



EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY

Work Session: Eugene Civilian Review Board 2010 Annual Report

Meeting Date: October 17, 2011
Department: Office of the Police Auditor
www.eugene-or.gov

Agenda Item: A
Staff Contact: Mark Gissiner
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ISSUE STATEMENT

This agenda item is for the council to discuss the 2010 Civilian Review Board Annual Report which was issued in May of this year.

BACKGROUND

Section 2.246(7) Ordinance 20734 establishing the Civilian Review Board states:

The civilian review board shall 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 consistent with section 2.244(7); and*
- (c) Evaluates the work of the auditor's office, including whether the auditor's office is functioning as intended.*

At this meeting the Civilian Review Board will present its 2010 Annual Report which was transmitted to the council in May of this year.

ATTACHMENTS

- A. Civilian Review Board 2010 Annual Report

FOR MORE INFORMATION

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CITY OF EUGENE

Eugene Civilian Review Board Annual Report

2010

30 May 2011



EUGENE CIVILIAN REVIEW BOARD

2010 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 may review complaints to provide a perspective about whether complaints are handled fairly and with due diligence.

During case reviews Board members discuss, deliberate and probe the Auditor's monitoring of the Eugene Police Department internal administrative investigations. We review the investigative files, listen to digital recordings of interviews and observe available videos related to complaints. We may comment on the Auditor's recommended adjudications as well as those of supervisors and the Chief. 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.

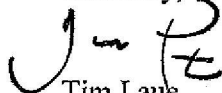
A Board emphasis for 2010 was ongoing and complimentary training relating to police practices, civilian rights and interactions with vulnerable communities. We generally devote an hour of our monthly meeting to Board education and training.

This is the second year of our work with an expanded Board of seven members. Unfortunately, due to circumstances beyond their control, two members have been unable to continue their service and we currently have vacancies in the positions previously held by Kate Wilkinson and Marisa Mendoza. We miss their participation and perspectives and would like to express our thanks and appreciation for their service.

We continue to work to increase transparency and public confidence. Board members volunteer a substantial amount of time and effort in this endeavor. We 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,



Tim Laue
Board Chair



Steve McIntire
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.

2010 Overview

The Civilian Review Board met ten times in 2010. It reviewed seven case files involving allegations of misconduct and four service complaints related to officer performance. The Board continued to refine its practices and procedures to improve its performance and achieve its mission.

Of particular emphasis for 2010 was continued training of Board members on issues, policies and procedures affecting officers in the conduct of their duties and members of the community in interactions with the department. Board training is of particular importance because the membership has varying levels of experience coming from different backgrounds.

Lastly, the Board identified (with the help of the Office of the Police Auditor) policy concerns to be communicated to the Police Commission that have emerged during discussions and deliberations.

Case Review Summaries

In preparing for a case review, Board members have complete access to the IA investigative file pertaining to the complaint allegation. This material includes call logs, correspondence, in car videos and digitally recorded interviews of complainants, officers, witnesses and others with potentially relevant information.

The Board reviews the 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 at the Board meetings the IA investigator is available to answer questions relating to the complaint investigation. The Lieutenant who supervises the Internal Affairs office 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 where the Board reviews the 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 synopsis of the 2010 individual case review follows.

February 2010: *This case involved two officers' detention of two non-English speaking students (including use of the Taser on one of the men). The Board found the intake and classification to be appropriate under the practices as defined by the ordinance, although some concerns were voiced regarding the Auditor's decision not to designate the complaint as a "Community Impact" case. The Board found the investigation and monitoring of the case to be thorough, complete and unbiased; and the relevant policies considered. The Auditor identified (and the Board concurred) that policies relating to search and seizure be reviewed, particularly as it relates to 'warrantless entries.' Chief Kerns had already initiated such a review by the time of our meeting.*

The Auditor recommended that the allegations of excessive use of force and unauthorized use of the Taser be sustained against one of the involved officers (the Auditor recommended that all other allegations be adjudicated as "within policy"). Chief Kerns adjudicated all allegations as "within policy." The CRB unanimously agreed with the Auditor's recommendations, but members disagreed regarding Chief Kerns' adjudication. Members unanimously agreed with Chief Kerns' adjudication that the following allegations were within policy: (1) 304.4 Search Warrants, (2) 308.4 Preliminary Investigations, (3) 501.1 Arrests, and (4) 1101.1.B.6 Constitutional Rights. Members unanimously disagreed with Chief Kerns' adjudication of the allegations of use of force and unauthorized use of the Taser. A majority of the Board agreed with the Chief's adjudication that the officers' actions were within POM 368.1 Limited English Proficiency.

