

City of Albany Citizen's Police Review Board

Minutes of Meeting 4/02/2001
Albany Public Library
HBH Room

Present: Kenneth Cox, Morris Eson, Marilyn Hammond, Judith Mazza, Herman Thomas, Michael Whiteman and Paul Weafer.

The meeting was called to order at approximately 7:08pm by Chairman Kenneth Cox.

Chairman Cox Chairman Cox reviewed the proposed meeting agenda and moved to change the order of item four, to hear the By-laws Committee's report first and the Complaint Form Committee's report second. Morris Eson seconded the motion and all approved.

Michael Whiteman addressed approval of the minutes. He noted that at the preceding meeting on March 14th, the Board did not approve the minutes of the February 14th meeting. He then moved to approve the minutes of both the February 14th and March 14th meetings subject to comments by the board. Judith Mazza seconded the motion and all approved.

Michael Whiteman presented the By-laws Committee report. He noted that the public had provided thoughtful comments at the previous meeting and that these comments were given lengthy consideration by members of the Committee. He explained that the Committee had prepared changes that they felt were appropriate and responsive to the public recommendations and that the Committee unanimously recommended the amended changes to the by-laws to the Board as a whole.

Mr. Whiteman noted that the suggested changes to the by-laws do not correspond exactly to the comments made by members of the public. However, the changes are responsive to all but three of the issues raised. He then addressed specific sections and changes to the by-laws.

With respect to Article 5, section 1, Mr. Whiteman noted that there were some changes made to address a comment regarding the undue restriction on the ability of a board member to express his or her opinion to members of the public. (see attached).

With regard to a public comment about the possibility of a vacancy or vacancies left on the Board in the event of resignation or death, Mr. Whiteman explained that while there is a possibility of this occurrence, it is the Committee's opinion that a change in the by-laws would not appropriately address the issue. He said that in the event of such occurrence, the Board would apprise the appointing authority and recommend that prompt measures be taken to fill the vacancy or vacancies.

To address a comment about whether the Board's annual report is a public document,

Mr. Whiteman explained that a determination of the status of the document as public information or not public information cannot be addressed in the by-laws. He said that whether or not the document is public is subject to statute.

As to the introductory material on page 1, Mr. Whiteman explained that the Committee tried to make the language in the second paragraph parallel to the language in Article 7, section 4. (see attached).

With regard to the powers and duties of the chair on page 6, section 2, to respond to an inquiry about who is able to serve on an ad hoc committee, Mr. Whiteman explained that there is no statutory authority authorizing non board members to serve on an ad hoc committee. He noted, however, that there is nothing in the law that precludes members of the ad hoc committee from consulting with non board members. (see attached).

According to Mr. Whiteman, the purpose of the change on page 10 is to assure that the board members speak with one voice; the voice of the Board. (see attached-last sentence of Article 5, section 1).

On page 11, Mr. Whiteman commented that there had been some confusion in the language regarding the time period for requests to the Chair of the Board to add an item to agenda. In an effort to address the confusion, Mr. Whiteman explained that the Committee recommended changing the time period to fourteen days, striking the language "Chair's meeting communication" and inserting "meeting to which it pertains." (see attached).

On page 13, item 12 regarding review of complaints in executive session, Mr. Whiteman explained that although it is most likely that review of complaints will be done in executive session, the committee opines that there is no need to have a per se rule in the by-laws requiring executive session for review of complaints. (see attached).

On page 17, section 4, Mr. Whiteman noted that a change was made to include "philosophical or political persuasion" to conform to the other sections of the by-laws with similar language. He added that the language "the success of" in the last sentence of that section was stricken in an effort to clarify that quarterly reports are intended to include all aspects of the outreach program, not just successes. (see attached).

At the bottom of page 21, Mr. Whiteman noted that there was some confusion about when the standing committee would make a report. He stated that although the intent was to make a report at each monthly meeting, the amended language of that section now expressly states the intent. (see attached).

Judith Mazza cited the bottom of page 21 and 22 questioning the meaning of the language "next previous monthly meeting." She commented that the language was confusing and suggested changing the language to read "last monthly meeting." Michael Whiteman noted the proposed change and suggested the language "last" or "preceding." The Board expressed its favor for "preceding." Mr. Whiteman then commented that following the committee report, he would recommend adoption with the proposed language change to include preceding in his motion to adopt the amended by-laws. (see attached).

Mr. Whiteman explained that the committee recommends that the by-laws not include a mandatory per se rule on executive session so that it is clear that the Board has the ability to determine whether it will or will not go into executive session. He then explained that the Open Meetings Law and section 50-a of the Civil Rights law gives the Board authority to go into a closed meeting in eight enumerated circumstances.

