

**MINUTES
CITY OF FORT MYERS
CITIZENS POLICE REVIEW BOARD
AUGUST 11, 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, August 11, 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 Jennifer Myers, Recording Specialist. Absent: None

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

PUBLIC INPUT

Councilperson Johnny Streets thanked the Board for their services and stated that if they need additional training or changes, they can notify the Police Chief, City Attorney, or himself.

Chair Votaw stated that it has been awhile since new members have been appointed, that there are three vacancies and asked if the vacancies could be filled by any Councilperson. City Clerk Carlisle stated that if an application comes and that Ward is already filled, the application will be sent to another Ward's Council Member who has a vacancy and ask if they will accept the applicant to fill their vacancy and a lot of times it will be accepted.

OLD BUSINESS - None

NEW BUSINESS/APPEARANCES:

- Appointment of Chair and Vice Chair

City Attorney Alley advised the Board on the nomination process.

Vice Chair Boyd-Dorsey nominated Board Member O'Halloran as Chair.

MOTION: It was moved by Vice Chair Boyd-Dorsey and seconded by Board Member Banks to nominate Danielle O'Halloran as Chair, effective August 11, 2020 through July 13, 2021. A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; Parker – Aye; Sanders – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

Board Member Banks nominated Board Member Walker as Vice Chair.

MOTION: It was moved by Board Member Banks and seconded by Vice Chair Boyd-Dorsey to nominate Shawn T. Walker as Vice Chair, effective August 11, 2020 through July 13, 2021. A roll call vote was taken as follows: Banks – Aye; Boyd-Dorsey – Aye; Parker – Aye; Sanders – Aye; Votaw – Aye; and Walker - Aye. Motion was unanimously carried.

1. Minutes of July 14, 2020

Chair O'Halloran stated that the minutes of the regular meeting held on July 14, 2020 were delivered to the Board Members.

MOTION: It was moved by Board Member Votaw and seconded by Board Member Boyd-Dorsey to approve the minutes of July 14, 2020. 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 2020-016

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Complainant: Lana Gregory

Officer: Lieutenant Peter Tarman

Internal Affairs Disposition: Civil Complaint

Discipline: None

Investigator: Lieutenant Jesus Ramos

3. Case No. Prelim 2020-023

Policy Related to Complaint: Alleged Complaint: Rude & Unprofessional

Complainant: Niya Brown

Officers: Officer Joshua Kuhl; Officer Trevor Zucchini

Internal Affairs Disposition/Finding: Insufficient Evidence to Investigate

Discipline: None

Investigator: Sergeant Daniel Morency

4. Case No. Prelim 2020-027

Policy Related to Complaint: Alleged Complaint: Rude & Unprofessional

Complainant: Roland Blanco

Officer: Officer Yeuris Vicioso

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Daniel Morency

5. Case No. Prelim 2020-028

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Complainant: Julian Ramirez

Officers: Lieutenant Peter Tarman; Sergeant Ashley Schindler; Officer Martin Davila; Officer Keron Ramjattan; Officer Stephen Fenner

Internal Affairs Disposition: No Policy Violation

Discipline: None

Investigator: Sergeant Daniel Morency

6. Case No. Prelim 2020-029

Policy Related to Complaint: Alleged Complaint: Performance of Duty

Complainant: Doris Henry

Officers: Officer Andrew Barlow; Officer Frederick Hink; Officer Evan Saboe; Officer Kenneth McCoy; Officer Richard Simonetti; Sergeant Kelsey Evenson

Internal Affairs Disposition/Finding: No Policy Violation

Discipline: None

Investigator: Sergeant Daniel Morency

MOTION: *It was moved by Board Member Banks and seconded by Board Member Boyd-Dorsey 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.*

MANDATORY REVIEW BY BOARD

7. Case No. IA 2019-005

Policies Related to Complaint:

(a.) General Order 6.1 Use of Force & Response to Resistance Section VIII: Situational Response Model

(b.) General Order 18.2 Canine (K9) Unit Section VII Use of Force Guidelines (41.1.5f) (A) Use of Force Guidelines

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

(d.) General Order 25.3 Mobile Video/Audio Recording Equipment Section IV: Body-Worn MVR Operating Procedures

Complainant: Latonya and Gerah Leaphart

Officers: Officer Jeremy Hawkins (a.)(b.); Officer Matthew Zarillo (a.)(c.)(d.)

