

CITIZEN REVIEW COMMITTEE

COMMUNITY OVERSIGHT OF PORTLAND POLICE BUREAU

Candace Avalos, Chair

Message: 503-823-0146

Fax: 503-823-3530

TTD: 503-823-6868

E-mail: crc@portlandoregon.gov

www.portlandoregon.gov/ipr/53654

MEMORANDUM

Date: March 17th, 2021

To: Mayor Ted Wheeler
Commissioner Jo Ann Hardesty
Commissioner Carmen Rubio
Commissioner Mingus Mapps
Commissioner Dan Ryan

CC: Auditor Mary Hull Caballero
Ross Caldwell
Dana Walton-Macaulay
Irene Konev

From: The Citizen Review Committee

Re: Statement regarding IPR/IA Case 2019-C-0144

Summary

This matter comes to City Council for the final decision of a police misconduct allegation. After significant dialogue and two conference hearings with Portland Police Chief Lovell, the Citizen Review Committee (CRC) and the Police Bureau are at an impasse with respect to an allegation that Officer A would not take a vehicle theft report from the Appellant.

The CRC found that a reasonable person could not conclude that Officer A was following Directive 630.61 - Stolen Vehicle when he refused to file a stolen vehicle report in August 2018 as requested by the Appellant. The majority also agreed a reasonable person could not conclude that had Officer A been uncertain whether Appellant's Notice of Transaction Submitted met the requirements of subsection

1.3.1.2 of Directive 630.61, he would not have violated policy by failing to contact a Sergeant for authorization to take the stolen vehicle report as outlined in 1.3.1.8. The documentation that the Appellant provided to Officer A to prove ownership of the stolen vehicle was a stamped DMV Notice of Transaction Submitted. Specifically, the majority agreed that a reasonable person could not conclude that this did not constitute “documents from DMV indicating process of transfer of title.” Testimony from Appellant established that the document in Appellant’s possession was, in fact, the only document an individual receives from the DMV following the submission of an application to transfer title.

The Committee voted twice (first by a vote of 4-3, then by a vote of 6-1) to challenge the recommended finding of Exonerated and instead recommend a finding of Sustained.

Allegation at Issue

The sole Allegation at issue reads: Officer A would not take a vehicle theft report from the Appellant. (PROCEDURE) (Directive 630.61 – Stolen Vehicles)] Officer A’s Responsible Unit (“RU”) Manager reviewed the case file and recommended a finding of Exonerated. Upon review, the CRC concluded that a reasonable person could not have reached that finding. The CRC voted to challenge the finding and recommended a finding of Sustained.

Applicable Directive

At the time of the incident, the Directive 630.61 – Stolen Vehicles read:

POLICY

1. It is the policy of the Portland Police Bureau to recover stolen vehicles taken through criminal activity and to refrain from exercising authority in situations involving vehicles taken in civil disputes.

PROCEDURE

Reporting Upon a stolen vehicle report, members will immediately call the Auto Records Desk to insure the stolen vehicle is immediately entered into LEDS and NCIC.

Proof of Ownership

In order to accept a report on a stolen car, members will conduct a preliminary investigation. As part of that investigation ownership must be established. One or more of the following may establish proof of ownership.

a. The complainant is the registered owner (per any DMV) which is substantiated by personal identification. Telephone reports may be accepted if the complainant can satisfactorily assure the reporting officer that he/she is the registered owner via corroborating sources (i.e., familiarity with vehicle, type, make, names of other registered owners, idiosyncrasies).

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

c. The complainant has possession of a title signed for transfer.

d. The complainant has possession of a bill of sale from a licensed car dealer on letterhead, dated within the last 60 days.

e. The complainant has possession of a notarized bill of sale, for a private sale, dated within the last 60 days.

f. If the person reporting the vehicle as stolen had possession under a rental/lease agreement, the reporting person must present the valid rental/lease agreement or telephone verification by the rental company.

g. The complainant is the owner of rented or leased vehicle and has completed the requirements set forth in ORS 164.140 (demand letter, 10 or 45 day waiting period, etc).

h. In situations that do not meet the previous criteria, officers must contact a detective or sergeant for authorization to accept a report of a stolen vehicle. If unable to contact a detective or sergeant (i.e., after hours), officers must obtain approval of a supervisory sergeant. The person authorizing the report shall be documented in the report.

