

City of Albany

CITIZENS' POLICE REVIEW BOARD

Quarterly Report November 1, 2003

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



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

November 1, 2003

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 the law requires that the Government Law Center of Albany Law School submit quarterly reports containing "statistics and summaries of citizen complaints, including a comparison of the [Board's] findings with the final determinations of the [Police] Department," on behalf of the Board. This is the fourth quarterly report so submitted in the year 2003.

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 with respect to the Board. Many of these are discussed, as appropriate, below.

ORGANIZATION OF THE BOARD

The following members constituted the Board during the fourth quarter:

Dr. Manuel Alguero
Rev. Kenneth E. Cox
Barbara Gaige
Marilyn Hammond
Judith Mazza
Herman Thomas
Eleanor Thompson
Paul Weafer, Esq.
Michael Whiteman, Esq.

The Board's elected officers are:

Chair	Kenneth Cox
Vice-Chair	Herman Thomas
Secretary	Michael Whiteman

The following committees were operational during the fourth quarter:

Complaint Review	Barbara Gaige Marilyn Hammond Judith Mazza Herman Thomas Michael Whiteman
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Policy Review/ Recommendations	Barbara Gaige Judith Mazza Paul Weafer
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Outreach/Education Kenneth Cox
 Judith Mazza
 Herman Thomas

In general, the following occurred during the fourth quarter of 2003:

- Pursuant to the Board's Operating Procedures (Section II, Review of Complaints, Subsection I), each of the appointed members of the Committee on Complaint Review, in addition to the Chair of the committee, was responsible for presenting at least one complaint at each meeting where Board business was conducted. Ten (10) complaints were presented and reviewed during the fourth quarter. The following Board members served on the committee:

September 2003 Barbara Gaige, Marilyn Hammond, Judith Mazza,
 Herman Thomas, and Michael Whiteman.

October 2003 Barbara Gaige and Judith Mazza.

- On October 6, 2003, Chairman Kenneth Cox met with Complainant No. 22-02/OPS No. C02-215 to allow her an opportunity to express her concerns regarding the Board's findings as to the allegations contained in her complaint, and to explain the Board's process of review and deliberation of a complaint investigation.
- Following a suggestion made during an outreach meeting with the Center for Law and Justice, the Board voted unanimously to add a new item, "Policy Review/Recommendations," to its monthly meeting agenda. This portion of the agenda will be devoted to discussion of Board policy recommendations and/or requests for policy review.
- At the Board's October 13, 2003 meeting, a new committee, the Policy Review/Recommendations Committee, was formed by Chairman Kenneth Cox. The committee was created for the purpose of addressing and following up on the Board's policy recommendations and requests for policy review. The following members volunteered, and were appointed, to serve on the committee: Barbara Gaige, Judith Mazza, and Paul Weafer.
- During the fourth quarter, the Board voted unanimously to approve the following:
 - ▶ its third quarterly report for 2003;

- ▶ draft correspondence to Commissioner of Public Safety John Nielsen following up on Board Resolution No. 1 of 2001 and the Board's recommendation for the implementation of a bias-based policing policy by the Albany Police Department;
 - ▶ draft correspondence to Complainant 1-01 in response to the complainant's request for documents relating to his complaint; *and*
 - ▶ revised correspondence sent to complainants notifying them of the outcome of the Board's deliberation of the investigation of their complaint and the findings rendered by the Board.
- The Board met three times during the fourth quarter. Meetings were held on August 19, 2003, September 8, 2003, and October 13, 2003. The August meeting was held at the Albany Community Development Agency on Henry Johnson Boulevard, and the September and October meetings were held at the Albany Public Library on Washington Avenue. There was a public comment period at each meeting, and the September and October meetings largely consisted of the review of complaints.
 - The Board continues to meet on the second Monday of every month so as not to conflict with the monthly meetings of the Common Council, and to encourage media participation at Board meetings. The Board will continue its 6:00 p.m. meeting time for the remainder of 2003. Meetings will continue to be held at the Albany Public Library on Washington Avenue when space is available. The Community Room at 200 Henry Johnson Boulevard remains the primary alternate meeting location.

TRAINING

Section 42-339 of the City Code requires that "the Government Law Center . . . provide, to CPRB members, and the members shall undergo continuing education ..."

