

## **MINUTES**

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

October 9, 2018  
5:30 p.m.

**PRESENT:** Maurice Denner, Chair; Rick Roseta, Steve McIntire, Carolyn Williams, Lindsey Foltz, Civilian Review Board members; Beatriz Hernandez, Leia Pitcher, Vicki Cox, Mark Gissiner, Police Auditor's Office; Cindy Coleman, Sgt. Jason Berreth, Lt. Angie San Miguel, Eugene Police Department.

**ABSENT:** Jim Hargreaves, Chris Hayes.

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

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

Mr. Denner asked for comments about the agenda and materials. There were none.

### **2. PUBLIC COMMENT**

There was no one wishing to speak. Mr. Denner let everyone know someone from the public was recording the meeting.

### **3. MINUTES APPROVAL – SEPTEMBER 2018**

Mr. McIntire stated he had edits for his comments on page 8 of the September minutes, and would email the group with his revisions.

The minutes were approved with the changes suggested by Mr. McIntire without objection.

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

Mr. McIntire stated he would attend the Police Commission on Thursday, and planned to share from the previous case. Ms. Foltz asked what about the case Mr. McIntire planned to share. Mr. McIntire said he would give the summary, learning opportunities, and ambiguities that came up during the discussion.

Mr. Denner gave an update on the Human Rights Commission's summer retreat and annual work plan. He noted that each member took an active role in shepherding a section the work plan throughout the year. Mr. Denner shared that Bonnie Souza was re-appointed to attend CRB meetings with updates, and asked if another member would volunteer to attend the Human Rights Commissions meetings because he had a conflict.

Mr. Denner added that he wanted to share Under the Bridge, a documentary about living un-housed, as a training tool (broken into two parts) this winter.

Mr. Denner stated that he brought the annual report from CRB to the Eugene City Council meeting. He said he believed the Police Auditor's Office worked efficiently with sensitivity toward community members.

Mr. Denner told Council that he was pleased with what this group has become since he first asked to create it in 2006. He let Council know he wanted to improve 911 call responses with training. Counselor Syrett, who was a member of Police Commission and the ACLU at the time of CRB's formation, was very positive in her comments.

Mr. Denner reported back on some of the proposals brought to Council by the Fire Chief and Police Chief. Moving forward, there would be alternative transportation help provided for fire and medical emergencies. Mr. Denner explained that a smaller vehicle would arrive first to radio out what type of help is needed, and added that using smaller vehicles would help meet the city's goal of carbon neutrality.

Mr. Denner stated the Police Chief also told the Council that they planned to ramp up the hiring process to quickly get qualified candidates trained and started. Mr. Denner said this was well received by Council, and they made an immediate motion to direct the city manager to come up with a funding plan.

Mr. Denner concluded by sharing he was troubled by the case discussed at the previous meeting, which was recorded and listened to by Chief Skinner. Mr. Denner said he discussed the case with Chief Skinner, and learned about his plan to bring new people into leadership through new hires and promotions. Chief Skinner shared his commitment to interview all persons promoted into command-level positions, and that leadership training would become a regular part of command-level meetings.

#### **5. DISCUSSION TOPIC: MEETING DATE AND TIME**

Mr. Denner stated that new CRB member, Chris Hayes, planned to submit a resignation to the mayor's office because he could not regularly make the meetings.

Mr. Denner asked for a motion to adjust the meeting date. No motion was offered.

Mr. Gissiner stated that CRB needed to have a minimum of five members. He added that they could remain at six members until the search process re-starts with City Council, and recommended CRB postpone finding another member until then.

Ms. Foltz noted that there were some additional applicants that already went through the process, but were not offered the position.

Mr. Gissiner said he did not believe adding new members in that way aligned with the ordinance.

#### **6. TRAINING TOPIC: WORK OF THE AUDITOR'S OFFICE AND THE CIVILIAN REVIEW BOARD**

Ms. Pitcher gave a brief overview of the Public Records Law and Public Meetings Law.

