

COMMUNITY REVIEW BOARD ON POLICE PRACTICES

A G E N D A

Tuesday, February 27, 2018
Cherokee Point Elementary School
3735 38th Street
San Diego, CA 92105

A quorum of twelve (12) board members is needed to conduct business. If you cannot attend, please call the CRB Complaint Coordinator at (619) 236-6296.

CLOSED SESSION 4:00 p.m. – 5:30 p.m.
Board Members and Staff Only

- I. Call to Order
- II. Legal Opinion(s) Request & Attorney/Client Privileged Response(s) (0)
- III. San Diego Police Department Feedback on Case Specific Matters Only
- IV. Shooting Review Board Reports (0)
- V. Category II Case Audit Reports (0)
- VI. Discipline Reports (0)
- VII. Case Review Team Reports (4)
- VIII. Case-Specific Recommendations to the Mayor (1)
- IX. Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0)

Pursuant to California Government Code Section 54957 — To discuss community complaints brought against San Diego Police Department Officers under California Penal Code Section 832.7.

OPEN/PUBLIC MEETING 6:00 p.m. – 8:00 p.m.
Open to the Public

- I. CALL TO ORDER/WELCOME (Chair Doug Case)
- II. PURPOSE OF THE COMMUNITY REVIEW BOARD ON POLICE PRACTICES
- III. APPROVAL OF MINUTES: CRB Open Meeting Minutes of January 23, 2018
- IV. NON-AGENDA PUBLIC COMMENT: (Speaker Slip Required)
- V. RECOGNITION & APPRECIATION: Board Member John Sieger
1 yr of Service on the CRB

- VI. TOPIC: “ SDPD Use of Force Policy & Officers Use of the Carotid Restraint”
(30 mins)
- Guest Speakers: SDPD In-Service Training Unit – Sergeant Michael Belz,
Officer Mike Rhoten, & Officer Ken Kries**
- VII. UNFINISHED BUSINESS (DISCUSSION/ACTION):
- A. Status of Implementation of Measure G Ordinance (David Graham)
 - B. Timeline
- VIII. COMMITTEE REPORTS (DISCUSSION/ACTION)
- A. Continuing Education Committee (Pieter O’Leary)
 - Upcoming Education Topics/Guest Speakers
 - B. Outreach Committee (Taura Gentry)
 - C. Rules Committee (Brandon Hilpert)
 - D. Policy Committee (Joe Craver)
 - E. Recruitment & Retention Committee (Maria Nieto-Senour)
- IX. CHAIR’S REPORT (Chair Doug Case)
- A. Work Plan FY19
 - B. CRB Legal Request & Opinion Memo
- X. EXECUTIVE DIRECTOR’S REPORT (Sharmaine Moseley)
- A. Caseload Update & Status of Case Reports
 - B. Community Events/Forums/Meetings
 - C. Better Management Impact Software Feedback
 - D. City Administrative Rule on EEO Policy
 - E. CRB Bylaw & City Rule on Communications with Media
 - F. Deadline for Shelving Cases
 - G. Other Items/Reminders – Cell Phone Usage During Meetings;
Importance of Self-Care; 1:1 Meeting with Executive Director
- XI. SAN DIEGO POLICE DEPARTMENT REPORT (Executive Assistant Chief Todd Jarvis)
- A. Status of CRB Recommendation to BWC Policy
 - B. CRB Recommendation on Canine Cases – Training for Members
 - C. Status of CRB Recommendation on Viewing of BWC Video
- XII. BOARD MEMBER RIDE-ALONG REPORTS (2 mins each)
- XIII. BOARD MEMBER ANNOUNCEMENTS/COMMENTS

XIV. ADJOURNMENT

Materials Provided:

- Minutes from CRB Open Session Meeting on January 23, 2018
- Measure G Ordinance
- Work Plan FY19
- Legal Response for an Opinion Memo

Public Comment on an Action/Discussion Item: If you wish to address the Board on an item on today's agenda, please complete a speaker form (on the table near the door) and give it to the Board's Executive Director before the Board hears the agenda item. You will be called to express your comment at the time the item is heard. Please note, however, that you are not required to register your name or provide other information to the Board in order to attend our public session or to speak.

Public Comment on Committee/Staff Reports: Public comment on reports by Board Committees or staff may be heard on items which are specifically noticed on the agenda.

Public Comment on Matters Not on the Agenda: If you wish to address the Board on any matter within the jurisdiction of the Board that is not listed on today's agenda, you may do so during the PUBLIC COMMENT period during the meeting. Please complete a speaker form (on the table near the door) and give it to the Board's Executive Director. The Board will listen to your comments. However, California's open meeting laws do not permit the Board to take any action on the matter at today's meeting. At its discretion, the Board may refer the matter to staff, to a Board committee for discussion and/or resolution, or place the matter on a future Board agenda. The Board cannot hear specific complaints against named individual officers at open meetings.

