

MINUTES

Civilian Review Board
Bascom Room, Eugene Public Library
100 West 10th Avenue

March 13, 2018
5:30 p.m.

PRESENT: Chris Wig, Chair; Maurice Denner, Vice Chair; Rick Roseta, Steve McIntire, Carolyn Williams, Jim Hargreaves, Heather Marek, Civilian Review Board members; Leia Pitcher, Beatriz Hernandez, Vicki Cox, Police Auditor's Office.

ABSENT: Mark Gissiner, Police Auditor's Office.

Mr. Denner convened the Civilian Review Board (CRB) at 5:32 p.m.

1. AGENDA AND MATERIALS REVIEW

Mr. Denner deemed the agenda approved by acclamation.

2. PUBLIC COMMENT

Mr. Denner declared there was no public comment.

Sean Shivers, from Police Commission (PC) said CRB sent a representative to PC meetings, so he thought a representative from PC should be at CRB; that way, Mr. McIntire did not have to report on both.

3. MINUTES APPROVAL – FEBRUARY 2018

Mr. McIntire had two corrections to the minutes. The first was on page 6, in the first full paragraph, in the third sentence. The sentence should read, "Officer A told EPD in the interview that he did not identify himself as a police officer while banging on the subject's window, but while in parking lot speaking with Springfield police officers, Officer A did indicate he was a police officer while banging on the window."

The second correction was on page 10 in the third paragraph. Mr. McIntire had said "**other claim**" instead of "counter claim."

Ms. Marek said on page 7 the sentence should read, "Ms. Marek said it was good to have a strong working relationship with IA, but she was also concerned that having police officers investigate complaints instead of the auditor would deter community members from reporting, such as those who were undocumented."

Mr. Denner said on page 1, he referenced to the acting chief of police. The correct title was "**acting director**" instead of "acting chief." On page 7, under complaint investigation, he made reference to

the document on a USB drive, in response to a statement by Mr. Roseta. Mr. Denner clarified the USB drive was “**redacted**” instead of “omitted.”

Mr. Denner declared the minutes approved as corrected, by acclamation.

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

Mr. McIntire apologized, as he had not been able to attend the recent PC meeting. In response to Mr. Shivers, Mr. McIntire said he is an appointed member of both CRB and PC, so he did not mind pulling double duty.

Ms. Pitcher was at PC and reported they spoke about professional stops program. Lt. Ron Tinseth provided an update at PC, and she told him CRB may want a presentation, as well. She said outreach efforts around director recruitment were also discussed, but it was a short meeting. Ms. Pitcher said the update could be on agenda next month if there was interest. Mr. Denner thought it would be a valuable training.

Ms. Marek commented there was a good presentation on the outreach event in December 2017. She thought as a board, they generally wanted to think about how they could be a resource to community, especially to those in marginalized communities that may not see police as a resource as much other community members did. Ms. Marek explained Oregon Sanctuary Law prevented using resources for enforcing immigration law, and had been important in making police a public safety resource to folks. If police become immigration enforcers, it creates a barrier to access. Ms. Marek explained there was a group Oregonians for Immigration Reform were working to get a measure on ballot to repeal the law. It was important for the public and board members to understand; she felt it would be a bad direction for the state, and wanted to highlight that to CRB.

Mr. Denner referenced a complaint on page 14 of the agenda packet. He explained that on February 7, 2018 a grandmother reported she, and her daughter, had tried unsuccessfully to report that her grandson had drugs in the house and had hidden them. No one could respond to the complaint, likely because no one was available. Mr. Denner was struck by the fact that the case was one of the elements the school considered when bringing on school resource officers in the early 2000s. They would be available to the schools in order to address some of these issues. He recalled there was an agreement in the 1990s that they would not allow drug and alcohol cases discovered by law enforcement to go without a response, and there would be some sort of follow up with the county and the school. Mr. Denner noted neither the schools nor EPD had the staff. He wondered if it was possibly a question to pose to PC. He thought if EPD had cases and could not handle them, it sent a distorted message to kids.

