

City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
December 8, 2011
6:00 p.m. - 8:00 p.m.

Present: Marilyn Hammond, Andrew Phelan Jr., Anthony Potenza, Eugene Sarfoh, and Reverend Edward Smart.

Absent: Akosua Yeboah.

I. Call to Order and Roll Call

Chairman Edward Smart called the meeting to order at 6:05 p.m.

II. Approval of the Agenda

Marilyn Hammond moved to approve the agenda. Anthony Potenza seconded the motion. The motion carried unanimously.

III. Approval of the June 9, 2011 Meeting Minutes

Anthony Potenza moved to approve the June 9, 2011 meeting minutes. Marilyn Hammond seconded the motion. The motion carried unanimously.

IV. Old Business

CPRB No. 38-11/OPS No. CC2010-105 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. According to the complainant, a meter public service officer gave him a ticket for parking in front of the City Hall Circle which is normally used for temporarily parking, even though it is marked off as "No Parking." Chairman Smart reported that a monitor was not assigned to investigate this complaint. He explained that the Board does not have jurisdiction to review this complaint since it involves a public service officer. He stated that the complaint is on tonight's agenda under old business to be voted on to be closed. Chairman Smart stated that the Board sent a letter to the complainant stating that they have no jurisdiction to review complaints against public service officers. Chairman Smart moved to close the case without review. Anthony Potenza seconded the motion. The motion carried unanimously.

V. New Business

A. *New Complaints*

1. New Complaints Received since the October 13, 2011 Meeting

Chairman Edward Smart reported that there are five (5) new complaints since the October, 2011 meeting. Chairman Edward Smart asked Andrew Phelan to read them.

CPRB No. 36-11/OPS No. 2011-116

The complainant alleges that he is being harassed on a regular basis by the same police officer. The complainant further alleges that the officer constantly stops him in front of his house while the complainant is with his dog or if he is doing a simple repair on his car. The complainant alleges that the officer is discriminating against him because of his ethnicity.

A monitor was appointed to investigate this complaint.

CPRB No. 37-11/OPS No. CC2011-120

On October 25, 2011, the complainant alleges that two (2) Albany police officers along with an individual, who used to live in her apartment, rang her doorbell. The officers allegedly told the complainant to let the individual into the apartment to get his belongings. The officer also allegedly told the complainant that the individual had a five (5) day letter that was given to him by Family Court Judge Duggan, but the individual did not have the letter with him. The complainant alleges that the officer became loud, rude, very biased, and threatened to arrest the complainant for possession of stolen property. The complainant claims that when she asked the officer at the Station, which officers were dispatched to her home, the officer allegedly told her that no officers or police vehicle was dispatched to her home.

A monitor was not appointed to investigate this complaint.

CPRB No. 38-11/OPS No. CC2011-111

According to the complainant, a meter public service officer gave him a ticket for parking in front of City Hall's circle, which is normally used for temporary parking even though it is marked off as "No Parking."

A monitor was not assigned to investigate this complaint. The Board does not have jurisdiction to review this complaint. This case is on tonight's agenda under old business to be voted on to be closed.

CPRB No. 39-11/OPS No. CC2011-127

According to the complainant, on November 7, 2011, he left his home to go to the credit union on New Scotland Avenue. The complainant alleges that a doctor at

Albany Medical Center used Albany police officers to intimidate him. The complainant further alleged that as he was standing on Holland Avenue, a police officer looked at him and then looked at his computer in the police vehicle. According to the complainant, the officer drove back and asked him what he was doing. The complainant alleges that the officer harassed him.

A monitor was not appointed to investigate this complaint.

CPRB No. 40-11/OPS No. CC2011-126

According to the complainant, on November 11, 2011, the complainant's neighbor backed into her car as the neighbor was pulling out of the driveway. The neighbor began threatening the complainant and sounded as if she was inebriated. The complainant called the police and then called again because thirty minutes passed. The police allegedly told the complainant that they were busy and would get there when they could. The neighbor's husband called the police and it sounded as if he knew the person who answered the phone. The police arrived shortly after. The officer allegedly looked at the neighbor's vehicle and then the complainant's vehicle. The officer allegedly told the complainant that the neighbor did not hit her car. When the complainant questioned the officer, the officer allegedly became rude and threatening as he yelled at the complainant. The complainant claims that the office never took a statement from her mother who was a witness and the neighbor. The officer allegedly took a statement from the neighbor's husband who was not present at the time of the accident. The complainant alleges that the officer let the neighbor leave the scene while she was under the influence of alcohol.

A monitor was not appointed to investigate this complaint.

