

CITIZEN REVIEW COMMITTEE

Community Oversight of Portland Police Bureau

Jamie Troy, Chair

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Minutes Citizen Review Committee December 5, 2012

Date Approved: January 9, 2013

Meeting Location: Lovejoy Room, 2nd Floor, Portland City Hall

Chair Troy called the meeting to order at 5:30 pm.

Introductions and Welcome

Citizen Review Committee (CRC) Members Present: Jamie Troy (Chair); Jeff Bissonnette (Recorder), David Denecke, K.A. Lalsingh, Rodney Paris, Dr. Rochelle Silver, Steve Yarosh

CRC Member Absent: Michael Bigham (Excused)

City staff: Rachel Mortimer, Assistant Program Manager, Independent Police Review (IPR); Constantin Severe, Assistant Director, IPR

Appeal Process Advisor (APA): Hank Miggins

Portland Police Bureau: Captain Dave Famous, Professional Standards Division; Lieutenant Larry Graham, Internal Affairs (IA)

U.S. Attorney's Office: Adrian Brown

Community and Media: Dan Handelman (Portland Copwatch and Flying Focus Video), Debbie Aiona (League of Women Voters), Denis Theriault (Portland Mercury), Ann Brayfield, Kalei Luyben, Ted Luyben, Henry Herring; Barbara Ross; Eric Terrell

Minutes of the 11/7/12 CRC Meeting

A motion was made by Chair Troy and seconded by Mr. Denecke to approve the minutes of the 11/7/12 CRC meeting. The motion passed unanimously.

Director's Report (Mr. Severe)

(See attached)

Chair's Report

Chair Troy participated in a successful outreach event in which CRC partnered with Race Talks. This event was also an opportunity for recruitment for new CRC members.

Chair Troy reviewed the case file materials in preparation for tonight's case file review.

Captain Famous has informed Chair Troy that the follow-up investigation on a previous appeal has been completed and the findings are being reviewed by the decision makers.

On 11/29/12 Chair Troy had coffee with Amanda Marshall and Adrian Brown of the U.S. Attorney's Office to discuss CRC concerns about the reduced timeline for appeals in the proposed settlement between DOJ and the City of Portland. Chair Troy invited Agent Brown to tonight's CRC meeting to observe a case review, and he thanked her for attending.

Case File Review of Case #2012-C-0005 (CRC Appeal #2012-X-0005)

Chair Troy introduced tonight's case file review. The appellant and APA Miggins were present. Chair Troy confirmed that all CRC members had reviewed the materials in preparation for the case file review.

Ms. Mortimer summarized the IPR investigation.

Lieutenant Graham summarized the IA investigation and then addressed a list of nine questions previously posed by CRC members.

There followed a discussion on whether a Courtesy allegation should have been added to the Force allegation that was investigated. Both Ms. Mortimer and Lieutenant Graham, in hindsight, agreed that a Courtesy allegation should perhaps have been considered.

At the request of CRC, Lieutenant Graham agreed to provide a visual diagram of the incident for the appeal hearing.

CRC members agreed unanimously that they had all the information needed to conduct an appeal hearing. The hearing was scheduled for the next CRC meeting, which will take place on the evening of 1/9/13.

Old Business

Dr. Silver proposed re-forming the Appeal Workgroup to work on how appeals will be handled in the wake of the DOJ proposed settlement. Chair Troy, Dr. Silver, and Mr. Denecke volunteered to serve on the reconstituted Appeal Workgroup, and Chair Troy offered the use of his law office for meetings.

Dr. Silver informed the group that she and Mr. Bigham have submitted to Captain Famous some suggestions for the draft of the Taser changes that the Police Bureau is

considering and that Captain Famous has passed these on to David Virtue in the Chief's Office.

New Business

Dr. Silver noted that appeal hearings have become quite lengthy, and CRC rarely has time to discuss policy recommendations to the Police Bureau. She suggested that time be set aside for this at the meeting following an appeal hearing. Chair Troy will ask Ms. Lloyd from now on to include this under Old Business for meetings following appeal hearings.

