



Case Summary for Appeal Hearing

2019-C-0144/2019-X-0003

February 3rd, 2021

INVESTIGATION OVERVIEW

Involved Persons

Appellant
Officer A

Witnesses

Community Member

Allegations

No.	Allegation Summary	Category	Finding
1	Officer A would not take a vehicle theft report from the Appellant. (PROCEDURE) (Directive 630.61 – Stolen Vehicles)	Procedure	Exonerated
2	Officer A did not adequately document a missing vehicle reported by the Appellant.	Procedure	Unfounded



Incident/Complaint Summary

On August 5, 2018, Appellant spoke to Officer A in order to report a stolen vehicle. Appellant said that Officer A would not take a stolen vehicle report because Appellant did not have the required proof of ownership. Appellant also reported that Officer A said he would put the vehicle on a Portland Police Bureau “missing list.” Appellant’s vehicle was later impounded in Salem and Appellant learned that it would cost over \$1,800 for the car to be released. Appellant contacted Independent Police Review on 5/17/19 and filed a complaint. Independent Police Review conducted an intake interview with Appellant and Internal Affairs conducted the investigation.

Summary Interviews

Appellant

Appellant reports that she had gone to the DMV after she bought the car and filled out paperwork and paid to have the car put in her name but that the DMV had made a mistake and had not properly recorded the mileage and so the car was technically in pending status. Appellant said that because the car was then stolen this process could not be completed. Appellant also reported that Officer A had told her he would put the car on a “missing list.”

Officer A

Officer A told the Internal Affairs Investigator that he spoke to Appellant about the stolen vehicle but could not take a stolen report because the vehicle was not registered to Appellant. He said that Appellant did not have the title or registration transfers and he thought that Appellant only had a handwritten bill of sale. Officer A reported that he told Appellant to get the paperwork taken care of and call again and he would then take the report. Officer A said that there was not sufficient paperwork for him to take a stolen report at that point and that at the time of his interview the car was still not registered in Appellant’s name. Officer A also pointed out that when Police do locate a vehicle that has been reported stolen officers perform a “high risk stop” which involves multiple officers and drawn weapons so there are important reasons to have proper verification of ownership before taking a stolen vehicle report.

Salem Impound Lot

The Internal Affairs Investigator spoke to a representative of the Salem Impound Lot who said that his company had sent a lien letter out to the last registered owner of the vehicle and that this person was not Appellant but was the owner prior to Appellant. He said that the previous owner had alerted Appellant of the lien and that the car was impounded.

Portland Police Bureau Records

The Internal Affairs Investigator asked Portland Police Bureau Records to contact Oregon DMV and complete an ownership search on the vehicle. Appellant’s name did not appear on the paperwork provided by DMV.

Detective A

The IA Investigator spoke to a PPB Detective (this was not in a formal interview) that works on auto theft investigations and the Detective said that the paperwork Appellant provided is not sufficient proof of ownership for a stolen vehicle report. Detective A also contacted Oregon DMV and reported that Appellant did submit a transfer of title request but that it was invalid because it was not signed. He reported further that DMV had sent the form back to Appellant to be signed but the form was returned to them by the post office as not deliverable and the DMV then refunded Appellant's application fee.

Complaint Received:	5/17/2019
Investigation Completed:	8/2/2019
Findings Completed:	8/20/2019
Appeal Received:	09/19/2019

Findings and Definition of Findings

Finding: A determination of whether an allegation against a member is unfounded, exonerated, not sustained or sustained. These findings have the following meanings:

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 or procedure.

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

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:

- I. 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 the Independent Police Review or Internal Affairs for further investigation.

At the hearing held on **Wednesday, December 4, 2019**, the Citizen Review Committee (CRC) voted 4-3 to challenge the following Police Bureau findings on the above case from Exonerated to Sustained. That finding was communicated to the Bureau by memo December 27, 2019.

Then-Chief Jami Resch responded to the recommended finding via letter on January 6, 2020 with a finding of Not Sustained with Debrief; specifically stating that the evidence was insufficient to make a sustained finding.

According to procedure, a conference hearing was scheduled with the Chief and CRC on **Wednesday, March 4, 2020**.

Between the time the conference hearing was scheduled and March 4, the Chief stepped down. IPR passed the case on to the new Chief Lovell to give him an opportunity to review the case and make findings. Before a new date could be set, the city shifted to COVID-19 remote operations.

The conference hearing was held with Chief Lovell on August 5, 2020. In that hearing, he requested to take additional time to review evidence that was introduced in the hearing that was not contained in the case file.

The CRC will reconvene the Conference Hearing on Wednesday 2/3/21.



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3.21.160 Hearing Appeals.

(Amended by Ordinance Nos. 185076, 188331 and 188547, effective September 8, 2017.)

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. Public comment will be allowed before the Committee has made its recommendation to the Bureau.

Search Code, Charter, Policy

Keywords

Search

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 proposed 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 proposed 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 proposed findings, the Director shall close the case.

(b) If, by majority vote, the Committee can not reach an agreement with the Bureau on the proposed 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 Captain 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.

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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.
