

City of Davis

Independent Police Auditor Report:

Concerns Raised About Officer
Performance During an Attempted
Custody Exchange

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

Independent Police Auditor
Michael Gennaco
Teresa Magula



Introduction

In its role as the City of Davis' Independent Police Auditor, we review internal investigations completed by the Davis Police Department (DPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate.

The complainant in this case requested that IPA review her matter because she believed that the Department was not adequately responding to her concerns. The complainant initially wished to participate in the restorative justice program facilitated by the City and DPD; this did not ultimately occur due to pandemic-related challenges and on-going delays in scheduling.

Case Summary

This case was initiated by a call for service to assist with a child custody exchange. The reporting party, a man, requested that officers respond to assist him in picking up his minor children from their mother's home.

A DPD officer responded and met the man. The man explained that the mother was refusing to engage in a court-ordered custodial exchange of his minor children. The man provided the officer the written court order and contact information for a court-appointed mediator.

The mother (and eventual complainant) exited the home and addressed the officer from behind the front gate. She stated that the children should not travel because of a state-wide pandemic travel ban and welcomed the man to parent the children inside of her home.

The officer advised the woman that she had to follow the court order. The woman asked the officer for his card, which he provided. The woman moved to re-enter her home as the officer requested that she remain outside and stated that he needed to talk to her. The woman repeatedly stated that she did not have to talk to him and went inside.

The man gave the officer extensive background on the situation. They reviewed the court order and messages from the court-appointed mediator.

The officer requested a supervisor. The officer then called the woman and left a voice message requesting that she cooperate. He ended the message stating that he did not wish to arrest her for violating a court order. The man and officer also discussed that they did not want to arrest the woman.

The woman exited the home and asked the officer if this was a civil matter; he said that it was. She stated that the officer should get a warrant and refused to exit the front gate. The officer stated that the woman had to adhere to the court order, or he could arrest her, and that he did not want to arrest her. The woman again stated that she did not have to speak with the officer or his supervisor and locked the front gate.

As she walked away, the woman stated that this was “a racial issue.” The officer responded that it was not a racial issue. The woman re-entered the home.

The officer advised the man to report to the court regarding the issue. The supervisor arrived. The supervisor stated that he could call the woman on the phone and “reason with her.” The officer stated that he did not want this to become “something bigger” or force the issue. The officer provided the man a police report number for his reference. The incident ended.

One month later, the woman contacted DPD and complained about the officer’s behavior. She stated that the officer discriminated against her, engaged in racial bias, and exceeded his official capacity when he threatened to arrest her for violating the court order.

DPD’s Investigation and Analysis

DPD sent the complainant a letter acknowledging receipt of the complaint and informing her that a supervisor would contact her.

Shortly after, a DPD supervisor contacted the complainant to ask how she wished to proceed with her complaint. According to the supervisor, the woman was first possibly interested in the Alternative Complaint Resolution (ACR) process, but then stated that she wanted a more “formal” resolution. According to the complainant, the supervisor stated that he would call her back with possible options.

Without further communication with the complainant, the supervisor forwarded the case to Internal Affairs for a formal complaint investigation.

DPD’s Internal Affairs investigated the incident and framed four allegations against the officer and the responding supervisor related to Discrimination (**Policy 7.07**), Bias Profiling (**7.70**), Knowledge of Laws, Policy and Procedure (**7.51**) and Obedience to Laws/Department Policy (**7.52**).

The investigator interviewed the man, the court-appointed mediator, and the Assistant District Attorney as witnesses, as well as both named officers. He indicated that he did not interview the complainant because her written complaint statement was extensive and detailed.

After viewing the body-worn camera, conducting interviews, and reviewing related paperwork, the investigator recommended that the allegations be unfounded.

Based on the evidence, DPD command staff agreed with the recommended findings, and further noted that the responding supervisor did not directly interact with the complainant.

In the interim, the complainant contacted DPD for an update; she did not receive a response. Days after IA completed the investigation, the complainant re-filed the complaint, amending it to add the DPD supervisor as a subject officer for his failure to communicate with her about the complaint process, and adding an allegation that neither officer wore personal protective equipment (PPE) or kept social distance during the original incident.¹

At this point, DPD sent the complainant a letter acknowledging receipt of the formal complaint and initiation of the formal investigation. The supervisor also sent an email to the complainant explaining the possible miscommunication and advising her of the formal complaint process.

Just over one week later, DPD sent the complainant a close-out letter detailing the investigation and the finding of “unfounded.”

IPA Review

Upon the request of the complainant, IPA reviewed the incident and subsequent responses by DPD. DPD provided IPA the complete case file and related internal memos. IPA reviewed all documents and digital evidence in the case file.

Communication with Complainant

We noted that IA did not communicate with the complainant in a timely or clear manner. This left the complainant feeling unsatisfied with the ultimate results of the investigation. As she expressed to IPA, she felt that DPD was treating her, the incident, and her complaint in this way because of her race – and those concerns largely stemmed from how the Department had failed to communicate with her.

We found several missed opportunities to communicate in a clear and timely manner. First, the supervisor did not follow-up with the complainant regarding sending her complaint into the formal investigation process, nor did IA send a confirmation letter

¹ DPD addressed this allegation by noting that at the time of the incident, there was no requirement for officers to wear PPE equipment.

upon initiating the investigation. This left the complainant in the dark about what was happening. Even more confusing, IA sent the complainant a “complaint initiation” letter *after* she re-filed the complaint months later, and after IA had completed the investigation.

The complainant was also not interviewed for this complaint. While she provided an extensive written narrative, communication with the complainant directly may have resulted in clarification of the complaint, especially related to the allegations of racial bias which are not evident on their face. And, ultimately, it may have prevented much of the subsequent confusion (and frustration) that ensued in this case.

Interviews

The witness interviews were not recorded. In one instance, the interview of the man, DPD noted that the man specifically requested that the interview be “off the record.” This was not the case for the other two witness interviews. DPD should record all interviews when there is no objection from the involved parties.

Investigation of Biased Policing

In finding the allegations of racial bias to be unfounded, DPD wrote, “[the officer] has no documented history of racial bias” and “there is no evidence of any race-related, racist, or biased actions.”

In the officer’s interview, the investigator asked a series of questions related to racial bias in this incident, including if the officer had “formed a bond” with the man because the man was also a white male, and if the officer engaged in any racial discrimination off camera. The officer denied any racially biased motivation.

Other than the fact that the man was white, and the complainant was black, a review of the body worn camera captured conversations do not demonstrate any evidence of bias in the responding officer’s actions. Rather, the officer appeared to have been even handed in his approach to the call for service in dealing with both parties.

Additional Issues

The complainant submitted an amended complaint in which she named the supervisor with whom she spoke about her complaint, stating that he had failed to communicate with her. This issue was not addressed in the subsequent DPD investigation.

In the complainant's lengthy correspondence and subsequent conversations with IPA, the complainant took issue with the police report, wherein the man is listed as a "victim" rather than the reporting party. The responding supervisor noted the error, stating that he did not catch it in his supervisor review. While this error does not rise to the level of a policy violation, it would have served as a helpful course correction for the officer to be orally counseled about this mistake.

RECOMMENDATION: DPD should interview the complainant as part of any internal investigation whenever possible.

RECOMMENDATION: DPD should record interviews with all witnesses in an internal investigation unless the witness objects.