Paul Weafer referred Mr. Whiteman to section 4 and asked Mr. Whiteman what the rationale is for not going into executive session. Mr. Whiteman responded that it is conceivable that a report or discussion could take place with regard to a complaint where no information concerning the record of the police officer would be disclosed or would require disclosure. Mr. Whiteman added that if an open discussion is not precluded by the Open Meetings Law or section 50-a, then the Board would not have any reason to go into executive session. He further commented that the Open Meetings Law presumes open meetings and it is the opinion of the committee that the by-laws should not have an advance directive that requires the Board to go into executive session or only be in executive session when reviewing complaints.

Mr. Whiteman explained that section 5 of Article 8 applies to both executive and open sessions. Therefore, the committee excluded the language "in executive session." (see attached).

In section 6, Mr. Whiteman noted that the by-laws committee deleted language referring to section 5. (see attached).

In section 7, Mr. Whiteman noted that the Board may be required to go into executive session at times other than the regular monthly meeting and explained that at the conclusion of an executive session, the Board is required to return to a regular open meeting. (see attached).

In Article 10, section three on page 27, Mr. Whiteman pointed out that language was added to address the concern of a member of the public that claims of retaliation be addressed in the same manner as any other complaint of police misconduct. (see attached).

Paul Weafer commented that section 1 and 4 of Article 8 on pages required further clarification for the public. He noted that the types of information that are enumerated in

A-F are the only circumstances in which the Board may enter into executive session. Mr. Whiteman responded that while it is probable that these circumstances would be the only circumstances in which the Board would go into executive session, he did not want to preclude the highly unusual situation in where information falling within the categories for executive session would be discussed at an open meeting.

Judith Mazza interjected, stating that the Board should presume to start out with an open meeting and must have a reason to go into executive session. She further explained that in dealing with certain complaints, the Board must give reasons for going into executive session. She said that executive session is always available during an open meeting, but once there is executive session, an open meeting is no longer available.

Michael Whiteman commented that he could envision a case where the Open Meetings law would apply providing for executive session, but where a police officer wants an open meeting.

Morris Eson commented that he could not think of any situation where the Board could review a complaint in open session. He qualified his preceding statement by saying this may be possible only when identities of the parties are not disclosed during the open meeting.

Michael Whitemen stated that the problem is that the Board is currently dealing in hypotheticals. The Board members have all taken an oath to obey the law and should be relied upon to do so. If the Board does not adopt rules flexible enough to accommodate a variety of circumstances, the rules could preclude operating properly in particular circumstances.

Paul Weafer noted that the Police Department and the Common Council believe that the circumstances enumerated in A-F are the rules that can be adopted in an open meeting to allow for the discussion of certain matters in executive session. He then moved that the language of the title of Article 8, section 5 be modified to read, "Board rules to be utilized in the review of complaint investigations and the making of findings when in executive session." (see attached).

Michael Whiteman asked Mr. Weafer if he would restore the language "in executive session" in the text of the by-law. Mr. Weafer responded that he would amend the title to include "when in executive session," following the word "findings." Morris Eson asked Mr. Weafer if he would reinsert "in executive session" at the bottom of page 23. Mr. Weafer responded that he would keep the strike out.

Paul Weafer explained that "when" does not imply that the per se rule has been adopted, but rather that those circumstances should apply when in executive session. Mr. Weafer then moved to adopt the proposed change to the language of the title of section 5, Article 8. Morris Eson seconded the motion. A vote was taken and all,

except Judith Mazza and Michael Whiteman, agreed.

Michael Whiteman asked if the Board wished to move to adopt the changes separately and then the by-laws in their entirety or move to adopt the changes and the by-laws in a single action. Chairman Cox commented that he preferred to move for adoption in a single action. Michael Whiteman then moved to adopt the amended bylaws. The Board seconded. All agreed.

Morris Eson gave the Complaint Form Committee report. He initiated the report by stating that the Police Department, especially Commander Breen, has been very cooperative in the committee's effort to revise the complaint form. He commented that Commander Breen has made herself available and has been very responsive to the suggestions made by the committee, even when she may not be in agreement. He also thanked Patty Salkin and the Government Law Center for their assistance to the committee in revising the complaint form.

Mr. Eson began the report with items he termed "cosmetic" to the form that the committee sought to revise.