March 2010: *In this case, officers used force in the arrest of a woman for disorderly conduct and interception of communication. The Board found the Auditor's intake and classification to be appropriate. The Board found the investigation and monitoring of the case to be thorough, complete and unbiased; and the relevant policies considered.*

The Auditor agreed with the Police Chief's adjudication that (1) the officers' use of force was within policy, and (2) the allegations that the officers and sergeant involved were in violation of POM 1101.1.B.9.b(1) Lack of Knowledge of the Law were sustained. The CRB unanimously agreed with the Auditor's and Police Chief's decision and expressed appreciation for the thoroughness of the IA investigation.

April 2010: *Three officers responded to an incomplete 9-1-1 call and entered and searched a house without a warrant or consent. The Board found the intake and classification to be appropriate. The Board found the investigation and monitoring of the case to be thorough, complete and unbiased and the relevant policies considered.*

The Auditor recommended to the Police Chief that insufficient evidence supported the allegations of violations of constitutional rights, but that the officers' actions violated the policy on performance, and therefore a service complaint on performance should be sustained. The Police Chief found that the officers' actions were within policy. The CRB agreed with the Auditor that the officers should have communicated more with the homeowners regarding the reasons for the search.

July 2010: *(4 Service Complaints): The CRB reviewed four service complaints: (1) where an elderly woman complained of her treatment by EPD officers; (2) where an off-duty officer observed a woman driving and delivered a reckless driving ticket to her three weeks later; (3) where the complaint felt he was harassed by an officer in the downtown area when he received a ticket for trespassing; and (4) where the police, looking for a robbery suspect, identified and questioned a woman whom they believed knew the suspect's whereabouts.*

The first complaint was dismissed as improbable, and the latter three complaints were addressed by supervisors of the officers involved and closed. The Board agreed that the complaints had been handled well and none had been inappropriately classified as service complaints.

September 2010: *The CRB reviewed a case where an EPD officer deployed a police dog believing that a male resident of the home was a suspect in a burglary. The Board found the Auditor's intake and classification to be appropriate. The Board found the investigation and monitoring of the case to be thorough and complete and the relevant policies considered. Some concerns were expressed about interview techniques and possibly leading conclusions in the IA investigative report.*

The Auditor recommended to the Chief that the allegation of excessive use of force be sustained, and the Police Chief did so. The use of the police dog was found to be within policy, but the Auditor, supervising Police Captain, and Police Chief agreed that the policy was in need of immediate updates. The Board concurred with the adjudications of the Auditor and Chief.

October 2010: *The complainant alleged that an officer used excessive force by pushing her up against and into his cruiser. The Board found the intake and classification to be appropriate. The Board found the investigation and monitoring of the case to be thorough, complete, and unbiased and the relevant policies considered.*

The investigation discovered no evidence of use of force, and the Police Chief adjudicated the allegations as unfounded which agreed with the Auditor's recommendation. The Auditor brought the case forward to illustrate that officers are sometimes accused of conduct that simply did not occur and that, such as in this case where it was clear the officers acted professionally and with compassion, complaints can still occur. The Board unanimously agreed with the case adjudications.

November 2010: *The complainant alleged that officers used excessive force when arresting her after a reckless driving stop by breaking her car window, using a Taser, and handcuffing her on the ground. The Board found the intake and classification to be appropriate. The Board found the investigation and monitoring of the case to be thorough, complete, and unbiased and the relevant policies considered. The Board had a long discussion of the circumstances surrounding this complaint, due to the danger presented and the apparent mental state of the complainant.*

The Auditor recommended to the Chief that the use of force and use of Taser claims be adjudicated as within policy, and that the performance allegation against one of the officers be adjudicated as unfounded. The Chief's adjudications comported with the Auditor's recommendations. The Board agreed these adjudications were reasonable given the facts and circumstances surrounding the incident.

