

City of Albany

CITIZENS' POLICE REVIEW BOARD

First Quarterly Report February 1, 2008

Submitted by:
The Government Law Center of Albany Law School
on behalf of the
City of Albany Citizens' Police Review Board



First Quarterly Report of the City of Albany
Citizens' Police Review Board

February 1, 2008

Submitted to:
The Mayor of the City of Albany
The Common Council of the City of Albany
The Police Chief of the City of Albany

BACKGROUND

Section 42-340 of Chapter 42, Part 33 of the Albany City Code requires the Government Law Center of Albany Law School to file, on behalf of the Albany Citizens' Police Review Board (CPRB), quarterly reports containing "statistics and summaries of citizen complaints, including a comparison of the CPRB's findings with the final determinations of the [Police] Department." This is the First Quarterly Report so submitted in the year 2008.

DEFINITIONS

For purposes of this report, the following words and phrases shall have the meaning described in this report:

COMPLAINT – A written statement concerning police conduct which is either submitted to the Citizens' Police Review Board for filing with the Albany Police Department or filed directly with the Albany Police Department.

CPRB or BOARD – The Citizens' Police Review Board.

GOVERNMENT LAW CENTER – The Government Law Center of Albany Law School.

MEDIATION – A structured dispute resolution process in which a neutral third party assists the disputants to reach a negotiated settlement of their differences.

OFFICER – Any sworn police officer of the City of Albany Police Department affected by a citizen complaint.

OFFICE OF PROFESSIONAL STANDARDS – The Professional Standards Unit of the City of Albany Police Department.

INTRODUCTION

The Government Law Center of Albany Law School was retained by the City of Albany to provide a number of services to the Board, the City, and the community. Many of these services are discussed, as appropriate, below.

ORGANIZATION OF THE BOARD

The following members constituted the Board during the first quarter of 2008:

Jason Allen
Daniel Fitzgerald
Ronald Flagg
James Malatras

John Paneto
Andrew Phelan, Jr.
Anthony Potenza
Hon. Fowler Riddick

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

Chair	Jason Allen
Vice-Chair	Hon. Fowler Riddick
Secretary	Ronald Flagg

Appointments

On January 29, 2008, the City of Albany's Common Council re-appointed Ronald Flagg as a member of the CPRB. Mr. Flagg has been re-appointed to serve a term which will expire on October 26, 2010.

Nominations and Elections for Board Officers

At the CPRB's January 10, 2008 meeting, nominations and elections were held for the positions of Chair, Vice-Chair, and Secretary pursuant to the Board's Bylaws (Art. IV, § 1). Jason Allen was nominated for the Chair position, Hon. Fowler Riddick was nominated for the Vice-Chair position, and Ronald Flagg was nominated for the position of Secretary. The slate was presented, voted on, and approved unanimously at the Board's January 10, 2008 meeting.

Nominations and Elections for Committee/Task Force Chairs

At the CPRB's January 10, 2008 meeting, nominations and elections were held for the chair and member positions of the Board's committees and task force. Chairman Allen proposed that all members and chairs remain the same from the previous term. The slate was presented, voted on, and approved unanimously at the Board's January 10, 2008 meeting.

Committees and Task Force

The following committees and task force were operational in the first quarter of 2008:

<i>By-Laws and Rules</i>	Jason Allen (Chair) James Malatras Hon. Fowler Riddick
<i>Community Outreach</i>	James Malatras (Chair) Jason Allen (<i>ex-officio</i>) John Paneto Hon. Fowler Riddick
<i>Complaint Review</i>	Andrew Phelan, Jr. (Chair) Jason Allen Daniel Fitzgerald Ronald Flagg James Malatras

John Paneto
Anthony Potenza
Hon. Fowler Riddick

Mediation Jason Allen (Chair)

*Police Department Liaison-
Policy Review/
Recommendations* Daniel Fitzgerald (Chair)
Jason Allen (*ex-officio*)
James Malatras
Anthony Potenza

Public Official Liaison Ronald Flagg (Co-Chair)
Jason Allen (Co-Chair)
Anthony Potenza
Andrew Phelan, Jr.

