



City of Albany Community Police Review Board

2021 3rd Quarter Report

May 1, 2021 – July 31, 2021

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

This report covers the operations of the Community Police Review Board (CPRB) from May 1, 2021 to July 31, 2021.

The Board is an independent body established by the City of Albany in 2000 to improve communication between the police department and the community, increase police accountability and credibility with the public, and create a complaint review process that is free from bias and informed by actual police practice.

In addition to its authority to review and comment on completed investigations of complaints of alleged misconduct made by community members against officers of the Albany Police Department, the nine-member Board may make recommendations to the Common Council and the Mayor regarding police policies and practices relevant to the goals of community policing and the exercise of discretionary authority by police officers. The Mayor and the Common Council appoint the board members. In a unique arrangement, the Government Law Center at Albany Law School provides substantial support services to assist the Board in its duties and responsibilities.

The legislation that established and governs the Board is part 33 of Chapter 42 of the Code of the City of Albany, which can be found online here: ecode360.com/7680044. More information on the Board can be found on its website, albanycprb.org.

Board Membership

The following members constituted the Board during the third quarter of 2021:

1. Nairobi Vives, *Chair*;
2. Veneilya A. Harden, *Vice Chair*;
3. Paul Collins-Hackett, *Secretary*;
4. Larry Becker;
5. Kevin Cannizzaro;
6. Reverend Victor Collier;
7. Zach Garafalo;
8. Matthew Ingram; and
9. Victor Person

As of May 1, 2021, there are no vacancies for mayoral appointments.

Complaint Review

The Board begins reviewing each case after it receives a “preliminary” report from the Albany Police Department’s Office of Professional Standards (OPS). The OPS report recounts the facts of the complaint, the facts revealed by OPS’s investigation, and OPS’s recommendations about the case. Each board member is entitled to view that report and the report prepared by any individual appointed by the Board as an observer, monitor or investigator. Board members are also entitled to question the investigator from the Office of Professional Standards who was principally responsible for preparing the preliminary report, as well as the individual appointed by the Board as an observer, monitor, or investigator. The Board is also may request a fuller description of the matter contained in the preliminary report and may ask such other questions that may enable them to vote on a fully informed

basis. The Board then makes findings on each case, which are forwarded to the Complainant and the Albany Police Department (APD).

The Board reviewed and made findings on four complaints in the third quarter of 2021: CC2019-003; CC2019-012; CC2019-024, and CC2019-028.

The summaries provided are separate findings by the OPS and the CPRB following a review and investigation of reported complaints.

OPS Case No.	Case Synopsis	OPS Finding	CPRB Finding
CC2019-003	The issue involves the allegation of an unlawful tow by APD. Allegation(s): 1. Call Handling	1. Call Handling: Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued.	1. Call Handling: Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued.

OPS Case #	Case Synopsis	OPS finding	CPRB Finding
CC2019-012	The Complainant alleges that on June 28, 2018, APD officers shot at their vehicle with no warning; officers covered up their body cams, lied in their report about their vehicle being unregistered, and planted a gun on the Complainant while they were passed out. Allegation(s): 1. Use of Force 2. Call Handling (3 cts)	1. Use of Force – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued. 2. Call Handling – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued.	1. Use of Force – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued. 2. Call Handling – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued.

OPS Case #	Case Synopsis	OPS finding	CPRB Finding
CC2019-028	The Complainant was involved in an auto accident on April 1, 2019, where another driver hit their door; an officer responded that the drivers exchanged their information, and	1. Conduct Standards – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued.	1. Conduct Standards – Not Sustained (Officers Anderson and Carpenter) - where review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint;

