The City of SAN DIEGO

Community Review Board on Police Practices

Policy Committee Meeting

Tuesday, June 11, 2019
4:00 p.m. – 5:00 p.m.
Mission Valley Branch Library
2123 Fenton Parkway
San Diego, CA 92108

AGENDA

I. CALL TO ORDER/WELCOME **(Committee Chair Brandon Hilpert)**

II. PURPOSE OF THE POLICY COMMITTEE: A standing committee which evaluates recommendations for the Board members for improvements to SDPD policy, procedure, training, or administration of discipline of SDPD police officers.

III. NON-AGENDA PUBLIC COMMENT

IV. APPROVAL OF MAY 14, 2019 COMMITTEE MEETING MINUTES

V. NEW BUSINESS (Discussion/Action)

a. Procedure & Guideline for SDPD Complaint Intake **(Committee Chair Brandon Hilpert)**

b. Modify SDPD Procedure 1.49: Axon Body Worn Cameras -Section Q.7(N) – Issue is some complainants are not allowed to bring person of choice for support when viewing his/her BWC video. (**Committee Chair Brandon Hilpert**)

c. Development of Third-Party Mediation (**Nancy Vaughn)**

d. Best Practices Research for Law Enforcement Investigations Involving Discrimination Allegations **(Patrick Anderson)**

e. Complaint Process Guide Card Issued to All Sworn Personnel **(Taura Gentry)**

f. Require that SDPD officers provide and/or call for medical assistance in all situations where a person shows signs that they might be in medical distress (**Committee Chair Brandon Hilpert**)

g. Recommend that the SDPD Non-Emergency Line be made into a toll-free number to aid in the effort of providing community members the ability to access public safety resources (**Taura Gentry)**

VI. ADJOURNED

Materials Provided:

- Minutes from Policy Committee Meeting on May 14, 2019 (Draft)
- Excerpt from SDPD Procedure 1.49
- CRB Policy Recommendation Re: Complaint Classification (Draft)

Public Comment on an Action/Discussion Item: If you wish to address the Board on an item on today's agenda, please complete a speaker form (on the table near the door) and give it to the Board's Executive Director before the Board hears the agenda item. You will be called to express your comment at the time the item is heard. Please note, however, that you are not required to register your name or provide other information to the Board in order to attend our public session or to speak.

Public Comment on Committee/Staff Reports: Public comment on reports by Board Committees or staff may be heard on items which are specifically noticed on the agenda.

Public Comment on Matters Not on the Agenda: If you wish to address the Board on any matter within the jurisdiction of the Board that is not listed on today's agenda, you may do so during the PUBLIC COMMENT period during the meeting. Please complete a speaker form (on the table near the door) and give it to the Board's Executive Director. The Board will listen to your comments. However, California's open meeting laws do not permit the Board to take any action on the matter at today's meeting. At its discretion, the Board may refer the matter to staff, to a Board committee for discussion and/or resolution, or place the matter on a future Board agenda. The Board cannot hear specific complaints against named individual officers at open meetings.

Comments from individuals are limited to three (3) minutes per speaker, or less at the discretion of the Chair. At the discretion of the Chair, if a large number of people wish to speak on the same item, comment may be limited to a set period of time per item. If you would like to have an item considered for placement on a future Board agenda, please contact the Executive Director at (619) 236-6296. The Director will consult with the Board Chair who may place the item on a future Board agenda. If you or your organization would like to have the Board meet in your neighborhood or community, please call the Executive Director at (619) 236-6296.

SAN DIEGO POLICE DEPARTMENT
PROCEDURE

DATE:	MARCH 8, 2018
NUMBER:	1.49 - ADMINISTRATION
SUBJECT:	AXON BODY WORN CAMERAS
RELATED POLICY:	N/A
ORIGINATING DIVISION:	OPERATIONAL SUPPORT
NEW PROCEDURE:	☐
PROCEDURAL CHANGE:	■ MINOR CHANGES
SUPERSEDES:	DP 1.49 - 12/21/2017

I. PURPOSE

This Department procedure establishes guidelines for Department members using body worn cameras and procedures for preserving the digital media in Evidence.com.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

Law enforcement's use of in-car cameras and body worn cameras has proven effective in reducing violent confrontations and complaints against officers. Cameras provide additional documentation of police/public encounters and may be an important tool for collecting evidence and maintaining public trust. There is also a learning curve that comes with using body-worn cameras. Video cannot always show the full story nor does it capture an entire scene. The use of cameras does not reduce the requirement to provide thorough written documentation. Persons reviewing recordings must also be cautious before conclusions are reached about what the video shows.