Monitors James Malatras (Chair)
Jason Allen (*ex-officio*)

The following occurred during the first quarter of 2008:

BY-LAWS AND RULES/MEDIATION

During the first quarter of 2008, the Board took further steps toward finalizing a mediation protocol that would avoid investigations in those instances where complaints can be resolved through mediation between the complainant(s) and officer(s). The Board planned on meeting with the Albany Common Council to discuss any updates that may be required to its By-Laws based on the development of the mediation program and other initiatives.

On December 20, 2007, members of the Board's Mediation and Public Official Liaison Committees met with Deputy Mayor Phillip Calderone and Chief James W. Tuffey to discuss the inconsistency between the mediation protocol and the City's ordinance. At that meeting, it was agreed that Assistant Corporation Counsel Patrick Jordan would draft language to conform the ordinance and the protocol.

In December 2007, Chairman Jason Allen, Board member Andrew Phelan, Jr. along with Government Law Center (GLC) staff interviewed eight (8) candidates for the CPRB mediator positions and selected six (6) of those candidates to be presented to Chief of Police James W. Tuffey, Mayor Gerald Jennings, and the Common Council for final approval. During the first quarter of 2008, the committee forwarded the list of six (6) candidates to the Chief for his approval.

At its January 10, 2008 meeting, the Board voted in favor of approving the list of mediators that was forwarded to Chief Tuffey.

COMMUNITY OUTREACH

In November 2007, the Board continued working on the development of its new CPRB brochure. The purpose of the new brochure is to explain the role and function of the CPRB. The Board agreed that the brochure should also be printed in Spanish.

In December 2007, the Board received and began its review of the draft brochure.

On December 5, 2007, Chairman Jason Allen and Board member John Paneto conducted an outreach meeting at the Council of Albany Neighborhood Associations (CANA) meeting. CANA consists of community association leaders and individuals interested in community affairs. The December meeting was attended by approximately thirty (30) people. At the meeting, Chairman Allen gave an overview of the CPRB's history and process. In addition, Mr. Paneto distributed copies of the Board's complaint form and copies of former GLC Senior Staff Attorney Justina Cintron's article¹.

In addition to participating in outreach meetings, one week before each CPRB meeting, Committee Chairman James Malatras emailed the neighborhood association liaisons inviting them to the CPRB meetings and inquiring if they would like the Board to address any concerns or issues they may have.

In January 2008, the Board finalized the CPRB brochure. It was agreed that the CPRB brochure was ready to be professionally printed by a union printing company. Committee Chairman James Malatras continued to draft a press release that would be mailed along with the CPRB brochure to the community.

At the Board's January 10, 2008 meeting, Committee Chairman James Malatras proposed that the Board staff a table at the New York State Black and Puerto Rican Legislative Caucus. Mr. Malatras stated that he would obtain more information regarding that event and forward it to the Board.

COMPLAINT REVIEW

Pursuant to Section II, Subsection I of the Board's Operating Procedures, each of the four (4) appointed members of the Committee on Complaint Review, in addition to the Chair of the Committee, will be responsible for the presentation of a particular complaint to the Board at its monthly meetings as assigned by the Chair of the Committee. Nine (9) complaints were presented and reviewed in the first quarter of 2008.

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

¹ Justina R. Cintron, *The New York Experience: Existing Models of Citizen Oversight*, Vol. 5, No. 2 NYBSA GLP Journal, 11 (Fall 2003).

November 2007	James Malatras, John Paneto, and Andrew Phelan, Jr.
December 2007	Jason Allen, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Hon. Fowler Riddick.
January 2008	Jason Allen, Daniel Fitzgerald, James Malatras, and Anthony Potenza.

COMPLAINT SUMMARIES AND STATISTICS

Section 42-340C of Chapter 42, Part 33 of the Albany City Code charges the Board with providing “statistics and summaries of citizen complaints, including a comparison of [its] findings with the final determinations of the [Police] Department.”

During the first quarter of 2008, the Board received seven (7) new complaints in addition to its twenty-seven (27) active complaints and nine (9) suspended complaints. Two (2) of the nine (9) suspended complaints were active and then suspended in the first quarter of 2008, while seven (7) of the nine (9) suspended complaints were carried over from previous quarters. Monitors were appointed to investigate three (3) of the seven (7) new complaints. Of the thirty-six (36) complaints before the Board, the Board presented nine (9) complaints for review and rendered findings for the allegation(s) contained in all nine (9) complaints. These nine (9) complaints contained a total of eighteen (18) allegations of misconduct.

