

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

February 12, 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 5:33 p.m.

- **AGENDA AND MATERIALS REVIEW**

There were no changes to the agenda.

- **PUBLIC COMMENT**

No one from the public wished to provide comment.

- **MINUTES APPROVAL – JANUARY 2019**

There were no changes to the minutes.

Mr. Denner deemed the minutes approved as presented.

- **COMMENTS FROM BOARD MEMBERS, HUMAN RIGHTS COMMISSION LIAISON AND POLICE COMMISSION LIAISON**

Mr. McIntire reported there was a Police Commission (PC) meeting that evening.

Mr. Denner noted there were two incomplete cases within the Police Auditor's report of interest to him. One dealt with juveniles at a shelter facility and the other was a domestic violence case where it appeared there was inadequate service. Mr. Denner requested CRB members inform him or Mr. Gissiner if they had cases of concern, too.

Ms. Williams was also interested by the recent juvenile case.

Mr. Denner asked the Human Rights Commission (HRC) Liaison (Serena Markstrom) if there was anything CRB needed to be aware of. Ms. Markstrom shared that HRC was a cosigner on a letter to the sheriff's office against sharing information with ICE. She explained as far as homelessness pertained, HRC would come out against any changes to the City of Eugene ordinance around panhandling, if the ordinance mimicked Springfield's exchange of goods policy. HRC also discussed the recent police shooting and viewed a presentation on protocol.

Ms. Foltz asked to review the timeline for the Charlie Landeros shooting. Ms. Pitcher didn't have the Interagency Deadly Force Investigations Team (IDFIT) file; however, the DA had reviewed the file and determined the shooting was not a criminal act. Now, the investigation went to EPD and the Police Auditor. After their review, a deadly force review board would convene to go over the investigations. The head of the board would write a memo to the police chief.

Mr. Denner suspected a result would come out late spring 2019. Ms. Pitcher said it would likely be at least six weeks out from February 12, 2019.

- **VOTE TO AMEND BYLAWS: ARTICLE III, SECTION 6 (TIMELINE FOR FILLING VACANCIES) AND ARTICLE VII, SECTION 3 (DEFINING QUORUM)**

Mr. Denner thought two items needed attention, separately rather than together. First, Mr. Denner wanted to address reappointments. He proposed an amendment to include new language about how vacancies would be filled to Part G, Article III, Section 6.

MOTION: Mr. McIntire moved to amend Article III, Section 6 (Timeline for Filling Vacancies). Mr. Roseta provided the second.

VOTE: The motion passed unanimously, 5:0.

Mr. Denner explained the second issue dealt with rules around defining a quorum. Current language was found in Article VII, Section 3 “Meetings, Voting and Procedures.” Language was updated to say a quorum was simply “a majority of members serving on the board.”

MOTION: Mr. Roseta moved to amend Article VII, Section 3 (Defining Quorum). Ms. Foltz provided the second.

VOTE: The motion passed unanimously, 5:0.

- **TRAINING TOPIC: COMMUNITY IMPACT CASE**

Mr. Gissiner provided a PowerPoint on “Officer Involved Shootings: Next Steps.” He explained a local nonprofit requested the recent officer involved shooting (OIS) be considered a community impact case.

Mr. Gissiner covered historical timelines:

- December 13, 2006: Ordinance 20374 Establishing the Police Auditor and CRB.
- June 28, 2007: Oregon Senate Bill 111 creating in each county a deadly physical force planning committee co-chaired by the county district attorney and sheriff, respectively. D.A. conducts criminal investigation.
- Must be approved by the Attorney General.
- January 2, 2008: Approved by Lane Planning Committee and approved by Eugene City Council on March 10, 2008.
- November 4, 2008: Charter Amendment requiring Council to hire an Independent Police Auditor, appoint a Review Board and grant authority and duties. Approved by voters.
- August 10, 2009: Ordinance 20435 amending sections of Ordinance 20374 establishing the Auditor and CRB consistent with the Charter Amendment.

Mr. Gissiner explained the process post the DA’s decision:

- EPD receives the criminal investigative file conducted by the IDFIT (Interagency Deadly Force Investigation Team) from the District Attorney’s Office which conducted a criminal investigation (focusing on whether officers committed any crimes).
- EPD Internal Affairs Section (IA) conducts an administrative investigation to determine whether the officer(s) committed any policy violations; monitored by the Police Auditor’s Office.
- IA usually does little additional investigation if the IDFIT investigation is thorough and complete.