The Body Worn Camera system operates on rechargeable battery power for up to twelve hours of continuous buffering and records up to ten hours of continuous video and audio media. The user can view recordings and add metadata from monitors, computers, and smart phones by downloading a specific software application.

SDPD Procedure 1.49 Axon Body WCM Cameras

a. Unless writing their own report, cover officers shall notate in their journal, and the CAD incident report. Additionally, they will notify the case agent of an incident that BWC evidence exists and provide a short description of what the recording depicts.

Supervisor's reviewing and approving reports shall ensure officers properly document and record events.

N. Impounding Procedures

After verifying the required metadata has been added to all recorded events, officers shall place the BWC into a slot on the EDS and ensure it is properly seated at the end of their shift. This will allow for the battery to recharge. The data will automatically be transferred from the BWC through the EDS to Evidence.com. The data is considered impounded at this point.

O. Retention of Digital Evidence

All recordings related to any criminal proceeding, claim filed, pending litigation, or a personnel complaint, shall be preserved until that matter is resolved and/or in accordance with the law. Officers and detectives are required to ensure that the BWC evidence is properly categorized for the necessary retention period.

P. Accessing Impounded Digital Evidence

1. All those given permission associated with Evidence.com may review digital evidence.

2. Using a Department computer, enter Sdpd.evidence.com in the browser.

3. Enter assigned user name and password. For help with problems, contact the Department Program Administrator in Operational Support Administration.

4. Digital Evidence can be viewed and/or copied from this location.

Q. Reviewing Impounded Digital Evidence

1. Officers may review their own digital evidence. Digital evidence can provide a cue to an officer's priming memory to recall more facts and greater detail of an incident.

2. Detectives are responsible for reviewing, updating and tracking digital evidence associated with their assigned cases.

SDPD Procedure 1.49 Axon Body Worn Cameras

3. Detectives and personnel assigned to investigative assignments (e.g., NRC Desk) are responsible for forwarding BWC video evidence to either the District Attorney or City Attorney's Evidence.com accounts. Digital evidence will be submitted at the same time the case file is submitted for prosecutorial review.

4. BWCs have a field of vision of either 75 degrees for the Flex or 130 degrees for the Axon. While human beings have a field of vision of 180 degrees, the human brain has a field of attention of 50-60 degrees. Under stress, this field can narrow down to a ½ degree. Stress also induces auditory exclusion and prevents the brain from analyzing and remembering all the stimuli that it takes in through the senses.

   Officers make decisions based on the totality of the human senses. An officer's recollection of specific details may be different than what is captured in digital evidence since BWCs only capture audio and video.

   Officers should review digital evidence prior to completing reports to assist in priming their recollection. Officers shall write their reports to what they remember and notate any discrepancies from what the recording shows. Officers shall not write their reports based solely on what they viewed from the BWC recording.

5. Officers shall review digital evidence prior to providing testimony at hearings, trial, or depositions.

6. It is NOT the intent of the Department to review digital evidence for the purpose of general performance review, for normal preparation of performance reports, or to discover policy violations.

7. Digital evidence may be viewed for administrative purposes limited to the following:

   a. Any incident in which a member of the Department is injured or killed during the performance of their duties.

   b. Any incident involving the use of force by a member of the Department, including canines, which results in injury or death.

   c. Any in-custody death.

   d. Any police pursuit.

