



Portland City Auditor

Independent Police Review

Auditor Mary Hull Caballero

Director Constantin Severe

TO: Mayor Ted Wheeler
Commissioner Amanda Fritz
Commissioner Chloe Eudaly
Commissioner Dan Saltzman
Commissioner Nick Fish

Cc: Auditor Mary Hull Caballero

FROM: Anika Bent-Albert, IPR Assistant Director

DATE: February 8, 2017

SUBJECT: Citizen Review Committee Appeal No. 2015-X-0002 (IPR/IA Case No.2015-C-0104)

The above-noted appeal has been set on the City Council Agenda for Wednesday, February 22, 2017 at 2:00 p.m.

It is the responsibility of the City Council to determine whether the Portland Police Bureau findings at issue in this appeal are "supported by the evidence." A finding is supported by the evidence "when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding." City of Portland Code Section 3.21.020 (S).

Issue Presented:

1. Is the Police Bureau's finding of "Exonerated/w Debriefing" supported by the evidence with respect to the allegation:
 - Officer B used inappropriate force while taking Appellant into custody. (FORCE) (Directive 1010.20 – Physical Force) (Directive 1051.00 – Electronic Control Weapon System)

The Citizen Review Committee (CRC) decided that a "Sustained" finding should have been made as to the above-noted allegation. At the conclusion of this hearing, the City Council must decide whether a reasonable person could conclude that a Finding of Exonerated w/ Debriefing is supported by the evidence or not.

Procedural History:

- ❖ Date of Incident: September 17, 2014
- ❖ City of Portland Risk Management Office received notice of Appellant's federal civil complaint: March 17, 2015
- ❖ Portland Police Bureau Internal Affairs (IA) opened complaint after review of Appellant's federal complaint: May 5, 2015



City of Portland
1221 SW 4th Avenue, Room 140 | Portland, OR 97204 | (503) 823-0146
Fax: 503-823-4571 | IPR@portlandoregon.gov

- ❖ Stipulation of Dismissal of Appellant's federal complaint filed with the court on: May 15, 2015
- ❖ Internal Affairs Investigation Completed: June 30, 2015
- ❖ Internal Affairs approved of investigation: July 3, 2015
- ❖ IPR approved investigation: July 10, 2015
- ❖ IA investigation assigned to unit manager for recommended findings: July 13, 2015
- ❖ RU Manager's recommended findings to Branch Chief for recommended findings: July 24, 2015
- ❖ Recommended findings received by IA Captain review and approval of recommended findings: July 31, 2015
- ❖ Recommended findings sent to IPR for review: July 31, 2015
- ❖ IPR approved recommended findings: August 4, 2015
- ❖ IA Disposition letter prepared: August 14, 2015
- ❖ IPR sent out IPR closing letter and IA disposition letter: August 21, 2015
- ❖ Appeal request received: September 2, 2015
- ❖ Case File Review: October 7, 2015
 - CRC voted 7-0 to send the case back for additional investigation. Specifically, CRC members requested that IA interview the civilian witnesses that were previously interviewed as part of the Bureau after action review process and requested clarification of the Taser log.
- ❖ IA received CRC official request for further investigation: October 26, 2015
- ❖ Additional investigation completed: November 23, 2015
- ❖ IA approved additional investigation: November 25, 2015
- ❖ IPR approved additional investigation: November 30, 2015
- ❖ Original & additional IA investigation assigned to unit manager for recommended findings: December 9, 2015
- ❖ Unit manager sent investigation back to IA for additional further investigation: December 23, 2015
- ❖ Additional investigation completed: January 26, 2016
- ❖ IA approved additional investigation: January 28, 2016
- ❖ IPR approved additional investigation: February 3, 2016

- ❖ Original and subsequent additional IA investigations assigned to unit manager for recommended findings: February 10, 2016
- ❖ Unit manager's recommended findings sent to Branch Chief: February 24, 2016
- ❖ Recommended findings received by IA Captain and sent to IPR: March 4, 2016
- ❖ IA approval of recommended findings: March 7, 2016
- ❖ IPR approval of recommended findings: March 11, 2016
- ❖ IA disposition letter prepared: March 17, 2016
- ❖ IPR sent out IPR closing letter and IA disposition letter: March 21, 2016
- ❖ CRC 1st Appeal Hearing: April 20, 2016
 - Bureau members did not appear to CRC hearing per order from Acting Chief Donna Henderson
- ❖ CRC 2nd Appeal Hearing: May 4, 2016
 - CRC voted 8-0 to challenge 1st allegation findings from Exonerated to Exonerated with Debriefing;
 - CRC voted 7-1 to affirm 2nd allegation finding of Exonerated with Debriefing
 - On May 6, 2016, IPR received notification from IA that Allegation #2 would be sent back to IA for new findings due to the incorrect version of the Police Bureau directive being used in the findings process
 - Via memorandum dated May 16, 2016, Former Police Chief Lawrence O'Dea accepted the CRC recommendation regarding allegation #1.
- ❖ CRC 3rd Appeal Hearing: September 7, 2016
 - CRC voted 6 – 2 (abstained) to challenge allegation #2 from Exonerated with Debriefing to Sustained
- ❖ CRC Conference Hearing with Portland Police Bureau Chief Michael Marshman: December 7, 2016
 - CRC voted 4-1 (abstained) to continue with the original challenge motion of Sustained on allegation #2
- ❖ City Council Appeal Hearing: February 22, 2017

Attachments:

1. City Council Appeals Protocol & City Ordinance.
2. Portland Police Bureau written statement.
3. Citizen Review Committee written statement.

4. Investigation case summary

Materials previously provided to Council Members in preparation for Appeal hearing:

- IA case file, including investigative summaries, interview transcripts, police reports, correspondence, Directives, video footage, dispatch records, etc. **(CONFIDENTIAL)**
- Portland Police Bureau statements in response to CRC post-appeal recommendations.
- CRC appeal documentation including: Citizen Review Committee questions regarding the case. **(CONFIDENTIAL)**, appeal procedural history, appeal meeting minutes and audios. (5 meetings), post-appeal recommendations **(CONFIDENTIAL)**, and case file review summary.
- Portland Police Bureau written statement.
- Citizen Review Committee written statement.
- Portland Police Bureau Directive 335.00 – Discipline Process

Charter, Code and Policies

City of Portland

GENERAL INFORMATION: 503-823-4000 EMAIL: cityinfo@portlandoregon.gov

More Contact Info (<http://www.portlandoregon.gov/citycode/article/15472>)

3.21.160 Hearing Appeals.

(Amended by Ordinance No. 185076, effective December 14, 2011.)

A. An Appeal Hearing shall be conducted after a majority vote of the Committee to hold such a hearing at the case file review or other meeting of the full Committee.

1. At the Appeal Hearing the Committee shall decide by majority vote:

- a. To recommend further investigation by IAD or IPR; or
- b. If the finding is supported by the evidence. In a case where the majority of the voting members of the Committee affirms that the Bureau's recommended findings are supported by the evidence, the Director shall close the complaint; or
- c. If the finding is not supported by the evidence. In a case where a majority of the voting members of the Committee challenges one or more of the Bureau's recommended findings by determining that one or more of the findings is not supported by the evidence, and recommends a different finding, the Director shall formally advise the Bureau in writing of the Committee recommendation.
 - (1) If the Bureau accepts the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall close the case.
 - (2) If the Bureau does not accept the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall schedule the case for a conference hearing.
 - (a) At the conference hearing, if the Committee, by a majority vote, is able to reach an agreement with the Bureau on the recommended findings, the Director shall close the case.
 - (b) If, by majority vote, the Committee can not reach an agreement with the Bureau on the recommended findings, the Committee shall vote whether to present the appeal to City Council.
 - (c) If, by majority vote, the Committee decides to present the appeal to City Council, the Director and the Committee Chair will schedule an appeal hearing before City Council. The Committee shall appoint one of its members to present its recommended findings during the appeal to City Council.

