

City of Albany  
Citizens' Police Review Board  
January 14, 2002

HBH Room - Albany Public Library (Washington Avenue)

In Attendance: Manuel Alguero, Kenneth Cox, Morris Eson, Marilyn Hammond, Judith Mazza, Herman Thomas, Paul Weafer and Michael Whiteman

Absent: Eleanor Thompson

Call to Order & Roll Call

Chairman Kenneth Cox called the meeting to order at 7:10pm. He revised the prepared agenda to include the discussion of resignations of Board Member Morris Eson and CPRB Monitor Linda Davis.

Mr. Paul Weafer noted an additional minor change to the agenda under *New Business/New Complaints*: 11 new complaints have been received since the December 3, 2001 meeting.

Resignations

Chairman Cox read the resignation letter Morris Eson sent to the Hon. Helen DesFosses, President of the Albany Common Council. Mr. Eson's resignation will be effective March 1, 2002. Chairman Cox praised and thanked Mr. Eson for his hard work, dedication and friendship.

Chairman Cox also read the resignation letter of CPRB Monitor Linda Davis, which explained that her resignation was necessitated by her relocation away from the area. Ms. Davis stated that she would be able to complete the two cases she is currently monitoring. Chairman Cox thanked Ms. Davis for her service to the CPRB.

Approval of Last Meeting Minutes

Mr. Michael Whiteman moved to approve the minutes of the last meeting. Mr. Herman Thomas seconded the motion. The motion was carried unanimously.

Committee Reports

Mr. Manuel Alguero reported the completion of the Spanish language version of the complaint form.

Chairman Cox reported that he, Ms. Judith Mazza and Mr. Thomas are trying to reschedule a meeting with the Police Union leadership. Chairman Cox also reported

that he had met with the Commissioner to follow-up on concerns previously expressed by the CPRB, including development of the early warning system.

### Operating Procedures

Mr. Weafer summarized the proposed changes to the Operating Procedures as set forth in a red-lined version entitled "Revision 1" and dated December 3, 2001. A new subdivision I is added, and the former subdivision I is relettered to new subdivision J, in section II of the CPRB Operating Procedures previously approved on August 20, 2001. The new subdivision provides for the appointment of a Committee on Complaint Review to consist of a Chair and four additional CPRB members to be appointed by the CPRB Chair. The Chair of the new Committee shall serve for one year. Two of the other four members shall rotate monthly on and off the Committee. Each Committee member shall be responsible for reporting on one of the cases at each monthly meeting of the CPRB.

Mr. Weafer requested that the Office of Professional Standards submit its preliminary reports on complaints to the CPRB at least 10 days in advance of a meeting. Mr. Todd Burnham, representing the Corporation Counsel, indicated that the City is fine tuning the process and will attempt to deliver preliminary reports to the Government Law Center 10 days in advance of the meeting at which they are to be considered.

Mr. Weafer moved to adopt the amendment to the Operating Procedures. Mr. Alguero seconded the motion. The motion was carried unanimously.

Chairman Cox appointed Mr. Whiteman, Ms. Thompson, Ms. Mazza and Ms. Hammond to the Committee on Complaint Review to report on cases at the February meeting. Chairman Cox directed Mr. Weafer to make the Committee assignments.

### Old Business

Mr. Weafer referred to the January 7, 2002 memorandum from Ms. Justina Cintron, and the need to clarify the action of the CPRB taken last meeting on case numbers 16-01, 18-01 and 22-01. There was a discussion regarding the specific terminology of the CPRB findings in relation to the specific preliminary findings of the Office of Professional Standards (OPS).

Mr. Whiteman moved to reconsider the vote made last meeting in case 16-01. Ms. Mazza seconded the motion. The motion carried unanimously. Mr. Weafer and Mr. Whiteman explained that the complaint in case number 16-01 involved call handling and use of force. OPS had made a preliminary finding that the police conduct was "justified." The CPRB had intended to concur with OPS, and found the entire complaint "not sustained." Mr. Whiteman explained that the CPRB should have made a finding of "exonerated," applicable to both call handling and use of force, and so moved. Mr. Weafer seconded the motion. The motion carried unanimously.

Mr. Whiteman moved to reconsider the vote made last meeting in cases 18-01 and 22-01, each involving the same complainant. Mr. Weafer seconded the motion. The motion carried unanimously. Mr. Weafer and Mr. Whiteman explained that the complaint in each case involved both call handling and conduct. The CPRB had found “not sustained” on both issues in both cases. However, the CPRB should have made findings of “exonerated” on the call handling issue in both cases, and “not sustained” on the conduct issue with respect to case 18-01 and “unfounded” on the conduct issue with respect to case 22-01. Mr. Whiteman so moved. Mr. Weafer seconded the motion. The motion carried unanimously.

Mr. Weafer referred again to the memorandum from Ms. Cintron regarding case 21-01, which was referred for mediation. The complainant has not responded to correspondence from the CPRB. Mr. Weafer suggested that the case be closed without prejudice, in that if the complainant does respond, the CPRB could reopen the case. Mr. Whiteman so moved. Mr. Alguero seconded. The motion carried unanimously.

Mr. Weafer again referred to the memorandum from Ms. Cintron regarding case 19-01, which is essentially the same as a complaint that was filed in 1997. OPS completed a full investigation in 1997 and found the complaint unfounded. Mr. Weafer suggested that the matter is best left to the courts and is not a matter the CPRB should be considering. The complainant is alleging that the Police Department has a tape that would exonerate him and wants the CPRB to direct the Police Department to turn it over. Mr. Weafer moved not to accept the case for review. Mr. Thomas seconded. Ms. Mazza wanted to clarify that this case should not be considered precedent for the notion that the CPRB may not review new information on a previously investigated complaint. The motion carried unanimously.

