



80 NEW SCOTLAND AVENUE  
ALBANY, NEW YORK 12208-3494  
*Albany Community Police Review Board  
c/o Government Law Center*

## **CPRB PUBLIC MONTHLY MEETING MEETING MINUTES**

*July 13, 2023, at 6:00p.m.  
Albany Law School, Room W212*

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### **I. CALL TO ORDER AND ROLL CALL** (N. Vives)

Chair Vives called the meeting to order at 6:00 PM.

**BOARD MEMBERS PRESENT:** CPRB Chair Nairobi Vives, Secretary Paul Collins-Hackett, Victor Person, Antionette Santos, John Levendosky, Rev. Dr. Victor Collier, Kevin Cannizzaro, and Matthew Ingram

**OTHERS PRESENT:** CPRB Program Manager Michele Andre, Government Law Center (GLC) Patrick Woods, Office of Professional Standards (OPS) Detective Keith Johnson, CPRB Investigator Julie L. Schwartz, CPRB Independent Counsel Mark Mishler, and CPRB Independent Counsel Michael Goldstein

### **II. APPROVAL OF AGENDA** (N. Vives)

Chair Nairobi Vives called the meeting to order and moved to approve tonight's agenda.

### **III. REPORT FOR MOEEL LAH FAKHOURY LLP** (Andrew Lah)

Consultant Russell Bloom from Moeel Law Fakhoury reported that they are preparing for the July 22<sup>nd</sup> Retreat, where they will work with the Board members on updating skills/methodologies, answering questions, and providing guidance related to investigations, reviewing investigations, and different oversight structures.

### **IV. CASE REVIEW AND UPDATE**

**CC2021-029**

Case not is ready for review. Case to be added to the next meeting's agenda.

**P. Collins-Hackett**

**CC2021-023****J. Levendosky**

Levendosky reported that the two allegations for this case involve improper call handling. The Complainant called the police on July 2, 2021, to report their vehicle as vandalized and that they were being harassed by an ex-partner who kept calling them on their cell phone outside their apartment wanting their child back, who was inside the apartment alone at that time. The complainant said that the police arrived and came inside the apartment and did not file a report for a vandalized vehicle. The complainant further stated that the officers stood by and watched those responsible vandalize the vehicle, causing damage.

Levendosky reviewed CCTV footage of an officer checking the car, along with another officer's body-worn camera, supporting the finding of an undamaged vehicle. The officers turned off their body worn cameras in compliance with policy after the other party left. A second call was made later, and three officers reported back to the same location, with only one being from the original call. The complainant reported that the vehicle, different than originally described, was vandalized, and that officers watched the vandalization and did nothing. The body camera footage does not show this vehicle was vandalized, and there were no cameras covering the area of the vehicle.

Board member John Levendosky made a motion to approve the following findings which was seconded by Board member Matt Ingram, motion approved.

After review and deliberation of the investigation of the complaint by the Office of Professional Standards (OPS), the CPRB has made the following findings as to the conduct of the specific officers involved:

- With regards to 2 counts of the allegation of improper Call Handling, the CPRB and OPS reached a finding of **Unfounded**.

**CC2020-011****A. Santos**

Santos' report that this case has two allegations, one being improper call handling and the other being reckless driving. The complaint was received on May 5, 2023, by Santos and it had several redactions throughout it, which was policy during 2020 when the complaint was submitted. Santos requested a fully transparent copy of the complaint, which was received. The complaint alleged on July 5, 2020, a police vehicle sped through an intersection, failing to stop at a stop sign, without usage of emergency lights and sirens. OPS reached out to the officer on April 27, 2023, who stated they had no recollection of the events. A sheriff's deputy was also in the vehicle at the time but did not make a statement, as the CPRB does not have jurisdiction over the Sheriff's Department. There is no dashboard footage for review.

Santos brings attention to the complainant's note that was received when requesting an original copy of the complaint. The Complainant states that the issue has been adequately resolved, and no longer occurs. The complainant also stated it was dismaying how the individual car numbers they took care to note were lost to the detective's black marks (redactions). Santos commended the community member's honesty when forwarding the paperwork and stating that this no longer occurs in their area.

Santos believes the case to be insufficiently investigated at the time in 2020 and could have been addressed through the mediation program. While the Complainant says this is no longer an issue now in 2023, there is no indication of what occurred between 2020 and 2023.

Detective Johnson requested to add a comment. He states that the OPS finding for this report was Not Sustained and the case was recommended for mediation. Michele Andre states the Mediation Committee sent this complaint back to OPS for investigation, as mediation never occurred. The Complainant comments that, to his recollection, mediation was not offered. The complainant is not interested in having a conversation now with someone from APD.

