



FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

POLICE ADVISORY & OVERSIGHT BOARD

MINUTES

Meeting: Police Advisory & Oversight Board Regular Meeting

Date: 04.11.2024

Time: 5:00 p.m.

Location: City Commission Chambers

The Regular Meeting of the Police Advisory & Oversight Board of Fargo Police Department was held in the City Commission Chambers at City Hall at 5:00 p.m., Thursday, April 11, 2024.

The Police Advisory & Oversight Board members present or absent were as follows:

Present: Scott Paul (video call), Todd Spellerberg, David Hogenson, Joanna Johnson, Conrad Thomas, Lucrachia King, Tonya Greywind.

Absent: None.

Item 1. Welcome and Introductions

Chair Johnson welcomed Members to the meeting and introductions were made.

Item 2. Approve or Amend Agenda

Vice Chair King moved the Agenda be approved as presented. Second by Member Spellerberg. All Members present voted aye and the motion was declared carried.

Item 3. Approve or Amend Minutes

Member Greywind moved the minutes of the March 14, 2024 Police Advisory & Oversight Board meeting be approved as presented. Second by Member Spellerberg. All Members present voted aye and the motion was declared carried.

Item 4. Public Comment Period

- No one signed up for public comment.

Item 5. Questions from Community Members

- There were no questions this month.

Item 6. Police Department Updates – Deputy Chief Joe Anderson

- Department of Justice COPS CRI-TAC assessment that started in late February. A consultation firm out of Chicago was selected. On April 1st, they came to Fargo and were with the Department Monday through Thursday and conducted interviews with PAOB members, city officials, and PD members. The purpose is to look at policies and procedures around critical incidents, not to look at a singular incident. It's about a 16-week process before a final draft with recommendations is provided. They took a deeper dive into pre- and post-incident response.
- Chair Johnson commented that she met with the consultants and believed they were also looking at the Board. DC Anderson replied that they are doing pretty comprehensive review.
- Member Hogenson commented that he's excited for the review and to learn what they come up with. He provided an overview of how the review came about. He finds it concerning that Chief Zibolski said the review would include a look at Use of Force in general and the O'Brien Incident from 2022. He was told by the consultants that Use of Force was not going to be looked at because it wasn't asked for by the Fargo Police Department. In the 2023 FPD Annual Review, it was said that Use of Force policy was being looked at. DC Anderson replied that he'll be happy to reengage the issue with the consultants. He said that Use of Force is a broad category, and the assessment is focused on Use of Force in critical incidents. Member Hogenson is curious as to whether Use of Force can be added to this review or if that would have to be another request. DC Anderson said they have been provided all the information already. Chair Johnson commented that Chief Zibolski in November, 2023 said it was about critical incidents. Member Hogenson pointed out that the Annual Report provided to the Commission used the language Use of Force Review. Vice Chair King commented that it might have to be a separate review for general Use of Force. Member Hogenson commented that it's important because the BCI report said O'Brien's actions were justified and there was no Fargo Police Department policy violated, and yet there was such a tragic outcome. DC Anderson responded that he'll circle back with Chief Zibolski in regards of what was asked of the COPS office.
- Vice Chair King asked for clarification that the consultants are provided recommendations, and the Fargo Police Department is not required to follow them. DC Anderson confirmed that this is the DOJ handing down a consent decree, which must be followed. It will be recommendations perhaps involving best practices.

Item 7. Officer Complaint Overview – Deputy Chief Joe Anderson

- As a result of a City Commission meeting where a few individuals had come forward to complain about some police interactions.
- On January 10th, 2024, Officer Duncan initiated a traffic stop on a vehicle for not having a front license plate displayed properly. A female passenger exited the car upon being stopped and walked towards the Sleep Inn & Suites lobby door, Officer Duncan tells her to stand back at the rear of the vehicle. Officer Duncan made contact with the driver, who stated he did not have an ID or driver's license on him. The driver self-identified as Abenico Kayee. When running the individual on the MDC, the name came up as an alias for Johnny Cooper, who had an open warrant. Sgt Mock was able to determine that Kayee was not Cooper and un-arrested him. Kayee refused to get out of the squad car for 40 minutes after being released.
- On January 11th, 2024, Kayee came to the FPD lobby to complete a complaint against Officer Duncan. He alleged that every one of his rights were violated. He was injured by the officers, discriminated against, falsely arrested, and unjustly detained for an unreasonable amount of time.
- Sergeant Siders with the Professional Accountability Unit (PAU) interviewed Kayee and Wyneta Fully at the police department to obtain their statements. Reviewed Incident Summary Report, photos, report supplements, FPD radio traffic, body worn camera footage, and squad car footage. Also interviewed Officers Duncan, Adair, Dosch, and Sergeant Mock.
- DC Anderson showed a snip of the initial encounter from Officer Duncan's BWC (the entire video is 1 hour, 25 minutes long).
- PAU investigation found that there was legal authority (valid reason for stop), the Officer identified himself to the driver and told the driver the reason for stop, the driver did not have a driver's license in possession (a violation of NDCC and Municipal Ordinance). SCOTUS has ruled that the driver and passenger are considered seized relative to

the traffic stop, which gives the officer the authority to control the scene.