Internal Affairs Disposition:

(a.) Not Sustained

(b.) Unfounded

(c.) Not Sustained

(d.) Not Sustained

Discipline: None

Investigator: Lieutenant Brian O'Reilly

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

Chair O'Halloran asked if the sequence of events were that a traffic stop was initiated, the driver pulled over, fled in his car, and then got out of the car and fled on foot. Lieutenant O'Reilly replied yes. The officer approached the car on foot, and the suspect took off in the vehicle. Board Member Boyd-Dorsey inquired if a canine is normally released on a suspect for a suspended license. Lieutenant O'Reilly stated that the crimes were felony fleeing and eluding from the police in his vehicle. If it is a suspended driver's license by itself, the canine would not have been used, however, the canine was allowed to be used for apprehension. Board Member Boyd-Dorsey felt as though the suspect was trying to get to a safe place as he went to his apartment complex. Lieutenant O'Reilly noted that when the officer approached his vehicle on foot, the suspect used that as an advantage to flee as it would be more difficult for the officer to catch up to him. Board Member Boyd-Dorsey mentioned that the dog kept biting the person in the video even though he was asking to get the dog off him. Lieutenant O'Reilly noted that at the point of apprehension he was still disobeying the commands to show his hands and the canine is trained not to remove from the suspect until they are properly detained. Vice Chair Walker referenced a photo and asked which body part it was showing. Lieutenant O'Reilly stated that it was the back of the suspect's leg.

Vice Chair Walker asked why part of the video was blurry. Lieutenant O'Reilly explained that approximately the first minute of the video the lens was fogged up from the heat and humidity after coming from the cold AC in the car. Vice Chair Walker asked if the other officer's video cams were blurred. Lieutenant O'Reilly stated that Officer Hawkins was the only officer that had the video cam on. Vice Chair Walker asked if any Tasers were pulled as he heard static on and off in the video. Lieutenant O'Reilly noted that no Tasers were deployed and that there were two (2) Lee County Deputies, which did not have body cameras, and two (2) Fort Myers Police Officers during the operation. Officer Zarillo attempted to

activate his body camera in the pursuit, however, it did not turn on. Vice Chair Walker noted that the Facebook videos showed more of what happened and noted that there are chemicals that keep lens free from humidity. Board Member Boyd-Dorsey asked if the complainant's teeth were actually knocked out. Lieutenant O'Reilly replied that on his medical intake information the complainant did not complain of any teeth pain but did say he had cavities, although the complainant said one (1) tooth was knocked out and thereafter, said there were two (2) teeth knocked out. Board Member Parker asked if the video automatically turns on when a Taser is pulled and Lieutenant O'Reilly replied yes. Board Member Parker asked if Officer Zarillo's video would have automatically went on if he pulled his Taser. Lieutenant O'Reilly replied yes. Board Member Parker mentioned that the witnesses stated guns and Tasers were pulled. Lieutenant O'Reilly stated that some statements were not corroborated by the body camera including his wife stating that dog was on him for ten (10) minutes wherein it was one (1) minute and fifteen (15) seconds of actual time. Board Member Parker asked if the dogs are trained to stop the suspect with a threshold and not to rip off or injure. Lieutenant O'Reilly noted that the canines are trained to grab and hold, however, if someone is wiggling or pulling away, they may have to reattach themselves. Board Member Parker asked if when the suspect and the dog fell in the water the dog reattached at that point and Lieutenant O'Reilly replied yes when they fell down the embankment.

Board Member Votaw mentioned that it is hard to get a clear picture when people are in action such as a chase. Board Member Votaw felt that Mr. Leaphart is not a stranger to Fort Myers PD and he knew what he was doing. Board Member Boyd-Dorsey stated that it doesn't seem logical if a dog is on you, you're trying to get him off, and being told to put your hands behind your back. Vice Chair Walker stated that during that time the video was not clear. Board Member Votaw stated that the Facebook videos were far away as well. Board Member Votaw stated his emphasis was on the officer yelling many times to stop running or he will release the dog and he kept running trying to get away, so they released the dog. Chair O'Halloran asked if Ms. Leaphart claimed assault and battery on him while the dog was biting. Lieutenant O'Reilly noted that the allegations addressed were unnecessary force with hitting and elbowing, and Officer Hawkins had an allegation for leaving the canine on too long unnecessarily which was unfounded. Board Member Parker noted that an LCSO Officers had to strike him to get him off his arms when they were trying to apprehend him. Lieutenant O'Reilly noted that Ms. Leaphart refused to give him a sworn statement, however, she stated in her written statement that four (4) people were hitting and kicking him and Mr. Leaphart said it was one (1) time. Vice Chair Walker asked if the police officer knew who Mr. Leaphart was when they were making the traffic stop. He stated that claiming he was a previous criminal should be toned down because a criminal is not always a criminal. Lieutenant O'Reilly stated that the officer did not know who Mr. Leaphart was because he fled before the officer got up to the car. Vice Chair Walker asked why the correspondence from the jail was in the file. Board Member Parker stated that the correspondence showed discrepancies in his statements and it kept building the longer he stayed in jail.

Major Newhouse asked if the Board would find it helpful for an experienced canine officer to provide a more in-depth training to the Board on how individuals are apprehended. Board Member Parker noted that the canine policy was put in the file and she got a lot out of that. Board Member Parker noted her appreciation that the Canine Policy was in the file and was very helpful. He asked that the Board consider the training.

MOTION: It was moved by Board Member Votaw and seconded by Board Member Parker to approve upholding the disposition on 2019-005. 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.

