



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

2023 2nd Quarter Report # 2

This second 2023 2nd Quarter Report covers the operations of the Community Police Review Board (hereafter “the CPRB” or “the Board”) from April 1, 2023, to June 30, 2023 using traditional calendar quarters.

Access to Albany Police Department Records

The CPRB access for remote case review was launched on Monday, November 14, 2022. However, there were limitations on how long the evidence.com shared link would remain active and when it would expire for case review. Chair Vives reported that she had spoken to the Department about the seven-day remote access rule for reviewing evidence and case files. Board Member Kevin Cannizzaro asked under what circumstances the Commander could set that timeline, and whether the instruction was from Corporation Counsel or Albany Police Department (APD). The Commander of the Office of Professional Standards answered that it was an internal decision, and the Corporation Counsel agreed with their decision. The Board expressed its concern about the Commander's policy on remote access.

Subpoena Non-Compliance

In accordance with Section 2302(a) of the New York State Civil Practice Law and Rules, Section 42-343(F) of the Code of the City of Albany, and other relevant laws, the Board approved and issued Subpoenas Ad Testificando and Subpoena Duces Tecum for ongoing investigations on May 18 and June 28. However, police officers and the City did not comply with the subpoenas or voluntarily participate in CPRB investigations. The Board was informed by both the union and the police department that they would not assist in producing APD officers for investigation and would not discipline any officers for refusing to appear, even when the officers have been subpoenaed. Furthermore, documentation demanded pursuant to lawful subpoenas was withheld based on the advice of the Corporation Counsel. The Board members raised concerns about the lack of cooperation between the APD and the Board. Chair Vives is working towards resolving conflicts between CPRB, APD, and Corporation Counsel to ensure true community oversight.

CPRB Legal Representation

The Board contracted with Mark Mishler, Esq. and Michael L. Goldstein, Esq. for legal counsel services.

Disciplinary Matrix Development

The CPRB is working closely with APD Chief Eric Hawkins and his team to create and execute a modern disciplinary system that outlines penalty levels and ranges of sanctions. The matrix is intended to establish a uniform accountability structure for the APD as required by Local Law J of 2020. The Committee held meetings on May 17, and June 14 to discuss this initiative.

Chief’s Quarterly Report of Disciplinary Investigations and Action

The Albany Police Department reported that there were no disciplinary actions taken by the department against any sworn members of the department during the second quarter of 2023 (April 1 through June 30, 2023). Accordingly, as of June 30, 2023, APD disciplined a total of 1 officer and provided no details about which officer was disciplined or what conduct resulted in the discipline.

Complaint Review Summary

There were 61 active cases (also referred to as complaints) at the start of the reporting period. An “active case” is a complaint awaiting review by an APD 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 70 active complaints.

There are currently 68 cases under investigation by OPS, 11 cases under supervisor review by OPS, 22 cases pending full review by the CPRB and 5 awaiting Detective and case number assignment. The Board voted to independently investigate 2 complaints involving alleged use of force against minors and failure to investigate.

The CPRB reached its findings by carefully analyzing all the evidence available, including video, established facts, statements by involved parties, and reports. Importantly, the CPRB considered the specific language of all applicable policies and laws to reach a reasoned determination. The Board reviewed and made findings on 4 complaints and one independently investigated incident in the second quarter of 2023:

OPS Case No. & Case Synopsis	OPS Finding	CPRB Finding
<p>CC2019-030 – V. Harden</p> <p>On October 10, 2019, the Office of Professional Standards received a complaint from an address in the City of Albany. The complainant referred to multiple incidents involving a former tenant. The complainant felt that the Albany Police Department did not adequately address her concerns with this tenant, and noted one specific time where she stated “I was in fear for my life.” The complainant also referred</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 	<p>For complaints filed prior to the passage of Local Law J, the Board cannot render its finding without the OPS “preliminary” / finding report / case summary.</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 3 counts of the alleged improper Call Handling, CPRB reached a finding of Unfounded –