December 2010: *The CRB reviewed an EPD officer's pursuit of a suspect that ended in a high-speed tactical vehicular intervention. The Board found the intake and classification to be appropriate. The Board found the investigation and monitoring of the case to be thorough, complete, and unbiased and the relevant policies considered.*

The Auditor recommended that each of the allegations (forcible vehicle stop techniques, use of force, and judgment) be adjudicated as within policy. The Police Chief adjudicated that the officer's use of a forcible vehicle stop technique and use of force were within policy, and adjudicated the alleged judgment violation as unfounded. The majority of the CRB agreed that the first two allegations were reasonably adjudicated as within policy, with one member stating that she would have sustained the allegations.

Case reviews are an important activity of the Board. They allow us to evaluate the work of the Office of the Police Auditor in classifying, monitoring and providing an outside perspective to the Police Department. We also are given the opportunity to assess the complaint investigations and comment on the adjudications ultimately determined by the Chief of Police.

Civilian Review Board Training

As noted earlier, a particular emphasis in the last half of 2010 was ongoing training of the Board members to acquire the understanding, knowledge, and skills necessary to perform responsibly and effectively in their duties. 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. We recognize it is important to receive balanced training from a variety of sources both inside and outside the law enforcement.

In 2010 our trainings 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 our regular meetings and the topics and presenters are selected by the Board in advance. The training sessions included:

Use of Force: A training was conducted for the Board from an outside consultant who provides review, analysis and opinion on the use of force for agencies throughout Oregon and Washington. Covered topics included:

- Authority of the use of force by police officers,
- Appropriate levels of force (use of force continuum),
- Training considerations, and
- Case law and legal considerations.

CAHOOTS: Cahoots is a cooperative program begun in the early 1990's between Eugene Police and Whitebird Clinic where trained social service and mental health providers work in cooperation with the department dealing with immediate calls for services involving distressed members of the community at the street level.

Police Recruit Hiring Practices: A presentation was given to the Board from the Eugene Human Resources department about the process involved in evaluating, training and hiring of Eugene police officers. This included information regarding qualifications, psychological evaluations and background checks on qualified applicants.

Party Patrol: The history and use of a party patrol to address violations and potential consequences of large parties in neighborhoods surrounding the University of Oregon was presented to the Board. The practice included a discussion of preventative and deployment strategies by the team. Practices employed for initial and subsequent interactions and interventions, and neighborhood riots and near riots that have occurred directly or indirectly related to large party activity in the University area.

NACOLE Conference Three members of the Board attended the annual NACOLE (National Association for the Civilian Oversight of Law Enforcement) conference in Seattle in late September of 2010. Breakout sessions included topics covering a wide range of topics including 'Evaluating Investigations' 'Stakeholder Outreach' 'Lessons from the Trenches' and 'Improving

Police Response to the Mentally Ill.’ Participation in three days of seminar trainings gave participants of many of the best practices and current issues surrounding civilian oversight as it’s practiced in many different forms throughout the United States and internationally.

Training continues to be a priority for the Board. As our membership changes and new members arrive it will be important to give them the necessary knowledge and background to perform their duties. Further, continuing education of the Board will be necessary to help keep us current with the issues surrounding our work and familiarize us with procedures and practices in the fluid environment of police procedure, civilian rights and social justice.

Identified Policy, Procedure and Training Concerns

Eugene’s model of oversight includes the Civilian Review Board 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 the Eugene Police Commission as a policy body to evaluate and address policy concerns, some of which have been identified by the Civilian Review Board arising out of its work. In 2010 both the Auditor’s office and the department helped the Board identify a number of concerns that were passed along to the Police Commission and the Chief.

Warrantless Entries - Both the Auditor and the Chief of Police identified the need for a clearer policy regarding entry into a home or place of business in the absence of a warrant. The issue came to the Board’s attention through its reviews and is currently being considered by the department and the Police Commission as a part of a larger review of policies relating to search and seizure.

Community Care-taking – The Board identified a need for a better understanding of the applications and limitations of this doctrine as it is applied in Eugene.

