



Status of Independent Investigations into Alleged Police Misconduct in the City of Albany

REPORT AND RECOMMENDATIONS

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for the Albany Community Police Review Board

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I. Executive Summary

This report, prepared by Moeel Lah Fakhoury LLP¹ for the Albany Community Police Review Board, provides a high-level overview of existing issues with the investigative process of misconduct investigations in the City of Albany that need improvement. It also addresses methods to improve information sharing between the CPRB and the Albany Police Department (APD), particularly ADP's Office of Professional Standards (OPS).²

Throughout 2023, the CPRB has moved to implement Local Law J and both city lawmakers' and voters' clear intent for independent oversight and investigations into allegations of police misconduct by members of the APD. This process has, unfortunately, been frustrated by a series of obstructive policies and uncooperative approaches from APD and the Office of the Corporation Counsel. This includes, but is not limited to:

- Restrictions on the length of time during which the CPRB and contract investigators may access APD's records, including the OPS case file and video footage, such as body-worn camera footage;
- Repeated delays in delivering, or outright refusing to provide, access to case information;
- Refusals to comply with properly-served subpoenas issued under Local Law J's clear grant of compulsory process authority to the CPRB; and
- A failure to provide timely and substantive updates on officer discipline.

It is essential that the CPRB ensure that these independent investigations—which include cases of the highest public interest in Albany—meet effective practices and basic transparency requirements. These issues are being raised at this time because they significantly hinder the CPRB and its ability to make appropriate and timely use of the investigative power provided by voters when they passed Local Law J.

¹ The report was prepared by MLF Managing Partner Andrew Lah and subcontractors Russell Bloom and Rania Adwan. Our team, which has years of experience in police oversight, serves as a consultant to the CPRB.

² OPS is APD's internal affairs unit that administratively investigates, among other things, complaints of officer-involved misconduct.

II. Local Law J Enhanced the CPRB's Powers

In order to properly frame the current issues, a brief history of the CPRB, a brief summary of Local Law J, and the steps taken by the CPRB to implement its new powers are outlined below.

A. Background of the CPRB

In July 2000, the Common Council of the City of Albany created the Albany Citizens Police Review Board by adding part 33 to Chapter 42 of the City Code. The enabling legislation created a nine-member independent body, comprised of citizens of the City of Albany appointed by both the Common Council and the Mayor, to review investigations of complaints made by citizens against members of the Albany Police Department for alleged misconduct.

For approximately twenty years, the Citizens Police Review Board (later renamed the Community Police Review Board) operated under a limited, volunteer³ review model that lacked the ability to conduct independent investigations and could not compel the production of witnesses or documents independent of the Common Council via subpoenas. This early iteration of the CPRB was limited to reviewing and monitoring OPS investigations of alleged misconduct.

In 2020, following the murder of George Floyd by a Minneapolis police officer, there was outcry for reform in the City of Albany by the public alongside communications to the Common Council from the CPRB about strengthening police oversight. The City's Office of Audit and Control contracted with the CNA Corporation (CNA) in August 2020 amid the calls for racial justice. CNA conducted a racial bias audit and provided "actionable recommendations for reforms to eliminate racial and implicit biases" in policing.⁴

CNA issued its final report in December 2020.⁵ Under Recommendation 19.3 of that report, the CNA Group noted that Albany "should review the roles,

³ The CPRB was a volunteer model in that the Board's members were uncompensated. The Board was provided staff support from an administrative agency, the Government Law Center at Albany Law School, pursuant to a city contract.

⁴ Thorkildsen, Z., Bryson, B., & Taylor, W. (2020). *Final Report: Racial Bias Audit of the Albany, New York, Police Department*. Arlington, VA: CNA.

https://www.cna.org/archive/CNA_Files/pdf/irm-2021-u-029039.pdf.

⁵ *Id.* at 3.

responsibilities, and authority of the CPRB, including considering the implementation of independent investigative authority and associated powers.” This recommendation was predicated on improving APD’s performance and enhancing community trust, along with other recommendations included in the CNA report.

Consistent with CNA’s recommendation, Albany voters considered a proposed amendment to Part 33 of Chapter 42 of the City Code to enhance the CPRB’s effectiveness and authority through increased independent civilian oversight of the APD. The amendment to Part 33, known on the ballot as Local Law J, was unanimously passed by the Common Council and became law when it was approved by more than 70 percent of voters in November 2021.⁶

B. Key Provisions of Local Law J

Local Law J significantly expanded the CPRB’s powers to allow for independent investigation of alleged misconduct by members of the APD, with or without a civilian complaint.⁷ To conduct these investigations, the law mandates that the CPRB “shall have full access to information about any officer involved in the events that are the subject of a complaint, including information about prior complaints involving that officer and any action taken in response to those complaints.”⁸