Mr. McIntire said EPD was likely prioritizing availability of resources when not responding to the grandmother’s call. He wondered if Mr. Denner was suggesting a school resource officer talk with the kid. Mr. Denner said yes, then dispatch could at least tell the caller a resource officer was assigned to the kid’s high school. Mr. Hargreaves asked if in fact the officer was in fact a resource; he was unfamiliar with what exactly was expected of a school resource officer. Mr. Denner said when he left the district, it

was a complaint they would have responded to. As a middle school administrator, he could call the officer and ask them to come and talk to the kid. Ms. Williams said from her observation that process still happened. Ms. Marek said while drugs and alcohol were no joke, especially for youth, school resource officers can be fairly controversial if they are seen as criminalizing youth. She stated that young people of color tend to be charged more for crimes where school resource officers are present. Ms. Marek wondered if there were ways to address behavior issues, other than involving police. Mr. McIntire said in the case at question, the family members reported the incident, race was not involved. Ms. Marek said it may not always have an impact but those patterns had been observed. Mr. Denner said he was advocate for getting officers involved in schools. He came from community where there was tight relationship between the two entities and the purpose was to keep kids safe, but he heard what Ms. Marek was saying.

5. TRAINING TOPIC: EPD CODE OF CONDUCT STATUS

Sergeant Kyle Williams introduced the code of conduct, and walked CRB what he had been working on. Sgt. Williams explained he'd been in his policy position for two years. When he entered the position there was a draft code of conduct. He kicked off what had been a long, continuous process to do a review and a thorough revamp of the code. The process began with meetings between himself, his captain, and other EPD supervisors. Before providing the draft to PC, Sgt. Williams provided it to the Eugene Police Employees' Association (EPEA) executive board for review. The EPEA president met with Sgt. Williams for a total of six hours to hear EPEA concerns. He said every bit of process looked at how to make the code more thorough and more usable, without being overly cumbersome and burdensome. Sgt. Williams noted it was an interesting balance of flexibility and detail.

Sgt. Williams and Mr. McIntire went through the document together, as well. Mr. McIntire added a lot of specificity and provided Sgt. Williams with many pages of feedback. Sgt. Williams said PC spent four sessions over the summer of 2017 reviewing the code of conduct. Now, review was at the senior staff level; it was a topic that brought out a lot of opinion and discussion. EPD was about half way through with senior staff review. The next level of review would be returning the document to the union and the department for review. After the union and department review, the document returned to senior staff and chief for final review and approval. He was not sure how much longer it would take to finalize it. Sgt. Williams hoped by the end of the process, the document could stand for the next 15 to 20 years without many adjustments. He was trying to be super critical, because it was one of the most important policies EPD has in the way it affects the community and police officer morale.

Mr. Hargreaves asked what the final step was in the approval process. After all the initial processes, Sgt. Williams would write a command directive about the policies, and then the Chief would approve the code once he felt comfortable with the document. He said often times he made minor changes to policies, explained the changes to his lieutenant, the chief approved them, and EPD moved forward with the policy.

Mr. Denner asked if Sgt. Williams was using Lexipol at all for code updates. Sgt. Williams responded EPD mostly wrote its own policy. Lexipol was a little difficult to use as a resource, because the policies listed could never be cut and pasted, they needed to be customized. EPD had conversations around whether to continue its relationship with Lexipol, but for now still had Lexipol as a resource. He

explained if there was a new policy or an area he questioned, he would go into Lexipol and check their recommended best practices. For example, Sgt. Williams recently pulled language about a pursuit policy.

In response to a question from Mr. Denner, Sgt. Williams said Lexipol was an organization that wrote recommended policies for police agencies that were state specific. The company took into account each states' specific rules and regulations when writing recommendations.

Mr. Denner said some people thought EPD could pull all policies from Lexipol, as to save staff time. He noted the difficulty was the process lost a personal touch. It was important to take time to sit down with the union, command staff, and the community. Ms. Pitcher agreed. Ms. Pitcher said PC meticulously reviews policies, often word by word, and that that community input is likely unique among Lexipol clients..

Ms. Marek asked how Sgt. Williams would characterize feedback from the union. She wondered what types of changes they recommended. Sgt. Williams did not receive much specific direction from union, but received more from individuals. As for the code of conduct, everything he received from the union was reasonable, well thought out and fair for employees as well as the organization.