The Public Records Law, generally, requires that the public be given access to records and documents that are created, used, or kept by the City. This includes: agendas, emails, maps, photographs, reports, handwritten notes, etc., in physical or digital form.

Most public records must be provided when they are requested, but state law exempts certain types of public records from disclosure, including: attorney-client privileged communications, records related to litigation, records related to personnel discipline, trade secrets, and criminal investigatory material. The City Attorney's office will work with staff to decide whether requested records are exempt from disclosure.

The Public Meetings Law is a transparency law. It requires that decisions by governing bodies be made openly. The Public Meetings Law applies whenever a quorum of the "governing body of a public body" meets to discuss public business. For the CRB, a quorum is 3 members if the Board is composed of 5 members, or 4 members if the Board is composed of 7 members.

The Public Meetings Law requires: bodies to give notice of a meeting at least 24 hours in advance (unless it is an emergency), meetings be held within the City of Eugene in a site accessible to individuals with mobility impairments, and that minutes of the meeting must be taken.

Ms. Pitcher added that the most important thing for CRB members to remember is that certain details about records cannot be disclosed, such as identifying information on employees such as names, gender identities, and titles.

Ms. Williams noted it's important to avoid gender pronouns at all times, not just when it's a woman. Ms. Pitcher offered that they could always say "he" or always say "they."

Ms. Pitcher said that communication for the CRB should take place in public, not over email.

Mr. Denner suggested they should avoid using the "reply all" email function to ensure they are not violating the Public Meetings Law. Ms. Pitcher replied that it would be acceptable to do so if the email does not involve making a decision for a CRB item of business.

Ms. Pitcher gave a brief overview of the intake process. She stated that all complaints come in through the Police Auditor's office, where they are classified by Mr. Gissiner and entered into a database.

Mr. Gissiner shared that body-worn cameras have resulted in an increase in case dismissals because they can easily determine whether or not something is a violation. If there is no violation, it is dismissed and a letter is sent out. If it is determined to be a violation, it goes to Sgt. Berreth to investigate. Mr. Gissiner noted that union members accused of a violation are able to have a representative in the interview room.

Ms. Pitcher stated that when there is a criminal investigation, the administrative investigation is paused and resumes after criminal investigation is complete.

Mr. Roseta asked what details the CRB can get from the reporting party, and expressed concern that people are difficult to locate after a report is made.

Ms. Pitcher replied that her office could ask for release of medical records and other details. She explained that there was concern people would not come forward if they had to sign an affidavit, and potentially be subject to a false reporting investigation.

Mr. Denner added that this issue was a point of contention with the Police Commission. Ultimately, people who advocated strongly for this review process felt to preserving an image of neutrality for the public was a priority. Mr. Denner said the current process does not keep people from coming forward.

Ms. Pitcher said they do a lot of work on the front end because sometimes people are hard to find again later. She added that body-worn cameras give a full picture of incidents reported, and all investigations are reviewed, no matter how serious.

Mr. Gissiner noted that more officer have been more apt to report something amiss, so they don't get in trouble for not reporting down the line. Additionally, if a person says they were racially profiled, a supervisor is called immediately for an on-camera interview. Mr. Gissiner explained that many complaints they received were about response time or officers not showing up.

Ms. Foltz asked if cases could be moved forward without a complainant. Ms. Pitcher responded that they could.

Ms. Pitcher stated that the adjudication process comes into play with allegations of misconduct. There is a chain of command recommendation, and all memos go to the Chief of Police who makes final determination.

Mr. Gissiner noted that the adjudication process in Eugene is not done like other localities where the process is done internally.

Mr. Roseta wondered if the auditor would close the case if there was not enough information.

Ms. Coleman said many allegations have been administratively closed in the past. She added that this is would be case if they could not finish the investigation due to lack of information, but that the case could reopen if they found more information.

Ms. Pitcher added that some cases are solved through mediation. Mr. Roseta then asked who would pay for mediation. Ms. Pitcher said her office would.

Mr. McIntire asked about the timeline of the process. Ms. Pitcher said the investigation could take six months for serious misconduct, and sixty days for less-serious misconduct. If there were a criminal complaint, it would move at a different pace.

