

City of Albany Citizen's Police Review Board

Minutes of Meeting 3/14/2001
Albany Public Library
HBH Room

Present: Manuel Alguero, Kenneth Cox, Morris Eson, Marilyn Hammond, Judith Mazza, Herman Thomas, Eleanor Thompson and Michael Whiteman.

The meeting was called to order at approximately 7:10pm by Chairman Kenneth Cox.

Chairman Cox reviewed the proposed meeting agenda and moved to accept the agenda. Manuel Alguero seconded the motion and all approved.

Chairman Cox announced that he and Judith Mazza attended a meeting with the Times Union editorial board. He noted that it is the Board's hope that the media will attend and cover more board meetings and events.

Chairman Cox asked members of the public who wished to speak about the by-laws and the complaint form to sign in, and to limit their remarks to five minutes.

Louise Robach of the New York Civil Liberties Union was recognized. She thanked the Board for the opportunity to comment. With regard to the by-laws, she directed the Board to page 26, end of section 3, last line, which reads, "The Board will request that the Chief of Police promptly investigate any claim of retaliation arising from the submittal or filing of a complaint" and suggested adding the language "and report those findings to the board." She suggested this language so that the board would be apprised of this type of claim.

Ms. Robach commented that she had serious concerns with the complaint form. She noted that in her opinion the form is not user friendly and appears to have been written for a police officer to fill out. She explained that the descriptive items called for such as height, weight, weight and badge number of the police officer is too detailed for a complainant to fill out. She added that a complainant could not always be precise at identifying these characteristics and commented that the form's language is threatening in that it requires a complainant to make statements under the penalty of perjury, and knowing that false, misleading or untrue statements could subject the complainant to criminal and/or civil prosecution. She suggested that the form ask for a narrative and request identifying information only to the extent that the complainant knows that information.

Ms. Robach commented that the complaint form does not invite the public to file a complaint. She said that she had taken the liberty of adding some language that she thought should be included at the end of the form, such as a thank you to the complainant for filing the form, a commendation to the board and the police department

in their effort to investigate and review complaints, and an assurance that action will be taken upon filing of a complaint.

Ms. Robach commented that the complaint form is a bit too much “me against the police officer.” She explained that the language had an accusatory tone, citing the language in the form that calls for the “name of the complainant” and the language that asks for the name of the officer “against whom this complaint is being filed.” She suggested that the form only ask for the “name.”

With regard to the “details of the complaint,” Ms. Robach commented that this section does not call for details, but rather calls for substance. She suggested that the form ask for the date, time of incident, and description of the officers involved.

Ms. Robach noted that the person who files the complaint form must swear under penalty of perjury that the statements made are true. She said that this language seems a bit intimidating, threatening even. She said that this language was entirely unnecessary. She explained that a simple, signed letter should be enough to start the process of the investigation and used to fill in a complaint form, if necessary. She commented that it was unnecessary to threaten the complainant with criminal prosecution or the penalty of perjury and said that it does not seem necessary to notarize the form.

Finally, Ms. Robach suggested that there be check boxes conspicuously marked on the form for categories of the complaint that the board will review. She explained that there is nothing on the form to indicate what type of complaint it is or that the complaint will be forwarded to the board.

Ms. Robach said that she had drafted proposed substituted language for the form. She then offered copies to the members of the board for their consideration. (See attached). She commented that it is unnecessary for a complainant to pledge in advance to appear for a hearing. She suggested that this language have a friendlier tone, explaining to the complainants that they may be required to appear before the board and that their failure to appear may result in action not being taken.

Michael Whiteman thanked Louise Robach for her comments. He asked her about the boxes, inquiring about who would fill out the boxes, the complainant or the police department. Ms. Robach responded that the boxes would be filled out by the complainant. He asked Ms. Robach about the language that asks a complainant to swear to the statement given in the complaint under penalty of perjury and with knowledge of criminal and/or civil penalties. He asked Ms. Robach to make an assumption about the law. He explained that the form is an official filing of a government document subjecting a person to penalties for filing a false claim. He then asked, given that assumption, if the language requiring the complainant to swear to his or her statement should remain or if something else should be considered in its place. Ms. Robach responded that filing a false report does not seem to be any different from filing a false insurance claim. She commented that her concern is that the language is

intimidating.

