

**Minutes
Minneapolis Civilian Police Review Authority
Regular Monthly Board Meeting
Wednesday, November 4, 2009
333 City Hall
6:00 p.m.**

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

I. Call to Order

Acting Chair Justin Terrell called the meeting to order.

Kvidera **moved** Items II and III of the meeting be closed to the public pursuant to the Minnesota Government Data Practices Act. Wetternach seconded.

Motion passed unanimously.

II. Reconsideration Hearing

III. Review of Disciplinary Decisions

Zuege **moved** to reopen the meeting. Benson seconded.

Motion passed unanimously.

IV. Approval of Agenda

Zuege **moved** the agenda be adopted. Wetternach seconded. **Motion passed unanimously.**

V. Acceptance of the minutes of the regular Board meeting of October 7, 2009

Benson **moved** approval of the October 7, 2009 minutes. Franklin seconded. **Motion passed unanimously.**

VI. Reports

Chair

- Committees need to be re-populated. Terrell asked members to state their interests in serving on the standing committees.
 - **Outreach:** Franklin, Terrell
 - **Steering:** Benson, Bicking, Kvidera
 - **Operations:** Bicking
 - **Reports & Statistics:** Benson, Kvidera, Wetternach, Zuege
 - **Policy:** Bicking, Wetternach
- Terrell reminded board members to submit their outstanding hearing panel determinations by the end of the year.

CRA Members

Bicking stated that the board discusses individual disciplinary decisions in closed session but they have come across a significant problem because many of the board's sustained findings

have not been disciplined, because of a de novo review of the facts by the MPD. He wants to discuss the policy in the ordinance, which both the CRA and the MPD have to follow. It 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 by the Minneapolis Police Department's internal affairs unit or any other police officer, unit, or division.

And:

...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 board has received an explanation from AC Lubinski as to why they are doing that. There can be disagreement on whether the opinion of the MPD is more valid than board members'. At this point, however, this is the City ordinance. In many other circumstances, the CRA has found itself bound in situations it would rather not be in based on the City ordinance, such as not being allowed to have hearings when there was no board chair. In all cases, no matter what the board felt was best or what the board would like to see, the board has followed the ordinance as it is. He is not sure what the board can or should do when the MPD says they will not follow the ordinance. There may be valid reasons to change the ordinance regarding this. He has no specific motion to make about this, but he feels there is a major conflict.

Terrell suggests a continuation of a dialog with MPD and that the board continue to read reports and statistics that CRA staff provide. Terrell said that in a perfect world, the board would make their findings and determination and forward them to the Chief and the MPD would discipline that officer because they would trust the work that the CRA does. That is where the frustration comes. Often, the sustained cases end up being not disciplined.

Assistant City Attorney Joel Fussy spoke to the drafting of this ordinance and its interpretation by the City Attorney's Office. There is a misapprehension by the board of the term de novo review of the facts. He explained that phrase refers to a brand new, from scratch, investigation. Under the factors that the AC cited, the Chief is bound to review the investigative file and the record that has been provided by the board's actions, and which is in front of them. The prohibition in the ordinance speaks to, in the opinion of the City Attorney's Office, that the MPD may not conduct their own de novo, from scratch, separate investigation into the matter. He stated that it is entirely appropriate for the MPD to review the CRA investigation as it comes forth from the board.

Bicking said he understands that there needs to be some review. Built into the system is a review of mitigating circumstances and some other factors that are included by law in a Loudermill hearing. The ordinance does not include a de novo review of the facts, and it says also, "The chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board." That's why for every single complaint, the decision of the hearing panel has a findings of fact. Those findings of fact are what is referred to here as "the adjudicated facts." There have been several cases discussed today, as well as previous cases, where the MPD has admitted refusal to discipline is based on not accepting those facts that are in those findings of fact. This is a very difficult situation when the city attorney who is the board's advisor and attends these board meetings has an opinion that is remarkably different from Bicking's and

many board members' as to how the board goes forward in a legal status, since the board doesn't have an attorney available to them who would represent the board's views.

Zuege added that a de novo review is really about the adjudication of the facts. If there are conflicting descriptions of some series of events by Person A and Person B, both cannot be telling the truth. CRA board hearing panels adjudicate who they believe: Person A or Person B. To decide, after the fact, that the other person is telling the truth is a de novo review of the facts. It's not about doing a new investigation, it's changing your view of the facts.

