

**MINUTES
CITY OF FORT MYERS
CITIZENS POLICE REVIEW BOARD
January 14, 2020**

The Citizens Police Review Board of the City of Fort Myers, Florida, met in regular session at Oscar M. Corbin, Jr. City Hall, 2200 Second Street, its regular meeting place in Fort Myers, Florida, on Tuesday, January 14, 2020, at 5:30 p.m. Present were presiding Robert W. Votaw, Jr., Chair, Erma Boyd-Dorsey, Vice Chair, Forrest H. Banks, Danielle L. O'Halloran, Esquire, Michele Parker and Shawn T. Walker, Board Members. Also present were Grant W. Alley, City Attorney, Gwen Carlisle, MMC, City Clerk, Board Administrator and Wendy White, Recording Specialist. Absent: None.

Chair Votaw led the Pledge of Allegiance to the Flag of the United States of America.

PUBLIC INPUT

None

OLD BUSINESS

None

NEW BUSINESS/APPEARANCES

Inspector General Donald Oswald noted he would like to speak with Board members individually regarding an item from the prior meeting.

1. **Minutes of December 10, 2019**

Chair Votaw stated that the minutes of the regular meeting held on December 10, 2019, were delivered to the Board Members. It was moved by Board Member Parker and seconded by Board Member Walker to approve the minutes of December 10, 2019. A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

CONSENT AGENDA

2. **Case No. Prelim 2019-068**

Policy Related to Complaint: Alleged Complaint: Traffic Stop

Complainant: Jhasmine Alder

Subject Officer: N/A

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

3. **Case No. Prelim 2019-70**

Policy Related to Complaint: Alleged Complaint: Harassment

Complainant: Tarique Wilson

Subject Officers: Officer Kyle Martins

Officer Ryan Amador

Sergeant Gloria Camacho

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Lieutenant Joshua Steinman

CONSENT AGENDA (CONTINUED)

4. **Case No. Prelim 2019-071**

Policy Related to Complaint: Alleged Complaint: Failed to Baker Act

Complainant: Laura Corbitt

Subject Officers: Officer Laura Marchena

Officer Terrell Brown

Officer Michael Schneider

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

5. **Case No. Prelim 2019-073**

Policy Related to Complaint: Alleged Complaint: Multiple Complaints

Complainant: Tarique Wilson

Subject Officers: N/A

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Dan Losapio

It was moved by Board Member Boyd-Dorsey and seconded by Board Member Parker to approve the Consent Agenda. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

ADDITIONAL ITEM

Board Member Banks referred to Cases similar to Case No. 2019-070 where it is noted that Command Staff made a decision that filings like this would not be considered a complaint; he asked if the item goes for legal review before that decision is made.

Lieutenant Steinman noted that Preliminary Assessment 2019-070 did not meet the level of a complaint; it met the criteria for a Preliminary Assessment per department policy. Captain Newhouse stated that the policy was legally reviewed.

MANDATORY REVIEW BY BOARD – NONE

NON-MANDATORY REVIEW BY BOARD

6. **Case No. Admin 2019-016**

Policies Related to Complaint:

- (a.) General Order 9.1 General Rules of Conduct Section VI (L) Harassment
- (b.) General Order 21.3 Field Interview Reports Section I (H)
- (c.) General Order 15.4 Limits of Authority (Search & Seizure) Section IX (A) (3)
- (d.) General Order 25.3 Mobile Video/Audio Recording Equipment Section IV (A)

Complainant: Travis Blanks

Subject Officers: Officer Martin Davila (a.)(b.)

Officer Chad Barnett (c.)(d.)

Internal Affairs Disposition:

- (a.) Unfounded
- (b.) Sustained
- (c.) Other Finding
- (d.) Sustained

Discipline:

- (a.) None
- (b.) Counseling
- (c.) Retraining on General Order 15.4
- (d.) Counseling/Policy Review

Investigator: Lieutenant Joshua Steinman

Lieutenant Joshua Steinman gave the disposition of the case.

