

**Minutes
Minneapolis Civilian Police Review Authority
Regular Monthly Board Meeting
Wednesday, March 4, 2009
333 City Hall
6:30 p.m.**

Board Members Present: Benson, Bicking, Franklin, Hall, Kvidera, Terrell, Turner, Zuege
Board Members Absent: Bellfield

Also Present:
CRA Manager Samuel L. Reid, II
Assistant Chief Sharon Lubinski
Assistant City Attorney Lisa Needham
Sherman Patterson, Mayor's Office

I. Call to Order

In the absence of the chair, Member Zuege called the meeting to order at 6:30 p.m.

II. Approval of Agenda

The agenda was **adopted by unanimous consent.**

III. Acceptance of the minutes of the regular Board meeting of February 4, 2009

Benson **moved** the February 4, 2009 minutes be accepted. Turner seconded.

Motion passed unanimously.

IV. Reports

Chair – presented by Austen Zuege

- The March hearing schedule has been provided to members.
- Chief Dolan was expected to attend tonight's meeting. He was not able to make it. Zuege suggested the entire Board send a formal invitation to the Chief.
- Board members were asked to complete their hearing panel determinations as soon as possible.
- At the February Board meeting, a motion was made to submit a letter to the MPD regarding obtaining training materials. The Board has not yet received any materials. Zuege asked AC Lubinski for an update on the request. Lubinski replied that she had received a request from Chair Bellfield for an extensive amount of MPD policy in a lot of different areas. Lubinski has responded to Bellfield and Reid that the requested information will be provided, but the MPD will not be able to fully meet Bellfield's deadline of March 5. Lubinski is curious about how the request originated and why it circumvented the Police Accountability Coordinating Committee (PACC) that was set up by the City Council to address such requests. She asked if the request relates to any particular cases that the Board is looking at.

Zuege responded that the letter was not initiated by Bellfield alone, but was directed by the full Board at the February Board meeting. One of the reason for the request was for use by the Policy Committee but also in the course of making determinations, it appeared that a lot of the materials that the CRA had on hand in the office were somewhat old or out of date. Certain provisions in the MPD policy manual refer to materials that are in training. The Board wants to make sure it has those up-to-date materials, in order to be able to apply the proper standards in their panel determinations.

Bicking added that a number of things in the use of force policy refer to training, and without the training manuals, the CRA does not have the materials to hold officers

accountable to the policy, as it exists. The Board wants to be sure it is applying current policy. The Board doesn't know which issues of policy will come up in cases. He recognizes it's not easy to get that material together and that goes to the heart of the problem. If that material were very easy for the MPD to obtain and get together in a couple of days, if the Board had a case involving that, they could access that material that quickly.

Lubinski replied that as the Board looks at the cases, if they have questions, they need to then request, through her, the policy that was in place at that time, as well as the training procedures. She wants to ensure, for the benefit of the complainant and the officer, that the Board is not making decisions based on wrong information. Just because the Board has current information doesn't mean they can apply that to a case, unless it can be tied back to a certain date. She has been the liaison for a long time and she has never received a request of such a broad scope without basis for tying it back to cases. It is the officer's reputation that is at stake here. The officer could be suspended and lose money. The complainant also wants some justice.

Bicking has the same concerns about timeliness. In the policy manual, as it exists in any other area, or as it existed before August 2007, that was available. The dates are clearly shown as to when policy changed. This is only a relatively recent issue. For the last many months that Bicking has been on this board, the Board has been looking at cases from 2005, 2006 and 2007. This change was made in August 2007 and lately hearing panels have been seeing quite a few cases from the later part of 2007 and from 2008. So that is why this has now become an issue for the Board. He does not think it is an unreasonable request to know what the policy currently is. Until August 2007, the Board could do that by simply looking at an online or printed manual. Sometimes it is hard to even know what specifically to ask if you don't know what sort of policy exists. The Board may not be aware a policy exists and therefore not be able to ask for that specific policy. That is what lead to Bicking's concern.

