

INDEPENDENT REVIEW PANEL Minutes

September 25, 2008

LOCATION: 140 West Flagler Street, Conference Room 1103
Miami, Florida 33130

PANEL MEMBERS PRESENT

Julia Dawson, Esq. Chairperson
Michael R. Band, Esq., 1st Vice Chairperson
Jean-Robert Lafortune, 2nd Vice Chairperson
Glenn P. Falk, Esq.
Tangier Scott, Ed.D.
Doris Shellow

EXCUSED

Jorge E. Reynardus, Esq.
Josie Perez Velis, Esq.
Moiez Tapia, Ph.D

ABSENT

Julie C. Ferguson, Esq.

PANEL STAFF PRESENT

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

AUDIENCE:

MDPD: Chief Leonard Burgess; Major Charles Nanney; Major Alex Casas; Officer Jorge Baluja
Office of Commissioner Gimenez: Ruben Arias
Civilian Investigative Panel (CIP): Don March

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) Ratification of the minutes from the meeting held on July 24, 2008. Ms. Shellow moved to ratify the minutes as corrected. Mr. Lafortune seconded. It passed unanimously.

Agenda Item #3) Adoption of the minutes held on August 28, 2008: Ms. Shellow moved to adopt the minutes. Mr. Lafortune seconded. It passed unanimously.

Agenda Item #4) Ratification of the disposition for IRP Complaint A 2008.036 Falk v. Animal Services Department (ASD) Ms. Shellow made a motion to ratify the disposition. Mr. Lafortune seconded. It passed unanimously.

Agenda Item #5) Request from Major Nanney to Remove File A2005.225 from IRP Website

Background

On February 23, 2006, the Independent Review Panel (IRP) reviewed a complaint in which the complainant alleged that two Miami-Dade police officers conducted an improper crash investigation by refusing to interview witnesses on the scene. As a result, the complainant was charged with the accident. The complaint was investigated by the Miami-Dade Police Department's Internal Affairs Unit. The MDPD disposition, written by Major (then Lt.) Alexander D. Casas and approved by Major Charles E. Nanney and Chief Leonard Burgess, was "**Not Sustained**," because "there were no independent witnesses that could corroborate or refute the allegation."

The Independent Review Panel **sustained** the allegation, based on statements taken by the Internal Affairs investigator from three independent witnesses. Two store owners and a shopper testified that the complainant was not in his vehicle at the time of the crash. The Independent Review Panel found that: "The MDPD disposition, written by Lt. Alexander D. Casas and approved by Major Charles E. Nanney and Chief Leonard Burgess, ignored facts documented in the Internal Affairs investigation."

Major Nanney stated that he learned about the IRP finding when a relative "googled" his name and the search linked to the IRP disposition. In a letter to the IRP Executive Director, Major Nanney stated that his "reputation, along with that of Chief Leonard Burgess and Major Alex Casas, was tarnished by a [IRP website] posting which alleges improper review of an Internal Affairs case." Major Nanney requested that the posting be removed immediately.

Discussion

Major Nanney stated that he was offended by the IRP finding that he and Chief Burgess "ignored facts documented in the Internal Affairs investigation." Major Nanney said that if he had known about the IRP hearing, he would have required the involved officers to be present.

Major Casas explained the MDPD process in a PC (Personnel Complaint) investigation. Once Internal Affairs completes the investigation, the complaint is assigned to a lieutenant in the district for disposition. Major Casas stated that he was a lieutenant at the time and he drafted the disposition. Major Casas stated that he did not find evidence in the file to sustain the allegation.

Chief Burgess stated that when the website posting was brought to his attention by Major Nanney, he felt it was a defamation of character and very derogatory. He stated that he was involved in accident investigations for years, and it is the job of the accident investigator to determine the relevant independent witnesses. During the Internal Affairs investigation, additional witnesses may be interviewed.

Mr. Falk stated that he was the Panel member who chaired the IRP committee meeting for this case. The Panel looked at the IA investigation and the finding that "there were no independent witnesses to corroborate or refute the allegation." The Panel found independent witnesses identified in the IA investigation, the TV repair shop owner and the bicycle shop owner. The issue is that MDPD stated

there were no independent witnesses and the Panel identified independent witnesses. Also, Panel staff sent Major Nanney, Major Casas and Chief Burgess letters advising them of the Panel's findings and asking them to respond. No one responded.

