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TO: City of Eureka Community Oversight Police Practices Board
FROM: OIR Group
DATE: October 18, 2023
RE: Review of Administrative Investigations: Third Quarter

Introduction

In its role as the City of Eureka's Independent Police Auditor, OIR Group reviews internal investigations conducted by the Eureka Police Department (EPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations are appropriate. We report these findings on a quarterly basis to the community at the Community Oversight Police Practices (COPP) Board meeting.

In the first months of our engagement, OIR Group reviewed cases that had been closed with the Chief's final findings and, when applicable, after discipline had been issued to the subject employee(s).¹ For each of these cases, OIR Group issued a memo outlining the case, EPD's investigation, and our assessment and recommendations. Because

¹ We did so, in part, because EPD had completed, or were near completion of, these cases prior to the start of our engagement.

each case was closed and complete at the time of our review, our comments could not impact that specific case's outcome. Our recommendations instead were intended to inform the process generally going forward.

But by August of 2023, we had completed reviews of all EPD's closed cases. Rather than wait to review cases after they were closed, EPD requested that OIR Group review open cases and provide feedback in real time. EPD sent cases for our review *before* the case was closed; we worked collaboratively to ensure that investigations were complete, objective, thorough and fair before they were sent to command staff for disposition and closure. This interaction allowed us to provide recommendations that might impact the specific case, as well as offer larger process or policy recommendations.

As a result of this "mid-quarter" review process shift, our report to the COPP Board this quarter includes both types of reviews: individual memos that evaluate completed cases and reporting of our real-time engagement with cases.

Closed Cases: Case Summaries & Findings

Prior to shifting to real-time case review, OIR Group received and reviewed several cases after they were closed by EPD. For each of these, OIG Group completed an individual review memo; these are attached as Appendix A and contain more detailed information. Here, we provide a very summary of each case and our recommendations.

Case #22-10

This case involved a complaint of harassment and retaliation. The complainant alleged that EPD officers who responded to a call of a suspicious person had harassed and threatened her when they responded to the call and gave her an unwarranted parking citation.

When EPD contacted the complainant, she withdrew her complaint. EPD chose to investigate it nonetheless, a practice that we recommend. As a result of their investigation, EPD noted that the behavior of the senior employee on scene could have been better, citing a "missed opportunity to de-escalate."

EPD reported that they counseled the involved employees on their response. We recommended that this informal and non-disciplinary counseling be documented and discuss this below.

Case #22-14

The complainant in this case alleged that an EPD employee made him feel unwelcome in the EPD lobby. When contacted, the complainant stated that he wished to withdraw his complaint. EPD conducted a preliminary investigation of the incident. EPD reported that it provided the employee informal counseling regarding interactions with members of the public but did not document this counseling.

Again, we recommended that these teachable moments be fully documented; see our detailed recommendation section below.

Case #22-15

This was an internally generated investigation of an animal shooting. As detailed in the memo, officers responded to a trespass call, which resulted in a foot pursuit and an animal shooting.

While we found the investigation to be thorough with respect to the animal shooting (which EPD found to be in policy), we found that the investigation did not meaningfully address the choice to engage in a foot pursuit. EPD conducted a cursory review and found the foot pursuit to be justified. But we recommended that, when reviewing officers' decisions to engage in foot pursuits, the Department should consider *all* the various factors articulated in its foot pursuit policy to assess whether there were safer, reasonably practicable alternatives for apprehending the subject. In the end, the Department might reasonably have concluded the foot pursuit in this case was justified but should only do so after considering all relevant factors.

Real-Time Collaboration: Case Summaries & Recommendations

As noted in our introduction, EPD requested, and our scope of work envisioned, real-time engagement with the Department before a case was closed. In the following cases, EPD provided the investigative file for our review when it felt that the investigation was sufficiently complete. After constructive dialogue, we provided feedback and recommendations, which EPD often adopted before the case was sent to the Chief for final disposition and closure.

The cases reported here are now officially closed.

