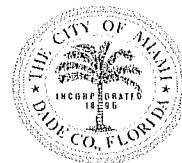




CIVILIAN INVESTIGATIVE PANEL
Summary of Minutes
Tuesday, June 16, 2009
5:30pm



Location

City Hall Chambers
3500 Pan American Drive
Miami, FL 33133

Members Present

Tom Rebull, Chairperson
Thomas Cobitz, Vice Chair
Susan Weintraub, Secretary
Fred St. Amand, Treasurer
Michelle Delancy
Rudy de la Guardia
Raymond Hart
Bess McElroy
Janet McAliley
Timothy Moore
Brenda Shapiro

Independent Counsel

Charles C. Mays, Esq.

Staff Present

Carol A. Abia, Interim Executive Director
Steven Wolf, Chief Investigator
Donald March Jr., Research Analyst
Shewanda Hall, Investigator
Luis Cabanillas, Investigator

Welcome

Chairperson Rebull greeted attendees and called the meeting to order.

Roll Call

Roll call was conducted by Ms. Abia.

Approval of the Minutes

Motion: To approve the Minutes of the May 19, 2009 meeting. **Moved by Mr. De la Guardia and Seconded by Ms. Shapiro. Motion carried.**

Approval of Agenda

Motion: To approve the Agenda of the June 16, 2009 meeting. **Moved by Mr. De la Guardia and Seconded by Ms. Shapiro. Motion carried.**

A. PUBLIC FORUM I

Independent Counsel prefaced the canine use of force discussion by Mr. George Wysong, MPD Legal Advisor, by explaining that the deployment of a police dog must be evaluated by reference to the Fourth Amendment's guarantee against unreasonable searches and seizures. Independent Counsel informed the Panel that the leading federal cases for considering whether a police dog was used in an unconstitutional manner are Tennessee v. Garner, Graham v. Connor, Kerr v. City of West Palm Beach, and Pace v. City of Palmetto, a recent middle district case.

Chairman Rebull made reference to a January 2006 recommendation from the United States Department of Justice (DOJ) to the City of Miami that the MPD should place canine force on the use of force continuum to give officers additional guidance regarding when such force is justifiable. Chairman Rebull observed that it was his understanding that MPD had not done so, and asked Mr. Wysong to explain. In response to questions from the Chair as well as other Panel Members, Mr. Wysong provided information on the MPD's Canine Policy. He indicated that the more modern approach followed by law enforcement agencies, those involved in criminal justice training and the MPD is to rely less upon a use of force matrix, particularly as to canine force, so as to avoid formalistic reasoning and the perception that an officer can "sic the dog" on a suspect. Mr. Wysong further advised that MPD employs a "handler-control" method wherein the police officer has complete control over the dog, instead of the "bite and hold" method where there is a greater likelihood that the dog will bite a suspect. He also explained that the MPD's Departmental Orders and the Canine SOP's provide guidelines for the preparation of reports and supervisory review when a canine bites a suspect and that MPD initiates a higher level of review whenever a bite ratio exceeds twenty percent (20%).

Mr. Wysong advised the Panel that the MPD eventually received a letter from the DOJ indicating that all concerns outlined in their original letter to the MPD had been addressed. He further advised that the CIP would be provided with the MPD's updated standard operating procedures and policies on Canine usage. The Panel requested that the MPD include the CIP on distribution lists for "Bite Reports" and the IA Monthly Activity Report. Mr. Wysong advised that he would follow through with the MPD on these requests.

B. CHAIRPERSON'S REPORT

Chair Rebull outlined the proposed changes to the CIP Ordinance being contemplated by the City Commission and his concerns. He also informed the Panel that Reverend Ralph M. Ross of the Historic Mount Zion Missionary Baptist Church, at the request of the CIP, had written a letter in opposition to the changes, which he subsequently withdrew. Reverend Ross indicated that, after speaking with City Commission staff, he realized that his conclusions as indicated in the letter were based on misleading information provided to him. Mr. Rebull informed the Panel that he responded in writing to Reverend Ross advising that he was greatly saddened to know that someone from the City Commission would indicate that the CIP had provided misleading information. Chair Rebull indicated that he requested a meeting with Reverend Ross to further discuss the issues.

