

City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue – Teen Center Community Room
March 13, 2014
6:00 p.m. - 8:00 p.m.

Present: Mickey Bradley, Anthony Potenza, David Rozen, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah

Absent: Marilyn Hammond, Maritza Martinez, and William McCarthy

I. Call to Order and Roll Call

Chairman Edward Smart called the meeting to order at 6:00 p.m.

II. Approval of the Agenda

The agenda was reviewed. Chairman Edward Smart noted that **CPRB 56-12/OPS No. CC2013-002** will be removed from the agenda and the cases to be presented by David Rozen are to be moved up in the proposed order to allow him to leave early.

Akosua Yeboah moved to approve the revised agenda. Anthony Potenza seconded the motion. The motion carried unanimously.

III. Approval of the March 14, 2013 Meeting Minutes

The March 14, 2013 meeting minutes were reviewed. Anthony Potenza moved to approve the March 14, 2013 meeting minutes. David Rozen seconded the motion. The motion carried unanimously.

IV. Approval of the June 20, 2013 Meeting Minutes

The June 20, 2013 meeting minutes were reviewed. Anthony Potenza moved to approve the June 20, 2013 meeting minutes. Mickey Bradley seconded the motion. The motion carried unanimously.

V. Old Business

A. CPRB No. 3-13/OPS No. CC2013-003 (Presented by Chairman Edward Smart)

It was reported that at the Board's September 2013 meeting, the Board rendered a finding in this case. At that time, the complainant agreed to mediation. It was reported that the Board sent a letter to the OPS and is waiting for a response from the OPS.

Chairman Smart inquired as to whether there is the ability to have mediation. Coordinator of the Board Sharmaine Moseley replied that it would be an informal mediation.

The Board requested that a new letter be sent to the OPS and Chief Steven Krokoff.

B. CPRB No. 23-10/OPS No. CC2010-035 (Presented by Anthony Potenza)

Anthony Potenza stated this case was first reviewed by the Board on October 13, 2011. This incident took place in September of 2009. Mr. Potenza stated that there were two (2) allegations of improper call handling and the Board rendered a decision on one (1) allegation where the Board concurred with the OPS finding of *not sustained*. Mr. Potenza reported that on the second allegation, the decision to reach a finding was tabled because there was a vote of four to one which is not a majority of the Board. The Board submitted correspondence recommending that this case be further investigated. Mr. Potenza stated that he discussed this matter with the OPS, and there is no new information to report on this case. Mr. Potenza reported that a large amount of time has passed since this incident occurred. Mr. Potenza discussed a report that was filed which stated in part that during the seven (7) months immediately prior to the complaint there was no effort on the part of the complainant to make contact with Detectives assigned to review this case. Mr. Potenza further reported that based upon this record it shows that the complainant was not cooperative and did not make efforts to further the investigation.

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 *not sustained* for the call handling allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

C. CPRB No. 3-14 /OPS No. CC2014-015

Chairman Edward Smart mentioned that this complaint was not filed within the six (6) month time limit designated by statute. Chairman Edward Smart stated that this time constraint was due in part to the fact that there is a difficulty in obtaining witnesses who have clear a recollection of the events after six (6) months. Chairman Smart mentioned that in this case the length between the alleged incident and the complaint was rather lengthy, and the board had decided not to review this complaint.

Chairman Smart moved to dismiss this complaint without prejudice. David Rozen seconded motion. The motion carried unanimously.

VI. New Business

A. New Complaints

1. New Complaints Received since the January 16, 2014 Meeting

Chairman Edward Smart reported that the Board received three (3) new complaints since its January 16, 2014 meeting. Vice-Chairman David Rozen read the cases, as Secretary Akosua Yeboah was unable to read the complaints. He only read the complaints that were not assigned monitors.

All three (3) new complaints are listed as follows:

CPRB No. 2-14/OPS No. CC2014-005

According to the complainant, while sitting in a Dunkin Donut's parking lot, an officer allegedly ordered him to turn off his car and show his ID. The complainant alleged that the officer threatened to pull him out of the car and tased him. According to the complainant, he got out of the car and was handcuffed. After his ID was checked, the officer allegedly let the complainant go without an explanation.

A monitor was not appointed to investigate this complaint.

CPRB No. 3-14/OPS No. CC2014-015

On February 25, 2014, six (6) members of the board were read this complainant verbatim. By a majority vote, the Board voted not to accept and review this complaint since the complaint was filed six (6) months after the date of the alleged incident. The case was put on tonight's agenda under "old business" and closed out accordingly.

CPRB No. 4-14/OPS No. CC2014-018

According to the complaint, he has to appear in traffic court on March 5 for three (3) traffic infractions. The first infraction was for dodging pedestrians at an intersection which resulted in an alleged high speed chase. The second infraction was for the officer allegedly telling the complainant that he would not ticket him for driving at a speed of seventy (70) in a fifty-five (55) limit zone, but then ticketing him for that infraction. The third allegation was that of an officer who searched the vehicle without a warrant.

