

INDEPENDENT REVIEW PANEL MINUTES

March 27, 2008

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

PANEL MEMBERS PRESENT

Julia Dawson, Esq., Chairperson
Michael Band, Esq., 1st Vice-Chairperson
Jean-Robert Lafortune, 2nd Vice-Chairperson
Julie Ferguson, Esq.
Doris Shellow
Josie Perez Velis, Esq.
Jorge Reynardus, Esq.

EXCUSED ABSENCES

Glenn P. Falk, Esq.
Moiez Tapia, Ph.D.

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

AUDIENCE:

MDPD: Sergeant Richard Conover
Civilian Investigative Panel (CIP): Don March
Complainant: Fernando Justiniani

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

Agenda Item #2) Approval and adoption of the minutes held on February 28, 2008. Ms. Dawson made a word correction on the next to the last page in paragraph 4, the third line. "Language of the subpoena power modeled *after* the City of Miami's Investigative Panel." Ms. Shellow moved to adopt the minutes as amended. Mr. Band seconded. The motion passed unanimously.

Agenda Item #3) IRP Complaint A 2007.311 Justiniani vs. MDPD. Mr. Justiniani commented that he would like the three involved officers to receive a week's suspension without pay. Ms. Dawson replied that the Panel does not have the authority to require that a department do anything; the Panel can only recommend.

Mr. Justiniani provided the Panel with a copy of the Arrest Affidavit, reporting that it was given to him when he was booked and he was unaware of the charges until that time. Mr. Justiniani said the copy he received was not legible. The Panel concurred. Ms. Boersma read the arrest information for the Panel.

Ms. Dawson stated that originally Mr. Justiniani asked that the case be handled by Internal Affairs, however it was later investigated at the district level. Mr. Justiniani stated that he was comfortable with his complaint being handled at the district level. Ms. Dawson inquired if anyone from the department explained to him the difference in the way the district and Internal Affairs investigates a complaint. Mr. Justiniani replied “no, not until the first [IRP committee] meeting.”

Sergeant Conover reported he was the Duty Sergeant at Internal Affairs on the day Mr. Justiniani filed his complaint. He completed the Preliminary Compliant Report, but when Mr. Justiniani advised that he was not concerned about the handcuffs, there was no Use of Force complaint. It became a minor complaint that could be investigated at the district level. Sergeant Conover explained this to Mr. Justiniani and Mr. Justiniani was OK with that. The complaint was then sent to the district as a Contact Report.

Ms. Dawson inquired if the department addressed the issue of the language allegedly used by the officers. Ms. Boersma reported that the MDPD memorandum does not address the language used.

Mr. Reynardus asked Mr. Justiniani if he was given a field sobriety test or any other objective test to measure if he had any alcohol in his blood, to which Mr. Justiniani replied, “No.” Mr. Justiniani stated that had he known he was being charged for intoxication, he would have asked immediately for a sobriety test to be conducted. Mr. Justiniani also stated that he told the booking officer that he wanted a test to be administered because he was being falsely charged. However, the booking officer said the test had to be done at a police station.

Discussion of Committee Findings

1. Lt. Gonzalez put his face close to the complainant’s face and told him: “You are pissing me off.” SUSTAINED. Mr. Lafortune moved to adopt the finding. Mr. Band seconded. The motion was passed unanimously.
2. Lt. Gonzalez abused his power when he arrested Mr. Justiniani and charged him with disorderly intoxication and resisting without violence. SUSTAINED. Mr. Band moved to adopt the finding. Mr. Lafortune seconded. The motion was passed unanimously.
3. Although the officer has the greater responsibility in making citizen contacts which inspire respect and generate cooperation, the citizen also influences the interaction between the officer and the citizen. In this case Mr. Justiniani’s refusal to give the keys to the vehicle in question to the owner, who was willing to move the vehicle, and his refusal to be guided back to the house by his friend, Juan Barquero, who realized the lieutenant was irritated with Mr. Justiniani’s “shenanigans,” caused the situation to escalate. The lieutenant reacted to Mr. Justiniani’s behavior by placing him under arrest. Mr. Band moved to adopt. Ms. Ferguson seconded. The finding passed a 6-1 vote. Mr. Reynardus opposed.
4. Mr. Reynardus made a motion to add the following finding: The disorderly intoxication charge was a pretense for arresting the complainant due to the fact that no objective testing for alcohol intoxication was performed during the investigative process of this case. Ms. Shellow seconded the motion and it passed unanimously.

5. Ms. Ferguson made a motion to add the following finding: The Arrest Affidavit contains unfounded allegations that caused undue harm to Mr. Justiniani. Ms. Shellow seconded the motion and it passed unanimously.

