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TO: City of Eureka Community Oversight Police Practices Board

FROM: OIR Group

DATE: January 16, 2024

RE: Review of Quarter Four Administrative Investigations
Update on Audit of Response to Mental Health-Related Calls
for Service

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 were appropriate. We report these findings on a quarterly basis to the community at the Community Oversight Police Practices (COPP) Board meeting.

As we reported in our third quarter review, our case review process shifted to allow us to review open cases and provide feedback in real time. With one exception, noted

below, EPD sent us the following cases *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.

Our scope of work also allows for periodic audits of the Department on any topic deemed relevant, timely, and constructive by our group, the COPP, or the Department. We presented several potential options to the COPP in late 2023, and the COPP requested that we conduct an audit of the Department's response to calls for service involving a mental health crisis. We are in the process of completing this audit. While we are overall impressed with EPD's responses to these calls for service, we also identified areas for consideration going forward, which we will share with the Department. We will provide a formal audit report at the next COPP Board meeting in the spring.

This period also saw a transition in leadership, with the retirement of Chief Todd Jarvis and the promotion of long-serving EPD leader, Assistant Chief Brian Stephens, into the role of Chief of Police. We express our sincere thanks to Chief Jarvis for his collaboration and candor during our first year as your City's IPA. We look forward to our continued collaboration with Chief Stephens.

Case Summaries & Recommendations

In the following cases, with one exception, EPD provided the investigative file for our review when it felt that the investigation was sufficiently complete.¹ 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 #23-01

Summary: This was a Department-initiated investigation of inappropriate use of social media. OIR Group recommended additional interview was needed, which EPD completed. OIR Group considered the investigation to be thorough and complete. EPD sustained the allegations against the officer and issued discipline. We found the findings and discipline to be appropriate.

This was an internally-generated complaint related to an inappropriate post on social media. While attempting to apprehend an armed subject who was fleeing on foot, EPD employees stopped their patrol vehicle. The subject ran into the patrol car's passenger door as the employee attempted to open the door, struck it forcefully, and continued to run. He was eventually apprehended.

The employee subsequently made an inappropriate social media post about the subject striking his patrol vehicle door and included a portion of his own body-worn camera footage. This was eventually reported to EPD.

EPD opened an investigation and framed the following allegations:

- 1: **450.6. Prohibited Use of Portable Recorders.** EPD alleged that the employee had violated this policy, which prohibits making personal copies of body-worn camera footage and prohibits release of any body-worn camera footage.

¹ There was one case this period that did not follow our real-time collaborative process: 23-08. We learned about this case after findings had already been issued and the case was pending discipline. EPD has assured us that we will see future cases prior to this point so that we can provide real-time feedback and recommendations.

- 2: **1057.4. Prohibited Speech, Expression, and Conduct.** EPD alleged that the employee violated this policy when he posted the clip with a tagline belittling the subject.
- 3: **339.5.6 Unauthorized Access, Disclosure, or Use.** EPD alleged that the employee violated this policy when posted the clip without any prior authorization from the Chief.
- 4: **339.5.9. Conduct.** EPD alleged that the officer violated this policy when he acted in an unbecoming way that discredited the Department.

The investigator conducted an extensive investigation into the technological aspects of this case, including speaking with the City's IT department and researching the Department's internal auditing system to learn when the video was viewed by the employee. From this, the investigator was able to determine that the employee had violated the above-listed Department policies by recording, retaining, and then publicly posting the video with taglines.

The investigator also identified several witnesses and interviewed them, two of these were employees who saw the post but failed to report it to leadership. EPD addressed this in a "Discrepancies Noted" memo, in which EPD noted that it identified the issue and re-trained these two employees on the requirement to report misconduct (**Policy 339**).²

We reviewed the investigative file and found that EPD had thoroughly investigated all potential misconduct related to the social media post and to the officers' duty to report misconduct. But we found that the Department had not addressed the actual subject of the body-worn camera clip: that an employee had purposefully opened the patrol vehicle's door to strike the subject as indicated in his taglines. We requested that EPD examine this more critically.