First, he stated that the committee suggested changing the name of the complaint form in response to a comment by a member of the public that the term "civilian" had a paramilitary connotation. He commented that Commander Breen was resistant to the change because the Police Department's Standard Operating Procedure (SOP) referred to the form as the "civilian complaint form." According to Mr. Eson, he recommended that the form be revised to read, "citizens' complaint form (formerly civilian complaint form) so that there would be no confusion in the SOP for purposes of record keeping. He noted that the revised form did not reflect this change. (see attached). He asked for the Board's advice as to whether or not the committee should pursue the change or leave the name of the form as it is.

Judith Mazza responded by saying that this is a minor issue with respect to the Police Department's ability to identify the document under a new name. She commented that her concern is with the perception of those who will be filling the form out. She opines that the form's name could be changed to citizens complaint form without posing a problem for record keeping purposes.

Paul Weafer asked Mr. Eson if the lack of conformity in the name and the rest of the Police Department's documents was the sole reason for not changing the name. Mr. Eson responded affirmatively, explaining that Commander Breen believed that the form would not be recognized under a new name. Judith Mazza commented again that the concern should be with the people using it; she said that the Police Department should be able to recognize it.

Morris Eson recommended that the discussion of the form be tabled until the committee has a chance to engage in further discussion with Commander Breen.

Mr. Eson addressed the cover letter and explained that the committee recommended that new paragraph be added regarding the integrity of the complaint process in response to a comment by a member of the public. He then read the paragraph. (see attached). He noted that the paragraph mirrors the language of section 1.1 of the law creating the Board and mimics the language of the contract between the police officers and the City.

Mr. Eson stated that he presumed that the language was acceptable to the Police Department because Commander Breen did not address it or make any changes to it during her meeting with the committee to discuss revisions to the complaint form.

Mr. Eson moved to accept the revised cover letter. Paul Weafer seconded the motion. All agreed.

Mr. Eson explained that the Board proposed and the police department agreed that a complainant can seek the assistance from certain organizations in filling out and filing a complaint. Mr. Eson commented that Commander Breen had approved a list of organizations and that the list would be attached to the cover letter of the complaint. He then read the names of the organizations. (see attached).

In addition, Mr. Eson stated, there is a list of organizations, that the Government Law Center contacted, which have consented to distributing the forms. He commented that he did not know how complainants would know which organizations were distributing the forms and where to get them. Judith Mazza responded that this could be included in the publicity. Mr. Eson said that he hoped there would be more publicity from the media and that publicity about the form should be covered a couple of times.

Mr. Eson then moved to adopt the cover letter and accompanying lists of organizations. Paul Weafer seconded. All agreed.

Michael Whiteman commented that he had reservations about the complaint form because at the last meeting members of the public said that the community might feel some trepidation about filing because the form is not user friendly. Mr. Whiteman stated that he did not feel as though the form is user friendly, but will vote to approve it with the reservation that it be used on a trial basis and watched closely so that the Board can continue to be responsive to the community.

Morris Eson agreed fully that the format is not user friendly. He commented that the format of the form needs to be attended and that the committee welcomes guidance from the Board in designing a form that is more user friendly. He said that the cover letter is the best solution to the unuser friendly format for now. The Board agreed.

Mr. Eson explained that there were two comments made at the last meeting that the committee considered to be very important to the revisions of the complaint form. First, Mr. Eson referred to and read the notarization statement at the bottom of the complaint

form. (see attached). He stated that the committee had recommended to Commander Breen that the notarization statement be deleted from the form and that it was his understanding that the statement would be deleted. However, he noted that the revised form did not reflect the deleted notarization statement.

Paul Weafer commented that he thought the form had always been subject to notarization. Marilyn Hammond stated that she thought that the statement was going to be deleted. Herman Thomas agreed, saying "we all did."

Morris Eson explained that after the committee's meeting with Commander Breen, it was his understanding that the statement was going to be deleted. He commented that he thinks the form is too forbidding and that instead of having the complainant notarize the form when filing the complaint, Commander Breen could have it notarized at the Police Department at the start of the investigation.

Paul Weafer commented that he understood the Police Department's position and recommended that the Board defer action further action on the complaint form until they have had a chance to talk to Commander Breen. He commented that someone could make a false statement and not know it. He then asked if the notarization statement was in the complaint form used to date. Marilyn Hammond responded that it was not.

Judith Mazza commented that the discussion must be tabled and the complaint form committee needs to meet and make some serious revisions to the form. She stated that it seemed as though the discussion was moving backward and not forward.

Discussion moved to a second issue raised by Morris Eson regarding a comment at the last meeting that the complaint form include a section to categorize the complaint. Mr. Eson read section 42-343B of the law creating the Board. He then commented that Commander Breen was adamant about having the Police Department determine, after reading the narrative of the complaint, what category of complaint it was. According to Mr. Eson, if the Police Department determined that the complaint was not one of excessive force or a violation of civil rights, then a monitor would not be appointed at the start of the investigation. He noted that this issue was more important than the notarization issue.

