

CITIZEN REVIEW COMMITTEE

Community Oversight of Portland Police Bureau

Jamie Troy, Chair

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Minutes Citizen Review Committee February 8, 2012

Date Approved March 7, 2012

Meeting Location: Lovejoy Room, 2nd Floor, Portland City Hall

Chair Troy called the meeting to order at 5:30 pm.

Introductions and Welcome

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

City staff: Mary-Beth Baptista, Director, Independent Police Review (IPR); Constantin Severe, IPR Assistant Director; Linley Rees, Deputy City Attorney; David Woboril, Deputy City Attorney

Portland Police Bureau: Captain Dave Famous, Professional Standards Division; Lieutenant Chris Davis, Internal Affairs (IA); Investigator Lynn Courtney (IA)

Community: Dan Handelman, Portland Copwatch and Flying Focus Video; Regina Hannon, Portland Copwatch; Debbie Aiona (League of Women Voters); Kalei Luyben, Ann Brayfield

Approval of Minutes of the 1/11/12 CRC Meeting

A motion was made by Mr. Pruitt and seconded by Dr. Silver to approve the minutes of the 1/11/12 CRC meeting. The motion passed 6-0. (The three new CRC members did not vote on this item.)

Presentation by Mr. David Woboril, City Attorney's Office

Overview of Portland City Code 3.21.160 – Hearing Appeals

Mr. Woboril introduced this portion of his presentation by saying that he would like to walk the CRC members through recent changes in the Code relating to CRC and CRC appeal authority and explain what they mean.

“There are two concepts I want to talk about that run through the Code that are not explicit in the Code, and are important in understanding how it’s set up and why it’s set up the way it is. One is scope of review and the idea of how broad a subject area a review is going to look at. Scope of review is defined in a couple of places here, and not explicit. We’re going to talk about that. The other is standard of review – what standard to apply as you look at the evidence and you review that particular subject area in the scope of review. And part of it is this idea and concepts are again not explicit in the Code but are clearly being followed in the creation of the Code, having to do with the role of CRC. In the handout on the Code, the first two pages are all definitions. There’s one definition on the bottom, ‘Supported by the Evidence.’ It’s very important that we talk about what you’re trying to decide in your hearings.”

After the above introduction, Mr. Woboril began his discussion of Code Section 3.21.160 – Hearing of Appeals:

“We can start on the Code provisions that direct you on how to conduct your appeals. You see both scope of review and standard of review in A.1.a, b, and c.

“A.1.a. talks about your review of investigations, and scope of review is the investigation – whether or not you think that the investigation was conducted in an adequate manner in the citizen’s and City’s interest. There is no standard of review here.... Really, it’s up to you to decide whether or not you feel you should recommend that there be further investigation by IA or IPR of the case. So the scope, again, is the investigation, and the standard of review is up to you to apply. This is the situation that the City has left up to you to decide whether or not you’re satisfied with the adequacy of the investigation.

“[A.1.] b. and c. have to do with another review, and that has to do with the connection between the findings that are generated by the City employees and the evidence on the record. That’s the scope: the findings and the evidence. And standard of review – and we have to go back to that definition here – the standard of review is whether or not the finding is supported by the evidence. On the second page you’re going to see a definition of ‘Supported by the Evidence,’ and that is: ‘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.’ What this is getting at is the possibility that there could be several reasonable findings based on a certain body of evidence. The City is asking you whether or not the City’s employees have made a reasonable finding, given the evidence in the record. And there may be a number of reasonable findings. You may think that one of the findings is better than another of the potential reasonable findings. The question, though, is whether the City employees acted reasonably....”

Mr. Woboril responded as follows to a request from Mr. Bissonnette for further clarification of the reasonable person standard of review: “It’s a fairly common standard in law.... The way I look at it is, if you can see that it is a reasonable decision, that the decision maker got to the conclusion in a reasonable way, you’ve got yourself a reasonable decision by that decision maker. Other people will talk about that it must be based on reason, there can’t be irrationality behind it, and you can see or acknowledge – maybe not completely agree, but acknowledge – that the pieces of the decision are linked up in a rational, logical manner. You may weigh certain linkages differently than

the decision maker, but if you have to acknowledge that in fact there's reason and sense to it, you have yourself a reasonable decision."

