

Minutes
Minneapolis Civilian Police Review Authority
Regular Monthly Board Meeting
Wednesday, May 5, 2010
333 City Hall
6:00 p.m.

Board members present: Benson, Elayaperumal, Franklin, Kallenbach, Kvidera, Pargo, Santiago, Terrell, Wetternach, Zuege

Board members absent: Bellfield

Also present: CRA Manager Lee Reid
Assistant City Attorney Joel Fussy
Deputy Chief Scott Gerlicher, MPD
Sherman Patterson, Office of the Mayor

I. Call to Order

Vice Chair Terrell called the meeting to order.

II. Approval of Agenda

Kvidera **moved** the agenda be adopted. Benson seconded. **Motion passed unanimously.**

III. Reconsideration

Zuege **moved** the meeting be closed to the public to consider a reconsideration request by the MPD Chief. Kvidera seconded. **Motion passed unanimously.**

Wetternach **moved** to reconvene the meeting. Benson seconded. **Motion passed unanimously.**

Terrell announced that the board will close the meeting again, after the last agenda item, to further consider the Chief's reconsideration request.

IV. Approval of Minutes – April 7, 2010 Minneapolis Civilian Police Review Authority board meeting

Zuege **moved** approval. Benson seconded.

Motion passed.

Yes: Benson, Elayaperumal, Franklin, Kallenbach, Kvidera, Pargo, Santiago, Terrell, Zuege

Abstain: Wetternach

V. Reports

Chair – Vice Chair Terrell

- Terrell advised board members of their assigned hearing panel dates. Wednesday, May 19:
6:30 – Terrell, Zuege, Benson
7:00 – Zuege, Terrell, Benson
May 26:
6:30 – Kvidera, Franklin, Benson
7:00 – Benson, Franklin, Kvidera
Terrell asked new board members to shadow the hearings. Reid explained that new board members will need to attend training being provided to them by the MPD and City Attorney's office before being assigned as hearing panel members. He hopes this training can be completed this month.
- Terrell will assign new members to committees by the next board meeting.

- Terrell explained that public comment is important to the board. Board members want feedback from the MPD and from the public. Each member of the public here tonight has three minutes to speak but anything past three minutes is disrespectful to others waiting to speak. If someone has more information to share with the board, board members are available after the meeting or by email or by mail.

CRA Members

Terrell

- Terrell has been working on scheduling a board retreat and is planning on holding it on a Saturday in July, from 9AM to 4PM. He emailed board members with notes from a retreat planning meeting. He is planning a retreat committee meeting within the next week and will notify board members when the date is set.
- Sarah Wernberg, a teacher at PYC alternative school, is attending tonight's meeting as Terrell's guest. Terrell has been speaking to students at the school all year and has had great conversations with the young people about police accountability and their concerns about relating to officers. Terrell reminded the board that he meets with students at PYC the first Monday of every month at 12:30 p.m. and asked other board members to consider attending. Wernberg gave the board a brief account of Terrell's meetings with students at PYC.

Manager

- Reid reviewed the [CRA Workload Report](#) for April 2010. Benson suggested additional hearings be scheduled in May and June since there are 15 complaints awaiting hearing. Terrell agreed to schedule additional hearings at 7:30 and 8:00 on May 19 and May 26.
- Franklin asked Reid if he had sent a letter to the city council executive committee as directed at the April 5 board meeting. Reid has not sent the letter. Zuege stated that the Franklin motion at the April meeting was to direct the CRA manager to write the letter. He pointed out that the ordinance provision refers to the CRA board chair notifying the executive committee. The board may want to consider whether the letter should come from the CRA chair. He suggested a new motion. Franklin agreed that it may be better to have the letter come from the board chair. Reid explained that the board cannot direct the manager to act. He considers their action to be a request. He added that the board can ask the Director of the Civil Rights Department to instruct him to act and he will then do it. Terrell read the motion:

Franklin **moved** CRA Manager Reid send a memo to the executive committee of the city council and the mayor stating the chief is not in compliance with the ordinance to issue discipline on sustained cases.

Terrell suggested this be discussed further under Item VII. Business.

- The 2009 annual report has been sent to all board members.
- Reid asked new board members to advise him when they will be available for training.

Committees

There were no committee reports.

VI. Public Invitation – Comments to be limited to three minutes

Chuck Turchick

He corrected the minutes of the April board meeting where it reads that he stated, "The chief is making a mockery of the CRA." He was talking about the process the mayor used in determining whether the chief was in compliance with the discipline section. He meant to say that the mayor

was making a mockery of the CRA in asking the chief if he had complied when the mayor didn't have statistics for the last 20 months.

He thanked Reid for getting the 2009 annual report out earlier this year. He commented on a recommendation in the report, that the chief should be encouraged to meet with the board on a quarterly basis. Turchick said that the chief offered three months ago to meet with the chair of the board to discuss the reckoning period. He asked if anything has been done on that.