Comments from individuals are limited to three (3) minutes per speaker, or less at the discretion of the Chair. At the discretion of the Chair, if a large number of people wish to speak on the same item, comment may be limited to a set period of time per item. If you would like to have an item considered for placement on a future Board agenda, please contact the Executive Director at (619) 236-6296. The Director will consult with the Board Chair who may place the item on a future Board agenda. If you or your organization would like to have the Board meet in your neighborhood or community, please call the Executive Director at (619) 236-6296.

This agenda will be made available in alternate formats upon request, as required by the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Requests for disability related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services or interpreters, should be forwarded to communityreviewboard@sandiego.gov, or call (619) 236-6296.

MEMORANDUM

To: Sharmaine Moseley, Executive Director, Community Review Board on Police Practices

From: Christina Cameron, Special Counsel

Date: February 22, 2018

Re: ***Information Provided to Complainants and Summaries Posted on Community Review Board on Police Practices Website***

Introduction and Background

At the conclusion of an investigation, the Community Review Board on Police Practices (“CRB”) writes a letter notifying the complainant of the outcome of the case. The letter details one of four (4) findings by Internal Affairs (“IA”) and indicates whether the CRB agreed or disagreed with IA’s determination.

In semi-annual reports, the CRB provides case review statistics including: demographic information about complainants, the location of incidents, the number of cases evaluated, characteristics of officers who have been the subject of an investigation, and the number of times the CRB and IA have come to different conclusions regarding a complaint. Neither these semi-annual reports nor any information on the CRB website includes summaries of the incidents or the conclusions of the CRB.

Question Presented

1. May the CRB include a short paragraph in its letters to complainants with a brief (1-3 sentence) explanation of the rationale behind the CRB’s finding for each complainant?
2. May the CRB include short summaries, without information that would identify an officer, of cases with the associated findings on the CRB website, similar to the San Diego County Citizens’ Law Enforcement Review Board website?

Brief Answers

1. No. Penal Code section 932.7, expressly limits what may be disclosed to a complainant at the conclusion of a CRB investigation to whether a complaint was “sustained, not sustained, exonerated, or unfounded.” To go beyond these holdings would have the potential to associate the identity of an officer with information obtained during the course of an investigation.

2. Maybe. In addition to not identifying officers involved in cases, care must be taken to ensure that identities cannot be ascertained as a result of the disclosure of summary information. It is relevant to note that the letter currently sent to complainants at the conclusion of a matter includes the CRB case number. This letter, the case number, and a complainant's general knowledge of the individuals involved in his/her complaint, may make tracing a facially anonymous summary back to a specific officer possible. This would violate at least the spirit of the confidentiality provisions contained in state law. Draft rules pursuant to which the CRB carries out its functions ("Operational Rules") are currently silent with regard to the form of final letters to complainants, the contents of CRB reports and information posted on the CRB website. Prior to any change in process, the Operational Rules should be amended to establish procedures and practices to ensure that involved individuals cannot be identified.

Analysis

I. City Charter and Operational Rules

Pursuant to Charter Section 43 (d), the CRB is authorized to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints, and to review all in-custody deaths and police officer-related shootings pursuant to Operational Rules established by the City Council that are consistent with state laws concerning citizens' complaints against peace officers. The CRB is required to provide semi-annual reports which may not disclose any information required to be kept confidential by law. This analysis is based upon a draft copy of Operational Rules which are in the process of being updated. These draft Operational Rules are currently silent in regards to the CRB's communication with a complainant following the conclusion of its review as well as the content of semi-annual reports to the Mayor and Council which are also posted on the CRB website.

Written notice to a complainant of the disposition of a complaint is required within 30 days of completion. Pen. Code, § 832.7

II. Personnel Records under State Law

The disclosure of peace officers' personnel records is governed exclusively by provisions contained in the Evidence and Penal Codes. See Evid. Code §§ 1043, 1047; Penal Code § 832.7. Though contained (among other records) in a peace officer's personnel file, courts have held that officers' names, employing agencies and dates of employment are disclosable under the California Public Records Act (Gov. Code § 6250 et seq.) ("CPRA") in spite of the general prohibitions contained in the Penal Code. *Commission on Peace Officer Standards & Training v. Sup. Ct.* (2007) 42 Cal. 4th 278; *Long Beach Police Officers' Ass'n. v. City of Long Beach* (2014) 59 Cal.4th 59 (disclosure of the names of all officers involved in officer-involved shootings); see also, 91 Ops. Cal. Atty. Gen. 11, 6-7 (2008).

