

Minutes
Minneapolis Civilian Police Review Authority
Special Board Meeting
December 16, 2009
109 Grain Exchange Building, 400 South 4th Street
6:00 p.m.

Board members present: Bellfield, Benson, Bicking, Kvidera, Terrell, Zuege
Board members absent: Franklin, Hall, Wetternach
Also present: Lee Reid, CRA manager

I. Call to Order

Chair Bellfield called the meeting to order.

II. Approval of Agenda

Terrell **moved** the agenda be adopted. Kvidera seconded. **Motion passed unanimously.**
Terrell **moved** Item IV, Public Invitation, be placed before Item III, Discussion of Report "CRA Participation in Minneapolis Police Department Chief of Police Performance Review." Bicking seconded. **Motion passed unanimously.**

III. Public Invitation

Daryl Robinson – vice president, CUAPB

The CUAPB has been trying to do this for a long time and have been unable to get close to having a public hearing about Dolan. There have been bad things happening in the community. All previous chiefs of police have met with the CRA board, but Chief Dolan has yet to do so. This needs to be done and the community needs to be involved.

Chuck Turchick

He quoted from Black's Law Dictionary, 9th Edition, 2009, Page 924: "De novo judicial review: A court's non-deferential review of an administrative decision, usually through a review of the administrative record, plus any additional evidence the parties present." This is also termed de novo review as well as de novo judicial review. Turchick talked to Deputy City Attorney Peter Ginder, who is the supervisor of Assistant City Attorney Joel Fussy. Ginder agrees with Fussy's definition of de novo review and he said "de novo review *slash* investigation." Turchick replied that the ordinance does not say "*slash* investigation."

Since the CRA was begun, there has been non-discipline of sustained CRA cases by the chiefs of police. He commends the board for finally trying to take a stand and involving themselves in the chief's evaluation process. Turchick suggested the board or Fussy write the mayor asking if he included the chief's compliance with 170.130 in his evaluation of the chief.

IV. Discussion of Report "CRA Participation in Minneapolis Police Department Chief of Police Performance Review"

Bicking **moved** the report be adopted. Benson seconded.

Discussion

Zuege recommended that the use of the word Taser, which is a trademark of Taser, International, be replaced with CED, conducted energy device, which is the terminology that the MPD policy manual uses. An alternative would be to use Taser® followed by the word "device." That would be proper trademark usage.

Bicking thinks the word Taser can be used, as long as it is capitalized, since that is the only CED the MPD has ever used. He has researched the use of the word Taser journalistically and in every case, it has been used without the trademark notation.

Zuege replied that just capitalizing a trademarked name is not correct usage. It is to be used as an adjective followed by a noun, such as device. Some customs would be all capital letters, rather than just the first letter, or putting the word in quotes. The most accurate is using the registered trademark symbol.

Terrell suggested referring to “CEDs or Tasers” in the same sentence.

Kvidera suggested a glossary of terms, so that it could be used as in general usage but recognition given to the trademark in the glossary.

Bicking said that although he doesn’t question Zuege’s knowledge of the law, but he knows that law is flagrantly violated in every written usage virtually ever seen.

Benson asked if “Taser” could be used.

Zuege **moved to amend** the draft report to replace all instances of the word “Taser” by itself with “Taser® device.” Kvidera seconded.

Motion passed.

Yes – Bellfield, Benson, Kvidera, Zuege

No – Bicking

Abstain – Terrell

Chair Bellfield recessed the meeting to proceed with complaint hearings. The meeting will be resumed immediately following the completion of the hearings.

Chair Bellfield resumed the meeting.

Zuege moved that Appendix D and any reference to content of Appendix D be deleted from the report. Terrell seconded.

Zuege stated that Appendix D contains discussion of chief’s justification for no discipline, which is a reproduction of certain materials from the 2008 CRA annual report. He suggests deleting this because it seemed tangential to some of the things being discussed and may distract readers’ attention from some of the conclusions and recommendations the board is making. In a worst case scenario, it could allow people to ignore some of the board’s conclusions and recommendations and instead, revisit these issues which were already presented in the annual report.

Bellfield believes Appendix D should be retained. The board doesn’t get many opportunities to say anything and it is relevant to the report.

