

**CITY OF FORT LAUDERDALE
CITIZENS POLICE REVIEW BOARD MEETING**

100 North Andrews Avenue
Eighth Floor Commission Conference Room
Fort Lauderdale, Florida
February 11, 2008 - 7:00 p.m.

Board Members	Attendance	1/08 – 12/08	
		P	A
Steven Muffler, Chair	P	1	0
Roosevelt Walters, Vice Chair	P	1	0
Lieutenant Mike DiMaggio	P	1	0
Ted Fling	P	1	0
Lieutenant Eric Brogna	P	1	0
Alan Stotsky	P	1	0
George Trodella	P	1	0
Eileen Helfer	P	1	0
Lt. Gregory Blazs	P	1	0

Staff and Guests

Captain Rick Maglione, Internal Affairs
Sergeant Bill Stewart, Internal Affairs
Sergeant Rod McGowan, Internal Affairs
Sergeant Hector Martinez, Internal Affairs
Linda Shallenberger
Michael Owens
Lisa Edmondson, Recording Clerk, Prototype, Inc.

A. Roll Call

Chair Muffler called the meeting to order at 7:04 p.m. and roll call was taken.

B. Approve Minutes from December 10, 2007

Chair Muffler noted the Board had not met in January.

Motion made by Mr. Walters, seconded by Mr. Fling, to approve the minutes of the December 10, 2007 meeting. In a voice vote, the motion was unanimously approved.

New Board members, Eileen Helfer and Lt. Gregory Blazs, were introduced.

Ms. Helfer, an appointee of Commissioner Teele, stated she had been a member of the Beach Redevelopment Advisory Board for six years, she is currently on the Beach Council and Chamber of Commerce and was one of the original founders of the Central Beach Alliance.

Lt. Blazs stated he has recently been promoted to Lieutenant and has been with the City of Fort Lauderdale for 20 years.

C. Special Presentation to Former Board Member

Chair Muffler thanked Ms. Shallenberger for her many years of service on the Board, and presented her with a plaque showing the City's appreciation.

D. General Information

Capt. Maglione provided a new roster for the Board members.

With regard to the Fort Myers civilian review board, Capt. Maglione said they had been in contact with Fort Myers providing assistance regarding start up of their new board.

E. Review the Following Internal Affairs Investigation

1. Complainant: Michael A. Owens (I.A. Case #07-112)
Allegation: Unnecessary use of force
Officers: Detective Jason Maldonado
Detective Richard Rivera
Detective Jeffrey Jenkins
Disposition: Unfounded

Chair Muffler announced the Board's hearing procedure and case to be discussed.

Mr. Fling had several procedural questions asking if two of the three officers filed a supplementary report, with the third having opted not to file a report, whether this was considered an unusual procedure.

Capt. Maglione stated that since officers ride as partners, generally one report is generated unless there are significant circumstances where a supplemental report is filed. The only time a supplemental report is mandatory from an individual officer is when that officer uses force.

Mr. Fling asked, since it was Officer Jenkins who effected entry into the house, if he should have written the report himself and was advised by Capt. Maglione that as long as all details were covered in a prior written report, it would not have been necessary for Officer Jenkins to write another one.

The dispositions of the arrests made as a result of this incident are unknown at this time per Capt. Maglione, although the cases were still open at the time of the IA investigation.

Mr. Owens, the complainant, then addressed the Board giving a brief summary of the events. He explained that Officer Rivera kicked him in the mouth, Officer Maldonado had a gun on him and, at no time during the entire incident, was he ever advised by the officers the reason they were in the residence. He added that he had allowed the officers entry while he had been on the phone with 9-1-1, stating that the officers searched the home, kicked him in the face, and then left.

Chair Muffler asked Mr. Owens why there were no witnesses to the face kick. Mr. Owens indicated those persons who witnessed the incident had been advised, since criminal charges were pending against them, not to make a statement to IA.

Mr. Walters questioned how long he had been in the apartment before the officers arrived, stating Mr. Owens had told the 9-1-1 operator he had been in his bed sleeping, although outside witness testimony was that he had just arrived. Mr. Owens responded he had not been aware of what was going on outside before he went in the house. Mr. Walters also asked why one young lady who was at the residence was not present to give her version of the events and Mr. Owens indicated he rarely saw that individual. He also stated he had only received the letter one week ago and had not had time to reach her.

Mr. Trodella questioned Mr. Owens' refusal of treatment or examination by the paramedics, as well as why, under the circumstances, Mr. Owens would not ensure everything was documented. Mr. Owens alleged that during that time the officers were still at the residence, threatening him, and telling EMS he did not want treatment.

Mr. Fling confirmed that at no time did Mr. Owens go to the hospital or a dentist. Mr. Owens also alleged that EMS were lying when they reported he had refused treatment.

Mr. Walters added that there were "No consistencies...of the individuals who were at the apartment of the officers." He also inquired of Capt. Maglione the reason for the finding to be "unfounded" instead of "not sustained." Captain Maglione said this was a case of physical evidence or actually a lack thereof. The allegation was he was kicked and a tooth was broken and the evidence was clear that this did not occur. Capt. Maglione answered there had been no finding by the State Attorney for a higher level of a burden of probable cause. Also, Capt. Maglione indicated that this was the first time Mr. Owens had been able to definitely state who had kicked him. It had been established that the officers and Mr. Owens' acquaintances had called EMS for Mr. Owens for a different, pre-existing medical condition. At no time had anyone imply that Mr. Owens had been

kicked - the EMS calls at the time were for the pre-existing condition and Mr. Owens purportedly having been maced. There was no physical evidence of the complainant being kicked in the face or of having a chipped tooth.

Chair Muffler agreed there were "major" problems with the lack of evidence in this case. No 4th Amendment violation was found.

Discussion continued regarding time definitions of "fresh" or "hot" pursuit with Capt. Maglione stating that term is situation specific and not definitive. Captain Maglione said "...even the courts won't give specific times, much like how long to wait when 'knocking and announcing' when executing a search warrant." Captain Maglione then asked Chair Muffler, an attorney, his thoughts and he concurred. Capt. Maglione stated that the officers are not rookies and had most likely determined "this was an ongoing, continuous effort to place these two fleeing felons into custody"; however, based upon the entirety of the circumstances, Capt. Maglione had recommended additional training for the officers to refresh them on legal guidelines.

Capt. Maglione emphasized that Mr. Owens had not been arrested for obstructing apprehension or harboring a felon, even though he had known the persons being pursued, had allowed them into his house, and had refused access by the police. In response, Mr. Owens asserted that he had let those persons into his home, being unaware that they had previously broken the law. Capt. Maglione agreed there was no reason to doubt that fact and/or suspect Mr. Owens of any criminal violation.

Mr. Fling felt the investigation could not be "faulted," however, he commented there were other deficiencies which needed to be discussed.

Motion made by Mr. Stotsky, seconded by Mr. Trodella, to accept the findings of Internal Affairs. In a voice vote, the motion passed 7-2 (with Mr. Fling and Mr. Walters dissenting).

Chair Muffler, due to an objection from the Board, did not fill out the checklist provided by Internal Affairs indicating their vote on this matter, as it "stifles [the Board's] ability to communicate" regarding their rationale.

There being no further business before the Board, the meeting was adjourned at 7:43 p.m.