

City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue – Large Auditorium
May 8, 2007
6:00 p.m. – 8:00 p.m.

Present: Jason Allen, Daniel Fitzgerald, Ronald Flagg, Mauri Davis Lewis, James Malatras, John Paneto, Andrew Phelan, Jr., and Anthony Potenza.

Absent: Hon. Fowler Riddick.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:20 p.m. He noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Chairman Allen noted that there was one change to the agenda. He explained that Board member Fowler Riddick may not make it to the meeting so CPRB No. 21-05/OPS No. C05-231 will be moved to the end of the agenda and reviewed by Mr. Riddick if he arrives. If he doesn't arrive, then the case will be moved to the June meeting. Chairman Allen moved to approve the agenda. Anthony Potenza seconded the motion. The motion carried unanimously.

III. Approval of the February 13, 2007 and March 13, 2007 Meeting Minutes

Chairman Allen asked board members if they had any comments on the February 13, 2007 and March 13, 2007 minutes. It was noted that there were no comments. Chairman Allen asked if there was a motion to approve the minutes. Ronald Flagg moved to approve the minutes. The motion was seconded by James Malatras. The motion carried unanimously.

IV. New Business

A. *New Complaints*

1. New Complaints Received Since April 10, 2007 Meeting

Chairman Allen reported that there were (6) new complaints received by the Board since its April 10, 2007 meeting. Andrew Phelan read a summary of each new complaint.

CPRB 08-07

On the night of March 17th around 3:00 as he was waiting for his designated driver outside of club “Pure” a group of guys approached the complainant and they exchanged words. The complainant alleges that he was punched in the face; he slipped on the ice and fell to the ground; and sustained moderate head trauma, a broken toe, bruised rib and a cut lip that required stitches. The complainant alleges that when the cops arrived, he requested that he wanted to file a report and needed help finding his property that had fallen in the snow. The complainant further alleges that the officer kept grabbing and shoving him down the street. The complainant asked the officer to stop shoving him so he could find his property in the snow and the officer arrested him.

While in the back of the police car, the complainant alleges that he requested medical attention and informed the officers that he needed to spit due to the rock salt that was severely burning the bleeding wound in his mouth.

A monitor was appointed to this complaint.

CPRB 09-07

The complainant alleges harassment, and that a false statement presented to the Grand Jury resulted in an indictment against him when he made no sale of a controlled substance. On the night of January 9, 2007, a police officer threatened the complainant’s friend into saying that the complainant sold drugs to her or she wouldn’t go home that night. Later, the complainant’s friend got caught up in drug raid and signed a false statement against the complainant.

The complainant further alleges that his friend was forced to say what the officers wanted her to say against the complainant, because the complainant wouldn’t help the officers set up another raid for them.

A monitor was not appointed to this complaint.

CPRB 10-07

On May 1, 2007, the complainant alleges that an officer stopped her for tailgating when the officer’s car was three cars in front of the complainant’s car. She further alleges that when she pulled over, the officer began to yell out of his window for her to pull up more. The complainant stated that she was waiting until she had a clear view. After the officer asked the complainant if the vehicle she was driving was hers and she responded “yes,” the complainant alleges that the officer said it couldn’t be because she didn’t know how to (explicit) drive. The complainant also alleges that the officer told her to hurry up and give him her information or she was going to be dragged out of the car. The complainant claims that her under-aged daughter was in the car and was upset and the officer told her daughter to shut the hell up. The officer then reached in the complainant’s car and

snatched the car keys from the ignition. Fifteen minutes later the officer came back to the car, and the complainant alleges that he threw her keys and insurance card at her and it landed on the floor of the car. The complainant claims that she informed the officer that she would be filing a complaint and the officer replied for her to go ahead because nothing was going to happen.

A monitor was appointed to this complaint.