Discussion and clarification around the vehicle and traffic law of emergency vehicles. A police vehicle may go through a stop sign if they are responding to a call and do not need to have lights and sirens on.

Board member Antoinette Santos made a motion to approve the following finding which was seconded by Chair Nairobi Vives, motion approved

After review and deliberation of the investigation of the complaint by the Office of Professional Standards (OPS), the CPRB has made the following findings as to the conduct of the specific officer involved:

- With regards to the allegation of Vehicle Operation, the CPRB and OPS reached a finding of **Not Sustained**

#### **CC2020-014**

#### **A. Santos**

Santos reports that this case is one of three, which follows the previous case 2020-011. There are similar redactions present. The allegations are improper call handling and vehicle operations by two APD officers. The Complainant states that an officer driving a black APD SUV drove excessively fast without the use of lights and sirens in front of the complainant, who was standing at the corner. The Complainant's wife alleges observing the passenger of the SUV laughing in her direction. Complainant claims to have followed the SUV to the station but observed two black SUVs idling in front. The Complainant returned home and phoned the non-emergency number to APD and gave a brief summation of the occurrence, and the APD officer allegedly stated "okay" and briefly paused stating he was going to disconnect to answer an emergency call. The Complainant, feeling his statement was brushed off, asked the officer for his badge number. Discussion ensued where the officer allegedly stated, "What would you like me to do?" and then "We'll see what we could do." Frustrated, the complainant threatened to submit a complaint and ended the call by affirming the dangers at the intersection where the incident occurred.

OPS stated that GPS information is only available for active units and cannot be backtracked. There are no radio transmissions and no body-worn camera footage to review. The phone call lasted one minute and fifty-five seconds, and there was no statement made by the respondent that he was going to disconnect the call.

Santos once again commends the complainant for submitting the complaints and forwarding the unredacted paperwork.

Board member Antoinette Santos made a motion to approve the following findings which were seconded by Board member John Levendosky, motion approved

After review and deliberation of the investigation of the complaint by the Office of Professional Standards (OPS), the CPRB has made the following findings as to the conduct of the specific officer involved:

- With regards to the allegation of improper Vehicle Operations, the CPRB and OPS reached a finding of **No Finding**.
- With regards to the allegation of improper Conduct Standards, the OPS reached a finding of Unfounded.
- With regards to the allegation of improper Conduct Standards, the CPRB reached a finding of Not Sustained.

#### **CC2021-002 — UPDATE**

**A. Santos**

Santos reports that the complaint was dated February 24, 2021, at approximately 5:30. The allegations are improper call handling and violation of body-worn camera policy. The violation was sustained by two APD officers, OPS verified by Commander Laiacona on June 26, 2023, that both officers were ordered to receive written counseling. They are completed on an APD counseling form. Counseling is not considered formal discipline and is conducted as a training tool only. Written reprimands are considered formal discipline, but not counseling. One officer has already received the counseling memorandum and signed it. The other officer will receive theirs when they return to duty, as they are out on medical leave.

After review and deliberation of the investigation of the complaint by the Office of Professional Standards (OPS), the CPRB has made the following findings as to the conduct of the specific officer involved:

- With regards to the allegation of violation of policy (Body Worn Cameras, General Order 3.2.15), the OPS and CPRB reached a finding of **Sustained** and recommended informal discipline in connection with that sustained finding.
- With regards to the allegation of improper Conduct Standards, the OPS and CPRB reached a finding of **Not Sustained**.

#### **CC2018-018 — UPDATE**

**M. Ingram**

Ingram reports that this is the third time he has been following up on this case. The first two times occurred in the monthly meetings for March and April of this year- case at the Price Chopper at the corner of Delaware and Madison. The Officer initiated contact with the complainant in parking lot, who claimed to have been threatened and had some of his property taken and not returned, and then taken down to South Station, wherein the complainant had to walk down to South Station to retrieve the property. The CCTV footage was unclear (too far away; grainy) with no audio, and unable to determine if there was anything to the actual complaint. This lack of footage would have been avoided if the officer turned on the dash camera or body-worn camera. Similarly, a second officer intervened as the complainant was walking to South Station and did not activate the dash camera or body-worn camera.

At the meeting on April 13, the investigation showed that the text-based logs of the body-worn camera activation did not show any activation for this contact and questioned if the footage may have been deleted depending on the tagging of the video. There is no dash camera footage, as anything prior to 2018 is unavailable due to a change in operating systems.

