

Minutes
Minneapolis Civilian Police Review Authority
Regular Monthly Board Meeting
Wednesday, October 7, 2009
333 City Hall
6:00 p.m.

Board members present: Bellfield, Bicking, Franklin, Kvidera, Terrell, Wetternach, Zuege
Board members absent: Benson, Hall
Also present: Lee Reid, CRA manager
Joel Fussy, Assistant City Attorney
Assistant Chief Sharon Lubinski
Deputy Chief Rob Allen
Sherman Patterson, Mayor's Office

I. Call to Order

Chair Bellfield called the meeting to order. Bellfield introduced MPD Deputy Chief Rob Allen to the Board. Allen is the new MPD liaison to the CRA.

II. Approval of Agenda

Kvidera **moved** the agenda be adopted with the removal of Item III, Review of Disciplinary Decisions. Terrell seconded. **Motion passed unanimously.**

III. Removed from agenda

IV. Acceptance of the minutes of the regular Board meeting of September 2, 2009

- Bicking stated the September 2, 2009 minutes should be amended to show "Wetternach" in place of "Bicking" on Page 5, bullet point #7 and Page 5, bullet point #10.
- Zuege stated the September 2, 2009 minutes should be amended to show "Zuege voted no" on the motion to amend, Page 5, bullet point #13.

Reid requested board members announce their names when speaking and that they speak loud enough for their comments to be heard on the recording.

Wetternach **moved** approval of the September 2, 2009 minutes, as amended. Bicking seconded. **Motion passed unanimously.**

V. Reports

Chair

- Board vacancies have been posted by the City Clerk's office. Applications for the four vacancies will be accepted through December 31, 2009.
- Bellfield provided the board with a copy of a letter sent to him and Board Member Bicking by AC Lubinski, dated October 2, 2009, regarding the board's inquiries and request for CED usage data. Bicking asked when the board can expect to receive the data, as it already four months past the date set by the policy recommendation process. Bellfield responded that he does not know. AC Lubinski added that she does not know at this time; it is an extensive data practices request. Some of the information requested may be considered tactical information and may not be public data. Bicking pointed out that several months ago the board passed a motion saying if they cannot get the full answer to their questions, they would appreciate those that it is possible to answer in the meantime. Some of the questions are fairly extensive and might require some data practices decisions, but the majority should not be and should not have taken longer than two months to answer.

- There will be a PACC meeting later this month.
- Bellfield wants to hold a meeting next week to discuss the evaluation of Chief Dolan by the board. Reid will advise of the date and time. Franklin asked if this will have any effect since the chief has just had his evaluation. Bellfield hopes what the CRA board has to say in their evaluation will at least be noted, since it will deal strictly with the chief's role concerning the CRA. The board has never done this before, and it was decided at the September board meeting to do it. Bicking said there is a value to doing this, as the chief is up for re-appointment in January 2010.

Zuege clarified that at the September 2 meeting there was a motion to refer this to the Reports & Statistics committee. He asked if there will be a motion today to change that directive. Bellfield will propose the motion to do that under Item VII, Business.

Patterson said that the ordinance states the board shall participate in the performance review of the chief and make a recommendation to the mayor. Patterson wants it to be on record that the City Attorney's Office has made recommendations to the board. Bellfield said everyone has a copy of Assistant City Attorney Joel Fussy's response to the question that the board raised about closing a meeting to conduct a performance evaluation of the chief's duties that relate to the CRA process. Bellfield said that the board understands Fussy's email and he wants it understood that the board does plan on proceeding with this.

- Bicking stated that last month it was decided to poll members about their committee interests. He suggested that be done soon.
- Bicking asked that the letter sent to the MPD sometime in August 2009 by Bellfield and himself regarding the MPD taser policy be sent to all board members. Bellfield will provide a copy to all board members.

CRA Members

Terrell met with new students at PYC, a charter school in North Minneapolis. He will be going there the first Wednesday of each month to talk with new students about CRA. He is also looking at doing some outreach with the PEACE Foundation.

