

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

August 13, 2019
5:30 p.m.

PRESENT: Lindsey Foltz, Rick Roseta, Carolyn Williams, Bernadette Conover, Susan Gallagher-Smith, Awab Al-Rawe, Civilian Review Board members; Vicki Cox, Mark Gissiner, Beatrice Hernandez, Police Auditor's Office.

ABSENT: Leia Pitcher, Michael Hames-Garcia

Ms. Foltz convened the Civilian Review Board (CRB) at 5:31 p.m.

1. Agenda and Materials Review

Ms. Foltz thought that they should start with the new member introduction and overview of CRB role, so that new members can make comments if they want.

2. Public Comment

Ms. Foltz read the policies related to speaking at meetings or filing complaints.

Travis Pendergrass, a Eugene resident, approached the board to discuss a complaint he had filed. He said that he filed a complaint and got a letter that said the city could do nothing more. He wondered if this meant the case was closed, or if it was technically still open. He noted that the case had not been brought in front of the CRB.

Ms. Foltz said that they do not usually respond directly to public comments but thought that Mr. Gissiner could answer his questions.

Mr. Gissiner said that the issue could go back to animal control. Since animal control is not sworn in to EPD, their cases cannot be brought in front of the CRB. He apologized for not having communicated better with Mr. Pendergrass on the progress of his complaint. Mr. Gissiner told Mr. Pendergrass that he would look into the case the next day and give him a call.

Mr. Pendergrass wanted to know the usual process for closing a case. Ms. Foltz said that the auditor's office sends the CRB all the complaints that are filed. Ms. Williams added that not all cases are brought in front of them for review. Usually a case has to have something unusual or suspect for them to talk about it at one of their meetings. Since there are so many cases a year, and they only meet ten times a year it would be impossible for them to go over all complaints filed.

3. Minutes Approval

Ms. Williams had a couple of corrections she wanted to make to the June 11, 2019 minutes. First, she noted that they were dated for April 9, 2019, not June 11, 2019. Also, on the second page it has Bonnie Souza's comment under the auditor's report when it should be under public comment. Lastly, in a couple of places the gender pronouns in the case study were incorrect.

Ms. Foltz declared the minutes approved, as amended, by acclamation.

4. New member Introduction and Overview of CRB Role

Ms. Foltz thought they should all go around and introduce themselves. She has served on the CRB on and off over the past few years. She let the new members know that they are expected to come to meetings prepared. While the board might not always agree on things, they all make sure to know the case front and back. She expressed her excitement with the opportunity to work with the new members.

Ms. Williams said that she has served on the CRB for the last three years. She is an educator in Eugene and brings that lens with her onto the board.

Ms. Gallagher-Smith introduced herself as a Eugene resident and thought the board would be a good way to express her beliefs.

Mr. Al-Rawe introduced himself. He is from Baghdad and is a program analyst for the State Department of Health. He said he is excited to be on the board.

Mr. Roseta said he is a retired lawyer who dealt mainly with defense of public law, a lot of which dealt with police using aggressive force. He said he is excited to see the perspectives that the new members bring to their discussions.

Ms. Conover introduced herself. She had spent time on the CRB before, from 2009 to around 2015/2016. She left because at the time it was too much to deal with alongside work. She applied for the board again because she thought having four fresh new members would be too much, and that having someone with experience would be helpful. She believed that board member diversity is important and is excited to see the perspectives that the new members will give.

Ms. Conover wanted to address the comment that Mr. Pendergrass gave earlier. She let him know that if police were involved, they would be able to look at the case, but if it was just animal control then it is not their business.

5. Comments from Board Members and Commission Liaisons

Ms. Foltz informed the board that since the commissions were currently not meeting they would just be doing board comments.

Ms. Williams emphasized the use of gendered pronouns in their case review presentations. She thought it would be a good idea to switch over to just using they/them pronouns. This would be important when talking about female police officers. Since there are only so many police women on the force, using they/them pronouns will help keep their identities secret. Ms. Gallagher-Smith concurred and said that taking away gender from the cases would help focus on the reasons they are being reviewed.

