

City of Albany

CITIZENS' POLICE REVIEW BOARD

Fourth Quarterly Report November 1, 2012

Submitted by:
The Government Law Center of Albany Law School
on behalf of the City of Albany Citizens' Police Review Board



Fourth Quarterly Report of the City of Albany
Citizens' Police Review Board

November 1, 2012

Submitted to:

The Mayor of the City of Albany
The Common Council of the City of Albany
The Police Chief of the City of Albany

BACKGROUND

Section 42-340 of Chapter 42, Part 33 of the Albany City Code requires the Government Law Center of Albany Law School to file, on behalf of the Albany Citizens' Police Review Board (CPRB), quarterly reports containing "statistics and summaries of citizen complaints, including a comparison of the CPRB's findings with the final determinations of the [Police] Department." This is the Fourth Quarterly Report so submitted in the year 2012.

DEFINITIONS

For purposes of this report, the following words and phrases shall have the meaning described in this report:

COMPLAINT – A written statement concerning police conduct which is either submitted to the Citizens' Police Review Board for filing with the Albany Police Department or filed directly with the Albany Police Department.

CPRB or BOARD – The Citizens' Police Review Board.

GOVERNMENT LAW CENTER – The Government Law Center of Albany Law School.

GRIEVANCE FORM – An APD form used to gather contact information from the complainant and forwarded to the Government Law Center for CPRB outreach purposes.

MEDIATION – A structured dispute resolution process in which a neutral third party assists the disputants to reach a negotiated settlement of their differences.

OFFICER – Any sworn police officer of the City of Albany Police Department affected by a citizen complaint.

OFFICE OF PROFESSIONAL STANDARDS (OPS) – The Professional Standards Unit of the City of Albany Police Department.

INTRODUCTION

The Government Law Center of Albany Law School was retained by the City of Albany to provide a number of services to the Board, the City, and the community. Many of these services are discussed, as appropriate, below.

ORGANIZATION OF THE BOARD

The following members constituted the Board during the fourth quarter of 2012:

Mickey Bradley	Andrew Phelan, Jr	Eugene Sarfoh
Marilyn Hammond	Anthony Potenza	Rev. Edward Smart
Maritza Martinez	David Rozen	Akosua Yeboah

During the fourth quarter, the Board's elected officers were:

Chair	Reverend Edward Smart
Vice-Chair	Anthony Potenza
Secretary	Andrew Phelan, Jr.

Appointments, Re-appointments, and Resignations

The Board filled the vacancy that was created by Patrick Toye's resignation from the Board in the third quarter. This position was filled by David Rozen who was appointed by the Common Council.

In September and October, the Government Law Center notified the Albany Common Council and the Mayor of the four (4) Board member's who's terms were about to expire. These members include Rev. Edward Smart, Andrew Phelan, Jr, Maritza Martinez, and Akosua Yeboah. Andrew Phelan, Jr. was not eligible for re-appointment as he had served two (2) consecutive terms. The three (3) other members are eligible for reappointment.

Committees and Task Force

The following committees and task force were operational in the fourth quarter of 2012:

<i>By-Laws and Rules</i>	Reverend Edward Smart (Chair) Anthony Potenza Akosua Yeboah
<i>Community Outreach</i>	Akosua Yeboah (Chair) Eugene Sarfoh Reverend Edward Smart (<i>ex-officio</i>)
<i>Complaint Review</i>	Andrew Phelan, Jr. (Chair) Mickey Bradley Marilyn Hammond Maritza Martinez Anthony Potenza Eugene Sarfoh Reverend Edward Smart Akosua Yeboah
<i>Mediation</i>	Reverend Edward Smart (Chair) Anthony Potenza
<i>Police Department Liaison- Policy Review/ Recommendations</i>	Andrew Phelan, Jr. (Chair) Anthony Potenza Reverend Edward Smart (<i>ex-officio</i>)

Public Official Liaison Reverend Edward Smart (Chair)
Andrew Phelan, Jr.
Anthony Potenza
Akosua Yeboah

Task Force on Monitors Akosua Yeboah (Chair)
Marilyn Hammond
Reverend Edward Smart (*ex-officio*)

COMMUNITY OUTREACH

Edward Smart was given the opportunity to speak to the students at the University at Albany's Educational Opportunity Program about the CPRB and the process to file a complaint.

