

MINUTES
Civilian Review Board
Saul Room, Atrium Building
99 West 10th Avenue

November 13, 2018
5:30 p.m.

PRESENT:

Civilian Review Board Members: Maurice Denner (Chair), Steve McIntire (Vice Chair), Rick Roseta, Carolyn Williams, Lindsey Foltz
Police Auditor Office Staff: Leia Pitcher, Vicki Cox, Beatriz Hernandez
EPD Staff: Lt. Angie San Miguel

ABSENT: Mark Gissiner

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

1. AGENDA AND MATERIALS REVIEW

There were no changes to the agenda.

2. PUBLIC COMMENT

No one from the public provided comment.

3. MINUTES APPROVAL – OCTOBER 2018

Mr. McIntire noted his name was missing the letter “M” on Page 1.

Mr. Denner corrected Page 3, Paragraph 2, Sentence 1 from “~~commissioner~~” to “**commission.**” Within that same paragraph, Mr. Denner corrected Sentence 2 by taking out the word “~~to.~~”

Mr. Denner was unclear about a sentence within Page 7, Paragraph 2. He thought it was oddly worded. Ms. Foltz suggested changing it to “Ms. Foltz would prefer if University of Oregon Police Department were subject to the Eugene Police Auditor process.”

Ms. Foltz pointed out that on Page 7, Paragraph 10, the sentence read, “~~Ms. Foltz asked wondered...~~” She requested the sentence be changed to “**Ms. Foltz asked...**”

The minutes, as amended, were approved by acclamation.

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

Ms. Foltz said that during last meeting, she did not have time to mention one comment. She was impressed that during the employee’s interview, he acknowledged mistakes he made. While she didn’t find his performance satisfactory, she appreciated the fact he reflected upon the process to learn and grow.

Mr. McIntire attended the recent Police Commission meeting where the group finalized the Code of Conduct policy. He thought the policy was much improved. In addition, there was a presentation regarding methods to reduce bicycle thefts, mostly around the idea of “bait bikes.”

Mr. McIntire reported that the Police Commission also reviewed proposed changes to EPD's taser policy. There was an issue about whether or not to capture taser displays and admonishments within Blue Team; some thought capturing the information was too much of an administrative burden. Mr. McIntire thought officers should be required to capture all types of force to track statistics. CRB had seen reports about effectiveness of taser threats alone; he thought only focusing on actual deployment left out some information on the true value of tasers as a tool. Mr. McIntire was unsure whether there would be any traction on the policy change, but he recommended Police Commission ask for the Police Auditor's feedback.

Mr. Denner asked Lt. San Miguel for her feedback from a police training point of view. Lt. San Miguel said supervisors are currently required to input a Blue Team entry to document any taser threat/use. EPD wanted to move away from that requirement, because the process took time. EPD had tracked the data for years, but now they felt that the importance of tracking had diminished. Mr. Denner asked if pointing of a firearm was tracked. Lt. San Miguel said pointing of a firearm was never documented in use of force reports, but it would be captured in police reports.

Ms. Pitcher stated that one possible solution, as suggested by Mr. McIntire at Police Commission, would be for the employees to still include taser display and admonishment information in their police reports, and then route those reports to the Auditor's Office for tracking.

Mr. Roseta asked what information they would seek by reporting taser threats. Mr. McIntire responded that it shows when only the threat of force, as opposed to the use of force, was effective. Mr. Roseta was unsure when it would be necessary to use that data in evaluation of officer performance. To him, it did seem somewhat of an administrative burden. Ms. Pitcher said the statistic was used a lot in discussing use of force. The current data shows that admonishment is frequently all that is needed for compliance; actual taser usage is often less effective. Also, as taser usage is still contentious in some parts of the community, she felt it was good practice to keep up reporting for the sake of transparency.

To Mr. Denner, admonishing someone with a taser or pulling a firearm was use of force. He noted both were more than just the officer's presence to gain compliance and represented potential for bodily harm. He was unsure if CRB had seen a case in which someone complained about either, but he saw room for complaint if there wasn't a record of what was done by officers. Mr. Roseta agreed, after hearing the value of the statistic.

Ms. Pitcher added officers could have weapons drawn and not pointed at anyone, and that the Police Auditor didn't necessarily need to know those instances. However, they do want to know when weapons were pointed at someone, and currently, they do not.

Mr. Denner asked if Police Commission would work on the policy with EPD. Mr. McIntire was unsure there was much they could do, but he thought there was some concern.

