



CITIZEN REVIEW COMMITTEE MEETING

Community Oversight of Portland Police Bureau

City of Portland / City Auditor
Independent Police Review (IPR)
Citizen Review Committee (CRC)

Date: Wednesday, June 6, 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: Andy Chiller, Julie Falk, Hillary Houck, Daniel Schwartz, Kristin Malone, Vadim Mozyrsky, Neil Simon, Jihane Nami, Jeff Bell, Charles Fender, Constantin Severe, Eric Berry, Andrew Pease, TJ Browning, Carol Cushman, Regina Hannon, Dan Handelman, Kalei and Ted Luyben, Eric Terrell, Alex Zielinski

Absent: Michael Luna, Candace Avalos, Albert Lee

AGENDA

5:30 pm—5:35 pm Introductions and Welcome (CRC Chair Kristin Malone)
(Approved of April 4, 2018 meeting minutes)

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

- Chair Malone asked Director Severe if the 8th Investigator will put IPR at the full budget authorization?
 - Yes.

5:40 pm – 5:45 pm Chair’s Report (CRC Chair Kristin Malone)

- Chair Malone worked on getting the word out regarding the changes to the standard of review.

5:45 pm – 6:45 pm **Appeal Hearing:** 2016-C-0170/ 2018-X-0001

Appellant alleged Officer A used an epithet against him while conducting a DUII investigation. Appellant also alleged Officer B Used inappropriate force while detaining and arresting the Appellant.

- Chair Malone asked Director Severe if the Committee is going straight to the appeal hearing since the case had already been sent back once?
 - Yes, we go straight into the appeal hearing
- Chair Malone asked the Appellant’s APA about him not being present tonight.
 - I’ve called him and left several voicemails and I have not heard back from him.
- Chair Malone asked Director Severe when was the last communication IPR had with the Appellant?
 - We sent the Appellant a letter saying we were setting the appeal hearing for today. The last communication our staff had with the Appellant was when our investigator called the Appellant for an interview. He made several statements about how he was ambivalent about the process.
- Chair Malone asked Committee members if they have any thoughts about this.
- Mr. Simon made a comment about how he was a little concerned about the Appellant’s health.
- Ms. Falk made a comment she was wondering about the implication of going forward since there’s a potential media coverage of the appeal.

- Chair Malone said that her recollection is that in the past, the Committee did not go forward with an appeal when the Appellant clearly stated they didn't want to proceed with the appeal, but when the Appellant didn't show up because they don't want to be there, the Committee ended up proceeding with the appeal.
- The Appellant's APA made a comment that the Appellant was extremely emotional when he discussed this case. It was very difficult tracking what the Appellant wanted since he kept changing his mind. The APA knows that the Appellant knows that the appeal hearing is happening and assumed that he doesn't want to be here.
- Chair Malone commented that the Committee can wait for public comments before voting whether to move forward with the appeal.

- Public comments:
 - Mr. Handelman commented the Committee had held an appeal hearing without the Appellant in the past.
- Chair Malone made a motion to proceed with the appeal hearing. This was seconded by Mr. Schwartz
 - Ms. Chiller: YES
 - Ms. Falk: YES
 - Ms. Houck: NO
 - Chair Malone: YES
 - Mr. Simon: Abstained
 - Mr. Mozyrsky: YES
 - Ms. Nami: YES
 - Mr. Schwartz: YES
- The Committee voted 6-1-1(abstention) to proceed with the Appeal Hearing.
- Director Severe provided IPR summary of the re-investigation:
 - The Committee requested in February that IPR conduct additional investigation to look for additional video from the Multnomah County Detention Center (MCDC).
 - IPR interviewed the Appellant. The Appellant during the interview stated that he drove down the exit ramp to report a possible crime that had occurred to him. He denied being influenced of any controlled substances. The Appellant could not remember if Officer B had identified himself as an officer. The Appellant did not believe Officer B is a police officer since he was not in uniform.
 - The Appellant recalled being held by law enforcement. After the Appellant got out of the vehicle several Multnomah County Sheriff's Office (MCSO) personnel came out of the jail to assist Officer B.
 - Regarding to the second allegation related to Officer A, during the original intake interview of the Appellant, he stated that it was Officer A who made the racial slur. During his 2nd interview with IPR, he was more ambivalent on whether it was Officer A.
 - Officer B was re-interviewed by IPR. IPR did not re-interview Officer A since we felt that there was enough information for a fact finder as to allegation 1.
 - Officer B provided similar story to the one he provided previously to IA during the first investigation. He was assigned to desk duty due to a knee injury. Given his injury, the officer stated multiple times, during both interviews that he would not have used a significant amount of force.
 - Officer B interacted with the Appellant at the bottom of the exit ramp and held the Appellant against the vehicle, but did not participate in the taking the Appellant to the ground. Officer B recalled holding the Appellant legs, the Appellant kicking him and Appellant having some scrapes on his face.
 - The Appellant stated that he had medical records during the interview. IPR mailed the Appellant a medical release form on March 26. IPR never receive the form back from the Appellant.
 - The IPR Investigator took several photos of the MCDC exit ramp.
 - IPR was able to obtain the additional video from Multnomah County. There was no explanation why the video was not provided during the original investigation. The video shows the Appellant driving down the exit ramp and his interaction with the MCSO personnel.
- Ms. Browning, the Appellant's APA made a comment that she was pleased with the thoroughness of the re-investigation. The Appellant wanted a better investigation and he got what he asked for.
- Acting Captain Fender spoke on behalf of the RU Manager, Captain Steinbronn:
 - Captain Steinbronn reviewed the re-investigation that IPR conducted. She recommended the 2nd allegation to be changed from Unfounded to Exonerated.