MEDIATION

Meetings about the mediation process were ongoing. These meetings were attended by Chief Krokoff, members of the Government Law Center (GLC), Police Union, and OPS. While these talks are ongoing, the GLC began drafting a training curriculum for the mediators.

COMPLAINT REVIEW

Pursuant to Section II, Subsection I of the Board's Operating Procedures, each of the four (4) appointed members of the Committee on Complaint Review, in addition to the Chair of the Committee, will be responsible for the presentation of a particular complaint to the Board at its monthly meetings as assigned by the Chair of the Committee. Eleven (11) complaints were presented and reviewed in the fourth quarter of 2012.

The following Board members were appointed to serve on the Committee on Complaint Review:

October 2012 Mickey Bradley, Marilyn Hammond, Andrew Phelan Jr., Anthony Potenza, Chairman Edward Smart.

November 2012 Mickey Bradley, Marilyn Hammond, Andrew Phelan Jr., Anthony Potenza, Eugene Sarfoh, Chairman Edward Smart.

COMPLAINT SUMMARIES AND STATISTICS

Section 42-340C of Chapter 42, Part 33 of the Albany City Code charges the Board with providing "statistics and summaries of citizen complaints, including a comparison of [its] findings with the final determinations of the [Police] Department."

During the fourth quarter of 2012, the Board received seventeen (17) new complaints in addition to its twenty-four (24) active complaints and seventeen (17) suspended complaints. Monitors were appointed to investigate eleven (11) of the seventeen (17) new complaints. Of the

fifty-eight (58) complaints before the Board, the Board presented eleven (11) complaints for review and rendered findings for the allegation(s) contained in ten (10) complaints. The ten (10) complaints reviewed and closed contained a total of twenty (20) allegations of misconduct. As to the ten (10) complaints that were reviewed and closed, the Board made findings consistent with the preliminary findings of the Office of Professional Standards in all ten (10) cases.

Board action was taken in one (1), where the one complaint was tabled so a monitor could be assigned.

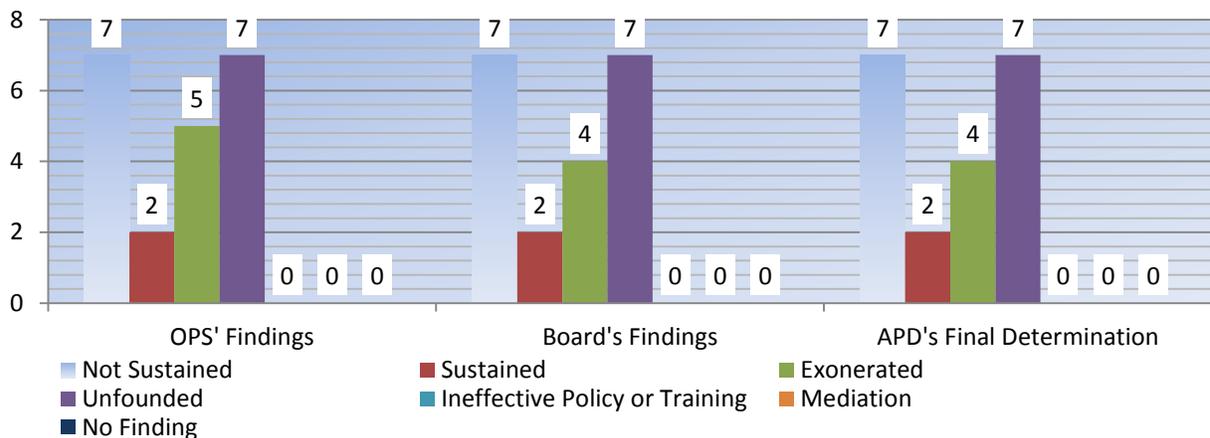


Figure 1: Comparison of Findings Made by the OPS, the Board, and the Albany Police Department during the Fourth Quarter of 2012.

