

City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
March 8, 2012
6:00 p.m. - 8:00 p.m.

Present: James Bradley, Marilyn Hammond, Maritza Martinez, Andrew Phelan Jr., Anthony Potenza, Reverend Edward Smart, and Patrick Toye.

Absent: Eugene Sarfoh and Akosua Yeboah.

I. Call to Order and Roll Call

Chairman Edward Smart called the meeting to order at 6:00 p.m. Chairman Smart welcomed Board members James Bradley and Maritza Martinez to the Board.

II. Approval of the Agenda

Anthony Potenza moved to approve the agenda. Marilyn Hammond seconded the motion. The motion carried unanimously.

III. Old Business

CPRB No 16-10/OPS No. CC 2010-021 (Presented by Andrew Phelan Jr.)

Andrew Phelan Jr. stated that the incident occurred on March 9, 2010 and the complaint was filed March 10, 2010. He further stated that the complaint involved two (2) allegations of call handling. The incident occurred on the corner of Hamilton and Eagle Street. The complainant alleged that she was pulled over because her car had tinted windows. The officer ran her driver's license and discovered that it had expired. The officer informed the complainant that she had one unpaid parking ticket and that the vehicle needed to be towed. The complainant alleged that this was not proper protocol. The complainant further alleged that when the tow truck arrived at the scene, the officer suggested that she wait with her grandson at the Stewart's located three (3) blocks away. The complainant alleged that the tow truck operator asked her if she and her grandson would like to wait in the tow truck until her ride arrived, but the officer told her to not wait in the tow truck and suggested that she walk to Stewart's.

Mr. Phelan summarized the OPS finding for the first call handling allegation as *exonerated*, where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. Based on the OPS investigation, the officer did not remember if he told the complainant that she could not wait in the tow truck. The

mobile DVR verified that the officer told the complainant “No.” The tow truck operator offered to let the complainant wait in his vehicle. The officer explained that he does not typically allow for a tow truck operator to wait with the person being towed because in his experience a problem can occur between the two. The officer usually stays until the tow truck leaves. If the officer would have allowed the complainant to stay with the tow truck driver, the officer would have had to stay for an unspecified amount of time. The officer stated that he had been waiting for forty-five (45) minutes already for the stop and the tow truck operator stated that the complainant’s ride arrived at the same time as the truck was being prepared to be towed. The complainant did not have to wait for an extended period of time. The officer’s responsibility is to ensure the tow truck operator’s safety during the tow process.

Mr. Phelan asked if the complainant was present. It was noted that the complainant was not present. Mr. Phelan reported that monitor Joel Pierre-Louis was assigned to the case on August 16, 2011. Mr. Pierre-Louis’ report stated that he agreed with the Office of Professional Standards’ (OPS) findings for both allegations. Mr. Phelan moved to concur with the OPS finding of *exonerated* on the first allegation of call handling. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Phelan reported that based on the monitor’s report, a greater burden should have been given to a woman and child as opposed to a man. Mr. Phelan stated that he agreed with the monitor’s report that this issue should be addressed by the Albany Police Department (APD). Mr. Phelan noted that Mr. Pierre-Louis was assigned to the case and supplied a report to the Board, but was not present.

Chairman Edward Smart stated that the OPS may want to look at their Standard Operating Procedures (SOP). Chairman Smart further stated that although the monitor was not present, his report was complete and the Board should move on.

Mr. Phelan summarized the OPS finding for the second call handling allegation as *exonerated*. The complainant alleged that the towing of her vehicle was not proper protocol. Based on the OPS investigation, the complainant’s driver’s license was expired. A vehicle can be towed when operated by a person using an expired license under City Code and pursuant to the APD’s SOP. Mr. Phelan moved to concur with the OPS finding of *exonerated*. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 3-11/OPS No. CC 2010-003 (Presented by Andrew Phelan Jr.)

