Case File Summary
2013-C-0099/2013-X-004
for Appeal Hearing on 8 January 2014

Summary Prepared on 23 December 2013

Synopsis of the Complaint

On 17 April 2013, the Independent Police Review division received a complaint from an individual who had an encounter with an individual claiming to be a police officer about six months prior, in October 2012. The complainant said that he was driving to his gym in Gresham on a Sunday morning in October 2012 (he was not sure which one). He encountered a white 7-Series BMW parked in the middle of the street on Civic Drive in Gresham. He waits for a while, toots the horn and the other driver waves and tries to continue. The other driver stops again, leans out the window and shouts that he's having car trouble. The complainant notes thinking to himself something like, "Why don't you get out of the middle of the road?"

This continued for another several blocks with the BMW stopping two more times. The complainant knows he is going to turn into his gym parking lot shortly and assumes the other driver will continue to go straight. But the other driver also turns into the gym parking lot ahead of him. Both the complainant and the other driver stop, roll down their windows and the other driver says to the complaint, "Hey, I'm having car problems." The complainant admits to being frustrated and said, "Hey, you dumb son of a bitch, you're gonna cause an accident doing that stuff." Both drivers exited the parking lot and eventually went separate ways.

After driving around for about five minutes, the complainant decided to go back to the gym. He parked and as he was walking in, he noticed that the BMW was parked by the front entrance. The other driver waved the complainant over. The complainant said, "I shouldn't have said what I said but you gotta be careful, man. You're going to cause an accident." At that point, the complainant said the other driver displayed a gun and a wallet with a badge on it and said, "I'm law enforcement. Don't fuck with me." The complainant responded, "Well, you're a cop. You should know better than anybody about safety and being on the road." The complainant then decided to leave to return to his home and come back to the gym another day.

Subsequent to that encounter, the complainant said he saw the individual at the gym from time to time and nothing was ever said and "everything was good as far as I was concerned." Then, in March 2013, the complainant was participating in the Shamrock Run and at a point in the route, saw the individual in a police uniform and thought, "that's him." The complainant got close enough to see his name tag and thus knew who to file a complaint against. He was encouraged by his wife to file the complaint, based on

suggestions made by a current officer and a retired officer who she knows socially. The complaint was then filed in April 2013.

Summary of Appellant, Officer and Witness Interviews

Complainant

In addition to IPR's initial intake interview which established the basic facts of the case, once the case was referred to Internal Affairs (IA), additional interviews were performed on three different occasions. On May 20, 2013, the interview covered the same issues as the IPR interview. The basic facts of the case did not change. The complainant clarified that the individual never raised his voice or pointed the gun and stayed in his car during the entire encounter. The individual did open his car door to bring both the gun and badge into view.

The next IA interview happened on May 21, 2013 after the involved officer was scheduled for an interview but claimed not to know anything about the incident. The IA investigator wanted to get additional information about the other vehicle and to review how the complainant identified the involved officer. The complainant described the vehicle as a five-to-ten year old white BMW 7-Series sedan with dealer license plates, which were further described as a silver plate with black letters and the complainant recalled the plate saying "dealer" in small letters. He had not seen the vehicle since the original encounter. The complainant said he was driving a black 2007 Acura TL sedan the day of the encounter.

The IA investigator also asked the complainant about the badge he saw. He said, "I remember it being more of a shield as opposed to a star," and also said, "It seemed more oblong, I guess, to being an oval..." He couldn't recall whether the badge was gold or silver colored but did say during the interview that he believed the badge was more rounded on the bottom and squared off at the top. He explained, "His badge was on top of the wallet. He brought it over from...the center console, put it on his lap so I could see that...then he displayed the gun with like his right hand, from his right to left, just so I could see it." When asked to describe the gun, the complainant said, "I think the gun was a...smaller revolver, or I don't know that it was even a revolver, but it seemed like smaller gun to me."

The complainant confirmed that he had seen the individual working out at his gym a few times over the next couple of months but had no further problems. There had been no stares or looks from the individual to indicate that anything had happened. The complainant did mention that on one occasion they were leaving the gym at the same time and thought he saw the other individual get into an older Subaru wagon. It wasn't until the encounter at the Shamrock Run that he saw that the individual was a police officer. The IA investigator asked if he had any doubt as to whether the officer he saw at the Shamrock Run was the individual with whom he had the original encounter. The complainant replied, "Well, that's...something we need to look at. I mean if I could see a picture of him, I mean that could say yea or nay that was him for sure. But I mean, god, there's always that chance, I mean it could be one of them faces that looks like

a million other people." The complainant noted that he had not seen the officer at the gym for at least a month or so prior to the interview.