Mr. Bissonnette gave an example of a case in which he could understand how the decision maker reached his decision, but he perceived that there was a disconnect in the logic. Mr. Woboril responded that "if in your mind there is no logical connection, and things can't mean what the decision maker says they mean, I think you're talking about an unreasonable conclusion at that point."

Mr. Woboril continued: "The next part of the Code that has to do with review is the next page, 2.B. This has to do with the nature of your hearing.... The Mayor wanted to make very clear that he wanted CRC to be able to take in any evidence, any information that anybody wanted to bring CRC at its hearing. It's an issue of to what purpose that new information can be put. They certainly wanted CRC to be a place with no filter – essentially no filter for new information. And B is all about that: 'The Committee may receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen.' And then further on we see that that information goes to Council.... We'll get to what you can do with that information in a moment.

"C is about Council. 'Witnesses' has to do with authority. Subsection D has to do with your authority in these hearings, and you have the ability to *require* – strong language in D.1 – require that City employees come and talk to you about their findings and about the investigation.... Subsection 2 indicates that you do not have subpoena power. There was some question during the debates before Council this last fall about whether or not CRC had subpoena power. Subpoena power in the City is – the Council is the body in the City that has subpoena power. Council can delegate subpoena power. Absent the delegation, none of the officials in the City, none of the agencies in the City has subpoena power. There's been a delegation of subpoena power to the Director of IPR. Council made a decision not to delegate subpoena power to CRC as of the latest revisions to the Code."

Mr. Woboril then went back up to subsection B: "This has to do with scope of review. There were ambiguities last fall in whether or not CRC, in taking in all of the unfiltered information at a hearing, could add that information directly to the record that CRC is reviewing, and Council had a chance over the course of the fall to decide what role it wanted CRC to play and decided to stick with what Council understood the situation to be before these latest changes. We see that reflected in the last sentence of B: 'When the Committee's review process develops new information,' which you're entitled to do at your hearings, 'the Committee may consider the new information when determining if additional investigation is warranted.'

"You have two scopes of review. One is if the investigation is adequate, and the other is whether or not the findings link up with the evidence in the records. So new information is available to you, to use in determining whether you think further investigation is warranted or when to send a case back based upon hearing this information at the hearing, '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.' The new information adds a new stature of hearings

available to you to make a decision about the adequacy of the investigation. You can't add to the record and then make a decision on the findings.

"As I understand it, the principal, how it works, is if you have new information that causes you to be concerned that the investigation is not complete and that perhaps other findings should have been made or other allegations should have been asserted by the City employees, you have the power to recommend that it go back for further investigation, and then eventually you will see, if the system is working properly, you're going to see the new information incorporated in the investigative effort that may generate appropriate allegations or not and findings, and you get a look at those findings down the road."

Chair Troy asked what happens if CRC requests further investigation, and the Police Bureau or IPR is unwilling or does not feel that it is a good use of their time. He asked if that is answered in the Code?

Mr. Woboril responded: "The Code does not force anybody to respond to the recommendations," but if CRC recommends further investigation and IPR or the Police Bureau is unwilling to do further investigation, he would expect that there would be a "very public conversation about that, and hopefully people figure a way through it."

Chair Troy asked if CRC's recommendation could be to controvert the finding if they conclude that without further investigation a reasonable person could not have made the decision.

Mr. Woboril responded: "I don't think that would work in this system. To do what you're talking about, you would have to be an investigative tribunal. You would have to be able to pull in evidence and incorporate it in the evidentiary record, and there are some bodies that can do that. You're not set up to do that. What Council did when it created this entire system and reaffirmed that in December is that it allows you to make sure that we have a very public forum for putting pressure on the City to make sure things happen – to make sure that the City employees are performing their duties adequately. You don't have the ability to actually make the record on which the City will have to stand and then discipline its employees. There's a lot of ways this would go very wrong if in fact you took on the powers to be an investigatory tribunal. You, for instance, then create records on which the City would have to defend its discipline decisions, where the City hadn't generated that information or hadn't applied its investigative capabilities and its long experience in these matters.... I'm anticipating something we've never seen before, and that is the discipline of an employee based on something said at a hearing that wasn't followed up with capable investigation.

