EUGENE CITY COUNCIL
AGENDA ITEM SUMMARY

Briefing: Quarterly Briefing to City Council from Police Auditor

Meeting Date: April 26, 2010
Department: Office of the Police Auditor
www.eugene-or.gov

Agenda Item Number: A
Staff Contact: Mark Gissiner
Contact Telephone Number: 541-682-5005

ISSUE STATEMENT
The Police Auditor is appearing before the City Council to provide an update on the annual report, Civilian Review issues, case classification issues, budgetary issues and suggestions for improvements in customer service.

BACKGROUND
The Eugene City Council is the hiring authority for the Police Auditor. On a quarterly basis the Police Auditor provides reports to the council on key issues effecting the Auditor's office and police/community relations.

RELATED CITY POLICIES
Eugene Charter and Police Auditor Ordinances.

COUNCIL OPTIONS
Offer comments and questions.

CITY MANAGER'S RECOMMENDATION
Not applicable.

ATTACHMENTS
A. Informational Report
B. Civilian Review Board Letter to the Oregon Attorney General Regarding Public Records
C. Response from the Oregon Attorney General to the Civilian Review Board

FOR MORE INFORMATION
Staff Contact: Mark Gissiner
Telephone: 541-682-5005
Staff E-Mail: mark.a.gissiner@ci.eugene.or.us

ATTACHMENT A

City of Eugene
Police Auditor

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Eugene, Oregon 97401
(541) 682-5016
(541) 682-5599 FAX
www.eugene-or.gov

To: Mayor Piercy and Councilors
From: Mark Gissiner, Police Auditor
Date: 4-26-2010
Re: Informational Report

This is my quarterly report to City Council on primary issues in the Auditor's Office. These issues are also discussed with the Auditor Supervision Team of Council President Mike Clark and Council Vice President Betty Taylor.

We continue to strive to provide excellent customer service with a recognition that often times the decisions made are not always popular. We also continue to work with the Eugene Police Department and Chief Pete Kerns to identify key issues in policies and training to improve the performance of the department and the Auditor's Office.

I. CRB Letter to the Oregon Attorney General Requesting Clarification on Public Safety Records

Recently I sent an email to each of you with attachments regarding the Civilian Review Board's request for clarification from the Attorney General with regard to public safety records (Attachment 1). Yesterday we received a letter from his office indicating that state law does not permit him to give an opinion or provide legal advice to the Eugene Civilian Review Board (Attachment 2). I believe our next step should be convening all of the interested parties to find an agreeable solution to share information with the public while protecting individual privacy.

II. Annual Report of the Auditor's Office

While I had hoped to provide an annual report by this date, it is not completed. One of my priorities when I took this job was to establish administrative policies and procedures for long term efficiency goals. While most data is entered in the complaint tracking system known as IAPro, the reports this product generates are inadequate for my needs to provide Council and the City with a comprehensive statistical analysis of complaints with key demographics identified. We did not have templates for statistical data – those needed to be developed. As we mine the data, we are finding errors in the data and are working to coordinate the data.

Each of the approximately 300 complaints must be individually scrubbed to ensure accuracy. Ms. Reynolds has been working on this project for several months and while our initial statistical reports are completed, they are now under review by all staff for accuracy. I expect that the report will be completed soon. As we begin to analyze complaints with empirical data, several issues begin to emerge, at times surprising given my experience. The average age of our complainant exceeds 40 years old. The complainants are predominantly male and many suffer from status conditions such as mental illness, homelessness and substance abuse.

Some initial key items are of interest:

- The OPA audited 15 use of force allegations. The force used ranged from ECWs (Taser), pepper spray, hands, handcuffs and one use of a K-9 (the K-9 case was opened by the Auditor and the Police Chief and one ECW case was opened by the Auditor). Other force complaints included using a blunt object. Of the 15 cases, mental health was identified as the status for 4 of the complainants, 7 were identified as homeless, and 1 was identified as ADA. Most self identified or were identified based on federal definitions, some had multiple statuses. Of the 15, 6 were identified as not having one of the above mentioned statuses.