Zuege suggested Appendix D be presented in the same way as Appendix E, a copy of the document, so that someone can tell this is not something new, that it is relevant material drawn from another location.

Bicking added a footnote to the title of Appendix D. He has no objection to copying as an image, although it may not look as neat as Appendix E.

Zuege’s concern is that people who are opposed to the CRA’s very mission could look at Appendix D and focus on that, rather than the more specific things mentioned. He added that the footnote does help clarify that it is from a previous document.

Bicking said an image may not appear much different from the current Appendix D. He suggested removing the footnote and changing the title of Appendix D to “Discussion of Chief’s Justification for No Discipline From 2008 CRA Annual Report.” Kvidera agreed with Bicking’s suggestion to add the clarifying information to the title of Appendix D.

Motion failed.

Yes – Zuege

No – Bellfield, Benson, Bicking, Kvidera, Terrell

Bicking **moved** that Appendix D be modified by putting the source of the appendix directly in the title of the appendix. Benson seconded.

Motion passed unanimously.

Bellfield questioned the use of “we” instead of “CRA board” in the report. Bicking believes that as long as it is clear that the report comes from the entire CRA board, not the staff, or any individual, the use of “we” or “our” is acceptable. Zuege does not want the document to be taken as personal opinions, but as the formal decision of the board as a whole. It is important to him that the board be referred to in the third person consistently throughout the document.’

Zuege **moved** to amend the document under discussion tonight so that all references to the CRA board are in the third person. Terrell seconded.

Kvidera suggested a footnote stating that “we” is considered to be the CRA board. The reading would be easier and “CRA” is in the report enough times so that it becomes unnecessary to keep saying “CRA.”

Terrell said it is more professional to refer to the CRA board in the third person.

Bicking said in places it sounds odd to say “CRA board” instead of “we.” Once it is clear who the report is coming from, the report doesn’t always have to speak in the third person.

The motion failed.

Yes – 3

No – 3

Zuege referred to Page 5, DE NOVO REVIEW OF SUSTAINED CASES. There is a sentence that includes language that talks about the “findings of fact” which are determined by the CRA investigator and the hearing panel. It should not say the CRA investigator, because only the hearing panel makes findings of fact. The CRA investigator can make recommendations. Zuege **moved** to strike the language “the investigator” and “the” on Page 5. Benson seconded. **Motion passed unanimously.**

Zuege referred to ISSUANCE OF DISCIPLINE IN SUSTAINED CASES on Page 4. The working group agreed they would include a pie chart that showed the percentage of cases that were not sustained by the CRA plus the percentage of cases that were sustained with no discipline and sustained with discipline. He would like that in the report because it shows the CRA panels have already achieved the objective of separating out cases that have no merit or have insufficient evidence and the sustained cases that are forwarded to the chief for discipline are only those for which the CRA believes there is cause to impose discipline. The graph makes that clear in a visual sense. He wants to keep the current graph and add this graph.

Bicking agrees, but he tried to do that and was not able to. With the discipline decisions, there is a certain number during the performance period. When addressing sustained or not sustained, that happens at the time that the hearing panel makes the determination and for many of the determinations that were made during the performance evaluation, the CRA has not yet gotten the discipline decisions back. At least half of them have to do with hearing panel determinations that happened before the time of this report; 2007 or earlier. Bicking suggested another pie chart with the sustained and not sustained for all determinations issued during this time period to get an indication of how many of the cases are sustained and how many are not sustained. He considered doing that as a footnote, he was having trouble wording it.

Kvidera **moved** that a pie chart be added to the report that shows the following categories: Not sustained, Sustained and Disciplined, Sustained and Not Disciplined and Sustained and No Disciplinary Decision Received and that it be noted in the Issuance of Discipline section of the report with the actual information in an appendix. Bicking seconded.

Reid asked if it would be appropriate to include the sustained/not sustained rate in the introduction where the board discusses how the board made the determinations. A pie chart showing the not sustained with the sustained and the disciplined could be confusing.

Zuege agrees with Reid. Sustained determinations with no decision received should be another category.

Terrell asked if there should be an appendix for graphs.

Bicking wants to keep the chart in this section instead of moving it to the introduction or placing it in an appendix and referring to the appendix in this section.

