

**CITIZENS' POLICE REVIEW BOARD
MEETING OF THURSDAY, September 22, 2016 – 6:15 P.M.
City Council Chamber - Third Floor**

I. CALL TO ORDER BY CHAIR BROWN a 6:19 P.M.

II. ROLL CALL AND ATTENDANCE

Present: Chair Chris Brown
Vice-Chair Charlette Green
Commissioner Sharon Ball
Commissioner Brian Bingham
Commissioner Thomas Cameron
Commissioner Erica Harris (Late Arrival: 7:06 p.m.)
Commissioner Colette McPherson
Commissioner Howard Tevelson
Commissioner Mya Whitaker
Commissioner Mauricio Wilson

Meredith Brown, Board Counsel

CPRB Policy Analyst Juanito Rus
Karen Tom, CPRB Investigator
Emma Dill, CPRB Investigator

Excused: Joan Saupe, CPRB Investigator
Nikki Greer, CPRB Investigator
Andrew Lee, CPRB Investigator

III. INTRODUCTION – NEW CPRB STAFF

Director Finnell reported that the CPRB was in search of a CPRB Policy Analyst and a CPRB Investigator. Several weeks ago he hired two outstanding individuals, Juanito Rus and Emma Dill (Resumes are attached in the Agenda Meeting Packet – Attachment 1). He asked the new staff to speak.

Emma Dill introduced herself and stated that she has a background in law, attended Vanderbilt University Law School and then entered in private practice in a large law firm doing mostly civil work. She is excited to get into something that is more community service oriented.

Juanito Rus introduced himself. He started in California Bi-Lingual Education Politics almost twenty years ago. A lot of his career has been trying to help people who are trying to make good things happen in government especially with respect to the communities that are underserved, to give them the tools that they need to be able to

work with government and hopefully be able to fulfill that role for the Board as well. He looks forward to a good tenure as a Policy Analyst with the CPRB.

Chair Brown thanked and welcomed them.

IV. MINUTES

A. September 8, 2016

Director Finnell asked members to review Attachment 2 in the Agenda Meeting Packet. Commissioner Ball thanked Claudia De La Cruz for sitting in and taking notes for this meeting.

A motion was made by Commissioner Ball to approve the September 8, 2016 minutes. Commissioner Cameron seconded. The Board voted unanimously.

V. OPEN FORUM

Chair Brown stated that he has one Speaker Card for this Item (Assata Olugbala).

Ms. Olugbala commented that this process is not working – this body has not been capable of holding police accountable for misconduct. It is her belief also that in the future, if we look at the proposal for the Police Commission (Measure LL – that is not going to work either), mainly because you are all political appointees. Anything that is going to have a serious impact on police behavior change has to be a totally independent impartial body. When in the past political appointments have happened at this body and people began to ask questions in dissent on issues, they were taken off the Board. You have almost a whole new Board now, except for the people that were considered the ones that will go along with the go along. She doesn't care if she is insulting. People are dying and the investigative process has to be done right.

Ms. Olugbala further commented that when you come up with no findings, exonerated – most of the time you are saying that you interviewed one person or you interviewed another person and someone was lying – most of the times it was the people. Unless you are looking at films – your documentation never states how you came to a conclusion, but you said that evidence is clear “based on what”, this process is not working. If somebody is sitting here and believing it – you don't have to do it in front of her, but please let her know how. It is not working, I will say it again. People are dying. You have racial profiling on the agenda, children affected by the police – police being inappropriate with children by pushing them down the stairs, guns being put to peoples' heads and over and over the findings are exonerated. You had a meeting with the City Administrator and when you do make a recommendation for discipline, most of the time the City Administrator does not go along with it. So continue with what you are doing and she will continue to monitor and will come forward and admit that she is wrong once she sees she is wrong, but she does not see it now.

Chair Brown thanked Ms. Olugbala for her comments.

VI. DIRECTOR'S REPORT

A. Announcements

Director Finnell asked members to review Attachment 3 in the Agenda Meeting Packet. Commissioner Ball referenced Attachment 3, Page 2, Data Collection and Case Management System – She inquired as to the total number of phases involved. Director Finnell stated that there are two phases - this is Phase Two; Phase One was the actual planning and development. The next step will be implementation.

