

MINUTES

Civilian Review Board
McNutt Room—Eugene City Hall—777 Pearl Street

February 14, 2012
6:30 p.m.

PRESENT: Tim Laue, Chair; Bernadette Conover, Steven McIntire, Snell Fontus, George Rode, Eric Van Houten (arrived at 5:32 p.m.), Debra Velure, members; Vicki Cox, Mark Gissiner, Police Auditor's Office; Lt. Scott Fellman, Sgt. Carolyn Mason, Eugene Police Department; George Buck, Human Rights Commission Liaison; District Attorney Alex Gardner; Tina Morgan, Bill Whalen, Kids FIRST Center; Carol Berg-Caldwell, Patricia Diehl, Miaya Sustaita, guests.

ABSENT: None.

I. DINNER FOR BOARD MEMBERS

Mr. Laue convened the CRB at 5:30 p.m. He noted St. Valentine was the saint for happily married people and bee keepers.

II. AGENDA AND MATERIALS REVIEW

None.

III. MINUTES APPROVAL—January 12, 2012

Mr. McIntire, seconded by Mr. Fontus, moved that the January 12, 2012 minutes be approved as submitted. Mr. Laue deemed the minutes approved.

IV. PUBLIC COMMENT

None.

Mr. Van Houten arrived at 5:32 p.m.

V. COMMENTS FROM CHAIR, MEMBERS AND CRB REPRESENTATIVES TO THE POLICE COMMISSION AND HUMAN RIGHTS COMMISSION (HRC)

Mr. Fontus attended the January 17, 2012 Human Rights Commission (HRC) meeting where the commission undertook defining its bylaws and processes. There was a presentation on Opportunity Eugene. He read a proclamation from the community task force on homelessness. The task force would meet six to eight times and report to the City Council in March 2012. The Asian Celebration was scheduled for this weekend. He introduced Ron Buck, the HRC liaison to the CRB.

Mr. Laue asked Mr. Fontus to approach the HRC regarding a joint meeting with the CRB.

Ms. Conover attended the February 9, 2012 Police Commission meeting. She reported the K-9 policy had been completed and could be viewed online. City Councilor Andrea Ortiz had rotated onto and Mayor Kitty Piercy had rotated off of the commission. Prior to the January 2012 Police Commission meeting, a public forum on continuing the downtown exclusion zone policy was held. While some speakers raised concerns about the policy, no one strongly opposed it. Several business owners spoke in support of the policy, saying it was a good tool for police officers to use. Several people also spoke against the policy at the February 9 Police Commission meeting. The commission forwarded a recommendation to the City Council.

Mr. Van Houten had been contacted by people who lived near the recent shooting death in south Eugene who expressed their appreciation to the Eugene Police Department (EPD) officers handling of the incident through their interaction with neighbors and the nearby elementary school.

Mr. Laue thanked Mr. Buck for attending tonight's CRB meeting.

VI. KIDS' FIRST PRESENTATION

District Attorney Alex Gardner introduced Tina Morgan, Kids' FIRST Center Director, and Bill Whalen, Kids' FIRST Center Board of Directors Vice President. He reviewed the history of Kids' FIRST and explained the center was designed to provide one stop shopping for the victim child and the whole family to enable a proper investigation and to ensure the child and family could be connected with the necessary resources. He stated the center was mostly grant funded in addition to \$135,000 from Lane County. He distributed the following brochures: *Domestic Violence Child Witness Project*; *Kids' FIRST—We're Listening to Children*; *Kids FIRST—Healing Together*; and *Forensic Medical Examinations: What to Expect and How to Prepare*. The center served as a regional training facility for other jurisdictions.

Ms. Morgan stated prosecution outcomes had increased during the time the program had been in effect. The center was the first in the nation to respond to children who had witnessed violence in the home. Interventions with the children by a multi-jurisdictional team consisting of a domestic violence detective, Womenspace advocates, Kids' FIRST advocates and the State Department of Human Services (DHS) occurred within 24 hours after the event. Offenders were being held accountable and children were being protected through the program.

Ms. Conover asked if there had been any problems with EPD officers in the facility that needed to be referred to a supervisor.

Mr. Gardner said if there was a complaint about an officer it was immediately referred to the officer's supervisor. There had been very few such complaints. He added members of the EPD Violent Crimes Unit was a strong, well supervised, well educated, highly experienced, quality team who behaved in a professional manner.

