

**MINUTES
CITY OF FORT MYERS
CITIZENS POLICE REVIEW BOARD
MAY 10, 2022**

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, May 10, 2022, at 5:30 p.m. Present were Michele Parker, Chair, presiding; Robert W. Votaw, Jr., Erma Boyd-Dorsey, Forrest H. Banks, Amanda L. Dennis, Nzingha Gaines, and Steven Brown-Cestero, Board Members. Also present were Johnny Streets, Council Member Liaison to the Citizens Police Review Board, Grant W. Alley, City Attorney, Gwen Carlisle, City Clerk, and Lily Baker, Recording Specialist. Absent: Danielle L. O'Halloran, Board Member.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Roll call was taken by Lily Baker, Recording Specialist. Absent: Danielle L. O'Halloran, Board Member.

COUNCIL LIASION TO THE CITIZENS POLICE REVIEW BOARD, COUNCILMAN JOHNNY STREETS

Councilperson Streets stated that the Jensen Hughes report was handed out at the last Citizens Police Review Board meeting. He explained that there is litigation in process and recommended the Board postpone discussion until matters are resolved. City Attorney Alley concurred with the comments provided by Councilperson Streets and mentioned that the representatives from Jensen Hughes were available via Zoom to make a presentation to the Board regarding the study that was concluded on Case No. IA 2021-009.

Board Consensus: to move forward with the agenda without a presentation from Jensen Hughes.

PUBLIC INPUT (Three (3) minute time limit) (NONE)

OLD BUSINESS

1. Status update related to Case No. IA 2021-021 (Grant W. Alley, City Attorney)

City Attorney Alley stated that there is no update to provide at this time. He noted that this also relates to the litigation filed in Federal District Court.

MOTION: It was moved by Board Member Brown to remove Case No. IA 2021-009 from future agendas and provide the Board updates as required; seconded by Vice Chair Boyd-Dorsey. Motion carried unanimously.

NEW BUSINESS/PRESENTATIONS

2. Minutes and Board Report of the Citizens Police Review Board meeting held on April 12, 2022

MOTION: It was moved by Board Member Brown to approve the minutes, and Board Report of the Citizens Police Review Board meeting held on April 12, 2022; seconded by Vice Chair Boyd-Dorsey. Motion carried unanimously.

CONSENT AGENDA

(Any Board Member may remove an Item from the Consent Agenda and place it on the Regular Agenda for discussion following the Consent Agenda)

3. **Case No.:** Prelim 2021-059
Investigator: Sergeant James Langton
Complainant: Benjamin Leroy Cummings
Officer: Officer Jimmy Hernandez
Policy Related to Complaint: Alleged Complaint:
Harassment
Chief of Police Disposition: No Policy Violation
Discipline: None

4. **Case No.:** Prelim 2021-068
Investigator: Lieutenant Lesa Breneman
Complainant: Janice Rouse
Officer: Detective Miguel Hernandez
Policy Related to Complaint: Alleged Complaint:
Harassment/Physical Abuse
Chief of Police Disposition: No Policy Violation
Discipline: None

5. **Case No.:** Prelim 2022-009
Investigator: Sergeant David Conticelli
Complainant: Charles Butler
Officer: None
Policy Related to Complaint: Alleged Complaint:
Cybercrimes
Chief of Police Disposition: No Policy Violation
Discipline: None

6. **Case No.:** Prelim 2022-018
Investigator: Sergeant David Conticelli
Complainant: David Lynom
Officer: Officer Myles Koch
Policy Related to Complaint: Alleged Complaint:
Standard of Conduct
Chief of Police Disposition: No Policy Violation
Discipline: None

7. **Case No.:** Prelim 2022-019
Investigator: Sergeant James Langton
Complainant: Evan Graves

Officer: Officer Martin Davila

Policy Related to Complaint: Alleged Complaint:
Performance of Duty

Chief of Police Disposition: No Policy Violation

Discipline: None

MOTION: *It was moved by Board Member Banks to approve the consent agenda as presented; seconded by Board Member Dennis. Motion carried unanimously.*

MANDATORY REVIEW BY BOARD

(Indicates a full review is required or voted on under the City Ordinance Rules and Procedures for the Citizens Police Review Board)*

8. **Case No.:** FD 2020-001

Investigator: Lieutenant Brian O'Reilly

Complainant: Chief Derrick Diggs

Officer: Marsy's Law invoked by Involved Officer

Policy Related to Complaint: General Order 6.1 Use of
Force & Response to Resistance Section II (A) F.S.S.
776.05

Chief of Police Disposition: Within Policy

Discipline: None

Lieutenant Breneman explained that the officer involved invoked Marsy's Law and some of the video footage could not be redacted to show the entire incident. She mentioned that when the officer exited the patrol vehicle and walked in front of the vehicle, the suspect opened fire on him.