Figure 1 depicts a comparison of the findings made by the Board and the findings made by the Police Department, including the preliminary findings of the Office of Professional Standards and the Albany Police Department's final determinations. The following is a summary of those complaints:

CPRB No. 3-12/OPS No. CC2012-010 [monitor appointed]

- Nature of the Allegation(s):
- 1) Use of Force – an officer pushed the complainant and forcibly escorted him back to the scene of a broken bottle; *and*
 - 2) Conduct Standards – the officer made unprofessional comments toward the complainant.

- OPS Preliminary Finding(s):
- 1) **Not Sustained** as to the use of force allegation; *and*
 - 2) **Not Sustained** as to the conduct standards allegation.

- CPRB Finding(s) :
- 1) **Not Sustained** as to the use of force allegation; *and*
 - 2) **Not Sustained** as to the conduct standards allegation.

APD Final Determination(s): 1) **Not Sustained** as to the use of force allegation; *and*

2) **Not Sustained** as to the conduct standards allegation.

CPRB No. 10-12/OPS No. CC2012-012 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards – an officer used profanity and yelled at the complainant for no reason; *and*

2) Arrest Authority and Procedures – an officer pulled the complainant over for no reason.

OPS Preliminary Finding(s): 1) **Not Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the arrest authority and procedures allegation.

CPRB Finding(s): 1) **Not Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the arrest authority and procedures allegation.

APD Final Determination(s): 1) **Not Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the arrest authority and procedures allegation.

CPRB No. 12-12/OPS No. CC2012-024 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards – an officer was extremely hostile and verbally assaulted the complainant;

2) Conduct Standard – an officer lost control of his emotions and did not show restraint; *and*

3) Call handling – the officer targeted the complainant because of a previously filed complaint.

OPS Preliminary Finding(s): 1) **Unfounded** as to the first conduct standards allegation;

2) **Sustained** as to the second conduct standards allegation; *and*

3) **Unfounded** as to the call handling allegation.

CPRB Finding(s): 1) **Unfounded** as to the first conduct standards allegation;

2) **Sustained** as to the second conduct standards allegation; *and*

3) **Unfounded** as to the call handling allegation.

APD Final Determination(s): 1) **Unfounded** as to the first conduct standards allegation;

2) **Sustained** as to the second conduct standards allegation; *and*

3) **Unfounded** as to the call handling allegation.

CPRB No. 13-12/OPS No. CC2012-032 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards – an officer yelled in the complainant’s face for two (2) minutes;

2) Use of Force – an officer handcuffed the complainant and threw him into a couch;

3) Use of Force – an officer pushed the complainant over a table while he was handcuffed and choked him for four (4) minutes;

4) Conduct Standards – the officer used profanity while talking to the complainant; *and*

5) Conduct Standards – a “superior officer” threatened the complainant.

OPS Preliminary Finding(s): 1) **Not Sustained** as to the first conduct standards allegation;

2) **Unfounded** as to the first use of force allegation;

3) **Unfounded** as to the second use of force allegation;

4) **Not Sustained** as to the second conduct standards allegation; *and*

5) **Not Sustained** as to the third conduct standards allegation.

CPRB Finding(s): 1) **Not Sustained** as to the first conduct standards allegation;

2) **Unfounded** as to the first use of force allegation;

3) **Unfounded** as to the second use of force allegation;

4) **Not Sustained** as to the second conduct standards allegation; *and*

5) **Not Sustained** as to the third conduct standards allegation.

