

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

January 8, 2019
5:30 p.m.

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

ABSENT: None.

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.

Mr. Gissiner requested a break after the case review, as he had to leave prior to adjournment.

Mr. Gissiner reported there were 392 complaints in 2018, up by about 60 when compared to 2017.

2. PUBLIC COMMENT

None

3. MINUTES APPROVAL – NOVEMBER 2018

There were no changes to the minutes.

Mr. Denner deemed the minutes approved as presented.

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

Mr. McIntire attended the recent Police Commission meeting in December 2018. During the meeting, he brought forward the case reviewed by CRB on the use of OC spray, and the ambiguity within the policy regarding static and passive resistance. The Police Commission was now working on the policy issue, so it should be resolved within the coming months. Additionally, there was a presentation regarding the parade permitting process. Mr. McIntire reported Sergeant Williams was working on policies around what constituted a pursuit, as well as separating the audio/video recording policy from other new technology (i.e. ICV) and how they differed.

Ms. Williams asked if another CRB member could begin attending the Human Rights Commission meetings on the third Tuesday of every month at 5:30 p.m. Most Tuesdays wouldn't work for her, so she was unsure if she could fill the role. Ms. Pitcher would add the issue to the following month's agenda.

Ms. Pitcher added that in general, a representative of the Police Auditor's Office was at the meeting. Reporting wise others were available to fill the roll, but structurally, it was important to have a liaison.

Mr. Denner recalled there was a significant incident that month, but it was quickly resolved by Eugene Police Department (EPD). During the event, the SWAT team was called to an apartment complex off Chambers Road; the conflict was resolved without shots. He was happy with the officers' performance.

5. REPLACEMENT OF MEMBERS: WAIVER OF BYLAWS REQUIREMENT

Mr. Denner said any bylaw changes needed public notice, preventing action from being taken during the meeting.

Ms. Pitcher shared the ordinance regarding membership. CRB was currently operating as a five-member board instead of a seven-member board. Due to the short amount of time left in the positions' terms, CRB hoped to wait and fill them when the City of Eugene began its appointment process.

Ms. Pitcher didn't believe operating as a five-member board violated any bylaws or the City of Eugene's ordinance, but two places required updating including Article 3, Section 6. She proposed they remove the sentence, "City Council shall approve within 45 days of the position becoming vacant." Otherwise, they could add "where/when practicable a subcommittee will be convened."

Mr. McIntire wanted to encourage replacement whenever possible, so thought that language should be included. Ms. Pitcher said the Police Auditor's Office could convene and do its part of the process regardless of the City's timeline. She suggested including, "as soon as possible or during the next recruiting process."

Ms. Foltz asked if there could possibly be a situation in which the board couldn't function (i.e. less than five members). Ms. Pitcher responded the ordinance read there needed to be five or seven people appointed to the board. If there were fewer than five, then there was an issue. Secondly, the ordinance said a quorum was required for business to go forward. Four members of a seven-member board and three members of a five-member board made a quorum.

Mr. McIntire and Ms. Pitcher discussed differences in defining a quorum. Ms. Pitcher thought CRB could include a more generalized definition, such as "the majority of those actively serving on the board," (meaning three would be a quorum in the board's current situation). Mr. McIntire thought the language should stay within terms of Robert's Rules of Order. He pointed out that City Council appointed a seven-member board, so he thought four members actually needed to be present. Otherwise, they would be in conflict with bylaws and the ordinance.

Mr. Roseta was not concerned so much about how CRB voted, but about the process to find replacement members. Ms. Foltz noted the City would announce they were actively seeking people for committees at the end of January 2019. After, City Council would decide upon a process.

Ms. Foltz pointed out now would be an opportune time to offer City Council with input. For example, Ms. Foltz thought alternates should be appointed during the open period, so in case of a mid-year vacancy, boards were prepared.

Ms. Pitcher summarized CRB comments.

Ms. Williams suggested listing the meeting day and time on the committee application so that people were aware of the time commitment.

Mr. Denner requested staff update the bylaws to include a sentence requiring the auditor or chairman to promptly report to the Mayor and/or City Administrator when a position became vacant. Doing so shifted the burden onto City Council to either act or have the recruitment bureau act, alleviating CRB and Police Auditor staff workloads. Ms. Pitcher thought the ordinance was clear in that it was the responsibility of both the Police Auditor and Mayor to convene a subcommittee.