Morris Eson thanked Louise Robach for her comments and commented that he would like to follow-up on Michael Whiteman's question regarding the boxes and the categories. He asked Ms. Robach for examples of the categories of the complaint. Ms. Robach responded that categories such as excessive force and a civil rights violation. She said that she would like the categories to include those specified in the ordinance with respect to the categories for the appointment of an investigator. Michael Whiteman asked if a box showing other should also be included. Ms. Robach said yes.

Ms. Robach commented that there are resources on the internet that the Board might want to look at. For example, she said that the NYC Board has its complaint form online. Several board members responded that they had already seen the form.

Manuel Alguero thanked Louise Robach for her comments and explained that the CPRB received the form from the police department as paperwork to open a case. He said that the board is trying to bring a new climate to the process. He agreed that Ms. Robach's comments that the form could be more user friendly rather than a bureaucratic processing of a complaint form is an important consideration and said that the board could bring out the fact that there is a different climate now then there was when the Council created the board.

Morris Eson asked Louise Robach if she took into account the cover letter accompanying the complaint form and explained that the board had considered many of the comments Ms. Robach made when they drafted the cover letter. Ms. Robach said yes, that she did take the cover letter into account. She acknowledged that the cover letter is designed to make the form more user friendly, but she said that the form is still "off-putting." She commented that she is not sure if there is a need for a sentence that includes the language, "legitimately founded" complaints. Morris Eson responded that the language was included because the board does not want to receive frivolous complaints.

Louise Robach commented that she is not sure if there is a major problem with a large number of frivolous complaints being filed.

Dr. Alice Green was then recognized. She thanked the Board for the opportunity to speak, congratulated the Board on their appointment and thanked the Government Law Center for its efforts.

Dr. Green said that she wanted to comment on the by-laws and the complaint form. With regard to the by-laws, Dr. Green suggested that the board add, to page 1, paragraph 2, something about economic status, referencing article 7, section 4. She commented that political and philosophical creed should also be added, noting that we live in a very political community with differing political and philosophical views.

Dr. Green referred the board to article 3, section 6, and noted that a resignation would

leave the Board without a voting member for 60 days. She asked if there were two resignations, would this cause a problem. She inquired into whether the Board could assure that there be a voting member in place sooner than 60 days.

Dr. Green noted that in article 4, section two, it is not clear if a non-Board member could serve on an ad-hoc committee.

Dr. Green cited article 5, section 1 as unduly restricting a Board member's ability to give his or her opinion or provide information about the Board to the public. She explains that the community may interpret the inability to say anything as not wanting to participate or to give information to the community.

Dr. Green suggested that the language in article 7, section 4 that says that "the committee shall issue quarterly reports to the Board with respect to the success..." should not be limited to successes only, but should also include unsuccessful endeavors.

Dr. Green noted that it is not clear when the report would be due in article 8, section 1.

Dr. Green asked if the language of article 10, section one, means that the annual report will be presented at the November public meeting or in executive session. She said that she wanted to make sure that the report will be a public document. Dr. Green also asked if the report could be broadened to include the cases reviewed, and the manner and extent of the board's involvement.

With regard to the complaint form, Dr. Green recommended that the title be changed to "Citizen" rejecting the para-military term "Civilian."

Dr. Green agreed with Louise Robach that the general appearance of the form needs to be more inviting and user-friendly. She said that the wording is crowding and intimidating and perhaps some of its content could be moved to the cover letter.

Dr. Green suggested that the body of the form be made more descriptive. She suggested further that the form ask only for a name, not the name of the complainant, noted that there is no room for a telephone number, and recommended that the line for race include ethnicity.

Dr. Green asserted that the form should include an area for descriptive information. She noted that the form only provides for one officer and said that a complainant would not know what to do if there were two officers involved.

Dr. Green commented that the bottom section discussing penalty of perjury and criminal and/or civil prosecution is intimidating. She added that people should have a choice to appear at a hearing.

