



# 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:** 06.13.2024

**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, June 16, 2024.

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

**Present:** Scott Paul, Todd Spellerberg, David Hogenson, Joanna Johnson, Conrad Thomas, Lucruchia King, Tonya Greywind.

**Absent:** None.

**Item 1. Welcome and Introductions**

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

**Item 2. Approve or Amend Agenda**

Member Paul 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 Paul moved the minutes of the May 16, 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. Pick a date for a brown bag meeting**

After some Board discussion, it was decided the brown bag meeting will be held on August 15, 2024 from 5:30pm-7:00pm.

**Item 5. Public Comment Period**

1. Charles Bellaire said the Mayor told him to come to the meeting because of conduct with the Police Department. He said if normal citizens were driving with no headlights in the dark, they would get in trouble, but there officers that

are doing that stuff. He also brought up getting pulled over a week ago despite the truck in front of him not getting pulled over. The officer said his trailer lights weren't working and that his tint was too dark. His tint came back legal when tested. He was ticked for his dash cam and radar detector. He mentioned being harassed because he flipped the officer off, because he has an issue with that officer. He feels his constitutional rights were violated because there was no other reason to pull him over. He wasn't ticketed for his lights or his tint. As he told the Mayor, it's either he gets a petition to have the Chief resign or he brings in legal counsel because he's sick of getting harassed by Fargo PD. He also mentioned getting pulled over for speeding, but the officer couldn't tell him what his speed was because his radar wasn't on. He received a ticket for his exhaust, but his exhaust was not changed after he purchased the truck from the dealership. He's tired of officers not getting in trouble for doing stuff.

**Item 6. Questions from Community Members – Lt. Matt Christensen**

1. How are the police officers alerted to be on the lookout for a violent/wanted person?
  - a. "Be on the lookout" (BOLO) from other agencies/Dispatch
  - b. Alerts within the department through daily briefing information at the begin of each shift, and also through announcements in the internal SmartForce system, which is used to run briefings. Officers also have access to that on their computers or phones.
  - c. An officer will receive an alert when querying names through Dispatch from NCIC (National Crime Information Center) if it's a nationwide or felony warrant
  - d. Member Johnson asked if someone calls in with a tip about the location of a wanted person, if that tip will get priority. Lieutenant Christensen said it would depend on the severity of the crime and the way the tip comes in. A tip that comes in through Dispatch will likely be addressed earlier than a tip left as a message directly for an officer or investigator who might not be on duty.
2. Does the Fargo Police Department have a board with 'warrants' and 'violent' offenders' faces to they know who to look for?
  - a. The SmartForce software used for daily briefings is accessible at all times and shows pictures and such of individuals being looked for
  - b. There are bi-weekly Intelligence Lead Policing presentations regionally with local partners, as well as streamed online so agencies around the state can also view that online.
3. Vice Chair Thomas asked if the Fargo Police Department uses any kind of facial recognition software. Lieutenant Christensen said the Fargo Police Department does not currently have the technology for that. There is NDSLIC (a statewide intelligence center), which has some of that if linked to a criminal offense. The Fargo Police Department can send them stuff and they might be able to do some of that, but the Fargo Police Department doesn't currently have that technology.

**Item 7. Police Department Updates – Chief David Zibolski**

1. Academy 7 started on June 3<sup>rd</sup>. With that on paper, Fargo Police Department positions are full.
2. The traffic safety team is slated to start in late August, once the current new officers complete their field training. Trying to address dangerous driving in the 2025 legislative session.
3. The Chief attended a Downtown Community Partnership and Business Owner meeting regarding increasing Downtown safety and perception of safety.
4. The C.O.P.S. office has selected a Subject Matter Expert for the review of use of force policy.
5. Member Hogenson asked how many sworn officers are on right now. The Fargo Police Department is authorized to 192 sworn. Member Hogenson asked where does the Fargo Police Department want to be. The Chief would like to have 18 more sworn positions. The strategic plan is to add six over each of the next three budget periods.
6. Member Hogenson asked what tools are being used to combat exhibition driving and reckless driving behavior. The Chief doesn't think there are many right now that are extremely effective. Going to resubmit an owner liability bill to hold the owners of fleeing vehicles responsible and give them the opportunity to let officers know who was driving. Trying to increase fines to make a ticket more of a deterrent. Member Hogenson asked if the incidents of racing are

by certain individuals or groups of individuals. Chief Zibolski thinks it's a combination. Vice Chair Thomas asked how the PD would prevent fleeing. Owner liability could help to identify fleeing drivers, adding a deterrent.