SDPD Procedure 1.49 Axon Body WAM Cameras

e. When any member of the Department intentionally or unintentionally discharges a firearm at a person regardless of whether an individual is struck.

f. When any member of the Department not involved in training intentionally or unintentionally discharges an ERIW at a person regardless of whether an individual is struck.

g. When any member of the Department not involved in training intentionally or unintentionally discharges a Conductive Energy Weapon at a person, including the application of a drive stun.

h. Officer involved traffic collisions.

i. Prior to the release of recordings in response to a proper legal request (e.g., in response to a subpoena or other court order).

j. In preparation for a civil deposition or responding to an interrogatory where the incident arises from the employee's official duties.

k. When preparing to testify in a criminal, civil, or administrative proceeding arising from the employee's official duties.

l. For investigations undertaken by the Department, for the purpose of proving or disproving specific allegations of misconduct.

m. For administrative proceedings, when digital evidence is used by the Department for the purpose of proving or disproving allegations of misconduct, only digital evidence relevant to the investigative scope shall be viewed and retained by investigators. Information relevant to the recordings viewed and seized as evidence by investigators shall be documented as part of the chronological summary of any investigation undertaken by the Department.

n. Supervisors should review BWC recordings to assist citizen's complaints. Supervisors have discretion to show BWC recordings to a complainant when it relates to his or her complaint, to assist in clarifying the complaint, resolving the complaint, or having the complaint withdrawn.

8. In situations where there is a need to review digital evidence not covered by this procedure, a captain or higher must approve the request. Each situation will be evaluated on a case by case basis.

The City of SAN DIEGO

COMMUNITY REVIEW BOARD ON POLICE PRACTICES

POLICY COMMITTEE MEETING MINUTES

Tuesday, May 14, 2019
4:00-5:00 PM
Mission Valley Branch Library
2123 Fenton Parkway, San Diego, CA 92108

Committee Members Present
Committee Chair Brandon Hilpert
Chair Joe Craver
2nd Vice Chair Taura Gentry
Patrick Anderson
Douglas Case
Maria Nieto-Senour
Pauline Theodore
Nancy Vaughn
Ramon Montano

Committee Members Absent
Maria Nieto- Senour

Staff Present
Sharmaine Moseley, Executive Director
Sonja Mack, Administrative Aide

SDPD Present
Mark Bennett, Lieutenant, San Diego Police Department
Paul Phillips, Lieutenant, San Diego Police Department

I. **Call to Order:** Policy Committee Chair Brandon Hilpert called the meeting to order at 4:04 p.m.

II. **Purpose of the Police Committee:** This is a Standing Committee which evaluates recommendations for the Board Members for improvements to SDPD policy, procedure, training, or administration of discipline of SDPD police officers.

III. **Non-Agenda Public Comment:** None

IV. Approval of April 9, 2019 Policy Committee Meeting Minutes:
Chair Joe Craver moved for the Committee to approve the meeting minutes of April 9, 2019. Nancy Vaughn seconded the motion.

The motion passed with a unanimous vote of 7-0-1.

Yays: Hilpert, Case, Theodore, Vaughn, Craver, Montano, Gentry

Nays: None

Abstained: Anderson

Absent: Maria Nieto-Senour

V. New Business (Discussion/Action)

a. Procedure & Guideline for SDPD Complaint Intake

CRB Policy Committee Chair Brandon Hilpert handed the Committee a draft of 4 recommendations he created to prevent complainants from being coerced into agreeing for his/her complaint to be investigated informally by Internal Affairs. The Committee discussed the recommendations. The draft recommendations are included with these minutes.

Recommendation #1: It shall be explicitly prohibited by SDPD Policy and Procedure for any member of SDPD (sworn or civilian) to direct another member of SDPD staff (sworn or civilian) to request, encourage, intimidate, coerce, demand etc. a complainant to change or modify their complaint once the complaint has been filed or registered.

Recommendation #2: No member of SDPD staff (either sworn or civilian) shall contact a complainant with the purpose or objective of encouraging the complainant to modify their complaint from a formal investigation to an informal investigation.

Recommendation #3: SDPD staff shall provide a complaint form, with the explanation of the complaint process and the differences between informal and formal complaints, to any individual who requests a complaint form without unnecessary delay.

