

CITY OF EUGENE

Eugene Civilian Review Board Annual Report

2012



EUGENE CIVILIAN REVIEW BOARD

2012 ANNUAL REPORT

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Introduction

Ordinance 20374 which enables Eugene's Civilian Review Board, requires the Board to "...prepare and present an annual report to the city council that:

- (a) Summarizes the civilian review board's activities, findings and recommendations during the preceding year;
- (b) Assesses the performance of the police auditor...; and,
- (c) Evaluates the work of the auditor's office, including whether the office is functioning as intended." [ORD 20374; 2.246 (7)]

Eugene's Civilian Review Board (CRB) is designed to provide transparency and help ensure public confidence in the police complaint process. The Board evaluates the work of the independent Police Auditor, and reviews complaints to provide a community perspective about whether complaints are handled fairly and with due diligence.

During case reviews, Board members discuss, deliberate and analyze the Internal Affairs investigation, Auditor's monitoring of the Eugene Police Department's (EPD) internal administrative investigations and have the opportunity to discuss, agree or disagree on the supervisor's recommended adjudication, the chain of command's recommended adjudication, the Auditor's recommended adjudication and the Chief's final adjudication. The review of the investigations may include, but are not limited to: reviewing investigative files, listening to digital recordings of interviews and live audio from the scene of an incident, and observing videos related to complaints. We decide whether we agree with the classification of the complaint and have the opportunity to review policy and service complaints classified as something other than an allegation of misconduct. Service Complaints are complaints about: "...Police employee performance or demeanor, customer service and/or level of police service" [ECC 2.452]. Generally, service complaints are referred to an involved officer's supervisor who reviews the issue and follows up with both the complainant and the officer. The supervisor prepares a memo detailing their review of the complaint and contact with the involved parties. The OPA reviews the materials for completeness and thoroughness, and then contacts the complainant for a follow-up and a survey. CRB reviews of service complaint files do not contain the same level of detail found in the investigative files related to allegations of misconduct. Nonetheless, we try to make a practice of reviewing service and policy complaints during at least one meeting per year. Further, each month we receive information regarding all complaints received by the OPA (including inquiries, service complaints, and policy complaints). Questions regarding the classifications of such complaints are posed to the Auditor during board meetings.

Our meetings are open to the public and provide an opportunity to learn about the complaint process. While we are committed to maintaining the confidentiality of the involved parties, discussing complaints in public allows the community to learn about the complaint intakes, classifications, investigations and determinations as they are discussed openly and critically.

In addition to case reviews, the CRB engages in continuous learning associated with police practices, civil rights, constitutional based policing practices, and interactions with vulnerable communities. The efforts in continuous learning prove beneficial to the Board's overall approach to its mission by ensuring a comprehensive understanding of relevant processes and community factors influencing various decision makers and affected parties.

Finally, the Board also considers and discusses current policies and practices and whether or not revisions seem appropriate. These policy recommendations are channeled to the Police Commission and the Police Chief through the CRB's appointed representative to the Police Commission. As a result of the CRB's recommendations, a number of policy changes have been implemented by EPD over the years.

Please allow us to express our appreciation to the City Council, the Police Auditor, the Eugene Police Department, and the larger Eugene community for the confidence entrusted in us. All of us on the Board are proud to participate because we believe in the strength and the potential of Eugene.

Thank you for the opportunity to be of service.

Sincerely,

Steve McIntire
Board Chair

Bernadette Conover
Board Vice-Chair

Mission Statement

It is the mission of the Civilian Review Board to provide fair and impartial oversight and review of internal investigations conducted by the City of Eugene Police Department into allegations of police misconduct, use of force and other matters that have an impact on the community. The Board will strive to build trust and confidence within the community and to ensure that complaints are handled fairly, thoroughly and adjudicated reasonably. The Board will encourage community involvement and transparency in order to promote the principles of community policing in the City of Eugene.

2012 Overview

The CRB is required to meet four times a year. The CRB met twelve times in 2012. There were ten public meetings, one exclusive tour of the Forensics Section and Property Control Room that was not open to the public, and one meeting in which the CRB reviewed the performance of the Auditor's office. The CRB reviewed thirteen case files involving **allegations** of use of force, constitutional rights violations, courtesy, misconduct, truthfulness, judgment, abuse of position, insubordination, a service complaint related to officer performance, two policy complaints, one complaint regarding the use of pepper spray and one complaint regarding a vehicle pursuit. Some cases involved multiple allegations and/or multiple officers.