2. In its hearing the Council shall decide:

- a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint; or
- b. If the finding is not supported by the evidence. The Council shall decide what the finding is. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint.

B. In reviewing the investigation, the Committee may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Committee may receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen. The complainant or member may appear with counsel. When the Committee's review process develops new information, the Committee may consider the new information when determining if additional investigation is warranted, but the Committee may not incorporate the new information in the evidentiary record the Committee considers when determining if a finding is supported by the evidence.

C. In reviewing the investigation, the Council may examine the appeal form and any supporting documents, the file and report of the IAD

and IPR, any documents accumulated during the investigation, the recording of the Committee's case file review and appeal hearing, the Committee's Case File review Worksheet, and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Council may receive any oral or written statements volunteered by the complainant or the member about whether or not they believe the finding is or is not supported by the evidence in the record. No new evidence may be introduced in the hearing. The complainant or member may appear with counsel.

D. Witnesses.

1. The Committee and Council may require within its scope of review the investigators and Commander of IAD and the Director to appear and answer questions regarding the investigation and may also require the responsible Bureau Commander to answer questions regarding the basis and the rationale for a particular decision.
 2. Other Witnesses. Other witnesses shall not be required to appear involuntarily before the Committee.
 3. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and other evidence. The power to compel the attendance and testimony of witnesses in accordance with City Code Section 3.21.160 D.3. shall not be delegated by the Council to the Committee.
-

Charter, Code and Policies

City of Portland

GENERAL INFORMATION: 503-823-4000 EMAIL: cityinfo@portlandoregon.gov

More Contact Info (<http://www.portlandoregon.gov/citycode/article/15472>)

PSF-5.16 - City Council Appeals Protocol for Independent Police Review Division's Citizen Review Committee Appeals

CITY COUNCIL APPEALS PROTOCOL FOR INDEPENDENT POLICE REVIEW (IPR) DIVISION'S CITIZEN REVIEW COMMITTEE (CRC) APPEALS

Administrative Rules Adopted by Bureau Pursuant to Rule-Making Authority

ARB-PSF-5.16

1. Notice of Appeal Hearing to Parties

- a. After an appeal to the Citizen Review Committee regarding alleged police misconduct where CRC has challenged one or more of the Portland Police Bureau's (Police Bureau) findings and no agreement could be reached between CRC and the Police Bureau during a subsequent conference hearing, an appeal hearing before City Council (Council) shall be set in accordance with Portland City Code 3.21.160.
- b. IPR shall provide notice of the date and time of the Council appeal hearing (at least four weeks prior to the hearing) to the appellant, involved officers, CRC, and the Police Bureau.

2. Submission of Documents for Council Review

- a. Upon receiving notice of a case being appealed to Council, IPR will collect and submit the following documents to Council:
 - i. A memo by IPR that includes the issues to be presented during the appeal, procedural history, and an IPR /CRC appeal report.
 - ii. An Internal Affairs (IA) investigative report summary, police reports, and other documents necessary for Council to conduct its appeal, including all material reviewed by CRC in conducting its appeal hearing.
 - iii. A written statement by CRC.
 - iv. A written statement by the Police Bureau.

b. Timing

- i. CRC and the Police Bureau shall be provided at least a one-week notice by IPR to submit their written statements.
- ii. IPR shall submit all the above documents to Council two weeks before the appeal is scheduled.

3. Review of Investigation

- a. In its review of the investigation, Council shall have access to all documents (including written or recorded statements) generated by the complaint in question, and recordings of the CRC case-file review and appeal hearing.

4. Appeal Hearing

a. Standard of Review

- i. In its appeal hearing, Council shall decide if the finding is supported by the evidence.
- ii. No new evidence may be introduced at the appeal hearing.

iii. Definitions:

(a.) Supported by the evidence: A finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.

b. Witnesses

i. Council may require within its scope of review the investigators, IA Commander, and an IPR representative to appear and answer questions regarding the investigation. It may also require the responsible Police Bureau Commander to answer questions regarding the basis and the rationale for a particular decision.

ii. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and other evidence.

iii. The complainant or officer may appear with counsel.

c. Council Hearing

i. Opening case synopsis by CRC; presentation of procedural history and case summary by IPR.

ii. CRC presentation of issues for Council to decide.

iii. Comments by the appellant or a representative (10-minute time limit).

iv. Police Bureau presentation (10-minute time limit).

v. Voluntary statement by involved officers or a representative (or in the case of officer-initiated appeal, a statement by involved community member (10-minute time limit per officer/involved community member).

vi. Council questions and discussion (as needed).

vii. Motion and vote on whether the Police Bureau finding is supported by the evidence.

HISTORY

Submitted for inclusion in PPD June 16, 2003.

Approved by IPR Citizen Review Committee effective March 7, 2012.



CITY OF PORTLAND, OREGON



Bureau of Police

Ted Wheeler, Mayor

Michael W. Marshman, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000

Integrity • Compassion • Accountability • Respect • Excellence • Service

DATE: February 7, 2017

TO: Portland City Council

SUBJECT: IPR/IA Case 2015-C-0104/Citizen Review Committee appeal

The purpose of this letter is to address concerns and provide Council with the Police Bureau's position regarding findings made regarding an incident which occurred on September 17, 2014, involving Officer B who deployed his Taser during the arrest of a community member (Appellant) near the intersection of NW Johnson St and NW 14th Ave. Appellant was arrested following a 911 call from a motorist who said that Appellant had attempted to assault her after Appellant became upset with the motorist while riding his bicycle on NW 14th Avenue.

This incident was investigated by the Portland Police Bureau's Internal Affairs unit (IA). This investigation was initiated by IA after the Bureau received a tort claim notice from Appellant related to his arrest. IA often initiates cases upon receipt of a claim to examine whether or not our officers' actions comport with our policies.

The appeal to CRC involves an allegation (Allegation #2) that one of the officers involved in the arrest of Appellant, Officer B, "used inappropriate force while taking Appellant into custody." The alleged improper use of force by Officer B involved use of a Taser during the arrest of Appellant. The Police Bureau Directives at issue are Directive 1051.00 – Electronic Weapon Control System and Directive 1010.20 – Physical Force.¹ Upon conclusion of the investigation, it was reviewed by Officer B's lieutenant. His lieutenant rendered a proposed finding of EXONERATED with a debriefing for the allegation of an improper use of force by Officer B.² This proposed finding was further reviewed by the Assistant Chief of Operations, the Captain of Internal Affairs, and the Independent Police Review Assistant Director, each of whom has the authority to controvert a proposed finding. In this case, each of them agreed with the finding.

Under City Code, Section 3.21.140, any complainant or Bureau member has the right to appeal a proposed finding to the Citizen Review Committee (CRC). The CRC held an appeal hearing in this case on September 7, 2016, pursuant to Portland City Code 3.21.160. The CRC's standard of review, which is the same standard to be applied by Council in considering an appeal of a finding, is whether the finding is "supported by the evidence." As defined in Portland City Code 3.21.020 "supported by the evidence" means "when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding."

