

Minutes
Minneapolis Civilian Police Review Authority
Regular Monthly Board Meeting
Wednesday, October 6, 2010
333 City Hall
5:30 p.m.

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

Board members absent: Kvidera, Terrell

Also present: CRA Manager Lee Reid
Deputy Chief Scott Gerlicher
Officer Kara Peterson
Assistant City Attorney Joel Fussy

I. Call to Order

Chair Bellfield called the meeting to order.

II. Approval of Agenda

Bellfield announced that Officer Peterson will make a presentation on the MPD's Early Intervention System after Item V. Reports. Kallenbach **moved** the agenda be adopted. Franklin seconded. **Motion passed unanimously.**

III. Review Of Disciplinary Decisions

Zuege **moved** to close this portion of the meeting to the public pursuant to the Minnesota Government Data Practices Act. Pargo seconded.

Motion passed unanimously.

Santiago **moved** to reopen the meeting. Pargo seconded.

Motion passed unanimously.

IV. Approval Of Minutes – September 1, 2010 Board meeting

Zuege **moved** to approve the minutes of the September 1, 2010 Board meeting.

Benson seconded.

Motion passed unanimously.

V. Reports

Chair

- Bellfield has been re-appointed to serve as board chair to a term that expires December 31, 2011.
- On September 21, Bellfield participated in a virtual open house held by Neighborhood and Community Relations Department to answer questions about openings on City boards and commissions. On September 23, he participated in an open house held in the City Hall rotunda for the same purpose.
- The MPD has issued new policies regarding use of force. All board members should have received a copy of that from Reid.
- The Mayor's office will be sending a response to the Board's request for someone from the Mayor's office to be involved in disciplinary discussions.
- A PACC meeting was held today. There was a discussion of CRA Ordinance 172.190, repair of the MPD's MVR equipment and followed up on officer training discussed several months ago. Kallenbach asked for more information about the discussion of the ordinance. Reid explained that the section discussed pertains to the complainant's choice of which office they choose to file a complaint, CRA or MPD IAU.

- Bellfield sent the Chief a letter asking to meet with him to discuss the MPD's reckoning period. He is awaiting a reply.
- Bellfield advised members to review the October hearing schedule and to contact him if they need to make any changes.

Manager

- Reid reviewed the [CRA Workload Report](#) for September 2010. Reid will send out a reminder to board members who need to review remanded complaints.
- Reid plans to have the 3rd quarter report completed next week.
- The Department of Civil Rights presented its [Results Minneapolis](#) report to City leaders two weeks ago. The report covers performance measures and goals.
- Bellfield and Reid welcomed journalism students from Augsburg College, who are attending tonight's meeting.

Committees

Retreat Planning working group - Bellfield

The Board retreat will take place on Saturday, October 16. An agenda will be available next week.

Performance Review working group - Zuege

The group met last month and continues to work on the 2010 report. Zuege asked that any board member who has input contact him. The next step will be to meet with Reid to gather statistics for the report.

VI. Officer Kara Peterson – Early Intervention System (EIS) Program

Peterson made a presentation to the board about the MPD's early intervention system. An early intervention system program is a proactive tool to identify officers who may be exhibiting work performance issues. The EIS program intervenes before the only solution to the officer's problems is through discipline. It is a completely non-disciplinary program to deal with issues that MPD employees may be experiencing that are affecting their work performance. EIS may function concurrently with a CRA or IA investigation.

The MPD did have an early warning system in the early 1990s. There is limited information about that program available today, but it was very primitive in the sense that if an officer received a complaint twice in one quarter, the supervisor was to meet with the officer and discuss the issue. There was no post-intervention monitoring.

There is no national standard for an EIS. The MPD was able to set their own criteria in reference to officers exhibiting problematic behavior. They took components from other programs and incorporated their own ideas. The MPD surveyed the department employees to ask if they knew what an EIS is. Many were not knowledgeable about it, but they did get a lot of good feedback from employees who were supportive of the concept of intervening. Many indicated they had seen coworkers' job performances deteriorate and they could envision an intervention working for them.

Pargo asked how many repeat officers have come through the EIS program and asked if community members can make a referral. Peterson said the program is new so they are not yet seeing repeats. The EIS program is not geared for community referral because members of the public don't see an officer on a daily basis to observe their work performance issues. The outlet for community contact is CRA or IA. However, a CRA

investigator who is looking at the totality of a case would have a much better feel for what was going on with the officer, or if an investigator has seen the officer a couple of times, they would have more significant information.

Zuege asked what kind of CRA information the EIS program uses, and if the CRA data be made more useful. Peterson said the information the EIS team gets is that a complaint has been made against a particular officer, the date of the complaint and the nature of the complaint. They don't have the findings on the complaint, but the fact that there was a complaint made is what they look at. EIS should be dealing with the issue before a determination is made on a CRA or IA case.