EPD responded by conducting an interview with the officer's training officer regarding the incident. This employee stated that the subject had run into the car door, that the employee had not intentionally opened the door into the subject, and that the subject did not fall. The subject had not complained of any injury, nor was there any damage to the

² We discussed the concept of "Discrepancies Noted" in our memo related to the EPD Texting case (see our memo regarding this case presented to the COPP Board on July 25, 2023) We maintain that it is preferable to formally frame these ancillary issues when they are identified.

car door. EPD concluded that the employee's taglines were misleading and that this was not a use of force incident.

Upon receipt of this additional interview recording, we considered the investigation to be thorough and complete. EPD sustained the allegations against the officer and issued discipline. We found the findings and discipline to be appropriate.

Case #23-02

Summary: This was a Department-initiated investigation regarding an employee's failure to properly respond to and investigate a call for service at a medical clinic. EPD sustained the allegations against the officer and issued discipline. We found the findings and discipline to be appropriate. OIR Group found that an additional allegation regarding activation of the body-worn camera was warranted; EPD is working on this issue generally through policy development.

This was an internally-generated complaint regarding an employee's failure to properly respond to and investigate a call for service at a medical clinic. In this case, EPD's rigorous internal review of mental-health related calls for service resulted in swift corrective action; we further discuss the concept in our Mental Health Audit section, below.

On the day of the incident, a security officer from the clinic contacted EPD and reported that a client, known to experience mental health crises, was significantly vandalizing property and acting aggressively. The security officer was standing-by in the lobby for EPD assistance. Rather than report to the location, the officer called the security officer from EPD headquarters and learned that the subject had left the location; the officer did not record this phone call on his body-worn video camera. In his documentation, however, the officer noted that the security officer stated that he would handle the matter because it had occurred on medical clinic property. He then cleared the call for service.

As part of its regular review of mental health related calls for service, EPD learned that the officer may not have handled this case appropriately. Specifically, the officer did not properly document the call or conduct any further investigative duties. For example, despite the property damage being of sufficient value to warrant a felony charge, the officer did not file a report regarding the matter, stating that he believed reporting and documenting this criminal activity fell under the jurisdiction of the VA Police who staffed the medical clinic. The officer also did not issue a Be-On-the-Lookout (BOLO) or

Welfare Check for the subject, who had acted aggressive and was known to experience mental health crises.

EPD framed three allegations in this case:

- 1: **339.5.7. Efficiency. Neglect of Duty.** EPD alleged that the officer failed to respond to the scene, investigate in a timely manner, and provide service as required by his role as a peace officer.
- 2: **339.5.7. Efficiency. Unsatisfactory work performance.** EPD alleged that the officer's failures listed in #1 exemplified unsatisfactory work performance.
- 3: **343.2.1. Criminal Activity.** This section of policy requires that officers document activity related to felony crimes in a written police report. EPD alleged that the officer did not complete the appropriate documentation in this case.

We found the investigation related to these three allegations to be thorough. The investigator conducted an extensive audit of this officer's calls for service, response times, and past responses, and conducted interviews of the subject officer and relevant witnesses. The investigator pulled other related documents, including a Memorandum of Understanding (MOU) between the medical clinic, VA Police, and EPD to learn what EPD's role and responsibilities should be in these types of calls for service.

As a result of the investigation, EPD sustained the first two allegations based on the available evidence. EPD unfounded the third, because, as listed in the MOU, the matter and any relevant reporting should have been handled by the VA Police who staffed the medical clinic. Accordingly, the officer had not violated policy when he did not document the crime in a police report.

The Department issued discipline for the sustained findings. We found the findings and related discipline to be fair and evidence based.

However, we noted that EPD did not frame an allegation related to the officer's failure to record the telephone call on his body-worn camera. Department policy requires that any investigative interactions, such as a call with a reporting party, be recorded.³

³ As listed in Policy 450: The portable recorder should be activated in any of the following situations:
(a) All enforcement and investigative contacts including stops and field interview (FI) situations.

We discussed this issue with EPD. EPD reported that it is actively working on body-worn camera activation concerns internally. Currently, the Department has an outdated General Order that has been updated with Department Bulletins, but these are inconsistent and unclear for officers. It is currently revising those documents to produce a single, updated General Order for clarity and will train officers on the new policies. And, after finalizing the policy and providing the training, EPD command staff plans to routinely frame and sustain allegations related to any BWC activation failures if the officer cannot articulate a rationale consistent with policy for failure to activate.

