



**CITY OF ALBANY
COMMUNITY POLICE REVIEW BOARD
PUBLIC MONTHLY MEETING
MEETING MINUTES**

*September 14, 2023, at 6:00p.m.
Albany Law School, Room W212*

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

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

BOARD MEMBERS PRESENT:

CPRB Chair Nairobi Vives, Vice Chair Veneilya Harden, Victor Person, Matthew Ingram, John Levendosky, Kevin Cannizzaro, Antionette Santos, and Rev. Dr. Victor Collier.

OTHERS PRESENT:

CPRB Program Manager Michele Andre, Independent Counsel Michael Goldstein, Office of Professional Standards (OPS) Detective Keith Johnson, and Julie L. Schwartz (T&M Managing Director of Investigations)

II. APPROVAL OF AGENDA (N. Vives)

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

III. CASE REVIEW AND UPDATE

CC2020-004 (M. Ingram)

Ingram reported that this case has been extended and states that he has reviewed the case twice before including at the last regular monthly meeting in July. The only remaining issue after the report by Ingram was complete is that there were possible implications related to the complainant being asleep in the back seat being out of view, but it is possible that the officers in the front of the patrol car were watching camera

footage that would have recorded the complainant in the back seat. After follow-up, Ingram discovered there was no camera footage due to a switch between video systems because it would not have been downloaded. No follow-up to be made due to there being no video.

Notes that they should make sure there is access to video from the current system if there is another switch in system type to avoid this happening again.

Ingram stated that Detective Johnson said his supervisors have the understanding that the current system videos will be available beyond any transition to a new system.

Ingram moved to approve to update record with the case finding as he describes it which is seconded by Board Member Rev. 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 1 count of Call Handling and Procedures, the CPRB and OPS reached a finding of **Unfounded**.
- With regards to the allegation of 2 counts of Department Procedures, the CPRB and OPS reached a finding of **Exonerated**.
- With regards to the allegation of 1 count of Authority and Procedures, the CPRB and OPS reached a finding of **Exonerated**.
- With regards to the allegation of 1 count of Use of Force, the CPRB and OPS reached a finding of **Exonerated**.
- With regards to the allegation of 7 count of Use of Force, the CPRB and OPS reached a finding of **Unfounded**.
- With regards to the allegation of 2 counts of Conduct Standards, the CPRB and OPS reached a finding of **Unfounded**.

CC2021-003

(A. Santos)

Santos reported that this case has two allegations, Call handling and Conduct Standards: Courtesy. The complainant reported an incident where she, along with other drivers, experienced harassment while driving on Route 787 by a group of approximately 20 motorcyclists. She claimed to have called 911 seeking assistance, but no response or aid arrived. Frustrated, she proceeded to South Station to file a complaint. The officer on duty at South Station responded by advising her to "contact the Mayor, the Governor, and all the Representatives to advocate for changes in the laws." The officer expressed a sense of futility, stating that "their hands were tied" due to the perceived issue of arrested individuals being quickly released on bail, and questioned why they should invest their time in such cases. The officer also mentioned concerns about calls to defund the police. The complainant allegedly phoned APD commander who allegedly apologized for the lobby officer, including a statement that APD wanted to avoid a civil lawsuit which is why they did not pursue these motorists. This latter statement could not be verified as the commander is no longer with APD.

Complainant ends her report demanding community service and license revocation for the motorists.

An interview was conducted on May 3, 2023 with the lobby desk officer. The respondent stated that he did not recall the incident, or any statements made during it.

Detective Johnson reported that the respondent did not recall a call coming into the station between the alleged incident and the complainant coming in, and the retention time for phone calls had passed. Detective Johnson, in a memo dated August 7, 2023, said that there is no video footage from inside the station or near the desk area, and at the time of the complaint, there was no system in place to track who was entering and leaving the station.

Board Member Santos agreed that while there is not sufficient evidence to prove or disprove the complaints, a review of the complaint shows that OPS failed to respond to these allegations in a timely fashion as there was a 2 year, 5 month, 2 day time between the complaint and the date of the interview. Santos stated that had the time been shorter, the credibility of the complainant could have been better assessed and answers from the respondent like "I do not recall" or "I do not remember" would have been less likely. This was in direct violation of General Order 2.4.05 which directs OPS to investigate complaints within 60 days. Further, the statute of limitations for disciplinary actions had passed by the time the investigation occurred.