Mr. Denner noted that most complaints would involve violations of police officer's policy manual but some would be violations of state or city policies.

Ms. Pitcher added that there had been instances where HR, Internal Affairs (IA), the Eugene Police Department (EPD) all investigated together.

#### **7. ELECTIONS OF CHAIR, VICE CHAIR, POLICE COMMISSION LIASON, AND HUMAN RIGHTS COMMISSION LIASON**

Mr. Denner asked for nominations for Chair. Ms. Williams nominated Mr. Denner. There were no other nominations.

Ms. Williams, seconded by Mr. Roseta, moved to elect Mr. Denner as Chair of the Civilian Review Board. The motion passed unanimously, 5:0.

Mr. Denner asked for nominations for Vice Chair. Mr. Roseta nominated Mr. McIntire. There were no other nominations.

Mr. Roseta, seconded by Ms. Williams, moved to elect Mr. McIntire as Vice Chair of the Civilian Review Board. The motion passed unanimously, 5:0.

Mr. Denner asked for nominations for Police Commission Liaison. Mr. Roseta nominated Mr. McIntire. There were no other nominations.

Mr. Roseta, seconded by Ms. Foltz, moved to elect Mr. McIntire as Police Commission Liaison of the Civilian Review Board. The motion passed unanimously, 5:0.

Mr. Denner noted that the appointment of a new Human Rights Commission Liaison did not require a vote. Ms. Williams volunteered for the role. There were no objections.

#### **8. BREAK**

CRB took a break from 6:38 p.m. until 6:50 p.m.

#### **9. CASE REVIEW: ALLEGATION OF DISPARATE TREATMENT, LACK OF KNOWLEDGE OF THE LAW, AND UNSATISFACTORY PERFORMANCE BY AN EPD SUPERVISOR**

Mr. Gissiner provided a narrative on the case.

##### **Summary of Facts**

- Supervisor A responded, along with several officers, to a call reporting a fight in the street. Supervisor D (an employee from another agency) was first to arrive on the scene. He saw several people pointing at Reporting Party, and observed a second male nearby who was bleeding from his head. Supervisor D detained RP in handcuffs before EPD employees arrived.
- The investigation on scene established that RP had been trespassing on private property when he was confronted by Involved Party E, who was clearly intoxicated and visiting the location.

- Involved Party E and the RP exchanged words, and at some point RP threw trash on the ground of the common area of the apartment complex. Involved Party E exited the apartment and chased RP as RP attempted to flee on a bicycle.
- Involved Party E caught up to RP and assaulted him, a short distance from the initial location. E also threw RP's bicycle to the ground, damaging it.
- RP and E both sustained injuries from the incident.
- Crisis Assistance Helping Out On The Streets (CAHOOTS) treated E at the scene, but RP was not.
- RP repeatedly asked for medical attention, but Supervisor A denied it. RP complained of back, neck, and hand injuries. RP was told to leave the area and walk to the hospital if he needed treatment.
- Because RP was trespassing at the time he encountered E, Supervisor A decided to release both subjects without enforcement action. Supervisor A directed employees not to complete a police report.
- RP went to the Auditor's Office to complain of his treatment from Supervisor A. RP's medical records showed that he was treated for finger fracture, finger sprain, and a suspected concussion.

### **Allegations**

1. **Unsatisfactory Performance:** that Supervisor A refused to summon medical attention to an involved party after a fight.
2. **Professional Police Contacts:** that Supervisor A failed to take law enforcement action based on the homeless status of the victim.
3. **Unsatisfactory Performance (Knowledge of the Law):** that Supervisor A failed to accurately interpret ORS 161.225 (Physical Force in Defense of Premises).