Ms. Morgan said the center served nine agencies, including the Lane County Sheriff's Office (LCSO), Springfield Police Department, EPD, and Oregon State Police OSP). More than one-third of the children were from Eugene. The center served children from 0 to 18 years of age, with children from 4 to 7 years of age, who were easy to prey upon, seen more frequently. The offender was always someone the child, knew, loved or trusted. The majority of physical and

sexual abuse occurred within the home, and there were significant number of children who were injured by coaches, pastors, scout leaders and day care providers.

VII. BREAK

The CRB took a break.

VIII. CASE DISCUSSION

Summary: Officer chased and apprehended an individual who the officer thought was fleeing from a stolen car chase. Pepper spray and focus blows were used to effect arrest. It was later determined that the man was not involved in the car theft. He later claimed he receive a head injury from the arrest.

Mr. Gissiner offered the staff report. Officer A and Officer B pursued a person suspected of stealing a vehicle. The crime that allegedly occurred was a felony in a high crime area. Citizen A did not comply with the officer's commands and posed a risk of flight or resistance. Officer A used pepper spray to effect an arrest. Citizen A complained of several injuries including a head injury, but there were no visible or audio signs of injury while Citizen A was in the police vehicle. The LCSO reported that Citizen A fell while in a holding cell, struck his head and was transported to the hospital. Mr. Gissiner's office reviewed the documents and video, and classified the allegation as one of Misconduct/Use of Force. Upon investigation, it was determined the individual was not involved in the car theft and was intoxicated. It was also determined the injuries he sustained occurred while he was in jail. IA conducted an investigation to determine whether Officer A or Officer B followed policy. During the course of the investigation, the Police Auditor added an allegation of Constitutional Rights to determine whether the officer had reasonable suspicion to stop and detain Citizen A.

Allegations:

Use of Force that Officer A used excessive force on Citizen A by using pepper spray to effect the arrest of Citizen A, and Office B used excessive force to assist with the arrest. Constitutional Rights that Officer A violated Citizen A's constitutional rights by arresting him.

Recommended adjudications:

Use of Force—Officer A did not use excessive force on Citizen A by using pepper spray and focus blows and Officer B did not use excessive force. The Police Auditor determined the Officer B showed up and helped with the arrest. The Supervising Sergeant, the Lieutenant, the Supervising Captain, the Police Auditor and Chief of Police felt Officer A was within policy.

Constitutional Rights—Officer A did not violate Citizen A's constitutional rights because Officer A lacked probable cause or reasonable suspicion to stop Citizen A. The Supervising Sergeant felt Officer A was within policy. The Lieutenant, the Supervising Captain, the Police Auditor and Chief of Police felt the complaint was unfounded.

- ***Complaint Intake and Classification***
 - Mr. Laue thought the intake was well done.

- Ms. Conover thought it was made clear to the complainant what he could and could not do. The intake was well done.
- ***Complaint Investigation and Monitoring***
 - Sgt. Mason stated the investigation was extended because IA made multiple, unsuccessful attempts to contact Citizen A, to give him an opportunity to give his version of the incident.
 - Mr. Rode said the investigation was thorough and likely very expensive.
 - Lt. Fellman said the complainant could not be required to appear and give his version of the incident.
 - Ms. Conover appreciated the officer's comments on why he chose to arrest Citizen A, and subsequently realized Citizen A needed to go to jail or Buckley House.
 - Sgt. Mason said Citizen A was a heavily intoxicated minor with a previous Minor in Possession (MIP) for which he was on diversion and delayed prosecution. Had the officer cited Citizen A for MIP, Citizen A would have lost his diversion.
- ***Relevant Department Policies and Practices***
 - 901.1—Use of Force.
 - 1101.1—Constitutional Rights.