2. New Complaints for Review

CPRB No. 15-11/OPS No. CC2010-105 (Presented by Eugene Sarfoh)

Eugene Sarfoh stated that the complaint was withdrawn by the complainant. He further stated that the complainant was at the South Police station because someone he knew was present there. The complainant arrived at the station and offered his friend a cigarette and his friend responded very loudly "Hell no." That commotion caused an officer to go to the front. The complainant alleged that the officer grabbed his neck, dug a fingernail into his neck, and dragged him to the front entrance of the station. The complainant further alleged that he would have left on his own had he had been asked, but it was his friend that was causing the commotion.

Mr. Sarfoh reported that he reviewed the OPS investigation file which included confirmation that on April 28th, 2011 the complainant submitted a sworn statement withdrawing his complaint. The sworn statement was signed in the presence of the monitor. As a result of the statement, the OPS investigation was closed.

Mr. Sarfoh summarized the OPS finding for the use of force allegation as *no finding*, where the complainant withdrew his complaint by sworn statement signed in front of the monitor which ceased the investigation of the complaint. Mr. Sarfoh moved to concur with the OPS finding of *no finding*. Andrew Phelan seconded the motion. The motion carried unanimously.

CPRB 56-10/OPS No. CC2010-131 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that he was at Jillian's night club when he was feeling sick and went outside. While he was outside with his friend, he alleged that one of the bouncers started cursing at him and began to beat him up. The police arrived and allegedly tackled, assaulted, and put a gun to the complainant's head and a taser to his back. There were about five (5) officers on the scene. The complainant alleged that he was threatened to be taken to jail for no reason and the officers did nothing to the bouncer that beat him up.

Marilyn Hammond summarized the OPS finding for the use of force allegation as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that he was assaulted by a bouncer and officers arrived on the scene. The officers allegedly assaulted the complainant and pointed a gun and taser at him. Based on the OPS investigation, a friend of the complainant stated that he was released to the custody of his mother and an officer stated "Get the hell out of here and don't come back." The witness stated that during the complainant's interaction with the officers the witness's brother was "swinging" at the police because he was so drunk that he did not realize what he was doing. Another witness stated that he was cleaning up the sidewalk where the witness's brother vomited, when he asked the brother to move the complainant and friend began to yell at him to leave the brother alone. When he got up he bumped into the witness at which time the complainant got upset and took a swing at the witness. A bouncer interviewed and restrained the complainant. An officer came over and started scuffling with the complainant and they both fell to the ground. The witness stated he never saw the officer display a gun or taser during the incident and does not remember any other police officers at the scene. The witness went back inside Jillian's when he felt the police officer had everything under control.

Marilyn reported that she reviewed an Intra-Departmental Correspondence (IDC) dated February 28th, 2010, the emergency discharge sheet dated Nov 7, and a witness statement

from a bar employee dated December 16th 2010. Ms. Hammond stated that she agreed with the OPS finding. She asked if anyone had any questions. It was noted that there were no questions. Ms. Hammond asked monitor Frank White if he had anything he would like to add. Mr. White replied in the negative.

Marilyn Hammond moved to concur with the OPS finding of *not sustained*. Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 6-11/OPS No. CC 2011-014 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that he was assaulted and officers would not take a report. The complainant further alleged that he requested medical attention and officers refused his request and threatened to arrest him if he did not leave the station. The complainant alleged that an officer has been threatening him by telling people that the officer is going to hurt the complainant for getting the officer in trouble. The officer allegedly told the complainant a report was not taken because the officer was about to get off of work.

Chairman Smart reported that he reviewed the following documents: Civilian Complaint Form; OPS Confidential Report; OPS Case Report; a hand written report by the complainant; CPRB received complaint letter; two (2) CAPSNET; sworn letter by the complainant; St. Peter's Hospital medical record; Incident Report; three (3) Call Reports; two (2) Arrest Reports; Failure to Report; Admission Screening; Suicide Prevention Screening; Warrant for Arrest; Call History Unit; City EMS report; Petit Larceny Report, and a Property Report.

Chairman Smart summarized the OPS finding for the call handling allegation as *unfounded*, where the review showed that the act or acts complained of did not occur. The complainant alleged that he called to file a report of assault and the officers would not take his complaint. The officer allegedly said that he was not going to take the complaint because he was about to get off of work. Based on the OPS investigation, there was no evidence to suggest the officer refused to assist the complainant. The officer completed a report for the matter complained about on December 17, 2010. The supervisor confirmed that he witnessed the report while the complainant was at the South Station and he showed the report to the complainant. The officer stated that they believed that the complainant was highly intoxicated and uncooperative. The complainant himself admitted to being intoxicated during the incident. The officers also stated that the complainant was issued an APD Victims Rights/Incident form in order to obtain a copy of the report.