	<p>the Complainant was provided with an incident number. An accident report was not produced. Complaint contacted APD and believes he was treated disrespectfully, and they failed to produce an accident report.</p> <p>Allegation(s):</p> <ol style="list-style-type: none"> 1. Conduct Standards 2. Call Handling (2 cts) 	<ol style="list-style-type: none"> 2. Call Handling – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued. 3. Call Handling – Exonerated - where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. 	<p>Sustained (Officer Smith) - where the review discloses sufficient facts to prove the allegations made in the complaint.</p> <ol style="list-style-type: none"> 2. Call Handling – Ineffective Training and Policy – where the matter does not guilt or lack thereof, but rather ineffective departmental policy or training to address the situation. 3. Call Handling – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued.
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OPS Case #	Case Synopsis	OPS finding	CPRB Finding
CC2019-24	<p>On August 17, 2019, Complainant was in her home and overheard an officer say “These savages,” and another officer respond “You can’t say that, and I have to turn my camera off” which she believed to be in reference to a black male in the back of the police vehicle. Officers from Albany and Guilderland Police Departments were present.</p> <p>Allegation(s):</p> <ol style="list-style-type: none"> 1. Conduct Standards (2 cts) 	<ol style="list-style-type: none"> 1. Conduct Standards – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued. 2. Conduct Standards – Unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued. 	<ol style="list-style-type: none"> 1. Conduct standards – Not sustained – where the review fails to disclose sufficient facts to prove or disprove the allegation(s) made in the complaint. 2. Conduct standards – Not sustained - where the review fails to disclose sufficient facts to prove or disprove the allegation(s) made in the complaint.

Complaint Summaries

OPS #: CC2019-003

This case involves one count of Call Handling.

On the allegation of “Call Handling,” OPS made a finding of Unfounded where the review shows that the act or acts complained of did not occur or were misconstrued. OPS reported the following:

IDC's from both Officer Rittie and Jones indicate that the Complainant's vehicle was towed because it lacked the required insurance and its registration was suspended.

Officer Rittie indicates that he was advised by a witness that Complainant typically used the vehicle to drive to and from work in spite of the registration's suspension and lack of insurance. He states that the towing of the vehicle would prevent its unsafe and unlawful operation on a public roadway and eliminate one possible reason for the Complainant to return to the residence, where the Complainant could cause harm to the witness.

The body worn camera footage and DMV documentation verify that the vehicle lacked insurance, possessed a suspended registration, and that the vehicle was towed for a lawful reason. Complainant allegation that his vehicle was towed for no legitimate purpose is inaccurate.

CPRB Discussion:

There was no discussion.

CPRB Findings: The complaint was reviewed at the board meeting held on May 13, 2021, where the board voted unanimously in favor of **“Unfounded”** finding for the Call Handling allegation.

OPS #: CC2019-012

This case involved one count of Use of Force and three counts of Call Handling allegations.

On the allegation of “Use of Force,” OPS made a finding of: Unfounded where the review shows that the act or acts complained of did not occur or were misconstrued. OPS reported the following:

The Complainant alleges police officers shot up his car with no warning. All officers involved deny discharging their duty weapon and only physical contact/open handed techniques were used to take the Complainant into custody (as documented on the Use of Force Report). There are also no calls for shots fired during the time of the incident.

On the first allegation of “Call Handling,” OPS made a finding of: Unfounded where the review shows that the act or acts complained of did not occur or were misconstrued. OPS reported the following:

The Complainant also alleges the officers covered their body cameras. Each officer who was assigned a body worn camera denies covering up their camera. Said footage was also viewed by the District Attorney's office (D.A.) and the Complainant's defense attorney and there was no issue with any footage being covered up.

On the second allegation of “Call Handling”, OPS made a finding of: Unfounded where the review shows that the act or acts complained of did not occur or were misconstrued. OPS reported the following:

The Complainant alleges the officers lied on the arrest report about his vehicle’s registration. A check of DMV at the time of the incident showed there was a suspension on the vehicle due to an insurance lapse. The D.A.’s office and the Complainant’s defense attorney indicate there is nothing to show that any officers lied about what happened that morning or any indication any arrest paperwork was falsified.

On the third allegation of “Call Handling”, OPS made a finding of: Unfounded where the review shows that the act or acts complained of did not occur or were misconstrued. OPS reported the following:

The Complainant alleges the officers planted a gun on him while he was passed out. The officers, the D.A.’s office and the Complainant’s defense attorney all stated the gun fell out of the Complainant’s basketball shorts and can be seen on the ground from the Officers body worn camera’s footage. The Complainant also admitted to detectives that he had the gun to feel safe and the Complainant is heard on body worn camera acknowledging the gun and that it is legally registered to his Aunt.

CPRB Discussion:

There was no discussion.

CPRB Finding:

The complaint was reviewed at the board meeting held on June 10, 2021, where the board voted unanimously in favor of “**Unfounded**” finding for all allegations.

OPS # CC2019-024

This case involves two counts of Conduct Standards.

On the first allegation of Conduct Standards, OPS made a finding of: Unfounded where the review shows that the act or acts complained did not occur or were misconstrued.