From September 21-24, 2003, Board Members Barbara Gaige and Michael Whiteman attended the Annual Conference of the National Association of Civilian Oversight of Law Enforcement (NACOLE) held in Los Angeles, California. The conference, entitled "Civilian Oversight: Tools for Success-Tools for Justice," featured workshops on force and excessive force; intelligence gathering, racial profiling, demonstrations, and First Amendment issues post 9/11; best practices and strategies to counter resistance to civilian oversight; basic tools for oversight of disciplinary cases; and interviewing witnesses and judging credibility. The conference also featured several panel presentations, including: mediation in oversight and insights on a serious police misconduct case - the Oakland "Riders."

At the Board's October 13, 2003 monthly meeting, Barbara Gaige and Michael Whiteman provided a report to the full Board about their experiences at the

conference. Both Ms. Gaige and Mr. Whiteman reported that the conference was excellent and offered vast amounts of useful information. Mr. Whiteman urged the City to send members of the Office of Professional Standards as well as members of the Department's management to future conferences, and noted that it would also be valuable for members of the police officers union as well as the Corporation Counsel's Office to attend.

The Board's training program has resumed. Two training sessions have been scheduled for the first quarter of 2004.

COMPLAINT SUMMARIES AND STATISTICS

Section 42-340(C) of the City Code creating the Board charges the Board with providing "statistics and summaries of citizen complaints, including a comparison of the [Board's] findings with the final determinations of the [Police] Department."

During the fourth quarter, the Board received five (5) new complaints in addition to its sixteen (16) active complaints, seven (7) complaints that had been previously referred to mediation, three (3) complaints that were suspended from review in 2001 and one (1) complaint that was suspended from review in 2002. Monitors were appointed to all five (5) new complaints. Of the twenty-one (21) active complaints before the Board, the Board reviewed ten (10) complaints and rendered findings for all allegations contained in nine (9) of the ten (10) complaints. With respect to one (1) complaint, the Board had rendered a finding for only one (1) of the two (2) allegations contained in the complaint. The following is a summary of those complaints:

Complaint No. 50-02/OPS No. C02-420

- Nature of Allegation(s):
- 1) Failure to Engage Emergency Equipment Causing Collision - a police officer failed to engage the emergency equipment on the officer's patrol car when the officer approached and attempted to pass the complainant's vehicle, thereby causing a collision;
 - 2) Improper Issuance of a Citation - the officer improperly issued a ticket to the driver of the complainant's vehicle after the officer told the driver that a ticket would not be issued;
 - 3) Unjustifiable Withholding of a Driver's License - the driver's license was withheld and not returned for several weeks; *and*
 - 4) Undue Delay in Furnishing Accident Report - the complainant could not obtain a copy of the accident report for two months.

OPS Preliminary Findings: "Unfounded" as to all allegations.

CPRB Findings: "Unfounded" as to all allegations.

APD Final Determination: "Unfounded" as to all allegations.

Complaint No. 70-02/OPS No. C02-618 [monitor appointed]

Nature of Allegation(s): Call Handling - the complainant was improperly/unlawfully stopped, searched, and his life was threatened by police officers.

OPS Preliminary Finding: "Exonerated."

CPRB Finding: "Exonerated."

APD Final Determination: "Exonerated."

Complaint No. 7-03/OPS No. C03-131 [monitor appointed]

Nature of Allegation(s): 1) Use of Force - the complainant alleged that an officer threw him to the floor of a bus; *and*
2) Call Handling - the complainant alleged racial bias in his being stopped and frisked.

OPS Preliminary Findings: 1) "Unfounded" as to the use of force allegation; *and*
2) "Exonerated" as to the call handling allegation.

CPRB Finding/ Action: 1) "Unfounded" as to the use of force allegation.
2) The Board has not yet made a finding with respect to the call handling allegation.

APD Final Determination: Pending.

Complaint No. 8-03/OPS No. C03-145 [monitor appointed]

Nature of Allegation(s): 1) Call Handling - a police officer improperly searched the complainant's residence and frightened her children; *and*

2) Use of Force - officers used unnecessary force on the complainant when one officer grabbed her arm and twisted it backwards, and a second officer grabbed her left arm, in which she had stitches, and squeezed her hand causing the stitches to "bust and bleed."