Staff would return with updated bylaw language during the February 2019 meeting.

6. CASE REVIEW: ALLEGATION OF MISCONDUCT RELATED TO EMPLOYEE'S SOCIAL MEDIA USE

Ms. Pitcher shared a PowerPoint entitled, "*Case Summary: Civilian Review Board, January 8, 2019.*"

I. Summary of Facts

- Following a hit-and-run, after which the driver had fled the scene, Officer A responded in a patrol vehicle to assist in setting up a perimeter.
- Officer A's car was in the parking lot of a business. The business owner approached the car and asked about why Officer A was parked in the lot with emergency lights activated. Officer A told the person not to worry about it, and that police would let him know if he needed to worry.
- The business owner filed a complaint with the Auditor's Office. During the review of ICV related to that complaint, it was discovered that Officer A had engaged in an extended "rant" after speaking with the business owner. It appeared that the rant was recorded in order to share on social media.
- After recording the rant, Officer A listened to it again. Officer A then recorded a similar rant.
- Officer A was alone in the vehicle at the time of the incident. There were no known witnesses, but the entire incident was captured on ICV.
- Officer A stated during the investigation that the rant was recorded on Snapchat and shared with two other EPD employees.
- During the investigation, it became clear that the group with whom the recording was shared also included a private citizen. The private citizen confirmed receiving the recording.
- Officer A clarified during a second interview that the initial misstatement about whom the recording had been sent was inadvertent.

II. Allegations

1. **1101.1.B.25** Unbecoming Conduct: that Officer A violated policy when she recorded a "rant", which was captured on in-car video and included profanity and inappropriate language.

III. Adjudication

1. Unbecoming Conduct:

- EPD chain of command recommendation: Sustained
- Auditor's Office recommendation: Sustained
- Chief of Police: Sustained

IV. Issues for CRB Discussion

- Complaint Intake and Classification
 - Discovered during review of related external complaint
 - Classification: Allegation of Misconduct

Mr. Denner misunderstood the source of intake.

Mr. Gissiner explained the business owner first filed a service complaint through the Auditor's Office -- he felt targeted because Officer A had been in their parking lot for about a half hour with emergency lights on. Mr. Gissiner explained the officer was using a strategy to apprehend a fleeing vehicle. When an IA staff member watched ICV and body worn camera footage, the recording came to their attention and onto the chain of command.

Mr. Gissiner continued that an allegation was then opened; however, there were no specific policies on social media so the case became more difficult to consider. Mr. Gissiner framed the issue in that the officer created a public record, no different than if they had typed something in a police report. He wasn't sure if CRB would be having the same discussion, had the officer only recorded themselves on Snapchat, and not ICV.

Ms. Williams was impressed that the internal employee identified the recording as being inappropriate and moved it forward onto the chain of command. She appreciated their due diligence.

Ms. Foltz agreed. She wondered if the case bifurcated, as far as the business owner was concerned. She hoped the business owner received response after the investigation.

Ms. Williams clarified the business owner didn't know about Officer A's rant. Ms. Foltz wondered if EPD and the Auditor's Office had to complete the entire IA process, if two cases were connected, prior to reaching out to the business owner. Mr. Gissiner said they were considered two separate cases, and the business owner's service complaint was dealt with promptly.

Mr. Roseta asked if the business owner complained because the operation was being disrupted, or about the way they were treated. Mr. Gissiner said a bit of both; they were more concerned about disruption, but the owner also didn't feel as though they received a thoughtful answer to his concerns. Ms. Pitcher added the owner was also concerned because he heard from other dispensaries that EPD was targeting that sector.

Mr. Roseta thought the situation was handled appropriately.

Mr. Denner said there was a need for rules. The employee was on City time and using a City-owned vehicle. Whether officers were allowed to use their personal cell phones or not, there was a certain level of expectation for appropriate language and conduct. Mr. Denner had been in a ride-along, though, and was aware not all language used was completely appropriate at all times. CRB needed to be wary of that as the policy moved forward.