Manager

- Reid reviewed the [CRA Workload Report](#) for February 2009. He asked Board members to complete their pending determinations.
- In response to a question, Reid explained the mediation process to the Board. He added that the mediators are volunteers and that the CRA wants to increase the number of mediators available. None of the CRA staff is involved in the mediation and nothing said in mediation is considered in investigation if the mediation is unsuccessful. The CRA is constantly looking at ways to grow the mediation program, but it is difficult with a limited number of mediators. The scheduling issue is also a challenge.
- Reid explained the meaning of "repeat officers" in Item 2 of his report. Terrell asked that repeat complainants be reported on and Lubinski asked that a distinction be made between "repeat officers" with CRA complaints several years ago and officers with more recent repeat complaints.

Committee Reports

- Outreach Committee – Terrell
The Committee is planning a public forum at Sabathani on March 24, 6:00 p.m. – 7:30 p.m. He asked Board members to arrive early to help him set up. The purpose of the forum is to inform and dialog with the community about the process and operation of the CRA. Terrell wants to inform the community about CRA's strengths and challenges, including the data privacy issue. Committee members have talked to several community groups who are interested in attending or having ongoing dialog with the CRA. Kvidera suggested all Council members be invited. If it goes well, future forums can be held at

locations in other precincts. Right now, the Board is focusing on the community, but in the future, Terrell hopes to have outreach with MPD officers.

- Reports and Statistics Committee – Benson
The Committee met February 23. They brainstormed about talking points for the quarterly summary report to the City Council. They want to discuss areas to report on at future Board meetings, such as cases awaiting completion of investigation, complaints waiting for hearings and cases pending. They will look at those three areas and share that with the Board in April or May. They will be meeting in March.
- Policy Committee – Bicking
The Committee spent most of their last two meetings discussing the MPD taser policy. They have reviewed where the policy stands, what has happened to the policy over time and their conclusions. The Committee is now ready to make recommendations to the Board for its consideration. Bicking stated he will ask the Board to act on the recommendations during the business section of tonight's agenda. Much of the policy incorporated in the MPD policy and procedure manual came from the CRA recommendations in 2006 when the City Council asked the CRA to do a study. Those recommendations were agreed to by the MPD and then the Council gave a directive that they be incorporated in the policy and procedure manual. The manual was changed in 2007 to take out explicit language and put in the reference to training. There was also a substantial re-write of the use of force policy. The Policy Committee is now focusing on the taser policy, because it is of interest to a lot of people and because it is the one that the CRA has a history of involvement with. They have written up some of their work and decided on some motions which they are proposing at this meeting. They found there is some information they do not have access to. There is a process in place for the CRA to carry out policy work. The PACC allows the Board to interact with the MPD. The Board can submit inquiries or policy recommendations to PACC. A motion of approval by the Board is required to submit these inquiries and put them on the PACC agenda. A recommendation requires more research and study for the Policy Committee. The recommendation the Committee is making is simple and straightforward. They have the information now to make that recommendation, but there may be some further work, for which these inquiries are critical for the Committee to understand where they stand with the policy and what their interests and concerns are on this policy.

Bicking provided the following documents:

- [Motions for CRA Board Meeting, 3/4/09](#)
- Reasons for CRA Recommendation that CED (Taser) Policy be Explicitly Incorporated in the MPD Policy and Procedure Manual
- MPD CED (Taser) Policy Timeline and Documentation
- MPD 2007 CED Recertification
- Processes for CRA Board to recommend changes to the MPD Policy and Procedure Manual
- Extended CRA Policy Recommendations Process

Lubinski corrected Bicking's statement that the Council gave a directive about the MPD Policy manual. By Charter, the MPD reports to the Mayor. The creation of policy is the responsibility of the Chief of Police. By ordinance, the CRA can recommend policy but policy decision making remains with the Chief. The MPD has had tremendous transparency around the taser policy.

V. Public Invitation

There was no public comment.

