



CITIZEN REVIEW COMMITTEE MEETING

Minutes

Date: Wednesday, March 7, 2018 (meetings are typically held the first Wednesday of each month)

Time: 5:00 pm * *Please Note: agenda times are approximate*

Location: **Lovejoy Room, Portland City Hall**. 1221 SW 4th Ave. Portland, OR 97204

Present: Albert Lee, Julie Falk, Daniel Schwartz, Candace Avalos, Neil Simon, Roberto Rivera, Vadim Mozyrsky, Constantin Severe, Jeff Bell, Anthony Passadore, Dan Handelman, Amanda Lamb, Debbie Aiona, Carol Cushman, Jasmine Money maker, Julie Ramos

AGENDA

5:30 pm—5:35 pm Introductions and Welcome (CRC Vice Chair Candace Avalos)
(Approved February 7, 2018 meeting minutes)

- The Committee did not have a majority vote to approve minutes from January 3, 2018.
- Acting Chair Avalos made an announcement that CRC will be conducting an election for the Chair, Vice Chair and Recorder position at the April meeting.

5:35 pm – 5:40 pm Director's Report (IPR Director Constantin Severe)

5:40 pm – 5:45 pm Chair's Report (CRC Acting Chair Candace Avalos)

5:45 pm – 7:45 pm **Case File Review/Appeal Hearing:** 2017-C-0210/ 2018-X-0002
Appellant alleged Officer A used inappropriate force while taking him into custody.

- Director Severe provided a summary of the investigation:
 - IPR became aware of the allegation when the Appellant submitted an appeal request related to another case that was investigated by IA.
 - Due to it being a use of force complaint, the case was forwarded to IA for a full investigation.
 - The IA investigator was able to interview the Appellant, the involved officer, and a witness officer.
 - The incident in question occurred after Officer A was dispatched to a bar after the bar staff said that the Appellant refused to leave after multiple requests.
 - Officer A contacted the Appellant and asked him to provide identification. The Appellant refused, stated that he had done nothing wrong, and walked away.
 - Officer A then grabbed Appellant's right arm to prevent the Appellant from leaving. The Appellant spun away, turning toward Officer A. Officer A took the Appellant to the ground as Witness Officer B arrived. The Appellant was taken into custody by both officers.
- Mr. Schwartz asked Director Severe if IPR followed up to retrieve the video from the bar that the officer meant to take.
 - Director Severe stated that IPR did not obtain this video
- Captain Bell provided IA's summary of the investigation:
 - The case was assigned on August 1. An IA Investigator was able to interview the Appellant via phone.
 - IA already had the Appellant's medical records from a previous case.
 - The IA investigator tried multiple times to get a hold of the employee where this incident took place, but was not able to make contact.
 - IA also did not follow up on the video.
 - The IA Investigator also interview both involved and witness officer and submitted the case for findings

