

City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue – Teen Center Community Room
May 15, 2014
6:00 p.m. - 8:00 p.m.

Present: Mickey Bradley, Marilyn Hammond, Maritza Martinez, Anthony Potenza, Eugene Sarfoh, Reverend Edward Smart and Akosua Yeboah

Absent: David Rozen

I. Call to Order and Roll Call

Chairman Edward Smart called the meeting to order at 6:07 p.m.

II. Approval of the Agenda

Marilyn Hammond moved to approve the agenda. Akosua Yeboah seconded the motion. The motion carried unanimously.

III. New Business

A. Complaint(s) for Board Review

CPRB No. 12-13/OPS No. CC2013-017 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that she was wrongfully arrested by officers which resulted in her missing a week of work while she was admitted to the Albany Medical Center Mental Health Unit.

Ms. Hammond reported that she reviewed the following documents: three (3) Incident Reports; Call Sheet; two (2) Confidential Reports; and an Emergency Admission Log.

Ms. Hammond reported that based on the Albany Police Department's Office of Professional Standard's (OPS) investigation, the complainant and officers were interviewed and departmental paperwork was obtained and reviewed.

Ms. Hammond reported that based upon the OPS investigation it was found that the allegations stemmed from an incident where the complainant's daughter called 911 because the complainant was banging on her door and windows with a screwdriver, while yelling "I'm going to gouge your eyes out." Ms. Hammond reported that the complainant was agitated during her interview and was fixated on the fact that she had only one (1) screwdriver in her possession at that time. It was noted that while the complainant was being held at Albany Medical Center she assaulted four (4) members of the medical staff.

Ms. Hammond reported that the OPS investigation revealed that the complainant had a history of mental illness and at the time the complainant had been off her medication. Ms. Hammond further reported that the officers stated that at the time of the incident, the complainant was screaming and not making sense. It was reported that based on these facts the complainant was arrested under Mental Health Law Section 9.41. Ms. Hammond further reported that the complainant would not remain calm during phone interviews. The OPS detectives left voicemail messages for the complainant to allow the complainant to clarify her position and these messages were not returned. Ms. Hammond reported that the OPS finding for the call handling allegation in this complaint was *exonerated* where the acts prove the basis for the complaint occurred but the review shows that the acts were proper. Ms. Hammond stated that based upon these facts she concurred with the OPS finding of *exonerated*.

Ms. Hammond reported that monitor Al Lawrence was assigned to this case and was present. Mr. Lawrence stated that this allegation is not really one with a factual dispute but simply a question of whether the officer had reason to believe that she should be detained for mental health. Mr. Lawrence stated that he agreed that there were sufficient facts for the officers to believe that the complainant should have been detained.

Ms. Hammond asked if complainant was present. It was noted that the complainant was not present.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* for the call handling allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

CPRB No. 20-13/OPS No. CC2013-047 (Presented by Anthony Potenza)

Anthony Potenza stated that this case contains one (1) allegation of improper call handling and one (1) of conduct standards. This incident occurred on May 5, 2013.

Mr. Potenza reported that he reviewed the following documents: Citizen Complaint Form; APD Civilian Complaint Report; OPS Confidential Report; Call Tickets, nine (9) IDC's; Officer's Log; and APD Incident Report.

Mr. Potenza summarized the circumstances surrounding the complaint. He stated that officers were responding to reports that a group of people were throwing objects, fighting, and causing public disorder. The officer and his partner were in the process of placing two (2) individuals in custody when the complainant approached the officers and stated that they were arresting her son. The officers advised the complainant that she could meet him at the station or that her son would be able to call her from booking. Mr. Potenza stated that according to the officers involved the complainant became agitated and screamed expletives at the officers. The complainant continued to dispute the arrest and was asked to leave the area and was told multiple times before she complied.

Mr. Potenza summarized the OPS finding for the call handling allegation as *not sustained* where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officer threatened to

arrest her for “obstructing justice” and that an officer stepped on her foot, pushed her and indicated that her son and nephew’s behavior was the result of being raised by a black parent. Mr. Potenza stated that on the OPS investigation, the officer stated under oath that he never claimed that the complainant would be arrested. His main concern at the time was the two (2) individuals in custody and that he wanted to control the situation. The officer claimed that he never stepped on the complainant’s foot or pushed her. Mr. Potenza stated the OPS report indicated that the officer did not make the arrest because the individual was raised by a black parent, nor did he say children act the way they do because of their parents. Mr. Potenza reported that the complainant’s son was arrested on charges of disorderly conduct, resisting arrest, and instigating a riot. It was further reported that the complainant’s son had been attempting to flee from custody which ended with him being chased and tased. Mr. Potenza reported that monitor Al Lawrence was assigned to this complaint and was present.