B. Pending Cases as of September 16, 2016

Director Finnell did not give a report,

Commissioner Cameron referenced the Pending Cases List and would like explanations on Case No. 15-0900 (Complainant OPD) – Page 1 and Case No. 15-0618 (Complainant OPD) – Page 7. Director Finnell stated that both cases were officer involved shootings. He reported that he initiated the investigations pursuant to the cases being officer involved shootings. We do not have an actual complaint of any wrong doing on those cases at this time but we are evaluating the entire incidents to see if the officers involved followed departmental procedures. We do not have an actual complaint from a family member or citizen at this point.

VII. CPRB SPECIAL COMMITTEE REPORTS

A. Outreach Planning

1. Report from Chair

Chair Brown asked Chair Tevelson to give a report. Chair Tevelson reported that the Committee held a meeting today at 4:00 p.m. Director Finnell, he and Commissioner Whitaker attended. We continue to want to work with the youth 11-18 (middle and high school children). He reported that Director Finnell did receive a name from someone in the school district; he tried to contact the person and to date, he has not received a response. Director Finnell will email the person and try to get a meeting scheduled to take the matter forward. The Committee has decided to hold off on additional print materials since Measure LL is coming up in November. Commissioner Brown thanked him for the report.

2. Event Calendar

Chair Tevelson reviewed the CPRB Outreach Calendar (2016) with members (Attachment 4). Director Finnell will verify the dates to determine if the events will occur as scheduled and contact the Committee by email.

3. Next Meeting

Chair Tevelson reported that the Committee will meet on October 20, 2016

(Thursday) at 4:00 p.m. in Director Finnell's office.

B. Transparency and Legislation

1. Report from Chair

Chair Brown asked Commissioner Ball to give a report. Commissioner Ball reported that Commissioner Green, she and Commissioner Bingham met with the City Administrator on the 23rd as the follow up to their previous meeting where she said she was going to take their comments, review them and get together. When they left this meeting, they felt very good; she is open to either the Chair or the Vice-Chair of the Board participating in the meetings that occur where our recommendations for discipline are discussed with the City Administrator and to have a representative of the Commission review the final report that is sent to her relaying our deliberations and recommendations prior to it being submitted to the CIO. Also, she has empowered the Executive Director to provide more detailed information and she will provide more detailed information in her feedback to us as to what her final decisions are based on our recommendations.

Commissioner Ball reported that the website changes (CPRB) are going to be moved up in the City's priority list so that we can get the information CPRB has been trying to get to the public soon. The meeting with Karen Boyd is on October 13. Commissioner Green will provide some of the detailed feedback on the cases that we discussed with the City Administrator; to be agendaized for the next Board meeting during Closed Session. Chair Brown thanked her for the report.

2. Next Meeting

To be determined.

VIII. CHANGES TO THE HEARING PROCEDURE AND TRAINING (ACTION ITEM)

A. Discussion

Director Finnell reported that at the September 8, 2016 meeting, the Board discussed some issues pertaining to procedures on hearing and training processes. There was comment made to take some action on some of those discussions. This Item pertains to those issues raised. He did not attend that meeting. He reviewed the DVD and there were some suggestions made but the Board was not in a position to take action at that time.

Chair Brown recapped briefly the suggestions from that meeting. We were looking for ways to improve the efficiency of our meetings. Chair Brown asked Board Counsel to talk about the Bench Book discussions.

Board Counsel Brown reported that one of the things that we talked about in terms of the training and improving the deliberative process and also making sure that the hearing process is focused specific to the evidence that is necessary to determine

whether or not there has been a violation of the Rules and Regulations that govern the police department was that we develop a Bench Book (similar to that which is used in a court of law and it is a book that outlines the elements that make up the different charges or the different descriptions of misconduct). For instance, we have a lot of demeanor complaints that are made – we would be able to look at the Bench Book and it would say what the elements of that are based on the Memorandum of Rules.