Mr. Gissiner introduced Vicki Cox, Beatrice Hernandez, and the absent Leia Pitcher. He said that Ms. Hernandez would be reaching out to all the new members to figure out what they wanted to be trained on. He stated that it is important that they let her know anything at all that they need help figuring out. With three new board members everyone needs to be on the same page. He informed the new members that the duty of the CRB is to review the actions of the officer(s) in question, not the police activity overall. They also cannot take part in any local political activity, since they need to avoid any conflicts of interest. Their goal is to review cases and speak their minds.

Mr. Gissiner reminded the board that they need to appoint a new police commission liaison and a new human rights commission liaison soon, since both will start meeting again in September. He informed everyone that the police liaison has voting rights, but the HR liaison does not. There is a lot to do, and Mr.

Gissiner said that the police auditor's office would do whatever they could to help. He would also be a good person to go to since he has spent around thirty years working in many different departments.

Mr. Gissiner said that the CRB meets every second Tuesday of the month, and that while they have no attendance policy members need to try and show up and let the board know when they will not be. Ms. Conover added that the police and HR commissions might have their own attendance policies. Ms. Williams said that if they know they will be absent they can still email in their thoughts on the case at hand, so their perspective is not missed. Once a year they go in front of city council to give their annual report. Mr. Gissiner said that all code and ordinance information is available online, and that if anyone needed help that they should reach out to any staff member. Ms. Foltz let the new members know that the 2018 annual report might be a good place to start.

6. Community Engagement Update

Ms. Hernandez reported on the forum that was held on May 24, 2019. The forum focused on public safety and was at Prairie Mountain Elementary. The event was all in Spanish. She said that the turnout was good, and that around one hundred people showed up. The event was two hours. The first half gave people time to eat, walk around, and look at the twenty-three tables that were set up. The second half was a Q&A with eight panelists, one of which was the police chief. Ms. Hernandez informed the CRB that since the event went so well they would be doing them more often.

Mr. Roseta asked if they were keeping track of the questions asked at the Q&As. Ms. Hernandez answered that they were, and they got a lot of questions about documentation, if it is safe to call the police, and if the police were working with ICE. The community is worried about what is happening across the country, as they should be. Mr. Roseta wanted to know if the community seemed comfortable asking those questions in front of the head of police. Ms. Hernandez replied that they did, and that there was even a member of the community who stood up, announced they were undocumented, and then asked a question. Mr. Gissiner said he was excited to see that they were able to create such a good relationship with their community.

Ms. Hernandez said that they have been working on a few collaborations with the police commission's office. They were present at Pride in the Park, where they talked to around two hundred people about safety and police. EPD also had its National Night Out, where the auditor's office had a table. They were able to make a lot of connections through the event.

Ms. Hernandez asked everyone to inform her of any events the auditor's office could either table or speak at.

Ms. Hernandez said that they had a few upcoming events to look forward to. Fiesta Cultural would kick off September 6, 2019. They would also be showing up at some neighborhood association meetings in order to get in contact with the community. Ms. Williams asked what neighborhoods she had reached out to. Ms. Hernandez replied that every year she emails all neighborhood associations, but sometimes she does not hear back. Lastly, there would be another public safety forum in November that everyone should keep an eye out for.

7. Break

The CRB took a break.

8. Case Review: Review of Allegation Related to Officer's Handling of a Call for Service for a Person in Distress

Mr. Gissiner presented a PowerPoint entitled, "Case Summary: Civilian Review Board August 13, 2019."