The Complainant alleges that, on August 17, 2019, she woke up to police outside her house. The complainant alleges she could hear some conversations from her open window (first floor) and allegedly heard an officer say, "These savages." The Complainant believes it was in reference to the black male in the back of the Albany Police patrol vehicle. The body worn camera indicates that at no time was anyone referred to as a “savage,” and no one was ever taken into custody that evening or ever placed in the back of the patrol car.

On the second allegation of Conduct Standards, OPS made a finding of: Unfounded where the review shows that the act or acts complained did not occur or were misconstrued.

In response to the “savages” comment, the Complainant alleges the other officer said “You can't say that; I'll have to turn my camera off.” All officers including East Greenbush deny anyone commenting on having to turn off their body worn cameras. P.O.’s stated their

cameras were on “stand-by” mode as they had no interaction with the public. One P.O. stated “my body worn camera was activated for this call and I did shut it off after it was determined there was no suspects in the area and I was just going to tow the car.”

CPRB Discussion:

Although the video does not support the Complainant’s allegation, Becker knows that officers were outside of the window engaging in conversation. He, however, does not have audio or video to support the Complainant’s allegation.

Question: Cannizzaro asks if there is an OPS policy that requires officers to have their body cameras on when they have a suspect or are interacting with a member of the general public? Is the scope that narrow?

Det. Pierce responded that officers do not walk around with their body cams on unless an incident occurs. Officers are required to turn on the camera if something is going on. There are times when the cameras are muted depending on the circumstances. There is some leeway about when officers must turn their camera on. The body cam also has a lag from when the audio is first turned on and when it starts recording.

Vives made recommendations in the Collaborative working group regarding the use of body cams. Along with reviewing General Orders, cases, and policies, the board should be mindful and ask questions.

Ingram states this has been a concern for the board and is a part of the core recommendations to have more accountability for why and when officers are turning off the cameras.

Becker states body worn cameras were turned off, and there were police at the scene in front of the Complainant’s house. The Complainant alleged that she heard what she heard. The cameras were turned off which left a situation where this allegation cannot be confirmed.

Det. Pierce provides examples of when it is necessary for officers to turn off their body cams.

Vives states the goal of the board is to provide more accountability and transparency.

CPRB Finding: The complaint was reviewed at the board meeting held on July 8, 2021, where the board voted unanimously in favor of “**Not Sustained**” for all allegations.

OPS # CC2019-028

This case involves one count of Conduct Standards and two counts of Call Handling allegations.

On the allegation of ‘Conduct Standards’, OPS made a finding of Unfounded where the review shows that the act or acts complained of did not occur or were misconstrued. OPS reported the following:

The Complainant alleges he was disrespected and treated like a second-class citizen by officers at South Station on September 23, 2019. All three Officers indicated they did not disrespect the Complainant, and they all remained professional. The officers indicated that

the Complainant was highly agitated, confrontational, and hostile from the beginning. The Clerk's IDC also indicates this.

On the first allegation of 'Call Handling', OPS made a finding of Unfounded where the review shows that the act or acts complained of did not occur or were misconstrued. OPS reported the following:

The Complainant alleges that, on September 23, 2019, he was initially denied an opportunity to speak with a Sergeant in regards to an Officer not filing an accident report for him. All Officers indicated the Sergeant was not in the building at the time of the Complainant's initial request to speak with him. An Officer did contact the Sergeant, who returned to the station and spoke with the Complainant in a timely manner. The Clerk's IDC also indicates this.

On the second allegation of "Call Handling," OPS made a finding of Exonerated where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. OPS reported the following:

The Complainant alleges that, on September 23, 2019, he tried to file a PDAA report for an accident that occurred on April 1, 2019 and was denied. Based on the Officer's evaluation of the incident and the minor damage that can be seen to the Complainant's vehicle on the body worn camera, the Officer was correct to allow the two drivers to exchange information, especially since all parties agreed to it. The Sergeant also reviewed the body worn camera and agreed with the Officers' handling of the call. The MV-104 report also states that it is to be completed within 10 days of incident.

Discussion:

Vives states there should be an additional finding for Officer Smith's behavior on the call with the Complainant. Vives states that this is a simple customer service issue that could have been easily resolved and instead the supervisor chose to defend the actions of his officer.

D/Lt. Decker provides that officers are required to provide accident report if there is an injury, damages over a certain threshold, or by request of a participant in the accident to provide an accident report.

Vives clarified that there should be a process or procedure where officers offer to provide a report or clarify that a report will not be provided.