The Board (with the help of the Office of the Police Auditor) identified policy concerns to be communicated to the Police Commission and the Eugene Police Department.

Case Review Summaries

In preparing for a case review, Board members have complete access to the Internal Affairs investigative file. These materials include call logs, correspondence, in-car videos and digitally recorded interviews of complainants, officers, witnesses and others with potentially relevant information.

Board members review file materials, the fact-finding report prepared by the Internal Affairs investigating officer, along with the Adjudication recommendations of the Auditor, the Supervisors and the Chief of Police. During our reviews the IA investigator is available to answer questions about the complaint investigation. The Lieutenant who supervises Internal Affairs is also available to answer questions regarding department practices, policies and procedures.

The Board follows a case review process delineated in its Policies and Procedures Manual. The Board reviews each case by evaluating and commenting on the complaint handling through the following steps:

1. Auditor's case presentation,
2. Complaint intake and classification,
3. Complaint investigation and monitoring,
4. Relevant department policies and procedures,
5. Policy and/or training considerations,
6. Adjudication recommendations, and
7. Additional comments and/or concerns.

A brief summary of the 2012 individual case review follows.

January 2012: The Board reviewed an allegation of use of force, courtesy, unbecoming conduct and truthfulness relating to a complaint that an officer unnecessarily leg swept an arrestee just prior to lodging at the Lane County Jail. The complaint was initiated by the Lane County Sheriff's Office. Upon careful review of the evidence, it was determined the arrestee was not leg swept. EPD adjudicated the matter as unfounded. The Auditor agreed with the adjudication as did the CRB.

February 2012: A resident initiated an allegation that an officer violated his constitutional rights when he was arrested by not having reasonable suspicion to stop and detain him and used excessive force when effecting his arrest by using pepper spray and by causing a head injury. EPD adjudicated the allegations as either unfounded or within policy as to the constitutional violation and within policy as to use of force. The Auditor concurred with the adjudication as did the CRB. It was determined that the head injury occurred when the citizen fell down while in custody of the Lane County Jail. There was additional discussion about the experiences of the CRB with regard to operational issues involving In Car Videos (ICV). While it was recognized that the devices are not the only evidence to consider, often times they do provide evidence of value when adjudication decisions are reviewed. Lt. Fellman of EPD indicated that new units are on order.

March 2012: The CRB reviewed a complaint from a resident who alleged that officers used excessive force against him. The Auditor added an additional allegation that the officer failed to properly care for his arrested person when the officer removed the man from the car to better restrain him and tipped him over causing the man to strike his head on the pavement. Officers arrested two men who were brawling at Kesey Square. One of the arrested men complained that officers used excessive force to effect the arrest. When placed in the patrol vehicle, that man intentionally and repeatedly hit his head against the plexiglass divider. Officers removed him from the vehicle to better restrain him. Once outside the cruiser, the reporting party, while on his knees, was ordered to the ground and given a slight push to the shoulder area. This caused the handcuffed reporting party to fall forward, striking his head on the sidewalk, and causing a contusion. The portion of the complaint involving excessive force was unfounded. The issue of performance with regard to the care of the arrested was adjudicated by all parties as sustained as the officer was held accountable for the safety of his prisoner. While the push to the shoulder was light, and it is possible that the reporting party assisted in his own fall, the officer has responsibility for ensuring the safety of his arrestee. The CRB agreed with the adjudication recommendations. The CRB did observe and discuss the Reporting Party injuring himself by banging his head violently against the Plexiglas divider while seated in the patrol car and what could be done to minimize self-injury in such situations. The CRB was assured command staff discussed this concern at defensive tactics training.

April 2012: A complaint was filed concerning alleged racial profiling resulting in a traffic stop. The Auditor classified the allegation as one of misconduct, constitutional rights/discrimination and IA investigated the complaint. The driver could not be seen from the ICV within the patrol car and it was determined the driver was speeding in a school zone. The investigation included a time/speed analysis and a review of the officer's past performance in issuing citations. We recognize that officers have discretion in issuing a citation. Once approaching the vehicle, there is no way to determine whether the discretion to issue the citation was based on any other factor other than probable cause existed that a speeding violation occurred. The matter was adjudicated as unfounded by EPD. The Auditor's office and the CRB concurred with the adjudication.

