



CITY OF PORTLAND, OREGON



Bureau of Police

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Charles Lovell, Chief of Police

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DATE: March 17, 2021

TO: Portland City Council

FROM: Charles Lovell Chief of Police

SUBJECT: Case 2019-C-0144 – Citizen Review Committee Appeal

The purpose of this letter is to provide the Police Bureau's position regarding findings made about an incident which occurred on August 5, 2018, involving Officer A who did not take a vehicle theft report from the Appellant.

This investigation was initiated after the Appellant lodged a complaint with the Office of Independent Police Review (IPR) on May 17, 2019. On June 4, 2019, the Portland Police Bureau's Internal Affairs (IA) was assigned to conduct an Administrative Investigation into this incident. The purpose of an IA investigation is to gather sufficient information to allow a "finder of fact" to determine whether or not an officer's actions comport with the Police Bureau's Directives.

This appeal to Council involves an allegation (Allegation 1) that Officer A would not take a vehicle theft report from the Appellant. The relevant Directive in this matter is Directive 630.61 – Stolen Vehicles. A copy of that Directive is enclosed.

Upon completion of the Administrative Investigation, this case was reviewed by Officer A's Responsibility Unit (RU) Manager. Officer A's RU Manager proposed a finding of Exonerated.¹ The reasoning for the Exonerated finding was supported by Directive 630.61, which states:

"In order to accept a report on a stolen car, members shall conduct a preliminary investigation. As part of that investigation, *ownership must be established. One or more of the following may establish proof of ownership: [list of pieces of evidence].*" (Emphasis added).

Officer A stated in their IA interview that Appellant provided a "handwritten bill of sale," which is not one of the pieces of evidence listed in Directive 630.61. Additionally, in practice, more than one piece of evidence listed in Directive 630.61 may be required to sufficiently demonstrate

¹ Under Police Bureau Directive 332.00, a finding of "Exonerated" means the preponderance of evidence proves the member's conduct was lawful and within policy.

ownership of a vehicle. Accordingly, Officer A did not believe at the time that Appellant had established ownership of the vehicle, and therefore he did not take a stolen vehicle report.

The proposed finding was subsequently reviewed by the Assistant Chief of Operations, the Captain of Internal Affairs, and the Independent Police Review, each of whom has the authority to controvert a proposed finding. In this case, each of them agreed with the proposed finding of Exonerated.

Under City Code, Section 3.21.140, any complainant or Bureau member has the right to appeal the finding to the Citizen Review Committee (CRC). The CRC held an appeal hearing in this case on December 4, 2019, pursuant to Portland City Code 3.21.160. The CRC's standard of review, which is the same standard to be applied by City Council, is whether the finding is "supported by the evidence." As defined 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."

The CRC voted 4-3 to challenge the Police Bureau's finding for Allegation 1 and recommended a finding of Sustained.² The CRC did not agree a reasonable person would have come to the same finding as the RU Manager based upon the investigation and statements made by the Appellant and their advocate at the hearing. At the hearing, Appellant and their advocate stated that Appellant had provided Officer A with a "Notice of Transaction Submitted" (NOTS) from the Department of Motor Vehicles and added that they did not have the bill of sale on August 5, 2018 as they provided it to the DMV when they applied for a lost title for the vehicle on July 24, 2018. The CRC believed the NOTS (NOTS) from the Department of Motor Vehicles (DMV) satisfied the following language in Directive 630.61, related to establishing ownership:

"The complainant provides documents from DMV indicating process of transfer of title."

After receiving the CRC's Memorandum from the hearing, the former Chief of Police reviewed the case file and determined the appropriate finding was Not Sustained.³ The former Chief believed the case file did not establish a preponderance of evidence to support the recommended finding of Sustained. However, the former Chief believed Officer A would benefit from a debriefing of the incident and added a debrief to the finding.

Due to the global pandemic, the Conference Hearing for this case was delayed. The Conference Hearing was held on August 5, 2020. The CRC voted 6-2 to continue with the previous motion to challenge the Police Bureau's findings on Allegation 1 and recommended a finding of Sustained. Based on my review of the case file and the information provided during the Conference Hearing, I noted the significant discrepancy regarding what documentation was provided to Officer A by the Appellant. In order to resolve this discrepancy, I directed IA to conduct additional investigation. Officer A was re-interviewed by IA and stated they were not shown the NOTS by

² Under Police Bureau Directive 332.00, a finding of "Sustained" means the evidence was sufficient to prove a violation of policy or procedure.

³ Under Police Bureau Directive 332.00, a finding of "Not Sustained" means the evidence was insufficient to prove a violation of policy or procedure.

the Appellant. Additionally, the original record established that the NOTS, in and of itself, would not be sufficient to establish ownership.

I find both the Appellant and Officer A credible in their testimony despite their lack of agreement on this key issue. I believe it is possible to have two credible people who believe their respective version of events. Regardless, even if I find Officer A was shown the NOTS, the investigative file establishes that the NOTS, in and of itself, is insufficient to establish ownership. Accordingly, I agreed with the former Chief and believed the appropriate finding for this case was Not Sustained with a debrief.

On February 3, 2021, a second Conference Hearing was held with the CRC. The CRC voted 6-1 to continue with their previous motion to challenge the Police Bureau's finding on Allegation 1 and recommended a finding of Sustained.

I have reviewed the case materials and I acknowledge this incident was unfortunate. In the end, the Appellant was unable to report their vehicle stolen, and the Police Bureau was unable to provide the service the Appellant expected. I believe this case demonstrates that our existing policy language does not provide sufficient clarity to our members, nor does it meet community expectations, regarding which documents readily establish ownership for the purposes of reporting a vehicle stolen. As a progressive agency, we must always ensure our policies and actions comport with legal standards and community expectations. That is why I directed our Policy Development Team to work with subject matter experts and the DMV to ensure our policy provides additional clarity to members and establishes additional layers of review when officers are unable to establish ownership.

I take accusation of misconduct very seriously, and I expect members of the Portland Police Bureau to provide quality service to our community. However, I do not believe there is a preponderance of evidence to find a violation of policy in this case. I believe the appropriate finding in this case is Not Sustained with a debrief.

Lastly, I want to express my appreciation for the large investment and energy by the members of the CRC. Our system of accountability is incomplete without the participation of community members, and I welcome the continued input of the CRC regarding the work of the Portland Police Bureau.

A handwritten signature in black ink, appearing to read 'C. Lovell III', with a stylized flourish at the end.

Chief Charles Lovell III