Ultimately, Detective Nostrand concluded that both officers were in violation of the General Orders regarding body-worn camera activation during a self-initiated stop of a citizen. Ingram agrees and moves to support Detective Nostrand's conclusion. Ingram suggests that the contracts with the agencies that provide camera operations should provide access to footage or log records after the termination of the contract. Ingram also points out that the text-based log is the final word on whether the body-worn camera was activated.

Board member Matthew Ingram made a motion to approve the following findings which was seconded by Board member Rev. Victor Collier, motion approved

After review and deliberation of the investigation of the complaint by the Office of Professional Standards (OPS), the CPRB has made the following findings as to the conduct of the specific officer involved:

- With regards to the allegation of improper Conduct Standards, the CPRB and OPS reached a finding of **No Sustained**.
- With regards to the allegation of violation of policy (Body Worn Cameras, General Order 3.2.15), the OPS and CPRB reached a finding of Sustained and CPRB recommended informal discipline in connection with that sustained finding.

#### **CC2020-004 — UPDATE**

**M. Ingram**

Ingram reports that this is the second time he has been following up on this case. The first time occurred in the monthly meeting for March of this year. There was a substantial amount of booking video that was not reviewed, about seven and a half hours of footage, due to it not being received with the materials. Ingram had to go to OPS in person to view the footage, which he did four times from March to May. New software was acquired, so it may be easier to access such footage in the future. The complaint relates back to two separate incidents on January 24, and February 5 of 2020, with seven different bookings videos of those two arrests. Original complaints about several forms of misconduct, including physical mistreatment by the officers, and then rude and racist language by the officers involved.

In the January incident, there does not appear to be any misconduct on the part of the officers, and there is a supervisor present throughout the interaction. In the February incident, there does not appear to be any misconduct on the part of the officers.

Ingram notes that this would have been a good case for early intervention by a mental health professional, especially during the second incident as the officers were already familiar with the complainant. Ingram also notes that during part of the complaint, the complainant was laying down in the back of the police vehicle sleeping, and because of the circumstances surrounding the incident, this would be concerning to happen, and there appearing to be a lack of police concern. Detective Johnson adds that there are cameras in the back of the police vehicle that play if the officer has the feed up on the screen. If the video was recorded, then the footage would be available.

To confirm and clarify whether there is backseat camera footage from the vehicle, this case will be tabled for future discussion. The case review was tabled for further discussion.

#### **V. INDEPENDENT INVESTIGATION — UPDATE**

**(J. Conroy)**

**CC2022-017**

Board Member John Levendosky reported that the complainant would like to withdraw their complaint. a complaint of allegation of improper investigation in a case of allegation of sexual abuse of a minor.

Board Member Levendosky made a motion to close the complaint with no report, which was seconded and the motion was approved unanimously.

**VI. PUBLIC COMMENT**

**(Public)**

A community member asked about how OPS goes about its investigation process. There were no OPS members present at this time to answer this question. Because this community member has an ongoing complaint, there is contact information available and will be further getting in touch with them regarding this requested information.

The Complainant in the two cases reported by Santos thanks the board for their activities, especially after their complaints were filed three years ago. Additionally, they mention two additional complaints they made and if they are going to be addressed later. The Chair mentions that the OPS reports regarding these complaints just came in and that someone will be in further contact.

**VII. EXECUTIVE SESSION**

Discuss the contemplation of future litigation.

**VIII. SUBPOENA CONSIDERATION**

**(Julie Schwartz)**

Julie L. Schwartz, T&M Managing Director of Investigations, updated the Board on the investigation. She is in contact with the final civilian witness and will be interviewing them in the future. There is still some body-worn camera footage left to review, but she believes there is enough to move forward. Ms. Schwartz detailed the next steps in the investigation, such as reaching out to interview the Chief, Commander Gibson, Commander Cornell, and Lt. Jones. While the officers may comply with the request to interview, Ms. Schwartz still wants subpoenas for their testimonies just in case since the next Board meeting is not until August. The Board voted in favor of the subpoenas.

**IX. ENFORCEMENT OF SUBPOENAS**

Julie L. Schwartz, T&M Managing Director of Investigations, updated the Board on the Young independent investigation. Ms. Schwartz subpoenaed officers for the second time with the understanding that they were told by counsel to appear but did not come on June 28. The subpoenas were properly served for the three officers and the sergeant. To date, Ms. Schwartz has not received either case file.