CPRB 11-07

The complainant alleges that a false criminal report was filed against her by an officer. The complainant claims that she entered City Hall in order to file some paperwork. Instead of entering the building through the revolving door, the complainant entered through a side door because she has a physical handicap that doesn't allow her to use revolving doors. The complainant alleges that the officer inside City Hall jumped out of his chair and rushed at her screaming that she couldn't use that particular door. The complainant identified herself as a handicapped person who could not use the revolving door and "complied with reasonable expectation of a security check." The complainant exchanged words with the officer and turned away to continue on her business. The complainant alleges that the officer "pushed, shoved, and grabbed her arm, dragged her across the floor, causing her pain and suffering in her arm, feet, legs and back." The complainant further alleges that the officer "deliberately falsified the description of the case and the incident. He then verified it as 'true and correct' and submitted it as a fake, phony, and falsified allegation certificate to Albany City Court."

A monitor was appointed to this complaint.

CPRB 12-07

On March 29, 2007 at about 5:30pm, the complainant claims that an officer pulled him over after he was driving under a traffic light that had just turned yellow. The complainant alleges that the officer kept him waiting 15 minutes before he approached the complainant. The officer asked the complainant for his driver's license and registration and took the documents back to his car. The complainant alleges that he waited 20 more minutes, so he then opened his car door and approached the officer. He further alleges that the officer shouted at him repeatedly to return to his car or he would spend the night in jail. The complainant alleges that the officer was verbally abusive, threatening and disrespectful to him.

A monitor was not appointed to this complaint.

CPRB 13-07

The complainant claims that around a month ago, a trooper and he exchanged some words, and the trooper told him that he was going to make his house his summer project.

The complainant admitted to cursing at the trooper telling him he could make his house whatever he liked because he doesn't use or sell drugs. The complainant alleges that the trooper would park in front of his house and look at him and whoever else was there. On the 18th, the trooper and officer pulled up in front to the complainant's house and both asked him what they said about him drinking at the complainant's address. The complainant claims that he did not respond and he wasn't drinking. After awhile of going back and forth with accusations, the trooper and officer got out of their car and asked the complainant for ID. The complainant complied and told his friend that he was tired of these (explicative). The trooper informed the complainant that he was under arrest, grabbed his left hand, snatching him from the top step towards the ground. The trooper kept yelling put your hands behind your back, but was not letting the complainant comply because he was still pulling him around by his left hand. The complainant admits that he put his other hand up for cover when he saw the trooper putting his fist up to hit him and after that the trooper was punching and kicking him. The complainant alleges that he felt someone else hitting him also but he couldn't see who because they were hitting him everywhere. The complainant believes that both the trooper and the officer were beating him. They picked him up and were strangling him to the point where he thought he was going to die. They kept yelling get your hands behind your back. The complainant further alleges that the officer and trooper pushed his face into the concrete and rubbed it in the concrete. The complainant admits that he cursed at them, but never yelled.

A monitor was appointed to this complaint.

B. *Appointment of New Members to the Committee on Complaint Review for June 2007*

The following Board members were appointed to the Committee on Complaint Review for June 2007: Jason Allen, Daniel Fitzgerald, James Malatras, Andy Phelan, Jr., and Anthony Potenza.

C. *Approval of 2005 Annual Report*

Chairman Allen asked the Board if there were any comments. James Malatras motioned to approve the 2005 Annual Report. Ronald Flagg seconded this motion. The motion carried unanimously.

D. *Committee/Task Force Reports*

By-Laws Committee

Chairman Jason Allen reported that there is an appointment on May 23, 2007 for the next Public Safety Meeting to discuss the standing document and he plans on attending. Chairman Allen stated that the standing document was passed by the old Board before they left. James Malatras suggested that it might be good prudence for the six (6) new

Board members to meet prior to the Common Council meeting to discuss the document. Chairman Allen stated that if the Board meets before the Common Council meeting it will have to be an open meeting. He then stated that it is his duty as the Chair to represent the Board that voted for the document. Most of the current Board members were not on the Board at that time but the document is based on the experience of the previous Board in handling the complaints before the Board. Ronald Flagg noted that prior to tonight's meeting there was a sidebar discussion and there seemed to be a concern about whether it would be appropriate for some members of the previous Board to have a discussion with the current Board regarding the document. Chairman Allen noted that he is willing to discuss it at the end of tonight's meeting.