- Ms. Chiller asked Acting Captain Fender was there enough evidence to change from Unfounded to Exonerated since there's still no video of the actual incident?
 - At the time of this incident happened back in 2016, our policy did not define holding someone against a car as use of force.
- Mr. Simon asked Acting Captain Fender, how often injuries occurred during the course of an arrest? Would the resulting injuries change the finding that excessive force occurred?
 - I couldn't tell you the percentage, but by holding someone in place like that and waiting for help, it minimizes the risk of injury. Regarding the question about the excessive force question, if you can determine how the injuries occurred and why that force was applied to cause that injuries
- Chair Malone asked Director Severe how IPR will deal with Multnomah County for future cases that involved videos?
 - When you asked for something between one governmental agency to another, you expect that the people you deal with are professional and they know what they are talking about. If someone told us that this is what they have, we have to take their word. Our relationship with Multnomah County has been respectful. One of the issues in this situation is the age of the case. The video was retained because Multnomah County completed a use of force investigation.
- Chair Malone made a comment she can think of another case where the Committee had questions about whether a video existed.
- Ms. Chiller commented that in the finding's memo, the RU Manager included a portion of the transcript of the re-interview of the Appellant where he was stating that he doesn't recall. During Officer's B re-interview, he also stated that he did not recall, but he then referred to his report on exactly what he said. Ms. Chiller was concerned that the Committee might be seeing the Appellant as being less credible since he doesn't recall what happened.
- Ms. Nami made a comment she was confused about Exonerated versus Not Sustained
- Director Severe made a comment Exonerated means that act occurred but it was lawful, and within policy. The officer holding the Complainant against the car. That act was within Bureau's policy.
- Ms. Falk made a comment that she found it to be confusing since the finding went from Unfounded to Exonerated.
- Ms. Chiller made a comment there's no video evidence that showed exactly what happened. The Appellant's and Officers' story also did not exactly line up.
- Director Severe made a comment there no need for agreement on the facts between all parties for the RU Manager to make an Exonerated finding. In this case, what we are going off the allegations as written.
- Chair Malone commented that the definition of Exonerated is the issue. Ultimately exonerated mean the act of an officer was within bureau's policy.
- Ms. Browning made a comment she was preparing to argue why the proper finding was not Unfounded. In both the original and re-investigation, the Officer B repeatedly stated his concerns about his injuries. She thinks Exonerated was a better finding than Unfounded since the incident did happen.
- Chair Malone made a comment she agreed Exonerated was a better finding.
- Ms. Chiller asked Acting Captain Fender if officers are trained to differentiate between a person who is under the influence of alcohol or control substances and mental health issue?
 - Yes. officers are also trained if a person is under a medical issue. Sometimes people who are diabetic can react in a way that is similar to intoxication.
- Public comments:
 - Unnamed community member made a comment it is not a fair process if the Appellant doesn't show up at his own hearing. She raised a question if the Appellant have a hearing disability or couldn't read the sign.
 - Mr. Handelman made several comments:
 - Having two case file summaries is confusing.
 - The officer stated that he put the Appellant into a control hold and escorted him to the hood of the van. That would have considered as an assault if it was the other way around.
 - Control holds should be considered as a use of force.