Dr. Green said that she didn't think that the statement should be notarized because it

discourages filing of complaints. She explained that some people would prefer to send the form in by mail. She noted that the old form did not require notarization and commented that she did not think frivolous complaints are a problem.

Dr. Green said that she endorses the language that Louise Robach suggested at the bottom of the form and recommended that the board move the section about the person who assisted in writing the complaint to the end of the form.

Michael Whiteman explained that the by-laws do not prevent a board member from expressing his or her personal views so long as it is clear that the board member is not speaking on behalf of the board. Manuel Alguero added that there is nothing in the by-laws that penalizes a board member for speaking to the public, but rather the by-laws encourage the board to speak as a team or one body.

Judith Mazza commented on the crowding of the form, explaining that the board intends to print the form on 8 ½ by 14 paper, rather than the 8 ½ by 11 paper used for the meeting.

Morris Eson said that he doesn't speak on behalf of the board because the board as a body decided that communication with the public should go through those board members chosen to handle media relations. Dr. Alice Green explained that her reading of the by-laws sounds like she cannot talk to a member of the Board.

Antoinette McCray was recognized. She explained that she was speaking as a parent who had to fill out a complaint form on a previous occasion.

Ms. McCray asked, "if a person does not fill out the description of the police officer, does it hold up the process?" She commented that it is hard to give a description in these types of situations where events are happening very quickly. She said that she hopes that failure to fill out the descriptive information does not hold up the process.

Ms McCray also asked if there is, for example, a police brutality case and medical attention is required, who determines if medical attention is needed. She added that if the Office of Professional Standards is going to request medical records, who will review them? She asked if there will be a medical doctor who will review the records or if the medical records can be reviewed by the board? She asked if the Board will have a doctor to review medical records.

Ms. McCray inquired about how an officer will be addressed. She explained that in her situation the officer was addressed in an interoffice memo. She commented that if a citizen is required to go before the Office of Professional Standards and answer questions, the police officer should also have to sit down with his or her superiors and answer questions.

Ms. McCray commented that mediation between a complainant and a police officer is a good idea, but she said that she is not sure how it will work. She said that she would

have preferred to sit down with the officer and a mediator to ask the officer why. She explained that she doesn't believe people want anything from the city. They just want to ask the question why.

Mark Mischler was recognized. He thanked the City, the Government Law Center and the Board for their hard work. He commended the members for their efforts in producing the by-laws.

Mr. Mischler commented that the notarization requirement is a huge step backwards. He noted that the form currently being used for complaints does not have this requirement. He explained that this issue had been discussed at length in the early months of the original board in 1986, who decided not to require that the complaint form be notarized. He referenced copies of the minutes containing the discussion of notarization by the 1986 board and offered his only copy to the board members. (See attached).

Mr. Mischler commented that the board should not take action that would intimidate or inhibit the filing of the complaint form. He noted that there is nothing in the law that requires the complaint to be notarized to commence an investigation. He explained that, often times, individuals do not have access to a notary and this would discourage the filing of complaints. He said that if the complaint serves as a basis for criminal charges, a criminal defendant would not make a sworn statement while charges are pending and therefore, should not be precluded from filing a complaint. He also explained that many people will file a complaint form without consulting an attorney or seeking professional help. He said that the board should have the goal of encouraging everyone to file a complaint who believes that misconduct has occurred.

Mr. Mischler commented that there should be check-offs on the complaint where the complaint alleges, for example excessive force and violation of civil rights, to identify the type of complaint. He noted that the by-laws provide for a different level of board involvement where there is a claim of excessive force or violation of civil rights. He recognized that most members of the public may not be aware of what constitutes a certain category of a complaint, but commented that the board and the police department will be able to categorize the complaint when it comes in. He added that the complaint form should state in clear language the impact of the board's monitoring by checking certain boxes, like excessive force or a civil rights violation.

Mr. Mischler addressed the section in the by-laws regarding complaint review in executive session. Mr. Mischler argued that there is no lawful basis in the New York Open Meetings Law for establishing a per se rule that the board go into executive session to review an investigation from the Office of Professional Standards. He referenced the Public Officers law, citing that none of the eight listed grounds requires blanket authority to go into executive session. He explained that if there is no proper ground for executive session, the board should not go into executive session to review complaints. He said that the decision to go into executive session should be decided on a case-by-case basis. He urged the board members to delete section 4 of the proposed

by-laws, but suggested if the board decides not to delete that section, then he encouraged the members of the board to vote against going into executive session when it is not warranted.