It was noted that the complainant was not present at the meeting.

Mr. Lawrence stated that the arrest of the complainant’s son and nephew are not being disputed in this case. While the complainant was disputing their arrest at the time of the incident, her complaint does not allege any wrong doing in the arrests. Mr. Lawrence stated it is the officer’s conduct toward her that she is disputing, particularly the pushing, stepping on her foot and the alleged statements. Mr. Lawrence reported that there is no evidence in this case other than the statements from the officer and the complainant.

Chairman Edward Smart asked if there was any audio or video of the incident.

Mr. Potenza replied that there was no audio or video of the incident. He believed that it may have been due to the time period in which the complaint was filed.

OPS Commander Michael Hicks stated that if the complaint was filed thirty (30) days after the incident the video would not have been retained, but it is also possible that the officers may have not have used the DVR.

Mr. Potenza stated that the officers were trying to stop a disorderly conduct incident and not engaged in a traffic stop so the officers were not required to turn on the DVR.

Maritza Martinez asked if the DVR unit is only used if there is a traffic stop.

Commander Hicks replied that the DVR must be engaged if there is a traffic stop, a pursuit, a potential DWI, and the instigation of a field sobriety test, or if a supervisor deems it necessary to turn on the DVR. Commander Hicks further stated that it is not a part of departmental policy to turn the DVR on if people are at the side of a vehicle as the DVR would not capture any of the incidents because the cameras are front facing.

Ms. Martinez stated that she is frustrated with these cases because she can’t see or hear any part of the case because it is not policy to record these incidents turning many of these cases into “he said, she said.” Mr. Potenza stated that he believed this case was thoroughly investigated based on the evidence in the confidential report. It appeared that the OPS attempted to make contact for more details with the complainant or potential witnesses and no one came forward.

Mr. Lawrence stated that the complainant never identified anyone as a witness, not even her son.

Chairman Smart inquired about video capabilities for officers on foot patrolling. Commander Hicks responded that the department does not have cameras on the officers themselves.

Anthony Potenza moved to concur with the OPS finding of *not sustained* for the call handling allegation. Maritza Martinez seconded the motion. The motion carried unanimously.

Mr. Potenza summarized the OPS finding for the conduct standards allegation as *not sustained* where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. Based on the OPS investigation, the officer stated that he did not have any physical contact with the complainant. The other officer on scene who saw the interaction did not observe any contact between the target officer and the complainant.

Anthony Potenza moved to concur with the OPS finding of *not sustained* for the conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 43-13/OPS No. CC2013-056 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that an officer acted unprofessionally by yelling at her “What the f**** did I tell you about having company? You are not allowed to have company. You’re f*****g stupid.”

Chairman Smart stated that no monitor was assigned to this case.

Chairman Smart reported that he reviewed the following documents: Citizens Grievance Notification; APD Blotter; Arrest Record; Appearance Ticket; Citizens’ Complaint Form; and OPS Confidential Report. Chairman Smart reported that this incident took place in a residential neighborhood on a Tuesday night going into Wednesday morning. At that time there was a party going on in a second floor apartment with approximately eighty (80) to one hundred (100) people. This party contained alcohol and alcoholic beverages being sold and there was a cover charge to gain access to the party. Chairman Smart reported that the police received calls about this party to come and shut it down at approximately midnight or one (1) am. This was during the work week with people needing to go to work the next day. When the officers arrive on the scene there was a substantial crowd gathered there.

Chairman Smart summarized the OPS finding for the call handling allegation as *not sustained* where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer acted unprofessionally by yelling at her saying, “What the f**** did I tell you about having company? You are not allowed to have company. You’re f*****g stupid.” Chairman Smart reported that based on the OPS investigation, out of the witnesses the complainant

identified, one (1) witness was unable to be located, and the other witness was unwilling to speak to the OPS detectives. Officers have been sent to this location before because of loud parties in the past. This incident included a large amount of people somewhere between eighty (80) and one hundred (100) people. Some of these people were blocking the roadway and others were throwing fireworks at the officers. During the incident the complainant was given a GCO because the party was operating at a level considered for a night club. The officers involved denied making any inappropriate statements or using profanity towards the complainant. A code inspector who was called to the scene was interrogated. He stated that he remembered the incident but had no knowledge of the officers using bad language.