This includes the OPS investigative file: “OPS shall provide to the CPRB its entire investigative case file related to the complaint. Thereafter, OPS shall send any newly acquired evidence to the CPRB within five business days of the acquisition of the evidence.”⁹

⁶ Ballotpedia (November 2021). *Albany, New York, Proposal 7, Community Police Review Board Authority for Investigations and Oversight of Complaints against Police*. Accessed Aug. 14, 2023. [https://ballotpedia.org/Albany, New York, Proposal 7, Community Police Review Board Authority for Investigations and Oversight of Complaints against Police \(November 2021\)](https://ballotpedia.org/Albany,_New_York,_Proposal_7,_Community_Police_Review_Board_Authority_for_Investigations_and_Oversight_of_Complaints_against_Police_(November_2021)).

⁷ The CPRB “shall have the power to investigate any and all conduct, acts or omissions by any APD officer independent of any investigation conducted by OPS.” See Albany, NY, City Code, part 33, ch. 42, § 42-343(F)(2).

⁸ See Albany, NY, City Code, part 33, ch. 42, § 42-342(D).

⁹ See Albany, NY, City Code, part 33, ch. 42, § 42-343(F)(4).

Local Law J specifically addressed providing the CRPB full access to video evidence, explaining that “[w]hen a complaint is filed, and OPS is in possession of any audio or video footage pertaining to the incident (including, but not limited to, body camera footage and dash-board camera footage), OPS shall make such footage available for any members of the CPRB upon request.”¹⁰

Finally, Local Law J gave life to the CPRB’s subpoena power to “compel the attendance of witnesses, APD officers, APD employees, and/or persons, and require the production of records and other materials, including records of the APD, other persons or other agencies.”¹¹ The CPRB’s subpoenas “are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.”¹²

These amendments promote the Common Council’s findings in § 42 that “an effective program to improve the relationship between the community and the Albany Police Department requires certain independent authority and power to review the handling of complaints of police misconduct.”¹³

¹⁰ See Albany, NY, City Code, part 33, ch. 42, § 42-343(E).

¹¹ “CPRB subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.” See Albany, NY, City Code, part 33, ch. 42, § 42-343(F)(3).

¹² Id.

¹³ See Albany, NY, City Code, part 33, ch. 42, § 42-332(E).

III. The CPRB's Implementation of Local Law J

Consistent with the voter-approved enhancements to supplement its investigative authority under Local Law J, the CPRB has created a hybrid and bifurcated investigations model. Under this model, the CPRB has the authority to either (1) conduct an independent investigation, or (2) as the CPRB has done since its inception, monitor OPS's investigation and/or evaluate OPS's completed investigation.

When the Board elects to open an independent investigation, the Board uses independent investigators trained in police practices to gather available evidence and complete all necessary steps to reach findings. The Board then reviews the investigations to decide whether to approve the investigator's findings. In the event of a substantiated allegation, the Board forwards its findings to the Chief of Police pursuant to § 42-345 of the City Code.

This model ensure that qualified, objective investigators conduct thorough, evidence-based investigations, which is critical for signaling fairness and objectivity to the community as well as to the involved officers.

A. Independent Investigators

This year, our team and the CPRB conducted a broad search for experienced and qualified investigators. After a comprehensive vetting process, the CPRB selected T&M USA, LLC, and James Conroy to serve as contract investigators.

- T&M USA, LLC ("T&M") is a firm with extensive experience conducting investigations. This team, which includes Julie Schwartz, Martin Gleeson, and Patrick Keane, has extensive prior experience as career prosecutors and law enforcement officers. The T&M team is well versed on police practices and conducting effective, evidence-based investigations.
- James Conroy has worked as a civilian oversight investigator with the Civilian Complaint Review Board in New York City and has served as a sworn law enforcement officer who investigated officer-involved misconduct among other cases.

B. Confidentiality

To facilitate information sharing, the CPRB and APD entered into a Stipulated Confidentiality Agreement (“Agreement”) to address APD’s concerns regarding the protection of documents related to the CPRB’s investigations. Although the Agreement was not necessary because Local Law J already requires the CPRB to maintain “absolute confidentiality with respect to confidential or privileged information they receive,” the CPRB entered into the Agreement to avoid further delays in accessing the evidence needed for its work. This agreement was finalized on November 8, 2022, after more than six months of negotiations between APD, Corporation Counsel, and the CPRB.

The Agreement acknowledges that the CPRB’s “investigations routinely involve information that is also relevant to ongoing criminal investigations and civil proceedings.”¹⁴ The Agreement also ensures that a process exists regarding confidential information that allows the CPRB and its investigators to access this information for its statutorily mandated work.