Chairman Edward Smart moved to concur with the OPS finding for the call handling allegation, as *unfounded*. Anthony Potenza seconded the motion. The motion carried unanimously.

Chairman Smart summarized the OPS finding for the call handling allegation as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that during the incident, he requested medical attention and the officers refused and threatened to arrest him. Based on the OPS investigation, the officers stated that the complainant was continuously offered medical attention which he did not request and the complainant refused. The officers were told by a supervisor to leave the complainant alone, so they did.

Chairman Smart stated that the complainant refused assistance and medical attention. Based on the OPS investigation, the complainant admitted that he refused medical attention and reports indicated that the complainant was more concerned about the reporting process. When taken to St. Peter's Hospital, the complainant was discharged and records indicated that the complainant never returned for any additional treatment. The EMS indicated that he refused treatment while being transported and was uncooperative. All of the officers seem to have attempted to assist the complainant and provided information and assistance to the complainant. Chairman Smart moved to concur with the OPS finding of *not sustained*. Marilyn Hammond seconded the motion. The motion carried unanimously.

Chairman Edward Smart summarized the OPS finding for the conduct standards allegation as *not sustained*, where the review failed to disclose facts that proved or disproved the allegation made by the complainant. The complainant alleged that the target officer stated that he would harm the complainant for getting him into trouble. Based on the OPS investigation, there is no evidence that the officers made the threat or that the officers have followed through with this threat. The officers followed the SOP and the complainant was arrested for outstanding warrants. The arrest was legitimate.

Chairman Smart stated that the threat or threats were not validated and the officer acted on warrants and followed the SOP for those who have warrants issued for their arrest. He further stated that there is no evidence of harassment. Chairman Edward Smart moved to concur with the OPS finding of *not sustained*. The motion was seconded by Andrew Phelan. The motion carried unanimously.

CPRB No. 7-11/OPS No. CC2011-004 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. The complainant alleged that he was stopped by numerous officers. The complainant further alleged that he was never told why he was pulled over and that the officers informed him that they saw him get out of his car and that he was not from the area, or had any business in the area. The complainant stated that he was with a friend and his child. The complainant alleged that he and his passenger were called "wise a**es," and they were constantly told to "shut the f**k up." The complainant stated that he had done nothing wrong to warrant being

stopped by the police. Mr. Potenza reported that a monitor was not assigned to this complaint. He stated that he reviewed the following documents: Grievance Form Report; Uniform Traffic Ticket; and Call Ticket. He stated that he reviewed the departmental paperwork that showed that officers and witnesses were interviewed.

Anthony Potenza summarized the OPS finding for the conduct standards allegation as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. The complainant alleged that the officer never told him why he was pulled over. The officer allegedly told him that he was not from the area and had no business being there. The complainant further alleged that the officer was rude and used profanity towards him and the passenger. Based on the OPS investigation, members of the NY State Police, who were on the scene, recalled nothing remarkable regarding the incident. One officer denied ever acting unprofessional or rude towards the complainant. The officer further denied using any profanity towards the complainant, or making the statements alleged by the complainant. The officer stated the he did notify the complainant that he was stopped due to the traffic infraction of failing to signal, and that it was discovered that complainant was operating a vehicle under a suspended license. All of the parties involved in the incident were interviewed and there is no additional evidence that can support or refute the complainant's allegations.

Anthony Potenza moved to concur with the OPS finding of *not sustained* for the conduct standards allegation. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

CPRB No. 55-10/OPS No. CC2010-116 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that he was assaulted by the bouncer at the Washington Tavern and the responding officer did not take a report for him, nor obtain witness information. It is further alleged when the complainant responded to the Center Station the following day; an officer told him that he could not file the report because the responding officer had to do it. The complainant alleged that he then went to the Traffic Safety Division and spoke to the officer, and he still refused to file a report.

Chairman Smart asked if the complainant was present. It was noted that the complainant was not present. Chairman Smart stated that he had reviewed the following documents: OPS Confidential Report; Assault, Rules of Conduct; Citizen's Complaint Report; Grievance Report; four (4) Sworn Testimonies; Health Disclosure Form; Medical Report; Attending Physician's Report; four (4) Incident Reports; and two (2) Call Reports.

Mr. Phelan asked if the complainant was present. It was noted that the complainant was not present.