Case #22-04

In this case, the complainant felt that she was being harassed for parking her vehicles in front of her residence for several days. When the complainant moved one of them to a different location, the vehicle was vandalized and then later stolen.

The complainant called EPD to file a stolen vehicle report. The employee who responded told her that, because the vehicle was not formally registered to her or family, EPD could not take a police report. She filed two complaints about the matter, stating she was unfairly harassed and that EPD refused to file a report.

The investigator called the complainant nearly a year later. They spoke at length about the incident and the complainant's hoped-for outcome. The complainant said she felt heard, but also reiterated that her family was upset, and that she felt targeted and harassed. The investigator indicated they would look into it.

The investigator reviewed the calls for service, body-worn camera footage, and the related citations and police reports for compliance with law and policy. One of the involved employees submitted a voluntary written statement detailing the incident and rationale for actions taken. Using this evidence, the investigator determined that the actions of EPD employees had not violated any Department policy or City law and requested to close the investigation.

While we agreed with the ultimate outcome based on the evidence provided, we and EPD identified procedural issues with this case, which we discussed with EPD.

First, the assignment and investigation of this case was not timely. Overall, delays in initiation of an investigation can have potential consequences. Apart from the inherent value of addressing personnel issues promptly and maintaining the public's trust in the process, the time lags can affect the quality of available evidence and available disciplinary outcomes if misconduct is discovered.

EPD acknowledged that timeliness was a significant concern in this case specifically and for IA, generally. EPD has since remediated by hiring personnel to work in IA. We are now seeing cases completed in a timely manner and will continue to track progress on this issue; we discuss staffing challenges further, below.

Second, this case was classified as a "complaint withdrawn," a classification which we noted in several EPD cases. In this specific case, the classification was apparently made in error, though likely unintentionally.

In the original investigative memo received by OIR Group, the investigator stated that the complainant had requested to formally withdraw her complaints during the intake interview. But when we reviewed the interview, we did not hear the complainant withdraw her complaints or change her mind about the incidents or the employees' conduct. While she seemed satisfied after her lengthy discussion with the investigator, which the investigator may have interpreted as a resolution, she reiterated that she felt harassed and was displeased with the employees' responses.

EPD agreed with our assessment and corrected the investigative memo to reflect that the complainant had not, in fact, withdrawn her complaint.

To his credit, despite believing that the complainant wished to withdraw her complaint, the investigator still collected evidence to support the ultimate outcome. And EPD reported that it spoke to the involved employees about the complaint and their actions. But, as we discuss later in this report, the *process* matters as EPD strives to develop a robust complaint investigation system.

Case #22-11

The complainant observed EPD employees "harassing" an unhoused community member. When she attempted to intervene, she alleged that one employee placed his hand on his firearm and aggressively commanded her to leave the area, which she did. Two days later, the complainant was pulled over and arrested for driving with a suspended license.

Over two years later, the complainant submitted a complaint stating that she had been discriminated against for attempting to intervene, falsely arrested, and that the employees were too aggressive when they "pulled her" from her vehicle during the arrest. Further, she alleged that an EPD employee had authored a false police report. The complainant did not provide any employee names.

The investigator was unable to contact the complainant using the number she provided. Rather than end his search, the investigator engaged in an exhaustive search for the complainant, going so far as to drive throughout Eureka to various past known addresses to locate her. He eventually located the complainant and conducted a thorough interview.

The investigator also conducted a detailed search of calls for service, police reports, and arrests on the days in question and was able to identify some of the involved employees. The investigator notified and interviewed these employees.

The investigator then sought body-worn camera footage of the incidents. But due to the length of time elapsed between the events and the complaint, these incidents, while appropriately recorded and retained at the time, had been destroyed per the records retention policy.

