

City of Albany

Second Quarterly Report May 1, 2005

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, 2005

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 2005.

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 2005:

| | |
|---------------------------|------------------------|
| Jason Allen | Judith Mazza |
| Reverend Beresford Bailey | Herman Thomas |
| Ronald Flagg | Paul Weafer, Esq. |
| Barbara Gaige | Michael Whiteman, Esq. |
| Marilyn Hammond | |

During the second quarter, the Board's elected officers were:

| | |
|------------|---------------|
| Chair | Barbara Gaige |
| Vice-Chair | Herman Thomas |
| Secretary | Ronald Flagg |

The following committees were operational, with each member serving on at least one committee:

| | |
|---------------------------|---|
| <i>By-Laws and Rules</i> | Paul Weafer (Co-Chair) Michael Whiteman (Co-Chair) |
| <i>Community Outreach</i> | Judith Mazza (Chair) Beresford Bailey Ronald Flagg Herman Thomas |
| <i>Complaint Review</i> | Judith Mazza (Chair) Jason Allen Beresford Bailey Ronald Flagg Barbara Gaige Marilyn Hammond |

Herman Thomas
Paul Weafer
Michael Whiteman

Mediation Barbara Gaige (Chair)
Jason Allen
Paul Weafer
Michael Whiteman

*Police Department Policy
Review/Recommendations* Jason Allen (Chair)
Marilyn Hammond
Judith Mazza

Public Official Liaison Ronald Flagg (Chair)
Barbara Gaige
Marilyn Hammond

The following occurred during the second quarter of 2005:

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 in the first quarter of 2005.

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

February 2005 - Jason Allen, Beresford Bailey, Ronald Flagg, Barbara Gaige, Judith Mazza, and Michael Whiteman.

March 2005 - Beresford Bailey, Marilyn Hammond, Judith Mazza, Paul Weafer, and Michael Whiteman.

April 2005 - Beresford Bailey, Marilyn Hammond, Paul Weafer, Judith Mazza, and Herman Thomas.

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 second quarter of 2005, the Board received thirteen (13) new complaints in addition to its thirteen (13) active complaints and five (5) suspended complaints. Monitors were appointed to twelve (12) of the thirteen (13) new complaints. Of the twenty-six (26) active complaints before the Board, the Board presented nine (9) complaints for review, and rendered findings for the allegation(s) contained in eight (8) complaints. The following is a summary of those complaints:

CPRB No. 21-04/OPS No. C04-438 [monitor appointed]

Nature of the Allegations: 1) Call Handling (Improper Arrest) - complainant was improperly arrested for drug possession while working as a confidential informant for the Albany Police Department; *and*

2) Call Handling (Improper Disclosure of Identity) - Albany police detectives improperly disclosed the complainant's identity to the individual from whom the complainant purchased drugs while working as an informant.

OPS Preliminary Findings: 1) **Exonerated** as to the allegation of improper arrest; *and*

2) **Exonerated** as to the allegation that detectives improperly disclosed the complainant's identity.

CPRB Findings: 1) **Exonerated** as to the allegation of improper arrest; *and*

2) **Unfounded** as to the allegation that detectives improperly disclosed the complainant's identity.

APD Final Determination: 1) **Exonerated** as to the allegation of improper arrest; *and*

2) **Unfounded** as to the allegation that detectives improperly disclosed the complainant's identity.

CPRB No. 24-04/OPS No. C04-502 [monitor appointed]

Nature of the Allegations: Excessive Use of Force - during his arrest, the complainant was assaulted in the back seat of a patrol vehicle; was dragged out of the vehicle by his feet; and, while still cuffed, the arresting officer drove his knee into the complainant's back, causing his face to smack the pavement, and ground the complainant's face into the concrete, causing injury.