The Agreement, along with other existing legal protections, provides clear legal guidelines and penalties for CPRB members who fail to honor them. Nevertheless, these multilayered protections have failed to lead to APD providing CPRB appropriate access to records.

¹⁴ Agreement at 1.

IV. Barriers to Properly Implementing Local Law J

In January 2023, the CPRB's new investigators embarked on their first independent investigations. These initial investigations have unsurprisingly and reasonably involved high-profile cases with significant public interest in Albany, including incidents of officer-involved shootings and those related to public protests in the aftermath of the murder of George Floyd. However, as outlined below, these important investigations have been unnecessarily delayed by a series of obstacles which contravene Local Law J and defy well-established law enforcement oversight and investigative norms, which are briefly summarized.

In 2009, the U.S. Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) issued a report recommending effective practices for internal affairs units.¹⁵ The report noted that every complaint should be tracked from receipt through final disposition via the use of an automated system (such as IAPro, discussed below).¹⁶ Absent an automated database, an agency makes it challenging to verify investigative diligence or actual completion of investigation.¹⁷ The authors highlight the benefits of automated tracking systems, including the ability to generate alerts warning of impending deadlines to avoid passing statutory time limits for completion of investigations and to "avoid the appearance of deliberate indifference."¹⁸

Accordingly, "[i]n all instances...an internal investigation should be completed within a reasonable time before any applicable statute of limitations or other bar to officer discipline has run out."¹⁹ The completion of internal investigations in a timely manner can aid in the development of community trust to demonstrate that all complaints are taken seriously and signals respect to the subject employees who may experience stress from the investigative process.

¹⁵ U.S. Department of Justice Office of Community Oriented Policing Services (2009). *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*. Washington, D.C.: Office of Community Oriented Policing Services. <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-p164-pub.pdf>.

¹⁶ *Id.* at 17.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 33.

Building on the COPS report, the National Association for Civilian Oversight of Law Enforcement (NACOLE) issued a report through a grant from the U.S. DOJ identifying an “Effective Practices” framework for agencies involved in civilian oversight of law enforcement.²⁰ Most relevant to this report, the framework emphasizes the following core issues which effective civilian oversight should include:

- Unfettered access to the police agency’s records, which is “vitaly important for effective civilian oversight.”²¹ The authors explain that “[t]he ability to review all records relevant to an investigation or other matters within the scope of a civilian oversight agency’s authority in a timely manner is essential to providing effective, informed, and fact-driven oversight.”²²
- Direct access to internal affairs databases, such as IAPro. These tools strengthen civilian oversight by reducing delays and providing the oversight agency with an opportunity to evaluate the law enforcement agency’s data and data collection.²³
- Avoiding conflicts of interest based on a municipal attorney’s dual representation of the municipality (and, by extension, the law enforcement agency) and the municipality’s civilian oversight agency.²⁴

The outcome of implementing the recommendations from the U.S. DOJ and NACOLE is straightforward. Investigative integrity is significantly enhanced by having direct and unimpeded access to evidence to allow investigators to review evidence as needed during the investigation and without control by the overseen law enforcement agency or its attorneys. This also eliminates any perception that the process can be undermined or manipulated by the overseen agency. As outlined below, the current process in the City of Albany falls far short of these effective practices.

²⁰ Vitoroulis, M., McElhiney, C., & Perez, L. (2021). *Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices*. Washington, D.C.: Office of Community Oriented Policing Services.

<https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0952-pub.pdf>.

²¹ *Id.* at 66.

²² *Id.*

²³ *Id.* at 44.

²⁴ *Id.* at 51.

A. Administrative Barriers

The CPRB has encountered several administrative barriers which have hindered the progress and completion of independent investigations. Resolving these administrative issues is vital to successfully implementing Local Law J.

1. OPS's Case Management System Is Underutilized

OPS has a case management system used by police departments across the country called IAPro. IAPro allows police departments to manage caseloads, store and share evidence, and manage and monitor complaints, among many other functions.²⁵ However, instead of having all OPS files and evidence digitized and uploaded to IAPro, OPS continues to rely on paper files and outdated case management modes. This contributes to a backlog of cases and lengthier and unnecessary delays in providing information to the CPRB.

Despite having access to IAPro, OPS consistently underutilizes the platform. OPS reportedly has lacked sufficient staffing and personnel to consistently upload and attach all relevant documentation and information to its case files. Relying on a paper system inherently creates inefficiencies in information sharing and effective file maintenance. This system can also lead to a failure to properly track case deadlines.

Even in its underutilized state, OPS does not provide the CPRB direct access to APD's IAPro system.