A. Summary of Facts

- Officer A responded for a call for a welfare check. The information provided by dispatch was that there was a possibly suicidal person, who had allegedly jumped out of a car that was moving and walked away on foot.
- Officer A was in the area and saw a person matching the physical description of the person in the welfare check. Officer A stated in a later interview that s/he initially tried to make contact using a calm voice (and without activating her emergency lights), but that the person ignored the officer. This interaction was not captured on video.
- Officer A then activated the vehicle's emergency lights and, using a loud, stern voice, ordered the person to stop or be arrested for interfering.
- The person stopped and asked Officer A the reason for the stop. Person A was calm at this time. Officer A continued with a loud, commanding voice, and stated that s/he was "investigating" a welfare check.
- Officer A then commanded Person A to sit on the ground. Person A stated, "You're being really hostile."
- Officer A's cover officers then arrived on the scene. Officer A moved in and grabbed Person A's arm, and the other two officers assisted with taking the person to the ground and into custody.
- Officer A ultimately arrested the person for interfering; Person A was lodged at the jail.
- The person who had called in the welfare check complained to a supervisor on scene about officers' treatment of Person A. The complaint was also filed with the Auditor's Office.
- The investigation included review of the incident by both the Defensive Tactics supervisor and the Crisis Intervention Training supervisor.

B. Allegations

1. 103.4.1 Judgment

C. Adjudication

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

D. Issues for CRB Discussion

- Complaint Intake and Classification
 - Complaint filed with Auditor; Reporting Party also spoke with a supervisor on scene
 - Classification: Allegation of Misconduct
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Ms. Foltz said that there were two policies that were not listed under allegations that she thought could be: use of force (800) and de-escalation (820). Mr. Gissiner informed her that there was a lot of discussion on qualifications and what fit. They landed on judgment because it was strong in the case, since the whole thing went down in under a minute. Ms. Foltz replied that she just wanted to hear the thought process.

Ms. Williams stated that she thought an allegation of unbecoming conduct might have fit, but also guessed that that was covered under judgment. Mr. Gissiner responded that unbecoming conduct is a hard allegation to stick. It is also rather hard to prove. Ms. Williams thought that judgment seemed like the right call.

Mr. Al-Rawe mentioned that the officer that arrived on the scene said something to Person A about how it would cost a lot of money to disclose the body camera video. He wanted to know more about this process.

Mr. Gissiner confirmed that it is really expensive to get video released, and that there must be a reason for it to happen. Mr. Al-Rawe asked who it is expensive for, the auditor's office, EPD, or the individual. Mr. Gissiner said that it is expensive for the individual.

Mr. Roseta thought that Person A seemed totally reasonable and respectful throughout the encounter. They got defensive at points, but that made sense for the situation they were put in. Mr. Gissiner said that since they are understaffed and have so much to do, sometimes their officers can be impatient and make bad judgments. Sadly, that is what happened here. Mr. Roseta thought that judgment seemed like a departmental expectation, a philosophy of duties and integrity. It did not make sense to him how it could be an allegation of misconduct. He thought that judgment was picked over a more detailed classification. Since they could not get the officer for unnecessary use of force, it seemed the judgement was picked as a blanket allegation that gave the officer some leeway. Mr. Gissiner understood where he came from but stated that it had been a hard call to make, and something that was debated for a while.

Ms. Conover thought that since things were done in such a small amount of time that de-escalation and use of force did not make sense. If the officer had acted slower, then those allegations might have fit. By going quickly, it showed that the officer was not taking the time to assess the situation and they made a snap judgment. In her mind, it did not seem necessary for the officer to act so fast, since the situation did not seem to call for it.

- Complaint Investigation and Monitoring

Ms. Williams appreciated that two experts were interviewed and noted that it took a while to interview the officer in question.

Ms. Conover noted that Officer A had only been employed with EPD for two years. She wished that they could have access to their entire training log to see if there were missing anything that would have helped them in the situation in question. She wanted to know if that two years started when they were hired, or after they completed training camp. Lt. San Miguel replied that the two years started when they were hired and that it takes ten months from being hired to complete training. He also thought that having the training logs would be a good idea.

- Relevant Department Policies and Practices

- POM 103: Code of Conduct
- POM 800: Use of Force
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Ms. Gallagher-Smith thought it was strange that the report said the person in custody was being 'combatant'. While they were annoyed with what was going on, 'combatant' gives the impression that they were physically reacting, which they were not. She wanted to know where the policy line for 'combatant' began. Is it just anyone that is displeased, is it vocal annoyance, or physical outbursts? She also believed that since it is thought that the person in custody might have fallen out of a moving car that Officer A should have taken them to the hospital first. Mr. Gissiner agreed that the officer should have taken them to the hospital, and that they talked to them about that procedure afterwards. He also said that in most situations 'combatant' is only used when the person gets physical, and that the officer interviewed just had another definition.