APD Final Determination(s): 1) **Not Sustained** as to the first conduct standards allegation;
2) **Unfounded** as to the first use of force allegation;
3) **Unfounded** as to the second use of force allegation;
4) **Not Sustained** as to the second conduct standards allegation;
and
5) **Not Sustained** as to the third conduct standards allegation.

CPRB No. 14-12/OPS No. CC2012-033 [no monitor appointed]

Nature of the Allegation(s): Arrest Authority and Procedure – the complainant was unlawfully detained, searched, and arrested.

OPS Preliminary Finding(s): **Exonerated**

CPRB Finding(s): **Exonerated**

APD Final Determination(s): **Exonerated**

CPRB No. 15-12/OPS No. CC2012-036 [no monitor appointed]

Nature of the Allegation(s): 1) Call Handling – officers entered the complainants home for no reason with their guns drawn.

OPS Preliminary Finding(s): 1) **Exonerated**

CPRB Finding(s): 1) **Exonerated**

APD Final Determination(s): 1) **Exonerated**

CPRB No. 18-12/OPS No. CC2012-038 [no monitor appointed]

Nature of the Allegation(s): Conduct Standards – officers stopped the complainant as the result of a felony vehicle stop, handcuffed her and her daughter, and told the complainant to shut up.

OPS Preliminary Finding(s): **Exonerated**

CPRB Action: At the Board’s September 13, 2012 meeting the Board moved to assign a monitor, the motion passed and a monitor was assigned. This case will be reported on after the monitor is able to make his/her report.

CPRB No. 19-12/OPS No. CC2012-040 [monitor appointed]

Nature of the Allegation(s): Violation of Civil Rights – officers violated the complainants civil rights by forcing entry into his home with guns drawn, handcuffing the complainant and his girlfriend, and searching for weapons.

OPS Preliminary Finding(s): **Exonerated**

CPRB Finding(s): **Exonerated**

APD Final Determination(s): **Exonerated**

CPRB No. 21-12/OPS No. CC2012-043 [no monitor appointed]

Nature of the Allegation(s): Call Handling – an officer filed a false report that the complainant’s birth certificate was lost and not stolen.

OPS Preliminary Finding(s): **Unfounded**

CPRB Finding(s): **Unfounded**

APD Final Determination(s): **Unfounded**

CPRB No. 26-12/OPS No. CC2012-063 [no monitor appointed]

Nature of the Allegation(s): 1) Department Vehicle Operation – an officer struck the complainant’s vehicle and did not stop; *and*
2) Conduct Standards – an officer was rude and not helpful when the complainant called the station.

OPS Preliminary Finding(s): 1) **Sustained** as to the first call handling allegation; *and*
2) **Not Sustained** as to the second call handling allegation.

CPRB Finding(s): 1) **Sustained** as to the first call handling allegation; *and*
2) **Not Sustained** as to the second call handling allegation.

APD Final Determination(s): 1) **Sustained** as to the first call handling allegation; *and*
2) **Not Sustained** as to the second call handling allegation.

CPRB No. 28-12/OPS No. CC2012-060 [no monitor appointed]

Nature of the Allegation(s): Call Handling – a sergeant stopped the complainant for failing to signal; searched and caused damage to the complainant’s vehicle.

OPS Preliminary Finding(s): **Exonerated**

CPRB Finding(s): **Exonerated**

APD Final Determination(s): **Exonerated**

CPRB No. 29-12/OPS No. CC2012-066 [no monitor appointed]

Nature of the Allegation(s): Call Handling – an officer targeted the complainant by questioning and stopping him on two (2) occasions.

OPS Preliminary Finding(s): **Unfounded**

CPRB Finding(s): **Unfounded**

APD Final Determination(s): **Unfounded**

DEFINITION OF CPRB FINDINGS

Section 42-344A of Chapter 42, Part 33 of the Albany City Code charges the Board with, after review and deliberation of an investigation, shall, by majority vote, make one of the following findings on the case:

(1) *Sustained* – where the review discloses sufficient facts to prove the allegations made in the complaint.