- The Sherriff's Deputy who claimed that he took the Appellant onto the ground. It would great to hear the outcome of that use of force investigation at tonight's hearing as well
- Ms. Falk made a comment the Committee should put the issue of Appellant not attending appeal hearing into a list of parking lot issues for further discussion.
- Chair Malone made a comment the Appellant did attend the Case File Review hearing. Had he verbalized that he did not want to proceed with the Appeal Hearing, the Committee would've not proceed.
- Mr. Schwartz made a comment the Appellant might have an anxiety issue and did not feel comfortable attending the hearing tonight. He might still want the Committee to proceed with the appeal.
- Ms. Chiller made a comment there could be something good coming out of having a discussion between the Committee, PPB and IPR.
- Chair Malone made a motion to affirm the findings of Not Sustained regarding to allegation 1. This was seconded by Ms. Falk
 - Ms. Chiller: YES, based on reasonable person standard.
 - Ms. Falk: YES, based on reasonable person standard.
 - Ms. Houck: YES based on reasonable person standard.
 - Chair Malone: YES, based on reasonable person standard.
 - Mr. Simon: YES, based on reasonable person standard.
 - Mr. Mozyrsky: YES, based on reasonable person standard.
 - Ms. Nami: YES, based on reasonable person standard.
 - Mr. Schwartz : YES, based on reasonable person standard.
- Committee voted 8-0 to affirmed Bureau's finding of Not Sustained on allegation 1.
- Mr. Schwartz made a motion the affirmed the finding of Exonerated regarding to the allegation 2. This was seconded by Chair Malone:
 - Ms. Chiller: YES, reasonable based on the evidence.
 - Ms. Falk: YES, reasonable based on the evidence.
 - Ms. Houck: NO, it should be Not Sustained, there were too much he said/she said.
 - Chair Malone: YES, based on the reasonable person standard.
 - Mr. Simon: YES, Officer used minimum force required to detain the Appellant.
 - Mr. Mozyrsky: YES, based on the standard of review.
 - Ms. Nami: YES, the Officer acted within policy based on the evident provided.
 - Mr. Schwartz: YES, the Officer acted within policy
- Committee voted 7-1 to affirmed Bureau's finding of Exonerated on allegation 2.
- Ms. Browning made a comment that she felt uncomfortable going through the appeal hearing. She will make a note for the future when contacting the Appellant in case he/she is not showing up to the appeal hearing.
- Mr. Simon commended IPR for being able to acquire the videos from the Multnomah County. If the County get a lot of issues of people driving down the ramp, maybe they can have considered putting a stop sign on top of the ramp since it is more universal
- Ms. Falk and Mr. Schwartz had questions about whether the County's use of force investigation can be shared with the Committee?
- Director Severe made a comment that it is up to Multnomah County to share that information with us.

6:45 pm – 7:00 pm New/Old CRC Business

1) Standard of review proposal

- Chair Malone commented, a month ago, the Committee released the standard of review's working proposal for public inputs and received 25 comments in support and 2 against.
- Chair Malone and Mr. Simon met up with a representative from the Portland Police Association regarding their opposition to the proposal. The meeting concluded that they agreed to disagree.
- Mr. Simon commented that he appreciated the PPA President for sitting down with him and Chair Malone.
- Chair Malone met with the Mayor and his Chief of Staff as part of the bimonthly meeting. They had a discussion on the Committee's proposal. At the end of the conversation the Mayor express his continue support for the proposal.
- Mr. Simon said he heard feedback from people after the Oregonian article and radio interview were released.

- Chair Malone incorporated suggestions into the latest draft of the proposal she would like to know if the Committee is ready to vote on this document tonight or set another date to vote on it.
- Public comments:
 - Ms. Cushman made a comment this proposal changes have been discussed for a long time.
 - Mr. Handelman made a comment the Committee did a lot of outreach for the proposed changes before voting on it. He would be interested to hear which former CRC members provided feedbacks.
- Chair Malone made a comment Ms. Browning and Mr. Terrell both responded to the CRC's request for comments. She also ran into former CRC Chair Jamie Troy and he wished the Committee luck. The Use of Deadly Force Workgroup also wrote a letter in support of the proposal.
- Mr. Schwartz made a motion to approve the proposal with edits provided to the Committee and community members this was seconded by Mr. Mozyrsky:
 - Ms. Chiller: YES
 - Ms. Falk: YES
 - Ms. Houck: YES
 - Chair Malone: YES
 - Mr. Simon: YES
 - Mr. Mozyrsky: YES
 - Ms. Nami: YES
 - Mr. Schwartz: YES
- Committee voted 8-0 to accept the final draft.
- Chair Malone made a comment the next step is to lobby council members. She will send out a list of Committee's members assigned to each elected official.