Community Outreach

Committee Chairman James Malatras reported to the board that he would like to schedule a subcommittee meeting before the next Board meeting. The committee met with the West End Neighborhood Association and circulated a survey to CPRB members regarding ways to reach out to the community. At the West End Neighborhood Association meeting about twenty (20) community members showed up. It was reported that the committee spoke to the Association for approximately forty-five (45) minutes and they had some great suggestions. The first suggestion was to submit a letter to each neighborhood association that formally presents what the Board does. Another suggestion was to set up a system of liaisons or contact persons from each neighborhood association so that the Board can get information to them about the meetings and what is going on and they can get information about the neighborhoods to the Board. Mr. Malatras would like to take this up with the committee the next time they meet. Mr. Malatras reported that the committee is also working to update the CPRB brochures. He noted the difficulty in finding the CPRB website; updating the website; complaint forms should be posted online so complainants can fill out and submit them electronically; and reaching out to more people. Mr. Malatras reported that the Hudson Park Neighborhood Association has contacted him about making a presentation sometime in the fall. He suggested sending a letter to each neighborhood association, including an invitation to invite them to the Board meetings. It was noted that representatives of the West End Neighborhood Association plan to attend the Board meetings in the future.

Mediation

Committee Chairman Allen reported that they had met with the heads of the Albany Police Unions, as well as with Albany Police Department management to review a draft of the mediation protocol. After the meeting, their comments were incorporated into the draft and it was forwarded to the APD. The committee has not received feedback yet. Chairman Allen noted that he followed up with a phone call to the Chief and has not yet heard back from him. He reported that the intent is to come to an agreement between the Board and the APD and then begin hiring mediators.

Police Department Liaison and Policy Review/Recommendations

Committee Chairman Daniel Fitzgerald reported that a letter was sent to Chief Tuffey informing him that the Board continues to receive complaints of people not being able to get officers' badge numbers and names. The Board is asking for assistance with this. Mr. Fitzgerald noted that he will talk with Sharmaine Moseley about the patterns of conduct that should be addressed and tracked so the Board can see the patterns as they emerge.

Public Official Liaison

Committee Chairman Ronald Flagg noted that the committee met with the Mayor and Deputy Mayor, as well as with Sharmaine Moseley, and they discussed a number of initiatives. He noted that minutes were taken of the meeting and he will review and note his comments.

Monitors Task-Force

Committee Chairman Allen reported on the meeting with Deputy Mayor Calderone regarding the monitor's protocol, standing document and budgetary items. He added that there was discussion regarding the budget for the NACOLE conference. It was reported that Deputy Mayor Calderone agreed to enact the monitor pay raise, effective May 1, 2007. The next step would be to schedule a meeting with the monitors within the next few weeks to go over the protocol with them. Chairman Allen noted that the Board should discuss selecting additional monitors. Chairman Allen reported that originally there were ten (10) monitors and now the Board has five (5). An evaluation of the monitors might be something the Board should consider. The protocol roughly says how the monitors report should appear and what information should be in it so that the Board can enforce a standard.

E. Report from the Government Law Center (GLC)

Government Law Center Coordinator of the Board Sharmaine Moseley gave the report.

Complaint Status as of Date of Meeting

It was reported that at last month's meeting there were fifteen (15) active complaints before the Board for review and twelve (12) complaints suspended from review. The GLC received correspondence from Corporation Counsel's office requesting removal of the suspended status from five of the suspended complaints and their return to the active status. It was also reported that the Board received six (6) new complaints since its last meeting which resulted in there currently being twenty-six (26) active complaints before the Board for review.

It was reported that 228 complaints have been closed and seven (7) complaints suspended

from review. The total number of complaints filed since 2000 is **261**.

Correspondence

It was reported that included in the Board packets for tonight's meeting is correspondence from the Board to Chief Tuffey regarding Complaint No. 29-06/OPS No. 490) which was reviewed at the Board's last meeting.

Reports

It was reported that also included in the Board's packets is a draft copy of the Fourth Quarter Report for 2006. Ms. Moseley asked the Board to forward any questions or concerns to her regarding the report. It was noted that the minutes from last month's meeting are currently undergoing review and should be in the packets for next month's meeting.