Andrew Phelan Jr. stated that this complaint was previously reviewed by the Board and sent back to the OPS with additional questions. The Board previously adopted the OPS finding of *sustained* for the use of force allegation, and *ineffective policy and training* for the call handling allegation. A decision was not made for the conduct standards

allegation. A letter was sent to Police Chief Steven Krokoff and Deputy Chief Stephen Reilly in response to the Board's questions. Mr. Phelan stated that the letter expressed that some members of the Board were concerned that due to the previous finding that sustained the use of force allegation and ineffective policy and training, it is highly likely that the officer rudely responded to the complainant. Also, the Board is recommending that the officer receive training on how to treat people. The Board received a response from Deputy Chief Reilly stating that the department offered an in-service training regarding policing the community and the officer attended the training on February 24, 2011. In his response, Deputy Chief Reilly also stated that there was sufficient proof to sustain the allegation of use of force, but due to a lack of audio evidence, the evidence was insufficient to sustain the allegation involving conduct standards.

Mr. Phelan reported that monitor Joel Pierre-Louis was appointed to this case, but was not present. Mr. Pierre-Louis' report was submitted to the Board. Chairman Edward Smart stated agrees that this is the appropriate measure and that the information supplied by the APD's letter contained the information that the Board was seeking. Chairman Smart noted that Mr. Pierre-Louis has arrived to the meeting. Andrew Phelan moved to concur with the OPS finding of *not sustained* for the conduct standards allegation that the officer responded rudely to the complainant. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Mr. Phelan asked if the complainant was present. It was noted that the complainant was not present.

IV. New Business

A. *New Complaint(s)*

1. New Complaints Received Since the 2/21/12 meeting

Chairman Edward Smart reported that the Board received three (3) new complaints since its February 21, 2012 meeting. Board Secretary Andrew Phelan, Jr. read the new complaints.

CPRB No. 9-12/OPS No. CC2012-016

According to the complainant, on February 13, 2012, as he drove by two (2) officers who were detaining two (2) black men, one of the officers made eye-contact with the complainant. That officer allegedly profiled the complainant and pulled him over for failing to signal.

A monitor was not appointed to investigate the complaint.

CPRB No. 10-12/OPS No. CC2012-012

According to the complainant, on January 24, 2012, an officer allegedly pulled the complainant over and asked the complainant for his driver's license and registration. The complainant told the officer that he did not have the requested items because his car was broken into and his wallet was stolen. The complainant also told the officer that he filed a report with the Schenectady Police Department. When asked why the officer pulled him over, the officer allegedly replied that the complainant did not have on his seat belt. The complainant denied that accusation and stated that he has a 1990 Honda Accord that has an automatic seatbelt system that engages automatically. Two (2) responding officers arrived on the scene and allegedly yelled at the complainant to put his hands on the steering wheel. According to the complainant, he and the officers were yelling and using profanity. The complainant was ticketed for "Obstructed View" and the officer was allegedly going to write him another ticket for "Improper Use of a Seatbelt."

A monitor was appointed to investigate this complaint.

CPRB No. 11-12/OPS No. CC2011-123

The complainant alleges that on November 2, 2011, police officers stopped her sons for a routine traffic stop and searched her car twice without a search warrant. The officers decided to tow the complainant's car and give her son a ticket because the son's license was suspended. The complainant alleges that during the car search, the officers damaged the front panel of the car, broke a piece of the key, and threw everything all over the back seat. The complainant is requesting that the Albany Police Department fix her car.

A monitor was appointed to investigate this complaint.

Board Coordinator Sharmaine Moseley noted that the complainant filed the complaint with the OPS in November of 2011 and the Board did not receive the complaint until last week. Detective Hendrick commented that she did not know why there was a delay and stated that she would look into the matter.

2. Complaint(s) for Board review

CPRB No. 44-10/OPS No. CC2010-111 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. He stated that this complaint contains two (2) allegations. The complainant alleged that officers grabbed her boyfriend and punched her in the face before her boyfriend was handcuffed. The complainant further alleged false arrest.