Peterson was asked if she foresees success with the EIS process being cited in lieu of issuing discipline for a sustained allegation. Peterson said they don't provide information to any disciplinary panel for a CRA or IA complaint. If the officer wants to bring up the fact that they have gone through EIS programming, it is up to that officer.

Wetternach asked that since the EIS team are mandatory reporters of crime or policy and procedure violations, who do they report to? Do they recommend discipline? Peterson replied that they would not recommend discipline. If people come to EIS with issues, they won't allow people who have committed a crime or policy violation to hide under EIS. They have the same duty to report. They would report to IA.

Benson asked if once an issue has come up, EIS has looked into it and they have concerns which they have reported to IA, do they find out the outcome from IA? Peterson doesn't foresee that their role is about going to IA. A person's supervisor or other means would exist for the employee to be reported to IA. The tracks are kept separate.

Benson asked if once a supervisor has received information from EIS about their concerns, is there a report made to EIS about what the follow-up was. Peterson said the supervisors are required to get back to the EIS team and let them know that they have taken some sort of action on the information EIS has provided to them. EIS does not require the supervisors to detail the action they have taken with the employee.

Gerlicher added that in the few months the MPD has been doing this, they are bringing the issue to the attention of a supervisor, expecting that they do something and then do some follow-up later on. If some time goes by and they are still seeing the same trend, they can pull the data and do their own follow-up with the supervisory staff. At some point, there is an accountability factor on the part of the supervisory staff to handle it in some way.

Zuege asked if the supervisors have welcomed the EIS input. Peterson said it has been a very good process for the supervisors. It has allowed them to deal with things right away, rather than waiting for them to progress. They have generally gotten great feedback from the precinct supervisors.

VII. Public Invitation – Comments limited to three minutes for each speaker

Chuck Turchick

At the end of last month's meeting, Turchick accused the board of acting in closed session. Kallenbach had stated he had made a similar motion that had lost on a 10-1

vote. Turchick had never read anything about that in the minutes. Pargo told Turchick it was in the minutes, but it was not. The motion Kallenbach made was a procedural motion, not a substantive motion. It was perfectly proper; it was a motion to table a discussion about discipline until the Mayor could come.

Chair Bellfield mentioned that the meeting offered by Chief Dolan in February was to discuss reckoning periods. Turchick added that the Chief also offered to discuss de novo review.

Turchick read the following, which he said was concerning a city out East:

As a supervisor at the 14th Precinct, I am writing this in response to the request that supervisors discuss use of force with officers under their command. My understanding is that if my use of force is not sufficient I will die. Training techniques on use of force are just that – training techniques. I personally am not comfortable with many use of force techniques because in my training and experience they are just “pretty” and not effective. Real force is not pretty. The suspect always determines how much force is used against him, not the officer. If a suspect does not produce his driver’s license on request, he then dictates that force be used, not the officer. And I would like to discuss a myth that has been perpetuated by use of force experts across the country. That myth is blows to the head are deadly force. Let me make one thing perfectly clear: while blows to the head are not pretty, they do not create a high likelihood of death. Remember, those who can, do, and those who can’t, teach. This relates to the “experts.” It is easier to dissect a force incident for several days in the safety of city hall or a newsroom. My retort to all the second guessers/experts is, why don’t you throw on one of those blue uniforms and go out and do it yourself, if it is so easy. Remember the “experts” also once said the earth was flat. I saw one expert say the kicking by the officers “seemed odd.” Well, if he was an experienced street officer, he would know they were not kicks, they were stunning blows to gain compliance. In ending, I will repeat that the Simmons arrest incident is a classic applied use of force by highly trained professional police officers.

Turchick stated that in fact, his quotation was not from a city out East, that it was Minneapolis. It wasn’t the Simmons incident, it was the Jenkins incident. It wasn’t the 14th Precinct, it was the 4th Precinct. This was written by Lt. Mike Sauro, of the Minneapolis Police Department.

Turchick said he has six questions about this:

1. How was someone with these attitudes ever hired by the Minneapolis Police Department?
2. If he did not have these attitudes when he was hired and he developed these attitudes while on the force, how was he promoted to lieutenant?
3. How is he supervising other officers on the proper use of force?
4. How could the police administration ever choose him to talk to officers under his supervision about the proper use of force?

At this point, Bellfield told Turchick his allotted time to speak was up. Turchick asked if members of the MPD can be required to go into therapy.