"So if you find something new at a hearing, *everybody* needs it investigated well. You don't know when you first hear it if it's true or not. You don't know its implications. It may lead to many other things, and you all don't have the capability to chase all that down. You, however, can recommend quite publicly that it be chased down, and then you have the ability to say quite publicly whether you think it was chased down properly and, again, whether you think that the findings that result connect with whatever that investigation developed. So you have a significant role in making it work right... you don't have the capability of actually doing the work yourselves."

Chair Troy expressed concern that CRC's inability to do more than recommend further investigation could potentially put CRC members in a difficult position. Mr. Woboril responded that the Code is a living document that can be changed by the policymakers if it is not working as it should.

Mr. Yarosh asked: "At what point would new information become evidence?" Mr. Woboril responded that it would be up to CRC to decide if the new information was properly incorporated into the evidentiary record.

Director Baptista asked for additional clarification of the reasonable person standard.

Mr. Woboril responded that the logic chain that leads to the decision maker to the conclusion is what matters, not one's view of the facts.

Director Baptista asked Mr. Woboril to clarify whether CRC is able to add allegations.

Mr. Woboril's responded as follows: "The Mayor got pushed on that and thought long and hard about it and decided to leave the situation as he understood it before the changes, and some of his messaging to the public and Council made very clear that CRC is not an allegation-generating body, that he wants professional staff to do that. He did, however, appreciate the value of CRC's view on appropriate allegations, and he wanted to make sure that the Auditor's forms – the forms you fill out in your conferences or following your hearings, have a place for you to articulate concerns you might have about the allegations, but the Mayor did not think it would work for the City to have this body actually impose the recommendations of the process."

Follow-up Discussion Regarding Intergovernmental Agreements

As a follow-up to last month's presentation by Chief Reese, Mr. Woboril discussed intergovernmental agreements between Portland, TriMet, and other police agencies, including a discussion of how complaints and discipline matters involving non-PPB officers assigned to the Transit Police Division are addressed. Examples of intergovernmental agreements were provided as handout materials.

Case File Review of Case #2001-C-0170 (CRC Appeal #2011-X-0002)

Chair Troy introduced the Case File Review and noted that CRC members had reviewed the IPR and IAD case files. The appellant was present for the case file review. Chair Troy assured the appellant that an Appeal Process Advisor would be made available for him.

Director Baptista presented a case summary, including allegations and findings and explained that IPR initially received the complaint in the form of a recording provided by the PPB officer who took the complaint from the appellant while interviewing him pursuant to his arrest.

Investigator Courtney summarized the IA investigation and responded to CRC members' questions. In response to a question from Chair Troy, he noted that none of the police cars had videocameras.

The appellant was given an opportunity to comment on the investigation. In response to a question from Dr. Silver, he confirmed that he did not see anyone besides the officers at the scene of the incident. He voiced concern that the IA disposition letter erroneously stated that three officers were interviewed when in fact four officers were interviewed. Lieutenant Davis acknowledged the mistake in the disposition letter about the number of officers who were interviewed but pointed out that it is clearly documented in the investigative notes that four officers were interviewed, and that was the information provided to the commander who made the findings.

Chair Troy asked the CRC members if anyone would like to request further investigation, and no one responded.

Dr. Silver made a motion to schedule an appeal hearing on this case at the March 7 meeting. The appellant was asked if that date would work for him, and he said that it would. After public comments were received from Mr. Handelman and Ms. Hammon, a role call vote was held. The motion passed by a vote of 6-0. (The three new CRC members did not vote, as they had not reviewed the case file.)

Director's Report

IPR Work Plan / Accomplishments

Rachel Mortimer has been hired to fill the IPR Assistant Program Manager position (formerly titled Assistant Director). Ms. Mortimer has worked for the past five years as a juvenile dependency/delinquency attorney with a small local firm. She has also worked for the Campaign for Equal Justice and as a clerk for Multnomah County Circuit Court Judge Maureen McKnight. She will start on 2/14/12.

City Auditor LaVonne Griffin-Valade presented five nominees to the Portland City Council for appointment to serve on CRC. New members Mr. David Denecke, Ms. K.A. Lalsingh, and Mr. Rodney Paris as well as returning members Jamie Troy and Jeff Bissonnette were appointed to serve three-year terms.