The investigator framed five allegations against EPD employees:

- 1: **339.5.3. Discrimination, Oppression, or Favoritism.** The complainant alleged that EPD had discriminated against her when they arrested her because of her prior attempt to intervene in enforcement activity.
- 2: **339.5.9. Conduct.** The complainant alleged that employees exceeded their peace officer powers when they arrested her unlawfully.
- 3: **339.5.9. Conduct Unbecoming.** The complainant alleged that her arrest was unlawful, which reflected poorly on the employee and EPD.
- 4: **339.5.1. Conduct.** The complainant alleged that the employee had violated the law when the employee arrested her.
- 5: **300.3. Use of Force.** The complainant alleged that EPD employees were overly aggressive when they yelled at her, and again when they pulled her from her vehicle during arrest.

Based on the available evidence, the investigator recommended that allegations 1 to 4 be Unfounded: the traffic stop and arrest were lawful and pursuant to a bench warrant.

The investigator recommended that allegation 5 be Not Sustained, which means that the investigation could not prove or disprove the allegation. In the absence of body-worn camera footage, the investigator reviewed the complainant and officer statements of the incident. The complainant recalled that she experienced excessive force. The officer did not, referencing the fact that, had he used force, he would have documented it.

This recommendation is commendable. In other jurisdictions, we have noted that a department often automatically “sides” with its employee, weighing the employee’s account over the complainant’s. Here, the investigator appropriately noted that he did not have sufficient evidence to prove or disprove the allegation.

Indeed, this entire complaint investigation was commendable. We did not identify any concerns with this case; as such, the Chief issued his final dispositions as recommended and closed the case.

Case #22-12

This investigation was prompted by EPD's receipt of a written complaint that made several allegations against an employee. These exhibited a range in their clarity and plausibility. Nonetheless, once the case was assigned to an investigator, that person made assiduous (but unsuccessful) efforts to locate the complainant to conduct an interview and potentially gain more workable information about the concerns.

It turned out that the complainant – who had a history of police contacts and mental health issues – was related to the employee named in the complaint. The investigator found three somewhat recent calls for service that revolved around the complainant and included a response by the related member of EPD. Body-worn camera recordings showed the communications that occurred between the two in each instance; these primarily involved evaluation of the complainant's well-being and immediate plans for care and shelter. The employee was found to have acted appropriately in the context of each encounter, and other EPD personnel were involved in each instance.

This review of available records was supplemented by an interview with the subject employee, who persuasively denied the misconduct allegations and provided useful context about the complainant's personal history.

The investigator framed several potential policy violations as charges in the case and determined each to be unfounded.

We noted a five-month delay between the submission of the complaint and the initiation of the investigation.² However, we found the investigation itself to be thoughtful, rigorous, and effective in dealing with a sensitive situation.

Case #22-16

This case resulted from a traffic stop. The EPD employee observed two subjects in a vehicle that he believed may be members of a gang. Later, he saw the vehicle pull over in front of a residence. The subject ran inside the residence. The employee requested another unit and approached the empty vehicle to look inside, at which point the subject exited.

² At the time of this investigation, the Department's policy allowed a year for investigations to occur. EPD leadership has since revised the policy to require more timely investigation to align with industry best practices.

The subject identified himself and confirmed that he was on probation with a general search clause. The employee requested that the subject sit on the curb, which he did. Other employees entered the residence to search the subject's room.

An employee handcuffed the subject and detained him in the rear of the police vehicle while a search was conducted, but the subject was ultimately released at the scene.

The subject filed a complaint, stating that he had been harassed and unlawfully detained.

The assigned investigator reviewed all related evidence, including body-worn camera footage and police reports.

The investigator then spoke with the subject on the phone. The investigator asked the subject if the subject thought the employees had engaged in misconduct. The subject responded that he did not know. In response, the investigator stated that EPD had not identified any misconduct, and asked if the subject would like to rescind his complaint. The subject responded that he did not think anything could be done about the incident.

The investigator wrote an administrative memo to document his review of evidentiary materials and his conversation with the complainant. The investigator concluded that no misconduct had occurred, that the employees had acted professionally, and that the subject had withdrawn his complaint.

