

City of Albany

Second Quarterly Report May 1, 2004

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



CITIZENS' POLICE REVIEW BOARD

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

May 1, 2004

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 second quarterly report so submitted in the year 2004.

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 second quarter of 2004:

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

In correspondence dated April 15, 2004 to Mayor Gerald Jennings and Helen DesFosses, President of the Albany Common Council, Board Chairman Kenneth Cox announced his resignation from the Board. Chairman Cox will serve as a member of the Albany CPRB through October 11, 2004.

The Board's elected officers are:

Chair	Reverend Kenneth E. Cox
Vice-Chair	Herman Thomas
Secretary	Michael Whiteman, Esq.

The following committees were operational during the second quarter of 2004:

Complaint Review	Dr. Manuel Alguero Barbara Gaige Marilyn Hammond Judith Mazza
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scheduled at the request of the Commissioner in response to the Board's letter of January 27, 2004, and based upon previous communications with the Commissioner and the Complainant.

The Board met as a whole three times for the conduct of business during the second quarter. Meetings were held on February 9, 2004, March 8, 2004, and April 12, 2004. All three meetings were held in the HBH Room of the main branch of the Albany Public Library at 161 Washington Avenue. There was a public comment period at each of the three meetings, and the meetings were devoted primarily to complaint review.

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

OUTREACH/EDUCATION

On April 1, 2004, members of the Board met with Dr. Alice Green, Executive Director of the Center for Law and Justice, to discuss her letter to the Board of April 6, 2004, in which she inquired about: 1) the status of her complaint filed in January 2004 regarding the police shooting death of David Scaringe; 2) the availability of minutes from the Board's February 3rd public hearing and whether or not the Board will draw conclusions and/or make recommendations based upon the information presented by the public at that hearing; 3) the availability of Department policies and procedures received by the Board at its February 9th meeting, how the Board intends to use the information received, and why some of the policies were reportedly marked confidential; 4) whether or not the Board will seek changes to the legislation that created it and, if so, what will those changes be; and 5) whether or not the Board believes it should play a role in all cases that involve police use of deadly force and, if so, what that role should be.

On April 22, 2004, members of the Board participated in an outreach session at the State University of New York at Albany, School of Criminal Justice. The session was facilitated by James Fyfe, a retired New York City police officer, who conducted a longitudinal study of more than 1,000 New York City police officers who were dismissed or forced to resign from the force during the 22 years from 1975 through 1996. These officers were compared to a stratified random sample of their colleagues in order to determine whether or not they differed on a variety of individual, organizational, and/or community characteristics.

POLICY REVIEW/REQUESTS/RECOMMENDATIONS

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

On March 30, 2004, members of the Board's Policy Review/Recommendations Committee met with Commissioner Nielsen and members of the Albany Police Department Command Staff to discuss the Department's policy against bias-based

policing. At the meeting, the Board provided the Department with recommendations for changes that would strengthen the policy. In a letter to the Board dated April 1, 2004, the Department reported that it had considered the Board's input and advice, and had decided to implement a series of changes to the policy, which included adding a separate section under "Officer Responsibility and Authority," immediately following the Department's "Code of Ethics," further emphasizing the Department's prohibition against bias-based policing.

Non-Confidential Copy of the SOP

In March of 2004, the Board received a non-confidential copy of the SOP. The public copy of the SOP has been placed in the Government Law Center of Albany Law School, and is available to the public for viewing by appointment.

Recommendation for Training and Strengthening of the APD's Policies and Practices in an Effort to Improve Community-Police Relations

In a letter dated March 10, 2004 to the Board from the Corporation Counsel's Office with an appended memorandum from the Albany Police Department in response to the Board's letter of February 9, 2004, the Department explained, in detail, its annual in-service training program for all officers, which includes components in interpersonal communications; police ethics; police-citizen encounters; community-oriented problem solving; and mutual respect (diversity), and provided the Board with copies of the Department's training materials. The Department noted its continued commitment to emphasizing the importance of effective and courteous police-citizen communications and interactions through in-service and other types of training provided to its officers on an annual basis.