May 2012: The CRB reviewed two separate cases involving allegations of misconduct. One regarding the treatment of a DUII resident in custody and one officer involved automobile pursuit.

1. A resident complained that she was denied the opportunity to use the bathroom when she was in custody of a male officer on a DUII arrest, causing her to urinate in her pants while handcuffed. The specific allegation was performance – judgment: that the officer failed to take proper care of a subject in his custody. The supervising sergeant recommended that the complaint be unfounded, the supervising lieutenant recommended a finding of within policy, and the supervising captain recommended a sustained finding. The Auditor and the Chief agreed that the allegation should be sustained. While the officer reassured the complainant that after he concluded the DUII processing she could use the bathroom, and after receiving advice from a fellow officer, he continued to process the DUI. It was recommended by the Auditor and decided by the Chief that the officer needed to make reasonable accommodation to the complainant to use the bathroom when her need was clearly articulated and there were options available to the officer. After a lengthy discussion, the majority of the CRB (in a 3-2 vote) agreed with the sustained finding. A concern of the Board was the officer conferred with a more experienced peer officer and did not appear to act with malice. The IA representative shared there was much discussion among EPD employees and opinions varied greatly, thus needing attention by command staff. The Board suggested this issue be studied by command staff to see what changes to policy would be appropriate.
2. The CRB also reviewed a pursuit (internally reported) which was found to be a violation of policy. Two officers were dispatched to a call of a vehicle with stolen plates leaving a store; the officers initiated and continued the pursuit despite poor conditions and an identified suspect. Several violations of the pursuit policy were alleged, including initiating in violation of policy, continuing after the suspect began driving dangerously, failing to broadcast critical information, and broadcasting inaccurate and inadequate information. The case also included allegations of poor judgment (for engaging in the pursuit) and insubordination (for failing to immediately comply with a supervisor's order to terminate the pursuit). The Auditor and the EPD chain of command agreed that the pursuit policy violations were sustained and the insubordination allegation was unfounded. On the judgment allegation, the supervising sergeant recommended that the allegation be unfounded; the command staff, and Auditor recommended sustained, the Chief concurred with the sustained allegation.

July 2012: The CRB reviewed two cases in July:

1. The CRB reviewed a case alleging an officer violated the abuse of position policy. The case concerned an allegation that an arrest was made for a noise violation when no noise was occurring when the officer arrived and that the officer had a personal relationship with the neighbor, an employee of the Eugene Fire Department. The Board discussed at length the policy surrounding arresting someone for noise based on a complaint when the noise is not present upon officer arrival. In this particular matter, the board concluded there was no abuse of discretion but a number of board members questioned whether the arrest made sense under the totality of the circumstances with so little investigation and lack of observed noise at time of contact and whether command staff should consider a policy that would require observed violation as a condition to arrest for low level misdemeanors.

The Board also discussed classification and that if the matter had been classified as judgment rather than abuse of position, the outcome might have been different. Finally, the Board

noted there was a language barrier between the arrested party and the officer and suggested it might have impacted the officer's discussions with the arresting party.

2. A second reviewed complaint was received from a reporting party who had been protesting outside of a social service agency. An officer responded and tried to direct the reporting party away from where he was protesting under threat of being arrested for trespassing. There was some discrepancy as to whether the officer told the reporting party he could not protest where he was standing. By law, since the man was standing on a public easement, he was permitted to protest there. The reporting party complained that the responding officer was discourteous during the contact. The discussion between the Officer and the complainant was heated and loud. Eventually, the complainant left the scene. It was later determined by the second officer that the complainant had a lawful right to protest in that location because it was City property. The Auditor's Office and the EPD chain of command recommended that the allegation be sustained, and the Chief concurred. The CRB also concurred with the sustained finding.

September 2012: In September, the CRB held a joint meeting with the Police Commission and reviewed a case wherein a complainant alleged that an Officer lacked reasonable suspicion to detain her and lacked probable cause to charge her with trespassing. The matter was classified as a constitutional rights violation as well as report preparation and submission. The reporting party alleged that her constitutional rights were violated and that the officer falsified information on his police report.