We discussed this case at length with EPD leadership. EPD highlighted concerns with the complaint intake process, and because of this case has re-evaluated its complaint intake process. Even before our review, EPD reported that it trained all investigators in complaint intake, including taking all complaints as reported by the complainant, offering options to resolve concerns and complaints, and formally documenting the process.

We also discussed our concerns with the actions of employees on scene. First, while the actions of officers on scene were legal, we questioned whether handcuffing and detaining the subject was retaliatory in nature, as employees did so only after the subject asked for names and badge numbers. After conversation with EPD, we learned that employees had other reasons to become concerned for their safety and that, in fact, EPD command would have preferred that, for tactical reasons, the employees handcuff and detain the subject earlier in the encounter.

We understand this perspective. However, the employees' rationale was not documented or included in the administrative memo.

This resulted in two recommendations. First, we recommended that EPD instruct employees to more fully document all rationale for detaining subjects, when practicable, either in real-time (e.g., articulated on BWC) or after the incident in their police reports.

Recommendation Q3 -1: EPD should instruct employees to document all reasons more fully for detaining subjects, when practicable, either in real-time (e.g., articulated on BWC) or after the incident in their police reports.

Second, the lack of documentation suggested that more investigation may have been warranted for this case. For example, the investigator could have asked the employee to articulate his decision-making on scene in an administrative interview. Absent any documented rationale (e.g., in a police report or body-worn camera) and without an administrative interview, all parties are left to speculate why the employees acted as they did.

But, as we noted above in Case 22-04, this case was not investigated further because this complaint was also classified as “withdrawn.”

We discuss our recommendations on this issue further, below.

Case #23-10

This complaint originated from a call for service. The subject initially contacted dispatch to request medical aid, stating that he was experiencing what appeared to be a mental health crisis. After extensive conversation with the subject, Dispatch determined that a welfare check by EPD employees would be more appropriate for the circumstances and sent employees to his location.

The responding employee did not initially find the subject at the address provided. Another responding employee recalled seeing the subject walking, and the employees responded to his location. The subject reported that he was walking to the hospital. The subject again requested medical aid. The employees hesitated, and one asked why the complainant could not just continue walking to the hospital. The complainant became very agitated, yelled, and called 911 again demanding an ambulance. By this time, the subject’s father had also responded to the location and confirmed that perhaps an ambulance would be the best choice.

An employee offered the subject a ride, but the subject declined. The subject, still agitated, abruptly turned and walked away, yelling that he would walk to the hospital. This ended the initial contact.

Later, EPD received a call for assistance from the hospital: while being medically treated, the complainant had become aggressive. When hospital staff attempted to restrain him, the complainant kicked a nurse. The staff requested that EPD arrest the complainant for assault.

When EPD arrived, the complainant was seated. He went limp and became a dead weight. EPD employees struggled to physically move him from the facility into the rear of the police vehicle; at one point he rolled off a wheelchair and scraped his elbow on the pavement. With considerable effort, they finally got him seated and secured in the patrol car for transport to the jail. Once at the jail, employees transferred care to the jail staff.

The complainant filed a complaint, stating that employees had refused to call an ambulance to transport him, had used excessive force, and had damaged his property.

EPD reviewed all relevant evidence, including the police reports, dispatch records, and body-worn video camera footage. EPD determined that employees had acted professionally during the encounter and did not use force beyond the physical control holds necessary to move the subject's dead weight from the hospital to the police vehicle. EPD closed the case with an administrative memo.

We reviewed the same evidence. Initially, we questioned why dispatch would send employees for welfare check instead of sending medical assistance as requested. We also sought clarification for the employees' hesitance to request an ambulance when they later encountered the complainant and his father (who also requested an ambulance), and the employee's initial demeanor when he advised the complainant that he should just continue walking (though we do note that the employee offered the subject a ride).

EPD responded that, based on their training and protocol, dispatch appropriately determined that the complainant was not experiencing a medical emergency that would require an ambulance response. Rather, as dispatch documented in the call notes, the complainant was likely experiencing a mental health crisis, which necessitated a welfare check. Later, employees made this same determination: employees determined that the complainant was not experiencing an immediate medical emergency. The complainant then left the location before employees could determine if he met any of the criteria for a mental health hold (e.g., danger to self, others, or gravely disabled, also known as a "5150" hold). Further, reported EPD, the City and County face resource limitations and, as such, cannot send emergency medical aid to requests where the need is not immediately warranted.