Workgroup Updates

Crowd Control Workgroup (Mr. Paris): At the November meeting, Mr. David Woboril from the City Attorney's Office addressed legal issues regarding crowd control. The December meeting has not yet been scheduled.

Outreach Workgroup (Ms. Lalsingh): The workgroup met today (12/5/12). At the November meeting, preparations were made for upcoming events mentioned in the Director's Report and preparations were made for CRC diversity training and the CRC/Race Talks community forum. In today's meeting, the workgroup discussed evaluations received from the community forum and strategies for recruiting new CRC members.

Recruitment, Retention, and Promotion Workgroup (Mr. Yarosh): The workgroup last met on 11/16/12. Mr. Derek Reinke of IPR made a presentation on existing data that is available on patterns of alleged misconduct based on age, race, gender, education, and experience level. The workgroup will be meeting with Sergeant Greg Stewart, a crime analyst with the Police Bureau, who is looking into whether crisis intervention training correlates with a lower use of force. At a future date the group will be meeting with a psychologist who has looked at similar studies. The next meeting is scheduled for 12/21/12 at 10:00 a.m. in the Auditor's Conference Room.

Recurring Audit Workgroup (Mr. Bissonnette): The workgroup has been struggling to complete its review of IPR dismissals. When data entry is completed, the data will be submitted to Mr. Reinke for analysis. The next meeting has not yet been scheduled.

Use of Deadly Force Workgroup (Mr. Denecke): The workgroup did not meet in November. The group is waiting to see what changes will be made in the deadly force directives. Three members of the workgroup have individually proposed changes to the deadly force directives as part of the DOJ process. The workgroup will need a new member to replace Mr. Bigham when he leaves CRC. The next meeting will primarily consist of a discussion on the future course of this workgroup in light of new developments taking place in the Police Bureau.

Public Comments

Mr. Handelman said that it was his understanding that CRC was supposed to vote at the case file review on whether to go forward with an appeal hearing at the next meeting, and that did not happen. He was of the opinion that CRC should have considered asking for a Courtesy allegation to be added to the current appeal case. He felt that the 21-day timeline for appeals specified in the DOJ agreement is unrealistic. He was opposed to postponing the policy discussion to the next meeting after the appeal hearing. He urged the Use of Deadly Force Workgroup to ask to be brought into the discussion about the recrafting of the Police Bureau's use of force policy.

Chair Troy acknowledged that Mr. Handelman was correct in that the CRC protocol for case file reviews calls for a vote and public comment prior to the vote, and he apologized for not taking a formal vote. He followed with a formal motion to hold an appeal hearing on 1/9/13 related to tonight's case file review. Mr. Yarosh seconded the motion.

Chair Troy opened the floor for public comment prior to the vote. Mr. Handelman repeated an earlier comment that he had made that when there is an allegation that an officer used profanity, it is irrelevant whether or not the appellant also used profanity.

During the ensuing CRC discussion, Dr. Silver posed a question about whether CRC has any involvement in the formation of allegations. Chair Troy stated that he does not know if CRC has the power to do that or not. Dr. Silver then asked IPR to address this question. Mr. Severe replied that he does not believe that CRC has the authority to ask for an allegation be added. Chair Troy was satisfied that this issue has been publically brought to the attention of IPR and IA, and he was ready to move forward with the appeal hearing. He suggested scheduling the appeal hearing on 1/9/13, and CRC unanimously agreed to do so.

Mr. Eric Terrell asked for clarification on whose responsibility it is to ensure that the allegations have been properly formulated prior to an appeal hearing. Mr. Severe stated that one of the more important functions of IPR is getting correct what people are complaining about. He noted that as part of the complaint handling process IPR sends a letter to the complainant summarizing the complaint, and the complainant has an avenue to address it at that stage. In addition there are numerous fact finders in the process who have an opportunity to weigh in on the allegations.

Captain Famous added that IA is not shy about identifying additional allegations after having additional conversations with the complainants or when the investigation uncovers new information. In addition, IPR and IA meet weekly to discuss caseloads and talk about allegations.