- It appears that many complaints begin as trespassing issues in the downtown area. Some of the complainants have received dozens of trespassing arrests or citations. The question is whether there is a more comprehensive approach to the downtown and parks trespassing issues?

One statistic that should produce reconfiguration of customer service issues, is that approximately 47% of all service complaints and nearly 40% of all complaints represent complaints about basic customer service:

- Officers not responding to a house when a crime has been reported;
- Dispatchers not dispatching officers to some reported crimes if they are considered "minor" crimes;
- Response delays due to man power shortages;
- Investigations of crimes not being investigated in a time frame that a victim expects;
- Lack of traffic enforcement on the complainant's street;
- Not having greater presence in "high" crime areas.

This volume of customer service related complaints puts a tremendous strain on the operations of the Office of the Auditor and the Internal Investigations Section because of the formalized process requiring that the Office of the Auditor intake and classify all complaints. These are then forwarded to Internal Affairs for processing. With regard to service complaints, which make up nearly 80% of all complaints, this process is cumbersome, costly, and most importantly, frustrating

to residents as they must wait for the process to assign a supervisor to contact them and investigate the issue. This process most often is at least a week in length, and too often several weeks. The OPA and the Eugene Police Department need to develop a Rapid Response customer service model where the outcome is that residents will not have to wait for days or weeks to get answers to basic customer service issues.

III. Community Outreach

I continue to meet with various neighborhood associations and groups. This month I have meetings scheduled in the Cal Young and Churchill Neighborhoods, respectively.

IV. Budget

We remain diligent in our efforts to be good stewards of tax payer dollars. I am hopeful that, given our current pace of spending, we will be under budget by 5% and perhaps as high as 8 or 9%. Much of this is in the area of non-personnel spending and not having to contract for specialized services. The budget office is recommending a continuation budget which I support.

V. Police Executive Research Forum Conference

Last week I attended this conference in Philadelphia. Chief Kerns was also there. I found the conference to be an interesting learning experience. We heard a significant amount of information and experiences on Tasers, customer service and economic resource challenges.

VI. Interactions with the Police Department

We continue to work together to improve training, policies and procedures. There have been several rotational changes in Internal Affairs with Sergeant Webber transitioning to patrol and Lt. Mozan was promoted. Recently added as replacements were Sergeants David Natt and Carolyn Mason, and soon, Lt. Scott Fellman will become supervisor of the unit.

VII. Discussions and Changes in the Police Department

The Chief and I continue to meet formally on a weekly basis as well as less formal discussions as issues arise. In addition, The Deputy Auditor and I meet with command staff and internal affairs staff to discuss cases. The process changes discussed in previous reports are being implemented and seem to be working. We continue to keep in place a process where on major incidents, the Chief contacts the Auditor and a case can be opened prior to the receipt of an official complaint.

We continue to work with the Chief and senior managers to identify ways to improve major policy and procedures issues for recommendation to the Police Commission. Examples include a review of the use of canines, warrantless entry into homes and use of the Taser in light of the recent decisions by the 9th U.S. Circuit Court of Appeals.

Previously I mentioned some concerns about officers making arrest decisions on non-violent misdemeanor calls for service when the officers did not witness the commission of a misdemeanor. These concerns have been discussed with the command staff and, at least from what I am hearing, in some instances officers are taking reports at the scene and providing them to the prosecutor's office for decision rather than trying to decide at the scene which conflicting version is more credible.

VIII. CRB

The CRB has remained intact and works well together. While they do not always share the same opinions on cases, they engage in thoughtful dialogue and do make decisions. Two primary issues remain of concern, the public records issue as indicated above and the "closed cases" issue. These issues will be discussed by them when they present their annual report to Council in June.

IX. Complaints

Last time I reported a slight reduction but now we are on pace for being about the same for last year. We had a large number of complaints in March which impacted our abilities to do other things. As indicated above, I hope that we can find more efficient solutions for some of the customer service issues raised by residents.

Also, recently I dismissed a complaint because it exceeded the six month time frame to file a complaint. According to Section 2.456 (1) (j) under Office of the Auditor – Complaint Processing:

> "Except for good cause, complaints of serious misconduct including, for example, excessive force that causes substantial physical injury, egregious acts of disparate treatment, or major rules violations shall be filled within the six months of the incident."