Bicking

He was pleased to hear Peterson's report on the EIS. It is helpful. He noted that the handout provided by Officer Peterson states on Page 8, "We are mandatory reporters of crime or policy and procedure violations, just as every other officer on the department." The idea that every officer on the department is a mandatory reporter of policy and procedure violations seems quite contradictory with actual experience with the code of silence or whatever else it is called. It is nice to have a reminder that this is actually the policy of the MPD.

He is glad the MPD chief's performance report is being done now. He recommends looking at last year's report. It was a good, comprehensive and well thought-out list of recommendations. It would be good to review which of those recommendations have been followed and what have been the results of those.

Bicking sent a letter to the CRA about the change in the use of force policy which is extensive and looks very encouraging, at first glance. He urged members to review the policy closely and to keep an eye on it. The policy on Tasers has brought back a lot of things the CRA had recommended. He asked if the MPD consulted with the CRA or if they notified the CRA when the changes were made. Bicking has copies of the old policy, if anyone needs to see it, since it is no longer online.

VIII. **Business**

Kallenbach wishes to bring forth a motion regarding board member concerns about conflict between the CRA ordinance and the MPD reckoning period or discipline matrix as set forth last year.

Kallenbach **moved** that the City Attorney's Office provide specific legal foundation, either statute or case law, that support the opinions set forth in Attorney Joel Fussy's April 27, 2010 memo.

Additionally, address:

- 1) Does the discipline matrix, as set forth by the MPD, conflict with the specific language or intent of the CRA ordinance?
- 2) Are department rules that conflict with an ordinance or the intent of an ordinance valid?
- 3) Can the reckoning period be used as a basis for discipline on complaints which were filed prior to the implementation of the policy?

Please have a response to Lee Reid prior to the October 16, 2010 board retreat.

Seconded by Benson.

Discussion

Kallenbach has heard a lot of talk amongst board members. He hopes this motion will get to the crux of members' concerns.

Elayaperumal suggested Fussy can be asked now for his opinion. Kallenbach responded that there wasn't any meat to Fussy's April 27 memo. There was no legal foundation to support the position taken by the City Attorney's Office. That is what precipitated this motion. Kallenbach deals with a lot of administrative law and from his experience, departments cannot implement a rule that conflicts with an ordinance. From Kallenbach's perspective, the reckoning period is in direct conflict with the intent of the ordinance. If the ordinance says a complainant has a year to file the complaint, and the MPD reckoning

period says if it is more than a year old, it's stale and the MPD is not going to discipline on it, then Kallenbach believes this goes against the intent of the ordinance and is in direct conflict with the ordinance. He would like a clarification.

Pargo asked for a comment from Fussy about the memo. Fussy responded he hasn't examined the issue in some time. It is the opinion of the City Attorney's Office, not just his opinion. If there was a specific case or statute that was on point, that would obviate the need for an opinion. He can bring it back to his office, but he can assure the board that the opinion of the City Attorney's Office will not change.

Bellfield called the question.

Motion passed unanimously.

IX. Announcements

There were no announcements.

X. Adjournment

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

Motion passed unanimously.

MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY
301 4th Avenue South, Suite 670
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TO: CRA Board

FROM: Samuel L. Reid II
Assistant Director

DATE: October 6, 2010

SUBJ: Monthly Report – **September 2010**

1. Intake – 41
2. Signed Complaints – 6
3. Complaints by:

<u>Ward</u>	<u>Police Precinct</u>	
Ward 4 – 1	Precinct 1 – 1	Repeat Officers ¹ – 1
Ward 6 – 1	Precinct 3 – 1	Repeat Officers ² – 4
Ward 7 – 1	Precinct 4 – 1	New Officers – 5
Ward 10 – 1	Precinct 5 – 2	
Ward 11 – 1	outside city – 1	
outside city – 1		

Allegations
Excessive Force – 5
Inappropriate Language – 8
Harassment – 44
Inappropriate Conduct – 21
4. Completed Investigations – 6

Complaints in Investigation	2008 – 1
	2009 – 56
	2010 – <u>53</u>
	110
5. Mediations scheduled – 1

Mediations held – 1
Successful mediations – 1

¹ Officers with one or more prior complaint 1991 through 2006.
² Officers with one or more prior complaint 2007 - present.

6. Manager dismissals – None
7. Complaints awaiting Hearing as of 8/31/10 – 12
8. Hearing Panels
 - Complaints heard – 5
 - Determinations Completed – 3
 - Partially Sustained – 1
 - Not Sustained – 2
 - Determinations Pending – 11
 - Hearings held in 2009 – 1
 - Hearings held in 2010 – 10
 - Remands – 3
9. Discipline Decisions Received From Chief of Police – 1
 - Termination – 1 officer
10. Complaints Awaiting Discipline Decision – 4