incident type: Supervisor Action
Status: Active
Received date: Oct 6, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP stopped by the Auditor's Office to report not finding his belongings in the jail locker that he was told his belongings were in.

Incident type: Supervisor Action
Status: Active
Received date: Oct 9, 2017
Class/sub-class: Policy Complaint
Disposition:

RP reported an interaction in which he felt that an officer was mean and threatening with him, not allowing him to finish a sentence. The officer also used the threat of running him for warrants if he didn't move his vehicle in which the officer claimed he was illegally camping.

Incident type: Supervisor Action
Status: Completed
Received date: Oct 9, 2017
Class/sub-class: Inquiry
Disposition: Supervisor Review-Closed

A supervisor responded to the jail regarding a person accusing an officer of racism. He was interviewed on body camera video/audio. The supervisor asked what the officer said or did that made him think he was being treated in a racist manner. The man could not give me specifics regarding his complaint.

Incident type: IA Investigation
Status: Active
Received date: Oct 10, 2017
Class/sub-class: Allegation of Misconduct / Performance
Disposition:

RP stopped by the Auditor's office to report an incident at her place of work in which a man came into the business and asked if they would call Cahoots. The RP alleged she was told by the call taker that they were very busy and it would be awhile. When they told the man he said: "That's too bad because

you guys are nice. I'd hate to have to kill you or shoot up this place." The RP called back for Cahoots and got them the same answer, they convinced the man to wait out on the patio. When the sun went down, he came back in asking about Cahoots again and made the same threats. RP called 911 and told them about what was happening and how freaked out they were, and was questioned whether they had seen a gun or not, which at that point they had not and were told it was not a priority. After an hour and half no officer had shown up. They convinced the man to take a cab and he left. No one at EPD ever followed up with them. RP is very upset that a potential shooting in a public place did not seem to be important to EPD.

1. 1101.1.B.9 Unsatisfactory Performance – A non-sworn employee allegedly did not follow appropriate caller interrogation on a report of an escalating public assist call for CAHOOTS services. Additionally the employee did not provide the caller with any safety instructions when the call evolved into a potentially armed and violent situation.

2. 1101.1.B.9 Unsatisfactory Performance – A second non-sworn employee allegedly failed to dispatch a police response when a public assist call for CAHOOTS services evolved into a potentially armed and violent situation.

3. 1101.1.B.9 Unsatisfactory Performance – A third non-sworn employee allegedly failed to ensure a police response was sent when a public assist call for CAHOOTS services evolved into a potentially armed and violent situation.

Incident type: Supervisor Action
Status: Active
Received date: Oct 12, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP reported an incident as he drove to work He noticed the officer shining lights into cars as if to see if anyone was using their phone while driving.

Incident type: Supervisor Action
Status: Active
Received date: Oct 12, 2017
Class/sub-class: Service Complaint / Service level
Disposition:

RP called to complain about the poor follow up his mother has received from a burglary at her home. RP noted several issues, finger printing did not take place, calls to EPD have not been returned, police have not followed up with businesses that his mother's bank card was used etc. RP had the same experience with a break in several years ago with his own belongings and is upset that this happening with his mother also.

Incident type: Supervisor Action
Status: Active
Received date: Oct 14, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP filed an complaint that officers who responded to her call for service about a neighbor who barged into her home, yelling profanities, attempting to instigate a fight with her guests, demanding they turn off the music and them later most likely shot BB's into her windows was not handled properly. RP and her roommates were basically told not to have people over because it provokes people around them and then were told about the Social Host Policy. RP felt officers used excuses and tried to make them out to be the perpetrators rather than the victims.

Incident type: Supervisor Action
Status: Active
Received date: Oct 15, 2017
Class/sub-class: Inquiry
Disposition:

RP reported an incident in which she had made a report to EPD concerning fraud, ID theft and other issues in a different jurisdiction. RP called the other jurisdiction at the officer's suggestion and then called him back with their reply, leaving a message. A few days later she received a call from his superior demanding she not call the officer. RP finds it upsetting that EPD is unwilling to assist her in any way.

Note: An officer took a courtesy report from RP.

Incident type: Supervisor Action
Status: Completed
Received date: Oct 16, 2017
Class/sub-class: Service Complaint / Performance
Disposition: Supervisor Review-Closed

RP reported an interaction with a police officer in which he treated her like a liar, kept her outside for over 2 hours, (RP is pregnant) and treated her rudely. RP was trying to report almost being run over by a woman who has been stalking her roommate. About 2 hours after the contact with the officer he called her back and told her the issue was not criminal and there was nothing that could be done about it.