2. OPS Has Allowed Statute of Limitations Deadlines to Lapse

OPS has struggled to complete investigations within the applicable statute of limitations (SOL). As of September 1, 2023, OPS has 37 cases that remain under investigation but have exceeded the one-year time limit for discipline that is part of the current Collective Bargaining Agreements (CBA). In a number of instances, OPS has also failed to complete investigations within the eighteen-month statute of limitations afforded misconduct investigations under New York State law. As evident in a case that the CPRB recently reviewed, this means that the Chief of Police cannot mete out discipline because the statute of limitations has expired.

²⁵ IAPro (n.d.). *The IAPro Solution*. Accessed Aug. 14, 2023. <https://www.iapro.com/pages/the-iapro-solution>.

For example, in CPRB Case 2021-037, which the CPRB adjudicated on June 8, 2023, the CPRB determined that an allegation regarding improper call handling was sustained, and made a recommendation regarding failure to comply with APD's BWC policy. However, because the incident occurred on December 19, 2021, and OPS did not complete its investigation until March 20, 2023, formal discipline was no longer possible due to the expiration of the one-year SOL period under the CBA. The Commander of OPS publicly recognized the backlog issue and committed to correct it moving forward to avoid further SOL lapses. During the CPRB public meeting on June 8, 2023, the Commander stated that he expected most active cases to be completed under the one-year SOL period before the end of the year. He also reported that OPS has been approved to receive an additional civilian position, which may enable a more robust use of the case management system.

Increasing OPS's staffing, whether civilian or sworn, should assist in ensuring that OPS investigates its cases within the limitations period and fully utilizes its case management system. Moreover, this will help OPS comply with General Order 2.4.05(II)(B)'s mandate that "[i]nvestigation of complaints shall generally be completed within sixty (60) days of the complaint investigation being assigned to an OPS detective." OPS currently has 74 open cases in violation of that order.

It will be important to train new and existing OPS personnel to consistently and properly use this tool for the reasons put forth by the DOJ, as noted above, in order to avoid lapses in important deadlines.

B. Difficulty Accessing Evidence

Aside from the structural issues noted above, the CPRB has faced substantial challenges to receiving timely and unimpeded access to evidence from OPS. These deviations from established and recommended internal affairs and civilian oversight practices have led to delays in investigating and ultimately adjudicating cases. Some of these issues are outlined below.

1. Limited Access to Information, including Body-Worn Camera Footage, to a Short, Fixed Duration and Self-Selecting Relevant Evidence

Body-worn camera (BWC) footage often provides critical insight into police-civilian interactions, whether as evidence for criminal cases or for analyzing

allegations of officer misconduct.²⁶ In Albany, as in many areas across the country, the police department maintains an account with Axon, a company that equips police departments with body-worn cameras and its digital evidence management system, Evidence.com.²⁷ The CPRB does not have direct access to APD's Evidence.com account.

OPS controls when and for how long the CPRB can view the BWC footage and other shared information.²⁸ Because the CPRB lacks authorization to directly access APD's Evidence.com account, a board member or investigator can obtain such evidence only if and when an OPS detective identifies the appropriate BWC footage to upload and then emails a link to the footage.

For the better part of the past year, APD and OPS have chosen, strictly as an administrative preference, to limit the time period within which the CPRB may view BWC footage to seven days.²⁹ APD has also blocked the CPRB from downloading recorded BWC video from the Evidence.com interface. When the OPS-determined time period has lapsed, the link no longer works, so the investigator or board member can no longer view or analyze the footage.

This artificial limit has created serious barriers to conducting thorough and balanced investigations. First, imposing time limits is impractical for cases of any complexity. For example, in the protests following the murder of George Floyd near South Station, APD reportedly has more than 300 hours of BWC footage from multiple officers relating to those incidents. Expecting investigators to view and analyze that amount of footage within seven days,

²⁶ Albany Police Department General Order 3.2.15 outlines how APD officers use Axon's BWC equipment and upload their footage. See Albany, New York Police Department, Body Worn Cameras, General Order 3.2.15. (Jun. 14, 2018; effective Aug. 13, 2018). Accessed Aug. 14, 2023. <https://www.albanyny.gov/DocumentCenter/View/7382/GO-3215-Body-Worn-Cameras-revised-61422-PDF>.

²⁷ Axon Enterprise (Jan. 2021). *Axon Enterprise Media Press Kit*. Accessed Aug. 14, 2023. https://prismic-io.s3.amazonaws.com/axon-2/93dca185-9d0b-4b87-b1a3-3bdb887dff57/MediaPressKit_AxonEnterprise_2021+%281%29.pdf.

²⁸ APD, as the account administrator, can "determine what files can be viewed by users and groups of users." Axion (n.d.). *Axion Evidence*. Accessed Aug. 14, 2023. <https://www.axon.com/products/axon-evidence>.

