



323-821-0586
7142 Trask Avenue Playa del Rey, CA 90293
OIRGroup.com

Independent Police Auditor Report
Allegations of Poor Handlings of Requests for Service
July 2020

Report by: Michael Gennaco
Independent Police Auditor
City of Davis

Introduction

In January 2019, the Independent Police Auditor (“IPA”) received a series of complaints from a Davis resident. The resident complained of the way in which the Davis Police Department handled an assault/vandalism investigation in which his sister was the victim. The complainant further alleged improprieties regarding the way a theft investigation was handled in which his sister was the alleged subject. Finally, the complainant alleged that when his friend called 911 after hearing a woman screaming, DPD did not respond to the 911 call.¹

In response to these series of complaints, IPA collected the police reports and body worn camera footage. Following is the outcome of that review:

Allegation 1: DPD handling of the assault/vandalism investigation

Police were called to a situation after an individual used a crowbar to inflict significant damage on a vehicle belonging to the sister of the complainant, smashing many of the windows of the car. After the sister and her boyfriend came upon the man in the process of vandalizing her vehicle, the man began shooting at the two with a pellet gun. DPD was called to respond.

When police arrived, the sister and witnesses were identified and were asked to sit on the curb by responding officers. According to the sister, her boyfriend fled from the scene prior to the police arriving. After surveying the damage to the car, one of the responding officers approached the sister and the following dialogue occurred as captured by the officer’s body worn camera:

Officer: Can we tell the truth for just a few seconds?
Can I tell you what I just saw from that car?
Sister: What?
Officer: That is a very clear; just not trying to take anything, just trying to break stuff.
So tell me what you did to him to make him do that. Were you dating him? Is he an ex-boyfriend?

This exchange between the victim and the officer is not how one would expect an officer to respond to a person who has just observed her vehicle’s windows being smashed out by a known assailant and who then proceeds to shoot at her with a pellet gun. The questioning is particularly troublesome in two respects. First, when the officer asked the victim to “tell the truth for a few seconds”, there was no reason to disbelieve the victim’s account. More troublesome was the officer’s representation to the victim that the victim must have done something to him to “make him do that”, suggesting that it was somehow the victim’s fault that caused the man to commit felony vandalism on

¹ After initially engaging with the Independent Police Auditor, the complainant stopped responding to additional inquiries. However, consistent with best complaint practices, the IPA determined to proceed with the review.

her vehicle and then assault her.

As the encounter continued, the officer's tone and approach with the victim softens somewhat and it becomes more akin to an officer/victim interview. However, even then the officer does not display a great deal of empathy toward the victim, particularly when asking her whether she wants to move forward on charges against her assailant. All in all, the victim interview on the sidewalk is not exemplary of a sympathetic police officer engaging a woman who had just been the victim of felony vandalism and assault.²

Ordinarily, IPA would recommend that DPD review the body camera footage with the responding officer and discuss how some of her comments were not helpful in establishing rapport with the victim. However, IPA has been informed that the officer is no longer with DPD. That being said, the greater point provides a good reminder to all officers about the need for sensitivity in interviewing victims of violent crimes.

Recommendation: DPD should remind its officers via briefing of the need to avoid making comments that could be interpreted as blaming the victim of a violent crime.

Allegation 2: DPD handling of a theft investigation

DPD responded to a call for service in which a woman reported that she had left her wallet in the dashboard of an unattended van parked in the lot of a commercial establishment. According to the police report, the owner of the van said an unknown person had told him they saw a female near the window of the van and the female might have been associated with a certain vehicle also parked in the parking lot.

Several days later a DPD analyst observed that the owner had posted photographs of possible suspects of the theft on social media. The analyst recognized the subjects as the complainant's sister and her boyfriend and provided the information to the handling officer. The handling officer wrote in his police report that he had been advised by the owner that a surveillance video had recorded the identified subjects as stealing the wallet.