NACOLE

It was reported that the GLC is preparing a letter to the City about the NACOLE conference in September to see how many members they will be able to send this year. The cost will be higher this year since it's being held in San Jose at the Fairmont Hotel. Ms. Moseley asked the members to let her know if they would like to attend the conference. She noted that the dates for the conference are September 24th – 28th.

Other

Chairman Allen asked the Board to refer to the database scorecard in their meeting packets. He noted that CPRB No. 8-07 was a new case that is twenty-eight (28) days old. CPRB No. 7-07 is forty-eight (48) days old because it's waiting for the preliminary report from the OPS. He reported that the Corporation Counsel wrote a letter to the Board un-suspending a few complaints. Chairman Allen asked the Board to review the database scorecard that was provided by Ms. Moseley.

F. *Report from the Office of Professional Standards*

Detective Hendrick reported that Commander Beattie was unable to attend the meeting and that the OPS had nothing new to report.

G. *Report from the Chair*

Chairman Allen reported that last summer the Board took July and August off and they will make the decision to do this again the month before they break. He explained the difficulty in getting a quorum during those months and last summer there was a backlog of complaints but when they resumed meeting in September they were able to get through those cases pretty quickly.

V. Public Comment

The floor was opened for public comment. No comment was offered.

VI. Discussion on Standing Document

Anthony Potenza asked what the Board's obligations are regarding this document since the issues predate the new members on the Board. Chairman Allen responded that if the police department decides that a complainant has no standing they send the Board a letter saying so and the Board then discusses it. If the Common Council adopts this and it goes into law, a year from now the Board could say that this isn't working or the Board may say that this may not go through the OPS but let's sit down with the complainant and work things out. Chairman Allen explained how the Board handled the complaint filed by the Coalition for Concerned Citizens about a year and a half ago. The Coalition filed a complaint that the Board did not know how to handle. The Board had two or three meetings with the Coalition and Chief Tuffey where concerns from both sides were discussed. The meetings were similar to informal mediations which worked out.

Jim Malatras stated that if there is something in the standing document that the new Board members couldn't live with or found objectionable, the document says "too bad." Daniel Fitzgerald added that the Board could make a motion to recall the document. Mr. Malatras responded that from what is in there now, there is no way anybody would be able to raise objections. Chairman Allen added that Mr. Malatras may have a serious concern and he can voice that concern and it is not just the Chair's decision.

Ronald Flagg added that what the Board was trying to do was to keep things moving forward. The intent was not to prevent someone who witnessed an incident from making a complaint. The Board was trying to figure out a way of putting it in the context of that complainant. Mr. Fitzgerald added that this is an affirmative action prior to the review of the Board to have that complaint go through. A witness complaint needs to be voted on whether to accept that complaint or not.

Chairman Allen explained that if someone witnesses an incident they can still file a complaint. An example of a witness is someone driving down New Scotland Avenue who sees a police officer beating up a motorist. That person can file a complaint. If someone reads about the incident in the Times Union, they can't file a complaint. If that person files a complaint then the Chief would send a letter to the Board saying that based on statutes this complaint doesn't have standing. The task force on standing spent a year on creating this document and the Government Law Center provided a lot of research on what the other police review boards were doing in this regard. Chairman Allen noted that he was on the subcommittee and some cities had a definition of standing while others did not. Mr. Flagg added that some cities allowed that you didn't have to witness anything to file a complaint. However, many cities that were researched had

something similar where witness complaints could be brought before the Board for some level of review and that is what this Board was trying to model.

Mr. Malatras said that if they are comparing a Board that has subpoena powers to a Board that doesn't, its standing document might be quite different because they have a different mission. The difference is the way the Board is instructed; you may want to limit standing in those cases where there is a witness. Chairman Allen stated that having a definition for standing clarifies how to handle complaints. He used the issue of overtime as an example. The Board doesn't have subpoena power and a lot of the other powers that NYC has, so when someone makes a complaint about overtime, would the Board review it? Chairman Allen made a point to the Deputy Mayor last week that there are some complaints that are management issues. He stated that the Board is not the manager of the Albany Police Department. Chairman Allen further stated that the Board will become weaker if they are not focused on complaints with standing. The Board doesn't see HR records, collective bargaining agreements, and the Board is not the manager of the Albany Police Department.