VI. Business

- Old Business
There was no old business.
- New Business
Terrell asked for a count of Board members who will be attending the March 24 public forum.
- Bicking **moved** that future agendas show a public comment period of a three minute limit for each speaker. Terrell seconded.
In response to concerns that three minutes may be too long if there are many members of the public in attendance, Zuege suggested three minutes be the default with the Board having the option of adjusting the time period as needed.
Motion passed unanimously.
- Bicking **moved** the Board adopt [Motion #1: CED \(Taser® device\) Policy Inquiries](#)
Terrell seconded.
Bicking stated this can be placed on the PACC agenda immediately by Bellfield. The Policy Committee believes they have sufficient reason, knowledge and understanding to put these inquiries forward and receive information.
Discussion
Terrell said he doesn't have a full grasp of this. Kvidera explained that the motion says that certain parts of the Taser policy were taken out of the policy and procedure manual and put into the training manual. Because of this, the Board is not sure what the changes are, because they don't have the current training manuals. Also, the Board needs to track what policy was in effect at the time a certain incident occurred. Unless the Board tracks the training manual changes, they cannot know at any given hearing whether or not the current policy or some other training was in effect at that time. This is what the Board is attempting to do via this motion.
Bicking explained that Motion #1 is an agreement by the Board to ask these questions. It doesn't represent the Board taking an action other than asking these questions be on the PACC agenda.
Turner added that the questions are necessary in order to track changes that have been made to the taser policy over time and how those changes were made.
Motion passed unanimously
- Bicking moved the Board adopt [Motion #2: CED \(Taser® device\) Data Inquiries](#)
Turner seconded.
Bicking explained the purpose of this motion is to have the questions contained in the motion put on the PACC agenda, which is the established process for asking these questions. Bicking added that the CRA 2006 recommendations included the recommendation that certain data be kept and be available for the public and to the CRA about taser usage. Bicking explained that this data was reported on in 2006 and the Policy Committee has seen the report. The Committee wonders if the MPD is still keeping this data, and if not, how the CRA can recommend that this data be kept in such a way that it is transparent and available.
Discussion
Patterson wants to be clear on this so he can brief the Mayor. Has the CRA been bombarded with complaints concerning taser incidents? He wants a clear understanding of why these questions are being raised. What is the driving force? They want to make sure to be progressive on this issue. If there is an issue, it should be addressed.

Zuege said this is an issue that the Policy Committee has been following for a number of months. He would not say there is any one incident or group of incidents that prompted this, just that it is a general concern since the Policy Committee has re-formed this past

year. The Board has seen taser usage come up a number of times at hearings. It is something of general interest. There have been a number of other cities that have undertaken studies of taser usage and a lot of reports are issued on that topic from various non-profit groups.

Terrell added that whenever he speaks to people in the community about the CRA process, taser use is probably the second thing people express concern about.

Motion passed unanimously.

- Bicking **moved** the Board adopt [Motion #3: CED \(Taser® device\) Policy Recommendation](#)

Terrell seconded.

Bicking said the Policy Committee feels confident that they know enough to make what they consider to be an urgent recommendation. It is not ideal, but it is a recommendation that can be easily implemented and that he believes would not be very controversial. They have a number of reasons for making this recommendation, such as those raised at tonight's meeting: where are these policies, how are they accessed, what does the public know or not know about them, all of which lead to the conclusion that things were better and simpler for the MPD and its officers before August 2007. This motion submits that recommendation to the PACC for consideration as explained in Processes for CRA Board to recommend changes to the MPD Policy and Procedure Manual. The full written description of issue to be submitted to PACC would be the motion, the MPD CED (Taser) Policy Timeline and Documentation and Reasons for CRA Recommendation that CED (Taser) Policy be Explicitly Incorporated in the MPD Policy and Procedure Manual.

Discussion

Bicking added that at the November and December 2007 CRA Board meetings there was extensive discussion about the taser policy and what had happened to it. This is a long time coming. Much time and effort has been put into this.

Zuege thinks the recommendation to reinstate the policy as it was prior to August 2007 is not ideal. Some of the Policy Committee members would like to do further analysis and make additional recommendations, but their initial concern is that the lack of a clear written policy that's widely available to the public and to the CRA has created confusion and frustration. It has made it difficult for the CRA to effectively carry out its mission. If the Board has to keep making data requests, they would need to make a new request for training materials with each complaint to make sure there hasn't been any change in the training between the incidents. Just as a matter of procedural efficiency this makes sense, but also in terms of having clear and consistent policies that provide a baseline, it would be immensely important and tremendously helpful to the CRA.