In addition to those mentioned above, the Board will regularly seek 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 Civilian Review Board “shall evaluate the work of the auditor’s office...” and shall “establish criteria by which to evaluate the work of the police auditor.” All five members of the Civilian Review Board completed written reviews of the police auditor and the work of the Office of the Police Auditor. At its May 11th 2011 meeting the Board discussed those evaluations with Mr. Gissiner in executive session. The evaluation criteria were along seven dimensions:

1. **Ethics, Integrity and Independence**
2. **Support of the Civilian Review Board**
3. **Community and Citizen Relations**
4. **Complaint Intake and Adjudication**
5. **OPA Reporting Responsibilities**
6. **Judgment**
7. **Knowledge**

Board members individually rated performance in each dimension and made comments and suggestions for improvement in evaluating the Auditor’s and the Office of the Police Auditor.

1. Ethics, Integrity and Independence

	Response Percent	Response Count
Does not meet Expectations	0.0%	0
Meets Expectations	40.0%	2
Exceeds Expectations	60.0%	3
answered question		5

Individual Comments

- “... stellar... [The Auditors] independence [and] thoughtful consideration is outstanding.”
- “... very clearly demonstrates integrity and honesty... clearly stated expectations make it clear [the Auditor] will not be pressured...”
- “... consistently demonstrated his independence from all influences... including the officers, the administration and member[s] of the community.”
- “... should be careful not to sacrifice needed independence for appeasement or otherwise making a concession to build relationship[s].”
- “... I believe we have more room for improvement and [the Auditor] along with the CRB must be diligent to protect the integrity of this process.”

Individual Suggestions for Improvement

- “Sharing responses from complainants would be helpful to continue to gauge... effectiveness.”

2. Support of the Civilian Review Board

	Response Percent	Response Count
Does not meet Expectations	0.0%	0
Meets Expectations	60.0%	3
Exceeds Expectations	40.0%	2
answered question		5

Individual Comments

- “... does well informing the Board of current issues... makes an effort to continuously evaluate methods to improve communication... keep all up to date on issues of interest and importance.”
- “... materials supplied to the board [have] always been complete and timely. Case law that could influence the decision is briefly described and discussed.”

Individual Suggestions for Improvement

- “Continuing to look for ways that make understanding the organization of the documents is always helpful”

3. Community and Citizen Relations

	Response Percent	Response Count
Does not meet Expectations	0.0%	0
Meets Expectations	60.0%	3
Exceeds Expectations	40.0%	2
answered question		5

Individual Comments

- "...creating a positive atmosphere...philosophies, professional standards and ethics show..."
- "...outreach to the community has been improved as has the ability to educate people about...Eugene's oversight model and the underlying principles that guide the work."
- "...has shown a respect for the diverse community that makes up Eugene."
- "...professional and respectful to the community and...enjoys credibility."
- "...some are naturally distrustful of the police and the auditor's office and bridging this trust issue creates challenges worth exploring."

Individual Suggestions for Improvement

- "...would like to see a strategy for community outreach to help educate the larger community about the existence of the office and role of oversight in Eugene."
- "Involve CRB members in community outreach."
- "Continued outreach to community groups and organizations is important."

4. Complaint Intake and Adjudication Recommendations

	Response Percent	Response Count
Does not meet Expectations	0.0%	0
Meets Expectations	40.0%	2
Exceeds Expectations	60.0%	3
answered question		5

Individual Comments

- "...a talented and thoughtful investigator."
- "People have indicated they were treated fairly although there has been some frustration when it is made clear the role of the office is neither investigative nor is it one of advocacy..."
- "All indications point to a fair and courteous staff."

Individual Suggestions for Improvement

- "Have the Eugene Human Rights commission more involved in intake process."

5. OPA Reporting Responsibilities*

	Response Percent	Response Count
Does not meet Expectations	0.0%	0
Meets Expectations	100.0%	5
Exceeds Expectations	0.0%	0
answered question		5

Individual Comments

- “I believe the tracking and trends [analysis] are not to where [the Auditor] or our community ultimately wants them to be.”
- “...reporting of the classification, disposition and results relating to complaints has continued to improve.”
- “...the auditor's office provides the board with information that is useful in understanding trends in officer contact with people and areas in need for improvement.”
- “...this process is still evolving; it's a bit like building a plane while flying. The Auditor's office is continuing to build in the way of appropriate tracking and I am confident will continue to improve statistical tracking in the months ahead.”