Mr. Malatras stated the Board receives individualized complaints that lead to an overall policy change. It shouldn't be up to the Board to determine whether it is a managerial issue or not. The Board should send the complaint to the OPS and let them tell the Board that it is a collective bargaining issue, and then the Board can send it to the policy subcommittee. We've created a perception in the community and a document based on two (2) complaints that were disposed of.

Mr. Flagg asked when a person files a complaint who doesn't have standing how would the Board would handle it? Chairman Allen replied that it is handled like an anonymous complaint. The Board wouldn't make a decision until they get a letter from the Albany Police Department. If the Board gets a letter saying that the complainant has no standing because the complaint is about overtime abuse then the Board can decide that this is a serious issue and refer it to mediation. Chairman Allen stated that the Board can also decide to review it and decide whether it is appropriate to take to a public official.

Mr. Malatras stated that currently the Board can do exactly what the standing document does without limiting the definition of who can file a complaint. He further stated that the Board received the anonymous complaint at a perfect time. The Board was able to decide that the OPS should review the complaint. Chairman Allen added that this was done in the model of the standing document knowing that there is a possibility that this month or next month the police department may say to the Board that they can't interview the complainant because there is no standing. The Board would have then accepted that. Mr. Flagg agreed with this statement.

Mr. Malatras explained the difference between having the police department come back and say that you don't have standing and the Board rewriting the local law's definition of standing. Chairman Allen noted that if the police department decided that a complainant had no standing then without this document they wouldn't have a legal basis to make this statement. Mr. Malatras asked if the Chief wants to suspend a case now can he do so whether there is a standing document or not. Chairman Allen replied that the Chief has suspended complaints and reopened them when the Board rejected his decision. Currently, the only complaints suspended are those

by the Mayor. The Board receives a letter from the Mayor saying that the complaint was suspended. Mr. Malatras stated that the document should not limit complaints and the Board should be able to push back when necessary. The previous Board acted as a liaison between the complainant and the political class in the city to resolve some of those issues. The community may see it as a major setback to change the process where there really isn't a problem.

Mr. Fitzgerald asked if those complaints where an officer wasn't involved and there were questions on department issues would those complaints end up being a policy issue? Chairman Allen replied yes. Mr. Malatras added that these complaints can be filed with the Board and if the OPS would not review it based on standing then the Board can refer it to the policy committee. Chairman Allen added that technically complaints should go through the OPS. Mr. Fitzgerald asked if the Board should define two different types of complaints that are received and not to make it overly complex. There are complaints against officer(s) that OPS would review. But does the Board want to expand the Board's powers to take general complaints that would not be appropriate for the OPS to be looking at and figure out a way to handle those. Mr. Flagg stated that that is what he thought the document did. That it would help to bring these types of issues forward as opposed to restricting them. Mr. Flagg said that this document would open the door more so that the Board could get those types of complaints. Mr. Malatras added that Michael Whiteman and Judith Mazza had great concerns with this and Mr. Whiteman stepped away from it when that was the direction the Board was moving in. Mr. Flagg replied that Mr. Whiteman is an attorney who helped draft the standing document. Mr. Malatras stated that he fails to see how the Board is hindered by not having the standing document as compared to how the Board gains from having it to dispose of those cases. Chairman Allen added that if the Board receives a coalition complaint without the standing document, the Board doesn't have the basis to break off and just take people into a room and talk it over. It has to be investigated.

