

MINUTES

Civilian Review Board
Sloat Room—Atrium Building—99 West Tenth Avenue

February 11, 2014
5:30 p.m.

PRESENT: Steven McIntire, Chair; Bernadette Conover, Vice Chair; Snell Fontus (arrived at 5:55 p.m.), George Rode, Debra Velure (via teleconference), Eric Van Houten, Chris Wig, Civilian Review Board members; Leia Pitcher, Vicki Cox, Police Auditor's Office; Sgt. Ryan Nelson, Eugene Police Department; Mary Clayton, Human Rights Commission liaison.

ABSENT: Mark Gissiner.

Mr. McIntire convened the CRB at 5:34 p.m.

I. AGENDA AND MATERIALS REVIEW

There was consensus to switch the order of the two case reviews, agenda Item V and agenda Item VII.

II. MINUTES APPROVAL—CRB December 10, 2013 meeting and case review portion of Joint CRB/Police Commission September 12, 2013 meeting.

Mr. McIntire deemed the minutes approved by acclamation.

III. PUBLIC COMMENT

Deb Frisch stated Judge Hogan recently resigned. She said he violated statutes related to official misconduct. She alleged that the Auditor had failed to provide complete information in the Police Auditor's annual report in 2011 and 2012, and she questioned whether he would provide complete information in the 2013 annual report. She said a Eugene Police Department (EPD) officer was guilty of misconduct in the second degree and had violated the use of force policy. She encouraged the CRB to encourage Police Auditor Mark Gissiner to obey the law.

Majeska Seese-Green stated the oversight program was not as strong as citizens would like it to be. Community members were afraid to make complaints to the Police Auditor for fear of retribution by police.

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

Mr. Rode said the Police Commission was working on bias policing and Juan Carlos Valle was holding meetings on the issue. The Police Commission had a lot of work and was doing well.

Mr. Wig thanked the members of the public for sharing their concerns during the public comment period. He was aware that similar concerns had been expressed by other members of the community.

Mr. Van Houten responded to Ms. Seese-Green's comments. He said when he first joined the CRB, he understood the voices of the people were fearful and that was one reason he was interested in being on the CRB. He understood there was a disadvantaged population in Eugene. He expressed an interest in meeting with Ms. Seese-Green to hear more about her concerns and how the CRB could be more responsive. He said he planned to reapply for his position on the CRB.

Ms. Velure thanked Ms. Cox for providing the technology for her to participate via teleconference in tonight's meeting.

Mary Clayton introduced herself as the Human Rights Commission (HRC) liaison to the CRB. She had read the materials in preparation for tonight's meetings, and hoped to regularly attend CRB meetings.

Mr. McIntire stated he had received a letter from CRB member Snell Fontus indicating that he would not reapply for the CRB when his term ends in July 2014. Mr. McIntire commended Dr. Fontus' valuable contributions to the CRB.

VII. CASE REVIEW—The CRB reviewed a case related to a use of force investigation involving an officer using his hand to contact the head of a youth after the youth bit the officer's hand.

SUMMARY OF FACTS

- Officer A was dispatched to a custodial interference call.
- Custodial Father gave Officer A a court order giving Custodial Father full custody of the son and stating that the mother had no parental rights or unsupervised visitations.
- Mother would not give Officer A her son's location. After a crowd gathered, a juvenile walked by and she shouted at him to run from the police. Officer A identified the juvenile as the son named in the court order and chased after him.
- Officer A caught up to the child and restrained him by the wrist. He walked with him back towards the park. The child continually tried to free himself. Three other people began to follow the pair.
- Officer A was watching another juvenile (one of the three followers) when he felt a pain on his left hand. He used the palm of his right hand to swat towards his left hand, contacting the child in the forehead.
- Officer A stated this was a reactionary move to the painful sensation in his left hand and that it was not punitive.
- Officer A's left hand had a slight red mark on it following the incident. The source of the mark is not immediately clear from photographs.