Chairman Smart summarized the OPS finding for the call handling allegation as *sustained*, where the review disclosed sufficient facts to prove the allegation made in the complaint. The complainant alleged that he was assaulted and the police officers did not take a report, nor did they obtain witness information. The complainant made multiple attempts to make and file a report and was allegedly refused. Based on the OPS investigation, the officers admitted not making the report and not gathering witness information at the scene of the assault. Other officers admitted that they refused to take the report because they were not the responding officer. The behavior of the officers in question is a violation of departmental procedures.

Chairman Smart stated that the actions of the officers were in violation of the rules of conduct contained in the SOP. These rules of conduct are clearly marked and officers are trained to follow these codes of conduct. Chairman Edward Smart moved to concur with the OPS finding of *sustained*. Marilyn Hammond seconded the motion. The motion carried unanimously.

Chairman Smart asked if there were any questions. It was noted that there were no questions.

CPRB No. 16-11/OPS No. CC2011-018 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that he was issued a ticket and the officer was rude by smiling and sarcastically saying, "Have a nice day."

Marilyn Hammond reported that she reviewed the following documents: Traffic Ticket; Criminal Court Deposition; Call Sheet; a confidential report dated 9/29/11; the complainant responding to OPS regarding the ticket issued on February 18th 2011; the radio transmission that was retrieved on March 9th; audio; and the mobile DVR displaying the stop. The officer tried to pull closer to the curb near a snow bank. After the stop, the DVR showed the complainant handing the officer the information and the officer said "Alright, I will be right back." The complainant had questions regarding the name badge and car number to which the officer responded that he would be right back. Ms. Hammond reported that the video showed no sarcasm from the officer and the complainant was also given a complaint form. On April 19th, the OPS received the complaint. The investigation revealed that the officer was on another call at 9:37 a.m. that day and cleared at 9:41 a.m. and the complainant stated that he waited 8 minutes behind the car. On May 25th, the complainant pled guilty to a lesser charge. According to Article 47.1 of the SOP, officers are to avoid any unnecessary conversation with a motorist when conducting a traffic stop. The dvr did not show the officer smiling at the complainant or using any behavior to taunt the complainant.

Marilyn Hammond summarized the OPS finding for the conduct standards allegation as *unfounded*, where the review showed that the act or acts complained of did not occur. The mobile DVR video of the traffic stop indicated that the officer did not act rude or unprofessional in any way. The officer stated, "Sir, have a nice day." The complainant alleged that the officer sarcastically made that statement twice, however this did not occur. The officer adhered to departmental policy by informing the complainant of the offense, and issued the ticket without discussion. The officer also provided his name and shield number upon request. The video did not display what would be considered taunting behavior.

Marilyn Hammond moved to concur with the OPS finding of *unfounded*. Chairman Edward Smart seconded the motion. The motion carried unanimously.

B. *Appointment of New Members to the Committee on Complaint Review for January 12, 2012.*

The following Board members were appointed to the Committee on Complaint Review for January 2012: Marilyn Hammond, Andrew Phelan Jr., Anthony Potenza, Eugene Sarfoh, and Reverend Edward Smart.

C. *Committee/Task Force Reports*

By-Laws and Rules

Chairman Edward Smart stated that he had nothing new to report.

Community Outreach

Chairman Edward Smart noted that Akosua Yeboah was not available. He stated that there was a community outreach meeting held and that Andrew Phelan was present at that meeting¹

Police Department Liaison-Policy Review/ Recommendations

Committee Chair Andrew Phelan stated that on October 27th, 2011, the committee met with Police Chief Steven Krokoff and his staff at headquarters to discuss the Early Warning System and what type of report would be available to the Board. We also discussed mediation and how that stands. Chairman Phelan stated that they are trying to meet with the union regarding the mediation. He further stated that they discussed cameras in the police vehicles and what the Board would be able to view. Chairman Smart stated that he wanted to inform Commander Matos that they have tried to meet with the union representatives and is asking for his assistance and the police department seems to be reluctant to meet with the Board.

¹ Board member Akosua Yeboah met with the Center Square Neighborhood Association on November 17, 2011.

Commander Matos stated that he was aware however was not aware of any scheduling. Chairman Smart asked whether the Commander Matos would be opposed to be the facilitator of the meeting. Commander Matos agreed to schedule and facilitate the meeting.

D. *Report from the Government Law Center*

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

Complaint Inventory as of Date of Meeting

It was reported that included in tonight's packets is the complaint database scorecard. As of today, there are currently thirty-nine (39) active complaints before the Board for review. Of those thirty-nine (39) active complaints, six (6) were reviewed and closed and one (1) was closed by the Board with no review at tonight's meeting. This leaves the Board with thirty-two (32) active complaints. There are five (5) cases on the next meeting agenda.