Recommendation #4: The only exception to this recommendation is that after a complainant has reviewed their available BWC footage, if based upon the additional evidence, they decide to withdraw their complaint, a member of SDPD shall facilitate the withdraw of said complaint.

The Committee members suggested rewriting recommendation #4, to clarify the written process when a complainant elects to withdraw his or her formal complaint. Committee Chair Hilpert stated he will make revisions to the suggested Policy recommendations and bring them back to further discuss during the next CRB Policy Committee Meeting, on Tuesday, June 11, 2019.

Executive Director Moseley asked if a complainant decides to withdraw his complaint does IA give the complainant something to sign during the interview? She explained that complainants have called the CRB office stating that after having discussions with SDPD Internal Affairs about their complaint, they were unaware that their complaint was changed from a formal status to an informal status. Some complainants have also stated that they did not have a full understanding of the interview process, and they were not informed during conversations with SDPD Internal Affairs that once their complaint changed to an informal status, it will no longer be reviewed by the CRB. Executive Director Moseley suggested that a letter of the complainant's decision to withdraw their complaint should be given to the complainant to sign and then forwarded to the CRB office.

SDPD Internal Affairs Lieutenant Mark Bennett stated that unless the complaint declines to be recorded, complainants are typically recorded during the interview process in person, or the complainant is interviewed and recorded over the telephone. The recordings will include SDPD Internal Affairs explaining to the complainant the option to change the status of their complaint.

Executive Director Moseley explained her concern that the more serious complaints, such as Use of Force, Racial discrimination cases, are being handled informally. Category 1 cases should automatically go through the process and given to the CRB for review. There should be a mechanism in place that ensures a checks and balances over IA investigations.

Nancy Vaughn suggested modifying Recommendation #3, where it states, "a difference between formal and informal complaints" she suggested to add the phrase "including CRB participation. Committee Chair Hilpert suggested adding the phrase to the CRB Complaint form instead. Nancy Vaughn agreed with the Committee Chair's suggestion. Committee Chair Hilpert stated that this recommendation will also be revisited and further discussed during the next CRB Policy Meeting on Tuesday, June 11, 2019.

Patrick Anderson stated he believes some Category I complaints should never be changed to an informal status.

Lieutenant Mark Bennett stated that changes to classification of complaints are handled on a case by case basis and depends on what the complainant decides.

b. Modify SDPD Procedure 1.10: Citizen Complaints, Officer-Involved Shootings, and In-Custody Deaths; Receipt, Investigation and Routing – Section VI A(10)

Committee Chair Hilpert reported that community member Tasha Williamson submitted a policy referral which states SDPD Internal Affairs must be compliant to their own policies and procedures, and that CRB review the procedure prior to the March 8, 2019 changes.

Doug Case commented that community members should not be able to advocate and submit policy referrals. Policy referrals should only be made and submitted by a CRB member. CRB policy change suggestions can be presented during CRB Policy Committee meetings or to a CRB member who can forward it to the CRB Policy Committee.

Committee Chair Hilpert stated that a complainant who submits a complaint on behalf of someone else, cannot be a part of viewing the same complaint. Therefore, in this case, SDPD Policy and Procedure was followed. Committee Chair Hilpert recommended that the Committee close the item without further action. 2nd Vice Chair Taura Gentry suggested that the Committee vote on the Committee Chair's recommendation.

Nancy Vaughn moved to close item V(b), without further action. Pauline Theodore seconded the motion. The motion passed with a vote of 6-1-1.

Yays: Anderson, Theodore, Vaughn, Craver, Montano, Case

Nays: Gentry

Abstain: Hilpert

Absent: Maria Nieto-Senour

c. Modify SDPD Procedure 1.49: Axon Body Worn Cameras -Section Q 7(N) –Issue is some complainants are not allowed to bring person of choice for support when viewing his/her BWC video.

The Committee discussed this item. Committee Chair Brandon Hilpert stated that further discussion should be held with Tasha Williamson to gain clarity on this item. 2nd Vice Chair Taura Gentry volunteered to reach out to the Ms. Williamson to establish a formal policy

recommendation.

d. SDPD Procedure 1.49 Retention of Digital Evidence – Issue is BWC video is not retained until investigation is completed. The Committee agreed that SDPD already has a policy for BWC retention.