As to the nine (9) complaints reviewed, the Board made findings consistent with the preliminary findings of the Office of Professional Standards in all nine cases. The findings of the Albany Police Department for these nine (9) cases were consistent with the Board’s findings.

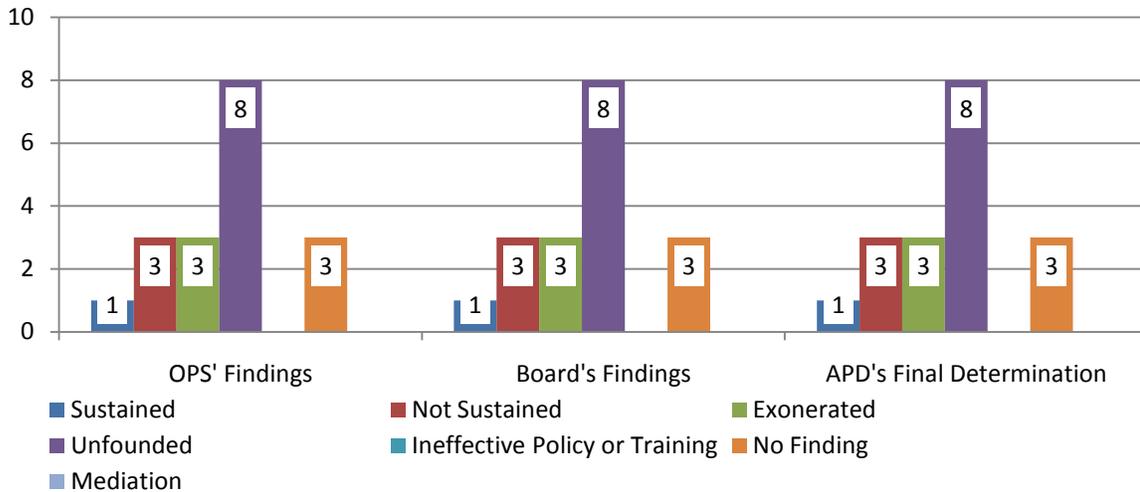


Figure 1: Comparison of Findings Made by the OPS, the Board, and the Albany Police Department during the First Quarter of 2008.

Figure 1 depicts a comparison of the findings made by the Board and the findings made by the Police Department, including the preliminary findings of the Office of Professional Standards and the Albany Police Department's final determinations. The following is a summary of those complaints:

CPRB No. 4-07/OPS No. C07-122 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards - while the complainant was in police station's waiting room, an officer tied the inside and outside doors together causing freezing cold air to come into the room; *and*

2) Use of Force - the officer grabbed the complainant and threw her forcefully out of the police station causing scrapes and bruises on the complainant.

OPS Preliminary Finding(s): 1) **Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the use of force allegation.

CPRB Finding(s): 1) **Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the use of force allegation.

APD Final Determination(s): 1) **Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the use of force allegation.

CPRB No. 8-07/OPS No. C07-219 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards - while in the back of a police vehicle, the complainant was denied a request for medical attention; *and*

2) Call Handling - the complainant requested that a report be filed for assault; *and*

3) Conduct Standards - officers denied complainant's request for help in finding his lost property.

OPS Preliminary Finding(s): 1) **Unfounded** as to the conduct standards allegation that the complainant was denied a request for medical attention; *and*

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

3) **Not Sustained** as to the conduct standards allegation that the officers denied complainant's request for help in finding his lost property.

CPRB Finding(s):

1) **Unfounded** as to the conduct standards allegation that the complainant was denied a request for medical attention; *and*

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

3) **Not Sustained** as to the conduct standards allegation that the officers denied complainant's request for help in finding his lost property.

APD Final Determination(s): 1) **Unfounded** as to the conduct standards allegation that the complainant was denied a request for medical attention; *and*

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

3) **Not Sustained** as to the conduct standards allegation that the officers denied complainant's request for help in finding his lost property.