Mr. McIntire said the code was very substantive and complicated. He hoped there would be buy in from everyone, and hoped Sgt. Williams would complete the process before moving onto a different assignment. He said Sgt. Williams did a very nice job on his approach; Mr. McIntire hoped the document did not go through any material changes since the last time PC saw it.

Ms. Pitcher asked if Sgt. Williams planned to show PC the final project. Sgt. Williams responded yes, once it was at a more finalized draft. Mr. Denner asked Mr. McIntire if he thought the revisions would have clarified some of the cases reviewed by CRB in the past couple of months. Mr. McIntire said some sections were overly complicated and ambiguous; those areas had been clarified. Sgt. Williams saw three to five sections being cited as "catchall areas." A goal was to split those sections out to provide more clarity.

6. BREAK

CRB took a break from 6:08 p.m. until 6:21 p.m. Mr. Wig arrived at 6:18 p.m.

Mr. Wig reported he was able to participate in a community panel for the EPD chief selection process. He explained there were four tables about internal relations, external relations, homelessness, and racial issues. Mr. Wig was on the table representing Homelessness, which also included diversionary programs, substance abuse programs, and CAHOOTs. He said participants were asked to rank applicants on four criteria including theory of policing, relationships in community, relationships in the department, and work experience. Mr. Wig reported all three applicants had a strong understanding of 21st century policing initiative started by President Obama. He thought whoever the City Manager chose would be someone reflective of values of the community.

Mr. Hargreaves asked about the timeline. Mr. Wig said applicants were there on Monday, March 12, 2018 and would be there until Wednesday, March 14, 2018. Jon Ruiz, City Manager, would make the decision next week.

7. CASE REVIEW: ALLEGATION OF UNSATISFACTORY PERFORMANCE DURING A WELFARE CHECK

Ms. Pitcher presented a PowerPoint on the case reviewed.

1. Summary of Facts

- Officer A was dispatched to a welfare check of a person living in a garage. The witness reported that the person was not answering his phone, had previously expressed concerns about the other residents at the location, and that the other residents had left the location when they learned police were responding.
- Officer A looked through a pedestrian door leading to the garage. He saw a plastic swimming pool wrapped with bindings on top of a hand truck. He did not examine the pool, and briefly looked around the ground floor of the residence before clearing the scene.
- Three days later, EPD responded after a murder victim was found by a family member. The victim was found wrapped in the swimming pool. The investigation showed that the victim had been there during Officer A's welfare check.
- This complaint was internally reported, and the investigation was suspended until the homicide case was closed.
- Officer A stated in his interview that he felt he took necessary steps to conduct a welfare check, and that he had received no information that led him to believe there was a violent crime at the scene.

2. Allegations

- **Unsatisfactory Performance:** Officer A failed to take appropriate action when he was dispatched to this welfare check.

3. Adjudication

- Unsatisfactory Performance
 - Auditor's Office recommendation: Sustained
 - EPD chain of command recommendation: Sustained
 - Interim Director: Sustained

4. Issues for CRB Discussion

- Complaint Intake and Classification
 - Internally reported
 - Classification: Allegation of Misconduct

Mr. McIntire wondered about the timeline of the complaint. Mr. Pitcher said the complaint was submitted internally, and the matter was discussed with employee as soon as it was discovered (even though the internal investigation was suspended pending the outcome of the related criminal investigation). It was made clear to the employee that a higher degree of thoroughness during welfare checks was expected.

Ms. Marek agreed with the classification. Mr. Denner was relieved to hear the matter was addressed promptly. Mr. Wig clarified the incident happened, and EPD then put the internal investigation on hold, pending the outcome of the homicide investigation. He asked why. Ms. Pitcher explained by conducting a homicide and internal investigation simultaneously, EPD was concerned talking to witnesses repeatedly about the officer's performance would muddy waters for the criminal investigation. She said in this case, there were many discussions about the issue but everyone agreed that as long as officer was talked to and expectations were made clear, the IA could wait. Mr. Hargreaves suggested an additional concern could be the officer's performance would be cited by the defense at trial. Mr. Wig pointed out the officer was negligent after death. Mr. Hargreaves said the defense could still use the poor performance to their advantage.

