



**CITY OF ALBANY
COMMUNITY POLICE REVIEW BOARD**

c/o GOVERNMENT LAW CENTER
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2023 2nd Quarter Report

This report covers the operations of the Community Police Review Board (hereafter “the CPRB” or “the Board”) from February 1, 2023, to April 30, 2023.

Access to Albany Police Department Records

During the reporting period, the Albany Police Department (APD), acting on the advice of the Corporation Counsel’s Office, refused to provide CPRB investigators access to witness and interview statements related to CRPB independent investigations. In the opinion of the Corporation Counsel, “the Board has all the records it needs to complete this task.” The Corporation Counsel asserted that those records are not subject to disclosure to the CPRB because “[w]itness and victim interviews are not in the IA case file nor are they relevant to the investigations into the conduct of the officer.” The Corporation Counsel also asserted that disclosure of these documents to the CPRB “could endanger public safety” as well as “the lives of victims and witnesses.” As a further legal basis for the non-disclosure, the Corporation Counsel cited the law enforcement exception to disclosure under the Freedom of Information Law found at Public Officers Law § 87(2)(e).

The Corporation Counsel’s Office encouraged the CPRB to issue subpoenas to APD seeking to compel the disclosure of the witness and interview statements. The Corporation Counsel advised that she expected “that judicial intervention will be necessary to resolve this situation” and that it was not “necessary to meet or to continue the back and forth” with the CPRB on the issue.

Access to Albany Police Department Personnel

During the reporting period, the APD has also refused to require its officers to submit to interviews by CPRB investigators. The Corporation Counsel’s Office advised the CPRB to subpoena officers to compel their participation in interviews. At the April CPRB meeting, the Board voted to issue subpoenas to three officers to compel them to meet with and provide information to CPRB investigators. Those subpoenas were served on May 4, 2023. This is the first time that the CPRB has used its expanded subpoena power.

CPRB Legal Representation

At this time of the submission of this report, the Corporation Counsel's Office continues to purport to simultaneously represent both the CPRB and the APD on issues where there is strong disagreement regarding the Board's rights and the APD's transparency obligations under Local Law J, including on the two issues described in the preceding sections. Despite repeated requests from the Board, the Corporation Counsel's Office has also periodically refused to answer questions about the City's legal position when those questions are posed by employees of the Board's Administrative Agency, the Government Law Center.

In compliance with the City's procurement policy and in anticipation of its legal needs resulting in costs exceeding \$5,000 for the rest of the year, the Board put out a request for proposal on March 27, 2023 for separate counsel to be paid out of its own budget. At the time of the writing of this report, the Board is in the process of selecting counsel from among the proposal responses. Once separate counsel is selected, the Corporation Counsel's office will be responsible for finalizing the engagement agreements with the selected bidder(s), subject to review and approval by the Mayor. To date, the Corporation Counsel has not been willing to certify separate counsel for the Board to be paid out of the City's fund for the provision of conflict counsel, leaving the Board to use its own limited budget for legal counsel in the areas where it most requires a view unhindered by a dual representation of both interested parties. The Board's current budget for outside counsel is unlikely to be sufficient to allow the Board to obtain judicial resolution of all current and anticipated disputes regarding the Board's oversight powers and duties between the Board, the APD and the Corporation Counsel.

Disciplinary Matrix Development

The CPRB is working collaboratively with APD Chief Eric Hawkins and his team to develop and implement a progressive disciplinary matrix that clearly delineates penalty levels with ranges of sanctions and provides a consistent accountability structure for APD, as required by Local Law J of 2020. The CPRB held a Special Meeting on February 1, 2023, with Chief Hawkins, APD Deputy Chief Anthony M. Battuello, Commander Joshua Laiacona, and Common Council Public Safety Chair Thomas Hoey announcing the creation of the CPRB Standing Committee on Discipline Matrix. Committee members include CPRB Chair Nairobi Vives, Esq., CPRB Vice Chair Veneilya Harden, CPRB Secretary Paul Collins-Hackett, APD Deputy Chief Battuello, APD Commander Laiacona, APD Detective Lieutenant and Albany Police Supervisors Association (APSA) President Josiah Jones, APD Sergeant and APSA Vice President Benjamin Peterson, Melanie Trimble (New York Civil Liberties Union), and Mark Mishler, Esq., attorney and activist. The committee met on February 22, March 8, March 22, and April 5. The Committee has further meetings scheduled for May 17, May 31, and June 14. For more information and to review current and contextual materials, please visit: <https://www.albanycprb.org/discipline-matrix/>

Reimagining Public Safety Through Community Oversight Series

CPRB hosted a two-part series of public events titled "Reimagining Public Safety Through Community Oversight," in collaboration with AVillage Inc. This series focused on changes to oversight, accountability, training, and police policies that are essential to implementing a system that works for all, which aims to empower our communities to participate in shaping what public

safety looks like, and which uses an approach to public safety that truly protects everyone from harm. These events were co-sponsored by the APD, Albany Public Library, New York Civil Liberties Union Capital Region Chapter, Youth FX, and Albany Housing Authority. Part 1 can be viewed at <https://youtu.be/deZ1Lfk2oE4> and Part 2 can be viewed at <https://youtu.be/Re4HQkXYVhE>.