- Mr. Simon asked Captain whether the IA investigator followed up on the report that one of the officers at the scene was talking to people, but did not take their statements. Was there any effort made to talk to the bar staff and patrons there?
 - Captain Bell responded that no effort was made to do so.
- Mr. Lee asked Captain Bell about typo of the address in the IA worksheet. Was the error the work product of the investigator?
 - Captain Bell responded that the typo was the work product of IA's administrative staff.
- Mr. told Captain Bell he was concerned that the error could have affected the investigation.
- Captain Bell responded that he thought it was just a typo and it does not affect the work of the investigation.
- Mr. Rivera announced his resignation and was inclined not to vote on this case file review/appeal. He was concerned that he won't be able to attend future hearings on the case should the Committee send the case back for an additional investigation or challenged Bureau's findings. After further discussion with the Committee he decided to participate in the appeal.
- Public comments:
 - Mr. Handelman made some comments:
 - It seems like no one interviewed the patrons in the bar.
 - It has happened many times that a Committee member voted and left the CRC between the first and second hearing.
 - He urged the Committee to read any questions submitted to IA and IPR.
- Mr. Schwartz made a motion to move the case to the appeal hearing. This was seconded by Acting Chair Avalos.
 - Mr. Mozyrsky: YES
 - Mr. Rivera: YES
 - Mr. Simon: YES
 - Acting Chair Avalos: YES
 - Mr. Schwartz: YES
 - Ms. Falk: YES
 - Mr. Lee: YES
- The Committee unanimously voted to move the case to an appeal hearing.
- Mr. Lee asked Director Severe if there is a way to get the Appellant to attend the appeal hearing.
 - Director Severe responded that the Appellant is currently incarcerated and has access to a telephone, but given the hour of the CRC meeting, that option was not available. In the past, when the Appellant hasn't been available, the Committee has carried on with the information provided.
- Mr. Lee asked Director Severe what would happen if Command Staff is not present.
 - Director Severe said that if a party is not available for some reason and will not likely to be available, CRC can continue with the hearing.
- Acting Chair Avalos asked Director Severe if the Appellant was provided an option to delay the appeal until he gets out of prison.
 - Director Severe noted that the Appellant will not be released until 2023.
- Acting Chair Avalos asked Director Severe to provide IPR summary of the investigation
 - Generally, that portion is reserved for when IPR when we did the intake or conducted our own investigation. This is a case that IPR rerouted the concern to IA and they conducted the investigation process.
- Captain Bell made a comment he does not have anything else to add to what he had provided during the case file part of the hearing.
- Lt. Passadore, the RU Manager, provided his explanation for the findings:
 - There were two use of force events that occurred during this incident. The take-down and the strikes that occurred after the officer had taken the Appellant down to the ground.
 - Officer A stated he had his knee against the Appellant's back and was trying to pull the Appellant's hands out from underneath him.
 - Officer A delivered a series of knee strikes to the Appellant based on his training that the Appellant could have hidden a weapon in the mid-section of the belt line. The officer stated once the Appellant's arms came out from underneath him, the officer stopped using force.

- Pursuant to the use of force training that was given at the time of the incident, it was considered very reasonable for an officer to respond to concern about a subject's hands being underneath him with strikes. Today, it is not a common thing because officers are being trained to use different tactics.
- Mr. Lee drew Lt. Passadore's attention to Officer A's description of the Appellant as having trouble maintaining balance, and also his seemingly conflicting report that the Appellant was able to spin around and crouch.
- Mr. Lee added that, looking at the investigative report, it doesn't seem like the officer told the Appellant that he was under arrest.
- It seemed to Mr. Lee that the officer was escalating the situation from the very beginning.
- Mr. Lee wondered how the Appellant ended up with cracked ribs and scratches.
- Mr. Lee also commented that, regarding the officer's armbar take-down on the Appellant, a proper armbar take down would be for the officer to take hold of the person's arm and cuff him.
- Mr. Lee asked how it is that an intoxicated individual who has difficulty maintaining balance was able to "turtle up."
- Mr. Lee reiterated that it seemed to him that the officer escalated the situation from the beginning.
- Lt. Passadore responded to Mr. Lee's comments:
 - Regarding the aggressive move, in my experience, the person who is intoxicated can be highly effective at being combative and aggressive.
 - Regarding the armbar technique not being perfect, it is very rare that the technique the Bureau teaches will be perfect.
 - Regarding the cracked ribs, even when you can do a very good job there will still be injury.
 - The Appellant also said he was in a fight with the police earlier that day.
- Mr. Lee asked Lt. Passadore about the part where the Appellant asked the officer if he still had to give his name if he was going to leave, and then walked away.
 - Lt. Passadore said that Officer A informed the Appellant that he was under arrest. The response that officers give today would have been different, but they do have the authority to make the arrest in this situation.
- Acting Chair Avalos asked Lt. Passadore if the Appellant was under arrest for the trespass or because he wasn't complying.
 - Lt. Passadore said he was under arrest for the criminal trespass.
- Ms. Falk said that it was confusing because in the investigative report, the Appellant was stated to be under arrest because he refused to give his name.
- Ms. Falk asked Lt. Passadore what would he be debriefing Officer A on.
 - Lt. Passadore noted that this incident happened 3 years ago. However, the debriefing would be what should he have done today. Under current training, the Bureau teaches officers to wait for cover. Had the officer waited, it would have increased the probability of the Appellant complying.
- Mr. Mozyrsky asked Lt. Passadore whether, if an officer used the same action today, he would still be in compliance with Bureau policy.
 - Lt. Passadore said he might be. Officers are trained to not use the same technique if it's not working.
- Mr. Mozyrsky asked Lt. Passadore what the training was back then when a person had their arms underneath their body.
 - Lt. Passadore said that the response would be what they did to the Appellant. Today, the Bureau trains to give warnings and give subjects the opportunity to comply.
- Mr. Mozyrsky asked Lt. Passadore about why, in this case, one officer decided to knee the Appellant, but the other officer did not.
 - Lt. Passadore said this commonly happens in a use of force situation. In this incident, Officer A was experiencing the Appellant's active aggression toward him so he used a higher level of force than the other officer who came to his assistance.
- Ms. Falk asked Lt. Passadore about the IA investigator's persistence in asking about the decision to call for an ambulance. Was it a common thing to happen? There was a use of force on the Appellant's head and it wasn't looked at.
 - Lt. Passadore said that officers call for an ambulance all the time. Sometimes, if the incident happens near a fire station, an officer will drive to the fire station.