OPS Preliminary Finding: **Exonerated**

CPRB Action: At its March 14, 2005 meeting, the CPRB voted unanimously, pursuant to its authority under § 42-323(F)(2) of the City Code, to request that the OPS further investigate the circumstances surrounding the arrest of the complainant and the injuries he sustained while being taken into custody. The Board's action was taken following a request made by an advocate for the complainant who agreed to provide the OPS with the contact information of two individuals alleged to have witnessed the complainant's arrest, and to provide the OPS with a copy of the complainant's medical records.

At the CPRB's April 11, 2005 meeting, the OPS reported that this information had not been forwarded by the complainant's advocate. As a result, the Board voted unanimously, pursuant to its authority under § 42-323(F)(2) of the City Code, to request that the OPS interview the complainant and obtain the necessary medical releases and documentation to determine: 1) whether or not a statement made by the complainant during the incident escalated the events; 2) whether or not a pre-existing medical condition was responsible for some of the complainant's alleged behavior; and 3) who the two individuals were who witnessed the events.

CPRB No. 25-04/OPS No. C04-511 [monitor appointed]

Nature of the Allegations: Improper Use of Force - an Albany police officer ordered the complainant and other motorcycle riders to pull over, and after one of the riders pulled off, the officer drew his weapon and aimed it directly at the complainant's head, standing about a foot away.

OPS Preliminary Finding: **Exonerated**

CPRB Finding: **Exonerated**

APD Final Determination: **Exonerated**

CPRB No. 26-04, 27-04, 28-04/OPS No. C04-573¹ [monitor appointed]

Nature of the Allegations: Call Handling (Neglect of Duties/Improper Arrest) - Albany police officers failed/refused to take statements from the complainants and a family friend involved in an altercation with two female

¹CPRB No. 26-04, CPRB No. 27-04, and CPRB No. 28-04 were filed by individual, related parties. The misconduct alleged by each complainant pertains to the officers responding to the same incident. The OPS handled these complaints collectively under one investigation, and the CPRB treated the complaints collectively in its review and subsequent findings.

neighbors; failed/refused to take their assault complaint against the two neighbors; and improperly arrested the family friend.

OPS Preliminary Finding: **Exonerated**

CPRB Finding: **Exonerated**

APD Final Determination: **Exonerated**

CPRB No. 29-04/OPS No. C04-575

Nature of the Allegations: Conduct (Unnecessary Use of Force) - while involved in a dispute with a store clerk, one of the responding Albany police officers pushed the complainant twice as he left the store.

OPS Preliminary Finding: **Unfounded**

CPRB Finding: **Unfounded**

APD Final Determination: **Unfounded**

CPRB No. 3-05/OPS No. C05-57 [monitor appointed]

Nature of the Allegations: 1) Arrest Authority & Procedures - following his arrest, the complainant was taken to his apartment where Albany police officers unlawfully entered and searched his apartment, and seized his property;

2) Call Handling (Failure to Properly Itemize & Document Seized Property) - the officers did not properly write and subscribe a receipt itemizing the property removed from the complainant's apartment and his person; *and*

3) Conduct (Missing Property) - following the search of the complainant's apartment, \$500.00, a gold chain necklace, and a gold 3k diamond ring were missing.

OPS Preliminary Findings: 1) **Unfounded** as to the arrest authority and procedures allegation;

2) **Exonerated** as to the call handling allegation; *and*

3) **Unfounded** as to the conduct allegation.

CPRB Findings: 1) **Unfounded** as to the arrest authority and procedures allegation;
2) **Exonerated** as to the call handling allegation; *and*
3) **Unfounded** as to the conduct allegation.

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

CPRB No. 6-05/OPS No. C05-77 [monitor appointed]

Nature of the Allegations: 1) Unprofessional Conduct (Failure to Give Name and Badge Number Upon Request) - during a pedestrian stop, an Albany police officer denied giving the complainant the officer's name and badge number after being asked multiple times; *and*
2) Call Handling (Improper Search) - the complainant was searched around his whole body, including his genital area, and asked to remove his sneaker for a comparison.