Mr. Gissiner shared the steps following that process:

- After completion of the criminal and administrative investigations, the Chief of Police creates a Use of Force Review Board (UFRB) for the purpose of determining whether or not the actions of the

employee(s) were consistent with department policies. The UFRB meets and discusses the case with Auditor's Office participating. The Auditor's Office is a non-voting member of the UFRB.

- Within 30 days after the determination by the Board as to whether policies were followed, the UFRB Chairperson will complete a report and recommendations. The Chief make the final determination regarding compliance with policy, training issues, tactics.
- Auditor's Office may also provide recommendations to the Chief.
- Civilian Review Board (CRB) role: The CRB may choose to review the completed case file at a regularly scheduled meeting.
- They review the quality of the investigation, quality of the work of the Auditor's Office, training or policy recommendations and the final adjudication decisions (whether the officers violated EPD policies).

Mr. Gissiner explained what happened if an investigation became a community impact case:

- City ordinance defines a community impact case as an investigation involving sworn police personnel that alleges excessive force, bias, disparate treatment of violation of constitutional rights, which the auditor determines should be reviewed by the CRB as a community impact case.
- If selected by the Auditor, the CRB will review a summary of the complaint and investigation and may decide whether they will accept it as a community impact case by majority vote. If so, Chief, employees and complainant are notified.
- Police Auditor monitors and reviews investigation.
- Upon completion of the investigation and preliminary adjudication decision by the Chief, the auditor will provide the investigation to the CRB for review.
- Within 14 days of receiving the case, the CRB will meet to discuss and present its determinations on the case, including whether they agree with the Chief's preliminary adjudication decision(s).

With a community impact case, the CRB would do one or more of the following within 30 days:

- Concur with the EPD adjudication.
- Develop recommendations on handling of the complaint and investigation, and/or identify policy or procedural issues.
- Require the City to reopen the administrative investigation if it finds either:
 - The investigation was incomplete or inadequate, and the CRB has a reasonable basis to believe that additional investigation is likely to reveal facts that could affect the case outcome; or
 - The adjudication reached is not supported by substantial evidence.
 - If the Board voted to reopen a community impact case, the Auditor shall inform the CRB of the subsequent investigation conducted and the final adjudication decision.

Mr. Roseta asked for the definition of a community impact case. Ms. Pitcher explained the ordinance defining a community impact case. The Police Auditor determined which cases were considered as such. Mr. Roseta clarified it was discretionary and subjective, meaning CRB wouldn't vote to review the case if it wasn't recommended by the Police Auditor didn't recommend. Mr. Roseta noted there was nothing in the definition related to what the family of people involved may want. Mr. Gissiner said correct. A family's position on the matter was still considered during the process, but the expectation wasn't in writing.

Mr. Denner provided some historical perspective. Proponents of civilian review wanted more transparency; however, during the ordinance's creation it was understood some incidents should be made more public than others. Review of the cases was a way to provide the public with as much information as permissible about a given incident. In his mind, community impact included anything violating constitutional rights (i.e. excessive force, etc.).

Mr. Roseta thought one could argue that what the family wanted wasn't valued as greatly, because community transparency was prioritized within the ordinance. But there could be some cases where the family may want less focus, rather than more.

Mr. Denner understood exactly what Mr. Roseta meant and agreed there were sometimes parties who didn't want a case to move forward. Mr. McIntire added that in literal terms, Mr. Roseta was correct.

Mr. Denner was reminded by a couple of cases prior where CRB made specific comments to people outside of EPD. He thought CRB had set some historical precedents in reviewing procedures.

- **CASE REVIEW: ADMINISTRATIVE INVESTIGATION FOLLOWING REPORT OF OFF-DUTY CONDUCT**

Ms. Pitcher presented a PowerPoint entitled, "*Case Summary: Civilian Review Board, February 12, 2019.*"

1. Summary of Facts

- A man called 911 and said that he had confronted a person over a door ding in a bar parking lot. The caller stated that the person appeared to be intoxicated and pushed the caller when the caller told him not to drive. The caller was concerned that the man appeared to be intoxicated but had driven away from the bar.
- The caller gave a physical description of the man and the license plate of the vehicle. Dispatch found that the vehicle was registered to Supervisor A (a personal vehicle, not a city vehicle).
- Dispatch notified the watch commander and entered a call for service for "Attempt to Locate DUI Driver). The vehicle was not located.
- Captain B, having been notified, called Supervisor A's cell phone about 15 minutes after dispatch received the 911 call. Supervisor A did not answer his phone. Supervisor A also did not answer two phone calls from Lieutenant C, which occurred early the next morning.
- Lieutenant C went to Supervisor A's residence the next day. A personal vehicle and city vehicle were parked there. Lieutenant C knocked on the door, but there was no answer.
- Supervisor A later sent a message to Lieutenant C, stating that he had left his phone in his vehicle and apologizing for not answering it.
- The incident resulted in a criminal investigation, which was reviewed by the District Attorney. The DA determined there was insufficient evidence to charge Supervisor A with any crimes.
- This administrative investigation followed.