- Regarding the use of force on the Appellant’s head, Lt. Passadore noted that the Appellant stated that he struck his head on the ground. The officer also described that happening when he took the Appellant to the ground. In Lt. Passadore’s experience, it is common to see scratches on people. There was no complaint of being struck on the head.
- Mr. Rivera asked Lt. Passadore if Officer A has trained with the latest use of force policy.
 - Lt. Passadore responded that he has.
- Mr. Simon asked Lt. Passadore if it is clear to him how many knee strikes were delivered. He also asked whether the Appellant was a danger to the public if the officer had let him go.
 - Lt. Passadore said it wasn’t clear. He looked at this incident as an assault about to happen to a police officer. He also looked at whether the officer lawfully took a person into custody and defended a member or other person from use of physical force. The officer certainly acted within policy. Today, we would have tried to find out the number of knee strikes that were delivered.
- Mr. Schwartz asked Lt. Passadore if the training officers receive today would have allowed the Appellant to walk away.
 - Lt. Passadore said that a lot has changed. The Bureau has changed the tactic. Today, officers would defuse the situation and ask the complainant if he/she is interested in pursuing this. If they are, officers would walk away and arrest the person later.
- Mr. Schwartz asked Lt. Passadore if the officer can be debriefed about letting the Appellant go and arresting him later should something like this happen again.
 - Lt. Passadore responded that he can be.
- Mr. Lee asked Lt. Passadore about the After Action Report, which stated that Officer A did not adequately describe the legal reason for not allowing the Appellant to leave. It also stated that Officer A did not sufficiently describe his reasoning. He wondered how the Lieutenant felt he had enough information to determine that the officer acted within policy.
 - Lt. Passadore said that the After Action Report was written by a different Lieutenant. This was clarified later through the IA investigation.
- Mr. Lee noted that the IA investigator asked a lot of leading questions.
- Captain Bell said that part of the reason why the investigator in this case asked a lot of leading questions was because the officer said he did not remember this very well. A lot of the time, when dealing with cases this old, those are the questions that the investigators need to ask.
- Acting Chair Avalos asked Captain Bell about the IA investigator’s question to the Appellant regarding how the whole incident could have been avoided if the Appellant had given the officer his name. Acting Chair Avalos asked Captain Bell whether this was an appropriate question?.
 - Captain Bell did not remember that question, but he said that it might be appropriate under certain circumstances, if the investigator is trying to figure out a person’s state of mind around how they felt about the incident. He said that the tone in which the question is asked is probably significant. Captain Bell offered to review the interview and get back to the CRC.
- Mr. Rivera asked Lt. Passadore if officers are required to identify an individual.
 - Lt. Passadore said that there is no requirement for officers to identify a person. In this case, officers took him to jail without knowing who he was.
 - Lt. Passadore said that there is a requirement for officers to identify a person if the person is being cited.
- Acting Chair Avalos asked Lt. Passadore if it was his perception that Officer A proceed with the arrest because the Appellant did not adhere to a lawful order to give his name.
 - Lt. Passadore said this was not his perception at all. He looked at the question of whether the officer had probable cause for the arrest. In this case there were multiple issues that the Appellant could be arrested for.
- Public comments:
 - Ms. Moneymaker wondered why the cracked ribs were not described in the case summary.
 - Mr. Handelman made several comments:
 - The officer said the Appellant was not resisting while the officer kept saying “stop resisting.”
 - If there were cameras mounted on officers’ chests, they would not be able to record what happening on the ground.
 - Ms. Ramos wondered why the appeal didn’t happen until 2018, when the incident happened in 2014.