7:00 pm—7:25 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

IPR staff: Irene Konev, Community Outreach Coordinator

- Mr. Simon made efforts to reach out to the public regarding proposed changes to the standard of review.
- Mr. Simon would like to continue with the outreach effort to keep the community informed of the Committee's standard of review proposal.

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

- Chair Malone made a comment she will follow up with this workgroup.

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

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

- Ms. Chiller said the Workgroup is trying to organize a community forum. They will discuss the venue and possible dates for the forum at the next workgroup's meeting.

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

- Chair Malone said Mr. Denecke is working on a wrap up report to essentially close the Workgroup
- Chair Malone said there should be an active workgroup to continue monitoring of PPB's use of force.

7:25 pm —7:45 pm Public comment and wrap-up comments by CRC members

- Ms. Chiller asked Chair Malone if there's any follow up regarding the Multnomah County' District Attorney's Office letter to a former Appellant regarding his participation in the CRC's administrative process?
 - I have not follow up on this. My understanding is their position is the same as the position regarding the 48-hours rule.
- Director Severe said the District Attorney released a statement outlining their concern was regarding a compelled statement within an administrative process would provide an officer a transactional immunity for criminal prosecution.
- Chair Malone asked Director Severe if he thinks it is accurate?
 - No, the DA office relies on a 34 years old case called "Soriano". If you keep the administrative and criminal investigation separate from each other then you should not have a transactional immunity problem. Transactional immunity is something that is contractual by nature. There's a need to be a statutory scheme and in this State, there's no statutory scheme. The collective bargaining agreement between the PPA and City of Portland does not give immunity to PPB officers if they participated in an administrative process.
- Ms. Chiller made a comment she would like to explore if there's anything the Committee can do about transactional immunity discourage people from participate in the CRC process.
- Mr. Mozyrsky asked Director Severe to clarify the DA's position regarding officers who give statements in an administrative investigation, that the statements cannot be used against them in a criminal investigation? If that is so, why would any officer subject a to criminal investigation not ask to first go through an administrative investigation as a pretext to immunity?
 - There are a few states where transactional immunity exists. In Oregon transactional immunity hasn't been an issue. In another case, the administrative investigation was shared with the criminal investigator, but the Court did not overturn that officer's conviction. There is a need to have a legislative fix in the State level. At this point there's a stated opinion from the Multnomah County DA saying that transactional immunity exists.
- Chair Malone asked Director Severe if this issue is on the City of Portland's legislative agenda?

- To my knowledge there isn't. Part of it was during the 48- hour rule discussion, I think the City's position was that there was not transactional immunity, but given the DA's role as the chief law enforcement official for the Multnomah County, that is their decision.
- Ms. Chiller asked Director Severe if the legislative fix must be at the State level and not at the City's level
 - Yes, there will need to be a statutory fix or some sort of a definitive statement from an Oregon appellate court, what the current state of the law in this state, but appellate courts don't generally give their opinion without a case before them.
- Ms. Nami asked Chair Malone about the status of possible new workgroups discussed at the retreat?
 - It seems like where we left off at the retreat will need to have another retreat to complete.
- Director Severe made a comment IPR is willing to support the Committee. They just need to let IPR know ahead of time of a general cost. He urged the Committee to have a Facilitator at the retreat.
- Public comments:
 - An unnamed community member made a comment she is concerned about there's not enough mental health professionals on the street to respond to people who are in mental health crisis particularly regarding the Appellant in the case tonight.
 - Mr. Handelman made several comments:
 - The appeal form can have a check box with a line "I am ok to proceed with the hearing if I cannot make it to the hearing".
 - Regarding to IPR's crowd control policy review, it skipped from people who were in the park to discussing people who got boxed in and had their pictures taken. It did not address the violent on protestors
 - Deputy Chief Day said at a meeting last week that between the changes in the use of deadly force last summer, they had not have any PRB hearing because the training analysis was cut out of the loop from the changes.
 - he urged IPR to extend deadline for protocols changes so the Committee will have a chance to submit comments.
 - The Committee should talk to the Auditor regarding the proposal
 - The Recurring Audit Workgroup is working on IPR's dismissal cases.
 - IPR website needs to have an FAQ section list to include question about is it true the DA can't prosecute after they've gone through the administrative investigation process
- Chair Malone made a comment the July's CRC meeting is cancelled due to its being on a holiday.

7:50 pm

Adjournment

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.*