Ms. Delancy commented on the inordinate amount of time spent by the CIP on this issue and the nominations process and whether the CIP would be better served by focusing its efforts on investigations and allowing the Commission to assume the responsibilities for the nominations and appointments process. Mr. Rebull indicated that the CIP was created to address citizen mistrust of the Police Department's procedures for policing themselves and that the resulting citizen oversight process works as designed. He advised that the changes as proposed would result in a more politicized process. Mr. Rebull further advised that requests from the CIP to Commissioners for nominations have netted approximately two nominations in over six years. Additionally, that CIP

nominations submitted for Commission approval are being deferred or rejected. Ms. Shapiro advised that the proposed ordinance will reduce the panel from 13 members to 9. She added that each member, under the current size and structure, serves on more than one committee which, in addition to their other duties is a huge undertaking. A reduction in membership would create added responsibilities for each member.

Mr. de la Guardia advised that the Panel may better understand the reasoning of the Commissioners in proposing the changes by requesting information on communications between the parties.

Motion: To make a request for information, pursuant to Chapter 119 of the Public Records Act, for e-mails by City Commissioners Spence Jones and Gonzalez, their Staff, the Mayor, City Manager, City Attorney and Shirley E. Richardson relating to proposed changes to the CIP Ordinance. Motion by Mr. de la Guardia, seconded Mr. Hart. Motion carried 10-1, with Ms. Delancy dissenting.

C. INDEPENDENT COUNSEL'S REPORT

Independent Counsel reminded the Panel that at the last meeting he informed them that he had received a courtesy call from attorney Ron Cohen, who advised that he intended to file a lawsuit challenging the CIP's subpoena in the D'Agostino investigation. Independent Counsel reported that Mr. Cohen had recently filed such lawsuit challenging the CIP's subpoena power as being in contravention of the Law Enforcement Officers' Bill of Rights and the Collective Bargaining Agreement between the Fraternal Order of Police and the City of Miami. Independent Counsel also reported that he met with the City Attorney and the Deputy City Attorney on June 15, 2009, to discuss the lawsuit and the City Attorney's desire to intervene in the litigation. The Panel was told that, unlike the Timoney litigation, the City of Miami would intervene in favor of the CIP. Independent Counsel also reported that the City of Miami would not file any court papers without first discussing the issue with Independent Counsel.

Independent Counsel expressed confidence that the CIP will prevail in the litigation, but observed that the issues involved are grander in scope than at first glance. In his view, the issues presented in the D'Agostino challenge were consistent a statewide effort by the Police Benevolent Association to dissuade local governmental entities from creating civilian review boards and to shut down those in existence. Independent Counsel reported on the fate of the Orange County Civilian Review Board (CRB) that had been dealt a fatal blow by the Fifth District Court of Appeal in Demings v. Orange County Citizens Review Board. He reported that the Fifth District held that the CRB could not investigate complaints of police misconduct; reasoning that the Orange County Charter and ordinance empowering the CRB conflicted with the Law Enforcement Officers' Bill of Rights and violated the Florida Constitution to the extent that the CRB infringed upon the authority of the Orange County sheriff, an independent constitutional officer.

Independent Counsel requested authorization to participate in an appeal to the Florida Supreme Court in the event Orange County decided to prosecute an appeal based upon conflict between the Fifth District and the Third District's holding in the Timoney decision. The Panel unanimously voted authorization to do so.

D. COMMITTEE REPORTS

D.1 Policies & Procedures

Chair Cobitz reported that the Policies & Procedures Committee did not meet in light of the fact that the MPD's Canine Policy was under consideration by the Committee and that Mr. Wysong's presentation tonight would form the basis for the discussions. He requested that panel members submit any suggestions related to the canine policy to the Policies and Procedures Committee for consideration.