The third interview took place on June 4, 2013. The IA investigator contacted the complainant to let him know the status of the investigation. The investigator noted that Sgt. A adamantly denied being involved in the case. He let the complainant know that Sgt. A does belong to the same gym and does occasionally drive a Subaru similar to one the thought he saw the subject get into several weeks after the incident. The investigator asked the complainant if he saw the subject go into the gym after their confrontation in the parking lot. The complainant said he did not.

The investigator asked if, when first seeing the person in the gym after the incident, he was positive it was the same person driving the white BMW 7-Series sedan. The complainant expressed some doubts thinking that maybe it wasn't, admitting that he could have fixated on the wrong person. The investigator said that he thought he correctly identified Sgt. A after seeing him in the gym but that the question was whether his initial recognition was in fact the same subject from the BMW. The complainant admitted that he had doubts about his identification of Sgt. A as the individual who was driving the white BMW.

Witness Officer 1

The IA investigator interviewed Witness Officer 1 on May 28, 2013. Witness Officer 1 knows the complainant's wife socially because she coached Witness Officer 1's daughter in volleyball and they frequent the same coffee shop. The officer knows the complainant somewhat.

Upon questioning about the original incident, Witness Officer 1 described the basic facts of the encounter as related by the complainant's wife. The wife noted how they had seen the involved officer at the Shamrock Run, saying that she had reported that she and her husband "were coming up to a turn on the course and she said the two of them locked eyes, and she could see there was a definite change in her husband and he ended up saying that was the guy that I told you about."

The IA investigator asked if the wife had been shown a picture of the involved officer. Witness Officer 1 said that someone at the table may have checked to confirm if there was an officer with the name of the involved officer and while it was possible someone may have shown her a picture, he couldn't be positive. He did say that he had encouraged the wife to have her husband file a complaint if indeed this was a police officer involved. He had never spoken directly to the complainant about the incident or his eventual complaint.

Sgt. A, the Involved Officer and the Appellant

On May 29, 2013, the IA investigator interviewed Sgt. A, the involved officer. The sergeant confirmed that he is a member of the gym in Gresham that the complainant said he goes to and was a member in October 2012. He says he goes four to five times a week, most often after work around 3pm. He

mentioned going occasionally on the weekends which could include some Sunday mornings. He said that his wife accompanies him to work out 80-90 percent of the time and that he almost always changes into workout clothes at home before going to the gym.

Sgt A said that in October 2012, he was driving (and still drives) a black Toyota Sequoia SUV but occasionally drives his daughter's silver Subaru Legacy station wagon. He said that he had never owned, borrowed or operated a white BMW 7-Series sedan. He also said that he has never driven a vehicle with dealer license plates. He further noted that he did not remember seeing such a vehicle in the gym parking lot or anywhere else.

The IA investigator asked Sgt. A if he had ever had any car problems on the way to the gym and he said no. He had the same negative answer to a question about whether he had ever had any traffic issues or words with any operating a black 2007 Acura TL sedan. The investigator showed a driver's license photo of the complainant to Sgt. A and asked if he looked familiar. Sgt. A said he is pretty good at identifying people and recognizing faces but that the complainant did not look familiar. He stated that he did work the Shamrock Run on March 17, 2013 and did remember someone running up to him and saying hi. He did not recognize the complainant as that individual but remembered thinking at the time that it was a little odd.

The IA investigator asked Sgt. A if he normally carries his badge and firearm when he goes to the gym. He stated he does not. He was asked what type of off-duty weapon he carries if he chooses to do so. Sgt. A responded that he normally just carries his duty firearm (a Glock Model 19). The only other gun he owns is a Glock Model 26. He does not own a revolver. When asked about his badge, Sgt. A stated that he always carries it on a belt clip, not a wallet. When off-duty, he puts it in a fanny pack at home.

At the interview, Sgt. A provided his calendar. The only Sunday in October where he did not have commitments was on the last weekend (October 27 and 28). Subsequently, Sgt. A provided the gym records that showed his usage. Those records showed that Sgt. A did not use the gym on any Sunday in October and confirmed his claim of usual usage pattern.

