

IN THE MATTER OF COMPLAINT
AGAINST THE SUN PRAIRIE
POLICE DEPARTMENT,

Case No. 225-008

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board (the “Board”) finds that the complainant FC¹ has shown by clear and convincing evidence that the respondent Sun Prairie Police Department (the “Department”) violated FC’s rights as a crime victim.

BOARD PROCEDURE

2. FC filed a complaint with the Board on May 13, 2022.
3. Upon receipt of the complaint, the Board contacted the Department of Justice (DOJ), Office of Crime Victim Services, Victim Resource Center (VRC), which verified that the substance of the complaint had been presented to the VRC and that the VRC had completed its action under Wis. Stat. § 950.08(3). *See* Wis. Admin. Code CVRB § 1.05(1), (4).

¹ This final decision uses the initials of the victim to protect the victim’s privacy.

4. The Board gave a copy of the complaint to the Department and invited it to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5)*. The Department, through counsel, filed a response on September 30, 2022.

5. At a meeting on October 18, 2022, the Board found probable cause that FC's victim rights had been violated. *See Wis. Admin. Code CVRB § 1.05(6)*.

6. The Board notified the parties and the VRC of its conclusions through the issuance of a written probable cause determination. *See Wis. Admin. Code CVRB § 1.05(8)*.

PROBABLE CAUSE DETERMINATION

7. The Board found probable cause that the Department violated FC's right to dignity, respect, courtesy, sensitivity, and fairness. *See Wis. Const. art. I, § 9m(2)(a); see also Wis. Stat. § 950.04(1v)(ag)*.

INVESTIGATION

8. The Board requested additional information from the parties regarding the allegation on which probable cause was found.

9. The Department submitted additional information, including a written response to questions posed by the Board and two department policies relating to officer involved critical incidents and media relations and information releases.

HEARING REQUEST

10. On December 21, 2022, the Department submitted a request for an evidentiary hearing, as permitted by Wis. Admin. Code CVRB § 1.07(1).

11. The Board finds that an evidentiary hearing is unnecessary because the Board has all the information it needs to resolve any material factual disputes and issue a final decision on the complaint.

FINDINGS OF FACT

12. The Board's evidentiary standard for resolving disputed factual questions is the "[c]lear and convincing evidence" standard. "Clear and convincing evidence" means evidence which satisfies and convinces the Board, because of its greater weight, that a violation occurred." Wis. Admin. Code CVRB § 1.07(7).

13. The burden of proof is on the complainant. This burden of proof is very important and can be the deciding factor in the Board's resolution of factual disputes. Where the evidence on a particular factual question is equally believable or plausible, the effect of the burden of proof is that the Board must find that the complainant failed to prove the point by clear and convincing evidence.

14. The Board finds the following facts.

15. FC is the sister of Clinton Harvey, a deceased victim in Dane County Case No. 20-CF-2292.

16. Shortly after midnight on June 26, 2020, Harvey was a passenger in a car driven by Lonzo Simmons, who was under the influence of alcohol and drugs. Upon encountering Department officers, Simmons fled and crashed his car, killing Harvey and another passenger.

17. Because of the involvement of Department officers and two deaths, the incident was investigated as an officer-involved death.

18. The Department contacted the DOJ, Division of Criminal Investigation (DCI) to request that DCI investigate the possibility of an officer-involved death. The Department also asked the Dane County Sheriff to investigate the traffic-related incident.²

19. DCI Special Agent in Charge, Jim Holmes, advised the Department that DCI and the DOJ Office of Crime Victim Services would handle the death notification to Harvey's family, consistent with DCI policy.

20. Agent Holmes also asked if the Department wanted public and media inquiries to go through DOJ. The Department accepted that offer. DCI and the Department did not discuss which agency would handle inquiries from family members.

² Those investigations ultimately found that no action by Department officers contributed to the cause of the crash or the deaths of the two passengers in the vehicle.

21. Later in the morning on June 26, 2020, FC called the Department to inquire whether Harvey had been involved in the accident. The person who answered the call put FC on hold and then attempted to transfer her to someone else, but the call went to a voicemail.

22. FC called the Department back and was given another number to call. When FC called that number, however, she was told she had the wrong number. When FC insisted that the person tell her if Harvey was involved in the accident, the person put FC on hold, and FC eventually hung up.