Zuege suggested placing a footnote after the second section of the Observations paragraph of the Performance of Chief Dolan Relevant to CRA section. It should be noted that Not Sustained cases do not include dismissals or successful mediations.

Bicking suggests a sentence or two of explanation in the appendix with the chart.

Terrell thinks this information should be in the introduction.

Motion passed unanimously.

Zuege referred to Page 9, Summary of Performance Evaluations section. He thinks a summary is not appropriate for a performance review, where the board already plans to have an Executive Summary, which is a specific summary of all the relevant findings.

Bicking agrees that some of the data covered in the Summary of Performance Evaluations section would also be in the Executive Summary section, but he thinks it is important to have this section because there shouldn't be anything that is only in the Executive Summary –the report should stand on its own without reading the Executive Summary. Bicking was originally planning on putting this information in a conclusions section. But he did not want to include the conclusions from both the performance evaluations and the recommendations together. It seems to flow naturally as a summary of the previous 4-5 pages, and before the recommendations section.

Bellfield agrees with Bicking. People read Executive Summaries of reports and don't read any further.

Terrell said that if it is left in, it should be moved to another place in the report. He wants people to come to their own conclusions.

Benson likes the Summary of Performance Evaluations section where it is in the report. The reader doesn't have to keep referring back to each section.

Zuege said that Bicking said earlier that there are some things in the summary that are not anywhere else. If it is truly a summary, it shouldn't be saying new things. It would be redundant with the executive summary. Bicking said that it doesn't introduce new information, but introduces a little bit of additional commentary from the board on this.

Zuege **moved** to delete entirely the Summary of Performance Evaluations section. Terrell seconded.

Motion failed.

Yes – Zuege

No – Bellfield, Benson, Bicking, Kvidera, Terrell

Zuege referred to Page 2, Executive Summary, which has no text. He believes there is language proposed by Kvidera for an executive summary. Bicking added that there should be a discussion of the content of the executive summary.

Bicking said that the discussion started at the November board meeting. He feels the executive summary is the "Cliffs Notes" version of the report. Unless the board knows what is in the report, they are not ready to write the summary. He believes it should take just the very essential parts of the report. He thinks there should be as much information as possible in the summary for the person who will only read the summary and not the rest of the report. He offered three options: release the report without an executive summary, use the draft executive summary with some small changes that can be made tonight or vote to release the report and authorize 2-3 members to write the executive summary.

Zuege **moved** to accept the language proposed by Bellfield and modified by Kvidera and Zuege which includes a restatement of the CRA mission statement and lists the specific conclusions in the section entitled "Performance of Chief Dolan Relevant to CRA," each subheading associated with categories of satisfactory, unsatisfactory, improvement desired, good performance. Terrell seconded.

Bicking said the Executive Summary could be the Summary of Performance Evaluations, a summary of recommendations for performance improvement & a summary of introduction, all condensed into a few paragraphs.

Zuege likes the list format of the current draft Executive Summary, which pulls a lot of information together in a way that is more readable than if it was in paragraph form. The mission statement may be redundant, but it reads well because a lot of the criticism the CRA takes is from people opposed to what is in that mission statement.

Motion passed.

Yes: Bellfield, Benson, Kvidera, Zuege

No: Bicking

Abstain: Terrell

Bicking **moved** that it be noted at the end of the report, and before the appendices, that the report was approved by the board at tonight's meeting and that the board members be listed by name. Terrell seconded.

Zuege **moved to amend** the original motion by adding that in Appendix C where it reads "text below current as of 12/xx/09," the date be inserted and that the table of contents be updated to reflect current page numbers.

Motion passed unanimously.

If the report is approved at tonight's meeting, Bicking will make all approved changes, review formatting, and make any changes needed. He would then want all members to see the report after that. He will also email the draft being reviewed at tonight's meeting to all members.

Bicking said there have been a few changes in the latest draft that he wants to bring to board members attention:

- o Data and pie chart
- o Footnotes showing where information came from
- o Performance goal for early intervention system, added this sentence:

“The CRA would like to see its data and experience used in a proactive way to warn of, and prevent, misconduct, not just to punish it after the incident. That would be the best way for the CRA to accomplish its mission, and we would like to cooperate with the MPD on this project.”