Mr. Denner added there were programs available to recover messages from Snapchat via the device it was created on, or the device it was played on. Officer A's recording was not completely lost in the atmosphere so that bothered him a bit.

- Complaint Investigation and Monitoring

Mr. McIntire was concerned by Officer A's omission of a private citizen's involvement. He found that suspicious and would have followed up with the officer. During the investigation, he would have liked to see a question about information shared on the group chat. Both Officers B and C said Officer A sent these types of Snapchat messages quite frequently. Mr. McIntire was concerned about what type of information could be shared to private citizens about cases concerning other private citizens. He didn't believe all police business should be shared.

Mr. Denner was pleased to see the case moved forward quickly. He thought the investigation was thorough but saw Mr. McIntire's point and recognized there was a quick "gloss over" about who was within the chat group. He understood on Snapchat that if someone opened a message and took a screenshot, the original sender would be notified, but he was concerned about whether messages could be forwarded, etc.

Mr. Denner thought guidelines around sharing police business, particularly that which was unresolved, should be outlined. Mr. Gissiner agreed, without a social media policy it was a grey area. He recalled a few years back when a criminal was apprehended, and the sergeant wrote a lengthy post about their feelings toward the person. Mr. Gissiner remembered the discussion with Chief Kerns around implementing a social media policy, because absent of policy, there were many liberties employees could take.

Mr. McIntire wondered if there was a different policy that would prohibit sharing information, since there were multiple types of social media. Ms. Pitcher said officers had a prohibition on sharing confidential information; had Officer A shared confidential information, they would have violated a different policy. If the officer had written (instead of recorded) their rant, a policy wouldn't have been violated.

Mr. McIntire agreed, a policy wasn't violated; however, EPD was unsure about the nature of what was shared. Ms. Pitcher responded the Police Auditor's office was not allowed to ask "fishing" questions. Unless there was a clear policy violation it was difficult to go down that path. Mr. Gissiner thought it was fair to ask if confidential information was shared.

Ms. Williams was concerned that Officer A wasn't talked to about how the business owner was treated. Mr. Denner said the issue was dealt with by a different supervisor. Ms. Pitcher said it was not clear in CRB member packets, however, the issue was dealt with by a different supervisor. The owner felt heard

and appreciated an explanation. Ms. Williams clarified that Officer A was part of both investigations. She was told yes.

Mr. Gissiner said there were many embellishment issues dealt with during the investigation. In some cases, his bar was higher in terms of truthfulness because often that meant their police career was over.

Mr. McIntire pointed out there was a difference between an allegation and one that was unfounded.

- Relevant Department Policies and Practices
 - 1101.1.B.25 Unbecoming Conduct
 - Code of Conduct now updated to POM 103: Standards, Duties, and Conduct

Mr. Roseta said they ought to be wary of delineating exact forms of social media. Only ten years had passed since the first iPhone, so they didn't know what to expect in the future. The policy needed to be general enough, specifically around sharing police / confidential business to those not within the force.

Mr. Gissiner noted some courts recently moved on the issue, ruling that inappropriate social media use fell under "unbecoming conduct." It was very important to pay attention, as many younger officers were entering the force.

Mr. McIntire was curious about the policy around using personal devices on company time, specifically in an active situation. Ms. Pitcher said there was a policy around active duty, which had been used in the past for taking excessive time to text, etc. It was usually brought up in extreme cases where productivity wasn't nearly matching other employees. There was a difference between split attention, and then completely abandoning a job. Mr. McIntire agreed that different situations would have different needs.

Mr. Gissiner noted that officers had vehicle locators for safety, so they could be tracked; however, that in itself couldn't be used to bring forward a disciplinary action. An additional circumstance was needed. Additionally, if officers were found saying something inappropriate on BWC, there could be some "gotcha" instances (i.e. an officer walking by themselves and venting without turning off BWC). Mr. Gissiner thought CRB had to be considerate of the technological paradigm shift and how it was handled in policy. BWC was very sharp but it changed the playing field in terms of measuring conduct.

Ms. Pitcher added that a ride-along felt a bit like a "reality show" because riders were recorded on BMC all the time.