Reid stated that when the City Council amended this ordinance, one of the ways they assisted the MPD with these conflicts was to have a reconsideration process. When there is a situation where the MPD feels that discipline should not be imposed on an officer, the MPD can bring it back to the board, explaining why they feel discipline should not be imposed. The board then has an opportunity to decide if they should change their determination. That way the officer does not have a sustained finding on his record if the MPD has found a factual legal basis to support changing the panel's finding. Since 2006, the MPD has not used the reconsideration option.

Bicking stated that would be one way to resolve the conflict and legitimate concerns of the MPD about their other obligations. Any review that the MPD does should be aimed at their bringing their point of view or interpretation of the facts back to the CRA board rather than simply ignoring the ordinance as it stands. The CRA has already, on numerous occasions, made the suggestion that the MPD use the reconsideration option available to them. They continue to not use that avenue.

Manager

- Reid reviewed the [CRA Workload Report](#) for October 2009.
 - Bicking asked for more information about the report of discipline decisions received from the chief. Reid explained that the appeals process is still underway when the CRA receives the notice of discipline imposed. Bicking asked that Reid consider some way to advise the board and the public of the point at which non-public information becomes public. Reid will look into ways to do this. He added that the appeals process can take months and in some cases, years. Reid suggested the board's Reports & Statistics Committee report on this.
 - Terrell noted that the mediation process is working well. Reid agreed, but stated that one of the challenges with the program is that there are not enough volunteer mediators. CRA has two or three very dedicated volunteers, but having to wait for volunteers to be able to find the time to mediate can delay the process, especially if the mediation is not successful and has to go into the investigation process. It does not look like CRA will get any funding for a paid mediator. Terrell believes the board should locate mediators for the program. Reid requested that board members ask any qualified mediators that they know of to contact him if they are interested in volunteering.

Zuege suggested the Outreach Committee take on this task. Franklin asked what the qualifications are for a mediator. How does the board know if someone would be a potential mediator? Terrell asked if law students could be recruited. Reid explained that they need to have the state-required 40 hour training. It would be helpful if they have mediated high stress situations, like family court issues. A lot of the CRA

mediations involve high emotions on both sides. Reid will provide the board with further information. Zuege suggested the CRA contact organizations that train mediators. Reid explained that some mediators were contacted through US Arbitration & Mediation of Minnesota.

- The PACC met today. The MPD delivered the board's inquiry answers. The response is at the CRA office for board member review. There is some other information to be made available to the board as "view only" so board members will need to contact the MPD if they wish to view that information.
- Reid hopes that the board will begin discussing ordinance changes in January.
- The City Clerk's office has been advertising board vacancies for about one month. There are only two applications so far. He asked board members to contact people they think would be good candidates and urge them to apply.
- Reid reminded the board that there are 11 hearing panel determinations pending. He strongly suggested that the board complete their work, so the CRA is not carrying old complaints into 2010. He will send an email reminder to board members this week.

Committee Reports

Outreach Committee – Terrell

He will be going to the Plymouth Youth Christian Center (PYC) alternative school next week to speak to a new group of students. The students have been great to work with and they have a lot of interest in the CRA process. Reid offered to fill in for Terrell in the future at the PYC, if needed. Bicking said he will be interested in speaking in the future. They would like someone from CRA to attend their upcoming health fair. Terrell will email board members with the date.

Terrell reminded board members to complete their ride-alongs and be in contact with their council members.

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

Dwight

He's trying to figure out what changes have been made to the Taser policy if the Taser is not being used the way it's supposed to be used. Some officers are using the Taser as "shut up and come along" tool. Dwight said it's clear in the Taser policy that the neck area and groin area is off limits. Most recently, the chest area is off limits. It seems to him that is some kind of admission that it is possible that Tasers are killing people. Terrell responded that the CRA is concerned with what the MPD Taser policy is. They were a part of creating the Taser policy in the past. Bicking said the CRA board is limited in what they can do. They can recommend policy and can to some extent track how that policy is followed. They can evaluate whether an officer has followed the policy in specific cases. The board has been severely hampered in the past two years in that respect, because it has not been possible for the board to know what the policy is. The board has had access to a training manual, which indicates one thing. They have had statements which indicate another. The board has just now received answers to some inquires that they made in April. They will be reviewing that data to see if there is a clear statement of policy, and what it is. Until August 2007, there was a clear statement of policy that the Taser was not to be intentionally aimed at the head, neck or genitalia. The board may want to review their recommendations regarding aiming at the chest area, based on Taser International's latest statement. Terrell urged Dwight to advise victims of police misconduct to file a complaint with the CRA. Lubinski added that if CRA investigators or board members have a question about what policy was in place when the incident in front of them happened, all they need to do is ask her.