7. Member Paul brought up the Fargo Police Department sending individuals to Milwaukee for the Republic National Convention. The Fargo Police Department is sending 15 of the Crowd Management Team to assist Milwaukee PD and other regional partners with the national security event. Wisconsin had sent officers to help for the DAPL protests and the Fargo Police Department wants to repay that effort and goodwill. It's also a way to gain knowledge and training from the event that may help the Fargo Police Department in the future. Member Paul asked if that will reduce Fargo patrol staffing. No, staffing has been shifted to make sure everything is still covered, including having canceled additional vacations during that week over a year ago.
8. Chair Greywind asked if Academy recruits are brought on as already being staff before they finish training. Yes. There is an initial pay step for recruits. They have to complete the academy and pass the North Dakota POST test before they are certified. Member Spellerberg brought up that the population will also be larger in three years, so rather than addressing understaffing for the current population by increasing sworn positions by six per year, it might be better to plan for larger.

**Item 8. Intelligence Presentation – Lt. Matt Christensen**

1. The goal of the intelligence-led policing model is to be proactive at thwarting crime before it happens when possible.
2. There is an Intelligence Analysis Unit (IAU) at the Police Department
  - a. Special Operations Lieutenant
  - b. 1 Detective (shared with Metro Street Crimes Unit)
  - c. 3 Civilian Crime Analysts
3. 28 CFR (Code of Federal Regulations) Part 23
  - a. Criminal intelligence information shall only be collected if there is reasonable suspicion that the individual is involved in criminal conduct and the information is relevant to that criminal conduct or activity.
    - i. Reasonable suspicion is established when information exists which establishes sufficient facts to give a trained law enforcement officer a basis to believe that there is a reasonable possibility that an individual or organization is involved in definable criminal activity or enterprise.
4. How do we get information?
  - a. Officers submit information to IAU resulting from investigations, citizen contacts, calls for service. They take reports when there is criminal activity, but there might be something that doesn't rise to that level but might be suspicious and they think it should be followed up on. That information can be submitted to the IAU.
  - b. Information from other LE agencies is reported
  - c. Information is discovered by Crime Analysis through crime statistic analysis and review
  - d. Citizens provide information to officers, Tip Line, email, etc.
5. Intelligence Cycle
  - a. Collection of information is processed through IAU, where it is analyzed for credibility
    - i. Records checks, report reviews, corroboration through other intelligence files
  - b. Once it is vetted, the information must meet criteria to be stored as criminal intelligence
    - i. Has relevance to suspected violations of the law or related activities which present a potential threat to the public
    - ii. Has been evaluated for accuracy and validity
    - iii. Was collected properly and obtained in accordance with all applicable federal, state, and local laws
    - iv. Is free of references to political, religious, or social views/affiliations not directly related to suspected criminal activity
  - c. A criminal intelligence file is then created and stored in the criminal intelligence database
  - d. At a minimum, the file must include
    - i. Submitting agency or individual submitter's name (when known)
    - ii. Creation/submission date of the information