Bonnie Sousa, chair of the Human Rights Commission work group, "Whole Eugene Community United," provided an update. The work group put together a voter's report; it was recently formalized and present to City Council. Ms. Sousa said WECU prioritized recommendation of three things: hire a full-time liaison to act as a bridge between the City and marginalized communities; develop a rapid response plan

in the case of hate crimes, or other serious and threatening incidents; and put together a planning committee to create a centrally located, multi-cultural center. The City Manager approved all requests and instructed staff to move forward. Currently, the proposal was in front of the budget committee.

Ms. Foltz asked which department the liaison would be in. Ms. Sousa was unsure, but it would be discussed with City staff.

5. REPLACEMENT OF MEMBERS: WAIVER OF BYLAWS REQUIREMENT

Currently, there are two vacancies on the CRB that have not been filled in compliance with the CRB bylaws. Mr. Denner read the bylaw (5) for current language:

(5) The civilian review board shall hold regular meetings with an opportunity for public comment at least quarterly, and the civilian review board and its committees may hold additional meetings as necessary. No business of the civilian review board shall be conducted at a meeting without at least a quorum of three (3) members on a five (5) member board or four (4) members on a seven (7) member board present. All actions of the civilian review board shall be made upon a simple majority vote of the members present.

Mr. Denner suggested moving forward with two separate motions. He thought the first motion should suspend the rules in order to move forward as a five-member board without recruiting additional members. The second motion should be to create a committee to consider amending the bylaws, so to make the change a more common practice. According to Roberts Rules of Orders, there was no discussion for suspending bylaws, it was simply a yes or no decision.

Mr. McIntire asked for clarification on whether CRB was on a timeline for recruitment, based on current bylaws. Mr. Denner responded according to the rules, CRB needed to replace a member within 45 days. Mr. Denner said CRB couldn't do fulfill that requirement because the appointment process went through City Council and their agenda. Ms. Pitcher explained the recruitment process. Usually, there were 12-13 members on a committee that reviewed applications. She didn't see how it would be possible to create such a committee within 45 days, so they were unable to meet the requirement; however, the only place the requirement was present was within CRB policy, so they could vote to amend the process. The long-term action would be drafting new language moving forward.

Ms. Foltz asked how many applicants were in the last process. Ms. Pitcher said there were six applicants for three vacancies. One was a reappointment. One concern she had was fall and winter were not a time when people familiar with boards and commissions were looking for openings. Ms. Foltz asked why they couldn't use the existing pool. Ms. Pitcher said City Council would not do that anymore. Mr. McIntire would appreciate more time for recruitment to expand the applicant pool; he wanted to engage an active effort in recruiting minorities.

Mr. Denner added another issue was that positions reopened in June 2019, and any applicants recruited now would still need screening and background checks after appointment. They wouldn't have much time on the board before needing to reapply. Ms. Pitcher noted the next recruitment process would start in March 2019 and end in May 2019. There would be three openings.

In response to Mr. Roseta, Mr. Denner said he wanted to waive the 45-day requirement.

Ms. Williams clarified with a five-member board, a quorum was three.

Mr. McIntire made a motion, seconded by Mr. Roseta, to waive the 45-day requirement within Article 3, Section 6.

The motion passed unanimously.

Mr. McIntire made a motion, seconded by Ms. Foltz, for the chair and vice chair to review the language in Article 3 during a leadership meeting.

The motion passed unanimously.

Mr. Denner had a chance to attend the Cal Young neighborhood meeting with staff. At the meeting, Ms. Hernandez and Mr. Gissiner brought more awareness to CRB, and explained the Police Auditor's role within the community. Mr. Denner encouraged members to attend a neighborhood meeting if one was set up by Ms. Hernandez in their neighborhood.

Ms. Hernandez shared the next meetings included the Downtown Neighbors Association on November 29, 2018 and the Harlow Neighbors Association on December 13, 2018.

Ms. Williams asked how many people were in attendance. Ms. Hernandez said about 40-60 people.

6. CASE REVIEW: ALLEGATION OF EXCESSIVE FORCE RELATED TO USE OF OC SPRAY

Summary of Facts:

- Officer A responded to a report of a suspect who had allegedly broken into a vehicle and stolen a phone. The victim was following the suspect and had called it in.
- Officer A found the involved subjects – the suspect, followed by the victim and a witness – and exited his patrol vehicle. Officer A stated that he ordered the suspect to stop walking and sit on the ground. The suspect did not immediately do so, and Officer A pulled his OC spray from its holder and sprayed the suspect.
- The incident was captured on body-worn video, but given how quickly the incident evolved, the camera only captured video (no audio).
- Officer A's sergeant and lieutenant reviewed the incident (per the use of force reporting policy) and determined that it was within policy. The captain believed the use of force was outside policy, and this investigation was opened into the incident.