Michelle Gross

In listening to the conversation about the de novo review, she believes the comments of some of the board members are correct: in fact, the ordinance states the CRA board are the final adjudicators of fact and therefore the police chief should not be undoing the work of the CRA by making disciplinary decisions by notions of not agreeing with the facts. The board is aware that the police chief has been put forward for re-appointment. She asked if the board intends to take a position on the re-appointment of the police chief. Community members are quite interested in the opinions of the CRA board members and are interested in CRA board experiences in terms of lack of discipline, de novo review, lack of willingness to share information, lack of transparency and other concerns. She thinks the board could take a position on the re-appointment of the chief, and at the very minimum, the board should take a position asking for the city council to hold a public hearing, so that members of the public can give their opinion about whether the chief should be re-appointed. They are concerned this will happen under the table and quickly, without any consideration of community concerns.

Terrell replied that they will do their own review of the chief's relationship with the CRA. They will take a position. Patterson added that a public hearing before the PS&RS committee is a part of the process. The community will get the chance to state their opinions. It will be publicized on the city's web site and Reid will also be notified.

Chuck Turchick

He is heartened by the board's discussion. He disagrees with Fussy's definition of de novo review but he thinks it should be emphasized that Fussy did not say anything about "...shall be based on the adjudicated facts as determined by the civilian review authority board..." He was surprised that the board does not see anything they can do about this. He has set an example of what they can do. This is a violation of the ordinance by the police chief. In 172.130(d) it says the police chief is subject to discipline for failure to comply with the requirements of the section. The board has witnessed the misconduct. They should file a complaint with the Internal Affairs Unit. Turchick has filed a complaint. He has read the complaint process manual of the MPD IAU. There is nothing in there about notification if it doesn't pass the preliminary stage. He contacted IAU to ask about this and was told he would get a letter. This is one of the reasons the CRA was established: the IAU process was veiled in secrecy. The board has an obligation to provide as much transparency as they can. In regards to the Police Accountability Coordinating Committee, he thinks it is ironic that a tiny group that has the word "accountability" in it meets in secret. Turchick said that for all he knows, Bicking could ask the CRA board chair to go to PACC and discuss how to convince the public that they are actually concerned about the Taser policy issues. When the FOIA took effect in 1966 nationally, people raised the same objections that he has heard today.

There was no other public comment.

VIII. Business

Discussion of Chief's Performance Evaluation

Zuege urged the board to begin discussion tonight. He said that members should all be familiar with the statistics for the time period under discussion. They have all reviewed the manager's monthly reports, as well as annual and semi-annual reports.

Terrell

- The period under evaluation be June 2008 to the present.
- Include officer attendance at mediations and officer attendance at hearings.

- Include communications with the MPD at CRA board meetings.
- Include disciplinary decisions.
- In addition to the CRA's own data, it might be wise to look into incidents that have been reported in the media.

Zuege

- Taking data from June 2008 to present and comparing it to previous time periods would be helpful.
- Address availability of squad video tapes.
- The focus of the report should be the CRA process, its hearings, their outcomes and the disciplinary decisions on those determinations. The context of how other people and the press view the situation could be helpful.
- The rationales behind disciplinary decisions should be covered.
- A template could be created that could be carried over to provide future boards with some guidance.

Bicking

- Areas the board could review are: disciplinary decisions, cooperation of the MPD with providing officers for statements, meeting timeframes, cooperation with the PACC.
- The board should be looking at each section of 172.130 in the ordinance to see to what extent this has been followed as it should be. It lists procedures that happen in the disciplinary decision making process and says, "The level of compliance with this section shall be included as an element of the chief's annual performance evaluation..."
- Looking through the complete ordinance will give the board suggestions on what to consider.

Franklin

The chief has never attended a CRA board meeting.

Kvidera

- Include outlay of capital by the city for lawsuits against the city for police misconduct.
- Having the template from the mayor's evaluation of the chief would be helpful. Fussy said the mayor's written performance evaluation of the chief would be protected personnel data, but a template as to what the categories were would be public. Patterson will inquire about it.

Reid said the board's report should be related to the CRA's work. The board may also want to consider what changes can be made to improve for the next performance evaluation.