Relevant Facts

Appellant purchased a vehicle on July 15, 2018, and on July 24, 2018, she and the seller visited the Department of Motor Vehicles (“DMV”) in order to carry out the process of transferring the title and registration into Appellant’s name. Upon submitting her application for title and registration, Appellant was issued a “Notice of Transaction Submitted” by the DMV. This document is a yellow piece of paper that an individual receives from the DMV indicating that the process of transfer of title has been initiated, and also serves as a receipt for the transaction. It is the sole documentation provided by the DMV under these circumstances.

On August 5, 2018, Appellant reported the vehicle stolen. Officer A responded to the complaint, but did not take a stolen vehicle report. Appellant and Officer A gave conflicting accounts of which document Appellant presented as proof of ownership when trying to make the stolen vehicle report. Appellant claims she presented the “Notice of Transaction Submitted.” Officer A claims that Appellant did not present this document, but instead presented a handwritten bill of sale. Officer A refused to take the stolen vehicle report based on his belief that the documentation shown by Appellant was insufficient to serve as proof of ownership. Appellant did not have the title to the vehicle (as she was in the process of attempting to obtain a title in her name). A copy of the vehicle registration (listing the previous owner’s name) was in the glovebox of the vehicle at the time it was stolen. The vehicle bill of sale had been submitted along with Appellant’s application for title and registration, and therefore was also not able to be presented to the Officer.

Subsequently, Appellant’s vehicle was impounded in Salem, Oregon. Because Appellant was not the registered owner at this time, she was not notified within 48 hours of the impound, and a lien was placed on the vehicle. She received the lien paper in the mail and contacted the tow yard to clarify why she was not informed earlier. She was told that she had not been informed initially because the vehicle was not registered to her, but that she was able to be identified as having “financial interest” in the vehicle due to the previous owner having released the vehicle to Appellant through the DMV. Appellant was unable to pay the fee associated with the lien and lost her vehicle as a result. Appellant claims she experienced a significant financial hardship due to the loss of the vehicle and the lien that was placed on it.

CRC wants to draw Council's attention to Directive 630.61(1)(h) requirement that “in instances where the appropriate documentation is not presented or in situations that do not meet the proof of ownership criteria, officers must contact a detective or sergeant for authorization to accept a report of a stolen vehicle.” Officer A alleged

that Appellant failed to meet the proof of ownership criteria and Officer A did not contact a detective or sergeant for procedural authorization.

Officer A's Perspective

Based on prior experience, Officer A was knowledgeable about the paperwork requirements for transferring ownership of a vehicle. In his interview, Officer A stated that the Appellant only provided a handwritten bill of sale at the time that she attempted to report the vehicle stolen: "The vehicle was not registered to her. I talked to her. She didn't have the necessary paperwork. No title transfers, no registration transfers. I think all she had was like a handwritten bill of sale..." This was followed up in a Computer-Aided Dispatch (CAD) statement as part of the disposition of the call: "Comp did not have the necessary paperwork yet. Doesn't have proof of title or registration. She will call back when she does."

The only bill of sale in the case file is not notarized and therefore does not establish proof of ownership, even if it was initially provided to Officer A. Although Appellant alleges that she provided Officer A with a "temporary registration," it appears that this document is actually a Notice of Transaction Submitted (NOTS), as contained in the case file. While Officer A disputes that Appellant presented this document to him at the time of the incident, the NOTS by itself would still not establish ownership. It is merely a receipt acknowledging the beginning of the process to transfer ownership. The NOTS document specifically states that "it is not an indication of temporary registration."

Thus, Officer A alleges that he did not violate policy because the Appellant did not provide him with the documents required by the policy to establish ownership of the vehicle.

