

INDEPENDENT REVIEW PANEL MINUTES

March 24, 2009

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

PANEL MEMBERS PRESENT

Julia Dawson, Chairperson
Tangier Scott, 2nd Vice Chairperson
Doris Shellow, Substitute Member
Julie Ferguson, Esq.
Moiez Tapia, Ph.D.

MEMBERS EXCUSED

Glenn P. Falk, Esq.
Michael R. Band, Esq.

MEMBERS ABSENT

Jean-Robert Lafortune, 1st Vice Chairperson
Josie Perez Velis, Esq.
Jorge E. Reynardus, Esq.

PANEL STAFF PRESENT

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

MDPD: Major Gary Shimminger, Professional Compliance Bureau

Major's Office: Denis Morales, Chief of Staff

Civilian Investigative Panel: Shewanda Hall

Public: Richard Gonzalez

Agenda Item #1) Call to order. Ms. Dawson called the meeting to order at 2:05 p.m. and asked staff to call roll.

Agenda Item #2) Adoptions of the minutes held on January 27, 2009 and February 24, 2009.

January 27, 2009 Meeting

Ms. Dawson directed the Panel to page 3, paragraphs 4 and 5, and commented that staff had worked with Mr. Lafortune to make the additions requested by Mr. Lafortune. Ms. Dawson made corrections on page 1. Dr. Scott made a correction on page 2, last paragraph.

Doris Shellow made a motion to adopt minutes as amended. Dr. Scott seconded. The motion passed unanimously.

February 24, 2009 Meeting

Ms. Dawson made a correction on page 2, second item, under Contact Report. Dr. Tapia made a motion to adopt as amended. Dr. Scott seconded. The motion passed unanimously.

Agenda Item #3) MDPD Presentation: Major Gary Shimminger, Professional Compliance Bureau (PCB)

Ms. Dawson stated that the Panel invited Major Shimminger to address the Panel after the Panel reviewed a complaint that had to do with Contact Reports, personnel records and complaint records, and discovered the complexity of MDPD records keeping. Major Shimminger stated that five months ago he was promoted to PCB Major, and he hopes to have a positive relationship with the IRP. He stated that PCB and the IRP share a common goal to provide a better life for the people in Miami-Dade County.

Personal History

Major Shimminger reported that he was a policemen for 27 ½ years, 24 of which have been with MDPD, and he is very proud to be a member of MDPD. He stated that he has gone through the ranks, as a detective, Corporal, Sergeant, Lieutenant, Captain, and now Major. He reported that he was a Captain for the previous 6 years. He has worked the streets, at the Homeland Security Bureau, Special Patrol Bureau, Warrants Bureau, and the Seaport. He reported that PCB and Internal Affairs (IA) are very new to him; however, it's something that he has always aspired to do.

Personnel Records

Major Shimminger reported that personnel records are considered public records, subject to Florida State Statute, Chapter 119. He mentioned that personnel records are inclusive of Personnel Files; Employee Profiles; Disciplinary Records; and Complaints. He also stated that most of these files are kept within the personnel jackets at the District or Bureau where the employee is located. Complaints are removed from the jackets after two years. Requests for Disciplinary Records are processed through the Legal Bureau, unless it is a closed IA case and stored at PCB. A closed complaint file, in which there was disciplinary action, will contain a copy of that action. Requests for Employee Profiles and complaint records are processed through the Public Records section of PCB. The Employee Profile is a summary of the officer's commendations, complaints, promotions, and use of force records. Only closed complaints are public record. Dr. Scott inquired about the process for requesting records. Major Shimminger replied that a public request form must be filled out and submitted, following which the requester is contacted.

Ms. Dawson inquired if the Legal Bureau decides what Disciplinary Records will be made available. Major Shimminger reported that certain information in the record would be redacted before the record is provided to the public.