Turchick has been talking about de novo review for the past nine months. In the annual report, there are eight instances of the chief giving the reason for not disciplining on a CRA sustained case as dispute with the facts. Turchick was able to come up with a reason for why the chief would not discipline for insufficient evidence without violating the ordinance that says that the disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board. He cannot come up with explanation for dispute with the facts. How can the chief have a dispute with the facts and base his decision on the adjudicated facts that the board finds? It is totally inconsistent. Turchick thinks the board should ask the city attorney to explain the phrase, "The chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board." If the chief says he has a dispute with the facts, he's not taking the facts as found by this board.

Dave Bicking

He thanked Reid for an excellent annual report. Regarding the letter to the executive committee, he understands that the board does not give direction to the CRA staff. He thinks it is still important and it should come from the chair, as in the ordinance. He hopes the board will pass a motion to that effect tonight. He trusts that Terrell, as acting chair, will comply with that. Bellfield told the press that he would not do it. He hopes that at some point the board will be able to find out how the meetings between Dolan and the board chair are going. There should be a response from the judge regarding the writ of mandamus by mid-May. It was not an action taken against the board but it was an action taken to strengthen the board and the CRA.

Kenneth Brown

His question is for the city attorney. Leaves of absence are not addressed in the CRA ordinance. Prior determinations from the city attorney's office has been that it is not addressed and cannot take place. How can Chair Bellfield claim that he is on a leave of absence? He can't be on something that doesn't exist. Brown asked if Bellfield is on a leave of absence or is he just not here at this meeting. Terrell responded that Bellfield is not at tonight's meeting because he underwent surgery today. Brown demanded an answer from Fussy. Fussy declined to respond, stating that he advises city officials and the board. Wetternach stated that if a member is going to be absent from a board meeting, the member can contact the chair, another board member or a staff person, to provide notice and that would be considered an excused absence. Zuege stated that the ordinance does have a provision that if a member misses three hearings or board meetings in one year, the member is automatically not a board member. The ordinance doesn't have any exceptions spelled out for health reasons or anything else. The board might want to suggest an ordinance change. Reid added this will be addressed when ordinance changes are considered. He confirmed that Bellfield has assured Terrell and him that he will be at the June meeting.

Brown asked if the city attorney is in court advocating for the city and police department not to expose private data, and if CRA board members say they want the private data given to the public, how can the attorney represent the board and the city at the same time and not have a conflict of interest? Terrell responded that this is an ongoing issue. He cannot answer if it meets the definition of conflict of interest. It is a problem. Brown said that since the city attorney has said he will not advise the public, he is directing Terrell to ask his question of the city attorney and provide the information to the public at the June board meeting.

Michelle Gross

She wants to discuss the Franklin motion from the April meeting regarding the letter to the executive committee. It is her understanding that the board cannot direct CRA staff to take an action, although it appears that has happened in the past, where Bellfield contacted a CRA staff member to send an email to the board advising them the March 2010 meeting had been cancelled. Given that the board cannot make directions to the staff, she wonders why did Reid not say last month that he was not going to send the letter. It shows that the board has absolutely no power. The board can pass motions directing the chair to make the report to the executive committee and then asking and/or directing the CRA manager to make the report. She has no idea why data that is known and available cannot be reported to the executive committee. She cannot understand why this is such a big deal. Gross stated that they did win a writ of mandamus ruling against Bellfield, directing him to take this action. The motion is what is the judge going to do about the fact that Bellfield has not fulfilled that obligation. It shows that the city makes efforts to clamp down on the board's power, to keep them from making information known.

Gross has concern about the level of hostility from members of this board toward the public. These kind of pronouncements at the beginning of meetings about members of the public behaving themselves – the board needs to hear what the public is saying. She doesn't hear that level of hostility toward the police, who are talking in a disrespectful manner about the CRA to the media, as well as engaging in misconduct. It is her understanding that a board member will be bringing proposing a code of conduct at tonight's meeting. She has seen a draft of the proposal and it basically indicates that all engagement with police is completely valid, any engagement with any level of the public is considered to be suspect and to be validated and cleared in advance. Gross thinks the board needs to think hard about what that says.

Gross asked the board to consider an ordinance change to have its own attorney. The community has been asking for this for several years.

Darryl Robinson

The board is only here for one reason, the public. If the board can't discipline the police, the public doesn't need the CRA. There is no reason for the board to be here. If the board isn't for the public, the public doesn't need the CRA – they will handle it on their own.

Terrell stated that the board appreciates the public comments and he urged people who have more information to share with the board to talk with members after the meeting or communicate via email.

VII. Business

Zuege

Zuege watched the video of Chief Dolan's reappointment hearing, where DC Gerlicher spoke about the MPD early intervention system. He asked if Gerlicher could tell the board anything about the status of that program. Gerlicher replied that it has been rolled out over the last few weeks, after several years of planning. The purpose of the early intervention system is to try to have a system in place which will ultimately reduce the CRA workload, reduce officer injuries to subjects, reduce liability for the city, and have more productive, happy employees on the police department. It is a non-punitive, non-disciplinary way of trying to proactively identify officers who may be having on or off duty issues, which are in some way affecting their work, and trying to identify what those are very early, before misconduct or other things happen, and trying to get those officers back on track. It involves a system where officers can refer other officers to take a look at what's happening. It also involves staff in the MPD looking at information that's obtained within a variety of databases, traffic accidents, use of sick time, use of force, type of force used, officer assignments. If they see anything that looks out of the ordinary, from a proactive look, that may be a signal that there may be something going on that may be negative and that would allow them to look a little deeper to determine if the factor potentially is an issue and do whatever they can to try to get that employee, sworn or non-sworn, the help that they need. That could be providing training, making referrals for counseling, a wide variety of things with the ultimate goal of a happier, more productive police force.

