

INDEPENDENT REVIEW PANEL MINUTES

January 27, 2009

LOCATION: 140 West Flagler Street, Conference Room 908
Miami, Florida 33130

PANEL MEMBERS PRESENT

Julia Dawson, Esq. Chairperson
Jean-Robert Lafortune, 2nd Vice Chairperson
Doris Shellow, Substitute Member
Tangier Scott, Ed.D.
Julie C. Ferguson, Esq.
Glenn P. Falk, Esq.
Jorge E. Reynardus, Esq.
Josie Perez Velis, Esq.

ABSENT

Moiez Tapia, Ph.D
Michael R. Band, Esq., 1st Vice Chairperson

PANEL STAFF PRESENT

Dr. Eduardo Diaz, Executive Director
Carol Boersma, Assistant to the Director
Kristin Anderson, Conflict Resolution Specialist
Anna Sidan, Conflict Resolution Specialist

AUDIENCE

Complainants: Thiagaras and Priya Naidoo
MDPD: Sgt. Robert Trujillo
Civilian Investigative Panel: Don March
Community Relations Board: Amy Carswell
Public: Luis Garcia

Agenda Item #1) Call to Order. Ms. Dawson called the meeting to order at 2:03 p.m. and asked staff to call roll.

Agenda Item #2) Adoptions of the Minutes from December 18, 2008. Ms. Dawson made a correction on pg. 2, bottom paragraph. In addition, she made a correction on pg. 3, 3rd line. Mr. Reynardus made a motion to adopt minutes as amended. Ms. Ferguson seconded. It was passed unanimously.

Agenda Item #3) IRP Complaint 2006.312 Naidoo v. Miami-Dade Police Department (MDPD)

Ms. Boersma explained the details of the case in which three young people were arrested and charged with possession of marijuana. On September 5, 2002, after Amy and Shan Naidoo, and a friend, stopped at a convenience store, they were followed by two plainclothes police officers in a truck. The three young people allege that the arresting officers falsely claimed they found a Ziploc bag of marijuana in the car. They filed a complaint with MDPD Internal Affairs.

Mr. Naidoo, father of two of the young people, contacted the Independent Review Panel because he was not satisfied with the “not sustained” disposition of MDPD. Mr. Naidoo stated that the US Immigration Services denied his son and daughter's residency application based on the inaccurate narrative in the Arrest Affidavit which indicated that his daughter made voluntary statements implicating her in the sale of marijuana.

About two weeks prior to this incident, Amy Naidoo had been detained for possession. At that time she signed an agreement with Detective Nick Anagnostis to be a Confidential Informant. At the time of the 9/5/02 arrest, she acknowledged she had a cigarette box containing marijuana in the car. She said Detective Anagnostis had told her to get it from a man named “Fulo.” Amy denied having a “bag” of marijuana.

Confidential Informant (CI)

Dr. Diaz inquired if the Naidoo's daughter was eighteen (18) years of age at the time she became an informant. The Naidoo's replied that she was. Ms. Velis asked if she was represented by an attorney when she agreed to become an informant. Mr. Naidoo replied that she was not. Mr. Naidoo stated that Amy did not tell her parents about the encounter with Detective Anagnostis until after the second arrest. Mr. Naidoo reported that his daughter worked in a video store where there is a lot of drug activity and she believed that is why the detectives wanted her to be an informant.

Ms. Boersma reported that the Naidoo's daughter was a documented confidential informant. Dr. Diaz stated that, subsequent to the committee meeting, staff inquired about the paperwork generated for confidential informants. MDPD provided the policy as well as the documents used.

Sgt. Trujillo reported that there are always two officers present when the informant is interviewed. There is a background check and the informant signs a form that states that being an informant is voluntary, that the informant is not allowed to carry any weapons or conduct him/herself as a police officer; that he/she will be under the instruction of the officer, etc. The CI works in a “controlled environment.” A number is assigned to each informant. The police department makes no promises to the informant. Ms. Dawson inquired if the informant can have another person, or an attorney, present to witness the agreement. In this case, an 18-year-old may not have understood all the implications in becoming a CI. Sgt. Trujillo replied that it is not protocol.

Dr. Scott stated that more specificity is needed to avoid confusion, such as advising the informant that he/she may have a witness present and the informant must not act alone, outside of a controlled environment. Mr. Falk suggested adding the conditions to the agreement in bold letters.

Immigration

Mr. Falk inquired about the immigration status of the Naidoo children. Mr. Naidoo reported that, based on what was written in the Arrest Affidavit, Immigration found reason to believe that his children were involved with drugs and their residency was denied. Mr. Naidoo stated that the decision was based on the police report. Immigration did not follow up on the police report or communicate with his daughter. Mr. Naidoo has an Immigration Attorney who is appealing the decision.