- The boy's father reported that he had no redness on his forehead after the incident, and that the father did not think the smack "even really registered for him."
- The Auditor's Office opened the complaint; it received several complaints and commendations from third party sources.

ALLEGATIONS

Use of Force – that Officer A used excessive force when he slapped a ten-year-old boy in the head.

RECOMMENDED ADJUDICATION

Use of Force

- Supervising Lieutenant: Within Policy
- Supervising Captain: Within Policy
- Police Auditor: Within Policy
- Chief of Police: Within Policy

Issues for CRB Discussion

- Complaint Intake and Classification
 - Auditor-initiated complaint
 - Media coverage and several third party complaints
 - Classification: Allegation of Misconduct
 - Ms. Conover noted the Police Auditor's (PA) office opened the case before a complaint was filed.
 - Ms. Pitcher stated the PA's office became aware of the issue when a video became available. She noted no parents of any of the involved youth complained.
 - Mr. Rode commended the PA's office opening the case and doing intake in a timely manner.
 - Mr. Wig said this was a high profile incident and the PA's office did a great job being proactive rather than reactive.

Snell Fontus arrived at 5:55p.m.

- Complaint Investigation and Monitoring
 - Ms. Conover appreciated the extra effort on the part of the PA to reach the father of the youth. She thought the investigation was thorough.
 - Mr. Rode thought the investigation was thorough. He noted there was no in-car-video (ICV) available. The PA and Lt. Mason did a good job.
 - Dr. Fontus said the PA did a fine job with the investigation and monitoring.
 - Ms. Velure agreed the investigation and monitoring were well done. She questioned why the ten year old youth who was central to the investigation was not interviewed. She said officers overheard conversations by State Department of Human Services (DHS) workers, which was hearsay.
 - Sgt. Nelson stated that interviews with ten year olds needed to be evaluated to determine if they had investigatory value, including an evaluation of whether the juvenile had the ability to understand what was happening.

- Mr. Wig said this investigation was as thorough as possible. The written report prepared by the officer was well written, and represented just the facts in a dispassionate manner.
 - Mr. Van Houten agreed with what had been said. He was pleased the documentation from the DHS workers had been included in the CRB materials. Two issues jumped out from the report:
 - The investigator’s use of the word “swat”.
 - The term “unruly crowd” was not initially defined in the interview report. The officer remained calm and concerned.
 - Ms. Pitcher said she did not push contacting the youth because she did not want to stress him further.
 - Mr. McIntire noted consensus that the Complaint Investigation and Monitoring was Satisfactory.
- Relevant Department Policies and Practices
 - 901.1 Use of Force
 - Mr. Van Houten noted there was no video of the 10 year old when he attempted to run away from the officer. He asked if there was an EPD policy on when officers should go after people who run away from them.
 - Sgt. Nelson said EPD had a foot pursuit policy that took into consideration risks to officers and third parties, and called for evaluation of risks versus needs. It was not inappropriate for the officer to go after the youth in this situation. He noted the officer was returning the youth to his father through a court order.
 - Mr. Rode asked how the youth could have been prevented from running away, and if the youth had been in handcuffs, would that not have happened.
 - Sgt. Nelson said it was important to maintain a low key environment when there was a crowd present. The officer did not have an opportunity, nor would it have necessarily helped the situation, to handcuff the youth before he ran off.
 - Mr. McIntire observed several hours passed between in the initial call and when an officer showed up.
 - Sgt. Nelson said dispatch of officers was resource based, and the way this was handled by dispatch was in line with EPD standards.
 - Policy and/or Training Considerations
 - Mr. Rode stated current policy and procedures could not have prevented this type of event from occurring. He did not think handcuffing the youth would have been a good idea.
 - Dr. Fontus said the term “swat”, “slap”, “punch” was open to interpretation. While it was true that the officer was bitten by the youth, he thought there was a better way the ten year old could have been handled. He agreed the officer did what he needed to do to protect himself.
 - Mr. Wig said he had been trained in non-violent crisis intervention through his work at a children’s mental health residential facility and had been taught how to handle a bite differently.