Zuege asked if members want to table this motion until next month to allow further review or if the Board feel comfortable going forward. Board members who are not Policy Committee members have had only since this afternoon to look at some of the materials.

Bicking does not want to wait a whole month for this. It is urgent and has been fairly well discussed. He gets a sense that this has been a frustration for a lot of Board members for a long time. He suggests the motion be amended to say "be it resolved that the CRA Board recommends the section be changed" and "be it further resolved that the CRA Board submits that recommendation to be placed on the agenda to be responded to in accordance with established procedure" and "be it further resolved that the Board provide the following documentation as soon as it is finalized." That allows the Board to submit this as it exists now with a caveat that the Board may wish to refine and further edit that documentation at the next Policy Committee meeting. He believes a full description of the issue, as required for the routine policy recommendation process, is contained in the MPD CED (Taser) Policy Timeline and Documentation.

Benson asked for more time to review the reasons and the timeline and really look at the documents.

Bicking suggested there could be an amendment made to vote final approval at a future date. The Board could give the Policy Committee authority to work on the documents, with Board input, or they can be considered at the next Board meeting.

Kvidera **moved** the motion be amended to read: Be it further resolved the CRA Board provides the following preliminary documentation in support of this change. The documentation to be considered for final approval at the April Board meeting.

Bicking seconded.

The motion to amend passed.

The main motion passed

Yes: Benson, Bicking, Franklin, Kvidera, Terrell, Turner, Zuege

Abstain: Hall

VII. Announcements

- Zuege stated that at the last Policy Committee meeting there was discussion of holding a community forum to deal with the 2008 RNC and receiving input on that for consideration by the Policy Committee and other CRA Committees. He plans to bring that up for discussion at the next Policy Committee meeting.
- Terrell asked the Outreach Committee to meet directly after the Board meeting is adjourned.
- Bicking wants the Policy Committee to look at the documents regarding taser usage at the next meeting, which is tentatively scheduled for March 18. He asked for comments from other Board members to help prepare a final draft to be sent out before the April Board meeting.
- Zuege advised Patterson the motions will be sent to him electronically.

VIII. Review of Disciplinary Decisions

Kvidera **moved** the meeting be closed for review of MPD disciplinary decisions. Bicking seconded.

Motion passed unanimously.

Zuege announced the meeting is reopened to the public.

IX. Adjournment

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

Motion failed.

Yes – Terrell

No – Benson, Bicking, Franklin, Hall, Kvidera, Turner, Zuege

Benson **moved** the review of disciplinary decisions with AC Lubinski be scheduled at or near the beginning of the meeting on future agendas. Kvidera seconded.

Discussion

Kvidera asked that meetings with that agenda item be started at 6:00, so the public portion of the meeting can begin at 6:30.

Needham advised the board that the meeting start time must be advertised as 6:00 and they should note in the published agenda that the Board is considering closed business first.

Yes: Benson, Bicking, Franklin, Hall, Kvidera, Terrell, Turner

Abstain: Zuege

Motion passed.

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

Motion passed unanimously.

7. Complaints awaiting Hearing as of 2/27/09 – 14
(8 have been scheduled for March)

8. Hearing Panels
 - Complaints heard – 7
 - Determinations Completed – 7
 - Sustained or Partially Sustained – 3
 - Not Sustained – 2
 - Dismissed – 2

 - Determinations Pending – 23
 - Hearings held in 2007 – 1
 - Hearings held in 2008 – 16
 - Hearings held in 2009 – 6
 - Reconsideration hearing – 1

9. Discipline Decisions Received From Chief of Police – 1
 - No Discipline issued – 1

10. Complaints Awaiting Discipline Decision – 4

Motions for CRA Board meeting, 3/04/09

Submitted by CRA Policy Committee

Motion #1: CED (Taser® device) Policy Inquiries

Whereas, the Civilian Review Authority Working Group Final Report, in 2006, established a process for submitting policy inquiries from the CRA to the Police Accountability Coordinating Committee (PACC), and;

Whereas, the change to the text of the Conducted Energy Devices (CED) policy in the MPD Policy and Procedure Manual (now in Section 5-314) that was made on August 17, 2007 has created uncertainty as to the provisions of the current policy, and;