2nd Vice Chair Taura Gentry moved for the Committee to dismiss item V(d). Pauline Theodore seconded the motion. The motion passed with a vote of 8-0-0:

Yays: Hilpert, Anderson, Theodore, Vaughn, Craver, Montano, Case, Gentry

e. Development of Third-Party Mediation

CRB Policy Committee Member Nancy Vaugh stated she is scheduled to attend a one-day conference on mediation in Nashville, Tennessee on Friday, May 15, 2019. She will report out at the next Committee meeting on June 11, 2019.

f. Best Practices Research for Law Enforcement Investigations Involving Discrimination Allegations (Patrick Anderson)

Patrick Anderson will include informal serious complaints that have discrimination as an allegation to his research. This item was tabled.

g. Complaint Process Guide Card Issued to All Sworn Personnel

Committee Chair Brandon Hilpert reported that IA Captain Morris and CRB Executive Director Sharmaine Moseley are in the implementing stages of the Complaint Process Guide. The process will be added to the CRB Website and on the back of the new joint complaint form.

2nd Vice Chair Taura Gentry expressed concerns about the status of the Complaint Card process. Doug Case requested an update on the status of the card. Committee Chair Hilpert, 2nd Vice Chair Taura Gentry, IA, and CRB Executive Director Sharmaine Moseley will work together on logistics.

h. Require that SDPD officers provide and/or call for medical assistance in all situations where a person shows signs that they might be in medical distress (Committee Chair Brandon Hilpert)

Item Tabled

i. **Recommend that the SDPD Non-Emergency Line be made into a toll-free number to aid in the effort of providing community members the ability to access public safety resources (2nd Vice Chair Taura Gentry)**

Item Tabled

VI. Adjourned: 5:05 p.m.

Community Review Board on Police Practices
Policy Recommendation

No SDPD officer or employee shall encourage or coerce a complainant to modifying a complaint to an informal complaint.

Summary

As a result of a few cases that the CRB has reviewed, it appears that regardless of the intentions of SDPD staff, complainants have been encouraged to modify their formal complaint to an informal complaint. The CRB believes that any member of SDPD (be it sworn officers or civilian staff) should not utilize their position of authority to encourage, coerce or intimidate any member of the public from filing a complaint in their selected method. Once a complaint is filed, the SDPD should not attempt to contact the complainant with the objective of having them modify their complaint or reduce the impact of a formal complaint.

As a companion to this policy recommendation, SDPD and CRB have worked to create a complaint form that explains what the differences are between an informal complaint and a formal complaint as well as the outcomes of each and what the process and steps are during the informal and formal complaint process.

Objective

In order to achieve a trusted complaint investigation process, it is imperative that the public understands and accepts the process that the SDPD utilizes to investigate allegations against its officers. When a complainant is encouraged to change from a formal complaint to an informal complaint, it creates the perception of coercion to reduce visibility of the complaint.

As a note, when a complainant does agree to modify their complaint from a formal to an informal complaint, it removes the oversight element that the CRB provides in investigating formal Category 1 complaints.

Recommendation

1. It shall be explicitly prohibited by SDPD Policy and Procedure for any member of SDPD (sworn or civilian) to direct another member of SDPD staff (sworn or civilian) to request, encourage, intimidate, coerce, demand etc. a complaint to change or modify their complaint once the complaint has been filed or registered.
2. No member of SDPD staff (either sworn or civilian) shall contact a complainant with the purpose or objective of encouraging the complainant to modify their complaint from a formal investigation to an informal investigation.
3. SDPD staff shall provide a complaint form, with the explanation of the complaint process and the differences between informal and formal complaints, to any individual who requests a complaint form without unnecessary delay.
4. The only exception to this recommendation is that after a complainant has reviewed their available BWC footage, if based upon the additional evidence, they decide to withdraw their complaint, a member of SDPD shall facilitate the withdraw of said complaint.