If you have any questions, please call me at 682-5005.

Civilian Review Board

Kate Wilkinson, Chair
Tim Laue, Vice Chair
Bernadette Conover
Snell Fontus
Marisa Mendoza
Steve McIntire
Eric Van Houten

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April 5, 2010

Mr. John Kroger, Esq.
State of Oregon Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon, 97301

Dear Attorney General Kroger:

On behalf of the City of Eugene Civilian Review Board (CRB) we are writing to seek clarity on issues involving the release of records to the public in investigative complaint cases reviewed by the CRB.

As Eugene considered the development of a model for civilian oversight, the concept of transparency was one of the primary principles emphasized. Legal opinions used in the development and implementation of the model clearly indicated that by choosing a "closed case" form of review the CRB could discuss and make available investigative files in cases that were found to be "unfounded," "within policy" or "not sustained" and where no discipline was imposed.

The CRB is covered under four governing layers: by City Charter, by Council Ordinance, by a Labor Contract with the Eugene Police Employees Association (EPEA) and by collectively bargained protocols between the City, the Police Auditor and the EPEA.

The goal was to have those records made publicly available to show the "thoroughness, completeness and absence of bias" in the complaint investigation. Or, on the other hand, to indicate where the Board felt the investigations did not meet those same standards.

Now we are informed by the Eugene City Attorney that such is not the case, citing another statute that was not considered at the time the Council put the initial charter amendment before the community. Nor was the Council informed of the implications of the statute at the time. In part, that letter from the Eugene City Attorney's office to the CRB states:

> ***"In sum, between ORS 181.854 and 192.501(12), unless an exception applies, records related to a personnel investigation of a public safety officer are exempt from disclosure, whether or not discipline is imposed."***

In our view, the result of this is that the public will continue to remain in the dark regarding "quality assurance" of police complaint investigations and will be forced to rely upon the Board's determination of the "thoroughness, completeness and absence of bias" in complaint investigations.

The Eugene City Attorney refers to exceptions in the statute but was not specific about what they are. In fact, there are four in ORS181.854(3):

> ***(a) When the public interest requires disclosure of the information.***
> ***(b) When the employee consents to disclosure in writing.***
> ***(c) When disclosure is necessary for an investigation by the public body, the Department of Public Safety Standards and Training or a citizen review body designated by the public body.***
> ***(d) When the public body determines that nondisclosure of the information would adversely affect the confidence of the public in the public body.***

We believe (a) and (d) are exceptions that apply to the work of Eugene's Civilian Review Board, and we seek an opinion of the Attorney General with regard to these matters, particularly as it relates to public disclosure in relation to the two exceptions [(a) & (d)] of ORS 181.854 and whether they may apply to Eugene's Civilian Review Board. Once we have that opinion to consider, we can decide on the next steps for the Board.

We believe the current State of Oregon public records laws provide no consistent standard for the release of administrative public safety records. Rather than well defined state requirements, the current laws seem to rely on subjective decisions by each respective jurisdiction. What may be considered of "significant public interest" in say, Medford, may not be considered of "significant public interest" in Salem. Public record laws should be State wide and clear. Relying on the subjective decisions of local governments erodes the confidence of citizens in their government because transparency is not clearly defined.

We also seek clarity as to who is authorized to release the records. In the case of the CRB, we are tasked with reviewing police investigative files and a few documents generated by the Police Auditor for the City of Eugene. Thus, with the vast majority of administrative records on police complaints, those records are generated by the Eugene Police Department. As the generator of an administrative record, is the Eugene Police Department the only entity authorized to release the record or, once in the possession of the CRB or Police Auditor, are they authorized to release to the public records originally generated by the police?

The final issue we seek clarity on is whether any collective bargaining agreements take precedence over state public records law. Currently in place is an EPEA contract and negotiated protocols that include clauses with regard to confidentiality and the public discussion of citizen complaints and administrative processes and decisions as a result of these complaints. We believe that this is an important question to be answered as well.