- Mr. Van Houten opined the officer did not over react, but did just enough to stop what was happening. He noted the officer's demeanor remained calm.
- Mr. McIntire noted consensus that the Complaint Investigation and Monitoring was Satisfactory.
- Adjudication Recommendations
 - Mr. McIntire noted consensus that the Adjudication was satisfactory.
- Additional Comments/Concerns
 - Ms. Conover said this case generated many negative telephone calls to the PA's office. She asked what lesson was learned and what the community and EPD could learn from this experience. She noted the father was relieved to get his son back. It was not possible to get back to the whole world with accurate information.
 - Mr. Rode said Lt. Mason handled the phone call she had received well. The mob mentality was scary. EPD did a good job.
 - Ms. Velure noted, as a mandatory child abuse reporter, she went to her training when looking at the video. She asked who would report the incident if not the officer.
 - Mr. Wig said the take away with this case was "Don't believe everything you see on TV." He stated that CRB and other community leaders lead by example. The investigation was well done.

VI. BREAK

The CRB took a short break.

V. CASE REVIEW—The CRB reviewed a case in which it was alleged that an officer violated the constitutional rights of a woman by patting her down after a traffic stop and in which her car was impounded for no insurance.

SUMMARY OF FACTS

- Reporting Party was stopped by Officer A for driving with a defective headlight. During the traffic stop, she told Officer A she did not have insurance. Officer A chose to issue RP a citation for driving uninsured and impound her vehicle.
- Officer A asked RP to remain in her vehicle, and he returned to his patrol car. He checked RP's warrant status and driving record while Officer B responded to the scene. Officer A and Officer B discussed the inventory search policy as it relates to impounds; they then muted their microphones (almost 8 minutes into the recording).
- Officer A returned to the vehicle and appeared to explain the citation to RP.
- RP exited the vehicle approximately 20 minutes into the recording. Officer A spoke with her, she raised her arms above her head, Officer A placed her arms behind her back and performed a pat down search.

- Officer A could not recall whether he asked RP for consent to search, and his microphone was muted. RP stated in her interview that Officer A did not ask for consent to search her.
- RP repeatedly shook her head back and forth during the pat down, which took approximately 16 seconds.
- Officer A searched RP's vehicle, which took approximately five minutes.
- RP complained to our office about the search. She did not feel that the officer did anything inappropriate, but she did not believe the search was necessary.

ALLEGATIONS

Constitutional Rights – that Officer A patted down reporting party without reasonable suspicion that she was armed and dangerous.

RECOMMENDED ADJUDICATION

Constitutional Rights

- Supervising Sergeant: Within Policy
- Supervising Lieutenant: Within Policy
- Supervising Captain: Sustained
- Police Auditor: Sustained
- Chief of Police: Sustained

Issues for CRB Discussion

- Complaint Intake and Classification
 - RP complained to Auditor's Office
 - Classification: Allegation of Misconduct
 - The RP thought there was something wrong or unconstitutional and showed she was not afraid of retribution by filing a complaint. This speaks well of the system.
 - Dr. Fontus asked where Officer B, the training officer was, during this incident.
 - Sgt. Nelson opined the training officer may have observed something else occurring that could have justified the pat down search.
 - Ms. Conover agreed with Dr. Fontus. Officer B was interviewed but was not listed as the investigation officer.
 - Mr. McIntire agreed with Dr. Fontus and Ms. Conover that Officer B was the senior officer and should have taken the opportunity to give advice to the junior officer.
 - Mr. McIntire noted consensus that the Intake and Classification was satisfactory, with concerns.
- Complaint Investigation and Monitoring
 - Mr. Van Houten said the Internal Affairs (IA) investigator did a great job with the interview.
 - Mr. Wig agree with Mr. Van Houten. He noted Officer A seemed genuinely concerned that he had violated someone's constitutional rights.