- DC Anderson presented what the officer saw on his MDC.
- In 2017, Cooper provided the false name of Abenico Kayee to the police. This resulted in Abenico Kayee's name being added as an alias for Johnny Cooper. Radio communication with Dispatch, Officer Duncan asks a dispatcher to run the "male party [Kayee] added to my run". Dispatch finds that Kayee has no warrants, but that Kayee has an alias as Johnny Cooper and Cooper has unconfirmed Cass County and Fargo warrants.
- Kayee refused a consent search; he's put into the squad car unsearched as he isn't under arrest at this point.
- Officer Duncan notices in Kayee's booking photo that he has a lazy eye and the person in the backseat does not. Officer Duncan speaks to the passenger (Wyneta Fully), asks why Kayee is providing a false name and isn't corrected.
- Not until Officer Duncan tells Kayee- Johnny you are under arrest- Kayee asked "who?" "What's my name?" Officer Duncan says "Johnny" – Kayee questions "my name is Johnny?" Fully says "his name is not Johnny. So, you're arresting the wrong person." DC Anderson provided a breakdown of the conversation between Kayee and Officer Duncan.
- Officer Adair has a phone conversation with Det Loos about Kayee/Cooper and believes Kayee is not Cooper. Officers stop in the Burger King lot to talk about Kayee's identity and wait for Sergeant Mock.
- Once on scene, Sergeant Mock determines Kayee is who he says he is and asks him to get out of the squad repeatedly, tells him he is free to go. Kayee argues and refuses to get out for 40 minutes.
- Officer Duncan was exonerated by Executive Staff and the Chief of alleged policy violation, no foundation for racism, had legal authority to stop the vehicle, had legal authority to detain driver, speak to passenger, to determine the driver's ID, and confirm the warrants. Once Kayee's identity was confirmed, Kayee was released. Officer Duncan has two years of experience; he could have tried other methods to confirm ID (ND DOT DL and other vital information comparisons); inexperience, distraction, and hostility were working against the officer

Item 8. Presentation Questions

- Vice Chair King asked if the two names that were mixed up in the system has been corrected. She commented that Officer Duncan not being able to see the difference between Kayee's and Cooper's mug shots is the equivalent of saying DC Anderson and Sgt Gamradt are the same.
- Member Thomas asked if being detained means being handcuffed. DC Anderson said it can, depending on the circumstances. There is no bright line rule as to when someone is handcuffed.
- Member Thomas commented that it seems like there was escalation on both sides and wonders if it could have been approached differently. DC Anderson responded that it certainly could have been, and Duncan's inexperience could have contributed to the situation.
- Chair Johnson commented that there was a lot of emotion. DC Anderson responded that more often than not are very cordial, but there are some people who get upset as they don't agree with being stopped or ticketed. Mr. Kayee was not ticketed in this instance, so there was no paperwork to give him as he requested, which also made him upset.
- Chair Johnson brought up the difference in the mug shot (the lazy eye). DC Anderson confirmed that Mr. Kayee's mug shot showed a lazy eye. Mr. Kayee had had surgery to correct that lazy eye since that mug shot was taken, but that wasn't communicated to the officer until later.
- Member Greywind asked for clarification in terms of what she was hearing about a policy change. DC Anderson said that modification wasn't a result of just this incident. There is more clarification for officers on the difference between detention and arrest, and when handcuffs should or shouldn't be used. Member Greywind doesn't know if it's very clear to citizens the difference between detainment and arrest, or how long someone can be detained for. She asked if that's also in the policy. DC Anderson answered that there is no magic time limit, it depends on the reasonability. For example, if an officer stops a car with the intent to write a traffic ticket, they can detain the person for how long it takes to write the ticket. If the officer suspects narcotics activity, they cannot unduly extend a traffic stop for the reason of getting a drug dog to get there. There is Supreme Court decision on that issue.
- Member Hogenson asked what kind of charge is a DUS. It's a class B misdemeanor. Member Hogenson asked if Cooper is assuming the identity of others. DC Anderson believes he's been giving false names. He has not looked in the CAD

system to see how many aliases Cooper has. Member Hogenson asked if a more senior officer would have handcuffed on a DUS warrant. DC Anderson can't definitively say whether that is the case. Member Hogenson commented it seems like after Kayee was handcuffed and in the back of the squad is when he got more agitated. It seemed to Member Hogenson that Kayee was in a mental health crisis and needed some help. He asked if a more senior officer would have reach that conclusion and he would have been taken somewhere to receive help. DC Anderson doesn't think that can be answered adequately since hindsight is 20/20. He said it seemed like Mr. Kayee got upset because Officer Duncan was talking to Miss Fully. Seeing what he saw in the video, he doesn't think he would have taken him in for an evaluation.

- Member Thomas commented that maybe the reason he escalated the situation was the misidentification and that there is a history of misidentification. To not take that seriously is something that needs to be looked at. DC Anderson disagreed that the officer didn't take it seriously. He agreed that there were any number of other options that could have been taken and that might have been taken by another officer, but that doesn't mean policy was violated in this instance.
- Vice Chair King asked how far he was let out of the squad car from where he was originally pulled over. DC Anderson doesn't know the exact distance. Some discussion among Board Members concluded it was about a quarter mile. Vice Chair King also understood with where Member Thomas was coming from.
- Member Hogenson asked for clarification that the finding that there was no foundation for the complaint. DC Anderson replied that it's not that there was no foundation, there was a foundation for the complaint, but the officer was exonerated. Member Hogenson mentioned that he'd be interested to see some complaints that were found to be legitimate.

Chair Johnson brought up that Chief Zibolski will not be in town on May 9th, which is the next scheduled meeting. She proposed moving the meeting to the 16th of May in order to allow the Chief to be present. All Board members agreed.

Item 9. Adjourn

The time at adjournment was 6:19 p.m.