Chairman Smart recommended that the OPS finding of *not sustained* be upheld because this party was held on a weekday, with loud noise and fireworks being set off. The officers were vastly outnumbered and multiple arrestees were made and the complainant was given a GCO. In addition, there was no evidence of the alleged inappropriate conduct of the officers.

Chairman Edward Smart moved to concur with the OPS finding of *not sustained* for the call handling allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 44-13/OPS No. CC2013-034 (Presented by Eugene Sarfoh)

Eugene Sarfoh stated that this complaint stemmed from an interaction that occurred in front of an apartment building on Central Avenue. It involves an allegation of call handling.

Mr. Sarfoh reported that the complainant alleged that he was harassed by an officer as he was sitting in front of a building speaking to the tenants of that building.

Mr. Sarfoh reported that he reviewed the following documents: Confidential Report; Citizens' Complaint Form; IDC; Mug Shot; and Complainant Arrest Record. He stated that the complainant's arrest record was relevant.

Mr. Sarfoh reported that the complainant does not live in the building. The manager of the building advised him that he was not allowed on the premises. The complainant was advised to not be on the premises after complaints from tenants, allegations of theft, and instances where the complainant was in possession of stolen property.

Mr. Sarfoh reported that at the date in question the complainant was sitting outside of the building on a bench talking to some residents of the building. The officer involved was on patrol at the time and was walking past the location. The officer was aware of the complainant's situation and reminded the complainant that he was not allowed on the premises. The complainant felt that he was being targeted and harassed by the officer. Additionally, the complainant was unhappy because there were other residents there at the time. He felt that it was a calculated move on the part of the officer to defame him in front of the residents.

Mr. Sarfoh reported that two (2) witnesses were located with the help of the building manager and a video of the premises. One witness did not remember this encounter but stated that he knew the complainant and was aware that the complainant was not allowed in the building. The second witness indicated that he was friendly with the complainant and had loaned the complainant an access card but when he had heard of the thefts he took it back. The manager was interviewed. He reiterated the issues he had had with the complainant, including an instance where the complainant impersonated a manager of the building to gain access to restricted areas.

Mr. Sarfoh summarized the OPS finding for the call handling allegation as *exonerated* which is where the acts which provide the basis for the complaint occurred but the review shows that such acts were proper. Based on the OPS investigation, the officer walked past the complainant and reminded him that he was not allowed on that particular premise.

Mr. Sarfoh stated that there is no indication that the officer did anything wrong, in light of the complainant's background that the officer was well aware of.

Akosua Yeboah inquired as to when the complainant eventually cooperated and left the premises.

Mr. Sarfoh responded that it was the officer's position that technically the complainant was on the premises and he simply was told that he was not to go in the building. The complainant took offense that there were other people around. The tenants who were around at the time were aware of the complainant's history and the officer simply reminded the complainant of this fact and moved on. There was no audio of the situation. This was not an incident that would even generate an incident report.

Eugene Sarfoh moved to concur with the OPS finding of *exonerated* for the call handling allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 48-13/OPS No. CC2013-123 (Presented by Mickey Bradley)

Mickey Bradley summarized the complaint. The complainant alleged that on the evening of August 31, 2013, the complainant and his girlfriend were on the porch of the house they lived in, with their music system playing. An officer responded to a complaint of loud music at 12:48 a.m. This was the second such complaint that evening, though the first attended by this officer, whose shift had begun at midnight and who was a few houses away making an arrest at the time of the call. According to the officer, at least 80 people were in front of the property, mostly walking around or lingering. The officer stated that when the complainant saw himself and another officer put a person in his patrol vehicle, the complainant turned the music up. The officer asked the complainant to turn the music down, and says the complainant replied, "Don't shine that f*****g flashlight in my eyes. Get that s**t out of my face." The officer then walked over to the house, told the complainant to turn the music off, and instructed him to get his ID, ultimately resulting in the issuance of a GCO.

Mr. Bradley summarized the OPS finding for the arrest authority and procedures allegation as *exonerated* where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. The complainant alleged that the officer came onto the premises and requested to see the complainant's ID. Based on the OPS investigation, the officer was investigating a complaint of loud music and there were many people in front of the property. The officer was within his rights to walk on the property and ask for identification.