Mr. Malatras responded that last month, the Board received an anonymous complaint and made a motion to close the case, which he would not have supported. The Board made a motion to send it back to the OPS even though it was unknown if the OPS was going to review it or say that they could not find the person. It is still an official complaint that goes into the annual report that could be handled by the policy committee. Mr. Malatras stated that he doesn't see how the Board is hindered by this process. Chairman Allen added that the Board was quite tempted to make a statement or judgment on the complaint but they didn't. They decided to run it through the process. Mr. Malatras stated that this opens up the possibilities without limiting the Board because in the end it doesn't seem like the document really changes how the Board disposes of cases. It doesn't seem like there is a tremendous problem with disposing of these cases. Mr. Malatras stated that he is not saying that the old Board intentionally did anything, they have done a lot to present this document but questioned what the Board gains by having the document. Mr. Malatras noted that he attended the last Common Council meeting and there was not one community member in favor of the document and it wasn't just the people that you would expect to show up. It was the average residents who were asking why is this Board coming up with a document defining who can file a complaint when we set them up to be the voice of the people to the police department. Why is this being done for one or two cases instead of getting the mediation program going which we is required by law? It just seems that the Board's priorities are going backwards and the community is looking at the Board different because of it.

Mr. Flagg added that the document allows the Board to reach out to everyone. You don't have to see something in order to bring something to the Board. This is going to open the door so people can say that they are concerned about this policy or these kinds of things are happening in their neighborhood that they did not witness but are concerned about because neighbors brought it to their attention and they want the Board to review the issue. Mr. Flagg noted that the Board needed to decide on a way to address issues.

Mr. Malatras reminded the Board that at its October meeting there was a discussion about having two levels of complaints. Chairman Allen added that the Board is not equipped to handle overtime or misuse of public funds. Mr. Malatras stated that he doesn't understand how the mechanics of a person filing a complaint before and a complaint being filed now under the new standing document would change the way we approach things. Chairman Allen responded that if someone filed a complaint on overtime with this document, they would get a letter from the Chief saying that he/she has no standing. Then the Board would talk about it and if there was enough concern they could setup a meeting with the Chief and follow-up. If there wasn't enough concern then the Board would not have to follow-up.

Mr. Malatras asked how this is different than how they would dispose of it now. Chairman Allen replied that the Board would not be able to subpoena anybody. Mr. Malatras said he doesn't see how the Board would not know how to handle certain types of complaints. The Board could go through a process of giving it the OPS and Chief without going through the process of changing the Board's standing procedures. Chairman Allen responded that if John Citizen reads about an overtime issue in the newspaper and writes a complaint, and the Common Council and the Mayor's office have not done anything about it, the direct line of supervision would be the Albany Police Department. Should the Board go ahead and review it?

Mr. Malatras replied that was not what he is saying. He is not speaking of how they will dispose of a case. The Board was created to represent the community and its interests and be the liaison between the community and the police department.

Chairman Allen explained that under the standing document the Board can receive a document saying that this complainant doesn't have standing, and the Board can make an intelligent decision about how best to proceed with the interest of the residents in mind. Mr. Malatras stated that the Board can do that now without the standing document. Mr. Malatras stated that what is important is that six new members on the Board that weren't part of the original development of this document would now have to deal with the ramifications of that process. If a complaint comes in on overtime or a major policy question, why shouldn't the Board handle those complaints on an individual basis, instead of setting up a policy which automatically moves certain complaints into an area that is different than what we consider complaints? Chairman Allen replied that technically without a standing document the Board would be hamstrung to have it investigated and the Board would lose options. Mr. Malatras questioned how are options lost now. The Board can still say that this is a policy area that needs to be discussed. If you have a standing document, it doesn't change that outcome or how the Board can act on it.

Mr. Flagg added that this should be put into the context of who was on the Board a year ago and their discussions with Former Chief Turley and Chief Tuffey and the decision made by the Board to create the standing document. The document still has to be approved by the Common Council. Mr. Flagg noted that he was thinking of the average person who does not witness something but has a concern, and that was his position at the task force meetings. He added that there are people who vehemently oppose the standing document because they believe that it compromised the Board, and it would be overwhelming to the police department and the OPS. Mr. Flagg further noted that his position remains that any individual who has a concern about something that is going on between the police and their community should have the right to bring that issue forward.

Mr. Malatras stated that his two concerns are oversight ability to handle these cases and the perception it creates. This document was in the works for a year prior to it being voted on. It was voted on at the Board's October meeting before six new Board members took their seats and now we have to deal with the consequences of the document.