Complainant requested to add comment virtually. Complainant expressed her disgust with the situation, particularly the lack of cameras, the officer not remembering the incident, and the fact that no one reached out to the commander. Complainant stated that she heard that the mayor changed a law about aggressive motorcyclists and she hoped that this is in effect and being enforced. Complainant said this event gave her PTSD, and she can only hope that the APD does better.

Chair Vives asked Complainant whether she was ever interviewed by a detective, and she stated that she was interviewed by Detective Johnson but did not remember when.

Detective Johnson requested to add comment virtually. Detective Johnson stated that he spoke to complainant within a couple days of receiving the complaint back in 2021. He also adds that this case was originally presented for mediation which contributed to the delay. Dr. Harden added that the mediation failing was due to the lapse in time of over 2 years, and so they did not think mediation was proper after such a long time.

Board Member Ingram asked whether the Body Worn Cameras should have been in operation even though there is no specific order about it in the General Orders, and whether the cameras should have been turned on since it was a contentious encounter. Board Member Levendosky asked Detective Johnson whether the Body Worn Cameras are worn only on patrol or if they are also used in the station. Detective Johnson stated that though the officers would have been wearing them they are not on because, by policy, officers are not to record inside the station unless there is a situation that needs

to be recorded, and that he did not know whether this would have been a recording situation.

Chair Vives asked Detective Johnson whether he made a credibility finding based on his interviews with complainant and respondent because there is a complainant who is very adamant that this situation happened and an officer who says he can't recall and there is minimal information. Detective Johnson said he only used what information he had and that he does not pick one side over the other. He further stated that he was not discrediting complainant, he did not have enough information to make a credibility assessment.

Board Member Cannizzaro asked Detective Johnson what the average time frame for processing complaints and completing investigations for OPS and APD. Detective Johnson did not answer because he does not have hard numbers, Cannizzaro requests the information in three days by email.

Board Member Santos made a motion to close this case based on the findings below, Rev. Collier seconded, Chair Vives opposed due to the long stretch of time between the complained of events and the investigation as well as the lack of Body Worn Camera footage. No others opposed; motion passed.

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 APD's response to Call Handling, the CPRB and OPS reached a finding of **No Finding**
- With regards to the allegation of APD's response to Conduct Standards, the CPRB and OPS reached a finding of **Not Sustained**.

The CPRB and/or OPS may make a finding of Not Sustained – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint and No Finding – where, for example, the complainant 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.

CC 2020-017

(A. Santos)

The date of the alleged incident is September 16, 2020, at 7:15pm and the APD OSI report date was June 27, 2023. Santos reported that this has three allegations, Vehicle Operation, Conduct Standards: Courtesy, and Departmental Procedures. The complainant visited APD's Center Station to submit a civilian complaint. Upon handing over the report, the desk officer reportedly read it and asked the complainant where they resided. In response, the complainant indicated that all the necessary information was included in the report. Subsequently, the complainant left the station but returned

shortly after to request additional complaint forms. During this return visit, an unidentified APD officer and another unidentified officer in a gray uniform entered the lobby. The lobby officer then informed them that the complainant had requested more complaint forms.

It is alleged that these officers engaged in verbal harassment towards the complainant, leading the complainant to feel as though they were being gaslighted, causing them to doubt their own judgment and well-being. Furthermore, it is claimed that the lobby officer printed additional complaint forms but placed them just out of the complainant's reach. When the complainant asked for the forms again, the lobby officer was said to have provided access by moving them "an inch" closer. The complainant suggested that if the officers had received proper training, this encounter might have been less adversarial.

Santos stated that respondent provided an IDC response on May 1, 2023, about 2 years and 8 months after the incident. Respondent's response stated that he was unable to recall the event or who the other officers might have been.

Santos stated that the complaint form is very vague on the initial incident which had to do with vehicle operation. Santos believed that the verbal harassment was more what the complainant was trying to get at. Santos concurred with the findings of Detective Johnson on Conduct Standards, but only because the respondent responded to the allegation over 2 years after the alleged incident and in that response stated that he did not recall.

Detective Johnson's investigation found that the Departmental Procedures allegation was exonerated due to the fact that complainant did receive the complaint form.

Santos further noted that in addition to there being no recording of the area, there is there is no log of who enters or submits a complaint, which means there are no accountability measures to protect community members or security personnel for the protection of APD.

Chair Vives clarified that the Departmental Procedures allegation is exonerated and asks whether Board Member Santos reviewed a disciplinary record of the lobby desk officer. Santos had not reviewed it, and it was not part of the full record. Detective Johnson later clarified that he did not review a disciplinary record.