OPS Preliminary Findings: 1) "Exonerated" as to the call handling allegation; *and*

2) "Unfounded" as to the use of force allegation.

CPRB Findings: 1) "Exonerated" as to the call handling allegation; *and*

2) "Unfounded" as to the use of force allegation.

APD Final Determination: 1) "Exonerated" as to the call handling allegation; *and*

2) "Unfounded" as to the use of force allegation.

Complaint No. 9-03/OPS No. C03-178 [monitor appointed]

Nature of Allegation(s): 1) Failure to Mirandize - the complainant was not read his Miranda warnings at the time of his arrest; *and*

2) Use of Profanity by Officers - during a stop of the complainant's vehicle and the complainant's subsequent arrest, the complainant was called a "f*cking as*hole" and a "f*cking moron" by an officer, and the arresting officer continued to use profanity towards the complainant.

OPS Preliminary Findings: "Not Sustained" as to both allegations.

CPRB Findings: "Not Sustained" as to both allegations.

APD Final Determination: "Not Sustained" as to both allegations.

Complaint No. 11-03/OPS No. C03-154 [monitor appointed]

Nature of Allegation(s): 1) Use of Force - an officer used excessive/unwarranted force on the complainant, including pulling the complainant out of his vehicle, striking him in the legs with a "police stick," pushing him to the ground, jumping on top of him, and kicking him in the head; *and*

2) Conduct - a police officer used threatening, personally offensive, and obscene language towards the complainant, calling him an "as*hole" and threatening him with bodily harm.

OPS Preliminary Findings: 1) "Exonerated" as to the use of force allegation; *and*

2) "Not Sustained" as to the conduct allegation.

CPRB Findings: 1) "Unfounded" as to the use of force allegation; *and*

2) "Not Sustained" as to the conduct allegation.

APD Final Determination: 1) "Exonerated" as to the use of force allegation; *and*

2) "Not Sustained" as to the conduct allegation.

Complaint No. 12-03/OPS No. C03-214

Nature of Allegation(s): Call Handling - the complainant was improperly questioned about a fraud and arson investigation while he was at the Albany Police Station to discuss an unrelated matter.

OPS Preliminary Finding: "Unfounded."

CPRB Finding: "Unfounded."

APD Final Determination: "Unfounded."

Complaint No. 13-03/OPS No. C03-215

Nature of Allegation(s): Call Handling - the complainant was pursued by police officers at high speeds after he fled the scene of a traffic stop, causing six (6) people to be injured "for no just cause."

OPS Preliminary Finding: "Exonerated."

CPRB Finding: "Exonerated."

APD Final Determination: "Exonerated."

Complaint No. 15-03/OPS No. C03-240 [monitor appointed]

Nature of Allegation(s): 1) Abuse of Authority/Arrest Procedures - the complainant was improperly/falsefully arrested following a call for a domestic disturbance at her residence; *and*

2) Excessive Use of Force - officers used excessive force on the complainant during the course of her arrest by "very roughly" grabbing and twisting her wrist, violently swinging her around, handcuffing her tightly, dragging her down the stairs and outside, and pushing her into, and dragging her entire body through, an icy puddle.

OPS Preliminary Findings: "Exonerated" as to both allegations.

CPRB Findings: "Exonerated" as to both allegations.

APD Final Determination: "Exonerated" as to both allegations.

Complaint No. 16-03/OPS No. C03-241 [monitor appointed]

Nature of Allegation(s): 1) Abuse of Authority/Arrest Procedures - the complainant was improperly arrested following a call for a domestic disturbance at his residence;

2) Excessive Use of Force - officers used excessive force on the complainant during the course of his arrest by spraying him in the left eye with "mace" and trying to twist and force his arm all the way back in an effort to secure his handcuffs; *and*

3) Nasty Attitude/Use of Sarcastic Comments - while the complainant was at the police station, officers displayed nasty attitudes and directed sarcastic comments towards the complainant and his girlfriend, insulting his girlfriend about her weight and saying "f*ck you" to the complainant.

OPS Preliminary Findings:

- 1) "Exonerated" as to the allegation of abuse of authority;
- 2) "Exonerated" as to the excessive use of force allegation;
and
- 3) "Not Sustained" as to the nasty attitude/use of sarcastic comments allegation.