Discussion of Committee Recommendations

1. That MDPD take tape recorded or transcribed statements in all complaint investigations, whether the investigation is conducted by the Professional Compliance Bureau (PCB) or the District.

Ms. Boersma advised that many years ago the Panel recommended that all complaints be investigated by PCB, whether classified “major” or “minor,” and that recommendation was implemented. After the Officer Bill of Rights was revised in 2005 to require that an Internal Affairs investigation be completed within 180 days if the officer was to be disciplined, PCB began to generate more “Contact Reports,” which document “minor” complaints and are sent to the District for investigation. The investigation at the District level is less formal.

Dr. Diaz made a suggestion to remove the word tape from the language.

Mr. Lafortune made a motion to accept the recommendation with Dr. Diaz’ suggestion. Ms. Ferguson seconded. Ms. Dawson made a friendly amendment to add Ms. Boersma’s explanation to the finding. The amendment was accepted and the motion was passed unanimously as amended.

2. That MDPD include the Independent Review Panel disposition of Mr. Justiniani’s complaint with the Contact Record 2007-1029 file. Ms. Shellow moved to adopt. Ms. Ferguson seconded. The motion was passed unanimously.
3. Mr. Reynardus made a motion to add the following recommendation: That MDPD supervisors discuss the Independent Review Panel disposition with Lieutenant Jose Gonzalez, Officer Jonathan Santana, and Officer Meagan Schrader. Ms. Shellow seconded the motion and it passed unanimously.
4. Mr. Reynardus made a motion to add the following recommendation: That MDPD adopt a policy which requires that an objective sobriety test be performed on any person arrested for disorderly intoxication prior to being transported to booking. Ms. Ferguson seconded. The recommendation passed a 6-1 vote. Michael Band opposed.

Agenda Item #4) Discussion: Letter from Consumer Services Director regarding IRP meeting suggestions

Ms. Dawson stated that Mrs. Peel wrote her letter suggesting improvements to the IRP meeting process after the Panel heard the complaint from taxi drivers. Mrs. Peel suggested that full introductions be made of the Panel members. Ms. Dawson stated that if it is the will of the Panel, she would be happy to include Panel member introductions as part of the opening statement. Ms. Dawson reported that she does not feel that every attendee present should be identified at the meeting, however. Only parties that speak should be required to identify themselves. The Panel members agreed.

Ms. Dawson reported that Mrs. Peel suggested that an overview of the case by IRP staff, before the case is discussed, may help set the stage. Ms. Dawson commented that staff already does that. Ms. Dawson referred to Mrs. Peel's comments in regards to the arrangement of chairs and tables. Mrs. Peel stated that the complainants were asked to come to the table to answer questions and give their remarks. However, the department had to respond from its position in the audience. The Panel agreed to have each party speak from a table.

Ms. Dawson reported that Mrs. Peel objected to the fact that the complainants presented documents during the meeting that the department had not seen. Ms. Dawson stated that Ms. Peel's concern is more along the lines of what you may experience in a courtroom and the IRP is not held to that same standard.

Ms. Dawson stated that she would like to have copies of the complaint and the agenda available at the meeting for anyone who is interested. Ms. Boersma replied that copies are always available.

Agenda Item #5) Police the Community Wants initiative and the IRP Survey Results

Dr. Diaz invited the Panel to share any comments or concerns and stated that that information will be used in crafting the next survey for the general public. Dr. Diaz reported that the intent is to visit several different parts of the community to see what the community has to say.

Mr. Reynardus suggested that a number of questions be added to the survey such as: occupational questions, educational questions, income level questions, and association questions for the police department and county employees.

Agenda Item #6) Executive Director's Report Dr. Diaz reported that the Commissioner Jordan sponsored ordinance supporting subpoena power for the IRP was defeated at first reading by a vote of 7-5. Dr. Diaz reported that the Mayor spoke at Monday's NAACP meeting and at that meeting the NAACP supported the ordinance. The Mayor doesn't support subpoena power for the IRP.

In addition, Dr. Diaz reported that in the Resource Allocation meeting, he learned that last year the commissioners cut \$200,000 from the county budget, which resulted in a reduction of 3,000 positions; however, the county was able to find other positions for those individuals who were displaced. This year another \$200,000 million dollars must be cut. The current position of the Mayor and the County Manager is to reduce or eliminate certain services or functions rather make across the board reductions.

Agenda Item # 7). Adjourn Jorge Reynardus made a motion to adjourn. Doris Shellow second. Motion was passed unanimously.