1. Allegations:

- **103.5.4 Adherence to Laws:** that Supervisor A did not comply with ORS 813.010 when he drove while under the influence of alcohol.
- **103.5.9 Conduct:** that Supervisor A engaged in conduct that brought the department into disrepute in his interaction with the complainant.
- **103.5.14 Unsatisfactory Performance:** that Supervisor A failed to perform as expected for his rank when he failed to answer calls from Captain B and Lieutenant C.

2. Adjudication:

- i. Adherence to Laws
 - EPD chain of command recommendation: Unfounded
 - Auditor's Office recommendation: Unfounded
 - Chief of Police: Unfounded
- ii. Conduct:
 - EPD chain of command recommendation: Unfounded
 - Auditor's Office recommendation: Unfounded

- Chief of Police: Unfounded
- iii. Unsatisfactory Performance
 - EPD chain of command recommendation: Unfounded
 - Auditor's Office recommendation: Unfounded
 - Chief of Police: Unfounded
- 3. Issues for CRB discussion:
 - i. Complaint Intake and Classification
 - Internally reported
 - Classification: Allegation of Criminal Misconduct (later reclassified to Allegation of Misconduct)

Mr. Gissiner thought the case was important because it involved how much EPD could delve into their personal lives.

Mr. Roseta thought complaint intake was fine, given the information available. He thought there was an intersection between policy, criminal law, and the officer's personal life. Mr. Roseta also found it beneficial to review a case when all those areas crossed.

Ms. Williams agreed. She thought the complaint that the officer could have brought the department into disrepute was possibly excessive.

Ms. Foltz had a technical question about how the case was reported. She was unclear why it was entered into Blue Team. Mr. Gissiner outlined the different types of incidents that would be entered; as this was a complaint of potential criminal activity by an EPD employee, it was entered.

Mr. Foltz wondered if entering the complaint was at the supervisor's discretion, or if it was part of policy. Mr. Gissiner thought the decision was mostly based on discretion. Ms. Pitcher added any complaint received by a supervisor was supposed to be entered into Blue Team within 24 hours.

Mr. Denner struggled with the third allegation. He remembered the State's code of conduct about following all procedures and rules as a sworn as officer. Lt. San Miguel said there was an oath of office. Mr. Denner had seen allegations based on failure to live up to expectations. He wondered who had discretion on how those allegations were made. Lt. San Miguel responded it was likely a case by case basis. In the particular case being reviewed, there was no policy requiring an officer to answer their phone when off duty. Mr. Denner told her that's where his concern was. For example, if an officer on an important team failed to respond, EPD didn't have much reach.

Mr. Gissiner added the Police Auditor didn't know protocol for specialized units until they entered the case. Mr. Denner thought many expectations were engrained traditions in teams and were not necessarily in policy.

Mr. Denner wondered about the different team expectations. Lt. San Miguel said the supervisor was called and decided how to proceed; however, every officer on the SWAT team was called.

Mr. McIntire added the call was from Captain B within 15 minutes of dispatch. He thought there must be an expectation that someone would return call within a certain amount of time, or it wouldn't have been made into allegation. He wondered if it was a command directive. Lt. San Miguel said it was not a command directive -- it was an expectation that when a supervisor called, the officer called back, especially if they were part of a special team.

Mr. Denner struggled with the allegation, because the officer was on their own time off. He thought some tightening within policy was needed.

Mr. Gissiner pointed out it was problematic if there was an emergency and no one picked up the phone.

ii. Complaint Investigation and Monitoring

Mr. Roseta thought the investigation was very good. He would have liked to see the video from the bar, but it seemed the people who needed to view the footage. From Mr. Roseta's perspective, it didn't appear the footage proved anything one way or another, but it would have been interesting to understand how everyone held themselves during the event.

Ms. Williams thought the investigation was very well done.