The officer contacted the sister at her residence and told her that there was a video of her and her boyfriend taking the wallet from the van. According to the officer's police report, the sister did not admit or deny responsibility for the theft. The officer then responded to the commercial establishment and apparently for the first time viewed the referenced video recording of the incident. The officer reported that the recording showed a male and female who appeared to be the sister and her boyfriend walk by the van, which had its windows open. According to the officer's report, the video further depicted the couples appear to peer into the van as they walked toward a vehicle parked

² As noted above, the incident was complicated when the victim's boyfriend left the scene prior to the police arriving. The boyfriend has been a constant focus of attention by Davis PD as a result of prior arrests. However, in this case, the woman was a clear victim of contemporaneous crimes and should have been treated as such.

next to it that appeared to be a car known to be owned by the boyfriend. The report further indicated that the recordings depicted the boyfriend approaching the van at some point at which point the recording ended. The report noted that the recording did not show anyone in the act of taking an item from the van.

The complainant alleged that during the investigation, DPD police lied to his sister about video evidence to obtain an admission from her. A review of the body worn camera footage of the encounter shows that the officer arrived at the residence and asked to speak to the sister who is accompanied by her mother. During the interview, the officer repeatedly told the sister that there was a video of her and her boyfriend taking the wallet from the van, even though he had not yet reviewed what the video depicted. The officer repeatedly asked the sister to return the identification that was in the wallet as a “good gesture”, informed her that there was “no question” she was responsible for the theft, and told her that giving the wallet back would not hurt her case at all. A review of the encounter clearly demonstrates repeated attempts by the officer to obtain an admission of culpability from the sister, but as indicated in the police report, she did not admit or deny that she was involved in taking the wallet from the van.

During the interview, the mother of the sister informed the officer that as a result of past encounters the family had “zero trust” in the police. While the officer told the sister that he would show her the video if she liked, when the mother indicated that she would like to see the video the officer said he would not do so.³

According to the complainant, subsequent to the officer’s visit the family obtained an attorney who ultimately learned that the video did not conclusively show either the sister or her boyfriend taking the wallet from the van. DPD did not pursue charges against either as a result of the inconclusive nature of the video.

Under the law, police can use ruses and exaggerate or mischaracterize evidence as part of a strategy to gain admissions from suspects. While the technique is legal, a growing number of criminal justice reformers question whether such strategies are generally advisable. When the ruse works and results in a case being cleared with an arrest, proponents of such strategies use such examples of how the technique needs to be available to investigators. However, when the ruse does not work and the individual the ruse is used upon learns that the information alleged by the police was not accurate, it results in increased distrust of law enforcement by those upon whom the tactic is used.

In this case, it appears that the officer did not even know the strength of the video evidence against the sister prior to visiting her. Basic principles of investigation teach officers to review evidence prior to interviewing potential subjects but this was not done

³ The mother also asked the officer for a business card. The officer replied by saying he did not have a card with him, offering to retrieve one for her later, and giving her his name. DPD policy states that “while on duty, a member shall provide their name, badge number, and/or business card to a member of the public upon request,” and expressly notes: “The City provides business cards for this purpose.”

in this case. Had the officer reviewed the video evidence prior to interviewing the subject, he may have deployed a different strategy and decided not to overplay the strength of that evidence.

As it turned out, by mischaracterizing the strength of the evidence against the sister, the officer did not obtain an admission from her and only increased the alienation and mistrust the family had in its police department after they learned that the video did not depict what the officer had said it did. This result calls for re-examination for this officer in particular and DPD in general about the advisability of mischaracterizing incriminatory evidence during subject interviews.

Ordinarily, IPA would recommend that the issue of risk/reward of providing misleading information to subjects of investigations be discussed with the involved officer as well as the need to personally review evidence before conducting a subject interview. However, IPA has been advised that this officer is no longer with DPD. That being said, all sworn DPD personnel could benefit from a briefing on these universal points.

Recommendation: DPD should brief its officers on the risks/rewards of providing misleading information to subjects of investigations and the importance of reviewing evidence prior to any subject interview.

Allegation 3: Delayed Handling of a Call for Service

The complainant alleged that he was walking through a Davis neighborhood when he and his girlfriend heard a woman screaming. The complainant indicated that his friend called 911 but that they stayed in the area and never observed Davis PD respond to the call.

A few days later a DPD officer visited the family residence to talk with the complainant's sister about her potential involvement in an alleged theft, as detailed above. As the officer was leaving the call, the complainant asked if he could discuss his concern about the alleged failure to respond to the call. The officer told the complainant "no, I am not here for you," and walked away.