Chairman Smart asked if the complainant was present. It was noted that the complainant was not present. Chairman Smart reported that monitor William Van Valkenburg was assigned to this case. It was noted that Mr. Van Valkenburg was present.

Chairman Smart reported that he reviewed the following documents: the OPS Confidential Report; Eight (8) Police Car Dispatches; Albany Police Department Subject Resistant Report; Albany Police Department Oral Statement Report; Response to Call Report; Call Person with a Weapon; multiple personal statements; Sixteen (16) Inter-Departmental Correspondence (IDC's); Arrest Records; First Albany Incident Report; Citizens' Complaint Form; Order of Protection dated 9/8/2010; Call Report; Criminal Complaint: Assault 3rd Degree - Obstruction of Government Administration; 2nd Albany Incident Report; and 2nd Call Report.

Chairman Smart asked Mr. Van Valkenburg if he had anything to add. Mr. Van Valkenburg replied that the incident stemmed from a call to the police stating that there was a man with a weapon which resulted in many police being dispatched to the scene. The first two (2) officers who arrived on the scene witnessed a woman thrown onto the front of their car and punched in the face. The officers separated the two (2) individuals and proceeded to arrest the woman who was the aggressor. As the complainant was being arrested, her boyfriend approached the scene. The boyfriend fit the description of the man who the police had originally received a call about. The officers let go of the complainant momentarily and turned their attention to the complainant's boyfriend. A physical altercation ensued between one of the officers and the boyfriend. The officer stated that he got hit in the face and that he physically made contact with the complainant's boyfriend. Both the complainant and the complainant's boyfriend were arrested. The complainant alleged that her boyfriend was unnecessarily harmed while being arrested and there was no cause for her arrest. The OPS' report upheld the officers' actions. Mr. Van Valkenburg stated that he agreed with the OPS. He believes that the officers acted appropriately under the circumstances.

Chairman Edward Smart moved to concur with the OPS finding for the use of force allegation as *exonerated*, where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. Marilyn Hammond seconded the motion. The motion carried unanimously.

Chairman Edward Smart moved to concur with the OPS finding for the arrest, authorities and procedures allegation as *exonerated*. Andrew Phelan seconded the motion. The motion carried unanimously.

CPRB No. 22-11/OPS No. CC2011-055 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. The complainant alleges that on May 5, 2011, her son was the victim of an assault, and the perpetrator was not arrested. The complainant further alleged that her son was wrongfully arrested for stabbing a woman, an act which the complainant contends her son did not commit. Additionally, the

complainant alleges that the officer who made the arrest had a conflict of interest due to her son's past.

The following documents were reviewed: Citizens' Complaint Form; Albany Police Department Citizen Complaint Report; OPS Confidential Report; investigating officer's handwritten notes; a letter to the complainant from the investigating officer requesting a date and time to speak to the complainant; Grievance Notification Report; OPS Complaint Number Assignment; a copy of the interview notice of the police officer; Subject Resistance Report; CAPS NET Incident Report; Taser Use Report; and call details.

Mr. Potenza reported that the complainant's mother stated that her son was involved in an incident where her son was stabbed in the knee by an unknown male. Mr. Potenza summarized the OPS finding for the conduct standard allegation as *exonerated*. Based on the OPS investigation, officers located near Jillian's were called to the scene. The responding officers saw a female with a stab wound to the shoulder/neck area and were told that this woman had been stabbed. The officers were given a description of the suspect by witnesses. The officers pursued the complainant's son and encountered him on Chapel Street. The complainant's son was there with other individuals, one of whom allegedly attempted to hit the complainant's son with a bottle. The police officer commanded that individual to put the bottle down. The police officer suspected that the individual was about to assault the complainant's son. The individual refused to put the bottle down after repeated commands to do so and was warned that a taser would be used if the individual did not comply with the command. The individual refused to obey the command and a taser was used on the individual. Witnesses on the scene identified the complainant's son as the person who stabbed the female. The complainant's son was then placed under arrest. Upon filing of the complaint, the arresting officer attempted to contact the complainant for additional information but no information was obtained.