Incident type: Supervisor Action
Status: Active
Received date: Oct 16, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP reported an issue with an officer helping him get his stolen vehicle back. RP has a court order for the vehicle and the officer told him she would need to talk with the DA about how to get it back, he has not heard from her and now over a week later the vehicle is no longer where it was.

Incident type: Supervisor Action
Status: Active
Received date: Oct 17, 2017
Class/sub-class: Inquiry
Disposition:

RP contacted the Auditor's Office with a concern about a disconnect that happened in an incident in which officers transported her adult son, who has Asperger's Disease to the University District Hospital after they called when he was menacing her and her husband. One of the officers on the scene told her that she would not have to worry about him returning at least for the weekend as her son had warrants from his parole officer, about 6 am he returned after walking back to her home from the hospital. Fortunately her son was not angry and they were able to have officers return and take him into custody again. If he had been in a different frame of mind RP feels the outcome could have been tragic. RP also noted several times that the officers who responded did an excellent job communicating with her son and feels they deserve a gold star.

Incident type: IA Investigation
Status: Active
Received date: Oct 17, 2017
Class/sub-class: Allegation of Misconduct / Performance
Disposition:

1101.1.B.9 Unsatisfactory Performance - It is alleged that a non-sworn employee failed to take

appropriate action when processing a call for service, which resulted in a delay in dispatching emergency medical personnel to a critical medical emergency.

Incident type: Supervisor Action
Status: Active
Received date: Oct 17, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP contacted the Auditor's Office with a concern about the service he received when he reported a caretaker who stole from his home. RP called EPD about 0700 and no one showed up to take a report until 1900, by that time he was tired and hungry, the officers that did finally respond were rushed, and the backup officer kept urging the other officer to hurry. RP also felt the officers asked stupid questions. RP is disabled and slurs his speech, and cannot quickly get his words out. The customer service was poor.

Incident type: Supervisor Action
Status: Active
Received date: Oct 17, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP commented on the poor help they have received when calling the non-emergency number for service, citing rudeness, call-takers being evasive and dismissive.

Incident type: Supervisor Action
Status: Active
Received date: Oct 23, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP sent an email. In his email, he wrote:

At 11:30am this morning, I observed an EPD volunteer driving turn left without signaling, and after failing to stop at the stop line.

Incident type: Supervisor Action
Status: Active
Received date: Oct 24, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

An Anonymous caller reported an EPD motorcycle officer who was impeding the flow of traffic, stopped right on the side of the road during morning rush hour traffic. RP felt this was unprofessional.

Incident type: Supervisor Action
Status: Completed
Received date: Oct 24, 2017
Class/sub-class: Service Complaint / Performance
Disposition: Dismissed-alt remedy

RP stopped by the Auditor's Office with the complaint that an officer violated his rights by stopping him and demanding his identification when he was not committing a crime. RP was in the park on Bailey Hill drinking a Not Your Father's Root Beer from a can, 37 feet from the sign that did not allow drinking or glass. RP was outside of the area that was under restriction in the park.

Dismiss - alternate remedy.

Incident type: Supervisor Action
Status: Active
Received date: Oct 25, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP contacted the Auditor's Office with a complaint that a non-sworn EPD employee had not gotten back to her regarding an incident where a neighbor pepper-sprayed her dog.

Incident type: Supervisor Action
Status: Active
Received date: Oct 30, 2017
Class/sub-class: Service Complaint / Performance
Disposition:

RP contacted the Auditor's Office with a concern about an incident in which his son was hit by a vehicle and he has been unable to get the officer who is handling the case to return calls so he can get information about it. RP finally went down to EPD and paid 5 dollars to get the report so he could get the insurance information to give to the hospital and others who needed it. RP also found out that the driver didn't have a valid license and he believes wasn't cited. The officer told him at the time that he would be re-contacted.

Incident type: Auditor Intake
Status: Active
Received date: Oct 31, 2017
Class/sub-class: Incident Review / Performance
Disposition:

RP emailed Chief Kerns with a concern about the level of service their daughter, a U of O Student received when her and her roommate's home was broken into late night/ early morning. The RP alleged that the door was completely broken down, place ransacked and numerous items were stolen. One of the students was asleep on the 3rd floor, thought it was her roommates so did not come down. The daughter called 911. After a few hours and after speaking with his daughter, the RP, who lives out of state called police. The operator told him that there were many calls about the burglary, and said there were more pressing/emergencies going on. At approximately 9:30 the next morning an officer arrived. The RP complimented the officer. His primary focus of the complaint was that for 8 or 9 hours the students were very upset and received no service. They did not know what to do in terms of staying or leaving, touching items, taking pictures, or trying to secure the door. There was no follow up on when the police might arrive or even reassured that officers would eventually arrive.