It was reported that four hundred and seventy-nine (479) complaints have been closed. The total number of complaints that remain suspended from review is thirteen (13). The total number of complaints filed to date is five hundred and twenty-four (524).

It was further reported that since the Board's last meeting, the Government Law Center (GLC) received ten (10) grievance forms, bringing the total number of forms received to two hundred and eighty-seven (287). In response to the GLC's outreach to all individuals, the GLC has received eighty-one (81) Citizen Police Review Board (CPRB) complaint forms.

Board Member Vacancies

It was reported that there are still three (3) vacancies on the Board. All of the vacancies are Common Council appointees. There are also two (2) Board members whose terms expired at the end of October. Ms. Moseley asked Board members Potenza and Hammond if they heard anything regarding their re-appointments. Marilyn Hammond responded that she received a letter in the mail. Anthony Potenza stated that he has yet to receive anything.

Community Outreach

It was reported that last month, Outreach Committee Chairperson Akosua Yeboah met with the Center Square Neighborhood Association. The committee has two (2) more meetings scheduled for the upcoming months. One is with the New York Civil Liberties Union (NYCLU) in January and the other with the National Association for the

Advancement of Colored People (NAACP). It was further reported that last month, the committee also met to finalize the meeting brochure as well as the revisions to the CPRB brochure. Draft copies of both brochures are in the Board's meeting packets. The next step with the brochures is approval by the Board and to have them translated into Spanish.

APD Ride-Along

Ms. Moseley reminded the Board that members should participate in at least one (1) ride-along per year. New members are required to participate as part of their orientation. Please let me know if you have not completed a ride-along this year.

Training

The GLC decided to hold off on scheduling training for the Board until new Board members are appointed.

E. *Report from the Office of Professional Standards*

OPS Commander Ron Matos reported that the APD has been involved in quite a few items since the Board's last meeting. The first item is that the strategic planning initiative of the APD has continued to move forward. The APD recently broke into separate groups at the tactical planning and operational planning level and have more department members involved and continues to move forward correlating its omission statements. It was further reported that the police applicant process has continued with applicant interviews and the APD are looking at approximately thirty (30) vacancies. In conjunction with the applicant processing the APD has decided to post a counselor at the academy. The counselor will be from the APD ranks and will be filled on a temporary basis based on an internal selection process between January 9, 2012 and July 13, 2012. Commander Matos further reported that the APD's in-service training reached its fourth evolution for 2011 where members were assigned to go to choices 301 training. Instructions were provided regarding EAP and different pitfalls of addiction and improper choices while officers are off-duty were some of the resources available to assist officers. The community coalition training has come out and will be held on December 13, 2011. A couple of the training blocks on that date that are note-worthy are: conflict resolution and building unity across ethnic, religious, and class divisions.

F. *Report from the Chair*

Chairman Edward Smart reported that the board had received two (2) letters on items that were previously deliberated on by the CPRB. One is regarding the review of dispatchers. The Board received this letter in response to an inquiry from Deputy Chief Stephen Reilly. This letter states that the matter of dispatchers supervising communication

regarding the dispatching and handling of calls coming into the communication division and is reviewed on a monthly basis. If the calls are being mishandled in any way the matter is addressed by the supervisor in the communications division. It is also come to the Board's knowledge that cases that involve allegations of misconduct by dispatchers and meter maids are not under the Board's jurisdiction and the police department will handle those cases as an internal matter. The Board also sent a letter to Deputy Chief Reilly concerning the APD's review of the SOP in terms of additional training and methods and techniques to prevent an avoidable dangerous situation from occurring. Deputy Chief Reilly stated that the sessions are incorporated to review current case law as well as proper search and seizure techniques. The training unit is currently reviewing the SOP guidelines and updating them. It is important to note that the seizure in review was heard at a suppression hearing after careful review and the same judge found that the seizure was proper.

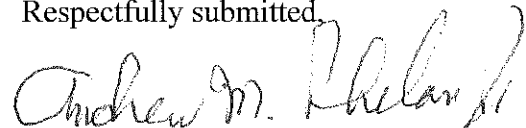
VI. Public Comment

Chairman Edward Smart opened the floor for public comment. It was noted that there were no public comments.

VII. Adjournment

Marilyn Hammond moved to adjourn the meeting. Chairman Edward Smart seconded the motion. The motion carried unanimously. The meeting was adjourned at 7:00p.m.

Respectfully submitted,



Andrew Phelan, Jr.
Secretary