Proposed Changes to the CPRB Legislation

On March 29, 2004, members of the Policy Review/Recommendations Committee met to discuss proposed changes to the legislation creating the Board. A list of proposed changes was drafted and forwarded to the Board for its review.

REPORTS

The Board voted unanimously to approve its First Quarterly Report for 2004.

TRAINING

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

On March 20, 2004, members of the Board attended and participated in a two-hour training session at Albany Law School. The training, conducted by Commander Paula Breen, served as a follow-up to the Board's January 27, 2004 training session.

Commander Breen provided the Board with information as to Albany Police Department's policies, practices, and procedures relating to the use of force, including deadly force, and pursuits.

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, shall be responsible for the presentation of a particular complaint to the Board at its monthly meetings as assigned by the Chair of the Committee. Nine (9) complaints were presented and reviewed.

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

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| February 2004 - | Manuel Alguero, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Eleanor Thompson. |
| March 2004 - | Manuel Alguero, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Paul Weafer. |
| April 2004 - | Manuel Alguero, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Paul Weafer. |

COMPLAINT SUMMARIES AND STATISTICS

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

During the second quarter of 2004, the Board received six (6) new complaints in addition to its seventeen (17) active complaints, three (3) complaints that were suspended from review in 2001, one (1) complaint that was suspended from review in 2002, and one (1) complaint that was suspended from review in 2004. Monitors were appointed to five (5) of the six (6) new complaints. Of the twenty-three (23) active complaints before the Board, the Board presented nine (9) complaints for review, and rendered a finding/findings for each allegation contained in seven (7) of the nine (9) complaints. The Board rendered a finding for one (1) of the two (2) allegations contained in one (1) complaint, and referred one (1) complaint to mediation. The following is a summary of those complaints:

CPRB No. 67-02/OPS No. C02-553

Nature of the Allegation(s): Unprofessional Conduct - during a verbal exchange between the complainant and an officer about the officer's patrol vehicle blocking the street, the officer

told a female driver parked on the street that the complainant asked the officer to issue her a ticket.

OPS Preliminary Finding: "Not Sustained."¹

CPRB Finding: "Not Sustained."²

APD Final Determination: "Not Sustained."

CPRB No. 6-03/OPS No. C03-62 [monitor appointed]

Nature of the Allegation(s): Call Handling (Neglect of Duties) - the Albany Police Department ignored a complaint filed by the complainant regarding stolen checks because he was incarcerated at the time the complaint was filed.

OPS Preliminary Finding: "Unfounded."

CPRB Finding: "Unfounded."

APD Final Determination: "Unfounded."

CPRB No. 21-03/OPS No. C03-392 [monitor appointed]

Nature of the Allegation(s): 1) Call Handling (Discourteous/Unprofessional Behavior) - during the arrest of the complainant's friend's brother, a police officer yelled at the complainant to "walk away"; and
2) Use of Force - when the complainant began to walk away, the officer grabbed her arm and threw her against a wall, causing her shoes to come off and her

¹The OPS had initially referred this complaint to mediation. Mediation did not take place so the OPS subsequently reopened its investigation of this complaint and rendered a preliminary finding of "Not Sustained."

²Prior to the OPS reopening its investigation of this complaint, the Board reviewed the preliminary investigation and rendered a finding of "Sustained." Following its review of the OPS's subsequent investigation, the Board moved, in a 7-1 vote, to adopt the OPS's preliminary finding of "Not Sustained."

cell phone to fall to the ground, and when the complainant's sister and cousin tried to give the officer her shoes, the officer grabbed them, "opened the police door and threw them at [her]."

OPS Preliminary Finding(s): "Exonerated" as to both allegations.

CPRB Finding(s): "Exonerated" as to both allegations.

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

CPRB No. 23-03/OPS No. C03-564 [monitor appointed]

Nature of the Allegation(s):

- 1) Call Handling (Improper Stop) - police officers improperly stopped the complainant, who was not wearing a ponytail, in her "black SUV GMC/Yukon," although the officers were "looking for a red SUV with two woman with ponytails inside, with the driver waiving a gun around";
- 2) Call Handling (Improper Search) - the complainant was improperly removed from her vehicle and searched by a female officer who patted her down, "examined [her] breasts on at least 2 occasions," "checked between [her] legs," and "reach[ed] down the back of [her] pants and felt [her] rear-end"; *and*
- 3) Use of Force - during the search of the complainant, the officer twisted and caused injury to her right shoulder.

