

Minutes
Citizen Review Committee
January 9, 2013

Date Approved: February 6, 2013

Meeting Location: Room C, Portland Building, 1120 SW 4th Ave. Portland, Oregon

Chair Troy called the meeting to order at 5:45 pm.

Introductions and Welcome

Citizen Review Committee (CRC) Members Present: Jamie Troy (Chair); Michael Bigham (Vice-chair), Jeff Bissonnette (Recorder), David Denecke, Rodney Paris, Dr. Rochelle Silver

CRC Member Absent: Steve Yarosh (excused)

City staff: Rachel Mortimer, Assistant Program Manager, Independent Police Review (IPR); Linly Rees, City Attorney's Office

Appeal Process Advisor (APA): Henry Miggins

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

Community and Media: Dan Handelman (Portland Copwatch and Flying Focus Video), Debbie Aiona (League of Women Voters), Regina Hannon (Portland Copwatch), Henry Herring, Ted Luyben, Kalei Luyben, Ann Brayfield, Angela Kimball, Barbara Ross, Harry J. Jackson, Shauna Curphey, (National Lawyers Guild), Dana Gross (law student and National Lawyers Guild), Michellene Frizzell, Gloria Penney

Chair Troy informed the group that Ms. K.A. Lalsingh has resigned from CRC in December.

Minutes of 12/5/12 CRC Meeting

A motion was made by Chair Troy and seconded by Mr. Denecke to approve the minutes of the 6/6/12 CRC meeting. The motion passed 4-0, with one abstention by Mr. Bigham.

Director's Report (Ms. Mortimer)

(See attached.)

Chair's Report

Chair Troy: Was not as busy due to the holidays. Let IPR know of Ms. Lalsingh's resignation; kept current on media reports about the City's agreement with the Department of Justice (DOJ) and does not believe it is appropriate for CRC to file a motion to intervene; has been informed by IPR that IA has completed its follow-up investigation on appeal #2011-C-0060/2012-X-0003 and has arranged to have this on this evening's agenda; notified the APA, Bob Ueland, that the follow-up investigation has been completed and that CRC will be discussing the scheduling of a follow-up appeal hearing on that case.

Appeal Hearing #2012-C-0005/2012-X-0005

Chair Troy said he was notified by IPR that a supervisor from the Police Bureau had requested on behalf of the involved officer that an APA be assigned for the officer. Upon his arrival at tonight's meeting, Chair Troy learned that the officer had intended to participate in this evening's appeal hearing, but is ill and has requested that the appeal hearing be rescheduled so that he may appear with an APA and participate in the hearing. Therefore, CRC needs to decide whether or not to proceed with the appeal hearing as scheduled.

Dr. Silver said that she understood that there are certain time limits for requesting an APA. She asked how this would apply with respect to a police officer who requests an APA. Chair Troy replied that there are timelines, and when he first received notice from the Police Bureau, it was within the prescribed timeline.

Dr. Silver said that she would like to hear from the appellant, the APA, and the appellant's witness how they would feel about delaying the hearing.

Ms. Mortimer said that she recalled that the email from the Police Bureau was received during the last week of December. She said that today she learned that the officer's Captain contacted IPR stating that the officer had been planning to attend the hearing but was disappointed that he was too ill to attend. Ms. Mortimer added that the Captain understood that the officer had been assigned an APA and requested that the APA be notified that the officer could not attend tonight's hearing. The Captain also requested that the hearing be rescheduled and stated that the officer would appreciate it if that could be done.

Lieutenant Davis said that it was his understanding that the officer's supervisor requested an APA for the officer. He said that his sense that the officer wanted an APA is bolstered by the fact that the officer's Captain thought that an APA had been assigned. Lieutenant Davis said: "Our concern with this is just that, as an employer, obviously, we need to make sure we follow our own process rules; so we all know that one of the seven pillars of just cause in discipline cases is due process, and so my concern is that we're setting ourselves up, potentially, depending on the outcome of this case, for a reversible error by not affording the officer due process." He said that it is his understanding that the request by the officer's supervisor was made during the timelines.

Captain Famous said there was apparently a misunderstanding among the command staff at the precinct, and they thought that the officer had been assigned an APA and that person was going to meet the officer at the hearing. Captain Famous asked to be in the loop in the future so that he can explain to the command staff what is going on. Chair Troy assured him that he will be in the loop the next time this comes up.

The appellant said she thought the officer should have given more advanced notice that he might not be able to attend tonight's hearing. She said that, as the complainant, she has been dealing with matter for over a year, and today was supposed to be the last day, and she wants it to be over with. She said that her witness is there, her friends are there, the APA is there, the National Lawyers Guild advocate is there, and they do not want to have to come back again.

Ms. Dana Gross, National Lawyers Guild volunteer, pointed out that the administrative rules state that the APA must be requested at least two weeks before the case file review. Chair Troy explained that this was loosely interpreted by IPR to also mean two weeks before the appeal hearing, and that is what was communicated to the Police Officer. Ms. Mortimer confirmed this and said this will be rectified in the future. Ms. Mortimer quoted the letter that was sent to the officer as saying, "If you would like to request an APA, you must let me know by phone or in writing no later than December 27, 2012."

Mr. Bigam expressed the opinion that the officer should not be held accountable for an honest error made by IPR. He also noted that appeal hearings have been set over in the past when the appellant was not able to attend.

Jeff Bissonnette agreed with Mr. Bigam and in the interest of fairness and the integrity of this process, he made a motion that the appeal hearing be held over to no later than next month's regular meeting. Mr. Denecke seconded the motion. After public comment by Mr. Handelman and one unidentified person, a roll-call vote was conducted, and the motion passed unanimously.