Mr. Weafer again referred to the memorandum from Ms. Cintron regarding case 12-01. The CPRB had sent a letter to Commissioner requesting access to certain information in this case, which request was granted in a letter dated November 16, 2001 and forwarded to the CPRB on December 6, 2001. Mr. Weafer suggested that a CPRB member go to the Police Department to review that information.

### New Business

Mr. Weafer reported that 11 new complaints had been received since the last meeting of the Board on December 3, 2001. The numbers are 36-01 through 43-01 for 2001 and also 1-02 through 3-03 for 2002. The board appointed monitors in 5 of the complaints because of allegations of physical abuse, excessive force or violation of civil rights.

Mr. Weafer advised that there are 4 complaints to be reviewed on the agenda.

Complaint No. 23-01/C01-370

Mr. Weafer stated that no monitor was appointed.

Mr. Eson expressed his concern that he can not easily ascertain the case numbers. Ms. Patricia Salkin committed to having the CPRB numbers more clearly placed on the documents. Mr. Weafer requested that the Government Law Center place both the CPRB and also the Police Department case numbers on the documents.

Mr. Weafer summarized the complaint, which alleged the use of a headlock and the use of pepper spray. OPS made a preliminary finding of “not sustained” on the headlock, and “exonerated” on the pepper spray.

Mr. Weafer asked Commander Breen when it was appropriate for an officer to use a headlock. Commander Breen stated that it was not appropriate to use a headlock. She stated that the allegation of the use of a headlock was “not sustained” because it could not be determined whether a headlock was performed. The third-party witnesses contradicted each other on whether a headlock occurred, and the officer could not recall. The allegation of the improper use of pepper spray was found “exonerated” because its use was appropriate for the circumstances. OPS determined that the officer failed to file a field card required by Department policy, but that failure was not a subject of the complaint.

Mr. Alguero expressed concern about the officer’s inability to recall. Commander Breen expressed similar concern and stated that OPS made every effort to prove this allegation one way or the other, but could not.

Mr. Eson expressed concern that an oath was included on the complaint. A discussion ensued over the use of oaths. Mr. Burnham stated that the complaint form does not include an oath and that the Police Department does not require an attestation clause. He stated that, in this case, the complainant may have used an old complaint form that included it. Ms. Salkin confirmed that the Government Law Center will continue to ensure the distribution of the new forms.

Mr. Alguero and Mr. Weafer reiterated that the CPRB is getting increasingly uncomfortable with police officers not being able to recall significant events.

Mr. Weafer moved to accept OPS’ recommendation that the allegation of the use of a headlock be found “not sustained” and that the allegation of the improper use of pepper spray be found “exonerated.” Mr. Weafer also recommended that headlock training be highlighted for this officer, and where possible to include it where it is not already included, in the general training for all police officers. Ms. Hammond seconded. The motion carried unanimously.

#### Complaint No. 30-01/C01-428

Mr. Weafer explained that Ms. Davis was appointed as monitor in this case. Mr. Weafer

summarized the case. Police responded to a 911 call of a shooting. Young individual was found bleeding from the mouth and officers separated another individual, later found to be the father of the young individual. Father complained that he was poked twice in the stomach by a large flashlight when he attempted to go to his son.

Ms. Davis explained that she met several times with Detective Shade, and reviewed the investigation, including the statements given by witnesses. She was able to ask OPS questions and participated in an interview of one of the witnesses present at the scene. She believes that the OPS investigation was complete and sufficient.

Mr. Weafer explained that OPS made a preliminary finding of “exonerated” on allegation of lack of arrest authority, and “unfounded” on allegation of unnecessary force. Mr. Weafer asked Ms. Davis if she agreed with these findings. Ms. Davis said that she believes that the conduct of the investigation was complete, thorough and sufficient. She also noted that the complainant did not allege conduct based on race or excessive use of force.

Mr. Weafer extended an opportunity to the complainant, who was present, to address the CPRB in executive session. Complainant’s attorney, Mark Mischler, said that in his opinion this discussion is covered under the Open Meetings Law and the Board should stay in open session. A discussion was had on the CPRB’s interpretation of the applicable laws.

Mr. Weafer moved to go into executive session. Chairman Cox seconded. Motion carried unanimously.

In executive session, the complainant gave his account of the incident. Mr. Mischler said he opposed going into executive session, but wanted to address the complaint, nevertheless. He explained that while he now represents the complainant, he did not assist the complainant with the complaint. He is very dissatisfied with investigation by OPS, and complained about the officer’s conduct at the scene. Commander Breen said that every officer that was present during the incident has been interviewed. She explained that the complaint differs from the complainant’s statement just made to the board. Mr. Mischler acknowledged that he had not seen the written complaint. The complainant acknowledged that he can not read or write, and that Detective Shade took the complaint. Ms. Davis said she saw the photos and the bruising in photos appeared inconsistent with the complainant’s statement. She also explained that the complainant’s daughter acknowledged that they were all intoxicated.

Mr. Weafer asked the complainant if he would entertain mediation, and explained mediation. The complainant stated that he wants an apology and his glasses replaced.

Chairman Cox tabled the matter, and explained that there may be a special meeting called.

Annual Report

Mr. Alguero moved to accept the annual report. Ms. Salkin suggested doing so subject to not releasing it until end of week for non-substantive changes and corrections. Motion carried unanimously.

Meeting adjourned at 9:05pm.

Respectfully Submitted,

Michael Whitman  
Secretary