Manager

- Reid reviewed the [CRA Workload Report](#) for September 2009.
- Reid noted that the CRA volunteer mediators are very committed and work hard to make the mediations successful. Reid would like to think about ways to build up the program. It will be a challenge to continue to grow the mediation program with the resource limitations the CRA has. Mediation is valuable because even if a mediation session is not successful, there is a benefit to a citizen and an officer being able to talk to each other on an equal footing and walk away with some idea of how they could have done or said something differently. Terrell asked how volunteer mediators are recruited. Reid explained that some mediators were contacted through US Arbitration & Mediation of Minnesota and some are attorneys from Gray, Plant, Mooty. The mediators don't have to be lawyers, but they do have to be trained. Zuege added that he has worked for a court where some issues were mediated by volunteers who were senior citizens. The CRA might wish to contact senior groups for volunteers to act as mediators.
- Bicking asked for status of the transcript of the July 15 taser forum. Reid will follow-up.

Committee Reports

Policy Committee - Bicking

The Policy Committee did not meet in the past month. As far as taser policy is concerned, the committee is stalled until they receive some of the information they requested from the MPD. Bicking referred to a letter from AC Lubinski responding to the board's letter regarding the MPD's denial of recommended policy changes. All board members were emailed a copy. He appreciates some of the things in the letter about working together and coming up with a compromise, but there is a problem. The board has been concerned with the taser policy being in training as opposed to being in the MPD policy manual. One concern is the board's ability to track changes in policy, so the board knows what policy was in effect at what date. This letter makes Bicking much more concerned about that version control. When the Policy Committee sent the recommendation to the PACC they referred to the taser policy that was in place just prior to August 17, 2007. It is helpful that AC Lubinski has here attached a copy of the policy that she was referring to in the original denial. The policy referred to in that letter was an earlier policy on stun guns. Stun guns are a different thing entirely and the policy that is attached to AC Lubinski's letter was written in 1993, before the invention of the Taser as it is now known and eight years before the MPD received its first Tasers.

In Lubinski's letter it says, "In any event, the MPD believes the focus of any future discussions should remain on current MPD policy, as it is counter productive to debate former versions of 5-318." That may be the case, but it also says, "In addition, if the CRA requires research of past MPD policies, to avoid any future confusion, we ask that the CRA follow the established PACC policy and that questions be directed to the MPD Command Staff liaison." Bicking feels there are two problems with the idea that instead of the CRA doing the research, the board should ask the MPD. One is that the board knew what the policy was just prior to August 17, while the MPD was referring to a policy 16 years old. The second part is that the board has tried the process of submitting inquiries to the PACC and at this point it is four months beyond the deadline for receiving answers to what the board has already asked.

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

Chuck Turchick

He believes 172.60(h) gives the board the power to participate in the performance review of the police chief. He believes it is referring to the performance review done by the mayor and whoever else is involved.

At the end of the September 2 board meeting, Turchick asked a couple board members if they knew what a Lauderhill hearing was. The complaint process manual of the MPD explains what happens with the board's sustained complaints once they go to the MPD. It is crucial that the board be knowledgeable of this. The specific pages in that manual that are of importance for CRA cases are Pages 20 and 21. In those pages, it says "The role of the panel is simply to listen to what the officer has to say about the charges" and "the accused employee (and/or his/her representatives) may, among other things, expound on the information in the case, ask the panel to consider mitigating circumstances...and/or give the panel any other information that is relevant to the case or investigation."

Turchick added that if he were a police officer he would not talk to a CRA investigator. He would wait until he got to the Lauderhill hearing and lay out his case there. Then the police chief could say there is a dispute in the facts or insufficient evidence, and therefore no discipline will be issued. This directly contradicts the portion of the ordinance which says, "The chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board, and shall not include a de novo review of the facts..." and "In cases where the civilian

review authority board has determined that specific facts constitute a violation of the Minneapolis Police Department policy and procedure manual, under no circumstances should the Minneapolis Police Department internal affairs unit or any other police officer, unit, or division be allowed to alter, augment, or revise the designation.” The MPD complaint process allows the officer to bring new evidence that goes to the substance of the charges, not just mitigating circumstances. This is a conflict between the MPD complaint process manual and the ordinance. The ordinance is law. The complaint process manual is not law. The ordinance takes precedence. The chief has to decide discipline cases on the adjudicated facts as found by hearings of the CRA board.