Closed Records

Dr. Tapia questioned what happens when a record becomes closed. Major Shimminger stated that when criminal charges are involved, the case must first be resolved through the legal process. Then it goes through the PCB administrative investigation and a disposition panel. The final step is the Director's signature. Once the Director signs, the case is officially closed. If the

complaint is not criminal in nature, the process begins with the PCB administrative investigation. Ms. Dawson asked if personnel files, complaints, and employee profiles are approved by the Legal Bureau before they are released. Major Shimminger reported that PCB can release any closed complaint.

Appeals

Ms. Dawson inquired about the appeals process when a request for records is denied. Major Shimminger replied that he did not know and would need to follow-up on that inquiry. Dr. Diaz added that he was not aware of any appeals recourse, other than the courts.

Mission of the Professional Compliance Bureau

Major Shimminger stated that PCB is a fact gathering organization. He reported that when a complaint is made, it is PCB's job to investigate, but not to render a decision. He emphasized that PCB gathers the facts by interviewing complainants, witnesses and the subject, and reviewing documents. The investigation is documented in writing and sent to a panel of three Majors for a disposition. He stated that once the panel of Majors makes its decision, the file is returned to PCB where it is reviewed and then sent back through the chain of command to the Director for his signature.

Contact Reports

Major Shimminger stated that Contact Reports are considered complaints. A Contact Report is an official record but it is not a formal complaint. Contact Reports are tracked and documented, and can be used to show a course of conduct. Ms. Dawson asked what determines whether a citizen's complaint about a police officer is going to be handled as a formal complaint or a Contact Report. Major Shimminger replied that Contact Reports are used to document complaints that are non-criminal and minor in nature, such as poor driving and discourtesy complaints. Most discourtesy complaints are handled informally at the complainant's request. A lieutenant or someone higher in command, contacts the complainant to be sure he/she is appeased.

Ms. Dawson questioned how the department explains the difference between a Contact Report and a formal complaint to the complainant. Major Shimminger stated the entire process is explained. For example, if a complainant goes to a district or bureau to file a complaint, a supervisor will fill out the Personnel Complaint Report (PCR). The PCR goes through the chain of command and is sent to PCB. If the complaint is handled informally, the process is faster and can be completed in about 30 days as opposed to 180 days for a formal complaint. Major Shimminger stated that Contact Reports are listed in the employee's profile; however, he is unsure of how long they remain.

Ms. Dawson asked who makes the decision as to whether the complaint would be a formal complaint or a Contact Report. Major Shimminger said that it is a mutual decision. Minor matters are usually Contact Reports, however if the complainant is adamant about having a formal investigation, there will be a formal investigation.

Ms. Dawson reviewed her understanding of what Major Shimminger said as follows: when citizens make complaints, they are informed that they have two options; the complaint can be

handled as an informal contact report, or a formal complaint, and the difference is explained to them so they can indicate which they want. The decision is made by the complainant. Major Shimminger replied “Right” to Ms. Dawson understanding; however later he said that it is a mutual agreement at the time the investigator speaks with the complainant.

Ms. Dawson asked if it was standard operating procedure that a lieutenant speaks to the involved officer when the complaint is documented in a Contact Report. Major Shimminger replied in the affirmative, adding that, once the lieutenant has spoken to the complainant, he will contact the officer and get the officer’s account of the incident. Major Shimminger stated that most complainants are pleased with the contact by the lieutenant. Ms. Dawson informed Major Shimminger that the IRP has encountered the opposite. She referred to the Zigler case in which the involved officer was not contacted until the IRP became involved. Major Shimminger reported that he was not familiar with the case but agreed that proper protocol requires that the officer be contacted.

Ms. Dawson stated that the IRP issues a disposition report after it reviews a complaint. She inquired whether IRP dispositions are included in officers’ file. Now they typically are not. Major Shimminger replied that the Legal Bureau would have to make a determination on that issue.

Agenda Item # 4) MDPD Response to Panel Recommendations for IRP Complaint A 20006.312 (Naidoo)

IRP Recommendations and MDPD Responses

IRP Recommendation

1. That MDPD revisit their Confidential Informant (CI) protocols to see if anything can be added that would prevent CI misunderstanding of what the CI can and cannot do within the law.