Penal Code section 832.7 makes peace officers' personnel records confidential and privileged. Peace officer personnel records are those maintained by "any state or local agency" pursuant to its authority and duty to investigate complaints by members of the public against peace officers under Penal Code section 832.5 and include "[c]omplaints, or investigations of complaints, concerning an event or transaction in which [the officer] participated, or which [the officer] perceived, and pertaining to the manner in which [the officer] performed his or her duties." Pen. Code, § 832.8 (e). This is true of investigative files of a review commission that is separate from IA, lacks the power to directly impose discipline, and whose records are never placed in an individual officer's personnel file. *Berkeley Police Assn. v. City of Berkeley* (2008) 167 Cal.App.4th 385.

The CPRA generally prohibits the release of any public employee personnel records and courts interpreting the CPRA have followed the Penal Code in defining the scope of a peace officers' personnel record. See Gov. Code, § 6254 (k); *City of Richmond v. Sup. Ct.* (1995) 32 Cal.App.4th 1430.

When the CRB is provided access to officers' personnel records in the course and scope of its duties as authorized pursuant to the San Diego City Charter, it is admitted into this privilege and must maintain the confidentiality of the records. It is not, however, the holder of the privilege with the authority to waive it.

The Penal Code explicitly authorizes review boards to "disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved" and to "provide written notification to the complaining party of the disposition of the complaint." Pen. Code, § 832.7, emphasis added. The requirement not to identify the individuals involved is critical to understanding the limitations on the CRB both in drafting public reports and communicating with complainants.

Under the rules of statutory construction, express exceptions to a general statutory rule are to be strictly and narrowly construed and not extended. *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 953-954 (analyzing whether salaries of certain public employees may be set in closed session under the personnel exception of the Ralph M. Brown Act – California's open meetings law). Here, there is a general prohibition in both the Penal Code and the CPRA against the dissemination of peace officer personnel records. The Penal Code contains an express exception to this general prohibition which must, therefore, be narrowly applied and followed. Further, Penal Code exceptions that allow agencies to "disseminate data" and provide written notification to the complaining party both allow "disposition of complaint[s]" to be made public. Penal Code §§ 832.7 (c), (e). "Disposition," however, is defined and limited to an indication that a complaint is "sustained," "not sustained," "exonerated" or "unfounded." See Penal Code § 832.7 (c).

No case law directly interpreting section 832.7 permits communication with a complainant at the conclusion of an investigation to go beyond those four determinations. Other opinions are instructive and suggest that adherence to the four enumerated determinations is required. For example, the Attorney General opined that completed investigation reports may not be released to a complainant. See 73 Cal. Ops. Atty. Gen. 90 (1990). Nor may a complainant have access to tape recordings or transcripts of review board hearings. *San Francisco Police Officers' Ass'n. v. Sup. Ct.* (1988) 202 Cal. App 3d 183, 191. Similarly, citizen review boards may not conduct their investigations in public hearings because, such hearings would necessarily disclose "information 'obtained from' confidential records, including the identity of officers who are subject to complaints, the content of investigative files, and memoranda compiled by ... investigators before the hearing." *Berkeley Police Ass'n.*, 167 Cal.App.4th at 405.

This last case is the most recent and also the most instructive. In order to go beyond the four enumerated determinations and provide a rationale for its determination, the CRB would have to draw upon information obtained in the course of its investigation. Under the holding in the *Berkeley Police Ass'n.*, case, the disclosure of such information to a complainant would be improper. While the *Berkeley Police Ass'n.* case concerned the conduct of an entire hearing in public and, in that regard, may be seen as an extreme example, the Court does not indicate or suggest that there is a *de minimus* reliance upon "information obtained in the course of an investigation" that could be disclosed.

Conclusion

Because it would have to draw upon information obtained in the course of an investigation, CRB may not add the rationale for the finding that it agreed or disagreed with IA's determination to letters notifying complainants of the disposition of a complaint. CRB may be able to include brief summaries of cases along with its findings in semi-annual reports and on its website if the information can be sufficiently anonymized to ensure that the identity of anyone involved in a matter cannot be ascertained. This includes ensuring that identities cannot be determined by reference to information provided to a complainant who may be aware of the identity of the officers involved in the incident that he or she has reported to the CRB. Draft Operational Rules do not address the content of reports to the Mayor and Council or materials posted on the CRB website. This issue should be addressed in the Operational Rules before additional information is added to semi-annual reports or summary information related to cases is posted on the CRB website.

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