NON-MANDATORY REVIEW BY BOARD

8. Case No. Admin 2019-021

Policies Related to Complaint:

(a.) General Order 9.1 General Rules of Conduct Section II (A) (21) Conduct Toward the Public

(b.) General Order 9.1 General Rules of Conduct Section II (A) (5) Rules Governing Conduct

Complainant: Jaimee Thompson

Officer: Officer David Gaide

Internal Affairs Disposition:

(a.) Unfounded

(b.) Unfounded

Discipline: None

Investigator: Captain Joshua Steinman

Captain Joshua Steinman gave the disposition of the case.

Board Member Banks mentioned that when one neighbor is accusing another neighbor of a criminal offense it does not work out well when it is aired out in a public meeting and that Officer Gaide read on the internet that it is good to have citizen’s concerns brought up at a public meeting and felt that the officer had something to back him up which is probably why there was no action taken. Captain Steinman noted that Officer Gaide was referencing the Ward 4 Community Meeting on his website and there is a screenshot on page four (4) of the report wherein these types of discussions do happen typically with a controlled dialogue, however, at this particular meeting it got heated. Chair O’Halloran asked if it was verified whether or not Officer Gaide made invitations. Captain Steinman referenced Page 37 of the report wherein he asked Officer Gaide specifically if he personally invited Mr. King to the meeting and he replied that he did not personally invite him, he asked to come. He noted that Officer Gaide is a community policing officer wherein he is probably involved in a lot of neighborhood activity and had good intentions on trying to get the two parties together to work things out amicably. Board Member Votaw felt that the problem arose when Officer Gaide ran out of time and did not advise Ms. Thompson that the previous lady who lived in the house was arrested for prostitution and that was probably the lady she saw not the daughter of who lives there now. Chair O’Halloran felt Office Gaide did nothing wrong and there was no malicious intent as this lady attends a public meeting, brought it up in a public forum, and took a chance that somebody may take opposition tor that the person she is talking about happens to attend. Board Member Banks felt Officer Gaide did nothing wrong, however, police officers must be aware that things can blow up and try to extinguish it before it gets in this type of forum. Vice Chair Walker asked what audio recording was referenced on page 38 of the report. Captain Steinmen stated that it was in reference to the conversation that was captured on audio at the meeting. Board Member Walker asked if Officer Gaide was asked why he said on the audio “that’s why I brought him here.” Chair O’Halloran asked if it was ever discerned what officer Gaide meant when he said on the recording “that’s why I brought him here.” Captain Steinmen stated he asked Officer Gaide

if he brought him there and he said No he did not bring him there, he wanted to come on his own.

MOTION: It was moved by Board Member Boyd-Dorsey and seconded by Board Member Walker to approve upholding the disposition on 2019-021. 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. Case No. Admin 2019-037

Policies Related to Complaint:

(a.) General Order 24.2 Unbiased Policing

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

Complainant: Mamberto Real

Officer: Officer Yvetta Dominique

Internal Affairs Disposition:

(a.)&(b.) Unfounded

Discipline: (a.)&(b.) None

Investigator: Sergeant Dan Losapio

Sergeant Losapio asked if there were questions regarding the disposition of the case.

Board Member Votaw asked if the Complainant is questioning the Officer’s judgement and bias. Sergeant Losapio noted that the complaint is that Officer Dominique should never have testified in his Release Termination Hearing. He stated that the information he received was that she absolutely was allowed to testify in the hearing on behalf of Public Housing.

MOTION: It was moved by Board Member Banks and seconded by Board Member Boyd-Dorsey to approve upholding the disposition on 2019-037. 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.

OTHER BUSINESS

Board Member Parker mentioned that the investigators have been doing a great job providing more information to the Board.

Chair O’Halloran asked if the group of people in the audience were new hires. Sergeant Losapio stated that the individuals have been hired by the City, completed the Academy, passed their State exam, placed into the field training program, and are waiting to be sworn in. He noted that the City does an in-house training with new employees that is more specific to the City rules as opposed to the State Academy which is generalized. Sergeant Losapio felt that the better someone is trained, the longer the retention, and the better officer they become. Chair O’Halloran congratulated the recruits.

Major Newhouse was thankful for the comments regarding the quality of investigations. He mentioned that when the Board has a full review of a case they will receive a full packet, however, generally speaking, a preliminary or administrative review file packet will not have all of the documents or videos unless the Board pulls it and asks for a full review of the case. Board Member Parker asked if changes were made due to new procedures in the book they received. Major Newhouse stated that the book was formalizing the processes and training although the concepts were not new. Board Member Parker asked for a list of training classes that are available wherein the Board could recommend training classes.

Major Newhouse noted that if the Board recommends a category of training to the Chief and he decides to move forward with that training, the training division will take the information in the case along with the Board's recommendation of training category to fit the unique situation. Major Newhouse noted that he will provide a generalized list training classes however it will not be all encompassing as every situation is unique. He noted that there is training in almost every field or topic and if they don't have it inside, there is people who offer that training to law enforcement officers.

10. Announce next meeting

Chair O'Halloran stated that the next meeting will be held on September 17, 2020. City Clerk Carlisle noted that the meeting is on a Thursday rather than a Tuesday next month due to scheduling conflicts in the chambers.

There being no further business, the meeting was adjourned at 6:30 p.m.