

City of Albany

Third Quarterly Report August 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

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

August 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 third 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 third 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 July 27, 2004 to Chairman Kenneth E. Cox, Board Member Eleanor Thompson announced her resignation from the Board. Board Member Thompson will serve as a member of the Albany CPRB through October 30, 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 third quarter of 2004:

Complaint Review	Dr. Manuel Alguero Barbara Gaige Marilyn Hammond Eleanor Thompson
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complaint to the Board at its monthly meetings as assigned by the Chair of the Committee. Five (5) complaints were presented and reviewed in the third quarter of 2004.

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

- May 2004 - Manuel Alguero, Barbara Gaige, Marilyn Hammond, Paul Weafer, and Michael Whiteman.
- June 2004 - Manuel Alguero, Barbara Gaige, Eleanor Thompson, Paul Weafer, and Michael Whiteman.
- July 2004 - Manuel Alguero, Barbara Gaige, Eleanor Thompson, Paul Weafer, and Michael Whiteman.

COMPLAINT SUMMARIES AND STATISTICS

Section 42-340(C) 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 third quarter of 2004, the Board received nine (9) new complaints in addition to its 15 active complaints and five (5) suspended complaints. Monitors were appointed to five (5) of the nine (9) new complaints. Of the 24 active complaints before the Board, the Board presented five (5) complaints for review and rendered a finding/findings for the allegation(s) contained in each complaint. The following is a summary of those complaints:

CPRB No. 19-03/OPS No. C03-296

Nature of the Allegation(s): Call Handling (Denied Access to Records) - The complainant was denied access to information from the Police Department that he requested under the Freedom of Information Law (FOIL).

OPS Preliminary Finding: "Unfounded."

CPRB Finding: "Unfounded."

APD Final Determination: "Unfounded."

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

Nature of the Allegation(s):

- 1) Arrest Authority - the complainant was 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;
- 2) Arrest Procedures - The complainant was not read his Miranda rights, and the complainant's friend in the vehicle, who flagged down the officers, was never identified or questioned; *and*
- 3) 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 Findings: "Exonerated" as to all three allegations.

CPRB Findings: "Exonerated" as to all three allegations.

APD Final Determination: "Exonerated" as to all three allegations.

CPRB No. 28-03/OPS No. C03-715 [monitor appointed]

Nature of the Allegation(s):

- 1) Call Handling (Improper Stop, Improper/Unconsented Search, and Improper Ticketing) - the complainant was followed, stopped, and his car was searched by an officer for no apparent reason and without permission, and the complainant was improperly issued a ticket for speeding; *and*
- 2) Call Handling (Improper Seizure) - the officer removed a miniature baseball bat and a small baggie from the complainant's car.

OPS Preliminary Findings: 1) "Exonerated" as to the stop, search, and ticketing allegation; *and*

- CPRB Findings: 2) "Sustained" as to the allegation that the officer removed a miniature baseball bat and small baggie from the complainant's car.
- 1) "Exonerated" as to the stop, search, and ticketing allegation; *and*
- 2) "Sustained" as to the allegation that the officer removed a miniature baseball bat and small baggie from the complainant's car.
- APD Final Determination: 1) "Exonerated" as to the stop, search, and ticketing allegation; *and*
- 2) "Sustained" as to the allegation that the officer removed a miniature baseball bat and small baggie from the complainant's car.

CPRB No. 2-04¹

- Nature of the Allegation(s): Failure to Report - an on-duty, Albany Police officer witnessed the complainant's car being damaged in the parking lot of a Denny's restaurant in Guilderland, but did nothing to report the incident to the Guilderland Police Department.
- CPRB Action: At its February 9, 2004 meeting, the Board voted unanimously NOT to accept and review this complaint pursuant its authority under Section 42-342(C) of Chapter 42, Part 33 of the Albany City Code.

CPRB No. 3-04/OPS No. C04-64 [monitor appointed]

- Nature of the Allegation(s): 1) Call Handling (Improper Stop and Search) - the complainant was stopped and searched by an officer while waiting with his brother outside of Jillian's for a taxi; *and*
- 2) Conduct - while the complainant was being searched, a second officer pushed his brother and friends out of the way, causing his brother to fall and sustain injuries.

¹A unanimous vote NOT to accept and review this complaint was taken by the Board at its February meeting, in the second quarter. It was inadvertently omitted from the Second Quarterly Report for 2004.

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

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

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

CPRB No. 4-04/OPS No. C04-72 [monitor appointed]

Nature of the Allegation(s): 1) Call Handling (Unlawful/Wrongful Search) - officers unlawfully/wrongfully searched the complainant's person, back pack, and car during a traffic stop; *and*
 2) Unprofessional Conduct - the officers made offensive and inappropriate comments toward 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.

GOVERNMENT LAW CENTER

During the third 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:

- Attended and participated in a meeting with the Mayor, the Deputy Mayor, and members of the Board.
- Met with Assistant Corporation Counsel, Patrick Jordan, the Board's new counsel, 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.

- Drafted and forwarded correspondence to the Board's counsel, requesting follow-up on several outstanding items, including a request for: a written opinion advising the Center as to whether or not it is permissible for the Center to copy the Council 82 President on correspondence sent to officers who are the subject of citizen complaints, a status report of those complaints suspended from review in 2001 and 2002, and a review of CPRB No. 22-03/OPS No. C03-355. These requests were initially made to the former Assistant Corporation Counsel assigned to the Board.
- Drafted and forwarded correspondence to Daniel Salvin, Esq. of the Center for Law and Justice in response to his Freedom of Information Law (FOIL) request, notifying him that the Government Law Center would forward his request to the Albany City Clerk.
- Drafted and forwarded correspondence to the Albany City Clerk, enclosing the FOIL request from Mr. Salvin.
- Drafted and forwarded correspondence to Complainant 29-03, notifying him that his complaint had been referred to mediation pursuant to Section 43-343(F)(4) of Chapter 42, Part 33 of the Albany City Code.
- Forwarded, to members of the Board, a written transcript of the testimony given by Melanie Trimble to the Board at its May 24, 2004 meeting.
- Received and Reviewed the 2003 report of the School of Criminal Justice and Hindelang Criminal Justice Research Center at SUNY Albany, entitled "Citizen Oversight of the Albany Police: Perceptions of Police Clients and Complainants, 2003" prepared by Professor Robert E. Worden.
- Updated the Board's website to reflect the Board's First Quarterly Report for 2004, Third Annual Report, current meeting schedule, new meeting minutes, 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;
- 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.
- 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 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 third quarter meetings;
- Assisted with typing and forwarding the Board's requests and recommendations to the Chief of Police, 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 an active third quarter, which included reviewing five (5) of its 24 active complaints; holding two regular monthly meetings; and meeting with the Mayor and Deputy Mayor.

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: August 1, 2004