MOTION: *It was moved by Board Member Brown to accept the findings of the police department for Case No. FD 2020-001; seconded by Vice Chair Boyd-Dorsey. Motion carried unanimously.*

9. **Case No.:** Admin 2021-014 **Voted for Full Review on 2/8/2022*

Investigator: Sergeant James Langton

Complainant: James Tisdall

Officer: Officer Myles Koch

i. **Policy Related to Complaint:** General Order 24.2
Unbiased Policing Section I (A) Biased Policing

Chief of Police Disposition: Unfounded

Discipline: None

ii. **Policy Related to Complaint:** General Order 9.1
General Rules of Conduct Section II (A) (9)
Standard of Conduct

Chief of Police Disposition: Unfounded

Discipline: None

Sergeant Langton stated that this case was voted on for full review by the Board on February 8, 2022. He explained that the complainant alleged that the traffic stop conducted by Officer

Myles Koch was based on race and it was determined to be *unfounded* by the Chief of Police. Sergeant Langton stated that the complainant also alleged that the officer was rude and unprofessional when interacting during the traffic stop and the Chief of Police disposition was also *unfounded*.

Board Member Votaw noted that the complainant had an attitude from the start. Chair Parker stated that the video was helpful in clarifying some of the questions the Board had originally. Board Member Brown agreed that the complainant had an attitude from the beginning.

MOTION: It was moved by Vice Chair Boyd-Dorsey to accept the findings of the police department for Case No. Admin 2021-014; seconded by Board Member Brown. Motion carried unanimously.

10. **Case No.:** Admin 2021-018 *Voted for Full Review on 3/8/2022

Investigator: Captain Joshua Steinman

Complainant: Cindy Pledger

Officer: Officer Kelly Witt

i. **Policy Related to Complaint:** General Order 9.1
General Rules of Conduct Section II (A) (9)
Standard of Conduct

Chief of Police Disposition: Not Sustained

Discipline: None

ii. **Policy Related to Complaint:** General Order 9.1
General Rules of Conduct Section II (A) (5) Rules
Governing Conduct

Chief of Police Disposition: Other

Discipline: Policy will be researched for potential
change

iii. **Policy Related to Complaint:** General Order 25.3
Mobile Video/Audio Recording Equipment Section
IV (A) Body-Worn MVR Operating Procedures

Chief of Police Disposition: Sustained

Discipline: Policy Review

Complainant: Captain Joshua Steinman

Officer: Officer Tori Johnston

i. **Policy Related to Complaint:** General Order 9.1
General Rules of Conduct Section II (A) (5) Rules
Governing Conduct

Chief of Police Disposition: Other

Discipline: Policy deficit will be researched

Board Member Votaw noted that the use of spray paint to cover up graffiti by police officers is not addressed in the City Code.

Discussion ensued regarding painting over property and the policy deficit that is needed to correct further issues.

MOTION: It was moved by Board Member Votaw to accept the findings of the police department for Case No. Admin 2021-018; seconded by Board Member Gaines. Motion carried 6-0-1. Board Member Dennis recused herself.

11. **Case No.:** Admin 2021-019 *Voted for Full Review on 3/8/2022

Investigator: Lieutenant Dion Freeman

Complainant: Chelsea Newton

Officer: Officer Jimmy Hernandez

- i. **Policy Related to Complaint:** General Order 9.1
General Rules of Conduct Section II (21) Conduct
Toward the Public

Chief of Police Disposition: Not Sustained

Discipline: None

Complainant: Lieutenant Dion Freeman

Officer: Officer Jimmy Hernandez

- i. **Policy Related to Complaint:** General Order 25.3
Mobile Video/Audio Recording Equipment Section
IV (A) Body-Worn MVR Operating Procedures

Chief of Police Disposition: Sustained

Discipline: Counseling/Policy Review

Complainant: Lieutenant Dion Freeman

Officer: Officer Tyler Williams

- i. **Policy Related to Complaint:** General Order 25.3
Mobile Video/Audio Recording Equipment Section
IV (A) Body-Worn MVR Operating Procedures

Chief of Police Disposition: Sustained

Discipline: Counseling/Policy Review

Board Member Brown conveyed the need for a clearer policy for officers that continue to violate General Order 25.3. He noted that this is Officer Hernandez's third violation and each time he has received the same disciplinary action of Counseling/Policy Review while another officer on the same agenda received a written reprimand for what appears to be their first offense.

Board Member Votaw inquired if the individual that was with the complainant was interviewed, and Lieutenant Freeman replied that the individual refused to participate.

MOTION: It was moved by Board Member Brown to accept the Chief of Police Disposition involving Officer Jimmy Hernandez pertaining to General Order 9.1 General Rules of Conduct Section II (21) Conduct Toward the Public; and accept the Chief of Police Disposition involving Officer Tyler Williams pertaining to General Order 25.3 Mobile Video/Audio Recording Equipment Section IV (A) Body-Worn MVR Operating Procedure. Case No. Admin 2021-019; seconded by Vice Chair Boyd-Dorsey. Motion carried unanimously.