Summary of Information from the Case File Review

There were two main clarifications from the Case File Review that was held on Dec. 4, 2013. First, the appellant in this case is the involved officer, Sgt. A. As will be noted later, the initial finding in this case was “unproven.” Sgt. A’s Appeal Process Advisor (APA) said that he would prefer a finding of “exonerated” because of his very strong contention that he was not involved in the incident.

Also, IPR reported that the complainant had noted that, while he thought the incident happened in October, it also could have been in November or December rather than October. The complainant was not

absolutely positive.

The APA said that while Sgt. A is adamant about not being involved, he does believe that something happened to the complainant and offered to be involved in mediation to address that. IPR said they would follow up with the complainant. Subsequent communication found that the complainant declined the offer for mediation.

Timeline

CHRONOLOGY OF CASE PROCESSING	DATE
Date complaint filed with IPR	4/17/2013
Date IPR Initial Investigation completed	5/7/2013
Date complaint referred to IA	5/14/2013
Date assigned for IA Investigation	5/16/2013
Date IA investigation completed	6/13/2013
Date completed IA investigation to IPR for review	6/18/2013
Date IPR approved the investigation	6/28/2013
Date completed IA investigation assigned to RU Manager for recommended findings	7/10/2013
Date RU Manager's recommended findings to Branch Chief for recommended findings	7/30/2013
Date recommended findings received by IA Captain	8/2/2013
Date recommended findings sent to IPR for recommended findings	8/2/2013
Date of IA sign-off of recommended findings	8/6/2013
Date of IPR sign-off of recommended findings	8/6/2013
Date of IA Disposition Letter	8/19/2013
Date of IPR closing cover letter	8/23/2013
Date appeal received	10/8/2013
Date appellant waived mediation in lieu of appeal	10/8/2013

TIMELINESS OF CASE PROCESSING	TIME ELAPSED (Calendar Days)	BENCHMARK (Calendar Days)
Time from date complaint received in IPR to the date the IPR Director refers the case to IA	28 days	21 days
Time from date received in IA to completion of investigation	29 days	67 days
Time from date IA investigation sent to RU Manager to date of RU's recommended findings received by Branch Chief for recommended findings	20 days	14 days
Time from date recommended findings received by Branch Chief to date referred to IA Captain for recommended findings	4 days	7 days
Time from date recommended findings received by IA to date IA made recommended findings (concurrent with IPR review)	4 days	7 days
Time from date recommended findings received by IPR to date IPR made recommended findings (concurrent with IA review)	4 days	7 days
Time from date of completed findings recommendations to mailing of the disposition letter	17 days	14 days
Totals	106 days	137 days

Allegations, Findings and Definitions of Findings

There were two allegations in this case. The first was that Sergeant A used profanity during an off-duty confrontation. (Category: COURTESY – Directive 310.40 - Courtesy). The initial finding by the Commander's Review was Unproven. The Commander noted that, while the incident described by the complainant would constitute a violation of policy, there is no conclusive evidence to support that Sgt. A was the subject involved in the incident.

The second allegation was that Sergeant A inappropriate showed his badge and gun during an off-duty confrontation. (Category: CONDUCT – Directive 310.00 – Conduct, Professional). The relevant portion of the directive on which the commander based his finding was: "Every member will constantly strive to attain the highest professional standard of conduct. Member, whether on duty or off-duty, shall be governed by the reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit upon the Bureau or the City." Again, the initial finding was Unproven because there was no conclusive evidence to support that Sgt. A was involved in the incident. The commander noted that he felt "that Sgt. A was not involved in any way."

Definitions of Findings

The possible findings in a case are:

Sustained: an incident alleged in a complaint did happen and does constitute a violation of policy

Unproven: while the incident may have happened, there is no preponderance of the evidence to determine how it happened or whether there was a violation of policy

Exonerated: while the incident may have happened, the preponderance of the evidence shows that there was no violation of policy.

Any of these findings could be accompanied by a debriefing, which would involve the superiors of an involved officer talking about the incident and providing instruction as to how the situation might have been handled better.

Options Available to the CRC

At the appeal, the CRC has the following options available to it:

1) The CRC can affirm the finding, meaning that it believes that a reasonable person can make the same decision based on the available information, whether or not the committee agrees with the decision; or

2) It can challenge the finding, meaning that the committee believes a reasonable person would have reached a different finding based on the available information. The CRC can recommend a debriefing as part of any challenged finding; or
3) It can refer the case to Independent Police Review division or Internal Affairs for further investigation.

Respectfully submitted,

Jeff Bissonnette
CRC Member