Board Counsel Brown stated that with the more detailed and involved areas of law like Search and Seizure – Fourth Amendment issues, that was one of the things that caused a very long deliberative process. We found that there are different interpretations of the Supreme Court cases and the descriptions of when and at what time there is appropriate search and seizure detention and when the custody changes to a detention or an arrest. Those things I think are the ones that caused a long process and a need to ferret through the specific questions that distill what the elements are that would support a finding of either of the choices that the Board has to reach in the deliberation process.

Board Counsel Brown further stated that what we had discussed was developing a Bench Book that would synthesize those issues that would interpret the cases and drill down on the specific elements. Because that one was rather complex and had several different branches of law that needs to be applied, that would probably be the one we would start on. We would have training once we develop the Bench Book and it would be a public document that would be available for review and comment because we would need the US Attorney's comment, District Attorney would probably want to comment, and defense counsel/the union counsel would probably want to have their say. That is the same process that happens when you develop a judicial bench book. This is something that has not been done before with respect to a Police Review Board – it doesn't exist. We would be creating something new; however, the process itself is in existence so this would give us the opportunity to have a baseline of understanding of the law that should be applied and the elements of each of the alleged wrong doing would be easier to identify and the questions would be more specific because you would tie them to the elements and it would not be a situation where one would be searching for what is the appropriate question, what is the relevance because that information would be available through an analysis and review of the Bench Book that we would put together. That is a process that will be evolving.

She reported that we will start with the most complex, we will get through that one, we will do training, we will let that Book be reviewed and let the comments come back, and we will add to it as we go along. We will start with the ones that are the most frequent and the ones that are the most complex and then we will fill in from the middle. I think that will help us with the process because one of the things that had come up with one of the prior hearings was: At what point is there a violation of civil rights, at what point is there a manifestation of an alleged wrong doing and which questions do we ask to get to that point. This will make that a more expeditious process. Chair Brown thanked Board Counsel for the information.

Chair Brown added that something new to this would be that the Bench Book describes racial profiling; it is something that people described as deficiency in

Oakland's process of laws that we know that there are statutes about racial profiling in certain conditions. The racial profiling issues that we get with the Oakland Police have not had a bright line set of rules and hopefully we can begin to put a stake in the ground with this. The people of Oakland can talk then about how we have modified based within the confines of the law to really express what it means to have racial profiling by a police force – that would be a landmark for the City of Oakland.

Vice-Chair Green asked if we were also talking about looking at the Memorandum of Rules and coming up with those that are most frequently at issue and getting the elements for those and including that in the Bench Book too. Board Counsel Brown stated that we are looking at the ones that are the most complex and frequent so we would start with those. The Memorandum of Rules are descriptions that are within the OPD MOR and something like demeanor does not have a constitutional connection but it does have through the materials that we have what is described in the complaints and through amadoda information that would be synthesized so that we would be able to describe what in our environment, what in the City of Oakland is considered to be a violation of demeanor and we would be able to then present something that could be used. The benefit of that and also having that be published is that the people will know going into a hearing how they are going to be evaluated which is necessary because we are dealing with public employees and public employees need advance notice of the charges that are against them, what the evidence is, certain specific rules and statutes governing the manner in which public employees are evaluated and disciplined. That would also be something that we would include. So part of the motion would be everything from the Memorandum of Rules to the more serious violations and legal standards.

Board Counsel Brown mentioned that one of the other things that we talked about is that sometimes there is a finding that the Board has that is not sustained by the City Administrator and it might be helpful to add training that follows the process of preparing cases for arbitration because what happens sometimes is that if the case is not ready to go forward and then there is a finding and the City Administrator wants to pick it up, then there is a back fill needed. If we begin from the beginning with the process of preparing for arbitration if there is evidence supporting a finding, we will be able to put the case together from the beginning. So there is the Bench Book; there is also training regarding public employee discipline, police misconduct, and in the matter that is followed in preparation for the arbitration process.

B. Public Comment

Chair Brown stated that he has one Speaker Card for this Item (Assata Olugbala).