MDPD Response

- The MDPD Departmental Manual [regarding] Confidential Informants (CI) elaborates on the policies and protocols to be followed. The policy was reviewed and found to be consistent with industry standards and no change is warranted.

IRP Recommendation

2. That MDPD investigate the allegation that Detectives Nick Anagnostis and Carl Sanabria did not follow MDPD policy for Confidential Informants in their proceedings with the complainant.

MDPD Response

- MDPD CI policies were followed by Detectives Nick Anagnostis and Carl Sanabria, to include the Information Source Liability Waiver Form, which was presented to and

reviewed by [the complainant]. This form clearly states the responsibilities and duties of the CI.

Ms. Dawson stated that the MDPD response was a “non-response.” It seems that once MDPD receives an IRP’s disposition, it responds that the actions were justified, or the officers followed the manual. Ms. Dawson stated that MDPD neglects to look at the particular case and consider the particular allegations or the circumstances of that case. It simply “regurgitates” what the manual says. Ms. Dawson commented that MDPD found that its policy was within the industry’s standards, therefore no changes were warranted. Also, the purpose of the Information Source Liability Waiver Form is to primarily protect MDPD from liability, not to give information to the CI. MDPD did not give reference to identify any industry standards.

Supporting “Rachel’s Law”

Ms. Dawson referred to the bill entitled “Rachel’s Law” that is currently before the State Legislature. Ms. Dawson stated that the staff analysis relating to this bill denotes that there are no statewide standards for CIs and this proposed law was created to provide minimum standards on how the police deal with Confidential Informants. Ms. Dawson informed the Panel that the original bill was “gutted” by lobbyists for Law Enforcement in the first committee, but a weaker version is currently moving through the legislative process.

Ms. Dawson said she is confused that MDPD concludes that its policy is consistent with industry standards when there are no statewide standards. Ms. Dawson stated that this bill is an opportunity for standards to be implemented. She has asked Dr. Diaz if he will check with the County Attorney’s Office as to whether or not it is permissible for the IRP as a Panel to support this proposed legislation.

Dr. Tapia made a motion that the Panel support the CI state legislation being discussed, pending a favorable response to the question of whether or not the Panel has the authority to support such legislation. Ms. Shellow seconded.

Ms. Dawson suggested the following wording for Dr. Tapia’s motion: “That the Miami-Dade Independent Review Panel support the passage of legislation that creates statewide minimum standards relevant to the use of Confidential Informants by Law Enforcement, and that this statement of support be communicated to the sponsor of the committee substitute for Senate Bill 604, and the House Companion Bill, and the members of the committees considering the Bill and the Dade Delegation, contingent upon whether the IRP can take such a public position on Legislation.” Dr. Tapia and Ms. Shellow accepted the wording as a friendly amendment. The motion passed by a vote of 4-1. Ms. Ferguson dissented because she had not had the time to become familiar with the bill.

Ms. Ferguson made a motion to craft a letter to MDPD Director Parker expressing the Panel’s dissatisfaction with his response because it did not address the Panel’s concerns. The Panel expressed concern that Mr. Parker concluded there was no indication of misconduct or departmental policy violations when no investigation had been conducted. The Panel also believes that the current MDPD CI policy and industry standards are inadequate and do not

provide sufficient protection for a CI. Dr. Tapia seconded the motion which passed by unanimous vote.

Staff will prepare a draft a letter for Ms. Ferguson, who will finalize the letter for the Chairperson's signature.

Agenda Item # 5) Executive Director's Report Dr. Diaz advised the Panel that Ms. Dawson was honored as a "Woman of Impact" by the Women's History Coalition of Miami-Dade County, Inc.

Dr. Diaz also stated that he met with the Budget Office last Friday, that all department directors are receiving a "doom and gloom" scenario. The best case scenario will be that the IRP budget will go into the next fiscal year with a "flat budget," meaning the same dollar amount as last year. This will be possible because Ms. Boersma will retire on September 30, 2009 and whoever fills her position will do so at a lower salary.

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