Chairman Allen explained that the Board didn't recognize the need for it until they learned from experience that it was necessary. As a result a task force was created. The individuals who filed the complaint came to the Board meetings every month and the Board didn't have an answer for them. The Board needed to have a standing document. Chairman Allen added that he wasn't officially on the task force but he attended the meetings. He believed that everybody should have standing. Anthony Potenza said that he thought that this standing document was meant to eliminate or filter out ways for a person who says, for example, my cousin's brother-in-law had a friend of his who said he saw a cop beating a guy up downtown, so I'm going file a complaint. Mr. Flagg responded that under the standing document he wouldn't be able to do that.

Mr. Malatras stated that the Board should deal with complaints on an individualized basis. The new Board should hear a big case and experience what the previous board did. The preponderance of who had to deal with it first is the issue. Presently the OPS reviews the complaints first. Under the new construct the Board would get a letter. Chairman Allen added that the Board handled the anonymous complaint as per the standing document. Mr. Malatras stated that the Board motioned to send the complaint to the OPS, which is an affirmative action taken by the Board. Chairman Allen replied that had the Board not voted on the complaint it still would have gone to the OPS.

Mr. Malatras said the old Board did an extraordinary job getting something that is compatible to continue operating in a proper way. Mr. Malatras said that this is a public relations matter, which may prevent people from filing a complaint. Mr. Malatras stated that there is nothing useless about the law but there are problems with the law. He would hate to see the Board mired when there are other initiatives that the Board should focus on. For example, there are plenty of complaints that would have been perfect for mediation. Chairman Allen replied that the issue with mediation is that there are a lot more stakeholders at play and Barbara Gaige gave a solid effort to come up with a draft document that was reviewed at the public safety headquarters a

month ago. Chairman Allen said that they have cemented the process with some of the language that is in it. To say that if this goes through then mediation is in jeopardy is not necessarily true.

Mr. Malatras stated that the Board is not making it any easier on themselves in this circumstance, considering that it was not a unanimous Board that passed this document; the members that are now off the Board are the most vocal and oppositional to this; and the members of the Common Council and the citizens who showed up at the Common Council meeting have shown mixed support or no support. Mr. Flagg responded that he doesn't see the standing document and mediation program as connected. Mr. Flagg stated that his biggest concern would have been if the police unions, the Chief or the Mayor's office was opposed to the document, but they are not. Mediation is needed in Albany and the Board needs to move forward with that and the Chief, and the Unions have supported that. Mr. Flagg suggested that the Board wait and see what the Public Safety Committee decides to do with the document.

Mr. Malatras motioned to recall the standing document from the Common Council. John Paneto agreed with what Mr. Malatras stated for one reason, which is the public's perception of the document. Mr. Paneto further stated that Melanie Tremble made it clear that she thinks that no one should be dismissed without the Board actually hearing the complaint with or without standing. If the Board feels that they should send it to the Police Chief because it is an anonymous complaint, then the Board should send it to the Chief. If the complaint involves an oversight issue then the Board can send it to the Mayor's office or we'll discuss it with the corporation counsel and find the best place for the complaint to go. Mr. Paneto agrees with Mr. Malatras that this makes the Board true to its public mission. Mr. Paneto recommends recalling the standing document if the Board isn't comfortable with it. If there are issues, recall it now and regroup and decide whether the Board wants to pursue it. Mr. Flagg added that the document has been presented to the Public Safety Committee of the Common Council. They would either move it forward or kick it back. Board members have every right to voice their opposition to it to the members of that committee. Mr. Paneto stated that he did not agree with that strategy. If the Board has the opportunity to recall it, then it should be recalled.

Mr. Fitzgerald added that perceptually if the Board recalls the document that is one thing, but if the Common Council kicks it back then the Board looks worse. Mr. Malatras replied that procedurally an affirmative action by the Board is much different than them saying no. Mr. Fitzgerald asked that if the Board recalls the document what do they open themselves up to other than the same conditions they have been under. Mr. Flagg added that the Board is making a decision in a vacuum. His position is to have a discussion with the Public Safety Committee of the Common Council and let them voice their concerns about it and if we want to recall it then, then recall it then. Mr. Flagg stated that he would rather have them review the document and give the Board feedback on it and then the Board can make a decision based on that. Mr. Flagg would like to hear the view of the Common Council.