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

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

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

MEDIATION

On February 16, 2005, Mediation Committee members Barbara Gaige and Jason Allen met to identify issues and concerns raised by complainants, police officers, the community, the Police Department, and the City, about the CPRB's Mediation Program. The meeting served as a first step in the process of redeveloping a mediation program that includes the active participation of the stakeholders and takes into account their interests and concerns.

MEETINGS

The Board met as a whole three times for the conduct of business during the second quarter. Meetings were held on February 14, 2005; March 14, 2005; and April 11, 2005. All three meetings were held at the Albany Public Library, 161 Washington Avenue, in the Large Auditorium. There was a public comment period at each meeting.

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.

POLICY REVIEW/REQUESTS/RECOMMENDATIONS

Standing Monthly Meeting with the APD

During the second quarter of 2005, the Police Department Policy Review/Recommendations Committee held three meetings with Chief Turley and Assistant Chief Paula Breen. Meetings were held on February 14, 2005, March 14, 2005, and April 11, 2005, one hour before the Board's regular monthly meetings. These meetings provided committee members with an opportunity to discuss the Department's development and adoption of a policy for the use of video recording devices in patrol cars; adoption of a taser use policy; revisions to its use of force and vehicle pursuit policies; and purchase of new software to track Early Warning System data. These meetings also provided an opportunity for committee members to discuss categories of complaint-related data collected by the Department that the Board would like to access and review.

TRAINING

Section 42-339 of Chapter 42, Part 33 of the Albany City Code requires that "the Government Law Center . . . provide, to CPRB members, and the members . . . undergo continuing education . . ."

New Member Orientation/Citizens Police Academy

_____ On February 7, 2005 and April 25, 2005, the final two sessions of the new member citizens police academy were held for Board members Jason Allen, Reverend Beresford Bailey, and Ronald Flagg. These two sessions included training on the legislation creating the Board, investigative methods (i.e., proof continuum, sources of information, case law, incident reconstruction, etc.), the Department's Standard Operating Procedures, the Collective Bargaining Agreement; and the OPS's investigations and findings. Ride-alongs for each member will be scheduled to take place in the third and fourth quarters.

Lecture - Consent Searches

On February 23, 2005, Board members Barbara Gaige and Ronald Flagg attended a lecture sponsored by the Police Research Group and coordinated by Professor Robert Worden, School of Criminal Justice & Hindelang Criminal Justice Research Center at the State University of New York at Albany. The lecture, "Yes or No - Does 'Consent' Matter? Examining Consent

Searches in Two State Police Agencies,” given by Associate Professor of Criminal Justice Robin Engel of the University of Cincinnati, addressed the results of a three-year research study of stops and searches performed by the police in Arizona and Pennsylvania.

APD Policy

A training session covering Police Department policies relating to tasers, video recording devices in patrol cars, use of force, and vehicle pursuits is scheduled for the third quarter.

REPORTS

The Board received a copy of the OPS’s First Quarterly Report.

The Board voted unanimously to approve its First Quarterly Report for 2005 prepared by the Government Law Center.

GOVERNMENT LAW CENTER

During the second quarter of 2005, 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:

- ▶ Met with Assistant Corporation Counsel Patrick Jordan, to discuss outstanding complaints requiring input and/or a written opinion from the Corporation Counsel’s Office. A follow-up letter and a report detailing the status of the outstanding complaints discussed were forwarded to Mr. Jordan.
- ▶ Met with Deputy Mayor Philip Calderone, Chief James Turley, Assistant Chief Paula Breen, and Assistant Corporation Counsel Patrick Jordan. Reported on four areas that the Board indicated would be its focus in 2005, including redeveloping its mediation program; updating and expanding its public education and community outreach campaign; actively participating in reviewing Police Department policies, practices, and procedures; and tracking the Department’s progress in developing its Early Warning System.
- ▶ Compiled and forwarded records to the Corporation Counsel’s Office in response to a demand for discovery received by the OPS.
- ▶ Prepared and forwarded Board member expense information for the 2004 NACOLE (National Association for Civilian Oversight of Law Enforcement) Conference to the Corporation Counsel.
- ▶ Audited and prepared a status report, including: the complainant’s name; the date the complaint was filed; a summary of the complaint; information regarding the appointment of a monitor; the date the OPS’ report was received and a summary of its findings; the Board’s findings and/or any action taken on the complaint; and the status of all outstanding complaints filed with the Board that were active, referred

to mediation, or suspended as of February 4, 2005.