Our process to provide the public with printed material of police department administrative investigations would include redacting individual names and places so that the individual identities are more easily protected.

In the attachments are nine opinions of the City Attorney's office related to the development and implementation of the model of civilian oversight in Eugene. Four of these opinions are particularly pertinent to the discussion we had concerning closed case public records and bargaining issues at the last meeting:

City Attorney Opinion dated March 1, 2005 [Pages 49-53 in attachment]
- Attorney opinion on impact of the Public Employees Collective Bargaining Act on civilian review.

City Attorney Opinion dated June 7, 2005 [Pages 36-45 in attachment]
- Attorney opinion on legal issues related to Eugene's model of civilian oversight

City Attorney Opinion dated July 8, 2005 [Pages 31-35 in attachment]
- Attorney opinion on legal issues related to Civilian Review Board requiring reopening of closed case investigations.

City Attorney Opinion dated June 29, 2006 [Pages 23-28 in attachment]
- Attorney opinion on legal issues related to Civilian Oversight Ordinance Framework and Mandatory Subjects of Bargaining.

Of the four the opinion dated June 7, 2005 provides the best overview. Below we have also listed the Oregon Statutes and court rulings cited in these opinions.

<u>Statutes relating to issues of public records</u>
- Oregon Public Meetings Law
  - ORS.192.610(3); ORS.192.501(12); ORS.192.630(1)(3)
  - ORS 181.854 (most recently brought to our attention)

<u>Court rulings relating to issues of public records</u>
- *City of Portland v. Rice,* 308 Or 118, 775 P2d 1371 (1989)
- *City of Portland v. Anderson,* 163 Or App 550, 998 P2d 402 (1999)
- *City of Portland v. Oregonian Publishing Co.,* 2005 WL 1283302

<u>Statutes relating to issues of collective bargaining</u>
- Public Employees Collective Bargaining Act
  - PECCBA, ORS 243.650 through 243.782
    - 243.672 (1)(e); 243.656; 243.650(7) (a-f)

<u>Rulings relating to issues of collective bargaining</u>
- *OPEU v. State of Oregon,* ERB UP-71-93, 14 PECBR 746 (1993)
- *Assoc of Oregon Corrections Employees v State of Oregon,* ERB UP-91-93, 14 PECBR 832 (1993)

Portland Firefighters Association, Local 43 v. City of Portland, ERB UP-99-94, 16 PECBR (245) 1995
• *Springfield Police Association v. City of Springfield,* ERB UP-28-96, 16 PEBCR 712 (1996)
• *Gresham Grade School District No. 4,* ERB C-61-78, 5 PECBR 2771 (1980)
• *Springfield Police Association v. City of Springfield,* ERB UP-37-94, 15 PEBCR 325, 332 (1994)

We look forward to your opinions on these important issues. We believe that to best ensure transparency and confidence in our governing bodies, public records laws in Oregon need to be better defined and less subjected to the current decentralized decision making at the local level. It is in the best interest of our state to provide as public records all administrative documents that do not expose personal information such as social security numbers, home addresses, etc. of our public safety forces. It is not our intent to expose individual public safety officials to embarrassment or exposure of mistakes. Rather, we believe that a broader public records mandate provides citizens the opportunity to review how government offices operate administratively.

Our liaison in this matter is Mark Gissiner, Eugene Police Auditor, 800 Olive Street, Eugene, Oregon, 97401; phone: 541-682-5005. He is available at your convenience if you have any questions or need additional information.

We look forward to your response.

Sincerely yours,

Kate Wilkinson, Chair
City of Eugene Civilian Review Board

JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

1162 Court Street NE
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Telephone: (503) 378-4400

April 14, 2010

Kate Wilkinson, Chair
Eugene Civilian Review Board
800 Olive Street
Eugene, OR 97401

Dear Ms. Wilkinson:

We have received your letter dated April 5, 2010. It appears you are requesting an opinion from the Attorney General. Unfortunately, state law does not permit us to give an opinion or provide legal advice to the Eugene Citizen's Review Board.

Thank you for contacting the Oregon Department of Justice.

Sincerely,

TONY GREEN
Director of Communications and Policy

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