Julie Ferguson, who works as an Immigration Attorney, clarified that, whenever there's an arrest, Immigration Officers request a certified copy of the Arrest Affidavit. There is a provision that declares that, even if the applicant has not been convicted, residency can be denied.

Mr. Lafortune stated that police officers have a great deal of discretionary power and to expect all officers to write accurate reports is "naïve." Mr. Lafortune added that many times the officers' reports are not accurate because they write the narrative to "sustain their position." Mr. Reynardus responded that Mr. Lafortune's characterization of police officers was "unfair and inaccurate." Mr. Reynardus added that Mr. Lafortune's position caused him (Reynardus) to question Mr. Lafortune's ability to sit on the Panel as a neutral arbitrator of the facts. Mr. Lafortune replied that he found Mr. Reynardus' comments very distasteful and disrespectful. Mr. Lafortune added that he does not expect to agree with everyone all the time, nor does he expect everyone to agree with him all the time.

Ms. Dawson stated that the Panel should avoid stereotyping. Police officers are not always correct and valid because they are police officers any more than arrestees are always suspect and incorrect because they are being arrested. The Panel has the responsibility to judge the totality of the circumstances.

Mr. Lafortune inquired whether MDPD informs immigrants about their vulnerabilities in becoming an informant. Sgt. Trujillo replied that there is documentation as to whether the CI is a citizen; however, immigration status is not documented.

Ownership of the vehicle and its contents

Mr. Falk inquired who owned the vehicle in question. Mr. Naidoo reported that his daughter owned the vehicle and was the driver at the time. Mr. Falk mentioned that he saw in the investigation that there were Ziploc bags and a broken scale in the trunk. Mr. Naidoo stated that the Ziploc bags were used to hold tokens his daughter collected from her work at the video arcade and the digital scale belonged to a friend's mother, who owned a pawn shop. He stated that his daughter came into possession of the scale after cleaning out the shop.

Discrepancies

Ms. Dawson stated that there are a number of discrepancies in this case, however very few can be resolved because there are no "independent witnesses." Several issues contribute to the inability to resolve the discrepancies: the three young people offered to take lie detector tests, but were not given lie detector tests; the two officers were asked to accurately remember what happened two years ago; there is a lack of understanding and openness regarding informants.

Length of time for Investigation

Ms. Dawson stated it was two years before the case was assigned to Sgt. Trujillo and the officers were interviewed. She questioned if the lapse in time was the result of the case being transferred. Sgt. Trujillo replied that it was. Ms. Dawson inquired why a transfer would delay the investigation and Sgt. Trujillo replied that he did not know. Ms. Dawson stated that it seems unreasonable to ask officers to remember details from an incident that happened two years ago.

The Panel asked staff to follow up on the following:

1. The statutory weight cutoff for felony and misdemeanor drug charges.
2. The amount of money the young people had on them when they were arrested.

Findings regarding Discrepancies Reported by Mr. Naidoo

The Panel adopted Items 1-5, and 7-8 as written. Item 6 was adopted as amended (“does not constitute a discrepancy” was changed to “makes it impossible to determine if there was a discrepancy”).

Committee Findings

The Panel adopted Items 1-3 as written. Item 4 was adopted as amended (“Location from where officers pulled the plastic bag of marijuana” was changed to “Location of car searched when officers came up with the plastic bag of marijuana allegedly found in the car”). Item 5 was adopted written. Items 6-7 were deferred pending staff follow-up as requested by the Panel.

Recommendations

Recommendations 1 and 3 were adopted as written. Recommendation 2 was deleted. Ms. Ferguson moved to add the following recommendation: That MDPD investigate the allegation that Detectives Nick Anagnostis and Carl Sanabria did not follow MDPD policy for Confidential Informants in their proceedings with Amy Naidoo. Ms. Velis seconded and the motion passed unanimously.

Agenda Item #4) Approval of Sunset Review 2007-2008 Dr. Diaz reported that every two years all county advisory boards are required to attend a Sunset Review and the document (Sunset Review 2007-2008) will be going before the Board of County Commissioners if the Panel approves it. Julia Dawson made a correction on pg. 2 (Sunset Questionnaire) #3 stating it should read Twenty-one(21) as oppose to Twenty-one (23).

Julie Ferguson moved to adopt the Sunset Review report as corrected. Jean-Robert Lafortune seconded. It was passed unanimously.

Agenda Item # 5) Executive Director’s Report Dr. Diaz reported that he thought he was going to have to lay off an employee because the Budget Office was requiring a 3% reduction in this year’s budget. However, after he made the County Manager’s Office aware that a 3% reduction would require lay-off action the IRP was released from the 3% requirement. It appears that the IRP will be able to maintain its five staff positions this fiscal year.

Dr. Diaz informed the Panel that they should be aware that we are in very difficult times and it is imperative that the County Commissioners know how important it is for the IRP to continue.

Agenda Item #6) Adjourn Julie Ferguson made a motion to adjourn. Josie Velis seconded. It was passed unanimously.