Major Nanney and Major Casas stated they did not receive the letter. Chief Burgess said he may have received the letter. Major Casas added that the store owners did not observe the crash or who was driving the vehicle. Mr. Falk responded that the TV repair shop owner testified that the complainant was in his store at the time of the crash, therefore he could not have been driving his vehicle.

Mr. Band brought out three points relating to this case:

1. Police officers do not participate in the IRP process.
2. MDPD gives credibility to independent witnesses; however MDPD does not treat police officer witnesses and civilian witnesses equally. Anyone who has a relationship with the complainant is not considered an independent witness, however police officers are considered independent, even if they ride in the same squad as the involved officer.
3. The wording of the MDPD disposition seems to indicate that witness' statements were not considered, rather than weight was not given to the statements.

Major Casas responded that the IRP finding implies that he deliberately ignored what the IRP considered to be independent witnesses. The allegation was that the officers conducted an improper crash investigation by ignoring physical evidence and refusing to interview witnesses. Major Casas said that the statements he saw in the IA file did not corroborate or refute the allegation; therefore the finding was "not sustained."

Mr. Falk replied that the IRP has to consider what is written in the MDPD report and that report stated there were no "independent witnesses to corroborate or refute the allegation." The IRP found independent witnesses in the MDPD report.

Major Nanney countered by saying that the finding that they did something wrong is a defamation of character.

Mr. Falk and Mr. Band suggested that the Panel find a way to accommodate the request that the IRP document be removed from the website. Mr. Lafortune and Ms. Dawson suggested caution in setting a precedent that would encourage people to request the Panel to change its findings if they felt harmed.

Dr. Diaz stated that it is his opinion that compliance with the request of Major Nanney would seriously undermine the independence of the IRP. That does not mean that the Panel cannot add something on the basis of today's meeting that would not modify the original finding of the Panel, but would address the position of the three individuals who are making the request.

Motions

Mr. Band made a motion to delete from the IRP disposition the finding that: "The MDPD disposition, written by Lt. Alexander D. Casas and approved by Major Charles E. Nanney and Chief Leonard

Burgess, ignored facts documented in the Internal Affairs investigation.” The motion failed for lack of a second. Dr. Scott questioned whether the Panel wanted to set a precedent by modifying the original finding.

Mr. Falk stated that there never was defamation. The Independent Review Panel is a quasi-judicial body that, based on the evidence presented to it, made a reasonable and fair finding. The Independent Review Panel contacted the three affected parties in writing and gave them an opportunity to respond. Although two of those parties said they did not receive the letter, the law states that a letter which is mailed is presumed to have been received. Mr. Falk added that, at the same time, the Independent Review Panel has an obligation to address the concerns of the three parties.

Mr. Falk made a motion to accept the testimony provided by Major Charles Nanney, Major Alex Casas, and Chief Leonard Burgess, that they did not ignore facts documented in the Internal Affairs investigation. They stated that they took into consideration the evidence presented by witnesses; however they did not find sufficient evidence in the witnesses’ statements to corroborate or refute the allegation. Ms. Shellow seconded the motion, which passed by a vote of 4-2. Ms. Dawson and Mr. Lafortune opposed.

Ms. Dawson stated that on the IRP website, there will be a link from the case to the minutes of today’s meeting.

Agenda Item # 6). Executive Director’s Evaluation. Dr. Diaz mentioned that Panel members evaluate the Executive Director in September. He recommended that the Panel authorize Chairperson Dawson to use the Panel’s individual evaluations to prepare one document which represents the Panel’s evaluation.

Dr. Diaz reported that as of last year, the county did not give merit increases to executives, but did give them a cost of living increase. Dr. Diaz asked the Panel to consider a resolution supporting a cost of living increase for all staff, including executives, should that increase be offered.

Motions

Mr. Band made a motion to authorize Chairperson Dawson to prepare a document summarizing the Panel members’ the evaluations of the Executive Director. Ms. Shellow seconded. It passed unanimously.

Mr. Band made a motion to support a cost of living increase for all staff. Mr. Falk seconded. It passed unanimously.

Agenda Item #7) Executive Director’s Report Dr. Diaz advised that Board of County Commissioners approved a fully funded budget for the IRP next year. He attended the budget hearing along with Chairperson Julia Dawson. Dr. Diaz stated that he is grateful for the Panel’s support.

Agenda Item #8) Adjourn Julia Dawson moved to adjourn. Michael Band seconded. It passed unanimously.