¹ Each of these directives has been revised and different standards may apply under the revised versions. The directives used to review the officer's conduct in this case were those that were in place at the time of the incident.

² Under the Police Bureau's performance review standards, a finding of "exonerated" means the act occurred but it was lawful and within policy. "Exonerated with a debriefing" means that, while the act was lawful and within policy, the commanding officer making the proposed finding believes the officer would benefit from a discussion and critique of the incident.

The CRC voted to challenge Allegation #2 as they did not agree a reasonable person would have come to the same finding as the lieutenant, based upon the investigation and felt it was not supported by the evidence. The CRC voted unanimously for a recommended finding of SUSTAINED.³ The CRC had three main issues with the use of the Taser. One, they believed Appellant's actions did not meet the definition of active aggression. Two, they felt Appellant was restrained on the ground during some of the Taser activations, and three, they deemed the final activation of the Taser was a use of force unsupported by the directive. I have reviewed all relevant materials in this case and I have considered the recommended findings of Citizen Review Committee. I will address each of the CRC's concerns individually below.

The first area of concern for the Citizen Review Committee is their belief Appellant's actions did not meet the definition of active aggression. The Electronic Weapon Control System directive in place at the time of this incident stated the Taser could be used in response to active aggression defined as "a threat or overt act of an assault coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent." Based on the video and officers reports Appellant's behavior clearly fits the directive definition of active aggression. The following is an overview of Appellant's actions leading Officer B to observe Appellant's actions of active aggression.

As Officer B approached Sergeant A and Appellant he did not know of Appellant's actions prior to stop, nor did he know about Sergeant A's attempts to defuse the situation from the start. When Officer B approached, he was able to observe Appellant's aggressive behavior and the attempt by Sergeant A to take physical control of Appellant. Despite the presence of three officers, Appellant was still acting aggressively and not complying with the officers' directions. In order to effectively deal with violent individuals and tense situations, officers must work together and follow the lead of the primary officer or supervisor on any given call.

Based on his own brief observations, Officer B considered Sergeant A's actions reasonable and joined him and Officer C in an attempt to restrain Appellant. The act of one or two officers struggling with a combative subject is much more likely to result in injury to the subject or to the officers than if additional officers can assist. I find Officer B's initial response to the situation to be reasonable and within policy, and in this specific instance, I don't have concerns with Officer B moving almost immediately to place hands on Appellant to help restrain him.

Appellant continued to be aggressive and uncooperative. Based on the video and Officer B's statements, I believe it was reasonable for Officer B to conclude that Appellant was attempting to try to strike Sergeant A with a closed fist. It was at that point that Officer B used his Taser to deliver a drive stun to Appellant to stop Appellant's aggression and enable the officers to take him into custody. Appellant's behavior clearly fits the directive definition of active aggression for the purpose of determining whether or not the initial use of the Taser by Officer B was within policy. I find that the initial application of the Taser was justified and within policy.

A question has been raised about how many times Officer B activated his Taser during the interaction with Appellant. Although the Taser download shows three separate activations at the time Officer B delivered the initial drive stun, due to the timing of the activations (three within five seconds), I believe this was intended by Officer B as just one use of force.

The fourth activation of the Taser occurred after Appellant was on the ground. Sergeant A and the other officer were attempting to get Appellant's hands behind his back when he kicked Officer B multiple times, hard enough to knock Officer B to the ground. After being kicked, Officer B was able to get up and then

³ Under the Police Bureau's performance review standards, a finding of "sustained" means there was sufficient evidence to prove a violation of policy or procedure." A finding of "not sustained" means the evidence was insufficient to prove a violation of policy or procedure."

attempt to put weight on Appellant's legs to try to prevent being kicked further. Officer B was aware Appellant's strength was considerable and was worried about losing control of Appellant. It was at that time Officer B applied the fourth activation (what Officer B believed was a second application): a drive stun for three seconds. Officer B felt the drive stun had some effect on Appellant, even though Sergeant A and the other officer were still unable to handcuff him. Officer B had just been kicked and knocked to the ground, and even as the officers were holding Appellant, they could feel him attempting to turn himself over and push up from the ground.

Officer B then made the decision to deploy Taser probes into Appellant's back. This would be the fifth activation of the Taser according to the log (what Officer B believed was the third application). The use of the Taser probes is typically much more effective than a drive stun application. This application did not immediately or completely incapacitate Appellant and it took several seconds for the third officer to gain control of Appellant's right arm. However eventually the Taser was effective enough that Sergeant A and the other officer were able to get Appellant's hands behind his back and place him in handcuffs. The video does not show the handcuffing; at the end of the video, it is clear Appellant is not yet in handcuffs, nor did Officer C have complete control of Appellant's arm.

The second concern of CRC deals with trying to understand if Appellant was restrained on the ground during some of the Taser activations. There are two factors to consider with both the fourth and fifth activations of the Taser. First, was Appellant still exhibiting "active aggression," and second, is the question of if Appellant was "held to the ground by multiple officers," in violation of the "prohibited use" section of the Taser directive? Watching the video, I believe Appellant was clearly exhibiting active aggression in that he was still violently struggling with the officers and attempting to kick, turn over and use his strength to get back up. As noted, he actually kicked Officer B multiple times hard enough to knock Officer B backwards onto the ground. This behavior could very easily have resulted in injuries to Appellant and the officers.

In much the same way, the prohibition against using a Taser on a person does not apply in this instance. Although the officers were holding Appellant on the ground, the prohibition in the policy applies when the subject is "restrained" unless the subject is "actively engaged in behavior that creates a substantial risk of injury to the subject, member or others, and no other reasonable force options are available." In a case where a subject is still actively kicking and struggling, such as Appellant, this prohibition does not apply and would not apply until the situation became static and the person stopped fighting. Additionally, the use of a Taser in this situation was a more reasonable use of force than strikes as it was less likely to cause injury to Appellant. The officers were also unable to use pepper spray due to their close proximity to Appellant.

The final activation of the Taser, listed as the sixth activation on the log, was done while the probes were still attached to Appellant. While we are unable to determine the duration, we do know it was no more than one second. With the lack of evidence of duration we are unable to determine if the application even had any effect on Appellant. The evidence in the investigation does not clarify and Officer B does not recall or account for the activation. In the interview of Appellant he does not recall feeling this activation of the Taser. After reviewing the video and time stamp of the Taser it does not appear this activation of the Taser occurred after Appellant was handcuffed. If Appellant did feel the effects of the Taser it is well documented in the video and reports that Appellant continued to fight throughout the handcuffing and even after handcuffing.

Based upon my review of the case and the reasons stated above, I support the finding of EXONERATED with a debriefing for Allegation 2. Under the circumstances of this event, I believe Officer B's actions were lawful and within policy. This is the finding determined by the officer's RU manager and, as noted, it was agreed to by the assistant chief, the IA captain and the IPR assistant director who reviewed the finding.

A handwritten signature in black ink, appearing to read "Michael W. Marshman". The signature is fluid and cursive, with the first name "Michael" and last name "Marshman" clearly distinguishable.