<p>to incidents on 04/23/19 and 06/22/19.</p> <p>Allegation(s): Call Handling (6cts)</p>	<p>allegation made in the complaint.</p>	<p>where the review shows that the act or acts complained of did not occur or were misconstrued.</p> <p>II. With regards to 3 counts of the alleged improper Call Handling, CPRB 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>
<p>CC2022-016 – Independent Investigation</p> <p>A Juneteenth celebration on Central Avenue briefly turned into a shoving match after an alleged confrontation between police and organizers, resulting in a 12-year-old boy allegedly being thrown to the ground by a city police officer. The complainant indicated that her son was holding onto his father’s back and walking backward when the officer assaulted him. The complainant further indicated that there was no reason for this action by the officer as her son did not provoke the officer in any way.</p> <p>Allegation(s): Use of Force (1ct) & Call Handling (1ct)</p>	<p>The OPS made the following findings as to the conduct of the officer involved:</p> <p>I. With regards to 1 count of the alleged improper Use of Force, OPS reached a finding of Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued.</p> <p>II. With regards to the 1 count of allegation of improper Call Handling, the OPS reached a finding of Exonerated – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.</p>	<p>The Board made the following findings as to the conduct of the officer involved:</p> <p>I. With regards to 1 count of the alleged improper Use of Force, the CPRB reached a finding of Sustained and recommended discipline in connection with that sustained finding. Sustained – where the review discloses sufficient facts to prove the allegations made in the complaint. The Investigator did not investigate the allegation of Call Handling and included it in the findings.</p> <p>II. With regards to the 1 count of</p>

		allegation of improper Call Handling, the Board did not make a finding.
<p>CPRB Case No. 00000956– Independent Investigation *Preliminary Findings</p> <p>Alleged use of force at a public park against a minor on May 31, 2023.</p> <p>Allegation(s): Use of Force (1ct) & Call Handling (1ct)</p>	<p>This incident is still being investigated by OPS.</p>	<p>The Board made the following findings as to the conduct of the officer involved:</p> <p>I. With regards to the allegation of violation of policy (Domestic Violence, General Order No.: 3.8.20), the CPRB reached a finding of Sustained and recommended discipline in connection with that sustained finding. Sustained – where the review discloses sufficient facts to prove the allegations made in the complaint.</p>
<p>CC2021-037 – J. Levendosky and K. Cannizzaro</p> <p>The Complainant alleged that, on the night of December 19, 2021, an APD officer approached his car, where he was waiting for his wife to be discharged from Albany Memorial Hospital. The Complainant alleged that the officer walked around the driver’s side of the vehicle, pointed a gun in the Complainant’s face, and then walked into the</p>	<p>The OPS made the following findings as to the conduct of the officer involved:</p> <p>I. With regards to 1 count 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.</p> <p>II. With regards to 1 count of the alleged improper Conduct Standards, OPS reached a finding of Unfounded – where the review shows that the act or</p>	<p>The Board made the following findings as to the conduct of the officer involved:</p> <p>I. With regards to 1 count of the alleged improper Call Handling, CPRB reached a finding of Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued.</p> <p>II. With regards to 1 count of the alleged</p>

<p>hospital without any communication. The Complainant reported that, when he called SSTA, the desk officer was rude and dismissive.</p> <p>Allegation(s): Call Handling(1ct), Conduct Standards (1ct), Body Worn Cameras, General Order No.: 3.2.15 (1ct) & Use of Force-Lethal Weapons, General Order No.: 1.3.05 (1ct)</p>	<p>acts complained of did not occur or were misconstrued.</p> <p>III. With regards to the allegation of violation of policy (Body Worn Cameras, General Order No.: 3.2.15), the OPS reached a finding of Sustained and recommended discipline in connection with that sustained finding. Sustained – where the review discloses sufficient facts to prove the allegations made in the complaint.</p> <p>IV. With regards to the allegation of violation of policy (Use of Force-Lethal Weapons, General Order No.: 1.3.05), this allegation was not addressed in the OPS report.</p>	<p>improper Conduct Standards, CPRB reached a finding of Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued.</p> <p>III. With regards to the allegation of violation of policy (Body Worn Cameras, General Order No.: 3.2.15), the CPRB reached a finding of Sustained and recommended discipline in connection with that sustained finding. Sustained – where the review discloses sufficient facts to prove the allegations made in the complaint.</p> <p>IV. With regards to the allegation of violation of policy (Use of Force-Lethal Weapons, General Order No.: 1.3.05), the CPRB reached a finding of Exonerated – where the acts which provide the basis for the complaint occurred finding.</p>
<p>CC2022-005 – A. Santos</p> <p>The Complainant alleged that APD Officer Delano did not provide a copy of</p>	<p>The OPS made the following findings as to the conduct of the officer involved:</p>	<p>The Board made the following findings as to the conduct of the officer involved:</p>