23. FC then called the morgue and staff informed her that Harvey was dead.

24. DCI and the Office of Crime Victim Services notified Harvey's family (including FC) of his death during a meeting at the family's home on June 26, 2020, at 1:46 p.m.

VICTIM RIGHT AT ISSUE

25. **Right to be treated with dignity, respect, courtesy, sensitivity, and fairness.** Under the Wisconsin Constitution, a crime victim has a right to "be treated with dignity, respect, courtesy, sensitivity, and fairness." Wis. Const. art. I, § 9m(2)(a). The parallel statutory provision provides that a crime victim has a right to "be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies." Wis. Stat. § 950.04(1v)(ag). This right "does not impair the right or duty of a

public official or employee to conduct his or her official duties reasonably and in good faith.” *Id.*

CONCLUSIONS OF LAW

26. The Board concludes that FC was a crime victim because her brother was the victim of an alleged homicide by intoxicated use of a vehicle, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Stat. §§ 939.12, 950.02(1m), (4); *see also* Wis. Const. art. I, § 9m(1)(a)2.

27. The Board concludes that the Department is a public agency subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).

28. The Board concludes that none of the allegations in the complaint are time-barred because they relate to conduct that occurred within three years before the complaint was filed. *See* Wis. Admin. Code CVRB § 1.04(5).

29. The Board concludes that the allegations in the complaint implicate FC’s right to be treated with dignity, respect, courtesy, sensitivity, and fairness. *See* Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag).

30. The Board concludes that the Department violated that right.

31. FC contacted the Department by telephone to ask whether her brother was involved in the car accident that occurred earlier that morning. Rather than responding to FC’s direct inquiry, the Department put FC on hold,

attempted to transfer the call, and eventually gave her another number to call. The Department does not have a record of the number it provided to FC but suggests it was the number DCI provided the Department for public inquiries.

32. The Department contends it was unable to answer FC's question because DCI policy prevented the Department from informing FC of her brother's death and Department procedure prohibited death notification by telephone. The Department argues that, under the circumstances, it acted reasonably and in good faith and, therefore, could not have violated FC's right to dignity, respect, courtesy, sensitivity, and fairness. The Board disagrees.

33. Even if DCI was responsible for the official death notification and public inquiries, the Department did not relinquish all its duties with respect to the victims and their families. The Department had no plan for responding to family inquires. Its policies do not address family inquires, nor did it discuss family inquires with DCI. Because the Department knew that multiple agencies were involved in the investigation and that the official death notification would not be immediate (DCI policy sets a goal of 24 hours), the Department should have anticipated the possibility of a direct inquiry from the family and planned accordingly.

34. Without an appropriate plan for direct family inquiries, when FC called to ask about her brother's death, the Department's response was insufficient. If the Department did not believe it had authority to respond to FC's inquiry, it should have helped FC get the answer to her question by, for example, staying on the line with her until she got through to someone who could provide the information, contacting DCI itself, or asking to meet with FC in person. The Department failed in its duty to the victim and its actions under the circumstances were unreasonable.

35. The Board concludes that the Department's failure to plan for family inquiries and its resulting inadequate response to FC's call violated FC's right to be treated with dignity, respect, courtesy, sensitivity, and fairness. *See Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag).*

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainant has shown by clear and convincing evidence that the respondent violated her rights as a crime victim.
2. That the Board declines to issue a sanction. *See* Wis. Stat. § 950.09(2).
3. That this is a final, appealable order of the Board, and as such makes final and appealable any previous non-final orders of the Board.
4. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See* Wis. Admin. Code CVRB § 1.10.
5. That a copy of this final decision shall be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the “Service List” below.

Dated this 22nd day of May 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

F.C. c/o
Attorney Megan Lee
Judicare Legal Aid
401 N. Fifth Street, Suite 200
P.O. Box 6100
Wausau, WI 54402-6100
Delivered via Email: mlee@judicare.org

Chief Michael Steffes c/o
Attorney Pamela M. Ploor
Stafford Rosenbaum LLP
1200 N. Mayfair Rd., Suite 430
Milwaukee, WI 53226
Delivered via Email: PPloor@staffordlaw.com

CVRB Operations Director Julie Braun
Wisconsin Department of Justice
17 West Main Street – 8th Floor
Madison, WI 53703
Delivered via Email: braunja@doj.state.wi.us