Mr. Malatras stated that there are certain members of the Board that feel a level of discomfort with it and they are taking an affirmative action saying that they would like to recall it. The problem is that it is not good for the Board to veto something that has been worked on. The committee would be making a motion on whether to submit the document to the full Common

Counsel for its vote. Chairman Allen added that the peril of recalling the document right now is that the Board would be skipping that next step, which is the healthy transaction that could occur. It wouldn't be a binding meeting. It would just move it to the next step if it does pass the Public Safety Committee. The discussion that the old Board had was based on research from the Government Law Center, and it was passed because the people who had the institutional knowledge and gone through the discussions were leaving the Board. It would have been a shame if Paul Weafer and Michael Whiteman spent a year working on something and didn't get to vote on it. Chairman Allen added that his intent at the October meeting was to not hold off on the vote because those members wouldn't have gotten to vote on what they created.

Mr. Malatras added that Barbara Gaige has worked on the mediation program and the old and new Board met to discuss it. Chairman Allen noted that the document is the Board's document and if the Board recalled it and changed standing to no standing then he would defend whatever document the Board passed. Chairman Allen stated that the Board made a decision five to one with members who said that this is a document that they would like to send to the Common Council for approval.

Mr. Malatras replied that one Board member who didn't show up for that meeting eventually blasted the Board. He reiterated that there is a level of discomfort about the document for some of the Board. What is the problem with the new Board reviewing what the old Board determined to be important and then continue to kick it back up to the Common Council? Chairman Allen replied that it is to allow the stakeholders a chance to make a decision on standing or not. Standing is a basic principle in law, it is a principle in our judicial system, and for this entity to go so long without a definition of standing is a mistake. This Board needs a definition of standing.

Mr. Malatras replied that that is the Chairman's and the old Board's opinion. That might not be the rest of the Board's opinion. Standing is a well-determined thing in law if you were talking about an environmental case in state supreme court or if you are talking about an economic or tax case. Mr. Malatras stated that standing is defined much differently in these cases. Standing was a priority for the last Board but may not be for the new Board with their level of discomfort.

Chairman Allen reiterated that the Board needs a standing document to be the basis of their decisions. If the Board votes to make a decision without having a legal basis then someone can say the Board made an illegal decision. Mr. Malatras asked when this has ever been alleged. Chairman Allen replied that it was alleged when they broke into executive session a couple of years ago. Mr. Malatras said that breaking into executive session isn't a basis of an illegal decision. The Board has a right to go into executive session when necessary. Chairman Allen replied that his point is that the Board couldn't make a decision because they had no basis to make a decision with respect to if a specific complaint had standing or not. If this happens next month, who is the Chief to say that they have no standing.

Mr. Malatras replied that the beauty of our law is its simplicity. There is a form that someone fills out that says they have been wronged. The form gets filed at the GLC or the police department and then the Board determines whether or not to appoint a monitor. Mr. Flag

responded that a year ago there was a concern that that kind of complaint would not get to the Board. Mr. Flagg offered that they delay the hearing with the Public Safety Committee and ask Mr. Weafer, Mr. Whiteman, Ms. Mazza and Ms. Perino to meet with the Board for a discussion so that they can give us the historical and legal background of the document. Mr. Weafer and Mr. Whiteman were on opposite sides of the fence on this so it would be good to hear from both of them. Mr. Malatras would like to hear what the old Board has to say about the document.

Chairman Allen asked Ms. Moseley to contact the Common Council to request that the meeting be rescheduled to June. The Board will invite three guest speakers: Mr. Weafer, Mr. Whiteman and Ms. Perino.

VII. Adjournment

Chairman Jason Allen motioned to adjourn the meeting. Daniel Fitzgerald seconded the motion. The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Ronald Flagg
Secretary