Ms. Williams mentioned that in the interviews Officer A admitted that Person A was not a threat to others. Mr. Gissiner said that in the interview process officers get the opportunity to paint situations how they want. By using the word combatant, they might think they will look better. He added that officers will sometimes say "I do not recall" in response to a question, and that had never sat right with him.

Mr. Al-Rawe concurred with Ms. Gallagher-Smith's statement. The officer did not ask the individual at any point if they were injured.

Mr. Roseta questioned in the definition of de-escalation what “cover” and “distance” meant. Mr. Gissiner said that when de-escalating officers step back from the situation and take cover, so they can safely take the time to talk to the person involved.

Ms. Williams brought up that an officer was dispatched because the individual in question was thought to be suicidal. She wanted to know why Crisis Assistance Helping Out On The Streets (CAHOOTS) was not contacted. Mr. Gissiner replied that they have not heard anything from CAHOOTS, but that he thought they were not available. Ms. Foltz added that the officer did not have the skills to deal with the situation, and that they saw a lot more cases like this before CAHOOTS.

Ms. Williams reflected on how hard it was to watch the video for the case. Person A was very calm throughout the whole thing, while the officer was aggressive. She thought that even if Person A was more verbally aggressive, Officer A’s conduct would still not be necessary. Throughout the situation Person A answered all questions they were asked.

Mr. Al-Rawe questioned if a welfare check was a reasonable cause to stop someone and arrest them. Mr. Gissiner responded that it meets their suspicion standard and it is up to the judgment of the officer.

Ms. Foltz noted that the body camera footage had a lot of muted conversation between officers and thought it would have been nice to hear what they said. It could have given a better idea into their thought process. Mr. Gissiner understood where she was coming from but said that when discussing charges and course of action officers are allowed to turn sound off. There are policies that protect officers from charges on muting footage.

- Policy and/or Training Considerations

Mr. Al-Rawe thought that they need to focus on de-escalation in all situations. They need to de-escalate all situations, even if non-violent, and always check on individuals to see if they need to go to the hospital. He also believed that cameras should not be muted. Mr. Roseta said that the conversations had did not seem important to the CRB’s job. Ms. Foltz disagreed, and said that knowing what was said between officers might help them understand the actions they made.

Ms. Foltz said that having an officer tell an individual that it would cost money to get the video tapes was a bad look. The public are entitled to the video and should not be pressured into thinking they are not.

Ms. Williams noted that this is not the first time they have dealt with an officer having lack of respect for the public. There is no reason to always be aggressive, and it is not a good look to be forceful with someone who is complying.

- Adjudication Recommendations

Members of the CRB were in agreement with the adjudication.

Ms. Gallagher-Smith expressed that her one reservation is that some of the language used in the situation seemed sexist. She also thought that some of the facts of the case did not make sense.

- Additional Comments/Concerns

Ms. Foltz read a section of the de-escalation definition. As part of the definition, officers need to be patient and not start an interaction off aggressively.

Ms. Williams thought the way Officer A spoke in both the event and the interview was troublesome.

Ms. Gallagher-Smith expressed her concern for Officer A's judgment and all the missed opportunities they had to de-escalate. Mr. Al-Rawe concurred.

Mr. Roseta said that the vehicle camera made him glad he was not an officer, since the individual was calling the officer every name under the sun. He noted that while the person was agitated with the situation, they still were not violent.

Ms. Conover said that mental health is always a challenge for officers, and that is why de-escalation is necessary in every situation.

9. Auditor Report

In the interest of time Mr. Gissiner did not give a report.

The CRB would appoint liaisons at their next meeting.

10. Adjourn – Next Meeting September 10, 2019

Ms. Foltz adjourned the CRB meeting at 7:32 p.m.

(Minutes Recorded by Lydia Dysart)