Mr. Miggins asked for clarification what role the appellant has in formulating allegations. Chair Troy offered to address this later in the meeting.

An unidentified community member expressed concerns about the possibility of postponing the work of the Use of Deadly Force Workgroup until after new use of force policies are developed.

Adrian Brown of the U.S. Attorney's Office thanked Chair Troy for inviting her to tonight's meeting. She said she appreciated everyone's comments and assured everyone that their comments have not fallen on deaf ears. She then discussed the various avenues for community involvement in implementing the proposed settlement between DOJ and the City of Portland.

Partial transcript of Agent Brown's statement:

"I do want to talk about the proposed settlement that will be filed with the court, but before I do that, I did also want to address briefly Dr. Silver's request that policy recommendations come forward from the CRC; and this was an area that was addressed briefly in our findings letter, which I don't want to get lost in history here, because the findings letter is what got us to the proposed settlement. The proposed settlement is a vehicle for remedial change that was discussed in the findings. The findings go through policy. I mean, that was the whole purpose of this investigation, was to investigate patterns and practices, i.e., policy, of the Portland Police Bureau. And I just recommend that letter to the CRC. It's a public document, and it's not just limiting input on policies to the Portland Police Bureau, but pretty soon we will have a process involving the Community Liaison – obviously, DOJ's not going anywhere, we're still here – and the Community Advisory Board. . . .

"Our finding letter talks to our use of force investigation. The Constitutional findings of our investigation stem from use of force issues..., but there is a full section on community concerns that I did not link to a Constitutional finding, but from which we believe the Portland Police Bureau, the City of Portland, needs to take a part: in essence, technical assistance to the Portland Police Bureau, the procedural ways that we think you can help improve community trust divides, which we believe does lead to escalation of force sometimes within certain sections of this community. And so those are areas of the findings letter, and I just urge everyone in this room, including the CRC, to talk this over. . . .

"I thought it was a good opportunity to remind people that the settlement proposal might be a vehicle for change, but there is lots within the findings letter that is not within the settlement proposal.... And then there's the oversight – the Community Advisory Board and the Compliance Officer that we must help link to those community concerns. Rudeness – it's no surprise ... that it arose here today..., and I really appreciate Lieutenant Graham's comment that that's something that he will be looking at in the future. I think the very first community member I spoke to in this investigation, that was what was raised – was rudeness.... And it was the number one IPR complaint..., so that is a perfect example of where the CRC has seen all these things.... So that is something that, even though it doesn't directly relate to force or to the Constitutional findings, ... but every officer is expected to display over the course of their career – this is a quote from our findings letter – 'the ability to regularly resolve confrontations without resorting to the higher levels of allowable force.' So we're not even talking about excessive force – we're talking about allowable force. The 9th Circuit requires officers to essentially de-escalate the situation.... So whatever policy we can come to together as a community and figure out how we can make that culture change to a long-term reducing of force, I think the better and more successful we're going to be at implementing our settlement. So I urge all of you to continue to give us feedback on

that throughout this, and we hope we can listen to that feedback, so thank you for the opportunity.”

Wrap-up Comments

Mr. Denecke: “I just wanted to address the two comments about the Use of Deadly Force Committee. I can’t speak for the other members of the committee, but I think we do have a lot to do, and I don’t expect us to sit and wait while the directives are edited. Also I will tell you that my understanding is that this is not going to happen in a vacuum. They’re going to come back to us with a draft, and we will be working again with those directives, but obviously there are other areas that we’re going to be looking at besides simply the language of the directives, and that’s probably what we are going to be discussing at our next meeting.”

Chair Troy addressed Mr. Miggins previous question by referring him to Protocol 5.21, which instructs the APA to go over with the appellant what CRC is supposed to do in an appeal. Chair Troy clarified that the discussion at tonight’s meeting was not about reclassifying allegations but rather adding allegations.

Adjournment

Chair Troy adjourned the meeting at 7:30 p.m.