Mr. Potenza further reported that the complainant believes that the arresting officer has a conflict of interest due to her son's past. However, the officer responded to the original call because he was in the immediate area. The complainant's son was identified by multiple witnesses. There was no evidence that the officer had any sort of pre-existing bias.

Mr. Potenza asked if the complainant was present. It was noted that the complainant was not present.

Anthony Potenza moved to concur with the OPS finding of *exonerated*, where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. Chairman Edward Smart seconded the motion. Chairman Smart commented that the complainant is not the victim and did not witness the event in

question. He stated that he questions whether the complaint can be reviewed by the Board. Board Counsel Patrick Jordan noted that if the complainant's son is a minor then there is no issue, but if that is not the case, an issue exists as to whether the complaint can be reviewed. The matter was tabled until an answer could be obtained as to whether or not the complainant's son was a minor or not. OPS Detective Kathy Hendrick stated that the complainant was born in 1988. Mr. Jordan noted that due to this, reviewing this case would not be consistent with the Board's by-laws or with the legislation creating the Board. Chairman Smart noted that the complainant's son has legal standing to file a complaint with the Board himself. Mr. Jordan confirmed that this was true. Mr. Potenza offered to withdraw the motion until such time as appropriate research could be done as to whether or not the complainant had standing to file the complaint. Chairman Smart commented that the case would be tabled until a proper review by legal counsel.

CPRB No. 31-11/OPS. No. CC2011-101 (Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that he was racially profiled during a traffic stop because four (4) officers arrived on the scene and questioned him. He felt that the line of questioning was inappropriate. Chairman Smart reported that he reviewed the following documents: Confidential Report, SOP on Traffic Stops; and Call Details. It was noted that monitor William Van Valkenburg was assigned to this complaint.

Chairman Smart summarized the OPS finding on the racial profiling allegation as *no finding*, where the complainant withdrew the complaint filed with the CPRB. Based on the OPS investigation, the complainant sent an e-mail to the APD, which stated that he wished to withdraw the complaint filed with the CPRB. The APD granted his request. Chairman Edward Smart moved to concur with the OPS finding of *no finding*. Marilyn Hammond seconded the motion. The motion carried unanimously.

B. Committee/Task Force Reports

By-Laws and Rules

Committee Chairman Edward Smart reported that there was a meeting of the committee earlier in the day. He further stated that the committee was waiting for a response from the Albany Police Department regarding the proposed mediation protocol. The committee met with the Common Council's Public Safety Committee and discussed the issues regarding the creation of a mediation process and the proposed early warning system.

Community Outreach

Chairman Edward Smart reported that Committee Chair Akosua Yeboah was unable to attend tonight's meeting. Board Coordinator Sharmaine Moseley reported on behalf of Committee Chair Yeboah that the Board was in the process of rescheduling a meeting with the NAACP that had been cancelled last month.

Mediation

Committee Chairman Edward Smart stated that the Board asked Deputy Chief Stephen Reilly if he would explore the Board's recommendations regarding the proposed mediation process. Chairman Smart further stated that it is important that progress be made quickly and that he believed if Detective Hendrick helped Deputy Chief Reilly, progress could be made in the next week or so. Detective Hendrick commented that they would try.

Police Department Liaison

Committee Chairman Andrew Phelan stated that he had nothing new to report. Chairman Edward Smart noted that Board Coordinator Sharmaine Moseley was attempting to schedule a meeting between Deputy Chief Reilly and Committee Chairman Phelan.

Public Official Liaison

Committee Chairman Edward Smart thanked the public officials who attended tonight's meeting.

Task Force on Monitors

Chairman Edward Smart stated that Ms. Yeboah was not able to attend the meeting and asked Board Coordinator Sharmaine Moseley if there was anything she wished to report.

Board Coordinator Moseley reported that the new Board members needed to be assigned to committees. Board member Mickey Bradley commented that he would join the Committee on Mediation. Board member Maritza Martinez noted that she would like to join the Committee on Community Outreach.