Individual Suggestions for Improvement

- “Researching and securing a database that could better serve the goals of the department, oversight and the city might be in order at this time.”

[*Note: The CRB evaluation was completed prior to the OPA issuing of its 2010 Annual Report]

6. Judgment

	Response Percent	Response Count
Does not meet Expectations	0.0%	0
Meets Expectations	60.0%	3
Exceeds Expectations	40.0%	2
answered question		5

Individual Comments

- “...doing an outstanding job. I appreciate the opportunity to work with him towards goal of excellence in the civilian oversight process.”
- “...the Auditor and OPA staff continues to adjust their operations to find efficiency and improve service.”
- “...a strength of the office of police auditor.’
- “While I may not always agree with Mark's outcomes, I believe [the Auditor’s] decisions are considered and demonstrate [an] effort to strike a balance between often competing interests.”

Individual Suggestions for Improvement

- None

7. **Knowledge**

	Response Percent	Response Count
Does not meet Expectations	0.0%	0
Meets Expectations	0.0%	0
Exceeds Expectations	100.0%	5
answered question		5

Individual Comments

- "...understanding of the issues involved in his work continues to impress..."
- "...independent analysis of policy, procedure and system improvement for the department and for the oversight system often pleasantly surprises..."
- "Knows how to play "the game" with local institutions."
- "...an aptitude for the work and is clearly quite capable."
- "...very seasoned and bright... with a great aptitude and passion for the work."

Individual Suggestions for Improvement

- "Continued ongoing education and training."

The ratings and evaluation of the Civilian Review Board reflect an evolving and improving organization that continues to work toward the community's goals of fairness, thoroughness, timeliness, transparency and accountability for all involved in Eugene's unique system of civilian oversight.

Recommendations and Conclusions

Recommendations

In the course of our reviews and other Board work, several areas of concern have emerged that we would highlight to seek guidance from Council. In particular, these concerns relate to the work of the Civilian Review Board and its unique role in Eugene's model of civilian oversight.

- **Public Information and Disclosure** - The Board continues to be conscious of the need for openness and transparency. To that end, the Board suggested and the Auditor is providing summaries and on-going status reports for both open and closed cases. Because of uncertainty and ambiguity surrounding legal requirements of the Public Records 'exceptions,' the Board is waiting for the outcome of the Oregon Attorney General's proposed revisions to the current public records statutes currently being considered by the legislature.
- **Definition of Good Cause exception to 6 month filing deadline** – The ordinance, Sec. 2.456 (1) (i) – (j), states that complaints shall be filed within 6 months of the incident, except for "good cause". The ordinance does not define good cause, and thus, vests discretion in the auditor to determine good cause. The Board believes that a definition of good cause could be warranted, and that a definition could be clarified, perhaps in consultation with the City Attorney. To do so would avoid any ambiguity when dealing with untimely complaints.

- **Community Impact Case [CIC] Designations** – Under Ordinance 20374 the Auditor has the exclusive authority to designate a ‘Community Impact Cases.’ The Board suggests to the Council that while authority for CIC rests ultimately with the Auditor, the CRB might include in a revision to its Policies and Procedures Manual a provision expressing its desire the Auditor confer with CRB members when weighing a CIC designation.
- **CRB authority to order cases reopened** - In our review of the Chinese student case a majority of the Board voted to order the Chief to re-open the investigation. The ordinance allows the Board to require the city to reopen the investigation with regard to Community Impact Cases (See Ordinance 20374, Section 2.244(4)) However, the ordinance is silent as to whether the Board has the authority to order closed cases re-opened. The Eugene charter states that the city council shall authorize the civilian review board to “...require that the city re-open an investigation.” City Attorney Glenn Klein provided a March 5, 2010 opinion to Mark Gissiner and to Chief Kerns concluding that the Board does not have authority to re-open investigations in closed cases. The Board respectfully suggests to the Council that a revision to Ordinance 20374 that clarifies this issue could resolve this issue.

Conclusions

In 2010 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.