Mr. Eson commented that if the Board does not insure that a monitor is appointed from the start of the investigation, then the Board will be derelict in its duties. He commented that this issue requires further discussion between the complaint form committee and the Board.

Paul Weafer asked Mr. Eson if there were any other serious concerns with the complaint form. Mr. Eson replied in the negative stating that there were a couple of minor cosmetic details that still needed to be addressed and commended the Police Department for the amicable discussions that it had with the complaint form committee.

Morris Eson motioned to table the discussion. Paul Weafer seconded the motion. All agreed.

Chairman Cox moved to new business. He noted that the Board has 180 days to produce the operating procedures and appoints the following to participate as members an operating procedures committee : Paul Weafer, Judith Mazza, Michael Whiteman, Marilyn Hammond. He commented that he would like to see one additional member of the Board on the committee.

Chairman Cox recommended that the complaint form committee be expanded. He agreed to serve on the committee and asked for a volunteer. Paul Weafer then volunteered.

According the Chairman Cox, Judith Mazza suggested that the Board address the issue of regularly scheduled monthly meetings. After a brief discussion, the Board decided that it would meet the first Monday of May and June; May 7th and June 5th and that, with the exception of July and August, the Board would later determine regularly scheduled monthly meetings.

Discussion moved to public comment. Christopher Gardner, counsel to the Police Officer's union was recognized. Chairman Cox requested that he keep his comments to five minutes.

Mr. Garner stated that he had several issues to discuss with respect to the draft by-laws and amendments to the by-laws.

With regard to sworn and unsworn statements, the notarization issue, Mr. Gardner commented that the form be one that requires a sworn statement because a complaint against a police officer is a serious issue in which a police officer's reputation is on the line and could result in discipline to that officer, including suspension or loss of a job. He stated that in serious allegations of misconduct it is imperative that a sworn statement be required at the onset of an investigation rather than later.

Paul Weafer asked if there was anything in the collective bargaining agreement about sworn statements. Mr. Gardner said no.

Morris Eson asked if, when a police officer charges a person with a crime, the police officer's statement is sworn. Gardner said that it is sworn.

Mr. Gardner commented that he did not have a lot of criticism for the by-laws. He stated that not going into executive session for the review of a complaint would be a problem; not good public policy.

Mr. Garner explained that under section 50-a, most, if not all of the documents produced would fall within section 50-a of the Civil Rights Law. He cited the case of

People v. Morales (97 misc.2d 733, 412 N.Y.Supp.2d 310) in which he interpreted as stating that anything that has the potential impact on the employment of the police officer falls within section 50-a.

Mr. Gardner subsequently cited Pelaz v. Department of Correctional Services (a Court of Appeals case). He explained that the case addressed the issue of the protection of a correctional officer's file with regard to inmate grievances and interpreted the case to mean that documents relating to a police officer's performance fall within section 50-a.

With regard to confidentiality, Mr. Gardner drew the Board's attention to Article 8, section 4, review of complaints in executive session. He commented that review in executive session should not spill over into an open meeting.

Paul Weafer commented that the Board did not intend to violate section 50-a. Mr. Gardner acknowledged Mr. Weafer's comment and stated that he wants the police officer's view to be heard by the Board.

Mr. Gardner referred to Article 9 and recommended that it cite 50-a and provide for notice to a police officer when and if records are going to be made public. He commented that the Board may want to consider providing also that records will not always be public.

Mr. Gardner commented that his concern is how the by-laws will be applied. He asked for good faith on the part of the Board and said that he hoped that complaints would be reviewed in good faith.

Chairman Cox thanked Mr. Gardner for his comments.

Louise Robach was recognized. She commended the Board on its changes and commented that she had spoken with Commander Neilson, who had expressed a willingness to amend the complaint form so that it was more user friendly.

Antoinette McCray was recognized. She asked if a person fills out a form, will that person sit face to face with the police officer and have the opportunity to hear the police officer swear to the truthfulness of the complaint. She explained that in her situation, the complaint went to Internal Affairs and the Officer denied in his sworn statement making a certain statement to her during the incident that gave rise to the complaint. She commented that she believes it is important to have someone available to watch the actions of the police officer while he or she is giving a sworn statement.

Dr. Alice Green was recognized. She commended the Board for its consideration of the public comments.

Chairman Cox then moved to adjourn the meeting. Herman Thomas seconded the motion.

The meeting was adjourned at approximately 8:30pm.

Respectfully Submitted,

Michael Whiteman
Interim Secretary