Ms. Foltz agreed with previous comments. She noted the involved civilian didn't know the other person was an officer -- the individual never had any pretenses and wasn't acting maliciously when submitting a report. Ms. Williams added the bartenders and bouncer knew the officer was employed by EPD.

Ms. Foltz noted the case files indicated the investigators "attempted to locate a tab from the bar" to understand what drinks were purchased. She knew the complainant saw multiple drinks being purchased for other people, but she was still curious as to whether that was found.

Mr. Denner thought the investigation was thorough as supervisors reached out and contacted numerous people to verify the officer's conduct. He had no trouble with the investigation and report.

iii. Relevant Department Policies and Practices

- POM 103: Standards, Duties, and Conduct
 - Subsection 5.4 Adherence to Laws
 - Subsection 5.9 Conduct
 - Subsection 5.14 Unsatisfactory Performance

Ms. Williams thought it could become an issue if people reported officers during their off time, just because they knew the person was an officer. It could put a lot of liability on the department. Ms. Williams noted officers weren't expected to use their personal devices on duty, but there was an expectation to use it when off. Her suggestion was, if an officer was on call, to treat off-duty contact as medical professionals did and have a separate device for work.

Ms. Williams thought it brought up a lot of questions if EPD required off duty employees to answer their personal phones. She didn't feel the officer had unsatisfactory performance especially considering the scope of impact. Additionally, Ms. Williams thought the allegation of conduct and unsatisfactory performance was unnecessary. She thought it might be wise to revisit policies in place prior to cellphones.

Ms. Foltz understood the person was not technically on call. Mr. Berreth confirmed yes, the officer was not being paid to be on call. Lt. San Miguel said the officer would be compensated via stand by pay. Ms. Williams clarified there was no reason an officer shouldn't have been at bar in their particular situation.

Ms. Foltz was struck because the public alleged an officer drank and drove, via a personal license plate number. With that information, dispatch could identify the driver as an EPD officer and could also locate the home. She wondered why, other than a phone call, there was no follow up within a period of time where evidence could be gathered. Without additional evidence, she agreed that the allegations were unfounded; however, there was a period of time evidence could have been gathered, but that time was not utilized to do so. By the time contact was made, any potential for evidence gathered was well gone. Ms. Foltz was concerned because not answering a phone/door could be an avoidance strategy.

Mr. Denner asked whether a supervisor went to the home address the next day. Ms. Pitcher replied yes. Like Ms. Foltz, Ms. Pitcher also considered the fact that evidence dissipated. Ms. Foltz added if someone knew evidence dissipated, they may be more inclined to take those actions. Ms. Foltz clarified she was not making specific accusations but wanted to discuss general possibilities.

Mr. Dinner's only concern with policies and practices was whether or not the call out instructions were clear enough for employees.

Mr. McIntire agreed. His primary concern was around practice. He brought up another recent case in which there was a tiff between two individuals at a bar. One person left and then called EPD to report Person 2. EPD went to Person 2's home and arrested him for a DUI. He was curious as to why, in some circumstances, EPD would listen to a patron and go to an offender's house, but not in others. Mr. McIntire pointed out the two cases had almost the exact scenarios which made him wonder if officers were treated differently. He wondered what EPD was actually supposed to do for those types of calls.

Mr. Gissiner explained that was one reason the particular case was brought forward. Lt. San Miguel said physical follow up was based on availability of officers and egregiousness of the case. She was told in this case that the officer was moving southbound but actually lived to the north, so it was unclear whether they were headed home. Mr. Berreth didn't think it would be unusual to receive 10 to 15 DUI reports on a Friday or Saturday night. No one generally went to the home unless they were in a dedicated DUI car. Ms. Pitcher added follow up was more likely if there was a report and something additional happened, like a hit and run.

Mr. McIntire also had concerns as the officer was a supervisor within EPD, so he was expected to perform at a higher standard. Mr. McIntire had one additional question regarding policy. It appeared the address on file for the officer was not correct. Lt. San Miguel said yes, the officer recently moved. Officers needed to notify EPD of address changes within 30 days.

iv. Policy and/or Training Considerations

There were no comments.

v. Adjudication Recommendations

Mr. Denner concurred with the auditor and supervisor's adjudication, due to lack of evidence.

Mr. Gissiner returned to policy considerations and stated leadership should considering having clear expectations outlined for each team. There could be problems if multiple officers from one team weren't available.

Mr. Denner agreed and thought it seemed beneficial for the supervisor, department, and City to have conditions for not showing up clearly spelled out.