Board Member O'Halloran noted that the Officer stated in the report that he could not comment on the marijuana smell; as he never smelled marijuana. She recommended that the Police Academy provide training for Officers to become familiar with a common drug, such as marijuana; as marijuana is very distinct. Discussion ensued on the determination of marijuana. Lieutenant Steinman stated that this can be addressed at the Academy level.

Board Member Parker asked how many phases there are in training. Lieutenant Steinman stated that training occurs in three phases, with approximately a month for each phase.

It was moved by Board Member Parker and seconded by Board Member Banks to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

NON-MANDATORY REVIEW BY BOARD (CONTINUED)

7. **Case No. IA 2019-003**

Policies Related to Complaint:

General Order 9.1 General Rules of Conduct Section II (9) Standard of Conduct

Complainants: Ma Angels Bonjoch Mas / Phillip Davis

Subject Officer: Officer Michael Isaacs

Internal Affairs Disposition: Unfounded

Discipline: N/A

Investigator: Lieutenant Brian O'Reilly

Lieutenant Brian O'Reilly gave the disposition of the case.

Board Member Parker asked how long Officer Isaacs was in the police department and whether he resigned because of this case. Lieutenant O'Reilly stated that he was with the agency for approximately a year and a half and they do not know the reason he resigned.

It was moved by Board Member Banks and seconded by Board Member Parker to accept the findings of the police department. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

8. **Case No. IA 2019-004**

Policies Related to Complaint:

(a.) General Order 9.1 General Rules of Conduct Section II General Rules of Conduct (A) (37) Untruthfulness in an official proceeding (perjury)

(b.) General Order 9.1 General Rules of Conduct Section II (A) (8) Performance of Duty

(c.) General Order 25.3 Mobile Video/Audio Recording Equipment Section IV (A)

Complainants: Ian Mann, Esq./Chief Diggs/ Lieutenant O'Reilly

Officer: Officer Tori Johnston

Internal Affairs Disposition:

(a.) Not sustained

(b.) Sustained

(c.) Sustained

Discipline:

(a.) N/A

(b.) Reprimand

(c.) Counseling/Policy Review

Investigator: Lieutenant Brian O'Reilly

Lieutenant Brian O'Reilly gave the disposition of the case and noted that at the time of the incident, Officer Johnston was a Police Officer for about four months. Chair Votaw further described the case and stated that the officer was dispatched to the automobile because a complaint was called in from somebody at a restaurant. Lieutenant O'Reilly clarified it was an anonymous complaint, but most likely it was from the restaurant across the street. Chair Votaw stated that Officer Johnston testified that she gave the dog water through an opening in the car window and called animal control.

Board Member Banks stated that this case would be a good training lesson for Officer Johnston as she will know to be more accurate the next time she is on a case.

Attorney Ian Mann spoke in opposition to the findings and suggested that the Citizens Police Review Board reexamine this case. Attorney Mann stated that he reviewed the security camera video footage pertaining to the case and noted that the videos are high quality and provide extraordinary detail. He further spoke on the hearing with Officer Johnston and the amount of her untrue statements, based on the video evidence. He challenged the finding that Officer Johnston did not intentionally tell a falsehood and that she was sanctioned. His main concern is that the department chose to do an Internal Affairs Investigation and reached a conclusion that said, she made all these false statements and because she did not have access to her body cams beforehand, they are not going to conclude she did it intentionally. He stated that she was lucky that the Animal Control Officer dismissed the charges before she took the stand. He had every expectation Officer Johnston was going to take the stand in a court proceeding; sworn under oath. He stated that the question for criminal lawyers was what her state of mind was; did she do it on purpose. He noted that all the errors are effectively against his client's interest, Ms. Brown. He forwarded the concern to the Lieutenant at the Fort Myers Police Department, hoping that someone would sit down with Officer Johnston and have a serious conversation with her about the inaccuracy of her descriptions, as it made it look like the details were intentionally fudged to make his client look worse than it is.