- ▶ In accordance with II (H) of the CPRB's Operating Procedures, created a schedule of Board members to be consulted regarding the appointment of a monitor to a complaint. The schedule, covering the months of February through December of 2005, provides for consultation with five members of the Board, including the Chair, Vice-Chair, and Chair of the Committee on Complaint and two designated members on a rotating basis.
- ▶ Coordinated a revised schedule of new member citizen police academy training sessions and forwarded the schedule to members of the Board, Assistant Chief Breen, and Assistant Corporation Counsel Patrick Jordan.
- ▶ Revised and forwarded the Board's information to NACOLE for posting to its Roster of Civilian Oversight Agencies in the U.S., available at: <http://www.nacole.org/RosterCivilianOversightAgencies0505.pdf>.
- ▶ At the Board's request, revised the draft request for further investigation of CPRB No. 8-04/OPS No. C04-203 for Board review and approval.
- ▶ At the Board's request, drafted a request for further investigation of CPRB No. 24-04/OPS No. C04-502 for Board review and approval.
- ▶ At the Board's request, drafted correspondence in response to a letter from a former complainant asking whether or not the Board had a procedure for re-opening complaints. Forwarded the draft correspondence to the Board for its review and approval.
- ▶ Forwarded a list of proposed amendments to the CPRB legislation identified and adopted by the Public Safety Committee at its caucus meeting on January 25, 2005 to the Board.
- ▶ Forwarded the Spring 2005 Albany Citizens Police Academy registration form and curriculum to members of the Board.
- ▶ Forwarded the Board's outreach materials, including its complaint review and mediation brochures, a one-page flyer describing the Board, and its website material, as well as sample brochures and website information from several citizen police oversight agencies from around the country, to Board member Ronald Flagg for use in redeveloping and updating the Board's public education and community outreach campaign.
- ▶ Forwarded revised copies of the Albany Police Department's Standard Operating Procedures to Board members.
- ▶ Forwarded the Board's committee structure information to Assistant Chief Paula Breen.

- ▶ Updated the Board's website to include a 2004 amendment to the CPRB legislation, a listing of new board members and officers, a current meeting schedule, and the most recent meeting minutes.

In addition, the Center performed the following administrative tasks:

- ▶ Scheduled and created a calendar of Police Department Policy Review/Recommendations Committee meetings with the Albany Police Department;
- ▶ Arranged logistics for and coordinated three monthly meetings of the Police Department Policy Review/Recommendations Committee, including securing dates, times, and locations for each meeting, and providing notice to committee members, Chief Turley, and Assistant Chief Breen;
- ▶ 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 and two committee 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, suspended, 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 second quarter meetings;

- ▶ Assisted with typing and forwarding the Board's requests and recommendations to the Chief of Police, the Office of Professional Standards, and/or the Corporation Counsel's Office;
- ▶ Received and logged in complaints;
- ▶ Opened and closed complaint files;
- ▶ Maintained regular communications with Board members, the Police Department, and the Corporation Counsel's Office; *and*
- ▶ Answered inquiries from the community and the media about the Board and the complaint review process.

CONCLUSION

The Board and its members had an active second quarter, which included holding three policy committee meetings in addition to its three regular monthly meetings; participating in the Citizens Police Academy for new members; attending a lecture on consent searches; and reviewing slightly more than one-third of its active complaints.

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, 2005