The Board's discussion focused on arresting for trespass when the complainant placed her foot on a wall while observing a protester being arrested. The complainant was told to move along and was eventually arrested for trespassing. The Board discussed the reasonableness of the arrest under the circumstances and the inconsistencies of the various reports filed by witness officers. On the first allegation, the Auditor initially recommended a finding of sustained, as his office did not find that the officer had reasonable suspicion to detain the subject for the crime. However, the prosecutor reviewed the case and found that the officer had probable cause to arrest for trespass (which is a higher standard than reasonable suspicion). Following the prosecutor's finding, the Auditor recommended a finding of within policy and EPD chain of command recommended unfounded. The Chief adjudicated the allegation as unfounded. The Auditor and EPD chain of command concurred that the second allegation be adjudicated as insufficient evidence (the investigation, while thorough, did not uncover sufficient evidence to support any other adjudication). The CRB concurred with the Auditor's recommended adjudications. A number of the members of the Board felt that the situation could have been deescalated through dialogue rather than resulting in arrest. In fact, at least one Board member opined that while the arrest was technically lawful, the complainant's actions did not meet the standard for enforcing the law. Ultimately, the Board agreed with the recommendation of within policy and unfounded as to the report writing.

October 2012: The CRB reviewed an allegation and a policy complaint, respectively.

1. The allegation arose out of a pedestrian violation. The reporting party alleged that an officer racially profiled her daughter by stopping her and issuing a citation; she also alleged that the officer was discourteous to both of her daughters. On the first allegation, the Auditor recommended a finding of insufficient evidence; the EPD chain of command recommended unfounded. The Chief adjudicated the allegation as unfounded. On the allegation of

discourtesy, the Auditor, EPD chain of command, and Chief Kerns agreed that the allegation was unfounded. The CRB agreed with the adjudication recommendations.

2. The policy complaint was related to EPD's response to Occupy protest at Bank of America. Investigation showed that incident could have been handled better but was handled within policy. The CRB agreed with the auditor's classification, as well as the finding that the response conformed with EPD policy.

November 2012: The CRB reviewed an Auditor initiated investigation into the use of physical force and OC spray during the arrests of two women after a demonstration. The allegations included: use of force: a violation of the OC spray policy, violation of the Taser policy (threatened), and a violation of the use of Taser policy (threatened).

One of the arrestees had a mild confrontation with an officer who was handing out police stickers to children. One of the arrestees told the officer not to hand her child a sticker and slapped the officer's hand away when he tried to hand her child a sticker. The two women left the park blocks and were confronted by officers whereupon they were eventually arrested.

The investigation and adjudication were complicated by the involved officer retiring before completion of the adjudication. Members of the Board noted there was an opportunity to deescalate this matter, which may have very well resulted in a different conclusion. At least one board member opined the lesson to be learned was not what the officers did after they got to the scene, but how they could avoid the use of force in the future.

The Board also discussed the problems associated with the use of ICVs or the lack thereof. At least one officer at the scene continued to advise other officers he was "hot", meaning his ICV was on and ask whether or not he should turn his ICV off. Several officers responded that he should leave it on. The Board noted there have been some inconsistencies with use of the ICV. Consistent use and functionality can go along way in resolving complaints including exonerating officers wrongfully accused or identifying misconduct. We remain appreciative that it is one piece of evidence, rarely all inclusive in adjudicating complaints.

The Board commended Chief Kerns on his observations that EPD missed an opportunity to successfully manage a challenging group of protestors.

The Board agreed with the adjudication recommendation of within policy; however, a majority of the Board members agreed with reservations and discussed how the officers missed an opportunity to improve community relations with this particular group of residents.

December 2012: The CRB reviewed an internally generated (a sergeant) complaint alleging unbecoming conduct and improper use of force by an officer during his detention of a juvenile related to a burglary. The allegations included unbecoming conduct and use of force.

During the arrest of a juvenile, the juvenile became antagonistic and the officer lifted him up from a seated position in an aggressive manner. The Board agreed with EPD and the Auditor sustaining the allegations of unbecoming conduct and use of force.

During the Board's discussion it was noted the Supervising Sergeant's initial adjudication memorandum was not credible and was discredited by command staff. The Board and the Auditor were confused and disappointed that the Sergeant's Memo was so contrary in the face of

overwhelming evidence and suggested there be some training discussions surrounding adjudication memorandums.