As a Defense Attorney, Attorney Mann's concern for Officer Johnston is, if she is going to do that in a dog in a car incident, what might she do in a more serious case. Attorney Mann suggested that the Board should at a minimum, review this case in its entirety, see the videos and all first-hand items, not only the summary.

Board Member Banks stated that upon reviewing the case, he thought how could it be possible to pull a window down in a modern car. Attorney Mann stated that he had the same concerns, when he first read the statement; modern vehicle windows do not go down without damaging the window mechanism. Board Member Banks stated that Mrs. Brown stated that the dog was in a terrible situation but not as bad as it was described by the Officer. Board Member Banks asked City Attorney Alley what the options are for the Citizens Police Review Board upon their agreeing with Attorney Mann.

City Attorney Alley stated that the Board decision would be presented to the Police Department and the Chief of Police. He reaffirmed that the purpose of the Board is for Advisory only. He stated that if the Board decides for a full review, it goes to the Police Department for consideration. He noted that an Internal Affairs investigation already took place through the Professional Standards Bureau. City Attorney Alley further described the discipline rendered on this matter and read the policies and the corresponding disposition.

Chair Votaw stated that windows can be moved in certain cars and the Officer might have been nervous when an Attorney appeared at the scene, got flustered, and did not tell the truth. Discussion ensued on training for honesty. Board Member Walker spoke on the injustice of the false accusation of a crime and the impact on a person's record.

Board Member O'Halloran noted that the Officer took a risk to write the statement, not thinking that the City security cameras were recording. She spoke on credible witnesses, on reputation, and noted that witnesses are not put on the stand who are going to lie. Further discussion ensued on honesty, reputation and credibility.

Lieutenant O'Reilly stated that the Officer was sustained for Performance of Duty for not revealing her body cam and notes associated with the call for service prior to writing her affidavit. She received a written reprimand for Performance of Duty for this situation.

Board Member Parker asked what the reprimand entailed. Captain Newhouse stated that a reprimand is a recorded admonishment of a deficiency of poor performance for violation of policy; it is a formal discipline against the Police Officer that remains in their file for fifty years after they retire. Board Member Parker asked if a reprimand comes with guidance or counseling. Captain Newhouse stated that a reprimand is more serious than counseling.

Board Member Banks stated that it looks like the Officer tweaked the case to be against Attorney Mann's client. Lieutenant O'Reilly noted that when an Officer is brought into an Internal Affairs investigation and the case has an Attorney, it is an eye-opening experience for anyone involved in this, as their job may be on the line based upon the severity of discipline. Further discussion ensued on the protocol of an Internal Affairs Investigation.

Board Member O'Halloran stated that the Officer did not review the body cam before writing the statement, but she does not want that to be used as an excuse to get out of being untruthful. Captain Newhouse stated that when an Officer is found to be knowingly untruthful, the result is usually termination.

Attorney Mann restated that he would like to see that the Board review the case; and if the Board believes she is untruthful, it does not mean the Chief has to fire her; she is a young inexperienced officer, nip it in the bud now, so she has the opportunity to have the experience of a successful career. However, if this is swept under the rug, he does not know if the message got through to her. He also is concerned about the atmosphere of the Fort Myers Police Department regarding the response that she could be fired. Discussion ensued regarding the purpose of a full review.

It was moved by Board Member Banks and seconded by Board Member Walker to hear a full review of the case at a future meeting. A roll call vote was taken as follows: Banks -Aye; Boyd-Dorsey - Aye; O'Halloran – Aye; Parker – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

9. **Announce next meeting**

Chair Votaw stated that the next meeting will be held on February 11, 2020.

OTHER BUSINESS

- Chair Votaw suggested that the Board Members speak individually with Councilperson Anderson to recommend new Board members to fill the three vacancies.
- Chair Votaw stated that it would be beneficial if Officers with experience would talk with Officer Johnston as part of the retraining.

There being no further business, the meeting was adjourned at 6:33 p.m.