Director Baptista and Community Outreach Coordinator Konev organized a three-part orientation program was provided for new and returning CRC members.

IPR Office Manager Carol Kershner has announced her retirement after being with IPR from its inception in 2001. Ms. Kershner will be with IPR until 3/28/12.

Director Baptista and Ms. Konev attended training presented by staff members of the Criminology and Criminal Justice Police Research Institute at Portland State University on Diversity and Profiling in Contemporary Policing Training.

IPR Community Outreach

Ms. Konev attended the Portland Police Bureau Awards Ceremony and Black History Month Proclamation at Portland City Council.

Director Baptista and Ms. Konev and participated in the CRC community public forum held on 1/26/12 at East Portland Community Center.

Dr. Silver and Ms. Konev attended the Fix-it Fair at Rosa Parks School to promote the IPR's commendation/complaint process, and connect with community members of North Portland.

(See IPR Director's Report for IA caseload information and status of officer-involved shootings and deaths in custody investigation.)

CRC Chair's Report (Chair Troy)

Chair Troy has been conferring with CRC members on re-shuffling the assignment of CRC members as liaisons to specific Council members.

Old Business

None.

New Business

Chair Troy reminded CRC members that elections of CRC officers will take place at the April CRC meeting.

Consideration is being given to finding a date that CRC members will be available for the next CRC retreat.

Chair Troy reminded CRC members to call ahead of time to schedule reviews of IPR and IA cases.

Mr. Yarosh and Mr. Bissonnette volunteered to prepare the case summary for the March appeal hearing.

The following mentors were assigned to assist new CRC members: Mr. Bissonnette (Mr. Denecke), Mr. Pruitt (Mr. Paris); and Mr. Troy (Ms. Lalsingh).

The following CRC members were assigned as liaisons to the Mayor and Commissioners: Ms. Lalsingh and Mr. Troy (Mayor Adams); Mr. Pruitt and Mr. Paris (Commissioner Fish); Dr. Silver and Mr. Yarosh (Commissioner Fritz); Mr. Bigham (Commissioner Leonard); Mr. Bissonnette and Mr. Denecke (Commissioner Saltzman).

Dr. Silver attended the last Community Police Relations Committee meeting. She encouraged all CRC members to attend one or more of these meetings. The meetings are on the third Wednesday of each month from 4:30 p.m. to 6:30 p.m.

Workgroup Updates

Appeals Workgroup (Chair Troy): The workgroup met on 1/17/12, and 1/30/12, and 2/7/12. The workgroup has prepared two final protocols (5.03 and 5.16) for CRC to consider and vote on, possibly at the March CRC meeting. This will conclude the work of this workgroup, and no further meetings are being scheduled.

Outreach Workgroup (Mr. Pruitt: newly elected Chair). Dr. Silver reported that the 1/26/12 public forum was well attended and successful. Mr. Pruitt announced that the workgroup is scheduled to meet on 3/7/12 at 4:00 p.m.

Protocol Workgroup: in hiatus.

Recruitment, Retention, and Promotion Workgroup (Mr. Yarosh): The workgroup meets on the second Friday of each month. The workgroup is currently reviewing PPB retention policies. The next meeting is scheduled for 2/10/12 at 10:00 a.m. in the Auditor's Conference Room.

Recurring Audit Workgroup (Mr. Bissonnette): The workgroup is currently reviewing IPR dismissals. The next meeting has been rescheduled for 2/9/12 at 9:30 a.m. in the Auditor's Conference Room.

Taser/Less-lethal Force Workgroup (Mr. Bigham): The workgroup last met on 1/31/12 and concluded its draft report, and it is being reviewed. It is hoped that the report will be ready for discussion at the next CRC meeting.

CRC Retreat (Chair Troy): The next CRC retreat is tentatively scheduled for Saturday, 4/14/12.

Public Comment

Mr. Handelman critiqued some of the points made by Mr. Woboril in his initial presentation.

Wrap-up Comments

Mr. Yarosh thought that the recent public forum was excellent. He also commented favorably on Mr. Woboril's presentation at tonight's meeting.

Dr. Silver requested a current contact list for CRC members.

IPR Assistant Director Severe expressed his appreciation to CRC members for their service.

Adjournment

Chair Troy adjourned the meeting at 8:49 p.m.