Turchick went to see President Obama on September 12 and saw Chief Dolan. He told Dolan that he should start issuing discipline in CRA sustained cases. Dolan replied to Turchick that he hadn't received any cases from the CRA for several months. Turchick responded that of the last 21 cases where Dolan issued disciplinary decisions, 18 resulted in no discipline and one of them was a type A violation, which is considered no discipline. Dolan replied, “Sharon handles all those cases.” Turchick stated that if in the future, in closed sessions to discuss disciplinary decisions, AC Lubinski or DC Allen pass the buck and tell the board that Chief Dolan is making these decisions, the board should know Dolan passes the buck right back to them and says that they are making the decisions.

Turchick stated that 172.130(d) states, “The level of compliance with this section shall be included as an element of the chief's annual performance evaluation...” The mayor did the evaluation without the board's knowledge. Turchick believes the board should ask of the mayor, in writing, if he did include this and if not, why not. Why didn't the mayor consult the board? The ordinance is not just binding on the board, it is binding on everyone in the city, including the mayor. He suggested the board ask the mayor in the future to let the board know when these evaluations are being held, as the board has an obligation to submit this information.

Turchick stated that Sherman Patterson commented at last month's board meeting that the board has enough on their plate. Turchick believes that comment was not appropriate. The CRA is an independent agency. The members are appointed by the mayor and the city council, but to have any credibility the board must exhibit independence. For the board to accept comments from the mayor's representative that the board has enough on their plate already is inappropriate. Turchick has no objection to Patterson giving factual information, such as that the chief's performance review had already been done, which he gave to the board 15 minutes after they had already discussed it.

Turchick's final comment was that when there is only one member of the public at a meeting, the board are choosing form over substance in limiting public comment to three minutes.

Bicking **moved** that an additional three minutes be given to Turchick to make further comments if he wishes. Zuege seconded. **Motion passed unanimously.**

Turchick stated that 172.130(d) reads:

The level of compliance with this section shall be included as an element of the chief's annual performance evaluation, pursuant to section 172.60(h) of this section. The civilian police review authority chairperson shall notify the executive committee of the chief's failure to comply with the requirements of this section, and such failure may subject the chief to disciplinary action.

Turchick called the City Coordinator's office and found out that the executive committee does not do the performance evaluation. He was told it was the mayor, the president of the city council and possibly the vice president of the city council.

Turchick read the CRA's 2008 annual report and he appreciates Reid's strong language in the report on Pages 25 and 26 about reasons given for not issuing discipline. Turchick strongly disagrees with the chief's reason for not disciplining because of CRA investigator's bias. Members of the MPD don't talk to the investigators, the investigators' comments are brought to the CRA hearing panels. The board has the ability to question the investigators and would be able to tell if there is investigator bias. If the chief has problems with the bias of investigators, that is grounds for discipline of those investigators and he should file a complaint someplace. It is also absurd to give the criminal associations of the complainant as a reason for not disciplining officers. The hearing panel does not make any adjudicated facts based on the associations of the complainant.

Turchick is considering filing a complaint with Internal Affairs that the police chief is violating this ordinance.

There was no other public comment.

VII. Business

- Reid stated that Turchick has made some points that he hopes all the board members reflect on. Reid heard surprise and astonishment coming from some board members as Turchick made his points. He encouraged board members to read and be guided by the ordinance. There are a lot of issues in the ordinance that board members are responsible for. He added that the ordinance and the administrative rules do need to be updated.
- Bicking stated that one of the issues with the ordinance is the IPAD decision. There was a lawsuit filed about that decision by CUAPB and there was a court decision on September 3 which upheld some of the plaintiff's and some of the defendant's claims. It would be difficult to make changes to the ordinance before knowing what those decisions are. Bicking has heard that both sides will be appealing this ruling. There may be other changes needed to the ordinance that can be looked at and dealt with before this issue is settled. Reid advised that Assistant City Attorney Jim Moore was contacted to set up a meeting with the board to discuss the ruling. Reid has not yet heard from the City Attorney's office about setting a meeting. Reid asked Fussy to follow up with Moore about scheduling a meeting to discuss this issue.
- Bellfield stated that at the September meeting the board voted to have the Reports & Statistics committee prepare a proposed performance evaluation of the police chief. Bellfield **moved** that the chair appoint a Committee of the Whole to set a time period for evaluation of the performance of the police chief and also to set a date for completion of that performance evaluation. Bicking seconded.