OPS Preliminary Finding(s):

- 1) "Exonerated" as to the allegation that the complainant was improperly stopped;
- 2) "Exonerated" as to the allegation that the complainant was improperly removed from her vehicle and searched; *and*
- 3) "Not Sustained" as to the use of force allegation.

CPRB Finding(s): 1) "Sustained" as to the allegation that the complainant was improperly stopped;

2) "Sustained" as to the allegation that the complainant was improperly searched; *and*

3) "Not Sustained" as to the use of force allegation.

APD Final

Determination:

1) "Exonerated" as to the allegation that the complainant was improperly stopped;

2) "Exonerated" as to the allegation that the complainant was improperly removed from her vehicle and searched; *and*

3) "Not Sustained" as to the use of force allegation.

CPRB No. 24-03/OPS No. C03-575 [monitor appointed]

Nature of the Allegation(s):

1) Arrest Authority and Procedures - the complainant was unlawfully/improperly arrested for operating a motor vehicle with a suspended license, even though he was not in or near the vehicle at the time of arrest and the officers did not see him operating the vehicle; for resisting arrest; and for illegal possession of marijuana. The complainant was not read his Miranda rights; *and*

2) Use of Force - the officers used excessive force on the complainant while placing him under arrest, including jumping on his back, slamming him to the ground, and one officer "drop[ping] his knee in the side of [the complainant's] head."

OPS Preliminary

Finding(s):

1) "Exonerated" as to the arrest authority and procedures allegation; *and*

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

CPRB Finding/

Action:

1) "Exonerated" as to the arrest authority allegation, including the complainant's allegations that he was unlawfully/improperly arrested for operating a motor vehicle with a suspended license, even though he was not in or near the vehicle at the time of arrest and the officers did not see him operating the vehicle; for resisting arrest; and for illegal possession of marijuana.

At its February 9, 2004 meeting, the Board voted 8-1 to return the complaint to the OPS for further investigation, pursuant to its authority under Section 42-343(F)(2) of Chapter 42, Part 33 of the Albany City Code, in an effort to determine who the individual was in the vehicle that initially flagged down the officers, and who the officers believed was being menaced by the complainant; *and*

2) At its February 9, 2004 meeting, the Board voted 8-1 to return the complaint to the OPS for further investigation, pursuant to its authority under Section 42-343(F)(2) of Chapter 42, Part 33 of the Albany City Code, requesting that the OPS provide additional information to the Board as to why only two officers were interviewed and why interviews were not conducted with the other officers present at the scene of the incident being complaint of.

CPRB No. 25-03/OPS No. C03-604 [monitor appointed]

Nature of the Allegation(s): 1) Arrest Authority and Procedures - officers stopped the complainant's boyfriend for operating a motor vehicle while using a cell phone. The complainant's boyfriend was subsequently arrested for possession of marijuana found on his person and crack cocaine found in the back seat of the police unit; *and*

2) Arrest Authority and Procedures - police officers improperly ticketed the complainant for speeding, and the ticket was not issued promptly.

OPS Preliminary Finding(s): "Exonerated" as to both allegations.

CPRB Finding(s): "Exonerated" as to both allegations.

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

CPRB No. 26-03/OPS No. C03-590 [monitor appointed]

Nature of the Allegation(s): Excessive Use of Force - during her arrest for criminal trespass, an officer grabbed the complainant and threw her down face first into the sidewalk, which caused severe injuries to her face, including a road rash down the side of her face and ear; a tooth

knocked out of her dentures; and a lump to the right side of her nose. The complainant's leg was twisted while she was being restrained for transport to the hospital for treatment of the lacerations on her face.

OPS Preliminary Finding: "Unfounded."

CPRB Finding: "Unfounded."