Board Member Ingram commented that as a matter of practice, these disciplinary histories have been a part of the file to review.

Dr. Harden clarified whether the complainant was interviewed. Detective Johnson says that he was sent an IDC on April 27, 2023 and received on May 1, 2023. She also asked Detective Johnson whether he knows that the complaint forms must be requested by the officers and are not readily available to which he replied that he cannot say for sure but he believed they were readily available. Finally, Dr. Harden asked whether an

opportunity to speak with a supervisor was available. Detective Johnson was unsure and believed that complainant asked to speak with a supervisor during the events but not after the complaints were filed.

Chair Vives moved to table this case as well as the following two (CC2020-020 and CC2020-010) since they were made by the same complainant and face the same information issues, due to Board Member Santos not receiving the disciplinary records of the officers involved and therefore did not have the opportunity to review the entire case record. Board Member Levendosky seconded; the motion passed.

IV. SUBPOENA CONSIDERATION (Julie Schwartz)

Julie L. Schwartz, T&M Managing Director of Investigations, first emphasized her difficulty with receiving disciplinary records, and then updated the Board on the investigation. They have interviewed the Chief and Chief Commanders who fully cooperated. Moving forward, they think it is important to give the two responding lieutenants, Lieutenants Josiah Jones and Lieutenant Devon Anderson, an opportunity to be heard. Ms. Schwartz requests the Board to authorize the subpoenas of these lieutenants because she does not think they would comply with a request for interview. The Board voted in favor of the subpoenas.

V. CONSIDERATION OF COMPLAINT CLOSURE WITHOUT REVIEW

Board Member Levendosky reported that two complaints were received by complainant on June 17, 2023 and September 6, 2023 – the complainant did not outline a specific complaint against an employee of the Albany Police Department. Further, two complaints were received on August 17, 2023 by complainant – these also do not outline a specific complaint against an employee of the Albany Police Department. Levendosky moved to close the complaints without review.

Chair Vives asked for clarification of reasons for closure. Levendosky stated that it is because the complaint did not list specific officers or departments or the complainant wouldn't know the material to make the complaint. Program Manager Andre stated that complainants have the opportunity to resubmit or add additional information upon notice that the case is being closed without review. The Board unanimously voted to close the complaints without review.

VI. COMMITTEE REPORTS

PUBLIC OFFICIAL LIAISON (N. Vives)

Chair Vives reported that a meeting was held on August 21, 2023 to discuss access to information issues, compliance with subpoenas, and outstanding issues that the Board is still experiencing. Confusion was expressed by the Chief on sharing of case materials. The committee proposed that the standing Police Department Liaison

Committee come together and make sure all parties are on the same page. This meeting had not occurred yet. The closeout of the discipline matrix was also discussed, and a meeting with the Chief was proposed and was to be scheduled.

Cannizzaro, Ms. Andre, Santos, and Chair Vives discussed ongoing issues with record production by OPS, specifically about disciplinary records and confidential reports.

BYLAWS AND RULES

(A. Santos and M. Andre)

Board Member Santos reported that her and Program Manager Andre met on September 12, 2023, and discussed updates needed on the bylaws including an updated attendance policy, adding a blurb regarding a standing committee on investigations, and adding language regarding case review expectations. Santos hopes to have new bylaws to vote on by next meeting.

INVESTIGATION

(J. Levendosky)

Board Member Levendosky reported that the Board is actively overseeing and managing five investigations and worked to advanced their independent investigations. Investigators performed interviews, many in connection with the South Station incident. The CPRB forwarded its findings to the APD for two incidents: CC2022-016 and the officer involved shooting on June 20, 2022. Levendosky notes that the CPRB was only made aware of contradictory finding in the OPS report *after* the statutory deadline passed.

With regard to the officer involved shooting, the committee did not get findings from OPS because the Chief stated that the officer subject to a violation was still on leave though he was not injured in that accident.

Levendosky reported that APD has complied with one of the two case file subpoenas but officer subpoenas remain outstanding. Further, there are pending requests to APD for policy procedure and investigating checklists of contents for 23 cases. The CPRB did receive APD's retention schedule, and the access frame for Axon cameras was extended from 7 to 30 days.

The status of complaints: 74 are under investigation by OPS, 29 are pending Board review, there were a total of 61 complaints received this year as of September 14th, 2023. Of those in 2023, 26 are under investigation, 7 were closed due to withdrawal, 16 were closed due to being out of jurisdiction, 3 are pending Board review, 6 are awaiting OPS number and detective assignment, and received a total of 36 case summaries and confidential reports.