Assata Olugbala gave comments. It was her understanding that when you are appointed as a member of this Commission that training was included. The training that you are talking about now should have taken place before you start a procedure of hearings. Are you talking about Departmental General Orders? Chair Brown stated the MOR. If you are talking about that, before you take your position you took, you should have been informed – she read part of the General Orders – Body Worn Cameras, Use of Force, Reporting the Investigation in the Use of Force,

Racial Profiling, Use of Electronic Weapons or Restraining Persons, Complaints Against Departmental Personnel and Procedures, etc. There is no way you can sit right now and go into a process of making decisions if you haven't been trained on Departmental General Orders, if you haven't been trained on the Negotiated Settlement Agreement. I think what you do is you go to the Police Academy and that doesn't cover any of this. You are being training by the people that you have to make judgement about; all your training is by these people. That is bias. You have to seek training from an impartial group of people as a part of it. I don't know how you go into a room and make decisions when you don't have the tools to do it. If I am wrong, let me know. Chair Brown thanked Ms. Olugbala for her comments.

Board Counsel Brown stated that as a matter of record she clarified that what she is describing is not a review of the existing rules that the Commission has been trained on. This would be an entirely new concept not in place in any police review board in any state in the United States. It would be an analysis of law that is similar to a Judicial Bench Book that we would create that would identify the elements of each of the items that are identified as misconduct, both in violations of civil rights and in the Memorandum of Rules and identify those elements so that there would be a more expedited and clear manner and standards set for deliberation and for the investigative process. So what we are talking about is elevating the training to that which is similar to that which occurs at the judicial bench but it would be something that would democratize such that it could be implemented by people who are citizens of the community and not requiring a training in law. Chair Brown thanked Board Counsel.

C. Action

A motion was made by Commissioner Ball that we go forward with developing the Bench Book based upon the most appropriate topics including the MOR and provide the training to go along with it – enhancements to the process. Commissioner Wilson seconded. The motion passed. The Board voted unanimously.

Chair Brown asked the Transparency and Legislation Committee to work with Director Finnell, CPRB Policy Analyst Rus and Board Counsel in implementing the project. If other Commissioners are interested in assisting, please contact the Transparency and Legislation Committee Chair.

IX. CLOSED SESSION: NEW BUSINESS (Convened at 6:56 p.m.)

- A. Cases proposed for Administrative Closure / Pursuant to Ordinance No. 12454 C.M.S. section 6, paragraph G subsection 9, hearing would not facilitate the fact-finding process; and that no good cause is shown for further action.

1. Based on findings of the investigation

Case No. 15-0838, Jaimie Rodriguez

- a. Complainant's Comment
- b. Staff Report
- c. Discussion
- d. Action

Complainant alleges an OPD officer used profanity towards him during their interaction, did not Mirandize him before questioning him, and that OPD officers rammed him in a police vehicle with their lights and sirens on.

Case No. 15-0867, William Woodrd

- a. Complainant's Comment
- b. Staff Report
- c. Discussion
- d. Action

Complainant alleges an OPD officer was rude by not shaking his hand, using profanity, and generally being unprofessional during their interaction. Complainant also alleges another OPD officer unlawfully handcuffed him, slammed him to the curb, slapped him in the head and covered his PDRD during his use of force against the Complainant.

B. Pending Cases for Administrative Hearing Discussion

There were no cases for discussion.

C. City Administrator's Response (Case No. 15-0749)
(Executive Director Anthony Finnell)

Director Finnell asked members to turn on their computer monitors to view a response letter from the City Administrator dated September 1, 2016. Director Finnell read aloud the letter (allegations/findings of each officer). (Reference to Attachment 7 in the Agenda Meeting Packet).

Discussion followed.

The Board reconvened open session at 7:49 p.m.

X. OPEN SESSION DISCLOSURE OF NON-CONFIDENTIAL CLOSED SESSION MATTERS.

BY MOTION AND VOTE IN OPEN SESSION, BOARD ELECTS EITHER TO DISCLOSE NONCONFIDENTIAL INFORMATION OR TO DISCLOSE CONFIDENTIAL INFORMATION THAT THE MAJORITY DEEM TO BE IN THE PUBLIC INTEREST.

XI. ADJOURNMENT

The Board adjourned at 7:50 p.m.