APD Final Determination: "Unfounded."

CPRB No. 27-03/OPS No. C03-661 [monitor appointed]

Nature of the Allegation(s): 1) Arrest Authority and Procedures - the complainant was falsely arrested for criminal trespass, even though the owners of the residence had given the complainant permission to be on the property; *and*

2) Property Handling - following his arrest, the complainant asked an officer if the officer could secure his property, which was in the residence and in the backyard of the residence, but was told by the officer that the property could not be secured. When the complainant returned to retrieve his property, it was no longer at the residence.

OPS Preliminary Finding(s): "Unfounded" as to both allegations.

CPRB Finding(s): "Unfounded" as to both allegations.

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

CPRB No. 29-03/OPS No. C03-716

Nature of the Allegation(s): Unprofessional Conduct - police officers knocked on the complainant's apartment door and entered his apartment uninvited.

OPS Preliminary Finding: "Not Sustained."

CPRB Action: At its March 8, 2004 meeting, the Board voted 6-1 to refer the complaint to mediation pursuant to its authority under

GOVERNMENT LAW CENTER

During the second quarter of 2004, 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 First Quarterly Report for 2004 and Third Annual Report.
- At the request of members of the Board's Policy Review/Recommendations Committee, met with the committee and forwarded a list of possible reforms to the Board for its review.
- At the request of a member of the Board, prepared three (3) memoranda regarding the annual statistics for the CPRB from 2001, 2002, and 2003, statistics for the Albany Police Department as reported to the Board for 2001, 2002, and 2003, and an outline of all complaints filed with the CPRB since it began reviewing complaints in 2001.
- Forwarded correspondence from Mayor Jennings to members of the Board, advising the Board that a special prosecutor had been appointed to investigate the facts and circumstances surrounding the death of David Scaringe on New Year's Eve and suspending the Board's review of the complaint in accordance with the advice and recommendation of the Corporation Counsel and pursuant to his authority under Section 42-348 of the Albany City Code.
- Drafted and forwarded correspondence to Complainant 1-04, notifying her that the Mayor has suspended the Board's review of her complaint.
- Attended and participated in meetings with Mayor Jennings, Commissioner Nielsen, Police Chief Wolfgang, the Police Department's Command Staff, and the Times Union Editorial Board.
- Forwarded, to members of the Board, a letter from Attorney Mark Mishler, along with a statement that Mr. Mishler presented to the Common Council on March 1, 2004.
- Forwarded, to members of the Board, Dr. Alice Green's letter of April 6, 2004.
- Met with the Board's new Assistant Corporation Counsel, Jennifer Cottrell, to discuss the Center's role in providing staff support services to the Board

and the relationship between the Board, the Corporation Counsel's Office, and the Office of Professional Standards in the process of citizen complaint review. Also, followed-up on outstanding correspondence sent forwarded to the Board's former Assistant Corporation Counsel Todd Burnham, including the status of four (4) suspended complaints and one (1) complaint previously referred to mediation.

- Updated the Board's website to reflect the Board's Fourth Quarterly Report for 2003, the Board's meeting minutes, new term limits for those members reappointed to the Board in 2003, and 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;
- Arranged logistics for and coordinated two outreach meetings, two committee meetings, and a training session including: securing dates, times, and locations for each meeting, and preparing meeting materials as needed;
- 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;
- Attended regular monthly meetings, two outreach meetings, two committee meetings, and a training session;
- 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 and closed complaints,

recommendations, and pending requests submitted to the Commissioner of Public Safety, the Office of Professional Standards, and/or the Corporation Counsel's Office;

- Reported monthly complaint accounting and inventory to the Board at each of its second 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 and the media about the Board and the complaint review process.

CONCLUSION

The Board had a very active second quarter, which included reviewing just under half of its active complaints; attending and participating in two outreach meetings; holding two meetings of the Policy Review/Recommendations Committee; holding a public hearing and its regular monthly meetings; and meeting with the Mayor, Commissioner of Public Safety, the Police Chief, the Command Staff of the Albany Police Department, and the Times Union Editorial Board.

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: May 1, 2004