MICHAEL W. MARSHMAN
Chief of Police

CITIZEN REVIEW COMMITTEE

Community Oversight of Portland Police Bureau

Kristin Malone, Chair

Message: 503-823-0146

Fax: 503-823-3530

TTD: 503-823-6868

E-mail: crc@portlandoregon.gov

www.portlandonline.com/ipr

MEMORANDUM

Date: January 30, 2017

To: Mayor Ted Wheeler
Commissioner Dan Saltzman
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Chloe Eudaly

From: The Citizen Review Committee

Re: Statement regarding IPR/IA Case 2015-C-0104/Appeal 2015-X-0002

On September 7, 2016, the Citizen Review Committee voted to challenge the Portland Police Bureau's finding on Allegation 2 of this file. Allegation 2 contends that "Officer B used inappropriate force while taking Appellant into custody." The Responsible Unit Manager reviewed the investigation and recommended a finding of Exonerated with Debriefing,¹ which was later adopted and supported by Chief Marshman. However, the Committee found that the finding was not supported by the evidence, and it recommended a finding of Sustained.²

The allegations in this file arose after a September 14, 2014 interaction between Appellant and three Portland Police Bureau members. Police responded after a community member complained that Appellant struck her window and shouted at her while he was riding his bicycle in Northwest Portland. Sergeant A contacted Appellant near the intersection of Northwest Hoyt and Park, and Officer B arrived shortly thereafter in a vehicle with his partner, Witness Officer D. After Appellant angrily threw several items out of his pockets and continued to reach into his pockets, Sergeant A forcefully spun Appellant around and pushed him into a wall. The three bureau members worked to handcuff Appellant, whom they described as struggling against or resisting their attempts to restrain him.

Although Witness Officer D reported that Appellant was not combative and Sergeant A did not describe feeling threatened, Officer B stated that he believed Appellant was going to punch Officer B and that he was "violent" and "volatile." Officer B therefore drew his Taser and gave

¹ A finding of Exonerated means "The act occurred, but was lawful and within policy." Bureau representatives have indicated that the proposed debriefing would involve modifying the resting position of the officer's index finger to prevent accidental discharges of the new X2 Taser.

² A finding of Sustained means "The evidence was sufficient to prove a violation of policy or procedure."

Appellant two warnings to stop resisting or the officer would use the Taser. Officer B then deployed the device in “drive stun” mode by contacting Appellant’s lower back. Appellant eventually went to his knees and was taken to the ground by the three officers, who continued their attempts to restrain him.³ While Sergeant A and Witness Officer D restrained Appellant’s arms and knelt on his back, Officer B straddled Appellant’s legs and deployed the Taser again, initially in “drive stun” mode (on Appellant’s calf) and then using probes (attached to his back).

Officer B reported discharging the Taser three times; however, the Taser Log made available to the CRC demonstrated that the Appellant received a total of six cycles of electricity from the X2 Taser – a device that was not then approved for widespread use by Portland Police officers. Multiple Taser discharges occurred while Appellant was lying face-down on the ground with three officers restraining him, as seen in video taken by a bystander. Some of these discharges have been attributed to Officer B’s finger slipping on and off of the button used to activate the weapon. However, the Committee and Bureau representatives agree that the final discharge occurred without Officer B’s knowledge or intent. This discharge has been explained by the Bureau as resulting from Officer B resting his finger on the button used to activate the device.

Due to an error on the part of the Bureau, the CRC examined this encounter twice, applying two versions of the same directive.⁴ When the CRC first evaluated the Bureau’s findings made under what appeared to be an earlier version of the directive,⁵ the CRC voted to affirm the Bureau’s finding. However, when the CRC subsequently applied the evidence to the correct iteration of the directive, the CRC found Officer B’s use of the Taser to be inconsistent with Bureau policy. Specifically, the CRC interpreted the differences in the rule to limit officers’ license to discharge the Taser when a subject is merely resisting arrest.

³ The bureau members’ testimony is inconsistent with respect to whether Officer B discharged the Taser again before Appellant went to the ground.

⁴ The procedural history of this complaint is complex and should be acknowledged here. Prior to this City Council hearing, the CRC met a total of 5 times related to this appeal:

1. The CRC conducted a Case File Review on October 7, 2015 and referred the case for additional investigation to obtain more information from Officer B’s Taser Log.
2. The CRC and Appellant appeared for an appeal hearing on April 20, 2016, but Bureau members failed to appear, on orders from Acting Chief Donna Henderson. The CRC voted to reschedule a hearing and to compel attendance of Bureau members.
3. The CRC heard the appeal on May 4, 2016 and voted to challenge the Bureau’s finding on Allegation 1 and to affirm the finding on Allegation 2. However, it was later determined that the Bureau evaluated Allegation 2 using an outdated directive, and the allegation was referred for further investigation and findings.
4. On September 7, 2016, the CRC re-heard the appeal related to Allegation 2 in light of the Bureau’s new finding based on the correct directive. The CRC voted to challenge the finding and to recommend a Sustained finding.
5. The CRC and Chief Marshman were unable to agree on a finding in a December 7, 2016 Conference Hearing, and the case was referred to Council.

⁵ The directive used in the original finding did not bear an effective date; however, the CRC presumed the incorrect directive to be an older version of the rule.

The directive used in the first finding permitted use of the Taser in under any one of three conditions:

- a. A person engages in or displays the intent to engage in physical resistance to a lawful police action. Physical resistance is actions that prevent or attempt to prevent a member's attempt to control a subject, but do not involve attempts to harm the member.
- b. A person engages in or displays the intent to engage in aggressive physical resistance to a lawful police action. Aggressive physical resistance is physical actions of attack or threat of attack, coupled with the ability to carry out the attack, which may cause physical injury.
- c. A person engages in or displays the intent to engage in suicidal behavior.

However, at the time of Appellant's encounter, the directive did not contain any of the language in subsection a describing physical resistance, although it did include language similar to subsection b, which the correct directive termed "active aggression."

The applicable directive permits Taser use in response to "active aggression," i.e., "a threat or overt act of an assault . . . coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent." In addition the effective directive also permits Taser use to prevent suicide, prevent flight from custody, and "in close quarters to protect a member, create a safe distance between a member and a subject, or to avoid the use of a higher level of force."

Applying the standards contained in that appropriate version of the directive, CRC members strongly disputed the Bureau's conclusion that Appellant engaged in active aggression prior to the first Taser discharge, noting that Sergeant A and Witness Officer D described Appellant only as "struggl[ing]" and "resist[ing]." Based on the plain language of the directive and the fact that it no longer contained the "physical resistance" justification, the CRC concluded that the evidence did not support Taser use under the Bureau's characterization of the "active aggression" requirement.

Further, the CRC reasoned that the evidence did not support Office B's Taser use while Appellant was restrained on the ground. The Bureau described Appellant's thrashing and resistance during that time – including a moment where Appellant kicked his legs and caused Officer B to momentarily fall backwards – as "active aggression" supporting additional discharges. Several members continued to view this as mere resistance. Perhaps more significantly, the CRC noted that the applicable directive provides, at Section 3.2, that "Members will not use [a Taser] on a handcuffed or otherwise restrained subject (*for example a subject being held to the ground by multiple officers*), unless the subject is actively engaged in behavior that creates a substantial risk of injury to the subject, member or others, and no other reasonable force options are available." For these reasons, the CRC concluded that the

evidence did not support Officer B's uses of the Taser when Appellant was restrained on the ground by three bureau members.

Finally, the CRC concluded that no in-policy finding could be supported for the sixth Taser discharge, which was apparently unintentional and unjustified. The discharge appears to have occurred while the probes were still connected to Appellant, but after he had been fully restrained, and Officer B claimed not to know that the discharge had occurred.