Mr. Roseta noted the officer agreed he did not do his best the job, and his supervisor likely told him that, too; he probably would not make the same mistake again. Mr. Roseta was unsure why CRB was going through the exercise if no damage was done to the community at large. Ms. Pitcher said an argument could be made that if the same level of performance continued, it could affect the community. She said the question was what was the purpose of corrective action. The department could not take impose corrective action without an investigation and due process. The department thought they might want additional corrective action rather than just coaching, and that was where CRB came in. Mr. Roseta asked about the charge of unsatisfactory performance. It said the officer "failed to take appropriate action when he was dispatched to the address." Mr. Roseta wondered if that meant perfection, or what type of standard. Ms. Pitcher said as best as one reasonably can. Mr. Roseta said the officer had to do a welfare check, but if there was nothing there that indicated a living person in jeopardy, he wouldn't have thought there was a reason to investigate further; seeing a pool wrapped in the garage easily could have been just be a pool. Mr. Hargreaves said there was a bigger issue than the body; he was concerned about everyone upstairs. He thought the officer did a cursory job. Mr. Roseta said called to check on the person living in the garage. Mr. Hargreaves said that wasn't the way the call was dispatched.

Ms. Williams agreed with the classification, but agreed with Mr. Roseta that it was surprising the case made it to CRB. Ms. Williams understood the caller made a report because of something his boss said, and he then saw people leave the house which made him want to call police. She said he hadn't heard from the resident; however, there was some confusion over whether the owner of house had heard from him that day (she had not). Ms. Williams said the discussion had a lot to do with hind sight. Looking back, there were a lot of red flags; but when looking at the picture the officer took of the pool from where he saw it, the pool did not look like a body. Ms. Williams noted from other views, it did look like a body.

Ms. Marek clarified that the supervising sergeant said the adjudication was not based on the pool and the body. That sergeant took issue that Officer A did not follow procedures they were taught with how to do a welfare check. Mr. Denner wondered what teams were told about welfare checks. Sgt. Jason Berreth said it was a case by case basis on what the officer was looking for. Sgt. Berreth would have expected a walk through the house. He noted it would not have changed the outcome, but those standards were what he would have expected.

Mr. Hargreaves said the supervising sergeant reported that based on Officer A's response, it was not unreasonable for him to miss the body, therefore Mr. Hargreaves tried to look at the case in a broader

perspective. Mr. Hargreaves noted only looking at the first floor wasn't sufficient. Ms. Williams added it was clear the victim was living in the garage, so she was unsure if it was important to look in the whole building. Mr. Denner said it would have been more important to look at the whole house had the officer arriving on the scene asked the RP why they called and listened to the series of circumstances, including a side accusation of child welfare raised with the call-taker. It did not appear that discussion happened upon arrival, and it seemed that was where the inadequacy began.

- Investigation and Monitoring
 - Investigation suspended during criminal investigation and prosecution

Ms. Marek said after the fact, the witness said in interviews there were additional facts the officer may or may not have known about, such as the telephone call. She said an interview with the person who had that telephone call would have been helpful to clarify whether those facts were present. It could illustrate what Officer A did or did not know.

Mr. Wig thought the investigation was done well, especially since it was done after a significant amount of time had passed. Ms. Williams was impressed with the speed of the investigation. Mr. McIntire emphasized the interviewer asked Officer A strong questions.

- Relevant Department Policies and Practices
 - •1101.1.B.9 Unsatisfactory Performance

Mr. Denner said thoroughness coaching was needed, but he was glad to hear there was some debrief closer to the incident than the final adjudication. Mr. Roseta agreed, and he was not sure there was much other choice.

Mr. McIntire wondered if there was a welfare check policy or a command directive. He was told it was not. Mr. McIntire wondered if it was included in a training then. Mr. Wig asked how officers knew the standard for a welfare check. Mr. McIntire thought it seemed vague. Lieutenant Angie San Miguel said welfare checks were very common; sometimes officers were checking on elderly or children, so the expectation was to get information by talking to neighbors, look in windows, and check for mail for example. It was not a once in a while event, which was why she thought it was reported by internal person who thought the check was not up to par. Sgt. Williams added that welfare checks were just investigations, and officers were trained to investigate. Mr. Hargreaves said it was a reminder for all officers that it could be easy to fall into a routine that was not serving them. Mr. Roseta said on other hand, if things at the house looked okay but the officer spent a long time there, there could be a situation the officer was needed in somewhere else. Mr. Roseta added, however, that the officer acknowledged he did not check thoroughly enough.