- Director Severe answered that the incident happened in 2014, but the Appellant notified the City of this use of force claim in July 2017. The appeal request was received in November of 2017. Due to the number of pending appeals, the appeal was delayed until this meeting.
- Mr. Simon asked Director Severe if there is a statute of limitation applied to complaints.
 - Director Severe said that, after the DOJ settlement agreement, there is no statute of limitation for use of force complaints. IPR has investigated cases that are at least 10 years old.
- Mr. Schwartz made a motion to affirm the Bureau’s finding of Exonerated with Debriefing. Beside the option of the officer waiting for cover, he could also have allowed the Appellant to leave and then arrest him later. This was seconded by Acting Chair Avalos:
 - Mr. Mozyrsky: YES, the officer acted within policy.
 - Mr. Rivera: NO, the officer use of force was unnecessary.
 - Mr. Simon: NO, the knee strikes on the Appellant were excessive.
 - Acting Chair Avalos: YES, based on the standard of review.
 - Mr. Schwartz: YES, based on the standard of review.
 - Ms. Falk: YES, the officer acted within policy.
 - Mr. Lee: YES, based on the standard of review.
- Committee voted 4- 2 to affirm Bureau’s finding of Exonerated with Debriefing.
- Policy discussion:
 - Director Severe said that he can help organize a training for the Committee on the use of force.
 - Mr. Simon said that he was glad to see the debriefing be included in the finding.
 - Director Severe said that he would write up a brief memo to the Bureau summarizing what the Committee would like to be included in the debriefing.

7:45 pm – 8:00 pm New/Old CRC Business

- Mr. Rivera made an announcement that he will be resigning from the Committee. He cited the need for him to spend his time volunteering within his neighborhood

8:00 pm—8:25 pm Workgroup updates: Please provide the following information —

- 1) Brief summary of the goals and objectives of your workgroup
- 2) Date of last meeting
- 3) Brief summary of the work done at your last meeting
- 4) Next scheduled meeting
- 5) Main topic to be discussed/addressed at the next meeting
- 6) Any assistance from IPR or CRC needed to achieve your goals

ACTIVE WORKGROUPS

1. Outreach Workgroup (5 min.)

MISSION STATEMENT: The Outreach Workgroup engages the community to raise awareness about the Citizen Review Committee (CRC), gather concerns about police services and accountability, and identify issues for the CRC to address. Following up with appellants and others community requests will supplement current work group tasks. Additionally, outreach committee members will serve as point for ongoing communications with IPR, the City, the Bureau, community members and/or act as the face of CRC.

Chair / Members: Neil Simon, Candace Avalos and Roberto Rivera

IPR staff: Irene Konev, Community Outreach Coordinator

- The workgroup is collaborating with the Crowd Control workgroup on organizing a community forum.
- Mr. Simon will be circulating a list of organizations so new CRC members can decide which organization they would like to conduct outreach to.