Chief’s Quarterly Report of Disciplinary Investigations and Action

The Albany Police Department reported that there was one disciplinary action taken by the department against a sworn member during the first quarter of 2023 (January 1, 2023 through March 31, 2023). This disciplinary action consisted of a Sixteen Day Loss of Leave Credit. The report provided no details about which officer was disciplined or what conduct resulted in the discipline.

Complaint Review Summary

There were 88 active cases (also referred to as complaints) at the start of the reporting period. An “active case” is a complaint awaiting review by an Albany Police Department’s Office of Professional Standards (OPS) investigator and a member of the CPRB, except for cases that have been suspended because of pending litigation. By the end of the reporting period, there were 103 active complaints.

There are currently 62 cases under investigation by OPS, 16 cases under supervisor review by OPS, 25 cases pending full review by CPRB and 4 awaiting Detective and case number assignment. The Board voted to independently investigate 5 complaints.

Active Cases	Count
Awaiting Detective and Case Number Assignment (OPS)	4
Under Investigation (OPS)	62
Under Supervisor Review (OPS)	16
Pending Board Review (CPRB)	25
Mediation	0
Total Active Cases	106

The Board reviewed and made findings on 2 complaints in the first quarter of 2023:

OPS Case No. & Case Synopsis	OPS Finding	CPRB Finding
CC2022-013 – M. Ingram & J. Levendosky On May 7, 2022, the Complainant was attempting to receive care at Albany Memorial	This complaint is still being investigated by OPS.	For complaints filed after the passage of Local Law J, the Board may render its finding without the OPS “preliminary” / finding report / case summary.

<p>Hospital. The Complainant alleges that, as she was attempting to leave the hospital voluntarily, Officer 1 used his forearm and pushed it against her throat to choke and strangle her. The Complainant also alleges other officers berated and disrespected her during the incident, accusing an officer of knocking her cell phone from her hand so she could not record the incident. The Complainant alleges officers searched her vehicle, pocketbook, and medicine bag, stating they were looking for drugs and threw all her items into the back of the police vehicle.</p> <p>Allegation(s): Use of Force (1ct) and Unlawful Search and Seizure (1ct)</p>		<p>The Board made the following findings as to the conduct of the officer involved:</p> <ul style="list-style-type: none"> I. With regards to the alleged improper Use of Force, the CPRB reached a finding of Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued. II. With regards to the alleged improper Unlawful Search and Seizure, the OPS CPRB reached a finding of Unfounded.
<p>CC2019-030 – V. Harden</p> <p>On October 10, 2019 the Office of Professional Standards received a complaint in which the complainant referred to multiple incidents involving a former tenant where she felt that the Albany Police Department did not adequately address her concerns with this tenant, as well as one specific incident where she stated “I was in fear for my life.”</p> <p>Allegation(s): Call Handling (6cts)</p>	<p>The OPS made the following findings as to the conduct of the officer involved:</p> <ul style="list-style-type: none"> I. With regards to 4 counts of the alleged improper Call Handling, OPS reached a finding of Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued. II. With regards to 2 counts of the alleged improper Call Handling, OPS reached a finding of Not Sustained – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. 	<p>The Board made the following findings as to the conduct of the officer involved:</p> <ul style="list-style-type: none"> I. With regards to 3 counts of the alleged improper Call Handling, the CPRB reached a finding of Not Sustained. II. With regards to 3 counts of the alleged improper Call Handling, the CPRB reached a finding of Unfounded.

New Complaints and Grievances

The Board received 21 new complaints during the first quarter of 2023.

Of the 21 new complaints, one case was closed because it was withdrawn by the complainant.

When CPRB receives complaints that fall outside of its jurisdiction, the complainant is notified and referred to the governmental entities with the jurisdiction to process their complaint. Of the 21 new complaints, four were determined to be outside of the Board's jurisdiction.

The Board received one new grievance form from OPS. Grievances are informal complaints received by OPS from community members who do not want to submit a formal complaint.

New Investigations

The Board voted to independently investigate one case in the first quarter of 2023. At the end of the reporting period, there were five active independent CPRB investigations.

Monitors

Section 42-343(B)(1) of the City Code requires the Board to appoint an individual to observe and monitor the investigation by OPS of a complaint "in the event the complaint alleges use of force or a violation of civil rights." The Board appointed a monitor for two of the new complaints.

Mediation

Sections 42-346(C) and 32-343(F)(4) of the City Code permit complainants, officers, and the Board to refer a complaint to mediation in place of full CPRB review. The Board forwarded no complaints to mediation this reporting period.

CONCLUSION

The Community Police Review Board continues to make every effort to work collaboratively with the Albany Police Department, the City of Albany, and the communities served by the Board.

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: May 11, 2023