We understand this rationale and the resource limitations faced by Eureka and Humboldt County. This is a concern nationwide, and one that often leaves law enforcement responsible for crises calls that might be better suited for behavioral/mental health clinicians. We look forward to working with EPD on this issue, to learning more about their response protocols, and to recommending ways to better serve those experiencing crisis.

Finally, while we agree there was no formal misconduct in this case, we found that employees could benefit from informal counseling on compassionate and appropriate responses to those experiencing a mental health crisis. We discuss this recommendation in greater detail below.

Policy, Training, or Process Issues

Through our case reviews and collaborative discussions with EPD and the City, we have identified three areas where we can continue to work with the Department to develop policy and procedures for more effective case review. In making these recommendations, we are also mindful that EPD is facing staffing challenges – at the time of publication, the Department has 13 vacant positions. As we work with EPD toward achieving the goals of our recommendations, we will make every effort to streamline and improve processes in ways that do not negatively impact the already-existing staffing challenges.

Administrative Closure of Complaints

During our time as Eureka’s IPA, we have reviewed a number of cases that EPD closed with an administrative memo versus a full, formal investigation.

In two of these, the employee was no longer with EPD and we determined that administrative closure was appropriate.

EPD also used an administrative memo to close out complaints that it determined would not result in sustained findings; that is, after an initial investigation of evidence, such as police reports and body-worn camera footage, EPD determined that the alleged actions either did not occur as alleged (“unfounded”) or occurred but were within policy (“exonerated”). As such, EPD determined that these cases did not warrant any further investigation and closed them without assigning formal dispositions.

When done thoroughly and appropriately, closing a case after an initial investigation proves conclusive can be an appropriate decision. To be clear, EPD’s cases, with few exceptions, are well-investigated; IA reviews relevant evidence to determine if any

misconduct occurred and articulates this well in their memos. We recommend that IA take the final steps to thoroughly document the cases and complete them per industry standards.

We will continue to work with EPD leadership on this issue, with the goal of crafting a policy that meets industry standards while ensuring that cases that require formal investigation receive such scrutiny. We have worked with other jurisdictions to create processes for efficiently addressing allegations are clearly unfounded or exonerated based on initial review of evidence, while also requiring proper documentation, disposition, and notification of outcomes. We will explore the use of similar processes in EPD.

It is true that, in our experience, some agencies prefer to avoid “complicating” an officer’s personnel history with complaints that prove to be unsubstantiated. In our view, though, the importance of accuracy and completeness outweighs these concerns. And regardless, disproven cases do not and should not reflect poorly on the individual officer.

Recommendation Q3-2: The IPA and EPD should draft a policy that that meets industry standards while ensuring that cases that require formal investigation receive such scrutiny.

Managing Withdrawn Complaints

In this period, EPD reported that, after speaking to an IA investigator, two complainants decided to withdraw their formal complaints (see 22-04 and 22-16). To its credit, EPD had already collected sufficient information to determine that the alleged misconduct had either not occurred as described by the complainant or had occurred but was within policy and procedures. EPD closed these cases without further investigation and without findings.

But, as with the administrative closures described above, OIR Group opines that some “complaint withdrawn” cases may merit investigation. The mere fact that the complainant withdraws a complaint alone is not a sufficient basis to close an investigation. Complainants may be motivated by various factors to “withdraw” a complaint, many of them having nothing to do with the legitimacy of the complaint: in 22-16, the complainant was essentially “talked out” of making the formal complaint, and, in 22-04, OIR Group discovered, and EPD agreed, that the complainant had not actually withdrawn her complaint at all.