Whereas, policies provided in their entirety in the MPD Policy and Procedure Manual are readily available online for the CRA and the public, but policies contained in training are much more difficult to access, and;

Whereas, it is difficult to know which training materials are current or were in place at a given time in the past, and;

Whereas, some or all of the CED training materials may be proprietary or copyrighted, and not available for copying and distribution, and;

Whereas, the lack of transparency regarding CED policies has led to concerns that policies may be changed with insufficient input and oversight from the City Council, the City Attorney's Office, and others, and;

Whereas, it is the responsibility of the CRA to make determinations regarding officer misconduct based upon whether that officer followed MPD policy in effect at the time of the incident, and;

Whereas, the CRA cannot properly carry out its mission without clear knowledge of MPD policy, so as to be fair to both the complainant and the officer;

Therefore, be it resolved that the board of the CRA submits the following inquiries to be placed on the agenda of the PACC, to be responded to in accordance with the established process:

- 1) Why was the text of the CED policy in the MPD Policy and Procedure Manual changed on 8/17/07?
- 2) Who was consulted before this change was made? In particular, were the following consulted:
 - a) Police Chief Dolan
 - b) Mayor Rybak
 - c) City Attorney's office
 - d) City Council, including any of its members, or any of its Committee chairs
 - e) Civil Rights Department
 - f) CRA staff or board
- 3) Who was notified of the change by means other than publishing the new policy on the MPD website? In particular, were the following notified:
 - a) Police Chief Dolan
 - b) Mayor Rybak
 - c) City Attorney's office
 - d) City Council, including any of its members, or any of its Committee chairs

- e) Civil Rights Department
 - f) CRA staff or board
- 4) Are all provisions of the CED policy as it existed before 8/17/07 now included in training? If so, are they in written form as part of the training? Are they provided to officers in materials that they may keep for their future reference?
 - 5) Please provide any existing written policy provisions from the training materials and handouts.
 - 6) What data, studies, reports and/or guidelines regarding CED policy, device operating procedures and safety has the MPD relied upon in formulating its CED policies, including product manuals and literature from the manufacturer(s)?
 - 7) Is there a method for controlling and documenting changes to training, such that it may be determined which policies were included in any given officer's training, or which policies were current at the time of any given incident?
 - 8) Is the "MPD 2007 CED Recertification" (included in CED training binder in CRA office) in current use for recertification training for CEDs? If not, when was it used? Was it prepared and/or put into use shortly after the 8/17/07 change in CED policy?
 - 9) Page 6 of "MPD 2007 CED Recertification" includes the following text: "MPD Policy & Procedure Updates", "New Use of Force Policy Changes", and "Notes: Policy – Explain that new policy gives the Officer more flexibility in the judgement and decision making areas during an incident. The Officer needs to use the 'totality of circumstances' factor to deploy the CED." Do these passages refer to the 8/17/07 policy change? Does the greater "flexibility" indicate that there has been a substantive change in policy, rather than moving the existing policy to training? Which restrictions on the officer's flexibility have been removed from the CED policy?
 - 10) Page 8 of "MPD 2007 CED Recertification" includes the following text: "Why the change?" and "Advantages: Officer has more discession (sic) & is looked at by others with the 'totality of circumstances' at the time & the 'reasonableness standards' theories vs the strict Do's and don'ts policy." What policy does the "strict Do's and don'ts policy" refer to? Is it the CED policy that was in section 5-318 of the MPD Policy and Procedure Manual prior to 8/17/07? Which "strict Do's and don'ts" no longer apply? In particular, are the following policies still in effect:
 - a) "Tasers shall not be used on passive subjects or as a come-along tool."
 - b) "When activating a Taser, officers should use it for one standard cycle and stop to evaluate the effectiveness and the situation (a standard cycle is five seconds). Tasers should only be used for more than two cycles if the subject continues to be serious threat of bodily harm to the officers or citizens. If the Taser is being effective, a longer cycle facilitating handcuffing is appropriate."
 - c) "The Taser shall not be intentionally aimed at the head neck, face or genitalia."
 - d) "Only one officer should activate a Taser against a person at a time."
 - e) "Tasers may only be used on fleeing persons if the subject's actions justify the use of hard empty hand or "intermediate weapons" as outlined on the MPD Use of Force Continuum. This level is appropriate for fleeing felons or the arrest of a subject who is actively aggressive, i.e., actually fighting against police officers."