### **Adjudication**

1. Unsatisfactory Performance:  
EPD chain of command recommendation: Sustained  
Auditor's Office recommendation: Sustained  
Chief of Police: Sustained
2. Professional Police Contacts  
EPD chain of command recommendation: Unfounded  
Auditor's Office recommendation: Sustained  
Chief: Unfounded
3. Unsatisfactory Performance (Knowledge of the Law):  
EPD chain of command recommendation: Unfounded  
Auditor's Office recommendation: Sustained  
Chief: Sustained

During the adjudication process, Chief added (and sustained) Allegation #4: Unsatisfactory Performance – that Supervisor A failed to conform to the standards of his rank in ensuring a thorough and fair investigation of the involved incident.

### **Complaint Intake and Classification**

- Reporting Party came to Auditor's Office to report the incident
- Classification: Allegation of Misconduct

Mr. Roseta had no issue with the fact that this case was given a classification of misconduct.

Mr. McIntire expressed that he would like to see a lack of courteous behavior added as a type of allegation.

Mr. Denner voiced he had no problem with allegations, and the way they were assigned. He noted that this case brought up a reoccurring question about what a supervisor is supposed to do, and he thought the Police Chief reaffirmed that more was expected from a supervisor.

Ms. Williams noted that the fourth allegation cleared up things that were difficult to get into with second allegation, and wondered if there was a protocol review being done by Chief.

Mr. Gissiner stated that the chief is still learning nuances to this system, and felt as though the second allegation was a strong indictment of Supervisor A's behavior.

Ms. Foltz asked if there would have been a formalized way to add a fourth allegation.

Mr. Gissiner replied that he did not know if it would be formalized. He added that there was no Union to challenge the addition of a fourth allegation in this case because it involved a supervisor.

Mr. Denner asked when the Statistical Transparency of Policing (S.T.O.P.'s) program—which was just approved by Council—would be implemented.

Mr. Gissiner replied he did not know when it would be implemented, but believed it would be sometime in 2019.

Mr. Denner asked if there had been an in-service on S.T.O.P.'s.

Lt. San Miguel replied that there had been an in-service.

### **Complaint Investigation and Monitoring**

Mr. McIntire said he thought some of the question prompts in the investigation went beyond objective fact-finding, and put the supporting officer in an awkward position to answer questions about a supervisor.

Mr. Denner noted there was not an effort to investigate where the conflict took place, which person struck the first blow, and how much time had transpired. He asked Sgt. Berreth if he believed it was clear where the fight took place based on interview. Sgt. Berreth responded that it was clear to him.

Mr. Gissiner noted that the body-worn camera footage helped determine some answers.

Mr. Denner suggested that a better investigation could have been done by the supervisor on the scene, and noted that there was no attempt to identify witnesses.

Mr. Gissiner replied that there was no investigation, which is why no witnesses were contacted. He added that once Supervisor A determined that Party E did not cause the cut on the RP's face, Supervisor A made the decision not to investigate.

Ms. Foltz would prefer if the UO Police Department were subject to the Eugene Police Auditor process.

Ms. Foltz said that she did not believe directly asking someone if they were biased was a good way to determine if someone was biased. She suggested they instead be asked open-ended questions. Ms. Foltz explained that there was other evidence of biased treatment, but the phrasing of the interview questions was not helpful. She highlighted that S.T.O.P.'s policy does not include protections for homeless people because homelessness is not a protected class.

Mr. Gissiner asked if it was protected in Eugene's ordinance.

Ms. Foltz replied that socio-economic status and homelessness are not protected, but source of income is. She added that bias against homeless people is something the city tracks, but that there are no additional criminal charges added in such cases.

Mr. Roseta said he did not believe anything was wrong with the phrasing of the interview questions, but did agree with Mr. McIntire that officers should not be put in the position of criticizing a supervisor.

#### **Relevant Department Policies and Practices**

Mr. Denner said the S.T.O.P.'s policy will be an emerging issue, and expected to see reviews on how it is implemented in the coming year. He added that given the size of Eugene's homeless population, this issue is something worth keeping on CRB's radar.

Ms. Williams suggested a good practice would be for officers to tell CAHOOTS about all injured people when they arrive.

Ms. Foltz asked how to contextualize the call volume referenced in the investigation given that it was used as a rationale for how Supervisor A handled the situation. She asked if the call volume was considered in the investigation.

Sgt. Berreth replied that it was considered.