(2) *Not Sustained* – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.

(3) *Exonerated* – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

(4) *Unfounded* – where the review shows that the act or acts complained [of] did not occur or were misconstrued.

(5) *Ineffective Policy or Training* – where the matter does not involve guilt or lack thereof, but rather ineffective departmental policy or training to address the situation.

(6) *No Finding* – where, for example, the complaint failed to produce information to further the investigation; or where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; or where the complainant withdrew

the complaint; or where the complainant is unavailable to clarify the complaint; or where the officer is no longer employed by the City.

(7) *Mediation* – where the complaint is resolved by mediation.

GRIEVANCE FORM PROCESS

Background

In the second quarter of 2008, former Chief of Police James Tuffey introduced a new system to the Albany Police Department, where complainants who have a grievance with a member of the APD, but opt not to complete a CPRB complaint form, would have their contact information provided to the CPRB using grievance forms so that the CPRB can reach out to them. This process ensures that individuals would not lose out on having their complaint reviewed by the Board. The OPS agreed to implement this grievance form process as part of its standard operating procedure. Under this system, every complainant who files a grievance form with the OPS will have a full opportunity to complete a CPRB complaint form.

Summaries and Statistics

During the fourth quarter of 2012, the Board received twenty-six (26) new grievance forms from the OPS, in addition to its three hundred and sixty-one (361) grievance forms that were received since the inception of the grievance form process in 2008. Out of the twenty-six (26) new grievance forms that were filed in the fourth quarter of 2012, seven (7) citizen complaint forms were filed. Of the three hundred and eighty-seven (387) grievance forms received by the Board since 2008, one hundred and six (106) complaint forms were filed.

MEETINGS

The Board met as a whole two (2) times for the conduct of business during the fourth quarter. Meetings were held on September 13, 2012 and October 11, 2012. Both of the two (2) meetings were held at the GWU the Center, 274 Washington Avenue, in the Teen Center Conference Room. There was a public comment period at each meeting.

The Board meets on the second Thursday of every month so as not to conflict with the monthly meetings of the County Legislature, and to encourage media and public participation at its meetings.

TRAINING

Section 42-339 of Chapter 42, Part 33 of the Albany City Code requires that “the Government Law Center . . . provide, to CPRB members, and the members . . . undergo continuing education . . .”

On October 23 2012 David Rozen completed the GLC orientation.

NACOLE

In October 2012, Chairman Edward Smart, Board member Marilyn Hammond, Board Member Tony Potenza, OPS Detective Andrew Montalvo, and Coordinator for the Board Sharmaine Moseley attended the Annual NACOLE Conference in San Diego, CA. The conference provided an opportunity for community members, practitioners of police oversight, and law enforcement officials to exchange information about police oversight and law enforcement accountability. Some of the issues discussed at the conference included: assessing the quality of an investigation and police interaction with people with mental illness.

MINUTES

At its September 13, 2012 meeting, the Board voted unanimously to approve its March 8 2012, April 12, 2012, and May 17, 2012 minutes prepared and submitted by the Government Law Center.

At its October 11, 2012 meeting, the Board voted unanimously to approve its June 12, 2012 minutes prepared and submitted by the Government Law Center.

GOVERNMENT LAW CENTER

During the fourth quarter of 2012, the Government Law Center engaged in the following activities as directed by the local law and pursuant to its contractual obligations with the City of Albany:

- Organized and participated in meetings on September 17 and October 2 between Chairman Edward Smart and Times Union reporter Alysia Santo for an interview about the CPRB process.
- Organized and provided an orientation training for member David Rozen on October 23 2012.
- Drafted and forwarded to the Board its March 8 2012 minutes for review.
- Drafted and forwarded to the Board its April 12, 2012 minutes for review.
- Drafted and forwarded to the Board its May 17, 2012 minutes for review.
- Drafted and forwarded to the Board its June 12, 2012 minutes for review.
- Forwarded the Board's First Quarterly Report for 2011 and Tenth Annual Report to its members, City of Albany public officials, and residents.
- Attended the 18th Annual NACOLE Conference in San Diego, CA, in October 2012.