**X. COMMITTEE REPORTS**

**BYLAWS AND RULES**

**(A. Santos)**

Board voted in favor to codify changes to public common policy (Art. VI, section 6). The section allows public comment open at meetings and allows the Chair to establish a reasonable time limit for public comment based on the agenda for the particular meeting. The changes devote at least thirty minutes for public comment with each speaker having three minutes.

Board also voted in favor of the added NACOLE Code of Ethics and the created appendix at the end of the document for the current version of the Code of Ethics.

**COMMUNITY OUTREACH**

(P. Collins-Hackett)

Batman reported that the Board has been active in a bunch of different events, such as marching in the Pride Parade, Juneteenth Parade, the Unity Event Day, and the march to stop the violence wherein Batman spoke and talked to others about the Board. They have been able to meet with classes and groups of young people from the Summer Youth Employment Program to tell them about the Board's process and how they could be a part of it. More events are coming up in Lincoln Park and other places. There are some mailers going out for different things.

**MEDIATION**

(V. Collier & V. Harden)

The committee had nothing new to report.

**INVESTIGATION**

(J. Levendosky)

Board member John Levendosky reported that the discipline matrix survey will go out and encourage voters to comment on the survey. There is a need for input from all stakeholders to make sure that the matrix is fair and effective, meeting the needs of the city.

If needed, they will subpoena the South Station independent investigation. This will only be used if department officials do not comply with requests to cooperate voluntarily. The current subpoena for the June 20 officer-involved shooting investigation was not complied with by APD and officers, with no legal challenge to drop them, but just ignored by all parties.

There are 88 complaints being investigated by OPS, four complaints awaiting case numbers and OPS detective assignments, and 29 cases that are pending board review.

**POLICE DEPARTMENT LIAISON**

(V. Harden)

Board member Dr. Veneilya Harden is not in attendance so the report will be tabled.

**PUBLIC OFFICIAL LIAISON**

(N. Vives)

The committee tabled the report.

**DISCIPLINE MATRIX**

(N. Vives)

Program Manager Michele Andre reported that the committee voted on the structure of the matrix. The GLC worked on creating a document that reflects the violations that the Board agreed upon along with their levels. A packet of the Discipline Matrix that included a description of how to read the document.

Andre also adds that she and the GLC have been working to finalize postage and the survey, which was also provided as a hard copy to the Board. The survey is also available in paper form for those who may not have internet access to complete the survey. The goal is to send out these to all registered voters in the City of Albany and to update and provide them the information around updates to Local Law J and ask for feedback on the document. In Wards that do not have lots of

registered voters, there are plans to do some outreach in person and provide an iPad so people can submit complaints live, along with paper copies. There will be a lot of outreach for the months of July and August in hopes of getting feedback on the document before the final version is completed. Any additional changes will be run through the Board before being submitted to the Chief.

### **CORPORATION COUNSEL**

There are no members of the Corporation Counsel present, so the Board skipped this portion of the agenda.

### **GOVERNMENT LAW CENTER**

(P. Woods & M. Andre)

Patrick Woods reported that Program Manager Andre has been working hard on the disciplinary matrix, along with the by-laws and rules amendments to codify the timing for open public comments. Woods also reported that the case management system has reached finalization, which was a lot of work in the making, and the Board members should expect invitations to access that soon. They also provided some potential draft language for amendments to Local Law J to close all the loopholes that the Corporation Counsel's office believes exist to ensure unfettered access to information for the Board.

Mr. Woods and Judge Stein nominated Program Manager Andre for a staff award at the GLC called the "Rising Star" award.

Mr. Woods also wanted to remind the Board that the NACOLE conference is from November 11 to 16 in Chicago this year. If anyone would like to attend, reach out to Program Manager Andre if they have not already done so.

### **OFFICE OF PROFESSIONAL STANDARDS**

(Cmdr. Laiacona)

There is no representative present from OPS to give a report, so the Board decided to skip this portion.

### **REPORT FROM THE CHAIR**

(N. Vives)

Chair Vives decided to skip their report in the interest of time. Chair Vives thanked the Board and everyone for their hard work and expressed hope that Program Manager Andre did receive the "Rising Star" award.

### **NEW BUSINESS**

Chair Vives made a motion to approve minutes from June 8, 2023, Public Monthly Meeting and July 5, 2023, CPRB Standing Committee on Discipline Matrix meeting, which was seconded, the motion was approved unanimously.

Chair Vives made a motion to approve the Bylaws and Rules Amendments.

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:16 pm.



Respectfully Submitted,

Michele Andre  
Program Manager