²⁹ The officially stated position of OPS was originally seven days. In August 2023, the CPRB was indirectly informed that the limitation period was increased to fourteen days. Later, the CPRB was informed that the limitation period was increased to thirty days. Actual time limits provided have varied from as little as 72 hours to as long as thirty days, without explanation from APD as to why one CPRB inquiry is being treated differently from another.

the initial time limit imposed by OPS, including weekends, fails from a commonsense and professional perspective, given that there are only 168 hours in a week.

Second, from an investigative standpoint, limiting access to footage to a short, fixed duration ensures that the investigator cannot review footage as investigations develop or, as is common in these investigations, sync footage across multiple officers to compare different camera viewpoints or to sufficiently prepare for interviews. In addition, this unnecessary policy makes it extremely cumbersome for investigators to show the relevant footage to CPRB members when the Board is reviewing the investigator's findings. It is basic investigative practice for investigators to maintain copies of evidence to evaluate it as needed while a case is active. This is especially critical when the investigator is conducting an independent investigation where records are maintained by the subject agency.

Third, allowing OPS to select which videos to provide to an independent investigator inherently creates a potential for investigative error or selection bias. The CPRB investigator—and not an OPS detective—should be able to determine which BWC videos are relevant and needed. Indeed, this selection problem has surfaced repeatedly as CPRB investigators have been forced to ask for other evidence such as street addresses and footage from station cameras, as well as other relevant files. It is antithetical to basic independent investigative principles to have the evidence selectively filtered through OPS.

Fourth, after the time period imposed by OPS lapses, the investigator or board member must submit a new request for access to the BWC footage. This process has been rife with delays and non-responses from OPS. Moreover, when an investigator or board member has renewed requests for links, they have sometimes received different footage. At times, footage initially provided has been withheld, or other footage has been provided for the first time, which illustrates the concern raised above about having OPS personnel determine which evidence is relevant for an independent external investigative process. Board members have also been locked out of their accounts entirely and required OPS action to gain access, a process which has taken weeks.

Fifth, this entire process of having OPS handle and monitor this evidence runs counter to independent investigative principles. Under the current structure, even if OPS decides certain information is relevant and then provides limited access to the CPRB, OPS can monitor precisely what evidence the investigator is viewing, when evidence is viewed, and for how long the investigator views

evidence. This type of monitoring from the subject police agency further removes the CPRB's investigation from one of true independence.

Ultimately, these manufactured barriers have impeded *every* independent investigation the CPRB has opened into cases of alleged police misconduct in the City of Albany.

The Board has repeatedly asked APD to remove this fixed limitation period because it runs counter to the intent of Local Law J and the additional protections of the Stipulated Confidentiality Agreement. Until recently, OPS has refused these requests. In August 2023, the CPRB was indirectly informed that the limitation period was increased to fourteen days and then to thirty days. However, this is yet another arbitrary time limit that is required neither by law nor APD's General Orders.³⁰ The Commander of OPS defended the imposition of this arbitrary time limit in a CPRB public meeting, asserting APD's need for "guardrails" when the footage leaves the office. Neither through this public statement nor any other response to the Board's requests, has APD provided any meaningful clarification as to why this unilateral access restriction exists.

Applying these arbitrary restrictions have no impact on the maintenance of the confidentiality of the video evidence at issue. Among other inefficiencies, it creates unnecessary work for OPS investigators, which is particularly relevant given APD's assertions that its OPS investigators are overburdened with their work obligations.

2. Not Permitting Investigators to Have Copies of Investigative Materials and Often Requiring In-Person Viewing

Rather than providing unfettered access to evidence, APD's position is that the CPRB members and investigators can schedule an appointment to physically visit APD headquarters to view BWC footage and OPS files. This position is impractical in terms of both efficiency and technology and further hinders the CPRB's investigative and monitoring functions.

Local Law J requires APD to communicate with the CPRB to "ensure the orderly and efficient flow of information" under § 42-343(D) and to "provide to the CPRB its entire investigative case file related to the complaint." However, APD,

³⁰ General Order 3.2.15 provides that access to these video files will be determined by applicable laws. The people of Albany elected to grant the CPRB with the authority to collect this video evidence via the implementation of Local Law J as noted above.

with the support of Corporation Counsel, has repeatedly referenced a different subsection, § 42-341(C), to thwart the Board's access to information. Section 42-341(C) prohibits CPRB members from removing any APD "personnel or other confidential files, records or tapes from City officers except as authorized under this article." The CPRB believes the intent of this section is to prevent original records and evidence, other than copies of OPS case files, from being removed from APD's possession with the risk that the record could be lost or damaged.