Mr. McIntire said it was an issue that the officer said he was not trained to do anything differently for a welfare call. He thought that was worthy of exploring. Ms. Williams brought up a question of the second officer showing up. She wondered why he took Officer A's word that the situation was fine, knowing Officer A had been there only for seven minutes. Mr. Hargreaves wondered what the second officer was for; he was told it was for safety if a problem arose. Ms. Marek inferred from Mr. Malone's statement that there was some sort of checklist for a welfare check, or some sort of procedure; but it sounded like in reality, it was based on judgement. Sgt. Berreth said yes, it was hard to be specific because each occasion was different, it was based on what seemed most reasonable.

- **Policy and/or Training Considerations**

Mr. Denner said it was a matter of thoroughness. He said not checking upstairs and not looking in the other two rooms on the first floor was poor judgment. Mr. Denner added one of the residents did not answer the door and was actually asleep inside the room. He wondered if there was an officer safety question in the case; clearly, this time nothing happened, but by not being more thorough Officer A could have put himself in a vulnerable position around people who were capable of significant violence. He thought the lack of thoroughness by Officer A was concerning. Mr. Wig asked if Officer A would have been trained on welfare checks and investigations at the Department of Public Safety Standards and Trainings (DPSST). Lt. San Miguel said yes, at the regional academy. They would be assigned a training officer who was with the officer in training for four months. Mr. Wig clarified it was not really a training consideration, it was more adhering to the training that Officer A had already received. He thought Officer A needed a refresher. Ms. Williams thought fact she herself could see why he did not go upstairs made it obvious that a clearer process was needed for welfare checks. Mr. McIntire reiterated it depended on the situation, and EPD did not need a policy for every single outcome.

- **Adjudication Recommendations**

CRB members were satisfied with the adjudication.

- **Additional Comments/Concerns**

Mr. Roseta said in hind sight situations were always 20/20, but he was glad there was concern around the incident other than just finding the body. But in terms of body itself, he said looking at the photos after knowing the body was there, it was obvious – however, he looked at pictures before knowing the case and it was not obvious. Ms. Williams echoed Mr. Roseta.

Mr. McIntire said the situation worked out okay, but it could have been different. Ms. Marek said the fact it ended well did not negate the seriousness of it. If she was in a situation where she needed a welfare check and was expecting officers to come find her, she would want more thoroughness. Ms. Marek remembered there was a case previously, about a year and a half ago, concerning welfare check, and she was concerned about the officer's conduct reaching unreasonable search; she realized there was a balance in checking safety and respecting privacy while also being thorough. It was a difficult balance.

Mr. Denner thought Ms. Marek made a good point about balance. Mr. Denner thought he understood the legal issues raised, in terms of pushing the case forward, but he also thought in way got in way of doing good police work. He hoped there was good discussion between Police Auditor and IA in how cases went forward.

8. AUDITOR REPORT

Ms. Pitcher presented on behalf of Mr. Gissiner. Mr. Gissiner met with chief candidates yesterday and was able to give feedback to the City Manager. She thought it would be an interesting couple of weeks watching how the Chief hiring process would work out.

Ms. Pitcher said she and Ms. Hernandez were teaming up to work on the Auditor's Office Annual Report. Mr. Denner asked if in the annual report they could include a measure of the gap of time between allegations made and adjudications made, particularly in felony cases. Ms. Pitcher said in previous reports, that data had been included in the appendices. Mr. Hargreaves asked Ms. Pitcher to do the median rather than the average for those statistics. Ms. Pitcher agreed.

Ms. Pitcher reminded CRB applications for members closed March 31, 2018.

9. ADJORN

Mr. Wig adjourned the CRB meeting at 7:06 p.m.

(Recorded by Marina Brassfield, LCOG)