Board Member Levendosky clarified that the APD is not withholding the policies because they don't provide them, only that they are not electronically available.

POLICE DEPARTMENT LIAISON

(V. Harden)

Vice Chair Dr. Harden reported that the committee met this week to discuss City Code provision regarding captains or higher being made available by the Chief to the CPRB to serve as a consultant advisor. Discussion about the City Code was tabled due to Lieutenant Decker wanting to bring it back to senior staff to see where it is. The committee further discussed extending remote access to Axon cameras and reassignment of cases from detectives that are no longer in the office. The committee requested an OPS representative at this Board meeting and an update on the investigation evidence checklist which should be forthcoming.

Lieutenant Decker had asked at the meeting if the complaint form should include the opportunity for complainants to ask for a supervisor. Dr. Harden notes that this would put a different pressure on the Board and negate some of the complaint process, and this may be explored further if the process and procedure is more clearly discussed with the full Board.

Dr. Harden concluded by while the Board is open to hearing ne considerations like the one Lieutenant Decker brought up, they would first like to see many of the prior asks the Board has been asking for before implementing anything new.

DISCIPLINE MATRIX

(N. Vives)

Chair Vives reported that the committee did put out the final draft for public comment which is now closed. Now, the committee is working on scheduling a meet with the Chief and finalizing the discipline matrix.

COMMUNITY OUTREACH

(V. Person)

Board Member Victor Person reported the event at Washington Park was successful. Person asked about case review and whether in person review is available. Program Manager Andre added that at the Police Liaison meeting, Lieutenant Decker had mentioned that the detectives are more responsive if the Board Members reach out directly, and there were some concerns from detectives about custody of the case file.

Dr. Harden added that when making the request to the detective, Commander Laiacona Program Manager Andre, and Lieutenant Decker, and that the file should be requested closer to the time the Board Member is reviewing it.

Upcoming community events: there is the NY Black Expo in Albany which requires some additional volunteers as some Board Members. Further, the November meeting will be moved to Tuesday.

MEDIATION

(V. Harden)

Dr. Harden suggested a brief survey to officers so as to understand why mediation was not being used from their perspective and use those results to make mediation more

useful to both community members and officers. Additionally, the committee is going to look at different spaces for mediation in collaboration with APD and OPS. Dr. Harden calls for submission of questions for this survey from Board Members.

REPORT FROM GOVERNMENT LAW CENTER

(M. Andre)

Program Manager Andre reported that two interns have started and have been helping with research, budget, and the bylaws. Additionally, Program Manager Andre suggested implementing a task list to keep track of outstanding items that are consistently asked about from the police and public liaison committees. Andre also suggests monthly updates being sent to the Board to make sure everything that has happened between public monthly meetings is recognized.

Program Manager Andre also met with former Board Member David Rosen who mentioned that the relationship between the Board and the police is important to having meaningful mediation.

In regard to some statistics, the Board had received 8 complaints since the last meeting which have all been assigned to Board Members and the goal is to prioritize review of those cases by the end of the year. Additionally, the quarterly and annual reports will be changed to traditional quarterly and annual dates as well as to have some cases are counted in the case count.

Terms coming to an end: On October 26, Chair Vives and Secretary Paul Collins-Hackett's terms are set to expire, and both are up for reappointment. Common Council has been notified and they intend to initiate resolutions for reappointment process. Board Member Collier's terms is also set to expire on October 26th and is not eligible for reappointment. The Mayor had been notified and urged to being searching for the next Board Member.

The Board has received a FOIL request which is being addressed and should be completed soon. The invoices have been sent to the Office of Audit and Control monthly. Finally, a request for proposal for investigative service was put out and one response was received, it was reposted on other sites with more responses coming in.

REPORT FROM THE CHAIR

(N. Vives)

Chair Vives thanked Board Members and Rev. Collier, consultants, the GLC, and investigators, recognized the effort going into budget season, and noted the responsibilities of Board Members around case review and that that responsibility is being shared equally.

VII. NEW BUSINESS

(N. Vives)

Chair Vives made a motion to approve the minutes from the July 13, 2023, public monthly meeting and the August 3, 2023, special meeting which was seconded and unanimously approved.

VIII. ADJOURNMENT

There being so further business, the meeting was adjourned at 7:59 p.m.