Both the RU Manager and Chief Marshman suggested that Officer B's conduct with respect to the final discharge was mitigated by the fact that Officer B was using a new model of the Taser, called the X2, which was still being field tested for approval by the Bureau.⁶ Specifically, the Bureau's representatives noted that the button used to deploy a charge from the X2 Taser is located along the side of the weapon, where officers using handguns are taught to rest or "index" their fingers until they are ready to fire. Chief Marshman also suggested that the deployment could have been brief enough as to be negligible.

Despite these mitigating factors, the standards of the directive remained in full force when Officer B discharged his Taser on Appellant. The Bureau does not dispute that the Taser was deployed, without justification, while connected to a community member. The Committee concluded that this action clearly violates the directive and would perhaps fit into the category of "Negligent Discharge" described in Section 6.4.

While the Committee strongly supported the Bureau's improved training on the now-standard X2 Tasers, several members expressed concern with a disciplinary approach that would excuse inappropriate uses of force toward community members on the ground that unapproved weapons were being field tested.

⁶ Since this incident, the Bureau has adopted the X2 as the electronic control weapon used by its officers.

INVESTIGATION OVERVIEW

Involved persons

Appellant
Sergeant A
Officer B
Witness Officer C
Witness Officer D
Witness Sergeant E
Citizen 1
Citizen 2
Citizen 3
Citizen 4
Citizen 5

Allegations

No	Allegation Summary	Category	Finding
2	Officer B used inappropriate force while taking Appellant into custody.	FORCE	EXONERATED with debriefing

Incident/Complaint Summary:

On September 17, 2014, Sergeant A observed a woman calling for help. The woman told Sergeant A that Appellant had just circled her car and was punching her windows. Sergeant A contacted Appellant. Police reports indicated Appellant was verbally aggressive and kept putting his hands in his pockets. Though Appellant indicated later when interviewed that he had his hands up and attempted to deescalate the encounter. The police reports further indicate Sergeant A turned Appellant around and pushed him up against a wall to try to handcuff him but was unable to do so due to Appellant's level of resistance. Officer B arrived, warned Appellant that he would be tased if he did not comply with orders, and then deployed his Taser in drive stun mode on Appellant. Appellant went to the ground but continued to resist. Officer B then deployed a second drive stun Taser in an attempt to handcuff. Officer B then used his Taser in probe mode and the officers were able to handcuff Appellant.

Appellant complains that the officers used excessive force and excessive numbers of Taser cycle rounds from the electronic control weapon.

Summary of Appellant, Officer and Witness Interviews conducted by Internal Affairs (IA)

Appellant

Appellant stated that he was riding his bicycle in the bike lane when a woman in a car bumped his rear tire and then drove off. Appellant stated that he tried to speak politely to the woman in the car. He stated that he pushed off her car window and it left a palm print, and, as she drove off, his hand slid on the window.

Appellant stated that Sergeant A, who was in a marked patrol car, flipped on his siren and lights at the intersection of 9th Avenue and Hoyt Street. Appellant stated that he was pulled over on his bicycle at 8th Avenue and Hoyt Street. Appellant said that because Sergeant A had parked his car at angle so close to him, had to pull his bicycle up onto the sidewalk. Because his bicycle has a European kickstand he has to lift the bicycle up and pull the bicycle back onto a dual-sided kickstand in order to park it.

Appellant stated that Sergeant A started to unbuckle his holster to pull his weapon on him and at that point he had his hands up and asked "what did I do, what did I do, what did I do?" He further stated that in an attempt to deescalate said, "I'm not homeless", and that he heard another witness say that Appellant was not homeless. While he had his hands up, Officer B and Witness Officer D pulled up in an unmarked gold Crown Victoria. Officer B and Witness Officer C, positioned themselves between the windshield and the doors, pointed their plastic weapons at him and told him to turn around. Appellant advised that he complied with their order and they "plunked" him in the back. Appellant stated that he then dropped to his knees and was "bum rushed" by the officers. Appellant referred to the video that was filmed by a citizen observer.

Appellant also stated that he believes that he was tased more than three times by Officer B. Appellant advised that Officer B started it up in his face when he did the thrust mode, which led him to put his hands in front of his face to protect his eyesight.

Appellant stated that whilst he was in the patrol car with Witness Officer D, Sergeant A told him that "it's a good thing I didn't shoot you."

Appellant later clarified that Sergeant A did not pull his weapon on him but that he did unsnap the protective cover. Appellant also stated that the only command he heard officers say was "turn around". When asked whether he consumed any alcohol prior to the incident, Appellant stated that he had two beers at home with dinner but that bicycle riding was not an issue for him.

Sergeant A

Sergeant A stated that he saw a disturbance in the middle of the street near 12th Ave and Johnson Street while on patrol. He also stated that he saw a woman crying and visibly upset in a car who was being assisted by citizens. He stated that the woman explained to him that a bicyclist had punched at her or punched her and was hitting her car and circling her in anger. Sergeant A stated that the woman assisted in identifying Appellant. Sergeant A stated that he radioed the situation and the direction of travel of the suspect and began to follow him but did not use lights or sirens. He was then flagged down by Citizen 1, security guard, who asked if Sergeant A was looking for the guy who was really upset and angry on the bike. Sergeant A confirmed and Citizen 1 pointed him in the direction of Appellant.

Sergeant A then drove to stop the suspect on the bicycle and that Appellant knew that he was trying to stop him. He stated Appellant stopped in front of the post office. After Sergeant A exited his car, he could tell that Appellant was angry and began yelling at him. Sergeant A stated that Appellant yelled that he wanted his lawyer present and yelled, "what the fuck did I do, why are you stopping me." Sergeant A decided that due to Appellant's angry demeanor and behavior, it was not in his best interest to get close and contact Appellant immediately.

Sergeant A then stated that Appellant stepped up to the curb and picked up his bicycle and held it as a shield and that it would be easy for Appellant to use as a weapon. Therefore, Sergeant A chose not to advance to Appellant but stayed in the street in front of his patrol car while Appellant had stepped onto the curb. Sergeant A recalled that he ordered Appellant to set the bicycle down, which he did but still appeared very angry and was still yelling. He stated that he was not thinking about mental health issues at the time. In order to control the environment, Sergeant A described that he lowered his voice and informed Appellant that he was just trying to look into what happened back with the lady in the car. Sergeant A then stated that Appellant yelled back that "she's the one that hit me and why in the fuck are you stopping me."

Sergeant A observed that Appellant stepped to the side of his bicycle and then stepped forward which he believed was a deliberate move to get around the physical barrier between them. Sergeant A stepped back and ordered Appellant to stop and to get back against the wall. He further stated that he observed Appellant, who was wearing shorts at the time, thrust his hands into his pockets that appeared to be weighted down. Sergeant A stated that although he never drew his weapon, he was concerned that Appellant had a weapon and stepped back, did the first retention of his holster and put the hood

down for immediate access to his firearm. Sergeant A ordered Appellant to take his hands out of his pockets but Appellant began to maneuver his hands in his pockets as if he was trying to grab hold of or was searching for something. Sergeant A then stated Appellant threw a cell phone and a wallet onto the ground in a fast, aggressive manner then thrust his hands back into his pocket again in the same manner as if searching or grabbing for something. Sergeant A advised that he ordered Appellant back to the wall but Appellant continued to pull his hands from his pocket and throw items to the ground, for a total of three times.