Discussion ensued regarding what the Board could recommend if the decision was to reject the findings of the police department.

Board Member Brown presented a spreadsheet to the Board Members he created using the data he is provided from the annual log. He explained that when breaking down the Mobile Video/Audio Recording cases some officers did not have the same disciplinary actions as others who had multiple violations.

Lieutenant Breneman stated that in the case file submitted, the disciplinary history shows only the dispositions that were sustained, not every allegation on the officer. She noted that it would then determine the disciplinary action based on the number of sustained violations. Lieutenant Breneman mentioned that one of the objectives in the 3-year strategic plan for the police department is to create a Disciplinary Matrix and she has begun researching other agencies' policy.

Board Member Gaines inquired what the counseling and the policy review process looks like when there isn't a clear policy in place. Lieutenant Freeman explained that the watch commander or commanding officer for the officer in question will review the written policy to ensure they understand it and examine where they fell short. He discussed the different levels of counseling that occurs as it moves up the chain of command. He stated that every situation is different when it's related to body cameras and there has to be some room for flexibility. Lieutenant Freeman stated that after a few years, some minor disciplinary actions fall off the officers' history.

Board Member Banks mentioned that Officer Hernandez won Officer of the Year about 5 years ago. Board Member Banks explained that he is pro-cameras and was part of the initiative for body cameras and cameras downtown years ago. He noted that he also understands the room for flexibility due to the circumstances that can occur.

City Attorney Alley stated that there is a good working General Order in effect that regulates the use of motor vehicle cameras and body cameras.

MOTION: It was moved by Board Member Brown to reject the Chief of Police Disposition involving Officer Jimmy Hernandez pertaining to General Order 25.3 Mobile Video/Audio Recording Equipment Section IV (A) Body-Worn MVR Operating Procedures; and not accept counseling/policy review as the disciplinary action; seconded by Board Member Banks.

A roll call vote was taken as follows: Boyd-Dorsey – Aye; Gaines – Nay; Votaw – Nay; Brown – Aye; Banks – Nay; Dennis – Nay; Parker – Nay. Motion failed: 2-5. Board Member Gaines, Board Member Votaw, Board Member Banks, Board Member Dennis, and Chair Parker opposed.

MOTION: It was moved by Board Member Dennis to accept the Chief of Police Disposition involving Officer Jimmy Hernandez pertaining to General Order 25.3 Mobile Video/Audio Recording Equipment Section IV (A) Body-Worn MVR Operating Procedures; seconded by Board Member Gaines.

A roll call vote was taken as follows: Boyd-Dorsey – Aye; Gaines – Aye; Votaw – Aye; Brown – Nay; Banks – Aye; Dennis – Aye; Parker – Aye. Motion carried: 7-1. Board Member Brown opposed.

12. **Case No.:** Admin 2021-023 *Voted for Full Review on 3/8/2022

Investigator: Sergeant Dan Losapio

Complainant: Sergeant Dan Losapio

Officer: Officer Ryan Beiner

Policy Related to Complaint: General Order 25.3
Mobile Video/Audio Recording Equipment Section IV (A)
Body-Worn MVR Operating Procedures

Chief of Police Disposition: Sustained

Discipline: Written Reprimand

Sergeant Dan Losapio stated that as explained at a previous meeting, Officer Ryan Beiner took advantage of the Discipline Dispute Resolution Process (DDRP) where he chose to bypass the entire investigative process, come in and admit he violated policy to the Chief of Police; and the Chief administered discipline. Sergeant Losapio stated that it is difficult to mechanically apply a body camera situation to him is challenging as he's receiving information that can be sensitive in nature.

Lieutenant Breneman explained Officer Beiner's disciplinary history and why *written reprimand*, was the disciplinary action given. She stated that the direction given to Officer Beiner moving forward is to audibly announce when he will be turning his camera off to receive sensitive information. She explained that this will allow a supervisor that may be reviewing footage to understand the timeline of events.

MOTION: *It was moved by Board Member Banks to accept the findings of police department for Case No. Admin 2021-023; seconded by Vice Chair Boyd-Dorsey. Motion carried unanimously.*

NON-MANDATORY REVIEW BY BOARD (NONE)

OTHER BUSINESS

Board Member Brown, Board Member Dennis, Vice Chair Boyd-Dorsey, and Board Member Gaines requested to receive the monthly Citizens Police Review Board agenda packet electronically.

MOTION: *It was moved by Board Member Brown to request that FMPD provide a full sequential list for all cases to account for the missing case number gap, similar to the monthly log, with data that can be provided to Board. Lieutenant Breneman given discretion on the timeframe to provide, 2-3 years preferred.; seconded by Board Member Dennis. Motion carried unanimously.*

NEXT MEETING ANNOUNCEMENT

Chair Parker stated that the next meeting will be held on June 14, 2022 at 5:30 p.m.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:06 p.m.