C. Appointment of New Members to the Committee on Complaint Review for April 2012

The following Board members were appointed to the Committee on Complaint Review for April 2012: Mickey Bradley, Marilyn Hammond, Maritza Martinez, Anthony Potenza, Chairman Edward Smart, and Patrick Toye.

D. Report from the Government Law Center

Government Law Center (GLC) Coordinator of the Board Sharmaine Moseley gave the report:

Complaint Inventory as of Date of Meeting

It was reported that included in tonight's packets is the complaint database scorecard. As of today, there are currently thirty (30) active complaints before the Board for review. Of the thirty (30) active complaints, four (4) were reviewed and closed by the Board at tonight's meeting. This leaves the Board with twenty-six (26) active complaints. There are five (5) cases ready for the next meeting's agenda and OPS will be closing out an additional five (5) more.

It was reported that four hundred and ninety-five (495) complaints have been closed. The total number of complaints that remain suspended from review is thirteen (13). The total number of complaints filed to date is five hundred thirty-four (534).

It was further reported that since the Board's last meeting, the Government Law Center (GLC) received three (3) grievance forms, bringing the total number of forms received to three hundred and nine (309). In response to the GLC's outreach to all individuals, the GLC has received eighty-five (85) Citizen Police Review Board (CPRB) complaint forms.

It was reported that the three (3) newest Board members have completed their orientation with the GLC and the OPS. Those members are now enrolled in the Citizen's Police Academy which began last week and will continue for the next thirteen weeks. The Academy meets every Thursday at 6 p.m. which conflicts with the Board's monthly meetings. Due to this, Ms. Moseley suggested that the Board find a different day of the week to meet for the months of April and May.

It was further reported that Board member Anthony Potenza will appear before the Common Council next week for his re-appointment.

Ms. Moseley stated that she would like to order business cards for members who wish to have them. She further stated that business cards are useful for outreach meetings as well as for use at the NACOLE conference.

NACOLE

It was reported that this year's NACOLE conference is scheduled to take place October 14-18 in San Diego, C.A. The Albany City Code requires that one Board member attend. Due to the large number of concurrent sessions in the conference, it would be beneficial to send more than one Board member. Ms. Moseley asked that Board members who are interested in attending the conference on behalf of the CPRB should let her know. Chairman Edward Smart added that Deputy Chief Reilly and another detective would be attending the conference.

E. Report from the Office of Professional Standards

OPS Detective Kathy Hendrick reported that she met with the three (3) newest Board members and explained to them the process used to review complaints. She noted that they had a good dialogue. Detective Hendrick further stated that with OPS Commander Ron Matos retiring, Deputy Chief Stephen Reilly would now oversee the OPS. Detective Hendrick commented that the OPS was trying to close all of the open cases but acknowledged that there still were a great number left. Chairman Smart asked if the OPS could work on obtaining the necessary swipe cards to use the elevators within the police building for Board members. Detective Hendrick stated that she would look into the issue.

F. Report From the Chair

Chairman Edward Smart stated that his report had previously been given. He commented that NACOLE is working very hard to engage other cities in their efforts.

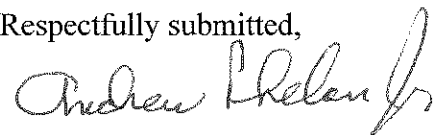
V. Public Comment

Chairman Edward Smart opened the floor for public comment. He acknowledged the attendance of Barbara Smith, Chair of the Common Council's Public Safety Committee, and Vice-Chair Leah Golby. Chairperson Smith commented that the Board was doing great work. It was noted that there were no additional public comments.

VI. Adjournment

Marilyn Hammond moved to adjourn the meeting. Chairman Edward Smart seconded the motion. The motion carried unanimously. The meeting adjourned at 7:00 p.m.

Respectfully submitted,



Andrew Phelan, Jr.
Secretary