Mr. Mischler commented that he was surprised that there was no discussion in the by-laws of how the monitoring process is going to work. He recommended that the board include, in its by-laws, a process of appointing monitors. He suggested that the by-laws address what the role of the monitor will be, when the need for a monitor will be triggered (how early in the process will the monitor be involved), and what a monitor will be able and unable to do. He asked how the board will make sure that the monitor is involved early in the process? He asked if monitors will be able to speak with witnesses and the complainant, and will the monitor be able to accompany the OPS detective. He asked if an independent monitor needs to be present and what the board will expect of a monitor once the investigation is completed. He explained that these and other issues with respect to the monitoring process need to be addressed in the by-laws.

Morris Eson commented that, according to his understanding of the law, the board is required to go into executive session to discuss the personnel records of a police officer. Mr. Mischler responded that there are different interpretations of the Public Officers Law, but he believes that it is improper to have a blanket rule in the by-laws. He noted, for example, that having a monitor discuss what they observed in an investigation, has nothing to do with personnel records and is not a proper basis for going into executive session.

Mr. Mischler discussed how the previous board handled this issue. He explained that the common council wanted the old board wanted to go into executive session to discuss summaries of cases only in executive session, but he said that this was not a proper basis to go into executive session.

Morris Eson noted that the language on the complaint form stated that a complainant may or may not appear. He then asked if a person does not want to appear, does the form still get processed. Mark Mischler responded by saying even though the board has no authority to have anyone appear before it, he believes that OPS is required to and will investigate any complaint that is filed. Morris Eson then asked if more than a statement was needed. Mark Mischler explained that there could be a case where a witness files a complaint, but the complainant does not cooperate. Manuel Alguero asked if someone, who is not a complainant, brought a video the police department, wouldn't the police investigate it. Mark Mischler responded that they should.

Chairman Cox stated that the board had received written comments from 100 Black Men and asked Michael Whiteman to read the letter. (See attached).

Chairman Cox thanked the public for their comments and opened the meeting up for discussion from the board members on the comments.

Judith Mazza noted that, in light of the comments, the committee would need to re-look

at the complaint form. She said that a lot of the public comments made sense. She agreed that board should delete the notary requirement. She recommended some time to revisit the form and make any necessary revisions as promptly as possible.

Michael Whiteman agreed with Judith. He commented that the same applied to the by-laws. He noted that he supported many of the comments and wished he had thought of them while he was drafting the by-laws. He recommended some time to revisit the by-laws and make any necessary changes as promptly as possible.

Morris Eson commented that the complaint form is a police department form and that any revisions to the form would have to be agreed upon with the department. He said that the board had considered using the term "Citizen" instead of "Civilian," but that the Albany Police Department recommended that civilian be used in the interest of uniformity with other internal documents.

Manuel Alguero recommended that the complaint form committee be given a mandate from the board as well as a deadline. He proposed anytime between now and the next two weeks.

Judith Mazza explained that the by-laws have to go to the Common Council, not the complaint for, so the committee need not rush to make the revisions. She also asked for a clarification of the Open Meetings Law.

The discussion moved to determining a date for the next meeting. Richard Conti commented that the Council meets on the first and third Monday of every month. Michael Whiteman suggested that the board set its own date. He then recommended that the board come together in two weeks from today's date in a formal meeting to summarize and discuss the public comments.

It was decided that the next meeting of the board would be April 2, 2001 at 7:00pm in the HBH Room of the Albany Public Library. However, if that room is unavailable, the meeting would be scheduled for the Community Room at 200 Henry Johnson Boulevard.

Chairman Cox suggested that the by-laws committee and the complaint form committee meet prior to that date.

Chairman Cox then moved to adjourn the meeting. Marilyn Hammond seconded the motion. The meeting was adjourned at approximately 8:50pm.

Respectfully Submitted,

Michael Whiteman
Interim Secretary