Allegations:

1. 803 Oleoresin Capsicum Aerosol: that Officer A's use of OC spray against the suspect was outside of policy.

Adjudication

1. OC Spray:
 - EPD chain of command recommendation: Within Policy
 - Auditor's Office recommendation: Within Policy

- Chief of Police: Within Policy

Issues for CRB Discussion

- Complaint intake and classification discussion
 - Internally reported
 - Classification: Allegation of Misconduct

Ms. Williams thought the classification seemed appropriate. Mr. Roseta didn't see an issue with the classification; he thought it was good to honor whatever was concerning someone.

Mr. Denner said the case was timely, in regard to the discussion at Police Commission. In the case at hand, Officer A announced the intent to use pepper spray and the subject didn't appear responsive. Mr. Denner didn't have trouble with the classification, but it raised the question of when use of force began.

- Complaint investigation and monitoring

Mr. Roseta said the investigation was handled appropriately; however, Mr. Roseta did not have a copy of the camera recording on his thumb drive. He thought the summary provided was sufficient enough. Ms. Pitcher said feel free to call the Police Auditor's office if that happened in the future.

Ms. Foltz appreciated body worn cameras, because they made the oversight process simple. It was unfortunate there wasn't audio, but because of the camera's angle, she could see everything the officer was doing, and both individuals' body language lined up with the officer's testimony.

Lt. San Miguel added Officer A was late in activating the video. The officer should have hit the button as he was pulling up but there was delay. Ms. Pitcher thought the car video was supposed to go on at the same time as body worn cameras, but it wasn't functioning. Lt. San Miguel said EPD was transitioning from the old in car video system to a new system. The new system would activate all other cameras in the area (i.e. for other officers, in cars etc.). Currently, about 70% of EPD's fleet was upgraded.

Mr. Roseta asked for the rule regarding when activation was to be done. Lt. San Miguel replied at any investigative contact.

Mr. Denner thought in car video should activate when the officer activated his overhead camera. Lt. San Miguel said it should have; she was unsure why it didn't. Ms. Foltz didn't think in car camera would have captured more, in this particular case. Ms. Williams added the audio would have been captured. Lt. San Miguel said body worn cameras within the new system served as both audio and video.

Ms. Williams thought the investigation was thorough.

- Department Policies and Practices

Ms. Foltz saw some confusion in wording of the policy. For her, the most important part of the policy was that protesters weren't being pepper sprayed when choosing to exercise their first amendment right. Ms. Foltz thought that was the intent behind the policy, and the case at hand was not in the same context. Ms. Foltz thought it would be good to harmonize wording ("passive" versus "static" resistance), but the overall intent was clear.

Mr. McIntire also concerned about wording of “passive” and “static” Mr. Denner asked if the concern was forwarded on. Ms. Pitcher said it was provided to the Chief and that Sgt. Williams was also aware.

Mr. Denner didn’t have other issues with the policy, but he hoped policies around protesting remained on Police Commission’s radar. Ms. Foltz thought the policy provided a lot of protection to protestors.

Ms. Williams said wanted more consistency as well, but she didn’t think the policy had anything to do with the case. She would like to see an entire paragraph to address cases similar to this one; she didn’t want to change the policy, but instead add an entire layer to fit other situations.

Mr. Roseta thought the policy could be left as is and left to officer discretion.

Mr. Roseta said that within the case interview, a sergeant stated he considered the situation “ominous.” He wondered if the language was out of another policy. Ms. Pitcher said EPD used to train on the use of force continuum. “Ominous” was one way of looking at a force situation. Officers were not trained on the same continuum anymore.

- Policy and Training

Ms. Foltz offered de-escalation training as a consideration. She thought the officer was on the scene for only 10 seconds, so it made her wonder if there were other things that could have been done. She wondered the standards of escalation were, before use of force.

Mr. McIntire thought Ms. Foltz’s point was one reason why the captain raised a concern around the case. Mr. Denner agreed, the officer administered pepper spray quickly. He noted that afterward, there was a conversation between a supervisor and officer about options for de-escalation. He praised the supervisor for acting proactively.

Mr. Denner said another concern involving use of force was that the individual could have crossed traffic again. It could have been a point where use of force was actually better for the subject than not deploying force (i.e. safer, because the subject could have run into traffic).

Ms. Williams agreed more de-escalation could have occurred, but without knowing the verbal exchange that occurred, it was hard to determine. However, she saw the subject with his hands open, in a non-threatening manner. She was unsure pepper spray was needed.