There were no comments on Relevant Department Policies and Practices.
- ***Policy and/or Training Considerations***
 - Mr. McIntire said the identification of the involved parties were vague.
 - Mr. McIntire said it appeared there were officers closer to the scene than the two officers who responded.
 - Lt. Fellman said until officers were certain they had the right person, multiple officers would arrive to assist with the search.
 - Ms. Velure noted one of the officers who traveled a distance was a K-9 officer.
 - Mr. Laue questioned whether two attempted forcible stops of the stolen vehicle was a good idea. He noted there were a lot of spectators in the area.
 - Mr. Van Houten said it clear that the Officer A physically engaged with Citizen A because he recognized pepper spray was not having the desired effect. He questioned why Officer B did not respond sooner.
 - Mr. Fontus noted Citizen A was resisting arrest and trying to flee from Officer A, and Officer B appeared to casually respond to the fleeing suspect. There was no audio and no picture when Officer B disappeared in front of the car.
 - Mr. McIntire iterated there were issues every month with the microphones and video.
 - Lt. Fellman said EPD was aware of the ongoing problems with the in-car video (ICV) units. The officers wanted the problems fixed but were faced with budget limitations. The first seventeen replacements units were arriving in February and would be installed as quickly as possible. He added there was a problem in the video age that officer descriptions were doubted without the video. Officers had complained that when they appeared in traffic court, if they did not have video evidence, their testimony was doubted and they could not win a traffic case. In the past, judges would say it was the officer's job to be able to provide accurate information and descriptions.
 - Mr. McIntire said better quality video would resolve some ambiguities and current protocols called for video.

- Lt. Fellman indicated that officers were expressing concerns that their credibility is more likely to come into question in the absence of video.
- Mr. Laue said it was not that the CRB did not believe the officer, but it was the CRB's job was to find the best way to review cases. He added the complainant did himself no favors with the way he pursued this complaint. One reason for using the ICV was officers wanted it because it made complaints go away.
- Mr. Fontus said officers' abusing their power was a part of EPD's history. When people were in a bad situation they called police, but at the same time, they did not trust the police. The cameras were helpful in supporting officers' statements. He questioned why the officer's microphone did not appear to be working until Citizen A was in the police car.
- Mr. Van Houten said if officers were aware their equipment was not working before they went on duty, they should do something about it.
- Ms. Conover said a former IA investigator tried to instill in officers the importance of taking their time and doing everything right on the street. This made the investigator's job easier because he could accurately recreate what happened.
- Mr. Gissiner said some of the issues became allegations because the community had 21st century expectations and EPD needed to invest in technology.
- **Adjudication Recommendations**
 - Mr. McIntire opined the complaint was unfounded and within policy.
 - Ms. Conover proposed that the supervisor say there was no constitutional right violation. The stop and contact of this individual was valid and therefore within policy and therefore unfounded.
- **Additional Comments and/or Concerns**
 - There were no additional comments.

IX. AUDITOR'S REPORT

Mr. Gissiner distributed a copy of a PowerPoint presentation entitled *Potential Policy Issue for the Police Commission—Civilian Review Board—2/14/2011* for CRB members to review for the March meeting.

Mr. Fontus asked what Mr. Gissiner's responsibility was to a recent officer involved shooting.

Mr. Gissiner said the City ordinance required that he be notified when a critical incident, such as an officer involved shooting, occurred. He or the Deputy Police Auditor then responded to the scene. He found the incident command well organized at this incident. The Interagency Deadly Force Investigation Team (IDFIT) gathered all of the facts and presented them to the District Attorney, after which the District Attorney determined that the shooting was justified. Following this, the IA administrative investigation commenced, which Mr. Gissiner monitors. The administrative investigation could include or not include reinterviewing the officer. Following the administrative investigation, the Chief would form a Use of Force Review Board consisting of several members of the command staff, Mr. Gissiner as a non-voting member, and an outside expert if needed. The Use of Force Review Board would then issue an adjudication recommendation and policy training recommendations, after which Mr. Gissiner would issue an

adjudication recommendation and policy training recommendations to the Chief. At the conclusion of these actions, the CRB could look at the case if it chose to.

Mr. Gissiner stated he was not getting surveys back from citizens regarding allegations. He was talking with Community Mediation Services to conduct the surveys. The number of complaints was up, with 12 in the last week, and an average of 9 per week.

X. TRAINING TOPIC FOR MARCH MEETING

Mr. Gissiner said a tour of the Eugene Mission was tentatively scheduled for March.

Mr. Laue suggested having an IDFIT presentation. He said a schedule for the next several months would be developed.

XI. CASE SELECTION TOPIC FOR MARCH MEETING

Mr. Gissiner reviewed possible cases for future CRB consideration. Following a brief discussion about the large number of cases in the queue for CRB review, there was consensus to conduct two case reviews per meeting in lieu of one case review and a training session in upcoming meetings.

Mr. Laue said an allegation of excessive force and performance would be reviewed in March.

XII. ADJOURN

The meeting adjourned at 8:05 p.m.
(Recorded by Linda Henry)