- f) “Tasers may only be used on children, visibly frail persons, women who are known to be pregnant, and people with known heart problems when other hard empty-hand control methods have failed or deadly force is justified.”
 - g) “Tasers may only be used on those in control of a motorized vehicle or bicycle in motion or those in a location where a fall may cause substantial injury or death when the subject’s actions justify deadly force.”
- 11) If restrictions on CED use have been modified or removed, that is, if the Officer has more discretion: Why was this done? Who gave approval? Who was notified? Why was the CRA not notified of a change that may affect our determinations? How might this affect the city’s legal liability?

Motion #2: CED (Taser® device) Data Inquiries:

Whereas, the Civilian Review Authority Working Group Final Report, in 2006, established a process for submitting policy inquiries from the CRA to the Police Accountability Coordinating Committee (PACC), and;

Whereas, Conducted Energy Device (CED) usage is a controversial subject, locally, nationally, and internationally, of interest to both the CRA and the public, and;

Whereas, little data is available to the CRA and public regarding CED deployments, especially in 2007 and 2008, and;

Whereas, the CRA Policy Committee is reviewing MPD CED policy in accordance with its duties and powers expressed in CRA ordinance section 172.60(f), and current data is necessary to evaluate the importance or desirability of any changes to that policy;

Therefore, be it resolved that the board of the CRA submits the following inquiries to be placed on the agenda of the PACC, to be responded to in accordance with the established process:

- 1) What data is collected regarding each incident when a CED is used? What data regarding CED usage is contained in the CAPRS report (e.g. number of cycles, location on body)?
- 2) Is any CED usage data collected on a separate form? Please provide a copy of that form. Who receives and stores that information?
- 3) Are any periodic reports or statistical summaries prepared containing data on CED usage? Are those reports public data, in whole or in part? Please provide any public reports, or portions thereof, to the CRA. If any data is private, please indicate the nature of that data and the reason for its private classification.

Motion #3: CED (Taser® device) Policy Recommendation:

Whereas, the Civilian Review Authority Working Group Final Report, in 2006, established a process for the CRA to submit recommended changes to the MPD Policy and Procedure Manual to the Police Accountability Coordinating Committee (PACC), and;

Whereas, the CRA Policy Committee has completed a review of the following policy issue and conducted preliminary research in accordance with the established process, and;

Whereas, the CRA was tasked in early 2006 with developing Conducted Energy Device (CED) policy and training recommendations, and;

Whereas, the CRA Taser working group consulted with employees of the MPD and members of the community, and considered printed information from past CRA complaints, the October 2005 Police Executive Research Forum (PERF) report, and the September 2005 American Civil Liberties Union (ACLU) of Northern California report, and;

Whereas, on February 1, 2006, the CRA board unanimously passed the task force report, titled, “Taser Policy and Training Recommendations,” and on February 15, 2006 the MPD accepted that report, and;

Whereas, on February 24, 2006, the City Council directed the MPD to incorporate the “Taser Policy and Training Recommendations” into their CED policy, and;

Whereas, on April 14, 2006, “Taser Policy and Training Recommendations” were adopted by their incorporation into Section 5-318 of the MPD Policy and Procedure Manual, and;

Whereas, on August 17, 2007, the CED section of the MPD Policy and Procedure Manual was changed in a manner that substantially shortened the text of the CED policy, and added the directive that, “The use of CED’s shall be consistent with current MPD training”;

Therefore, be it resolved that the CRA board recommends that Section 5-314 of the MPD Policy and Procedure Manual be revised to contain exactly the same text as appeared in Section 5-318 of the MPD Policy and Procedure Manual prior to the change made on August 17, 2007, and;

Be it further resolved that the CRA board submits the above recommendation to be placed on the agenda of the PACC, to be responded to in accordance with the established process, and;

Be it further resolved that the CRA board provides the following documentation in support of this change:

- 1) “Reasons for CRA Recommendation that CED Policy be Explicitly Incorporated in the MPD Policy and Procedure Manual”
- 2) “MPD CED Policy Timeline and Documentation”