<p>the video of her being assaulted on a CDTA bus and that the Albany Police Department did not contact her about possibly being exposed to COVID-19.</p> <p>Allegation(s): Call Handling(1ct), Conduct Standards (1ct) & Unprofessional Conduct (1ct)</p>	<p>I. With regards to the alleged improper Conduct Standards, the OPS reached a finding of Exonerated – where the acts which provide the basis for the complaint occurred but the review shows that such acts were proper.</p> <p>II. With regards to the alleged improper Call Handling, the OPS reached a finding of Exonerated – where the acts which provide the basis for the complaint occurred but the review shows that such acts were proper.</p> <p>III. With regards to the alleged improper Unprofessional Conduct, this allegation was not addressed in the OPS report.</p>	<p>I. With regards to the alleged improper Conduct Standards, the CPRB reached a finding of Exonerated – where the acts which provide the basis for the complaint occurred but the review shows that such acts were proper.</p> <p>II. With regards to the alleged improper Call Handling, the CPRB reached a finding of Exonerated – where the acts which provide the basis for the complaint occurred but the review shows that such acts were proper.</p> <p>III. With regards to the alleged improper Unprofessional Conduct, CPRB 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>
--	---	--

Independent Investigations

The Board voted to independently investigate two cases in the second quarter of 2023. At the end of the reporting period, there were six active independent CPRB investigations.

Complaint/Incident	Description
Incident No. AD2022-002	Officer-involved shooting incident on January 24, 2022.
CPRB Case No. 00000956	Officer-involved shooting incident, June 20, 2022.

Incident No. AD2023-020	Alleged use of force at a public park against a minor on May 31, 2023.
Complaint No. CC2023-013	Alleged failure to investigate allegations of child sex assault and related conduct violations.
South Station/Arch Street	<p>The CPRB received four civilian complaints related to the incidents at South Station in Albany on April 14 and April 22, 2021:</p> <ul style="list-style-type: none"> • CC2021-20 (alleged excessive force on April 14); • CC2021-010 (alleging police removed badges and/or name tags on April 14 and April 22; “thin blue line” insignia present on April 22; and excessive force on April 22); • CC2021-011 (alleging officers obscured or removed nametags and/or badges; that officer used excessive force; and that officer wore Blue Lives Matter or “thin blue line” insignia on their riot gear on April 22); • CC2021-012 (alleging excessive force on April 22, and refusal to share information with a parent about a child’s whereabouts).
Complaint CC2022-016 (Closed)	Use-of-force incident involving a minor during Juneteenth on Central Avenue. The CPRB completed its independent investigation and recommended that the use-of-force allegations be substantiated. APD did not respond until after the statute-of-limitations (SOL) deadline and did not disclose to the CPRB that it reached a different finding until after the SOL deadline.