Motion to add additional finding to this complaint. Collins-Hackett states that the suggested behavior provided by Vives should be encouraged.

Question: Cannizzaro asks when an officer is asked to provide their badge number, is there a stated policy that directs officers on how to respond?

Cdr. Battuello states that officers must provide their badge numbers upon request. It's pretty clear as written.

Question: Person asks when officers are responding to accidents is there a write up on the incident?

Cdr. Battuello stated that call tickets are created for all calls to the 911 operator. These call tickets can be obtained through FOIL process. A disposition should be provided for each call.

Rev. Collier notes that APD should use better de-escalation practices when dealing with community members.

Question: Ingram asks for clarification about the Complainant's phone call with Officer Smith. Did the officer know who was on the call? Was the officer rude?

Vives stated based on her review that it appeared the target officer knew who was on the call. The Complainant stated that he was just in the station making a complaint. The Officer eventually provided badge number after a minute exchange.

Question: Ingram expressed an issue with the characterization of Complainants as difficult. Ingram explained that officers complaining about complainants is not in line with the spirit of the complaint process. That is, it does not help to build police-community trust if, when complainants come forward to express dissatisfaction, then officers target complainants with ridicule or derision. Ingram doesn't know where this will fall within the provisions of the complaint but wants to raise concern that this issue should be looked at more closely. There was an informal discussion followed about recommendations on how officers should serve community members.

Motion to amend motion for sustained finding to Not sustained for Officer Carpenter and Sgt. Anderson and Sustained for Officer Smith. Motion passes. One abstention.

CPRB Finding: The complaint was reviewed at the board meeting held on May 13, 2021 where the board voted unanimously in favor of “**Ineffective Training and Policy**” finding for the first allegation of Call Handling; “**Unfounded**” for the second allegation of Call Handling; and “**Not Sustained**” for the Conduct Standards allegation.

Three cases were considered for mediation in the third quarter.

New Complaints

The Board received eight new complaints during the third quarter: CC2021-013; CC2021-014; CC2021-015; CC2021-016; CC2021-018; CC2021-019; CC2021-020; CC2021-024.

Meetings

The Board met three times to conduct business in the Third Quarter. The Bylaws and Rules and Executive Committees had five meetings to discuss policy recommendations and board business during this time. Due to the on-going COVID-19 pandemic, Community Police Review Board Meetings were held over Zoom. Meetings were held in May, June, and July. The Board meets on the second Thursday of every month, and encourages media and public participation at its meetings.

Conclusion

The Community Police Review Board continues to work collaboratively with the Albany Police Department, The City of Albany, and the community we serve.

Respectfully submitted,

Hon. Leslie E. Stein (Ret.)
Government Law Center of Albany Law School

Nairobi Vives, Chair
Approved by and submitted on behalf of the
Community Police Review Board

Approved by the CPRB: July 14, 2022

Appendix: Definitions

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

GRIEVANCE FORM - An APD form used to gather contact information from the complainant and forwarded to the Government Law Center for CPRB outreach purposes.

CPRB or BOARD - The Community Police Review Board.

GOVERNMENT LAW CENTER (GLC) - The Government Law Center at Albany Law School.

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

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

MONITOR – A qualified individual with an investigative background whom the Board appoints to objectively investigate a complaint that involves allegations of excessive use of force and/or a violation of the complainant’s civil rights.

OFFICE OF PROFESSIONAL STANDARDS (OPS) - The Professional Standards Unit of the City of Albany Police Department.
Section of 42-344A of Chapter 42, Part 33 of the Albany City Code charges the Board with making one of the following findings on each allegation by majority vote after review and deliberation on an investigation:

SUSTAINED – where the review discloses sufficient facts to prove the allegations made in the complaint.

NOT SUSTAINED – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.

EXONERATED – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

UNFOUNDED – where the review shows that the act or acts complained [of] did not occur or were misconstrued.

INEFFECTIVE POLICY OR TRAINING – where the matter does not guilt or lack thereof, but rather ineffective departmental policy or training to address the situation.

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 complaint withdrew the

complaint; or where the complainant is unavailable to clarify the complaint; or where the officer is no longer employed by the City.

MEDIATION – where the complaint is resolved by mediation.

REFERRED BACK TO OPS FOR FURTHER INVESTIGATION – where the Board refers a case under review back to OPS to reexamine or investigate a particular issue or material fact(s).

DEFERRED VOTE – where the Board delays or postpones a vote pending additional information or facts from OPS.