Mickey Bradley moved to concur with the OPS finding of *exonerated* for the call handling allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Bradley summarized the OPS finding for the first conduct standards allegation as *exonerated* where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. The complainant alleged that the officer shined his flashlight in the complainant's and his girlfriend's faces after being asked not to do so. Based on the OPS investigation, given the time of day and the dark conditions, it was reasonable for the officer to shine his flashlight at the complainant and his girlfriend. According to the complainant's girlfriend, the officer shined his light at her just once, after which she went into the residence.

Mr. Bradley stated that OPS Detective Reith did a very thorough investigation of the possibility of this one-time flashlight incident causing the girlfriend, who has epilepsy, to have a seizure a month or so after the date in question. It was reported that this allegation is not something specifically cited in the complaint, but it was alleged by the complainant in his interview, a couple of months after the complaint was filed. Mr. Bradley reported that both Deborah Bain, Program Director for the Northeast Epilepsy Foundation, and Dr. Michael Gruenthal, Chair of the Department of Neurology at Albany Medical College, said it would be very unusual for a person to have a seizure a month later due to a flashlight being shined in her face. Photosensitive epilepsy in adults is very rare and where it does exist, it is usually triggered by a strobe light, rather than a steady light, and the seizure usually occurs immediately.

Mickey Bradley moved to concur with the OPS finding of *exonerated* for the first conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Bradley summarized the OPS finding for the second conduct standards allegation as *not sustained* where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officer used vulgarity in referring to the complainant's music system. Based on the OPS investigation, the officer stated that he told the complainant he could play his music, but not so loudly. He does not recall the exact language used but denies that any of it was vulgar.

Mickey Bradley moved to concur with the OPS finding of *not sustained* for the second conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Bradley summarized the OPS finding for the third conduct standards allegation as *not sustained* where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officer kicked over items when walking on the porch. The officer stated that he did not. Mickey Bradley moved to concur with the OPS finding of *not sustained* for the third conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 1-14/OPS No. CC2013-104 (Presented by Akosua Yeboah)

Akosua Yeboah reported that this complaint involved a conduct standards allegation. She stated that no monitor was assigned.

Ms. Yeboah reported that she reviewed the following documents: Confidential Report; Call Details; IDCs; Correspondences to the Complainant; Incident Report; Arrest Report; Citizens' Complaint Form; and a Medical Report.

Ms. Yeboah summarized the facts as they were presented in the case file. Ms. Yeboah reported that the APD had been called about a woman chasing people with a pair of scissors. The description that was given matched the complainant and in fact turned out to be the same person. The complainant had a previous injury to her head due to medical treatment. When the arresting officer removed her hat to inspect it, the previous injuries started to bleed. The complainant was then transported to Albany Memorial Hospital and then to CDPC for an evaluation.

Ms. Yeboah asked if complainant was present. It was noted that the complainant was present. The complainant was given the floor.

The complainant stated that everything that was said was a lie. The complainant expressed her dissatisfaction with her treatment by the police.

Ms. Yeboah thanked the complainant for coming and stated that while the complainant felt that she was acting in self-defense by pulling out scissors, what others saw was someone with what appeared to be a weapon in the parking lot.

The complainant stated that she believes the officers can destroy or tamper any evidence that there was.

Ms. Yeboah reported that there was no monitor assigned and there was no video of the incident.

Ms. Yeboah stated that based on the OPS report when the officers responded they were able to confirm that the complainant was in fact the person described in the call. It appears the proper protocol was followed by referring the complainant for medical evaluation and then for a psychological evaluation. Ms. Yeboah stated that based upon her review of the case, although the complainant claimed to have been acting in self-

defense, the complainant's detention was consistent with the APD's Standard Operating Procedure and police training given the danger that the complainant's actions posed to the general public.

The complainant again expressed her dissatisfaction with the Board's review of her case stating that the doctors that evaluated her apologized for her treatment.

Chairman Smart asked if there was an arrest made in this case.

Ms. Yeboah replied that the complainant was arrested because she matched the description of the person chasing people with scissors, so she was detained for both the public and her own safety.

The complainant stated that she was not actually arrested but was sent for an evaluation, and then released after nine (9) hours by the psychologist.

Chairman Smart stated that what the Board is doing is reviewing how OPS investigated the complainant's case, and how that individual officer acted. Chairman Smart stated that while it seems that the officer acted harsh, the officer was actually acting within the operating procedures which are designed for everyone's protection.

Akosua Yeboah moved to concur with the OPS finding of *unfounded* for the call handling allegation. Eugene Sarfoh seconded the motion. The motion carried unanimously.