Investigator Reports

On May 11, 2023, the Albany Community Police Review Board (CPRB) heard from its independent investigators regarding the outcomes of two officer-involved shooting cases: (1) the Juneteenth Investigation (CC2022-016) and (2) CPRB Case No. 00000956 June 20, 2022. Local law permits the Board to review any incident or allegation of police misconduct, whether or not a complaint was filed, and whether or not the Albany Police Department (APD) chooses to conduct its own investigation. The City Code, in combination with the Collective Bargaining Agreement between the Albany Police Department Officers Union and the City of Albany, outlines a timed process by which reviews and investigations are conducted, not to exceed one full year, during which any officer discipline can be considered. In addition to working within the one-year deadline for discipline recommendations to the Chief of the Police, the Board is responsible for identifying trends or issues that may warrant a review of police policy.

CPRB Case No. 00000956:

Regarding CPRB Case No. 00000956, initially, the Albany Police Department and its attorney, Senior Corporation Counsel Matthew Toporowski, who was also representing the Board during some of this time, claimed that releasing records to CPRB investigators was prohibited by a protective order issued in the criminal prosecution *People v. Frazier* on June 27, 2022. However, the CPRB was not a party to the criminal proceeding, and the Board is bound by strict

confidentiality obligations under Local Law J and the Stipulated Confidentiality Agreement between the Board and the APD. After Toporowski agreed that the protective order did not apply to the CPRB, the Corporation Counsel contacted the Albany County District Attorney's office. The District Attorney subsequently obtained a revised order that applies to third parties like the Board. When the Board sought to be heard on the modified order, the District Attorney's office successfully opposed the request. Due to the protective order in place, the Board will most likely be unable to obtain the documents needed to complete its review until after the criminal prosecution has concluded.

Working with what the Board could access, the CPRB's initial review of the Officer's Body Worn Cameras, the independent investigator working with CPRB found that one of the officers violated APD General Order No. 3.8.20 Domestic Violence by failing to arrest the defendant for assault. Therefore, the Board sustained that allegation. For more details on this case, refer to the T&M preliminary report [here](#).

The CPRB investigated the case and submitted its findings to the Chief on May 16, 2023. The investigation's findings required the Chief of Police to provide a written explanation if he disagreed with the disciplinary recommendation made by the CPRB. On July 27, 2023, the Chief of Police responded, stating that Officer Anthony Rogers had been on leave since the incident. The CPRB followed up with a letter, inquiring whether Officer Rogers was injured during the incident, as it was believed that another officer had sustained injuries. The length of Officer Rogers' leave, which is over 400 days and ongoing, raised concerns about the standard procedure for handling an officer's absence following an incident of this nature. However, as of the close of the reporting period, the APD Chief had not yet responded to the CPRB's letter.

Complaint CC2022-016:

Regarding the independent investigation of CC2022-016, the CPRB completed its own investigation before the statute of limitations deadline and shared its findings with APD more than a month prior to the deadline. For more details on this case, refer to the investigator's report [here](#). The OPS report and APD's subsequent responses were received after the statute of limitations, which meant that no disciplinary actions could be taken. The Chair of the Board's Investigation Committee also believes that the OPS report incorrectly describes the incident and requires clarification. Even if APD's interpretation of the evidence is correct, the finding in the OPS Confidential Report for the Use of Force should be "Exonerated" rather than "Unfounded." A finding of "Exonerated" is made when the complaint's basis was proper but the officer's conduct was nevertheless justified, whereas a finding of "Unfounded" is made when the act or acts described in the complaint did not occur or were misconstrued.

New Complaints and Grievances

The Board received 28 new complaints during the second quarter of 2023.

Of the 28 new complaints, two cases were closed because they were withdrawn by the complainant and four cases were closed without review. Complaint CC2022-017 relating to the Juneteenth investigation was withdrawn by the complainant.

When the 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 28 new complaints, 11 were determined to be outside of the Board's jurisdiction.

The Board received no grievance forms from OPS. Grievances are informal complaints received by OPS from community members who do not want to submit a formal complaint.

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 one 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 recommended two complaints to mediation this reporting period. The Board is exploring other venue opportunities to conduct mediations because APD has stated that Albany Law School, the site of prior mediations, is not a "neutral location."

In partnership with the Albany Police Department, the Board hopes to develop greater public awareness of the mediation program on the CPRB website.

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: November 7, 2023