CPRB No. 10-07/OPS No. C07-262 [monitor appointed]

Nature of the Allegation(s): 1) Call Handling - an officer stopped the complainant for tailgating when complainant was driving three car lengths behind the officer; *and*

2) Conduct Standards - during the traffic stop, the officer swore at the complainant, threatened the complainant and threw the complainant's car keys and license at her.

OPS Preliminary Finding(s): 1) **Exonerated** as to the call handling allegation; *and*

2) **Not Sustained** as to the conduct standards allegation.

CPRB Finding(s):

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

2) **Not Sustained** as to the conduct standards allegation.

APD Final Determination(s): 1) **Exonerated** as to the call handling allegation; *and*

2) **Not Sustained** as to the conduct standards allegation.

CPRB No. 11-07/OPS No. C07-284 [monitor appointed]

Nature of the Allegation(s): 1) Use of Force - while at City Hall, the complainant alleged that an officer physically assaulted her;

2) Arrest Authority and Procedures - the officer falsified records against the complainant; *and*

3) Conduct Standards - the officer screamed at the complainant and acted irrationally.

OPS Preliminary Finding(s): 1) **Unfounded** as to the use of force allegation;

2) **Unfounded** as to the arrest authority and procedures allegation; *and*

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

CPRB Finding(s): 1) **Unfounded** as to the use of force allegation;

2) **Unfounded** as to the arrest authority and procedures allegation; *and*

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

APD Final Determination(s): 1) **Unfounded** as to the use of force allegation;

2) **Unfounded** as to the arrest authority and procedures allegation; *and*

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

CPRB No. 12-07/OPS No. C07-279 [no monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards - during a traffic stop, an officer verbally abused and threatened the complainant; *and*

2) Call Handling - the officer detained the complainant on the scene for thirty-five (35) minutes.

OPS Preliminary Finding(s): 1) **Not Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the call handling allegation.

CPRB Finding(s): 1) **Not Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the call handling allegation.

APD Final Determination(s): 1) **Not Sustained** as to the conduct standards allegation; *and*

2) **Unfounded** as to the call handling allegation.

CPRB No. 15-07/OPS No. C07-359 [no monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards - an officer wrongfully stopped the complainant, and searched the complainant's vehicle for marijuana and money; *and*

2) Conduct Standards - the officer harassed the complainant in front of her children.

OPS Preliminary Finding(s): 1) **Exonerated** as to the first conduct standards allegation; *and*

2) **Unfounded** as to the second conduct standards allegation.

CPRB Finding(s): 1) **Exonerated** as to the first conduct standards allegation; *and*

2) **Unfounded** as to the second conduct standards allegation.

APD Final Determination(s): 1) **Exonerated** as to the first conduct standards allegation; *and*

2) **Unfounded** as to the second conduct standards allegation.

CPRB No. 18-07/OPS No. C07-525 [no monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards - members of the Albany and Colonie police departments and firefighters have been continuously harassing the complainant; *and*

2) Conduct Standards - members of the Albany police, Colonie police or firefighters broke the headlight on the complainant's car.

OPS Preliminary Finding(s): 1) **No Finding** as to the first conduct standards allegation; *and*

2) **No Finding** as to the second conduct standards allegation.

CPRB Finding(s): 1) **No Finding** as to the first conduct standards allegation; *and*

2) **No Finding** as to the second conduct standards allegation.

APD Final Determination(s): 1) **No Finding** as to the first conduct standards allegation; *and*
2) **No Finding** as to the second conduct standards allegation.

CPRB No. 21-07/OPS No. C07-588 [no monitor appointed]

Nature of the Allegation(s): Conduct Standards - while at Lark Fest with his alligator, the complainant was asked to leave by three police officers.

OPS Preliminary Finding(s): **Exonerated**

CPRB Finding(s): **Exonerated**

APD Final Determination(s): **Exonerated**

CPRB No. 24-07/OPS No. C07-644 [no monitor appointed]

Nature of the Allegation(s): Conduct Standards - while at a legislative meeting, a Sheriff grabbed the complainant's flier, pushed the complainant, and asked the complainant to leave.