E. CASE MANAGEMENT

Mr. Wolf reported that for the current month, the Complaint Committee reviewed eight (8) cases which were classified as summary dispositions. One (1) substantive case was deferred as a result of current litigation. He further advised that Investigations closed 238 cases year to date; opened 204 cases; 46 cases were Direct Files. Mr. Wolf updated the Panel on the pending issue of inaccurate information being utilized to populate the Monitoring List and the subsequent removal of the Monitoring List from the CIP website. Additionally, a Public Records Request was made of the Miami Police Department for information related to copies of disciplinary histories, Internal Affairs investigations that were "**Substantiated**" and other information considered helpful in reanimating the list so that it is current and accurate. Once that information is received it will be reviewed and a determination made regarding officer eligibility for placement on a future Monitoring List.

Summary Disposition Cases:

- E.1 **Complainant: Dejon George; Principal Officer: Officer Juan E. Mendez, (CIP #09-050, IA #09-022): To close case as No Finding for Improper Procedure and Missing Property.**
Ms. Delancy requested that Officer Mendez be placed on the Monitoring List. Mr. Wolf advised that staff would look into the background of Officer Mendez and make a determination as to the Officer's eligibility to be placed on the list.
- E.2 **Complainant: Richard Monegro; Principal Officers: Officer Daniel Valladares (Companion Case- Dejon George; IP #09-051 IA #09-022): To close as No Finding for Improper Procedure and for Missing Property.**
- E.3 **Complainant: Ennerys Maria Lopez; Principal Officer: Officer Nestor Garcia (CIP #09-155, IA# 08-394): To close as No Finding for Improper Procedure.**
- E. 4 **Complainant: Hector Schwerert; Principal Officer: Angel Calzadilla (CIP 08-415, IA 08-271N); To Close as No Finding for Discourtesy.**
- E. 5 **Complainant: Jennifer Gray; Principal Officers: Officer Marc R. Marcelin and Officer Marc Francois (CIP 08-005, IA 07-026S); To Close as No Finding for Discourtesy, Improper Procedure and Misconduct.**
- E.6 **Complainant: Cristina Perez; Principal Officer: Joseph Balikes(CIP 08-325; IA 08-090); To Close as No Finding for Abusive Treatment and Discourtesy.**
- E.7 **Complainant: Vincent Gore; Principal Officer: Marc A. Francois (CIP 09-054; IA 09-061); To Close as No Finding for Missing Property.**
- E.8 **Complainant: Jose Garcia; Principal Officer: Unknown (CIP 09-001; IA 08-341) To Close as No Finding for Improper Procedure.**

Motion: To accept No Finding dispositions on Items E.1 through E.8. Moved by Ms. Shapiro and seconded by Mr. Cobitz. Motion carried by unanimous vote.

F. **PUBLIC FORUM II**
Please see item A.

G. **ANNOUNCEMENTS**

G.1 Field Videotaping for PSA

Ms. Abia reported that the video recording of the revised PSA is yet to be finalized. She advised

that location for the video recording is being contemplated for Miami-Dade College Wolfson Campus but open to any other suggestions. Vice-Chair Cobitz suggested the Courthouse (Richard E. Gerstein Justice Building). Ms. Abia advised that she will proceed with scheduling.

G.2 Determination on CIP 2009 Recess

It was agreed that given the several priority and pending issues facing the Panel, the most likely month for a recess would be in December. Panel members then considered alternative dates for the July 2009 Panel meeting.

Motion: To move the July 21, 2009 regular meeting to July 23, 2009 at the CIP conference room. Moved by Ms. Shapiro and Seconded by Mr. Cobtiz. Motion carried.

Ms. McElroy commented that the scheduling of all regular Panel meetings have been predetermined and personal schedules adjusted based on the pre-set dates. She added that a member's inability to attend a scheduled meeting should not warrant a change to the meeting date. Ms. McElroy further stated that an absence from the rescheduled July meeting should be considered "excused." Her comments were noted for the record.

G.3 Next CIP Meeting Date:

City of Miami- Civilian Investigative Panel (Conference Room)
July 23, 2009
5:30 P.M.