APD has relied on the Corporation Counsel's overly broad interpretation of § 42-341(C) to prevent CPRB investigators and board members from making copies of relevant evidence for the CPRB's investigative files. Based on this interpretation, APD has blocked the CPRB from downloading recorded body-worn camera (BWC) video from the Evidence.com interface. As noted above, APD has also limited the time period within which the CPRB may remotely view BWC footage.³¹

APD's alternative—requiring in-person site visits to review its files—is highly inefficient because the CPRB's requests can easily be accommodated through secure electronic methods. Indeed, APD has provided remote access in some cases, but not in others. Numerous oversight entities, law enforcement, and prosecutorial agencies across the country have implemented these methods over the years. As noted above, NACOLE expressly endorses this as an effective practice. Indeed, one of the CPRB's consultants is the current head of an oversight agency in connection with another police agency and has had direct access to that agency's IPro and Evidence.com accounts for years.

Moreover, the bureaucratic procedure imposed by APD requires investigators at T&M, which is not based entirely in Albany, to travel to review the case files. This is unnecessarily burdensome for the investigators and for OPS personnel, and it creates a fiscal strain for the CPRB, which already operates with limited resources and minimal staffing. Given the potential for full remote access, there is little reason for OPS detectives or staff to stay past business hours (and receive overtime pay to do so), although this claim has not been borne out of experience. On at least one occasion when T&M attempted to stay past business hours to view evidence, they were asked to exit because the detective had to leave for the evening.

³¹ *Supra*, note 28.

3. Delays in Receiving Evidence

In addition to these deeply concerning limitations that APD has constructed regarding *how* the CPRB receives information, there are substantial issues with regard to *when* (or if) the CPRB receives the requested evidence. Some of the current issues include the following:

- T&M and board members have repeatedly asked for information from OPS, only for OPS to ignore their requests or fail to provide the requested information.
- In circumstances in which OPS has sent information after weeks of delays, board members and T&M have received electronic links to files that did not properly upload or, as noted above, received different BWC footage than was initially sent. This requires another round of communications with OPS, which often does not respond for several business days, and requires repeated follow-up emails by the CPRB board member or investigator.
- Even after the CPRB provided relevant releases and subpoenas, the CPRB was informed weeks later that the Corporation Counsel was preventing the release of information to the CPRB.

Such delays and restricted access to information only serve to unnecessarily waste investigator resources and taxpayer money and directly contravene baseline investigative practices.

Ultimately, Corporation Counsel and APD have created this system. The investigators can only view evidence when APD allows it to happen. CPRB investigators cannot download BWC or other footage, and have a limited window to remotely view such evidence following repeated requests. When that window ends, the cycle of delay and inefficiency repeats, leaving the investigators without critical evidence because APD and Corporation Counsel will not allow copies of that evidence to be transferred to CPRB files. These obstructive policies leave investigators waiting unnecessarily for evidence while the statute of limitations period whittles down.

Perhaps most disturbing, as explained below, when the CPRB has served subpoenas for such evidence, APD and Corporation Counsel have obstructed efforts or outright refused to comply.

4. Lack of APD Cooperation with Officer Interviews

In cases where the Board has initiated an independent investigation, APD has taken the position that it "...will not be involved, in any way, with [investigators'] interviews of our employees.... This includes any request, from the CPRB or their designees, for assistance in providing our officers with materials in order to prepare them for your interviews."³²

Although not confirmed directly by the Chief of Police, APD has reportedly taken the position that it will not compel any officer to cooperate with any CPRB investigation and will not impose discipline upon any officer for failing to cooperate with the CPRB. This position by APD has prompted the union counsel representing subpoenaed officers to advise properly served officers that they need not comply with Board-issued subpoenas.

Accordingly, APD has refused to provide CPRB with duty rosters or shift assignments so that CPRB could serve the officers with subpoenas or arrange interviews at time periods which are most convenient for the officers and APD. Although OPS said it would provide access to the case file for review, the CPRB investigators have faced the same delays noted above and never received the BWC footage and recordings of prior officer and civilian statements to prepare for the officer interviews, despite making repeated requests over the course of the week leading up to the scheduled interview date.

5. Conflicted Representation, Interventions by Corporation Counsel, and Refusals to Comply with Subpoenas

The CPRB has previously raised concerns about the Office of the Corporation Counsel's conflict of interests in simultaneously representing APD and the CPRB for the past year. After elevating concerns to all levels of Albany government, the CPRB's concerns were successfully acknowledged, and the Board was finally able to retain its own counsel to obtain the conflict-free advice it needs. Following a search process via a Request for Proposals, the CPRB selected Michael L. Goldstein and Mark S. Mishler to serve as its independent counsel. The CPRB recently finalized retention agreements with them, and the Board is eager to move past the conflict of interest issues presented thus far.

³² Commander Joseph Laiacona, email communication to T&M investigator Julie Schwartz, July 22, 2023.