CPRB No. 2-14/OPS No. CC2014-005 (Presented by Akosua Yeboah)

Akosua Yeboah stated that this complaint contained two (2) counts of call handling. Ms. Yeboah summarized the facts of the complainant. The complainant matched a description of someone who was in a fight and was approached to be identified. Ms. Yeboah stated, that the OPS investigation revealed the complainant was initially uncooperative when the police ordered him to leave his vehicle. The orders were repeated and the officers then threatened to render the complainant cooperative with tasing. The complainant further alleged that he was not informed as to why he was being stopped. The complainant alleged that the police used strong language and expletives.

Ms. Yeboah reported that based on the OPS investigation, the officers involved stated they used strong language without expletives, and they did inform the complainant of why he was being stopped after the fact. Ms. Yeboah reported that there were no witnesses to corroborate either side of the story.

Ms. Yeboah stated that this is a situation where a person is in a vehicle and is approached by officers because he matched the description of someone who was in a fight. When the complainant was ordered out of the vehicle he was uncooperative but when he was warned he would be tased if he did not leave the vehicle, he began to cooperate.

Ms. Yeboah summarized the OPS finding for the call handling allegation as *unfounded*. Based on the OPS investigation, the police ordered the complainant out of the car and he did not comply with that order. The police then escalated the command with the threat of

being tased after which the complainant did comply. Ms. Yeboah stated that the police were acting appropriately because the complainant was being uncooperative while sitting behind the wheel of a vehicle which could have put the officers in danger.

Chairman Smart asked whether the officers admitted to using the taser on the complainant if he did not leave his vehicle. Ms. Yeboah replied that the officers did tell the complainant they would use a taser on him, but the allegation is that they used expletives, and that was denied by the officers. Ms. Yeboah stated that the complainant was behind the wheel of a vehicle and was being uncooperative. After asking the complainant to leave the vehicle the next step was to tell him if he did not leave they would tase him and force him out. Ms. Yeboah stated that because he was behind the wheel of a vehicle they were afraid that he could use his car as a dangerous instrument against them or someone else.

Akosua Yeboah moved to concur with the OPS finding of *unfounded* for the call handling allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Ms. Yeboah summarized the OPS finding for the second call handling allegation as *not sustained* where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officers did not explain the reason for his detention and his police contact. Based on the OPS investigation, both officers claimed that they explained to the complainant the reason for the contact after the fact. The OPS file did not contain any evidence to indicate that the officers did not explain to the complainant why he was being stopped.

Akosua Yeboah moved to concur with the OPS finding of *not sustained* for the second call handling allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Ms. Yeboah stated that she has an additional finding to report on this case as it was identified by the detectives who reviewed the complaint. The OPS found that the officers involved handcuffed the defendant during the identification procedure known as a “show up.” This is an improper technique because it is suggestive to the witness that the complainant was the person sought. The OPS found this to be enough for a finding of ineffective policy or training for the officers involved.

Ms. Yeboah stated that while she commended the OPS on taking the additional step in identifying the additional finding, she stated that she believed that there should have been a finding in light of the fact that there was no video recording of the event. Ms. Yeboah stated that she believed that either the officers didn’t follow procedures in the SOP which requires the recording equipment be turned on or that the video was unable to be located. Ms. Yeboah continued that regardless of the reason it indicates a systemic problem with respect to the DVR use. Evidence from the video might have confirmed both counts of call handling for this complainant. Ms. Yeboah recommended that the OPS investigate why the video was not available and that its findings should be reported to the CPRB.

Commander Hicks stated that this case was not a traffic stop, because the officers first encountered the complainant who was not in a vehicle at the time.

Chairman Smart asked what a “show up” is.

Commander Hicks stated that a “show up” is done if a crime is committed, a suspect is apprehended and that suspect is then quickly shown to the victim. Commander Hicks reported that the department is working on the camera system. They are in the process of adding a rear facing camera, and to make the front facing camera always recording.

Mr. Bradley mentioned that he is concerned because the issues with the DVR seemed systemic.

Commander Hicks stated that with the amount of technology being used there sometimes are issues in the system and individual units.

IV. Report from the Chair

Chairman Edward Smart stated that he gave his report as the Board has moved through its agenda.


V. Public Comment

Chairman Edward Smart opened the floor for public comment. It was noted that there were no comments.

VI. Adjournment

Chairman Edward Smart adjourned the meeting at 7:12 p.m.

Respectfully Submitted,


Akosua Yeboah
Secretary