While EPD corrected these missteps to the best of its ability in these specific cases, and committed to re-training IA investigators on complaint intake, it stopped short of investigating the cases further (in the case of 22-04, the case was already well beyond that statute of limitations). OIR Group recommends that EPD carefully reconsider its response to complaints that it believes to be “withdrawn.” OIR Group recommends that Internal Affairs, in consultation with the Chief and OIR Group, review each withdrawn complaint to ascertain:

- If the complaint process was fully described to the complainant after the complainant expressed his/her wish to withdraw a complaint.
- If the complainant was in any way coerced or convinced to withdraw his/her complaint during the intake interview.
- The nature, severity, and possible disciplinary outcome of the allegations in the withdrawn complaint.

If the allegations are of a serious nature, or indicate a need for directed training, counseling, or other action, EPD should investigate. EPD leadership has expressed that it is committed to this process; we will continue to work with EPD to ensure that all complaints, regardless of whether they are withdrawn, receive the appropriate level of investigation, findings, and documentation.

Documentation of Informal “Teachable Moments”

As exemplified by the cases detailed in this report, every complaint, whether internally or externally generated, provides an opportunity for EPD to engage in critical evaluation. Nine months into our engagement, EPD has already acted to formally modify policy or to reconsider its general policing philosophy (for example, how it will respond to calls for service regarding civil matters) in response to issues identified in complaints. And, in cases where allegations are sustained, EPD provides the appropriate corrective action and discipline.

EPD reported that complaints sometimes allowed for “teachable moments,” or ways that the officers may have done better in response to a call for service. For example, in the case where a complainant felt unwelcome by staff in the Department lobby, EPD reported that it had spoken to the employee about the incident and encouraged a more pleasant disposition toward the public. However, this commendable action is seldom documented.

Here again, we have engaged in robust discussions with EPD leadership over how best to balance our recommendation to document these important conversations against any

legal implications, impact to employee morale, and perceived increased workload of documenting “teachable moments.”

We maintain that documenting these actions as they relate to a specific complaint is in the best interest of a department and its employees. From an individual officer’s perspective, documentation – even informal – allows for tracking behavior over time; this may result in positive evaluations as the officer shows growth or, conversely, may uncover an area where an employee may need more formal coaching or training. This also serves as effective risk management, as it ensures that the action actually occurred, and allows external auditors, such as the IPA, to track these actions. We also find that transparent reporting, including noting these commendable informal corrective actions, is a large part of gaining community trust.

We acknowledge the Department’s concerns about documenting specific critiques and will continue our discussions with Department leadership about how best to implement our recommendation.

[Recommendation Q3-3](#): EPD and the IPA should collaborate to determine the best mechanism to document actions taken in response to a complaint.

Overall, we are pleased to report that EPD has been receptive to our recommendations thus far. We have reviewed several very thorough and fair investigations and see that there is room for improvement. Our robust discussions and EPD leadership’s willingness to collaborate assure us that EPD is committed to working with the IPA to make continued improvements.

Appendix A: Case Review Memos



7142 Trask Avenue
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TO: City of Eureka
FROM: OIR Group
DATE: June 7, 2023
RE: Review of Administrative Investigation – #OIR22-10

Introduction

In its role as the City of Eureka’s Independent Police Auditor, OIR Group reviews internal investigations completed by the Eureka Police Department (EPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate.

Case Summary and Investigation

A complainant submitted a form she had filed online with the U.S. Department of Justice Civil Rights Division, then printed and mailed to EPD. The complaint lists “profiling, stalking, harassment, and retaliation” without further detail.

The case stemmed from a response to a call for service: two EPD employees responded to a report of suspicious persons tampering with a vehicle at the location. These employees approached her car at around 1:30AM. She was standing beside the open driver’s door talking to a man who was holding a bicycle. The employees began talking to the complainant, who immediately walked away from them. The employees later learned the car’s registration was expired, and began talking to the bicyclist, explaining the nature of the suspicious persons call. The complainant returned, complaining that officers were stalking and harassing her.

While the employees were asking her about her registration, the complainant called 911, claiming she was being harassed and bullied, and would be pressing charges with the Department of Justice and the FBI.