#### **Policy and/or Training Recommendations**

Mr. Roseta wondered if the RP was treated unequally because they were homeless or because they had difficulty communicating and paying attention. He asked if there was a policy about people who have trouble communicating.

Mr. Gissiner replied he had not seen a training specific to difficulty communicating, but he believed it was clear in this case that there was a neurological disorder.

Ms. Williams agreed that it was clear there was a neurological disorder, but felt as though the different treatment became clear when Party E admitted to assault and was then treated differently.

Mr. Roseta stated that the question of what force was relevant changed multiple times throughout the process, including when there was a knife present. He believed that the amount of force available to both sides changed as time went on, which made it difficult to critique Supervisor A. He added that Supervisor A made the decision to clear everyone from the scene, which is why not everything is known about this case.

Mr. Gissiner noted that RP admitted they were close to blacking out when Party E choked them, which was when they pulled out their knife. After reviewing the whole sequence in terms of credibility, Mr. Gissiner felt that RP was very credible.

Mr. McIntire wondered what the minimum requirements of investigations were, including the expectations of someone taking over a scene and filing a report. He questioned whether there was confusion between the supervisor and officer about who would file a report, and who had the authority to determine what constituted mutual combat. Mr. McIntire then referred to the fact that Supervisor A had said RP was not in custody even though RP was in handcuffs.

Ms. Foltz added that RP had been his Miranda Rights.

Lt. San Miguel responded that RP was in custody. She added that it is possible to detain someone, but then release them once the scene settles.

Mr. Denner noted that the body-worn cameras were on through the entire event, and revealed that there never was a discussion for how they would handle the situation.

Mr. Roseta agreed, and added he thought the problem was that no one was assigned to do the investigation.

Mr. Gissiner highlighted that there was a disagreement on the scene about how intoxicated RP was between Supervisor A and an officer. He emphasized how uncomfortable that situation could be for officers.

Ms. Foltz replied that this was an example of why it is important for supervisors to be good at their jobs.

Mr. Gissiner stated that Chief Skinner recognized this as an issue as well, and that this particular case was a new supervisor put in during a busy time without proper training.

### **Adjudication Recommendations**

Ms. Foltz appreciated what the Police Chief was attempting to do with added fourth allegation. She felt dissatisfied that it was not determined RP was treated differently because of their homeless status. She highlighted the fact that they were detained, and not given the opportunity to press charges, and the language used by others involved that characterized homeless people as dangerous. Ms. Foltz stated she would rather the second allegation say there was insufficient evidence rather than unfounded.

Mr. Roseta thought saying that Supervisor A refused medical attention was not accurate, and that it should instead say they failed to provide for medical attention. He agreed with the auditor that the second allegation was not based on homeless status, but was instead based on RP's inability to communicate. Mr. Roseta noted that Supervisor A should have delegated responsibility to other officers to investigate what happened.

Mr. McIntire sustained the first allegation. He agreed that the second allegation lacked sufficient evidence. Mr. McIntire stated that Supervisor A was clearly discourteous, and agreed the second allegation should say insufficient evidence, not unfounded.

Mr. Denner concurred with auditor's evaluation, and understood and appreciated the Chief's addition.

Ms. Williams agreed there was lack of sufficient evidence for the second allegation, and sustained all four allegations.

Ms. Foltz again highlighted that this case was a good example of why body-worn cameras were helpful.

#### **10. AUDITOR REPORT**

Mr. Gissiner shared a summary of a report by Stanford University on racial disparity in police stops. The study included a data set of 16 million state patrol stops over a majority of states, and revealed widespread racial disparities in stops and arrest rates, specifically that Black and Hispanic drivers are searched far more often than white drivers under similar stop circumstances. Mr. Gissiner said he would include the study along with the next newsletter.

#### **11. DISCUSSION: CASE SELECTION FOR NOVEMBER MEETING**

There was no discussion of case selection for the November meeting.

#### **12. ADJOURN**

Mr. Denner adjourned the meeting at 7:52 p.m.

*(Recorded by Erin Hagen)*