Mr. McIntire was unsure about having such specific requirements for showing up when off duty. People had lives, and it couldn't be expected for a supervisor to always prioritize work over their personal life. Instead, he thought there should be a succession plan. Specifically, there should be enough people with leadership abilities to step in as back up.

Mr. Roseta thought having clear guidelines for SWAT team was one thing but doing so for other areas of work could breach too much into officers' personal lives. Mr. Roseta agreed with Mr. McIntire.

Ms. Foltz said EPD needed to pay officers to be on call if they were required to answer phones. Officers shouldn't have to during their own personal time.

Mr. McIntire disagreed with two adjudications. The first was "unfounded." He clarified "unfounded" meant the event didn't occur, so he thought the adjudication should have been "insufficient evidence," as there was not enough evidence. This classification also aligned with the District Attorney's opinion.

Secondly, Mr. McIntire disagreed that "engaging in conduct that brought EPD into disrepute" was unfounded. The DA said there no doubt something occurred between the officer and the witness, but the video didn't corroborate the witness' claim. He didn't think there was enough evidence there to say the claim was founded, but it was also not entirely unfounded.

Mr. Gissiner also thought the adjudication options available were limiting.

Mr. Roseta thought Mr. McIntire made a good distinction, but overall, he agreed with unfounded.

Ms. Williams agreed one adjudication should have been insufficient evidence, and that the other two should be unfounded. For her, the distinction was that the complainant didn't know the officer was an EPD employee.

Ms. Foltz agreed there was insufficient evidence. She thought it was good all three policies were considered. It was also valuable to disprove things.

Mr. Roseta thought it was best for the Police Auditor to have broad discretion on what was looked at, then make decisions based on where evidence fell. Mr. Gissiner said that was one reason for the second interview, as he wanted the officer himself to say how much he drank.

Mr. Denner asked if members thought the allegation was inaccurately labeled, and whether they wanted to send the case back to the Chief. Ms. Foltz wanted to vote. She personally disagreed with the Chief and the Police Auditor. Mr. Denner commented not many cases were sent back. Ms. Williams considered it central to the CRB's purpose to voice disagreements where they exist.

Mr. Roseta was unsure if sending the case back would accomplish much but thought it was a good comment to make on record. He noted the Chief was busy, and likely didn't want to analyze each allegation individually.

Mr. McIntire imagined the Chief heard of CRB decisions regardless. He also thought it was good for the Chief to know CRB didn't "rubberstamp" everything.

Mr. Denner had mixed feelings about how much more time from the department CRB could expect; however, he thought it needed to be noted when the majority of CRB was clear that the first allegation should have been insufficient evidence. Mr. Denner was open to an official motion.

Ms. Pitcher added there were informal ways to ensure the Chief knew about that meeting's discussion. Ms. Foltz wondered if emailing concerns worked. Ms. Pitcher said yes.

MOTION: Ms. Foltz moved, seconded by Ms. Williams, to have the Chair email the Chief and Auditor about CRB discussion regarding the adjudications.

VOTE: The motion passed, 4:1. Mr. Denner abstained.

vi. Additional Comments

Mr. McIntire was concerned that the call wasn't answered within 15 minutes. Otherwise, he was still concerned about the possible perception that the public was treated differently than officers.

The HRC liaison asked if the officer's phone was looked at during the investigation, for activity overnight. Mr. Denner denied the question. Ms. Pitcher would reach out to her after the meeting.

Mr. Denner would run his email by Ms. Pitcher and Mr. Gissiner prior to sending to the Chief.

- **AUDITOR REPORT**

Mr. Gissiner appreciated officers turning on Body-Worn Video, especially in the recent officer involved shooting. He acknowledged they were extraordinarily valuable in cases but could be problematic in terms of “gotcha” moments when the officer was alone and not interacting with the public.

Mr. Gissiner explained another recent issue, in which an individual suffered a serious medical injury in the back seat of a police cruiser. It was a freak accident, but lessons were learned. The case could come before CRB in the future.

Mr. Gissiner and Ms. Hernandez were working on a report in regard to racial profiling and bias. which would be complete fairly soon.

Ms. Williams asked about recruitment. Mr. Gissiner said there were four CRB vacancies.

Mr. Denner updated CRB on his living situation as he may need to resign prior to the end of his term.

- **DISCUSSION: CASE SELECTION FOR MARCH 2019**

There was no discussion.

- **ADJOURN - NEXT MEETING MARCH 12, 2019**

Mr. Denner adjourned the CRB meeting at 7:19 p.m.

(Recorded by Marina Brassfield, LCOG)