After Sergeant A observed his cover car with Officer B and Witness Officer D arriving, he took hold of Appellant's clothing from about the chest height, spun him around, grabbed his arms and moved him forcefully against the wall. He described forcefully to mean controlling Appellant's hands and arms. When Officer B arrived, Sergeant A stated that he had Appellant facing and pinned against the wall. Sergeant A indicated that he was trying to grab Appellant's arm but Appellant was violently thrashing and pulling his arm.

Sergeant A described that Officer B tried to grab hold of Appellant's right arm and Witness Officer D positioned herself on the left side. While Appellant continued to struggle violently, Sergeant A heard Officer B give a verbal warning to Appellant that if he did not stop resisting and fighting he would be tased.

Sergeant A stated that Appellant continued aggressively thrashing and then he heard a second cycle of the Taser on drive stun. Sergeant A described that Appellant continued to thrash, yell and violently struggle. He then heard Officer B state that he was going to use probe modes so he moved to the side and heard the cycling of the Taser, which sounded like a good connection. Sergeant A stated Appellant fell to the ground but the officers led him to the ground as well. Sergeant A described that as he also went down he struck the ground with his knee and positioned himself to pin Appellant down to control him. He advised that he and the other officers were able to gain control of Appellant's arms and handcuff him.

After Appellant was in handcuffs, Sergeant A described Appellant to still be very upset, yelling, screaming, thrashing and kicking around but that Appellant's tone changed stating that he wanted his 940 process to start as required by the Department of Justice.

Officer B

Officer B stated that at time of this incident he worked a partner car with Witness Officer D. He heard Sergeant A get on the radio advising that he was attempting to stop a suspect, later identified to be Appellant. Sergeant A advised that Appellant was involved in a disturbance with a motorist and then they went to cover him.

When they arrived at Northwest Hoyt and Park Avenue, Officer B stated that he saw Sergeant A exit his vehicle. He observed Appellant yelling at Sergeant A in a focused and aggressive manner with his hand waving rapidly and shoulders rolled forward. Officer B believed that Appellant was about to engage in a physical altercation with Sergeant A. As they neared the stop location, Officer B stated that he observed Appellant thrust his hands forcefully into his front shorts pocket and that he was clenching objects in his pockets. He then saw Appellant violently rip his hands out of his pockets, throw items into the air in front of him. Officer B stated that as he exited the patrol car to assist Sergeant A, Sergeant A moved toward Appellant. Appellant continued to thrust his hands into his front pockets and stepped around his bicycle towards Sergeant A in the following manner: lowered head, chin tucked toward chest and with a motivated gait.

Officer B stated that he observed Sergeant A grab Appellant's right arm in an attempt to control him, spinning him away so that he faced south sidewalk. He stated that Sergeant A started to move Appellant towards the building wall and so he went to try to assist. As he went to assist, Officer B observed Appellant turn toward Sergeant A and clench his right fist when he removed it from his pocket.

He then observed Appellant arch his back, push against Sergeant A, turn his body towards Sergeant A and believed that Appellant was going to punch Sergeant A.

Officer B stated that he removed his Taser from his drop leg holster, grabbed Appellant's right wrist in an attempt to control Appellant's right arm and prevent him from striking Sergeant A. He further described that he attempted to pin Appellant against the wall and told him to stop fighting or the Taser would be used. Officer B stated that Appellant continued to scream at Sergeant A and was volatile and violent. When Officer B grabbed Appellant's right wrist, Appellant pulled and forced his hands towards his front waistband area and his hips started to face Sergeant A. Officer B provided another Taser warning and then activated the Taser in drive stun mode by applying it to the Appellant's lower left back area. He further described that Appellant then spun toward the application site which put him face to face with Sergeant A. Officer B stated that he let go of Appellant's right hand and maintained contact with the Taser. He then stated that he observed Appellant drop to his knees and began kicking his feet.

Officer B indicated that while Witness Officer D tried to gain control of Appellant's right arm and Sergeant A was trying to control Appellant's left arm, Officer B was kicked multiple times by Appellant, which caused him to fall to the ground. He then knelt on Appellant's legs in order to try to control Appellant who was still moving his arms and rotating his hips. Officer B then stated he provided a Taser warning and then applied a drive stun to the backside of Appellant's left calf. He advised that Appellant's hips dropped back down to the ground.

Officer B stated that he realized that the Taser was assisting but the officers were not able to get Appellant's arms out from underneath him to handcuff him. Officer B stated that he advised the other officers that additional assistance was needed to control Appellant because Appellant was starting to overpower Sergeant A and Witness Officer D. Officer B then provided a verbal warning of Taser with probes and deployed the Taser probes to Appellant's back/right shoulder. Officer B advised that he decided not to do a follow up drive stun with the Taser per training, because Sergeant A's right leg got in the way. Witness Officer D and Sergeant A were then able to handcuff Appellant.

Officer B indicated that after Appellant was handcuffed, he still continued to yell, scream and thrash on the ground even while Portland Fire removed the probes. Officer B stated that Appellant was placed in the rescue breathing position to ensure open airway but was still kicking his feet about and so Officer B crossed his legs and kneeled on his foot to prevent him from rolling or kicking.

When asked, Officer B stated that while he was waiting for Portland Fire and controlling Appellant, he did smell a heavy odor of an alcoholic beverage.

Witness Officer C

Witness Officer C stated that he responded to the original location of the incident and interviewed the original female victim of the road rage. The woman he spoke with stated that she felt threatened by Appellant. Witness Officer C did not see Appellant being taken into custody.

Witness Officer D

Witness Officer D stated that she was partnered with Officer B and responded to assist Sergeant A. Witness Officer D advised that she drove the patrol car and Officer B was the passenger and in order to assist, he jogged ahead and made contact with Appellant while she parked the car.

When she arrived to assist, Witness Officer D stated that it was obvious that Sergeant A was trying to place Appellant into handcuffs. Witness Officer D described Appellant as agitated, animated and yelling. She further stated that Appellant was facing the wall with Sergeant A on the left and Officer B on the right. Witness Officer B stated that the officers were trying to overpower Appellant's resistance and were trying to place his hands behind his back. She then stated when Officer B let go, she took Officer B's position on Appellant's right side while Officer B went to his Taser.

When asked, Witness Officer D confirmed that Appellant was resisting but not combative. She described Appellant as pulling, jerking arms, overpowering but not swinging at anybody at the time. She further confirms that although verbal commands to stop resisting and advising Appellant was under arrest were being given, Appellant was not compliant.

Witness Officer D then stated Officer B drove stunned Appellant and they were able to get him to the ground, either through the Taser or by physical means. She described that they all ended up on the ground. She was on Appellant's left side trying to get control of his left arm and still gave commands. Witness Officer D then stated that she heard Officer B say probes and Officer B probed Appellant in the back and was then successfully handcuffed.

Witness Officer D further stated that Appellant remained verbally agitated after he was arrested, while being checked by medical, and while she transported him to jail.

Witness Sergeant E

Witness Sergeant E stated he responded to the location of Park and Hoyt and conducted an after action review. He stated that he spoke with Appellant as part of the conducting the use of force review. Witness Sergeant E described Appellant to be still struggling on the ground, kicking and screaming while he tried to talk to Appellant.