- Dr. Fontus noted the tape stopped working at the RP's house, but he was glad it had worked until that time. He had issues with Officer B, asserting he had not asked enough questions of the junior officer.
 - Mr. Rode agreed with what had already been said. He agreed the investigation of Officer B had not been through enough.
 - Sgt. Nelson said he had looked at the issue from a constitutional rights issue and Officer B did not have a constitutional rights involvement.
- Relevant Department Policies and Practices
 - 1101.1.B.6 Constitutional Rights
 - Mr. Van Houten asked if the officer had an option on whether or not to impound the RP's vehicle.
 - Sgt. Nelson said officers had discretion to impound vehicles. He could have helped the RP find a way to get home without her vehicle. It was common for officers to impound uninsured vehicles.
 - Mr. Wig noted the RP did not have insurance. When her vehicle was impounded, her demeanor changed, which may have made the officer feel less safe. He noted the incident got all the way to the captain before constitutional rights were sustained.
 - Ms. Velure said her concerns had already been addressed.
 - Dr. Fontus agreed the vehicle should have been impounded. There were many people without out insurance and impounding sent a strong message.
 - Mr. Rode was concerned that officers muted their ICVs for a portion of the contact, which made it look like they were hiding something.
 - Sgt. Nelson said several things occurred that caused the officer to do a pat down. Some mistakes may have occurred due to the inexperience of the officer in training.
 - Mr. McIntire noted consensus that the Relevant Policies and Procedures were satisfactory.
 - Policy and/or Training Considerations
 - Direction to Officer A from Field Training Officer
 - Mr. Van Houten was struck by where the officer stopped the RP, on the sidewalk in front of a convenience store. The RP was a woman of color, and there were many cars and people in and out of the convenience store. He asked if the officer could have stopped the RP on the side of the road. He was pleased everything took place in view of the ICV.
 - Sgt. Nelson said it was difficult to dictate where things happen. He added when the officer learned that the driver was not insured, he would not want to take a chance on someone being injured if the RP moved her vehicle. Officers take into consideration safety for the public and the officer when forecasting a stop.
 - Mr. Rode said EPD was getting new software that would provide data on stops and other actions of people of color.
 - Adjudication Recommendations
 - Ms. Conover agreed with the final adjudication recommendation. She appreciated having the captain from an outside agency who brought a

fresh set of eyes to the event. She also appreciated the written report prepared by Chief Kerns.

- Mr. Van Houten agreed with the adjudication and Ms. Conover.
- Mr. Wig agreed with the adjudication and Ms. Conover, and appreciated Chief Kern's comments.

Ms. Velure terminated her telephonic connection to the meeting at 7:45 p.m.

- Adjudication Recommendations
 - Dr. Fontus appreciated Chief Kerns writing to the RP and inviting her to his office to discuss her concerns.
 - Mr. Rode agreed with Dr. Fontus' comments. He respected the Chief for his actions which showed he cared about the RP.
 - Ms. Conover noted the RP's initial complaint presented just the facts and did not comment on possible reasons for her treatment by EPD.
- Additional Comments/Concerns
 - Dr. Fontus noted the officer could not remember if he asked to pat down the RP. He asked what the officer would have done if the RP said no.
 - Sgt. Nelson said the decision to pat the RP down was based on her demeanor, what was in her car, and her behavior. The officer would search whether or not the RP gave consent.
 - Dr. Fontus asked why the officer asked for consent to pat the RP down if it was not required.
 - Ms. Conover said it makes the issue of the legality of the search clearer for future court review if there is consent.

VIII. AUDITOR'S REPORT

Ms. Cox said the Police Auditor's update memo had been sent to the City Council.

Ms. Pitcher said she and Mr. Gissiner had been working on the annual report and continued to work on community outreach. She attended a public safety forum in January 2014, and Mr. Gissiner was attending a neighborhood association meeting.

IX. SELECTION OF NEXT CASE REVIEW AND TRAINING TOPIC

Ms. Pitcher agreed to follow up on selection of a case to review and a training topic for the next CRB meeting.

X. ADJOURN

The meeting adjourned at 8:00 p.m.

(Recorded by Linda Henry)