Mr. Denner asked about Officer A's first interview. He heard there was an objection to the allegation, but he didn't hear what it was. He was told Officer A didn't intend to make a public record.

Mr. Denner thought officers needed to fully understand the equipment used.

Ms. Williams had questions about social media and use of personal devices on company time. She was a public employee in a different realm, and there were rules about social media use that were important to note and adhere to.

Ms. Williams added everyone was entitled to breaks but the use of personal devices on duty were not appropriate, especially on an active duty setting. She agreed that smartphones were only a 10-year old technology; however, there needed to be trainings on how to manage social media well. She agreed trainings and policy didn't need to specifically outline different media outlets, as technology was changing, but she didn't think officers should talk about the public in the way Officer A did.

Mr. Gissiner asked Mr. Berreth how breaks and flexibility worked. He said officers received paid breaks on patrol, but many days' officers didn't get true breaks, because if someone was on lunch, they were still available for calls.

Ms. Williams clarified a break wouldn't happen during active duty, like the case considered that day. Mr. Berreth said no, a break would not occur. EPD would expect the officer to be outside their car. Ms. Pitcher added that if an officer was on break, they were expected to inform dispatch.

Ms. Foltz asked how the determination was made whether to utilize a public or personal cellphone while on duty. Mr. Gissiner said it was the officer's choice to use a City phone, or a personal phone and receive a stipend. Ms. Foltz imagined most people used a stipend. She pointed out a personal phone would be less searchable and would require more procedures to extract data, even if paid for with City monies. She thought requiring officers to use a public phone when on duty should be considered as a potential policy.

Ms. Foltz asked what EPD's retention requirements were for ICV and BWC videos. Mr. Gissiner said non-criminal BWC had a pretty short retention timeline. It was a state-level determination. Ms. Pitcher said all video was public record and were considered evidentiary or non-evidentiary. She thought they were allowed to keep videos longer than the requirement but did not need to. One reason EPD did not save video footage longer was due to storage issues. EPD got an enormous amount of video daily.

Ms. Foltz asked that ICV and BWC be retained for as long as people could file an Auditor's grievance, as footage included data that couldn't be recovered. Mr. Gissiner said the State required departments retain footage for 180 days but no more than 30 months when not related to a court proceeding for criminal investigation.

Ms. Foltz agreed there was a ton of data, but there were increasingly more inexpensive and secure offsite data storage options. From her perspective, the more data they had to draw from, the better. But, to limit liability, she understood feeling differently. Ms. Foltz thought retaining video for only one year seemed very minimal.

Ms. Foltz asked who could request ICV videos and how people would know of their existence. Ms. Pitcher said any member of the public could but submitting a public record request may be cost prohibitive when it came to video, because EPD needed to blur all faces and blank out names.

Ms. Foltz thought it interesting that Officer A was surprised their actions were caught on record. Often, people would positively modify their behavior if someone could be watching or listening.

- Policy and/or Training Considerations

Mr. Roseta agreed with Ms. Williams, training around social media would be valuable.

Mr. McIntire said within policy, there was no ambiguity that an officer conduct must at all times, on and off duty, reflect favorably on the department. He was unsure if the policy should be softened.

Mr. Denner said the case showed a distinction in how younger people used media, and how people from different levels of society used language. He pointed out the policy was outlining the bar for behavior; however, someone under 35 may interpret the bar differently than someone over 50. Mr. McIntire noted the command had set that bar of performance. Despite one's age, they accepted the position and in doing so, agreed to adhere to expectations.

Mr. McIntire noted the rant by Officer A did not reflect favorably on the department. Mr. Denner agreed, but explained in the context of casual conversations with friends, put downs were often not meant to be offensive by the person saying it, but could offend the person who hearing it. Somehow, EPD needed to be clear in training that recordings were public record, and absent cursing, the rant was still offensive.

Ms. Pitcher noted previous language in the unbecoming conduct policy required officers on and off duty to act in ways favorably reflecting the department. Governing what people did in their off-duty life was extremely difficult, so the policy ended up being too expansive to be easily enforceable.

Mr. McIntire asked why the policy was still included within the meeting packet. Ms. Pitcher said the particular policy was included because it was still in effect during the incident. Since then, the policy had been updated.