Witness Sergeant E stated that what he observed of Appellant is similar to the past two contacts he has had with Appellant. He advised that the other contacts involved a trip to detox and the other where Appellant was arrested for disorderly conduct and interfering with public transportation. Witness Sergeant E explained that Appellant's demeanor was similar to his past experience which is to be intoxicated and combative. He confirmed that Appellant's injuries in the instant encounter were to be Taser probes and minor abrasions.

Citizen 1

Citizen 1 stated that he is a security guard employed with a security company that patrols downtown in Portland. He was on duty in that capacity when he observed Appellant getting arrested by PPB officers.

Citizen 1 stated that he initially saw Appellant riding his bicycle near Northwest Johnson and 12th Avenue. He stated that noticed Appellant because he was screaming she hit me and he was yelling profanities. Citizen 1 stated that Appellant continued in that manner all the way up to 11th Avenue. He described that there were a lot of people around and Appellant was yelling and frantic.

As Citizen 1 went to the scene on his Segway, he observed that the officers had Appellant against a wall. As he got closer, Citizen 1 stated that he then observed that officers had Appellant on the ground but did not have him cuffed. He described the officers as being gentle and that Appellant was yelling, pulling away and not being cooperative. Citizen 1 further described that the officer that was on Appellant had his knees on the fatty part of the Appellant's thigh and was trying to keep Appellant's hands behind his back. He also described another officer in front trying to hold Appellant's shoulders.

Citizen 1 stated that he did not know Appellant was tased. Citizen 1 also discussed that from what he observed of the interaction it appeared as if Appellant was undergoing some type of post-traumatic stress disorder based on how he was talking to the officers.

Summary of Interviews conducted by Internal Affairs after CRC request for Additional Investigation

Citizen 2

When asked what he recalled of the incident, Citizen 2 stated that he heard the siren of a police car. He stated that he observed a man, later identified to be Appellant, off of his bike but was still holding the

bike on the side of the road. He described hearing one of the officers tell Appellant to put the bike down, which he did and then stated Appellant was pushed against the wall of the building by an officer. He stated that another person stepped in while there were a couple of officers trying to get Appellant against the wall. Citizen 2 stated that Appellant was tased a few times. Citizen 2 stated further that Appellant was on the ground and officers were maintaining control. Citizen 2 clarified that the Appellant was screaming but not for pain, more like "rambling stuff". Citizen 2 later clarified that Appellant was yelling about one officer that was either there that he had previous encounters with or yelling about previous things that have been done to him.

When asked why Citizen 2 took cell phone video of the incident, he replied, "it seemed like it was escalating and it's definitely in the back of my mind that, you know, incidents can get out of control and things can happen, and it just seemed like it would be a good idea to try to get a record of it". When asked if he understood by Appellant was being tased, Citizen 2 replied he that "he assumed he was not cooperating fully...in whatever he was being told".

When asked if he had any issues with the amount of force used by officers, Citizen 2 replied that he did not. Specifically, Citizen 2 stated: "I thought, given the situation, it looked fairly controlled. In fact...I think I posted it on social media and I said something to that effect, you know, this could have gone a lot worse....my feeling was that the police had conducted themselves in a fairly controlled manner compared to other incidents nationwide".

Citizen further added that although he is not a professional, the longer he watched the incident and longer he listened to Appellant, it seemed that he was an individual with mental health issues or serious social behavior issues.

Citizen 3

Citizen 3 recalled that at the time of the incident she was coming out of the post office. She observed a man and a woman and noticed there was commotion across the street with two or three policeman. She stated that at some point there were seven police present. She stated the police were tasing and throwing Appellant up against the building while Appellant was saying that he did not have anything in his pocket. Citizen 3 stated that it appeared to be seven against one guy.

Citizen 3 stated that she heard officers giving Appellant commands but could not recall the specific commands. When asked Appellant followed commands, she stated that the officers got Appellant right away.

Citizen 3 did not recall the amount of times nor if more than one officer tased Appellant.

Citizen 4

Citizen 4 recalled that she observed a man talking with police officers and that he was asked to take his hands out of his pockets. She then observed the man taking stuff out of his pockets and then throwing them on the ground. She then recalled that the man was asked to go against the wall but then observed that the man was then pushed against the wall and then tased. Citizen 4 recalled hearing the man say "you're hurting me" after being tased and then was put down to the ground. Citizen 4 also recalled that the man was held down on the ground by two officers.

Officer B

Officer B was interviewed again for follow up questions regarding the deployment of his Taser. Officer B confirmed that he wrote in his report that he discussed three separate Taser deployments, specifically two drive stuns followed by the deployment of the probes.

Officer B stated in part, that pursuant to his taser training after he deployed the taser probes, he prepared to drive stun Appellant in order to create a neuromuscular incapacitation (NMI). Officer B stated that he was unable to do so safely because Sergeant A was in the way. Officer B stated that there

was a possibility that as he prepared to drive stun his finger was on or near the trigger “button”, which if pushed could have resulted in the one (1) second “arc” recorded on the taser device report.

Summary of new information obtained after CRC request for Additional Investigation

Taser Analysis from PPB Training Division

The summary analysis of events based on the downloaded data from the Taser (X2):

“The user armed the X2, attempted a drive stun or warning arc (sic) about 5 seconds later, totaling about 5 seconds. After the drive stun or warning arc, the user turned the X2 off by turning the safety switch on. About 5 seconds later, the user turned the X2 on again, and pulled the trigger about 2 seconds after, deploying cartridge #1 for a standard 5 second cycle. About 2 seconds after the cycle was over, the user pressed the Arc button and held it for 1 second. About 19 seconds after the Arc button was released, the user turned the X2 off by switching the safety lever.”

City Attorney Interview of Citizen 3

On April 20, 2015, Citizen 3 was interviewed by a private investigator at the request of the City Attorney’s Office in preparation for potential litigation at the time. The private investigator’s report of the interview was obtained for this investigation. The report indicated that Citizen 3 expressed concern in her inability to recall details of the event and that it would be “advantageous to the city’s defense of the police”.

Citizen 3 reported that police officers “threw” him against the wall and described the action as “manhandling”. Citizen 3 further reported that she believed there were seven officers involved and after he was thrown against the wall, Appellant was thrown to the sidewalk, face down.

Citizen 3 did not recall if Appellant was tased three times while he was against the wall or while he was faced down.

When asked if she was distrustful of police, Citizen 3 replied yes and added that she has had “ugly exchanges” with police.

City Attorney Interview of Citizen 5, woman involved in the altercation with Appellant

On April 6, 2015, Citizen 5 was interviewed by a private investigator at the request of the City Attorney’s Office in preparation for potential litigation at the time. The private investigator’s report of the interview was obtained for this investigation. The report indicated that Citizen 5 reviewed Witness Officer C’s police report containing her statement and she stated that it was accurate. Citizen 5 then provided additional details regarding the two locations she stated Appellant punched her vehicle. Citizen 5 stated that Appellant was “so enraged and loud – screaming obscenities at her as he punched her car”. She then added that the officer who took her statement explained to her that Appellant assaulted her by striking her vehicle and that when asked if she wanted to press charges, she declined. When asked why she declined to press charges Citizen 5 said, “I thought getting tased was probable punishment enough”.