OPS Preliminary Finding(s): **No Finding**

CPRB Finding(s): **No Finding**

APD Final Determination(s): **No Finding**

DEFINITION OF CPRB FINDINGS

Section 42-344A of Chapter 42, Part 33 of the Albany City Code charges the Board with, after review and deliberation of an investigation, shall, by majority vote, make one of the following findings on the case:

(1) *Sustained* – where the review discloses sufficient facts to prove the allegations made in the complaint.

(2) *Not Sustained* – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.

(3) *Exonerated* – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

(4) *Unfounded* – where the review shows that the act or acts complained [of] did not occur or were misconstrued.

(5) *Ineffective Policy or Training* – where the matter does not involve guilt or lack thereof, but rather ineffective departmental policy or training to address the situation.

(6) *No Finding* – where, for example, the complaint failed to produce information to further the investigation; or where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; or where the complainant withdrew the complaint; or where the complainant is unavailable to clarify the complaint; or where the officer is no longer employed by the City.

(7) *Mediation* – where the complaint is resolved by mediation.

POLICE DEPARTMENT LIAISON - POLICY REVIEW/RECOMMENDATIONS

During the first quarter of 2008, Committee Chairman Daniel Fitzgerald planned on scheduling a meeting with the Office of Professional Standards to discuss the status of the APD's implementation of the early warning system.

PUBLIC OFFICIAL LIAISON

During the first quarter of 2008, members of the Public Official Liaison Committee met with Deputy Mayor Phil Calderone and Chief of Police James Tuffey to discuss the inconsistency between the Board's mediation protocol and the city ordinance; CPRB initiatives; and an abbreviated version of the Citizens Police Academy for the CPRB mediators.

On January 16, 2008, members of the Public Official Liaison Committee and Policy Review Committee held a meeting with the Albany Common Council to discuss CPRB initiatives; the inconsistency between the Board's mediation protocol and the city ordinance; the mediation program; and community outreach. At that meeting, the Common Council unanimously re-appointed Board member Ronald Flagg to serve another term on the Board.

The Committees agreed to continue meeting with the Mayor's office and with the Common Council at least twice a year.

TASK FORCE ON MONITORS

During the first quarter of 2008, the Task Force forwarded to the Board a red-lined draft version of the monitor's protocol for its review.

On January 24, 2008, the Task Force met with the CPRB monitors to discuss comments or concerns that the monitors had regarding the monitor's protocol. This meeting resulted in the finalization of the monitor's protocol.

MEETINGS

The Board met as a whole three times for the conduct of business during the first quarter of 2008. Meetings were held on November 8, 2007, December 20, 2007, and January 10, 2008. The December 13, 2007 meeting was moved to December 20, 2007 due to inclement weather. The meetings were held at the Albany Public Library, 161 Washington Avenue, in the Large Auditorium. There was a public comment period at each meeting.

At its December 20, 2007 meeting, the Board voted in favor of changing its monthly meetings from the second Tuesday to the second Thursday of every month to accommodate the schedule of a Board member. In addition, the Board hopes that this will also encourage media and public participation at its meetings. The meeting time remains 6:00 p.m. and meetings will continue to be held at the Albany Public Library located at 161 Washington Avenue.

TRAINING

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

During the first quarter of 2008, the Board discussed its plans for members to attend the National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference that is scheduled for October 26 – 30, 2008 in Cincinnati, Ohio. The Board agreed that the attendance of more of its members would be beneficial because the conference is a valuable training vehicle. The Board also discussed the possibility of the APD sending a representative to the conference as well.

REPORTS

At its November 8, 2007 meeting, the Board voted unanimously to approve its First Quarterly Report for 2007, prepared and submitted by the Government Law Center.

At its December 20, 2007 meeting, the Board voted unanimously to approve its Second Quarterly Report for 2007, prepared and submitted by the Government Law Center.

GOVERNMENT LAW CENTER

During the first quarter of 2008, the Government Law Center engaged in the following activities as directed by the local law and pursuant to its contractual obligations with the City of Albany:

- Coordinated the interview process for mediator candidates by reviewing resumes, forwarding resumes to the Board, preparing interview questions, scheduling interview times, and participating in the interviews of mediator candidates.