- iii. Clear and adequate documentation of an established link with identifiable criminal activity, based upon reasonable suspicion
    - iv. Evaluation and classification designations (reliability designations/sensitive)
    - v. Record of all disseminated information
  - e. Criminal Intelligence Information cannot be stored longer than a period of five years, unless there is relevant updated information, related to current/ongoing criminal conduct which could extend the retention period. The SmartForce system is now in use for storing intel. It will automatically purge a file after five years if it hasn't been updated. Previously, someone had to manually audit the files.
  - f. Intelligence is then disseminated to the necessary stakeholders, and continuously re-evaluated for legitimacy
    - i. Tactical intelligence: information regarding a specific criminal event that can be used immediately by operational units to further a criminal investigation, plan tactical operations, or provide officer safety
    - ii. Strategic Intelligence: information concerning existing patterns, emerging trends or criminal activity designed to assist in criminal apprehension and crime control strategies to accomplish both short and/or long term investigative goals
6. 4<sup>th</sup> Amendment Adherence
- a. Law Enforcement does not have authority to search property or seize persons or effects absent a search warrant, with some exceptions
  - b. Exceptions:
    - i. citizen consent (can be revoked at any time)
    - ii. search incident to arrest: if probable cause exists to make an arrest, an officer may search that person after making the arrest, under the justification to prevent the destruction of evidence and to prevent the suspect access to a weapon
    - iii. Exigent circumstances: a need for LE to provide emergency aid, prevent death or great bodily harm, "hot pursuit" of a fleeing suspect, and prevention of the imminent destruction of evidence
      - 1. Court looks at the totality of the circumstances in these cases
    - iv. Vehicle searches: if PC exists that a vehicle contains evidence or contraband, no search warrant is needed. The courts have explained that the mobility of vehicles would allow them to be quickly move from the jurisdiction
    - v. There are other circumstances that would allow for a search to occur absent a search warrant, that are situation dependent
  - c. How is privacy determined?
    - i. Invasion of privacy is the root issue that people are concerned about, and law enforcement cannot violate the rights of the citizens they serve
    - ii. Expectation of privacy
      - 1. Katz v. United States created the reasonable expectation of privacy
        - a. The individual has exhibited an actual (subjective) expectation of privacy
        - b. The expectation is one that society is prepared to recognize as reasonable
    - iii. Where is that reasonable?
      - 1. Residences
      - 2. Hotels
      - 3. Concealed on your person
    - iv. Not reasonable?
      - 1. Public spaces (parks, streets, sidewalks, common areas)
  - d. Plain View Doctrine: if an officer has legal authority to be in a space where they observe contraband or criminal activity, no violation of the 4<sup>th</sup> Amendment exists. Further searching may require a search warrant unless one of the exceptions exists. Officers often ask themselves "are my feet legal?"
7. Technology
- a. License plate readers on squad cars- if a stolen vehicle drives by and the license plate reader catches it, the officer

gets an alert

- i. No expectation of privacy when it's on a public street. There can be some issue if the vehicle is up on the driveway away from the public part of the road (a search warrant might be needed to go take the vehicle off of that property, though it's still visible from the street)
- b. Surveillance cameras
  - i. Viewing public spaces, where no expectation of privacy exists
  - ii. Does not enhance the ability of a person to see things not readily available to see through natural means (zooming in is like a person walking closer in a public space)
- c. UAV (Drones)- there is a regional drone team
  - i. Traffic crash/crime scene reconstruction
  - ii. Missing persons
  - iii. Searching for suspects safely
  - iv. NDCC 29-29.4 Surveillance by Unmanned Aerial Vehicle
    1. Information obtained from an unmanned aerial vehicle is not admissible in a prosecution or proceeding within the state unless the information was obtained pursuant to the authority of a search warrant or in accordance with exceptions
    2. Information obtained from the operation of an unmanned aerial vehicle may not be used in an affidavit of probable cause in an effort to obtain a search warrant
  - v. Also regulated by the FAA
8. Summary
  - a. Utilize information and Criminal Intelligence to enhance investigative abilities and further the mission of disrupting crime activities in the community
  - b. Work within the parameters of legal authority to provide the highest level of service to citizens of Fargo

**Item 9. Presentation Questions**

1. Vice Chair Thomas asked if there is any procedure or method to guarantee that a search warrant is served at the correct location. There is an Ops plan, pre-operational briefing, and a nationwide system for deconfliction (to avoid going to the same area as another agency at the same time, which might cause issues)
2. Member Hogenson asked for clarification that information obtained through UAV not being admissible, if that also applies to manned aircraft. Chief Zibolski said since planes are in open view, there are no protections from that information unless they are looking into a private space, such as someone's home.
3. Member Hogenson asked for clarification if the expectation of privacy in one's own home extends to the use of phone, computers, Ring doorbells, etc by the homeowner. Lieutenant Christensen confirmed it does. Member Paul asked if that also extends to social media. If the information is accessible to anyone, no search warrant is needed. If it is not publicly accessible, a search warrant is needed.
4. Member Paul asked about the manpower for the IAU, what does 'right' look like. Lieutenant Christensen said the Fargo Police Department is working on getting its own real-time crime center. Several more people would be needed to fully man that; maybe a sergeant to help oversee, a couple detectives to handle those investigations, and more analysts. Member Paul asked Chief Zibolski if the 2025 budget request included anything for manning the Intelligence section. The Chief confirmed it does.
5. Member Johnson asked, with search warrant stuff, if you had a search warrant to go through emails or phone, is the owner alerted to that, or is that something that can be done without the owner knowing. Lieutenant Christensen answered it depends. Search warrant on social media and such, you might not be notified right away as it could destroy the investigation. The search warrant needs to be returned to the judge in a reasonable amount of time.

**Item 10. Adjourn**

The time at adjournment was 5:59 p.m.