Patterson asked if the board intends to do an amendment to the evaluation that has already been done and if the board is trying to complete this before the end of the year.

Terrell said the goal is to evaluate the chief's involvement with CRA and for the board to make some recommendations about how to move forward. He added it is not part of the re-appointment process, but it behooves the board to do this because they need to know what the relationship with the chief looks like. Also, the community needs to know.

Zuege disagrees that this not part of the process of the chief's appointment. The board is involved in preparing a performance review that is considered through the proper channels and is public information that is considered by members of city council and the mayor and anyone else who cares to look at it. It is in the context of that process. He thinks it is important that the board do this before the end of the year. That is not rushing or expediting in any fashion.

Bicking agrees with Zuege and added that because there is a public hearing coming up before the city council as a formal part of the re-appointment process the board would definitely be part of the formal process if they participate in the public hearing in any fashion.

Bicking said it should be clear that those working on writing the evaluation are a working group and not a committee with public meetings and public notice. No final decision will be made by any of the participants. Fussy agreed in general terms, as long as the entire body adopts whatever comes from that working group.

Fussy stated that it remains his opinion that this board is not charged with the authority to conduct its own performance evaluation. Fussy further explained that as he told the board last month, they are allowed to give input on the performance evaluation of the chief, which is conducted by the mayor in August. His understanding is that this did not happen. Fussy does not know why the board has not had that role. The board could ask to facilitate with the mayor to have a greater role in that. The board has the right to give input and could certainly forward it to any body they want under the guise that this is the input the board would have provided in the performance evaluation.

Bicking said the cover of the report won't say performance review of the chief, it will say "CRA participation in the performance review of the chief." In any case, he hopes it is something the chief and the mayor would at least consider. One reason the board hasn't participated in the performance review is because it happened and the board was not told that it was happening, was not asked to participate and was not given any manner in which to participate. The board is going to, based on being left totally in the dark about the process, do it to the best extent they can do it now and under these circumstances.

Bicking, Terrell and Zuege volunteered to write the report. Reid added that Bellfield will want to participate. Patterson stated that the CRA manager should have some input.

Terrell will set up a time to meet with Bicking, Zuege and Bellfield as soon as possible to figure out how to begin writing this.

Terrell **moved:**

be it resolved that a work group of four board members: Don Bellfield, Austen Zuege, Dave Bicking and Justin Terrell, convene to begin writing CRA participation in Minneapolis Police Department chief of police performance review and to produce a rough draft for consideration at the December board meeting. Zuege seconded.

Motion passed unanimously.

Kvidera suggested that as the working group completes major portions of the rough draft, they email them to the other board members so they can suggest changes as they go.

Future Business

Bicking suggested that at their December meeting, the board consider 172.130(d):

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.

The board has been talking about what should they do when the MPD fails to comply with the ordinance. The ordinance says the chair shall notify the executive committee of the chief's failure to comply with the requirements of this section.

IX. Announcements

There were no announcements.

X. Adjournment

Kvidera **moved** the meeting be adjourned. Zuege 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: November 4, 2009

SUBJ: Monthly Report – **October 2009**

1. Intake – 26
2. Signed Complaints – 5
3. Complaints by:

<u>Ward</u>	<u>Police Precinct</u>	
Ward 5 – 1	Precinct 1 – 3	Repeat Officers ¹ – 3
Ward 7 – 3	Precinct 3 – 1	Repeat Officers ² – 4
Ward 9 – 1	Precinct 4 – 1	New Officers – 1

Allegations
Excessive Force – 4
Inappropriate Language – 4
Inappropriate Conduct – 1
Retaliation – 1
4. Completed Investigations – 6

Complaints in Investigation	2007 – 4
	2008 – 22
	2009 – <u>67</u>
	93
5. Mediations Scheduled – 5
Mediations Held – 5
Successful Mediations – 4
Unsuccessful Mediations – 1
6. Manager dismissals – 1
7. Complaints awaiting Hearing as of 10/30/09 – 7

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

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

- 8. Hearing Panels**
 - Complaints heard – 6
 - Determinations Completed – 7
 - Sustained or partially sustained – 1
 - Not Sustained – 4
 - Dismissed – 2

 - Determinations Pending – 11
 - Hearings held in 2008 – 4
 - Hearings held in 2009 – 7

- 9. Discipline Decisions Received From Chief of Police – 2**
 - 20 hour suspension (1 officer)
 - No discipline (1 officer)

- 10. Complaints Awaiting Discipline Decision – 3**