Later, the officer and another officer returned to the residence to investigate an alleged hit and run involving the sister. After examining the vehicle in question and finding no damage, the mother raised the issue of the women screaming, the 911 call made by her son, and how no one from DPD had responded. The officer said that he did not know anything about it and that he could not begin to answer the question.

The partner officer did engage the mother and complainant about their concern about the failure to respond to the 911 call. The partner said that he did not work on that "side of the week", so he did not know why officers would have failed to respond. He said that DPD is often short-handed and calls will need to "pend" as a result. The officer said that under current staffing, there were often only three officers to patrol the entire city.

The officer further said that it was unsafe to only send one officer to a domestic violence call and that they were trained to wait for cover before responding to such a call. The partner officer said that if they tried to take action and did not wait for backup, cover, or attempt to de-escalate, and got into a use of force there would be ramifications. The partner officer said that he did not agree with “a lot of things that we do” but reiterated that he did not know the circumstances regarding the allegation of failing to respond to a 911 call.

With regard to the underlying complaint, IPA used the Department’s publicly available “Crime Mapper” application and located a call for service of “Disturbance Family: Disturbing the Peace” at the location and date the complainant believed the call was made. IPA then requested the body camera footage of the two DPD officers who responded to the incident.

A review of the body cameras showed that the two officers parked down the street of the location and walked to the residence where a male and female were in the front patio area. The woman indicated that she had gotten into a verbal dispute with her boyfriend and had been screaming as a result and apologized for disturbing the neighborhood. The female no longer wanted to stay at her boyfriend’s residence and one of the responding officers then drove her to a relative’s house in Davis.

Based on the above, DPD did respond to the 911 call. A review of the body worn camera footage also demonstrated a professionally handled defusing of a domestic situation and a sensible resolution to the conflict. While the handling of the underlying call was textbook, the officers’ response to the complainant was not.

Clearly, the officers were visiting the family residence for other reasons, but when an individual raises another issue, the response should not be “I am not here for you.” Rather, the preferred response should have been, I really cannot respond to your question, but I can certainly contact a supervisor about your concern and ensure that he responds to them.⁴

Nor was it appropriate for the partner officer to attempt to explain why officers may not have responded to the domestic violence call for several reasons. First, the complainant was incorrect that officers had not responded to the call. Second, it was really not the officers’ role to attempt to explain why there had been no response, especially when the officers had no first-hand knowledge of the situation. This again, is why the best response would have been to alert a supervisor to the complaint so that it could be handled by someone who could investigate the concern.

Finally, it was inappropriate for the partner officer to inform the complainant that he did not agree with a lot of things DPD did to ensure officer safety and reduce use of force. While officers can privately engage their organization and debate policies and

⁴ Ordinarily, IPA would recommend a discussion with this officer about better ways to handle a voiced complaint in the field. However, we have been advised that this officer is no longer an employee of the police department.

practices, it is not good practice to publicly relate any disagreements while on a call for service.

Recommendation: The officers who handled the “woman screaming” call should receive positive recognition for the way they handled the call.

Recommendation: DPD should discuss with the partner officer how to better respond to similar complaints in the future.

Recommendation: DPD should prepare a briefing on what officers should do when receiving a complaint in the field about other officers, focusing on the importance of bringing a supervisor into the conversation.

Conclusion

The series of interactions reviewed here evidenced both optimal handling of a call for service and other communications that did not rise to the level of a need for a formal investigation and discipline but was more appropriate for a “course correction”. One advantage of body cameras is that an audio/video record exists that clearly sets out those interactions and provides an opportunity for informal discussions by supervisors intended to improve performance. For the officer who remains in the employ of DPD, we recommend just such an outcome. And for those encounters that are exemplary, positive reinforcement should be used to reward and reinforce such performance.

It has also been our experience that if a particular officer is identified as performing sub-optimally in dealing with a field challenge, other officers could potentially benefit from briefings. Whether the topic is how to best interview assault victims, the need to view evidence before raising it with subjects, the advisability of using deceptive practices with a subject, or how best to handle complaints received in the field about other DPD activity, each is fertile ground for discussion and learning for Department members.