Discussion

- Bellfield believes the entire board should participate because it affect the entire authority. They should all have a voice.
- Kvidera questions the designation as an evaluation meeting, since the board is to give input to the evaluation. He would clarify it as being a discussion of the board's input to the chief's evaluation, so that they are not directly holding an evaluation themselves in contradiction to the ordinance.

- Terrell stated that since the chief's evaluation already happened, the board is evaluating their relationship with the chief. He asked if actually doing the evaluation is included in Bellfield's motion. Bellfield replied that it is.
- Wetternach said the board doesn't have the authority to "evaluate" the chief, that is up to the mayor and then it is presented to the executive committee. He asked if this is more of an advisory to the mayor, of what the board believes the performance of the chief has been as it relates to the CRA. He has no problem that the board reviews the chief's function as it relates to the board, but rather a problem with the terminology of doing a performance evaluation.
- Fussy stated that his advice to the board is in line with the way that Wetternach has stated it. He believes it would be outside the scope of the authority of the board to conduct a performance evaluation of the chief of police. The board does have the explicit power and the duty to participate in the evaluation of the chief of police. However, that evaluation has already taken place for this year. Whether there was notification of that or how that should work is a separate matter for future evaluation. It is the opinion of the Office of the City Attorney that this board can reconvene as a Committee of the Whole to generate the input that it wishes to provide in its duty to participate in the performance evaluation of the chief, to reduce that to writing in an adopted motion or a report and then to provide that to the mayor, who performs the evaluation of the chief of police. Fussy would envision this as a hand off of information that would be in the category of *here is our ordinance-mandated contribution or participation in the upcoming evaluation of the chief of police*. The evaluation having already taken place, the mayor would only have a duty to take that information into account the next time there is an evaluation of the chief of police.

Bicking **moved to amend the motion** by substituting the phrase "discuss our participation in performance review of the police chief." Zuege seconded.

The proposed amendment was adopted unanimously.

The motion was adopted unanimously.

- Terrell **moved**: be it resolved that a Committee of the Whole meet on Thursday, October 22 at 6:30 p.m. at a location to be announced by e-mail from the chair to discuss the CRA's participation in the police chief review. Bicking seconded.

The motion was adopted unanimously.

VIII. Announcements

Bicking asked why there was no discipline discussion at tonight's meeting. Reid had sent out the wrong list of cases to board members so discipline will be discussed next month, if possible, depending on AC Lubinski's schedule.

IX. Adjournment

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

Motion passed unanimously.

MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY
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TO: CRA Board

FROM: Samuel L. Reid, II
Manager

DATE: October 7, 2009

SUBJ: Monthly Report – **September 2009**

1. Intake – 39
2. Signed Complaints – 7
3. Complaints by:

<u>Ward</u>	<u>Police Precinct</u>	
Ward 2 – 1	Precinct 1 – 1	Repeat Officers ¹ – 4
Ward 4 – 1	Precinct 2 – 1	Repeat Officers ² – 8
Ward 6 – 2	Precinct 3 – 4	New Officers – 4
Ward 7 – 2	Precinct 4 – 1	
Ward 9 – 1		

Allegations
Excessive Force – 6
Harassment – 12
Failure to Provide Adequate or Timely Police Protection – 2
Inappropriate Conduct – 18
4. Completed Investigations – 4

Complaints in Investigation	2007 – 8
	2008 – 23
	2009 – <u>67</u>
	98
5. Mediations Scheduled – 8
Mediations Held – 6
Successful Mediations – 5
Unsuccessful Mediations – 1
Cancelled – 2
6. Manager Dismissals – 3

¹ Officers with one or more prior complaint 1991 through 2005.

² Officers with one or more prior complaint 2006 - present.

7. Complaints awaiting Hearing as of 9/30/09 – 10 (8 scheduled for October)
8. Hearing Panels
 - Complaints heard – 1
 - Determinations Completed – 6
 - Sustained or partially sustained – 2
 - Dismissals – 4
 - Determinations Pending – 12
 - Hearings held in 2008 – 4
 - Hearings held in 2009 – 8
9. Discipline Decisions Received From Chief of Police – 1
 - Discipline issued:
 - Letter of Reprimand (2 officers)
10. Complaints Awaiting Discipline Decision – 5