Mr. McIntire was concerned that Officer A was on duty yet was still alarmed by someone walking up to the car. They didn't seem actively engaged in the situation. It seemed like their focus should have been on the case at hand, not on social media. He thought social media training and use of personal device training could be beneficial.

Mr. Denner was struck that safety could be compromised, in particular for intelligence agents. He wondered if, with BWC, the news, public cameras, etc., police departments would be able to recruit people for undercover work and ensure officer safety. There was an incredible power to share information with each other, and hard drives could potentially be compromised.

Mr. Denner pointed out that Las Vegas Police Department released all its video footage within 24 hours. Ms. Foltz added that most states had footage readily available. Mr. Denner said departments often did so to ensure the public saw the police officer's point of view, not just bystander videos.

Ms. Williams was not as offended by language, but by tone of the rant and intent of the message. She thought it was important for people to understand the Internet's permanence, and to train officer's on appropriate media presence. Many people from younger generations knew data didn't disappear once sent but chose to disregard the fact.

- Adjudication Recommendations
 - Auditor and Chain of Command concurred

All CRB members concurred with the adjudication decision.

- Additional Comments/Concerns

Ms. Foltz thought it was clear officers needed additional opportunities to vent when watching the footage. They often dealt with circumstances other community members didn't face. She didn't think venting itself was problematic, but the fact it happened on a social platform was an issue. She supported any efforts in providing mental health supports, additional time off, etc. The case reviewed was minor, but it bled into greater work-life balance issues.

Ms. Foltz addressed public records. She continued to advocate that in general, more access to records was better, as it would demystify many issues. Greater access often helped officers, too. As of now, the public relied on CRB, to rely on the Auditor. It was not desirable to her.

Mr. McIntire thought Officer A's rant was over the top. In their IA, Officer A should have owned that they didn't follow policy. He reiterated his concern about the officer sharing information with private citizens. Additionally, the comment by Officer A, "I hate people," was inappropriate. If they hated people, he was unsure why they were a police officer. Finally, the other officers were annoyed with the Snapchats, but did not express so to Officer A or the chain of command.

7. BREAK

CRB took a break from 7:00 until 7:05 p.m.

Mr. Gissiner excused himself during the break.

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

Ms. Pitcher introduced the second half of the film "*Under the Bridge: Criminalization of Homelessness*." The viewing was split over two meetings.

CRB watched the film until 7:42 p.m.

CRB discussed scenes in the film from the second half, specifically in regard to police conduct.

Mr. Roseta thought the police behaved well. Mr. McIntire said the officers had job to do; they didn't necessarily like what they had to do with the homeless camp – and he didn't either.

Mr. Denner thought the sergeant's demeanor was ideal that role, in that he had a strong desire to not provoke anything. Mr. Roseta said the leader of the homeless group was accepting of their situation and doing his best, but also didn't want to create a criminal situation.

Ms. Foltz was empathetic toward officers put into situations they were untrained for. It seemed like sometimes they were used as a tool, incorrectly. Officers were also often put into positions where they were asked to differentially implement laws, which they couldn't do (i.e. the definition of camping was expansive, but officers couldn't make exceptions). Ms. Foltz was thankful the City of

Eugene tended to use money to support CAHOOTS and other tools better suited for those particular interventions.

Ms. Pitcher thought it was worth remembering that not everyone had homelessness at the forefront of their mind as an issue to solve rather than push away.

Mr. Denner was struck by the number of homeless folks who found the Police Auditor as a resource in Eugene. During Human Resource Commission meetings, folks regularly came to vent. He also knew there were EPD officers who were known around the community as willing ears.

9. AUDITOR REPORT

Mr. Denner said board and commission openings would be listed by the end of the month.

Ms. Hernandez reported the Police Auditor's Office would hold its second annual Public Safety Forum at Prairie Mountain School on February 5, 2019. There were two panels that year: a government services panel and a community services panel. The discussion was in Spanish, but each information table had bilingual speakers.

Ms. Pitcher added staff continued to attend neighborhood meetings to spread awareness on the Police Auditor's Office and CRB.

Ms. Pitcher would attend Police Commission that Thursday.

10. ADJOURN

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

(Recorded by Marina Brassfield, LCOG)