The appeal hearing was rescheduled for 1/30/13 at 5:30 p.m.

Old Business

Dr. Silver asked if CRC should address the 21-day timeline for completing appeals at the federal court hearing on the DOJ agreement. Mr. Denecke said that he believes that anyone may sign up to testify at the hearing.

There was a discussion of policy issues from the appeal hearing held in November 2012 (#2011-C-0270/2012-X-0004). Mr. Bissonnette stated that recent disposition letters to complainants do not appear to offer an adequate explanation of the findings. He also felt that there was inadequate communication between the appellant and her attorney. Dr. Silver said that police officers should be trained to slow down when there is no immediate danger or emergency. She also suggested that in scenario-based training, there should be citizen participation to the extent that "real people" and "the actual kind

of person” would be used in the role-playing, as for example, in this case, older persons. Mr. Denecke seconded Dr. Silver’s first training comment and expressed the opinion that no officer should go out to make a probable cause arrest in a home unless the requesting agency has exigent circumstances for doing so if there is no warrant.

Lieutenant Graham said that when he came to IA, he abbreviated the letters that go out, but he now agrees that there should be more information provided. He said that he is trying to include more details in the letters he is currently working on.

Captain Famous offered to pass on the training recommendations to the Captain of the Training Division and to ask him to attend a future CRC meeting to discuss this matter if CRC so desires. Chair Troy suggested that Dr. Silver personally speak with the Captain of the Training Division and report back to CRC.

Update of previous appeal #2011-C-0060/2012-X-0003, for which additional investigation had been recommended. Chair Troy announced that IA has completed the additional follow-up investigation on this case, and it has gone through channels and a finding has been made. All of the supplemental materials are now available for review at IPR and IA. Mr. Bissonnette made a motion to schedule the continuation of this appeal at the February 6, 2013, CRC meeting. Mr. Bigham seconded the motion. The motion passed unanimously.

Chair Troy reminded the group that in order for any members to vote at the upcoming appeal hearing, if they were not present for the case file review or the appeal hearing on this case, they will need to listen to the entire recording of the hearing that they missed.

New Business

Mr. Denecke announced that the Use of Deadly Force Workgroup will be meeting on 1/16/13 at 2:00 p.m. in the Auditor’s Conference Room, to review the DOJ/City of Portland agreement. The workgroup will then come back to the full CRC with a report on what they think should be done, if anything, in terms of input regarding the agreement.

Workgroup Updates

Crowd Control Workgroup (Mr. Paris): The workgroup met today (1/9/13) at noon. This was mainly a planning meeting to discuss what will be done over the next couple of months. The workgroup plans to invite appropriate members from the Police Bureau to come and speak about crowd control/crowd management tactics and practices. The next meeting has not yet been scheduled.

Outreach Workgroup (Dr. Silver): The workgroup’s last two chairs have left, so this is now a two-person workgroup. The workgroup met today (1/9/13) and discussed recruiting for CRC. The workgroup plans to review the data from the last community forum and identify ten or fifteen of the most common themes and share these items with

the full CRC. They also began discussing the next community forum. The Outreach Workgroup will continue to meet at 4:00 p.m. on the day of the monthly CRC meetings.

Recruitment, Retention, and Promotion Workgroup (Mr. Bigham): No update at this time.

Recurring Audit Workgroup (Mr. Bissonnette): The workgroup has nearly completed its data entry on IPR dismissals. A meeting will be scheduled to analyze the existing data and start to develop the framework for the investigations review.

Use of Deadly Force Workgroup (Mr. Denecke): As stated earlier, the workgroup will be meeting on 1/16/13 to look at the DOJ agreement and decide what input, if any, to give at the Fairness Hearing.

Public Comments

Mr. Handelman: commented on the IA disposition letters; CRC's involvement at the DOJ Fairness Hearing; CRC recruitment; the importance of reading out the individual cases that come before Police Review Board during the presentation of the Director's Report.

Ms. Aiona: suggested that the City Council be asked to appoint interim CRC members, perhaps from retired CRC members, and asked Mr. Bigham to consider staying a little longer.

Ms. Brayfield seconded Ms. Aiona's suggestion about interim CRC members; agreed with Mr. Handelman about the importance of CRC providing input on the DOJ agreement.

An unidentified person agreed with Ms. Brayfield.

Wrap-up Comments

Mr. Denecke: "Even though the existing agreement is held up until the judge signs it, there's a whole process and a whole system and a whole group of ordinances in place which can allow us to move forward as we're presently moving, and it seems to me that should include replacing anybody who needs to be replaced right now, and what I'm really trying to bring up is the fact that I think that people are going to be able to intervene in the process for getting that agreement signed, or changed and signed, could be a lengthy process, so we should anticipate that we're going to be in Limbo for quite a while."

Mr. Bigham: "I'm sorry that the Auditor has not graced us with her presence again. Once in the past year she's been here, and that was for a half hour, and I think it shows an extreme lack of support to the CRC and to the criminal justice community in general that she is MIA in the full process."

Mr. Bissonnette: Apologized to the appellant and the witness for tonight's mix-up and thanked them for being willing to come back; agreed with Mr. Handelman about the importance of publicly discussing the Police Review Board report at least twice annually; agreed to personally do his best to carry through on Ms. Aiona's suggestion.

Mr. Paris asked for an email from IPR summarizing the CRC application process and what they are looking for so that CRC members can get the word out to people they know that might be interested. Ms. Mortimer agreed to work with Irene on this.

Chair Troy announced that he intends to schedule a "roast" of Mr. Bigham at his final CRC meeting.

Adjournment

Chair Troy adjourned the meeting at 7:25 p.m.