She then asked for the employees' badge numbers. The senior employee on scene provided a badge number and name. When the complainant asked how to spell the name, the employee told her to read it off the name plate affixed to his uniform. Other employees provided their names and badge numbers.

She said, "I am reporting you to the Department of Justice for harassment and stalking." She continued to go on about suing the officers, and again called 911 while officers were still on scene.

The senior employee continued to engage with the clearly agitated complainant, arguing that they hadn't done anything to harass or threaten her. Indeed, the employees had been calm and only tried to talk to her about her registration. Ultimately, the employee wrote a parking citation and left it on her windshield. She took it and drove away.

The complainant successfully challenged the parking citation by eventually providing proof that her registration was valid.

EPD's Investigation and Analysis

When the EPD investigator contacted the complainant, she told them the matter had been taken care of and they didn't need to look into it any further.

Despite the complainant's withdrawal of her complaint, the investigator completed the investigation. The investigator reviewed the body-worn camera footage and concluded the officers wrote a valid ticket and did not violate any policies. But the investigator also found that the senior employee might have further agitated the complainant by refusing to spell the employee's last name, instead directing her to read it off the name plate. The investigator described this as a "missed opportunity to de-escalate" the encounter, but did not document any actions taken to address this issue with the officer.

The investigation was closed without any formal Department finding or action.

OIR Group Review

We reviewed the complete case file. We do not disagree with the closure of the IA investigation, based on the complainant's withdrawal of her complaint and the body-worn camera footage. However, we agree that the lead employee's demeanor with the complainant could have been better. Beyond the refusal to spell the employee's name

for her, the employee also continued to argue with her when it should have been clear that she was reacting in a way that evidenced a mental health concern. Continuing to engage only further agitated her and exacerbated her belief that she was being harassed.

This case presented an opportunity for addressing the employee's communication skills, particularly with subjects who are in some type of mental health crisis. Especially in cases like this, where there was at least one new officer at the scene, EPD should identify the chance to discuss ways in which the overall approach to the scenario could be improved. We were advised that some informal counseling did occur in this case; we recommend that the Department document that type of remediation in future cases.



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TO: City of Eureka
FROM: OIR Group
DATE: July 16, 2023
RE: Review of Administrative Investigation – OIR 22-014

Introduction

In its role as the City of Eureka’s Independent Police Auditor, OIR Group reviews internal investigations completed by the Eureka Police Department (EPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate.

Case Summary and Investigation

Complainant contacted a City employee to complain about an unprofessional encounter he had with an employee in the lobby of the Police Department when he had gone to EPD to update his mailing address.

EPD’s Investigation and Analysis

The investigator interviewed the complainant in person. The complainant said he could not remember anything the employee said to him, but that the employee looked at him in a way that made him feel unwelcome. The complainant believed that EPD should give the employee a “talking to” about how to treat people, but ultimately said he wished to withdraw his complaint. The investigator requested the investigation be closed.

OIR Group Review

We reviewed the complaint and the investigative file. We also spoke with EPD and learned that management had made the employee aware of this complaint and provided informal counseling about making sure members of the public feel welcome in the Department's lobby. We find the decision to close this investigation was reasonable.



7142 Trask Avenue
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TO: City of Eureka
FROM: OIR Group
DATE: October 6, 2023
RE: Review of Administrative Investigation – OIR #22-15

Introduction

In its role as the City of Eureka's Independent Police Auditor, OIR Group reviews internal investigations completed by the Eureka Police Department (EPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate.

Case Summary and Investigation

Officers responded to a retail establishment to remove two individuals suspected of trespassing. They learned that both individuals had outstanding warrants, and both fled. Officers went in foot pursuit and caught one individual, while the second subject continued to flee. An officer heard the broadcast of the pursuit while in the officer's patrol car, and then observed the subject run into a greenbelt. The officer broadcast that the officer was going into foot pursuit, exited the vehicle, and entered the greenbelt through a large hole in a chain-link fence.