2. Recurring Audit (5 min.)

MISSION STATEMENT: The Recurring Audit Workgroup seeks to improve accountability of IPR and the Portland Police Bureau by reviewing closed cases to ensure procedures, policies and protocols are followed and will recommend improvements, if necessary.

Chair / Members: Vanessa Yarie, Bridget Donegan, Daniel Schwartz and Jeff Bissonnette

3. Policy and Protocols (5 min.)

MISSION STATEMENT: The Policy and Protocols Workgroup examines CRC jurisdiction and the standard of review and recommends action to the CRC. Additionally, the workgroup will review community letters/input on policy issues and police bureau issues and present findings to full CRC.

Chair: Daniel Schwartz / Members: Julie Falk, Andrea Chiller and Kristin Malone

- The workgroup is still working on the proposal to submit to City Council.
- Mr. Schwartz will circulate a working draft to the full Committee for approval. After that, it will be circulated for public comments.

4. Crowd Control Workgroup (5 min.)

MISSION STATEMENT: The Crowd Control Workgroup examines existing crowd control policies, training, and tactics of the Portland Police Bureau, reviews crowd control best practices, legal standards and other information, and makes appropriate recommendations.

Chair: Candace Avalos /Members: Andrea Chiller

- The workgroup met earlier today and had a discussion on organizing a community dialogue.
- Acting Chair Avalos will do some research on ideas for the structure of the dialogue.
- Next workgroup meeting is April 4 at 4:30 PM.

5. Use of Deadly Force Workgroup (5 min.)

MISSION STATEMENT: The Use of Deadly Force Workgroup examines Portland Police Bureau use of deadly force policies, directives, training and implementation in order to recommend and support any needed change in Portland Police Bureau use of deadly force.

Chair: David Denecke / Members: Rochelle Silver, Kristin Malone and James Young

8:25 pm —8:45 pm Public comment and wrap-up comments by CRC members

- Ms. Aiona thanked Director Severe for creating a short appeal timeline for the summary. She would like IPR to share the protocol changes with the CRC for review.
- Mr. Handelman made several comments:
 - Part of CRC's job is to advise IPR on their policy, so the Committee must take a look at IPR's protocol changes.
 - He raised the issue of the City Attorney not attending CRC meetings at the last City Council meeting. The Auditor stated that the idea now is to have the Committee submit questions to the City Attorney before the meeting. Mr. Handelman urged the Committee to either have the Auditor's Attorney attend CRC meetings or persuade the City Attorney to attend meetings again.
 - Copwatch was not able to testify at the OIR hearing for the first time in 15 years. The CRC should weigh in and pressure the Mayor to allow public testimony.
 - The lieutenant said that "officers have to use force." Mr. Handelman said that terminology should not be used.
 - The Committee should use the proper terms, like "affirm the finding," instead of using the term "sustain the finding." The Committee also should take a symbolic vote as if voting using the preponderance of the evidence standard.
 - The Committee should hold training in a public setting.
- Director Severe responded to Ms. MoneyMaker's question about the injuries not being included in the case summary. Director Severe said that he simply wrote the appeal summary based on the investigative report.

To better serve you, a request for an interpreter or assisted listening device for the hearing impaired or for other accommodations for persons with disabilities should be made three (3) days prior to the meeting—please call the IPR main line 823-0146 (or TYY 503-823-6868).

Visit the website for more information regarding the Independent Police Review division, Citizen Review Committee, protocols, CRC meeting schedules, and approved minutes: www.portlandoregon.gov/ipr.

CRC Members:

- 1. If you know you will not be able to attend a CRC meeting or that you will be missing a significant amount of a meeting, please call or e-mail IPR in advance so that the CRC Chair may be made aware of your expected absence.*
- 2. After this meeting, please return your folder so IPR staff can use it for document distribution at the next CRC meeting.*

**Note: agenda item(s) as well as the meeting date, time, or location may be subject to change.*