- Assisted the Board in selecting six (6) mediator candidates to be recommended for approval by the Mayor, Common Council, and Chief Tuffey.
- Forwarded the list of six (6) mediator candidates to the Board and Chief Tuffey for approval.
- Engaged in discussions between Chief Tuffey, the Executive Director of *Mediation Matters* and the Board in developing the mediation program.
- Engaged in discussions with City officials regarding the Center's revised contract for services to the Board.
- Prepared and submitted to the Board drafts of the new brochure for final approval before printing and coordinated efforts to have the brochure translated into Spanish;
- Coordinated with the Board and the Council of Albany Neighborhood Associations (CANA) in order to schedule time for the Board members' presentation at the December CANA meeting.
- Forwarded the redlined monitor's protocol to the Board.
- Drafted and forwarded correspondence to the Common Council regarding Board member Ronald Flagg's re-appointment status.
- Drafted and forwarded correspondence to the Mayor's office regarding one mayoral vacancy on the Board.
- Drafted and forwarded correspondence to Chief Tuffey requesting the APD's final determinations for complaints reviewed by the Board.
- Forwarded correspondence to the Board from Chief Tuffey on the APD's final determinations for complaints reviewed by the Board.
- At the request of the Board, drafted and forward correspondence to the State Police regarding its concerns about allegations in CPRB No. 13-07/OPS No. C07-282 concerning the actions of a State trooper.
- Drafted and forwarded correspondence regarding Freedom of Information Law (FOIL) requests.
- Forwarded the updated database scorecard to the OPS and members of the Board.
- Forwarded the Board's First and Second Quarterly Reports to its members, City of Albany public officials and residents.

- Forwarded to the Board press clippings regarding the Albany CPRB.
- Updated the contact information for the organizations listed on the CPRB's complaint form and brochure.
- Continued the development of the CPRB electronic database.

In addition, the Center performed the following administrative tasks:

- Arranged logistics for and coordinated three (3) regular monthly meetings, including: securing dates, times, and locations for each meeting, and providing notice to the affected parties and to the public;
- Arranged logistics for and coordinated four (4) committee/task force meetings, including: securing dates, times, locations, and preparing meeting materials;
- Arranged logistics for and coordinated interviews of potential mediators, including: securing dates, times, locations, and preparing interview materials;
- Arranged logistics for one (1) outreach meeting, including: securing date, time, location, and preparing meeting materials;
- Prepared and assembled regular monthly meeting packets for Board members, including: photocopying complaints, reports, and accompanying documents for review;
- Prepared a summary of new complaints filed with the Board for presentation by the Chair of the Committee on Complaint Review at each monthly meeting;
- Prepared findings forms for the recording of Board determinations by members of the Committee on Complaint Review at each monthly meeting;
- Attended three (3) regular monthly meetings and four (4) committee/task force meetings;
- Reported all activities related to Board business at each monthly meeting;
- Recorded and transcribed the minutes of each monthly meeting;
- Notified affected parties of Board findings, recommendations, and requests following each monthly meeting;
- Conducted a monthly accounting and inventory of complaints filed with the Board, including a summary of active, suspended, and closed complaints, recommendations, and pending requests submitted to the Chief of Police, the Office of Professional Standards, and the Corporation Counsel's Office;

- Reported monthly complaint accounting and inventory to the Board at each of its first quarter meetings;
- Assisted with typing and forwarding the Board's requests and recommendations to the Chief of Police, the Office of Professional Standards, and/or the Corporation Counsel's Office;
- Received and logged in complaints;
- Opened and closed complaint files;
- Forwarded complainant related correspondence to Board members;
- Updated and maintained the Board's website to include new meeting minutes, first and second quarterly reports for 2007, new Board members and the new meeting schedule;
- Maintained regular communications with Board members, the Police Department, and the Corporation Counsel's Office; *and*,
- Answered inquiries from the community and the media about the Board and the complaint review process.

CONCLUSION

The Board had an active first quarter, which included: interviewing and recommending mediator candidates for its mediation protocol; holding three (3) regular monthly meetings, four (4) committee/task force meetings, and an outreach meeting; creating and printing its new brochure for distribution; and reviewing complaints.

Respectfully submitted,

Government Law Center of Albany Law School
Approved by and submitted on behalf of the
City of Albany Citizens' Police Review Board

Dated: February 1, 2008