Civilian Review Board Training

Members of the Eugene Civilian Review Board have differing life, cultural, professional and educational backgrounds and varying degrees of exposure to law enforcement and corrections professionals, municipal government operations, the criminal justice system, and the full and diverse range of communities served by local law enforcement agencies. The Board recognizes it is important to receive balanced training from a variety of sources both inside and outside the law enforcement.

In 2012 our training came from a variety of sources including social service agencies, mental health professionals, outside consultants and the Eugene Police Department. Generally a training session occurs at regular meetings and the topics and presenters are selected by the Board in advance. The training sessions included:

- February: Kids First presentation (District Attorney's Office)
- March: 1. Eugene Mission tour with Mission staff.
2. CRB policy discussion about an officer's responsibilities when arrested persons are refused at the Lane County Jail based on a nurse's evaluation.
- June: Tour of the Forensics Unit and Property Control Rooms
- September: Discussion of the annual reports of the Police Auditor, Internal Affairs and Police Commission.
- October: Tour of the new EPD facility.
- November: Report by the Auditor on the National Association for Civilian Oversight of Law Enforcement (NACOLE) annual conference.

Identified Policy, Procedure and Training Concerns

Eugene's model of oversight includes the CRB as a quality assurance oversight body to evaluate and comment on the work of Office of the Police Auditor and review and comment on some Internal Affairs investigations arising out of complaints and allegations of misconduct. It also includes providing a CRB as a representative to the Eugene Police Commission as a policy body to evaluate and address policy concerns, some of which have been identified by the CRB arising out of its work. The CRB has a representative on the Human Rights Commission. In 2012 both the Auditor's office and the department helped the Board identify concerns that were passed along to the Police Commission and the Chief.

Protection from self-inflicted injuries – During one of the Board's case reviews it was observed that an arrestee was banging his head violently into the plexi-glass of the patrol car and it was suggested the policy be reviewed.

Use of Facilities –The Auditor and the Board requested EPD review its approach to arrestees in distress and needing the use of restroom facilities, particularly female arrestees in the custody of male officers.

Arrest for low-level misdemeanor without observed violation – The Board suggested that EPD consider the appropriateness of arresting or citing someone for low level misdemeanors where no violation is observed by the officers.

De-escalation – The board continues to suggest that EPD work to improve de-escalation as a tool over escalation.

In addition to those mentioned above, the Board regularly seeks clarification regarding procedures and practices that evolve out of case reviews and training discussions. On occasion these result in suggestions to the department for improving services.

Evaluation of the Office of the Police Auditor and the Auditor's Performance

By ordinance, the CRB “shall evaluate the work of the auditor’s office...” and shall “establish criteria by which to evaluate the work of the police auditor.” Six members of the CRB completed written reviews of the police auditor and the work of the Office of the Police Auditor, as did Lieutenant Fellman and Nate Reynolds of the EPD Office of Professional Standards and the Chief of Police. At a special meeting the Board discussed those evaluations with Mr. Gissiner in executive session. The evaluation criteria were along seven dimensions.

The OPA and the Auditor’s performance were rated in each dimension and individual comments and suggestions for improvement were included in the evaluation. The 2013 evaluation is included in the evaluation for Council in its evaluation scheduled for June 2013.

The Board previously sent the information to the Council in its performance evaluation packet in June 2012. The entire package is available upon request. Overall eight dimensions were evaluated. In those dimensions the Auditor’s office met or exceeded expectations. Points of emphasis include continued efforts to strategize how to get additional community engagement in the processes.

Conclusions

We have an engaged and thoughtful civilian review board that invests considerable personal time to participate in and evaluate the police oversight processes in Eugene. They are the community’s representatives in analyzing the internal administrative personnel processes of EPD and the external monitoring and complaint intake processes of the Auditor’s office. The CRB conducts open and transparent public meetings on case review, policy considerations and training issues. As one example of their dedication, in 2012, the CRB met eight more times than the minimum requirements of the Ordinance. At most meetings, the entire board is present. The CRB must evaluate difficult personnel and policy issues that impact community members and sworn police personnel. They have been complimentary, critical, inquisitive and decisive. It is an honor and privilege to serve the community of Eugene. In 2012 Eugene’s system of civilian oversight continued to evolve and develop. We look forward to continuing our work and we are committed to improving our processes in service of the community.