Beyond the specific allegations in this case, we found that this case provided another example of Eureka's wrap-around services model for subjects experiencing mental health challenges who are also involved in the criminal justice system. We reviewed a series of emails that were included in the complaint case file and learned that the subject was being prosecuted for several matters, including the one cited here. As evidenced in the email thread, EPD, the County DA's Office, and mental health practitioners from the medical clinic, worked closely to ensure that the subject received the appropriate level of care while also being held accountable for his criminal actions.

Case #23-03

Summary: This was a Department-initiated investigation for alleged failure to timely investigate allegations of sexual abuse of a minor. EPD sustained the allegations against the officer and we found the findings to be appropriate. The officer chose to resign during the investigation and is no longer employed by EPD.

This case was an internally-generated investigation for alleged failure to timely investigate allegations of sexual abuse of a minor. In this case, an EPD employee learned of the potential sexual abuse from school personnel. This employee then failed to investigate the matter, inform his supervisor or command staff of the incident, or take any other action on the case for over a month.

Over a month later, the officer sought the advice of his supervisor, who directed him to immediately act on the case. The officer then met with the victim. But during this meeting, the officer did not seek an official statement from the victim, stating that the topic seemed to elicit an emotional response from the victim. In the following weeks, the victim attempted to connect with the officer, who did not respond in a timely fashion.

This left the victim feeling as if the officer did not want to hear her story or investigate possible criminal activity.

Eventually, another EPD employee took over the case. That employee determined that the matter had occurred in a different jurisdiction. That employee forwarded the case to the appropriate agency and conducted follow-up to ensure the matter was resolved.

EPD framed four allegations in this case:

- 1: **339.5.7. Efficiency. Neglect of Duty.** EPD alleged that the failure to investigate the matter was neglect of the employee's basic duties and responsibilities.
- 2: **339.5.9. Conduct Unbecoming.** EPD alleged that the officer's neglect of duty and his failure to respond to the victim's attempts to communicate rose to the level of unbecoming conduct.
- 3: **450.5. Activation of Portable Recorder.** The portable recorder shall be activated in all enforcement and investigative contacts.
- 4: **General Order 2016-04, Section IV. Body-Worn Camera Policy.** Officers shall not record an interview or statement of victims, witnesses, or parents of victims during investigations concerning Sex Crimes or Child Abuse.

We found the investigation of this incident to be thorough with one exception: the interview of the subject officer. EPD also raised this concern independent of our review, finding that the investigator had not asked sufficiently probing questions. EPD reported that it had used this as a "teachable moment" for all IA investigators. EPD further reported that it is not uncommon for newer IA investigators to be reluctant to assertively interview a fellow officer; EPD agreed with us that this can, and should, be taught as IA investigators are brought on board. Since the start of our engagement, EPD has sent all IA investigators to outside training specifically designed for their work in IA. Continued training and experience should result in better interviews, and we will continue to track this.

Ultimately, the rigor of the officer's interview did not impact the final disposition: EPD recommended, and we agreed, that all four allegations be sustained. The officer chose to resign during the investigation and is no longer employed by EPD.

Case #23-08⁴

Summary: This complaint was submitted by members of the public regarding EPD's response to a civil disturbance call involving a juvenile and his parent. EPD framed and sustained one allegation for the officer's use of unprofessional language. OIR Group found that additional allegations were warranted in this investigation and recommends that the Department provide training on de-escalation tactics.

Two community members who witnessed the incident submitted a similar complaint. EPD generated one complaint investigation to address their concerns.

An EPD officer responded to a disturbance call in front of a housing location. When the officer arrived, he observed a mother trying to coax a juvenile, who was yelling, out of the back seat of a family member's vehicle. After unsuccessfully attempting to verbally encourage the juvenile to exit, the officer instructed the mother to pull the juvenile out, which she did. This escalated the situation as the juvenile ran into the roadway and re-entered the vehicle from the opposite side. After another round of this, the officer instructed the family member to drive away and the mother to physically restrain the juvenile.