Mr. Roseta agreed with the other CRB member comments. He noted hindsight was always 20/20. For example, the subject could have sued the officer if he ran into traffic and was hit; the subject’s defense could have been “the officer should have done something to stop me and keep me safe.” Mr. Roseta thought overall, the officer’s performance was okay.

- Adjudication Recommendations

Mr. McIntire had no quarrel with the adjudication. Mr. Denner agreed. Ms. Pitcher’s memo was thorough, and he appreciated the chief’s comments.

All members agreed the adjudication was within policy.

Ms. Pitcher said de-escalation was discussed a lot during the case, specifically around the tools available to the officer. Tackling and use of a Taser were actually much less safe than the use of pepper spray; although the video was jarring, out of everything available to the officer, he chose the safest option. Ms. Foltz noted there were bystanders very close by who could have been affected by whatever option chosen.

Ms. Foltz added the pepper spray definitely stopped the person, but they weren't incapacitated and could still talk. It appeared the officer used the minimum amount of force necessary.

Mr. Denner commented that all the subject's behaviors fell into a different context when he saw the officer search the subject and meth came out. It created challenges for the officer and for bystanders. The two bystanders following the subject and not listening to the advice of the operator was frustrating. Mr. Roseta said yes, it was likely frustrating for the operators when people didn't listen in that type of setting.

Ms. Williams added the case exemplified the value of board and the Police Auditor. At first, she thought the officer's actions were totally unreasonable, but after review and going through the process, they did appear within policy.

7. BREAK

CRB took a break until 6:43 p.m.

8. TRAINING TOPIC: VIEWING OF THE FIRST HALF OF "UNDER THE BRIDGE: THE CRIMINALIZATION OF HOMELESSNESS"

Ms. Pitcher introduced the film "Under the Bridge: Criminalization of Homelessness." The viewing would be split over two meetings.

CRB watched the film until 7:23 p.m.

CRB discussed scenes in the film thus far. Mr. Denner noted the aerial shots exemplified the amount of infrastructure the city was not doing. It showed different priorities. Additionally, it was interesting to see the reduction in police contact when the police department identified a population based on number of arrests and then intervened. However, they didn't seem to have capacity for the next step of support.

Mr. Roseta thought the use of Commissioner Officer Training (COT) force seemed a little unclear. Ms. Pitcher said Eugene did something similar with a response team. The team focused on one frequent arrestee, and accessed services for the individual to get them out of the system. The program was currently still funded and required coordination between community organizations.

Mr. McIntire pointed out they could fund services more if saving that kind of money. Mr. Roseta said an example of similar work in Eugene was the expansion of CAHOOTS.

Mr. Denner pointed out there were a variety of people homeless for different reasons, so the issue begged multiple solutions. It was the nature of government to look for a single answer, which

wouldn't work. Mr. Denner said CRB wanted the message sent to officers and other city employees to be aware, thoughtful, and careful in their work with the population.

9. AUDITOR REPORT

Ms. Pitcher provided a report on behalf of Mr. Gissiner, as he was currently at a training. Over the past month, Mr. Gissiner served on the deadly force review board and brought information back to EPD.

Ms. Hernandez was planning the various neighborhood meetings currently happening.

Ms. Pitcher said there were some Police Commission training ideas that might also be interesting for CRB. Ideas included the ride along program, community court, or a presentation by Sergeant Julie Smith on generalized downtown improvements. Mr. Denner thought a presentation focused on downtown might be a good follow up to the movie.

10. DISCUSSION: CASE SELECTION FOR DECEMBER MEETING

Mr. Denner wondered whether CRB should meet in December 2018 or January 2019. CRB agreed to meet January 2019.

Ms. Pitcher asked if there was any interest to review one of the open cases. Ms. Foltz asked if staff could send November 2018 closed cases at some point so CRB members could review.

Mr. Denner wanted to create an agenda for the January 2019 meeting prior to December 25, 2018. He also wondered when case books could be delivered. Ms. Pitcher said the first week of January. Mr. Denner suggested that if there was not a closed case of policy violation, CRB could review a service complaint instead. Ms. Pitcher would speak with Mr. Gissiner.

Lt. San Miguel shared there were 13 new employees, who had about 40 weeks total of training. Another training topic could be on the new hire academy. She reported another captain position was opening, and the deputy chief position still was not filled.

11. ADJOURN

Mr. Denner adjourned the CRB meeting at 7:47 p.m.

(Recorded by Marina Brassfield, LCOG)