Appellant's Perspective

Appellant purchased a vehicle on July 15, 2018, and on July 24, 2018, she went to the DMV along with the person who sold her the vehicle in order to carry out the process of transferring the title and registration into Appellant's name. At that time, the seller filed an application for a replacement title as she could not find the original title to the vehicle, and Appellant filed an application for title and registration in her own name. Appellant was required to include the bill of sale along with the filled-out application in her submission to the DMV. Therefore, Appellant did not have the bill of sale in her possession at the time she made contact with Officer A to report her vehicle stolen on August 5, 2018 because she surrendered it to the DMV. Accordingly,

this could not have been the document she showed to Officer A at the time of the report. To confirm this, Appellant's Appeal Process Advisor (APA) introduced evidence that the original bill of sale was mailed back to Appellant from the DMV on March 29, 2019 -- with the document having been in DMV's sole possession during the intervening time. What Appellant provided to Officer A was not a "handwritten bill of sale," but a "Notice of Transaction Submitted" (NOTS), which Appellant's APA confirmed with the DMV is the only documentation an individual receives when submitting an application to begin the process of transferring title.

Appellant contends that the NOTS that she showed to Officer A in the course of her attempt to make a stolen vehicle report was sufficient under Directive 630.61 to establish proof of ownership as the NOTS constitutes "documents from the DMV indicating process of transfer of title" (subsection (b)). Further, if Officer A did not believe that the NOTS qualified, Appellant contends that he should have contacted a detective or sergeant as provided by subsection (h) of the Directive in order to seek authorization to take the stolen vehicle report.

As a result of Officer A's refusal to take a stolen vehicle report, Appellant was not notified promptly when her vehicle was impounded, and a lien was placed on the vehicle in the amount of approximately \$1900. Appellant was unable to pay this amount, and therefore could not recover her vehicle. Appellant has suffered significant distress in addition to the loss of the monetary investment she had made in the vehicle.

Appeals Process

On December 4, 2019, the Citizen Review Committee voted 4-3 to challenge the Portland Police Bureau's "Exonerated" finding. The Committee found that a reasonable person could not have concluded that the evidence did not prove a policy violation. The CRC recommended a finding of Sustained – meaning that the evidence in the investigative file was sufficient to prove that Officer A violated the Stolen Vehicle directive.

The Committee relied on the language in Directive 630.61 - Stolen Vehicle, which includes a provision at subsection (b) allowing community members to establish ownership by presenting "documents from the DMV indicating process of transfer of title." The PPB was unable to describe what, other than the paperwork the Appellant provided, would have satisfied this requirement. The majority of the CRC believed that a reasonable person could not have found that Appellant's Notice of Transaction Submitted did not qualify as sufficient documentation under the language of subsection (b), and as a result could not have found that Officer A did not violate the

Directive by failing to take a stolen vehicle report following contact with Appellant. Further, the CRC found that a reasonable person could not conclude that Officer A was in compliance with the Directive (see subsection (h)) when he declined to call a Supervisor to verify whether he should file the stolen vehicle report with the paperwork provided by the Appellant.

Chief Lovell disagreed with the CRC's recommended finding at a Conference Hearing held on August 5, 2020, and determined further investigation was needed by the Portland Police Bureau into the applicable DMV processes. In addition, Chief Lovell's post-Conference Hearing memo dated August 18, 2020 stated that "[t]he testimony and exhibits provided by both the appellant and the appellant's advocate added information to the case file that was not available to the Police Bureau when the original findings were proposed. Ensuring all reviewing entities have access to the same information is the hallmark of a thorough, complete, and unbiased investigation. Likewise, providing the involved officer the opportunity to respond to all evidence regarding the allegation is foundational in providing due process as required under law. In light of the disparity between the evidence available to the Police Bureau and the evidence available to the CRC, I have referred this case back to Internal Affairs for additional investigation. I expect Internal Affairs to collect this new information and conduct additional interviews, as appropriate. ... I would kindly request that you do not schedule this matter to be heard before Council, so that Internal Affairs may have adequate time to investigate."