CPRB Findings:

- 1) "Exonerated" as to the allegation of abuse of authority;
- 2) "Exonerated" as to the excessive use of force allegation;
and
- 3) "Not Sustained" as to the nasty attitude/use of sarcastic comments allegation.

APD Final Determination:

- 1) "Exonerated" as to the allegation of abuse of authority;
- 2) "Exonerated" as to the excessive use of force allegation;
and
- 3) "Not Sustained" as to the nasty attitude/use of sarcastic comments allegation.

OTHER BOARD ACTIONS/REQUESTS/RECOMMENDATIONS

Recommendation for the Adoption and Implementation of a Bias-Based Policing Policy

In response to a complaint filed with the Board in May of 2001, Board members met with the Public Safety Commissioner, John Nielsen, in the first year to discuss its concerns about racial profiling and bias-based policing in the City of Albany. Pursuant to authority granted to it under the City Code, which provides that the Board "may make recommendations to the Common Council and the Mayor regarding police policies and practices...", the Board adopted Resolution 1 of 2001 recommending that steps be taken to limit, if not eliminate, the potential for bias-based policing and racial profiling in the City of Albany.

In May of 2002, the Commissioner, in correspondence to the Government Law Center, reported that Commander Paula Breen of the Albany Police Department had done extensive research and training on this issue, and had convened a series of working groups with interested community stakeholders and advocates to discuss the formation of such a policy.

In October of 2003, the Board approved correspondence, drafted on its behalf by the Government Law Center, to the Commissioner requesting that the Department provide the Board with an update as to what the Albany Police Department has accomplished since the issuance of Resolution 1 of 2001 with respect to the adoption and implementation of a bias-based policing policy.

GOVERNMENT LAW CENTER

During the fourth quarter of 2003, 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:

- Drafted, and forwarded to the Board for its approval, the Board's third quarterly report for 2003.
- Drafted and forwarded correspondence to those complainants whose complaints had been referred to mediation, asking that they contact the Center to discuss the status of mediation.
- Drafted and forwarded correspondence to the Common Council and to the Mayor notifying them of the expiration of the terms of Board Members Marilyn Hammond, Judith Mazza, Michael Whiteman, and Paul Weafer; and requesting re-appointments for Board Members Hammond, Mazza, and Whiteman, and a new appointment to fill the vacancy to be left by Board Member Weafer.
- Drafted revised correspondence, for Board approval, to complainants notifying them of the outcome of the Board's deliberation of the investigation of their complaint and the findings rendered by the Board.
- Drafted correspondence, for Board approval, to the Commissioner of Public Safety following up on Board Resolution No. 1 of 2001 and the Board's recommendation for the adoption and implementation of a bias-based policing policy by the Albany Police Department.
- Drafted correspondence, for Board approval, to Complainant 1-01 in response to the complainant's request for documents relating to his complaint.
- Responded to a Freedom of Information Law (FOIL) Request from Council 82, which included preparing and forwarding a copy of the audio tape from the September 8, 2003 Board meeting to Council 82 President, Officer James Teller.
- Attended and participated in the Annual Conference of the National Association for Civilian Oversight of Law Enforcement.

- Met with Albany Law School's Computer Resources Department for a demonstration of software options to be used in the creation of a database for Board business.
- Updated the Board's Website to reflect additional links, the Board's fall/winter calendar of meetings, and most recent news articles.

In addition, the Center performed the following administrative tasks:

- Arranged logistics for and coordinated regular monthly meetings, including: securing dates, times and locations for each meeting, and providing notice to the affected parties and to the public;
- Prepared and assembled 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;
- 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;
- Provided content for, updated, and maintained the Board's Website;
- Conducted a monthly accounting and inventory of complaints filed with the Board, including a summary of active and closed complaints, recommendations, and pending requests submitted to the Commissioner of Public Safety, 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 Commissioner of Public Safety; the Office of Professional Standards; and the Corporation Counsel's Office;
- Received and logged in complaints;
- Opened and closed complaint files;

- Maintained regular communications with Board members; *and*
- Answered inquiries from the community about the Board and the complaint review process.

CONCLUSION

The Board had an active fourth quarter, which included reviewing nearly half of its active complaints; attending the Annual NACOLE Conference; forming a new committee to handle Board policy recommendations and requests for policy review; and holding its monthly public meetings.

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, 2003