Aside from conflict issues, Corporation Counsel has inserted itself into investigations for unascertained reasons and has at times advised APD to withhold certain evidence from the CPRB. For example, it has interpreted a criminal protective order issued to defense counsel in a case as also applicable to the CPRB, even though the CPRB is not a party to the criminal litigation and the Board has strict confidentiality obligations under both Local Law J and the Stipulated Confidentiality Agreement. It appears that after being informed that the protective order did not apply to the CPRB, the Corporation Counsel communicated with the Albany County District Attorney's office with the result that the District Attorney successfully sought a revised order that is applicable to the CPRB.

In a separate CPRB investigation involving unsatisfactory performance and call-handling allegations, Corporation Counsel interjected itself into the investigation and refused to provide information despite a release from the complainant. Instead, Corporation Counsel stated that a subpoena duces tecum³³ for that information would be needed. In response, the CPRB served a subpoena for these records on June 28, 2023, but Corporation Counsel refused to provide any documents and failed to issue objections or a substantive response as to why it had failed to comply with the subpoena. Corporation Counsel did so despite the CPRB's explicit authorization to "compel the attendance of...APD officers...and require the production of records and other materials, including records of the APD, other persons or other agencies."³⁴

In these matters, Corporation Counsel has formally taken the positions that the CPRB lacks the authority to issue subpoenas without judicial authorization, that the CPRB lacks the authority and competence to investigate allegations of police misconduct in cases involving sex crimes, and that CPRB lacks the authority to investigate allegations of APD officers failing to properly investigate. Based on these points, Corporation Counsel refused to produce the documents in response to the subpoena.

In response to Corporation Counsel's position, the CPRB's legal counsel informed Corporation Counsel that its position ran counter to Local Law J and binding legal authority. Months after asserting this unsupported legal position

³³ A subpoena duces tecum is a written command in the name of a court or other legal authority to appear and provide relevant documents.

³⁴ See Albany, NY, City Code, part 33, ch. 42, § 42-343(F)(3).

and refusing to produce documents, Corporation Counsel eventually agreed that the CPRB does not need to seek judicial authorization to issue a subpoena.

On August 22, 2023, Corporation Counsel agreed to produce documents responsive to the subpoenaed records. However, just six days later, Corporation Counsel again changed its position and said that it would not produce documents responsive to the subpoena because the matter was being forwarded to the District Attorney's Office. The fact that a case might be under review by the DA's office is irrelevant to the issue of compliance with a duly issued and served subpoena as there is no "review by a DA" exception to the legal requirement of compliance with a proper subpoena. Unsurprisingly, Corporation Counsel provided no legal basis for its continued failure to comply with controlling New York State law and the Albany municipal code. Finally, after approximately four and one-half months of delay, Corporation Counsel produced at least some of the subpoenaed records.

6. APD Officers Have Ignored CPRB Subpoenas

The CPRB has issued subpoenas to four APD officers to appear for interviews regarding an officer-involved shooting case, using its lawful authority to "compel the attendance of...APD officers."³⁵ The officers ignored the subpoenas and chose not appear for their interviews despite being properly served, with the support of the APD officers' unions and Corporation Counsel.

APD Chief Hawkins was also served with the subpoena for his officers, pursuant to Local Law J, yet he failed to direct them to appear. Although the APD Chief has not confirmed this directly, counsel provided by the officers' union has informed the CPRB that APD has taken the position that it will not compel any officer to cooperate with a CPRB investigation and will not impose discipline upon any officer for failing to cooperate with the CPRB. APD's position has prompted the union counsel to advise properly served officers that they do not need to comply with subpoenas issued by the Board.

The CPRB is committed to ensuring APD officers' due process protections, including any Fifth Amendment concerns under *Garrity v. New Jersey*, 385 U.S. 493 (1967). The Common Council's clear intent under Local Law J was to authorize the Board to conduct officer interviews. The APD Chief should order

³⁵ *Id.* The CPRB served subpoenas to four officers on May 18, 2023, to appear and provide oral testimony. The CPRB issued subpoenas to the same four officers on June 28, 2023.

officers to be interviewed pursuant to the CPRB's subpoenas or face discipline, up to and including termination.

The positions of APD, the APD officers' union and Corporation Counsel appear to contravene New York State and City of Albany laws by refusing to comply with the lawfully issued subpoenas. These issues will need to be addressed through the appropriate processes in the coming months. Should those processes involve litigation, the cost to the City will be two-fold, with taxpayers bearing the expenses for attorneys on both sides of the litigation.

C. Absence of Transparency Regarding Discipline

The CNA Group's 2020 Albany Police Department Racial Bias Audit Final Report emphasized the importance of transparency and community trust, including for Internal Affairs reporting:

The lack of public release of reports and annual summaries shows low transparency and diminishes trust by the community in the City of Albany. It is important to increase transparency with these types of reports to follow through with APD's mission.³⁶

Although APD sends quarterly discipline reports to the CPRB, the reports include virtually no substantive information, including the case number, officer name, or any information regarding the underlying facts. This information does not satisfy the transparency standards in New York State or under Local Law J.