Almost immediately after the officer passed through the fence, a dog charged at the officer out of an encampment in the greenbelt. The officer drew the officer's handgun and discharged the firearm three times, killing the dog, who had advanced to within three to five feet of the officer. The dog's owner and others from the encampment began yelling at the officer as the officer backed up through the hole in the fence, still

holding the firearm at the officer's side. The officer ordered the bystanders to stay back while keeping the gun at "low ready" and waiting for other officers to arrive and assist.

EPD's Investigation and Analysis

EPD conducted a thorough investigation of this incident, including reports from all involved and witness officers, interviews of civilian witnesses, review of body-worn camera footage, and two separate administrative interviews of the shooting officer.

The Department evaluated the officer's actions for compliance with several different EPD policies.

- Policy 312.7.1 DESTRUCTION OF ANIMALS

The policy authorizes officers to use firearms to stop an animal in circumstances where the animal poses an imminent threat to human safety and there are no other alternatives available. Here, the dog aggressively charged the officer immediately as the officer entered the area of the encampment and, as articulated in the officer's interview and depicted on body-worn camera, the officer had very little time to react or employ other alternatives to stop the dog. An independent witness who was present in the encampment provided a statement confirming that no one had physical control of the dog at the time the officer entered the area.

The Department concluded the officer's use of a firearm was within policy.

- The Department also concluded the officer complied with policies regarding report preparation and activation of body-worn cameras.
- Finally, the Department evaluated the officer's decision to initiate a foot pursuit. EPD concluded that the officer did not violate policy in deciding to pursue based on the fact the officer had information that the subject had outstanding warrants and was fleeing from police.

OIR Group Review

We reviewed the complete case file, including the body-worn camera footage. We found the investigation to be thorough and EPD's finding with respect to the shooting to be reasonable.

The Department's review of this incident, however, did not meaningfully address the foot pursuit in light of EPD policy. Policy 458.2 – FOOT PURSUITS – begins with a statement about an officer's decision to pursue:

The safety of department members and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. Officers must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department members.

The policy includes a list of guidelines that officers should consider when deciding whether to engage in or continue a foot pursuit that is consistent with this view, and instructs that officers "should consider alternatives" to pursuing when, among other things, "[t]he officer is acting alone."

This directive is based on the fact that single officer foot pursuits can present a number of officer safety concerns. For example, the subject being pursued determines the path of the pursuit and has a tactical advantage and has the opportunity to ambush the pursuing officer. A long foot pursuit also can leave an officer (who is weighed down by necessary gear on his or her belt) winded, and the exhaustion can compromise the officer's tactical skills and decision-making ability. The dynamic of a solo officer foot pursuit is also unsafe for the public and the subject being pursued, as the heightened sense of danger faced by officers in this scenario may cause the officer to mis-perceive potential threats.

Here, the officer was acting alone when the officer decided to enter the greenbelt to pursue the subject. Being attacked by a dog was just one of many possible bad outcomes in this scenario. Given the Department's preference – as stated in policy – for not having officers engage in solo foot pursuits, the Department's review of this incident should have discussed the officer's alternatives in a more substantive way. For example, could the officer have waited for backup while communicating the subject's location and coordinating a containment? Given that officers knew the subject's identity, would it have been reasonable to wait and apprehend him at a later time?

Instead, the Department essentially concluded the pursuit was justified because the subject was fleeing officers who had the legal right to arrest him.

When weighing an officers' decisions to engage in foot pursuits, we recommend the Department more meaningfully engage with the various factors articulated in its foot pursuit policy to assess whether there were safer, practicable alternatives for apprehending the subject. The Department should view cases such as this one as

opportunities for training and reinforcing its expectation that officers will consider their own safety and the safety of others before engaging in potentially dangerous foot pursuits.

Recommendation 22-15:01: When reviewing officers' decisions to engage in foot pursuits, the Department should consider all of the various factors articulated in its foot pursuit policy to assess whether there were safer, reasonably practicable alternatives for apprehending the subject.