- Drafted and forwarded correspondence to NACOLE regarding the Board member designated to exercise the CPRB's vote at its annual conference.
- Processed travel reimbursement for the three (3) Board members who attended the NACOLE Conference in San Diego, CA.
- Forwarded correspondence to the Albany Common Council and Mayor Jennings regarding the expiring terms of Chairman Edward Smart, Maritza Martinez, Andrew Phelan, and Akosua Yeboah.
- Drafted and forwarded correspondence to Chief Steven Krokoff requesting the APD's final determinations for complaints reviewed by the Board.
- Forwarded correspondence to the Board from Chief Steven Krokoff on the APD's final determinations for complaints reviewed by the Board.
- Notified organizations, community groups, and complainants of the Board's public meeting by posting a press release in City Hall, and sending out via mail and e-mail notices and press releases.
- Corresponded with the Citizens Network of Protection in Evanston, Illinois who had questions about how the CPRB operated and how board members were trained.
- Drafted and forwarded correspondence to the City regarding Freedom of Information Law (FOIL) requests.
- Forwarded the updated database scorecard and the grievance form chart to the OPS and members of the Board.
- Forwarded to the Board press clippings regarding the Albany CPRB.
- Continued the development of the CPRB electronic database.

In addition, the Center performed the following administrative tasks:

- Arranged logistics for and coordinated two (2) regular monthly meetings; two (2) committee/taskforce meetings; and one (1) annual conference including: securing dates, times, and locations for each meeting, and providing notice to the affected parties and to the public;
- Attended two (2) regular monthly meetings; one (1) annual conference; and two (2) committee/taskforce meetings;
- Prepared and assembled regular monthly meeting packets for Board members, including: photocopying complaints, reports, and accompanying documents for review;

- Prepared a summary of new complaints filed with the Board for presentation by the Chair of the Committee on Complaint Review at each monthly meeting;
- Prepared findings forms for the recording of Board determinations by members of the Committee on Complaint Review at each monthly meeting;
- Reported all activities related to Board business at each monthly meeting;
- Recorded and transcribed the minutes of each monthly meeting;
- Notified affected parties of Board findings, recommendations, and requests following each monthly meeting;
- Conducted a monthly accounting and inventory of complaints filed with the Board, including a summary of active, suspended, and closed complaints, recommendations, and pending requests submitted to the Chief of Police, the Office of Professional Standards, and the Corporation Counsel's Office;
- Reported monthly complaint accounting and inventory to the Board at each of its fourth quarter meetings;
- Assisted with typing and forwarding the Board's requests and recommendations to the Chief of Police, the Office of Professional Standards, and/or the Corporation Counsel's Office;
- Received and logged complaints and grievance;
- Opened and closed complaint files;
- Forwarded complainant related correspondence to Board members;
- Updated and maintained the Board's website to include reports, new meeting minutes, new Board members and revised meeting schedule;
- Maintained regular communications with Board members, the Police Department, and the Corporation Counsel's Office; *and*
- Answered inquiries from the community and the media about the Board and the complaint review process.

CONCLUSION

The Board had a steady fourth quarter, which included: holding two (2) regular monthly meetings; two (2) committee/task force meetings; and reviewing eleven (11) complaints and rendering findings for allegation(s) contained in ten (10) complaints. In addition, three (3) Board

members attended the annual NACOLE conference in San Diego, CA. The Board continued to work collaboratively with the APD on its initiatives, which include mediation, and the Early Warning System.

Respectfully submitted,

Government Law Center of Albany Law School
Approved by and submitted on behalf of the
City of Albany Citizens' Police Review Board

Dated: November 1, 2012