Timely and transparent communication with APD regarding discipline can be improved. In CPRB Case 2022-016, which involved a use-of-force incident involving a minor during the 2022 Juneteenth holiday, the CPRB's investigator completed an independent investigation. After reviewing the information, the CPRB recommended discipline for a "sustained" allegation³⁷ on May 11, 2023, and forwarded the findings to the Chief of Police five days later on May 16.

³⁶ Thorkildsen, Z., Bryson, B., & Taylor, W. (2020). *Final Report: Racial Bias Audit of the Albany, New York, Police Department*. Arlington, VA: CNA.

³⁷ A finding of "sustained" indicates that the review or investigation provided sufficient facts to show that the alleged act(s) occurred in violation of APD policy or regulations.

When the CPRB did not receive a response from the Chief, the CPRB followed up with the Chief on June 13 and again on June 15 seeking an update on the case because the CBA statute of limitations deadline was June 19. The CPRB did not receive a response, and it appeared that OPS had not completed its investigation. On July 27, after more than one month of silence and several days after the statute of limitations expired, APD provided a report with a finding of “unfounded,”³⁸ which is inconsistent with the CPRB’s finding in the case.

Section 42-345 provides that the Chief of Police “shall...make the Department’s final determination known to the CPRB.... In the event that the Department’s final determination is inconsistent with the CPRB’s finding, the CPRB may request that the Chief provide a written explanation of the Department’s final determination.”

We recommend that APD should prioritize improving its processes to provide timely updates on cases, including a description of disciplinary action taken, or a written explanation as to why it allowed the statute of limitations to expire without acting.

³⁸ A finding of “unfounded” indicates that the review or investigation shows that the alleged act(s) did not occur or were misconstrued.

V. Conclusion and Recommendations

The CPRB and APD are understandably undergoing an adjustment period as they implement new procedures in accordance with Local Law J. However, substantial changes to APD's information-sharing process must occur in order for the CPRB to fulfill its obligations as established by the provisions of Local Law J. These recommended changes will also enable the City of Albany to meet effective practices for misconduct investigations, as outlined in the reports by the U.S. Department of Justice COPS Office and NACOLE, discussed above.

We recommend the following changes to align with these effective practices and resolve many of the issues presented in this report.

Recommendation 1

APD should provide unfettered, remote access to IAPro and Evidence.com to the CPRB and its investigators to avoid the OPS investigator having to repeatedly send and resend expiring links. The CPRB alone should determine what evidence it needs for its independent investigation and have access to that evidence for the duration of the investigation. This can be accomplished most easily via a shift in OPS practices, a revision to the language of General Order 3.2.15, or by the Chief of Police issuing a direct command to OPS personnel (pursuant to the language of the existing general order). Alternatively, Local Law J can be amended by the City of Albany Common Council to create explicit information-sharing parameters to avoid the problems identified thus far.

Recommendation 2

APD and OPS should not have the ability to self-select which footage to provide to the CPRB or set an arbitrary, limited duration for review. Fully implementing Recommendation 1 will rectify this issue and improve the efficiency and effectiveness of both OPS and the CPRB. Implementing Recommendations 1 and 2 will also help to ameliorate OPS's staffing issues by removing an administrative burden from OPS personnel.

Recommendation 3

APD should hire civilian staff, whether contract or full time, to digitize its files and properly utilize IAPro and Evidence.com both for its internal use to better

monitor its cases for statute-of-limitation compliance and to facilitate information sharing.

Recommendation 4

APD should communicate clearly with the CPRB to “ensure the orderly and efficient flow of information” under § 42-343(D). This includes timely communications with the CPRB regarding disciplinary outcomes under § 42-345 and providing more detailed and transparent reports on employee discipline to the CPRB.

The recommendation to provide unfettered access is technologically feasible; most of the obstructions identified are matters of choice that can be easily remedied. We hope that the CPRB continues to work with APD and other stakeholders in the City of Albany to implement these recommendations and ensure that the voters’ strong mandate in passing Local Law J is fully effectuated. Alternatively, amendments to Local Law J may assist the CPRB in obtaining the information it needs to conduct timely investigations and adjudicate complaints of alleged misconduct.

Recommendation 5

APD should be required to comply with the CPRB’s subpoenas and provide testimony regarding allegations of misconduct. Given the clear intent of Local Law J to authorize the CPRB to conduct officer interviews, the APD Chief should require officers to appear, subject to discipline, including termination by the APD Chief. Officers will be provided *Garrity* and due process protections during CPRB interviews consistent with applicable law.