CASE PROCESSING SUMMARY:

CHRONOLOGY OF CASE PROCESSING	DATE
Date complaint opened by IA	05/05/15
Date IA Investigation completed	06/30/15
Date completed IA investigation assigned to IPR and IA for review	06/30/15
Date IA approved the investigation	07/03/15
Date IPR approved the investigation	07/10/15

Date completed IA investigation assigned to RU Manager for recommended findings	07/13/15
Date RU Manager's recommended findings to Branch Chief for recommended findings	07/24/15
Date recommended findings received by IA Captain for recommended findings	07/31/15
Date recommended findings sent to IPR for recommended findings	07/31/15
Date of IA recommended findings	07/31/15
Date of IPR of recommended findings	08/04/15
Date of IA Disposition Letter	08/14/15
Date of IPR closing cover letter	08/21/15
Date appeal request received	09/02/15
Date appellant waived mediation in lieu of appeal	09/02/15
Date of CRC Case File Review meeting	10/07/15
<i>Date IA received CRC official Request for Further Investigation</i>	<i>10/26/15</i>
<i>Date Further Investigation assigned to IA Investigator</i>	<i>10/27/15</i>
<i>Date Further Investigation completed</i>	<i>11/23/15</i>
<i>Date IA approved Further Investigation</i>	<i>11/25/15</i>
<i>Date IPR approved Further Investigation</i>	<i>11/30/15</i>
<i>Date original & further IA investigation assigned to RU Manager for recommended findings</i>	<i>12/09/15</i>
<i>Date RU Manager sent investigation back to IA for additional further investigation</i>	<i>12/23/15</i>
<i>Date additional further investigation assigned to IA Investigator</i>	<i>12/30/15</i>
<i>Date Further Investigation completed</i>	<i>01/26/16</i>
<i>Date IA approved Further Investigation</i>	<i>01/28/16</i>
<i>Date IPR approved Further Investigation</i>	<i>02/03/16</i>
<i>Date original, further, and additional further IA investigation assigned to RU Manager for recommended findings</i>	<i>02/10/16</i>
<i>Date recommended findings to Branch Chief</i>	<i>02/24/16</i>
<i>Date recommended findings received by IA Captain</i>	<i>03/04/16</i>
<i>Date recommended findings sent to IPR</i>	<i>03/04/16</i>
<i>Date of IA recommended findings</i>	<i>03/07/16</i>
<i>Date of IPR of recommended findings</i>	<i>03/11/16</i>
<i>Date of IA Disposition Letter</i>	<i>03/17/16</i>
<i>Date of IPR closing cover letter</i>	<i>03/21/16</i>
<i>Date of upcoming Appeal Hearing</i>	<i>09/07/16</i>

TIMELINESS OF CASE PROCESSING	TIME ELAPSED (Calendar Days)	BENCHMARK (Calendar Days)
Time from date received in IA to completion of initial investigation.	56	67
Time from date IA investigation sent to RU Manager to date of RU's recommended findings received by Branch Chief for recommended findings. (05/20/16 – 06/03/16)	15	14
Time from date recommended findings received by Branch Chief to date referred to IA Captain for recommended findings.	6	7

(06/03/16 – 06/08/16)		
Time from date recommended findings received by IA to date IA made recommended findings (concurrent with IPR review). (06/08/16 – 06/09/16)	2	7
Time from date recommended findings received by IPR to date IPR made recommended findings (concurrent with IA review). (06/08/16 – 06/15/16)	8	7
Time from date of completed findings recommendations to mailing of the disposition letter. (06/15/16 – 07/07/16)	23	14
<i>Time from date of disposition letter to date of CRC Case File Review meeting. (08/21/15 – 10/07/15)</i>	47	35
<i>Time from Case File Review meeting to assignment to IA Investigator for further investigation. (10/07/15 – 10/27/15)</i>	21	N/A
<i>Time from further investigation assigned to date assigned to RU Manager for recommended findings. (12/30/15 – 02/10/16)</i>	43	44
<i>Time from RU Manager returning case for additional further investigation to completion of additional further investigation by IA completed. (12/23/15 – 01/26/16)</i>	35	N/A
<i>Time from additional further investigation completed to date IA and IPR to review RU Manager's recommended findings. (01/26/16 – 06/08/16)</i>	135	35
<i>Time from RU Manager's recommended findings received by IA & IPR to date of upcoming CRC Appeal Hearing. (06/08/16 – 06/15/16)</i>	92	42

CASE TIMELINESS	TIME ELAPSED (Calendar Days)	BENCHMARK (Calendar Days)
<i>Time from date complaint received to date of upcoming CRC Appeal Hearing. (04/28/15 – 09/07/16)</i>	498	180

Findings and Definition of Findings

The possible findings in a case are:

Unfounded: The allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.

Exonerated: The act occurred, but was lawful and within policy.

Not Sustained: The evidence was insufficient to prove a violation of policy and procedure.

Sustained: The evidence was sufficient to prove a violation of policy or procedure.

Options Available to the CRC

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

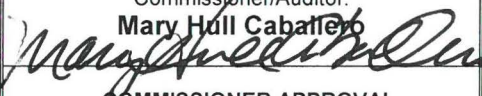
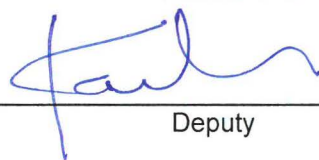
The CRC can affirm the finding, meaning that it believes that a reasonable person can make the same decision based on the available information, whether or not the committee agrees with the decision; or

It can challenge the finding; meaning that the committee believes a reasonable person would have reached a different finding based on the available information. 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.

Agenda No.
REPORT
 Title

spellout

Appeal of the Citizen Review Committee against Portland Police Bureau's finding regarding IPR/IA case No. 2015-C-0104/ Appeal No. 2015-X-0002. (Report)

INTRODUCED BY Commissioner/Auditor: Mary Hull Caballero 	CLERK USE: DATE FILED FEB 14 2017
COMMISSIONER APPROVAL Mayor—Finance & Administration - Wheeler Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland By:  Deputy
BUREAU APPROVAL Bureau: Auditor Bureau Head: Mary Hull Caballero Prepared by: David Nguyen Date Prepared: 2/8/2017 Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> City Auditor Office Approval: required for Code Ordinances City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan Council Meeting Date 2/22/2017	ACTION TAKEN: FEB 22 2017 APPEAL NOT SUSTAINED

AGENDA TIME CERTAIN <input checked="" type="checkbox"/> Start time: 2:00 PM Total amount of time needed: 2 Hours (for presentation, testimony and discussion) CONSENT <input type="checkbox"/> REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)	FOUR-FIFTHS AGENDA	APPEAL NOT SUSTAINED COMMISSIONERS VOTED AS FOLLOWS: <table border="1"> <thead> <tr> <th></th> <th>YEAS</th> <th>NAYS</th> </tr> </thead> <tbody> <tr> <td>1. Fritz</td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> <tr> <td>2. Fish</td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> <tr> <td>3. Saltzman</td> <td></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>4. Eudaly</td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> <tr> <td>Wheeler</td> <td></td> <td><input checked="" type="checkbox"/></td> </tr> </tbody> </table>		YEAS	NAYS	1. Fritz	<input checked="" type="checkbox"/>		2. Fish	<input checked="" type="checkbox"/>		3. Saltzman		<input checked="" type="checkbox"/>	4. Eudaly	<input checked="" type="checkbox"/>		Wheeler		<input checked="" type="checkbox"/>
	YEAS	NAYS																		
1. Fritz	<input checked="" type="checkbox"/>																			
2. Fish	<input checked="" type="checkbox"/>																			
3. Saltzman		<input checked="" type="checkbox"/>																		
4. Eudaly	<input checked="" type="checkbox"/>																			
Wheeler		<input checked="" type="checkbox"/>																		