Terrell asked how CRA data is being used in the early warning system. Gerlicher replied that the MPD has access to employees who have complaints, either IAU or CRA, and that's how it's being used. Using existing databases they can go through and look at the employees and see how many complaints they've had over what period of time, the type of complaints, to see if there is a common theme, a particular type of citizen complaint. They are able to track both for CRA and IAU complaints. That isn't the sole source of data.

Terrell said he understands Gerlicher's answer to be that it is there, but it's not always part of the equation. Gerlicher responded that it may not be, depending on if that is the issue that comes to light or is in some way affecting the officer's work performance. Someone could be having on or off the job issues, but they aren't getting any complaints. The MPD has staff that is going to be looking at all these things proactively, both on an individual basis and at the department as a whole. There may be an issue, there may not be. If there is, it's an attempt to get ahead of that before the officer is involved in something significant, as far as misconduct, or getting themselves hurt.

Zuege moved:

Be it resolved that the CRA board creates a Data Practices working group to consider and make policy recommendations regarding Minnesota State Data Practices laws as they relate to the CRA mission, with such recommendations to be presented to the full board for consideration. Benson seconded.

Discussion

Zuege said the CRA has had a history dealing with the Minnesota state laws of private data about MPD officers. There was a request made to IPAD, which is a state agency that offers opinions on the data practices act. From there, there was a lawsuit filed by CUAPB, as well. A lot of these issues impact how the CRA operates. Zuege thinks data practices issues are the number one concern that the CRA faces right now. The CRA is in a situation where the

expectations of the public are such that people are very likely to be disappointed with the CRA process, because the CRA is not able to inform complainants whether the board has sustained or not sustained a case. They may not hear anything about their complaint for years, if ever. That leads to a lot of dissatisfaction from people who come to the CRA. It is a critical issue and Zuege believes the board needs to be proactive in looking at this issue.

Terrell agrees with Zuege. He thinks this is overdue and something the board needs to put a lot more energy into.

Motion passed unanimously

Zuege, Elayaperumal, Santiago and Terrell volunteered to serve on the working group. Zuege will serve as chair. Zuege will set up a meeting and let all the board members know when it is. The group will not make any official decisions, but will be investigating at this point, considering what the options are, and put something forward to the whole board.

VIII. Announcements

Zuege noted that there is was a lawsuit filed against the city concerning police conduct. He would like Reid to track that sort of information, since it relates to what the CRA does. The CRA has no procedures that allow the board to know when a complainant has also filed a lawsuit.

IX. Adjournment

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

Motion failed.

Kvidera **moved** the meeting be closed to the public to consider a reconsideration request by the MPD Chief. Zuege seconded.

Motion passed unanimously.

Wetternach **moved** to reconvene the meeting. Zuege seconded.

Motion passed unanimously.

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

Motion passed unanimously.

MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY
301 4th Avenue South, Suite 670
Minneapolis MN 55415
(612) 673-5500

TO: CRA Board

FROM: Samuel L. Reid, II
Manager

DATE: May 5, 2010

SUBJ: Monthly Report – **April 2010**

1. Intake – 33
2. Signed Complaints – 11
3. Complaints by:

<u>Ward</u>	<u>Police Precinct</u>	
Ward 3 – 2	Precinct 1 – 6	Repeat Officers ¹ – 8
Ward 4 – 2	Precinct 4 – 5	Repeat Officers ² – 7
Ward 5 – 1		New Officers – 4
Ward 7 – 6		

Allegations
Excessive Force – 9
Inappropriate Language – 5
Harassment – 1
Inappropriate Conduct – 14
4. Completed Investigations – 5

Complaints in Investigation	2008 – 13
	2009 – 66
	2010 – <u>22</u>
	101
5. Mediations scheduled – None
6. Manager dismissals – None
7. Complaints awaiting Hearing as of 4/30/10 – 15

¹ Officers with one or more prior complaint 1991 through 2006.

² Officers with one or more prior complaint 2007 - present.

- 8. Hearing Panels**
 - Complaints heard – 5
 - Determinations Completed – 11
 - Sustained – 2
 - Partially Sustained – 3
 - Not Sustained – 3
 - Dismissed – 3

 - Determinations Pending – 6
 - Hearings held in 2009 – 1
 - Hearings held in 2010 – 5
 - Remands – 1

- 9. Discipline Decisions Received From Chief of Police – 1**
 - Letter of Reprimand – 1 officer

- 10. Complaints Awaiting Discipline Decision – 7**