The juvenile was combative and made various allegations of abuse as the mother attempted to restrain him with the officer's continued encouragement. When the juvenile began to strike the mother, the officer intervened and placed the juvenile's arm in a control hold. The juvenile cursed at the officer, and the officer responded by yelling, among other comments, that the juvenile was "a little baby" and instructing him to stop his behavior.

Another EPD employee arrived and assisted the first, holding the juvenile's other arm. These employees discussed options to resolve the situation and determined that they should place the juvenile in a mental health hold ("5150") because he was a danger to the mother and to himself and transport the juvenile to the hospital.

Other EPD officers arrived. One knew the juvenile from previous interactions with the family. This officer calmly and patiently spoke with the juvenile, the mother, fellow

⁴ We did not review this investigation prior to EPD closing the matter. We discussed this issue with EPD, who recommitted to sharing investigations before issuing disciplinary recommendations and closing the case.

officers, and staff in the housing facility. After more negotiation and discussion, the officers eventually convinced the juvenile to enter the housing location with his mother. This ended the incident.

The following day, two community members who had observed portions of the incident submitted complaints. Upon receipt of the complaints, EPD reviewed all related body-worn camera footage. EPD determined that the officer's demeanor and language were unprofessional, but that the way in which the officers had responded was otherwise within policy. EPD spoke with both complainants and explained their initial findings. EPD also explained the formal complaint process. After these discussions, both complainants responded that they would be satisfied if EPD addressed the officer's unprofessional interaction with the juvenile through the complaint process.

EPD initiated a formal complaint and framed one allegation of violation of the Department's Conduct policy (**Policy 339.5.9**), for the officer's use of discourteous and derogatory language against the juvenile during the interaction. EDP sustained this allegation and issued low-level discipline.

However, had we reviewed this case prior to it being closed, we would have recommended that the Department also frame allegations related to the officer's failure to attempt to de-escalate the incident. Our review found that the officer's response from the onset, which involved yelling, reaching into the vehicle to pull out the juvenile, and encouraging the mother to use both restraint and force – all without taking a tactical pause to assess the circumstances, separate the parties, or call for back-up – significantly heightened tensions, and escalated the situation.

Specifically, we found that the officer did not follow any tenets of de-escalation required by the Department's Use of Force policy (**300.3.6**, "Alternative Tactics – De-Escalation") and its Civil Dispute policy (**468.3**, "General Considerations"), both of which require officers to consider and employ de-escalation tactics prior to using any force tactics or becoming actively engaged in civil disputes (which this incident arguably was).

We discussed this issue with EPD command staff, who hypothesized that the officer's response was the result of being alone on the call, wanting to quickly resolve the matter that was causing a disturbance in the roadway, and seeking a safe outcome for the juvenile. However, framing these allegations and properly investigating them would have been appropriate here, and removed the need to guess why the officer reacted the way he did.

We recommend that the Department conduct Briefing Training on de-escalation tactics and policies Department-wide; officers can always benefit from refresher training on this

critical component of 21st Century policing. And, more importantly, EPD should train the involved officer specifically on the principles of de-escalation.

RECOMMENDATION 1

EPD should conduct Briefing Training on de-escalation tactics and policies Department-wide.

RECOMMENDATION 2

EPD should train the involved officer specifically on the principles of de-escalation.

Update: Mental Health Audit

The COPP requested an audit of the Department's response to calls for service that involved a mental health component. EPD, as with all agencies nationwide, responds to a high volume of these calls for service: in the year-long period covered by our audit – November 22, 2022, to November 22, 2023 – EPD responded to 1,486 such calls.

To conduct this audit, we are reviewing calls for service related to individuals experiencing some type of mental health crisis handled by patrol officers or by the Department's specialized Community Safety Engagement Team (CSET). These cases were randomly selected from the 1,486 calls for service that involved a mental health component over a 12-month period.

Evaluating law enforcement's response to mental health calls is particularly timely due to increasing calls nationwide for cities to implement *alternative* responses to these calls and provide a more holistic response to a person in crisis. To date, our audit suggests that Eureka has embraced this concept wholeheartedly. While we are overall impressed with EPD's responses to these calls for service, we also identified areas for consideration going forward, which we will share with the Department.

We are in the process of compiling our findings in collaboration with the Department. We will present our formal audit report to the COPP Board in the spring.