A second conference hearing took place on February 3, 2021. The supplementary investigation conducted by the PPB into this case consisted of another interview of Officer A, during which he reiterated his position that Appellant had shown him a "handwritten bill of sale" rather than the "Notice of Transaction Submitted," and explained that he had "just skipped that whole ask-a-supervisor [process] because that would have been a no because her proof of ownership was completely insufficient" (see interview of Officer A, dated September 10, 2020). No attempts seemed to have been made to contact the Appellant for another interview; nor were the documents brought forward by the Appellant at the December 2019 hearing included in the updated investigative file, despite Chief Lovell's claim that Internal Affairs would be expected to consider this evidence. The updated investigative file also did not reflect any investigation into the relevant DMV processes. While Chief Lovell maintained that it was unclear that the paperwork submitted by the Appellant was sufficient for Officer A to file a stolen vehicle report, he did acknowledge that there was likely more that the Officer could have done to follow up in the spirit of providing good customer service. During this hearing, a retired Portland Police Sergeant gave public comment that based on her experience in the bureau as a stolen vehicle expert, calling in for authorization (as prescribed in subsection (h)) was a standard practice, and characterized Officer A's actions as "lazy police work."

The CRC voted 6 to 1 to challenge the finding. Members of the majority articulated that they believed that Officer A was shown the Notice of Transaction Submitted (rather than the bill of sale), that the Notice of Transaction Submitted was the only documentation that subsection (b) could refer to, and that per subsection (h), if Officer A believed the document fell short of proper proof of ownership, he failed to follow the Directive's provision stating that an officer "must contact" a Supervisor for authorization to take the stolen vehicle report.

The CRC member who concurred with Chief Lovell that a finding of 'not sustained' was appropriate explained that he read 630.61 as providing too much officer discretion in accepting stolen vehicle reports. In sum, the member read 630.61 as describing procedure "in order to accept" a stolen vehicle report, not procedure or conditions in which an officer *must* take a report. While the directive instructs officers to conduct a preliminary investigation, it provides an officer with broad discretion in establishing ownership as part of that investigation (i.e. "one or more of the following *may* establish proof of ownership"). Accordingly, the member believed that a reasonable person could find that there was not enough evidence showing the Officer violated the directive by refusing to accept a stolen vehicle report based on Appellant's DMV "Notice of Transaction Submitted" because it was not clear the Officer had to accept a report. The member agreed with the challenging members that the paperwork Appellant provided to the Officer was enough for the Officer to accept a report under subsection (b), or at minimum qualified as a situation where the Officer should have contacted the supervisor under subsection (h). However, the member believed that the Officer's failure to take a report, a failure that came at the expense of a crime victim's time and money, was a failure that PPB's directive appeared to permit.

Because the CRC and the Bureau were unable to agree on a finding, the matter has been referred to City Council for a final decision.

Recommendation

Based on the evidence in the case file, a reasonable person could not conclude that the Officer was following Directive 630.61 - Stolen Vehicle when he refused to file a stolen vehicle report when requested by the Appellant in August 2018. Accordingly, the CRC asks that City Council adopt the Committee's challenge to the "Exonerated" finding, and that it vote to "Sustain" the allegation.

The CRC also believes that if Directive 630.61 is interpreted (as the Police Bureau did in this case) to exclude the DMV Notice of Transaction Submitted from the acceptable proofs of ownership or transfer of ownership required in writing a stolen vehicle report, it would not only render the provision at subsection (b) seemingly without meaning (as no documents other than the NOTS are issued by the DMV to indicate “process of transfer of title”), but it would also leave individuals who are waiting for the DMV to process their paperwork without any recourse should their vehicle be stolen during that time period. This is exactly what appears to have happened to Appellant in this instance.

Given that the DMV’s process to transfer ownership can be lengthy, a community member, like the Appellant, could be left extremely vulnerable in that timeframe if PPB’s narrow interpretation of the Directive is accepted. The CRC believes that a reasonable person would interpret the Directive as providing sufficient coverage to account for situations like Appellant’s, especially when the wording of subsection (b) does not appear to have any other possible referent. Furthermore, when officers fail to follow protocol, and that failure creates harm to another, they should be held accountable. In almost every profession, if an employee fails to perform and that failure causes a loss or inconvenience to the customer, that employee would likely face a consequence. Here, Appellant made the report in good faith and suffered significant harm as a result of Officer A’s failure to follow the Directive. It is unclear why PPB evinces so much reluctance to issue a consequence to Officer A in this case (which Chief Lovell specified during the February 3 conference hearing “wouldn’t be...super significant, like days off or firing”).

The CRC additionally asks that Council directs the Portland Police Bureau to update Directive 630.61 by ensuring that it refers to acceptable documentation by name, so as to be consistent with current DMV practices and paperwork.