- Recommendations for Performance Improvements

Added, “Use the reconsideration option when the MPD questions CRA findings of fact or interpretations of policy violations.”

Zuege stated that the reconsideration option is mentioned on Page 10, Recommendations for Performance Improvements, “Cease *de novo* reviews of CRA findings and instead utilize the provision of 172.130(b)(3) added to the CRA Ordinance in 2006 for making one-time written requests that the CRA reconsider sustained findings”

Kvidera **moved** that the change made by Bicking adding “Use the reconsideration option when the MPD questions CRA findings of fact or interpretations of policy violations” be deleted. Bicking seconded.

Motion passed unanimously.

- Added, “Establish a regular process to notify the CRA with updates of grieved disciplinary decisions, and especially the final disposition of the case.”
- Added, “In cases where officer untruthfulness in CRA cases is in question, conduct further investigation and impose discipline as appropriate.”

Terrell cautioned against using wording that could imply the CRA board is asking for a *de novo* review. Benson suggested removing “as appropriate.”

Bicking **moved** the wording be changed to, “Impose discipline in cases where the CRA has determined the officer was not truthful.” Zuege seconded.

Motion passed unanimously.

Bicking **moved** that he will make the changes to the report as required by the amendments adopted tonight and that he will send the report to the full board for a final review by 7:00 a.m. tomorrow. He will obtain additional statistics from CRA staff tomorrow and send out a final draft of the report to all board members before end of business tomorrow. Kvidera seconded.

Motion passed unanimously.

Bellfield restated the motion:

Bicking **moved** the report “**CRA Participation in Minneapolis Police Department Chief of Police Performance Review**” be adopted as amended.

Motion passed.

Yes: Bellfield, Benson, Bicking, Kvidera, Terrell.

No: Zuege.

Bicking suggested a cover letter be prepared by one or more board members and be sent to the full board by end of business tomorrow. Bicking explained that the cover would go to the mayor and council members and Chief Dolan. He added that the cover letter would highlight the fact that the board was not asked to participate in the performance review, or even notified that there was a performance review, and that the board would like to see that done better next time.

Bicking **moved** that Bellfield will draft a cover letter with the assistance of any board member who wishes to contribute and the letter will be sent to the full board for review by the end of business tomorrow. Benson seconded.

Motion passed unanimously.

Bicking believes the board wishes to get this report out to the public during the reappointment process, which is the most likely time that the chief can be held to some commitments. The board needs to make it known that CRA needs public support and needs improvement in this area in order to fulfill the very basics of its mission. This is coming from the CRA board, not the staff. The board is independent and it is important that they get out to the public to explain their difficulties, appeal for help and let people know what they're doing. He would like to see at least a press release or even a press conference.

Bicking **moved** that Bellfield and Bicking prepare a press release by the end of business tomorrow, to be reviewed by the board and ready for release by Friday morning. Terrell seconded.

Motion passed.

Yes – Bellfield, Benson, Bicking, Kvidera, Terrell

Abstain – Zuege

Bicking asked Zuege if he would like to state why he abstained from voting on adopting the report and preparing a press release. Zuege responded that he has no comment.

Bicking asked if members feel media representatives would attend a news conference called by the CRA board. Terrell suggested holding a public forum and inviting the media to attend. Reid agreed and added that the board could then discuss the report with the public. Bicking added that the press release would then include a date, time and place of the forum. Several board members added that the forum should be held after the holidays, perhaps the second week of January. Terrell suggested holding the public forum on January 6, during the regular board meeting.

Terrell **moved** the January 6, 2010 regular board meeting convene at 6:00 p.m. and that an hour be set aside to conduct board business and that the board convene at 7:00 p.m. to hold a public forum to discuss the board's report, "CRA Participation in Performance Review of MPD Chief Dolan," and that the media be invited to the forum. Bicking seconded.

Motion passed unanimously.

Terrell asked board members to contact their council members and community members to let them know about the forum. Terrell will send out an email. It was suggested a flyer be distributed.

Bellfield and Reid will discuss the best meeting room for the forum. Bicking suggested the regular board meeting be held in Room 333 as usual, and the forum be held in a bigger room.

V. Adjournment

Bicking **moved** the meeting be adjourned. Kvidera seconded.

Motion passed unanimously.