2. Complaint(s) for Board Review

CPRB No. 7-13/OPS No. CC2013-015 (Presented by David Rozen)

David Rozen noted that this complaint was initially reviewed by Maritza Martinez, who was unavailable for today's meeting. Mr. Rozen mentioned that Ms. Martinez had reviewed the report and he reviewed the report as well. David Rozen summarized the complaint. The complainant alleged that on February 22 2013 the complainant was home and could hear children upstairs screaming so she called 911 to have them check on the children. The complainant stated that the officers checked on the children and informed her of the outcome. The complainant further alleged that after she returned to her apartment, officers knocked on her door because they wanted to check on a child that was possibly being harmed by that child's mother. The complainant let the officers know at

the door that her daughter was ok and that she called her child to the door so that the officers could see for themselves. The complainant further alleged that when she turned to get her daughter, the officers entered her apartment without her permission. The complainant stated to the officers that everyone was safe which is when she was allegedly told to "Shut up." The complainant alleged that the officers were in her space. If either officer sneezed, it would have gotten in her eyes and on her skin. The complainant stated that her child was fearful and whining about why the officers were doing what they were doing. The complainant stated that she felt she was being penalized for doing the right thing and did not feel respected. She felt officers were "baiting" her so she could lose her cool.

David Rozen reported that he reviewed the following documents: Citizens Complaint Form; Confidential OPS Report; CAD Call; NYS Domestic Incident Report; APD Intra-Departmental Correspondence (IDC); APD Supervisor Inquiry Request; CAPSNET Query; three (3) CAPSNET APD Incident Reports; and two (2) Field Interviews.

Mr. Rozen stated that a monitor was not assigned to this case. He asked if the complainant was present. It was noted that the complainant was not present.

Mr. Rozen summarized the OPS finding for the call handling allegation as *exonerated*, where the acts which form the basis for the complaint occurred, but the review shows that such acts were proper. Mr. Rozen stated that the documents reviewed showed that the officers were responding to a possible domestic abuse situation and the call ticket read "Check a subject. Check the welfare of a twelve (12) year old," naming the complainants daughter. Mr. Rozen stated it is the APD's protocol to physically check the inside of someone's residence and the physical wellbeing of the person they were called for. Mr. Rozen stated the OPS report continued to state that the officer was justified in entering the complainant's apartment so as to assess the health of the child. The officer was correct in getting the complainant's daughter alone to gather her pedigree information and her side of the story where the complainant could not influence her answers. Mr. Rozen reported that based upon this information he concurred with the OPS finding.

David Rozen moved to concur with the OPS finding of *exonerated* for the call handling allegation. Mickey Bradley seconded the motion. The motion carried unanimously.

Mr. Rozen summarized the OPS finding for the conduct standards allegation as *unfounded*, where the review shows that the act or acts complained of did not occur or were misconstrued. The complainant alleged that the officers were rude when they told her to "Shut up." She felt officers were "baiting" her so she would "act out." Mr. Rozen reported that the OPS interview with the officer indicated that the officer asked the complainant to stop yelling because the complainant yelled and was agitated throughout their entire time in the complainant's apartment. The officer instructed the complainant to be quiet in order to calm her down as she would not stop yelling. It was indicated that the complainant did not quiet down during this time. Mr. Rozen stated he concurred with the OPS finding because it appeared that the complainant was uncooperative when asked to be silent.

David Rozen moved to concur with the OPS finding of *unfounded* for the conduct standards allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

It was noted that the complainant in this case arrived late to the meeting. This complainant has multiple complaints pending and was concerned about missing the discussion of this case.

Chairman Smart informed the complainant that her pending cases were still pending and that the investigation of those cases was not impacted by the holding in this case.

David Rozen was then excused from the meeting. The Board still maintained a quorum in Mr. Rozen's absence.

CPRB No. 3-09/OPS No. CC2009-003 (Presented by Chairman Edward Smart).

Chairman Edward Smart mentioned that this was a case which had been held over due to pending legal action. The Mayor suspended this case because of that action.

Chairman Smart summarized the facts of the case in which the complainant alleged that an officer used profanity and was disrespectful when addressing him.

Chairman Smart reported that he reviewed the following documents: Citizens Complaint Form; Mayor Suspension Memo; Reinstating of Case Memo; and OPS Report.

Chairman Smart asked if the complainant was present. It was noted that the complainant was present.

The complainant inquired as to why it took so long for the case to be reviewed, and what is the outcome of his explanation to the Board.

Chairman Smart explained to the complainant that the review of this complaint was suspended by the Mayor because there was a legal matter pending, based on another complaint which was similar in location, time and facts as this case. It was stated that these two cases overlapped and due to the litigation of the other case the review of both were suspended.

Detective Hendrick reported that there was a separate complaint filed the same day and there was legal action taken on that complaint. The complainant agreed with that and stated that he was a witness to that interaction.

Chairman Smart stated to the complainant that while this was not reviewed for a few years because of that pending litigation, the complaint would be reviewed tonight.

The complainant stated that it has been five (5) years and he hasn't had any bad interactions with this officer since then, and that he is concerned about what might happen to the officer for an incident that occurred so long ago.

Mickey Bradley reiterated that while the Board was unable to review the case in real time due to the reasons stated by Chairman Smart, the OPS reviewed the case during the time frame it happened in so the initial factual review was performed while the incident was still fresh. Mr. Bradley stated that it is the OPS finding that would have an impact on the officer. Mr. Bradley stated that it is the OPS finding that would have an impact on the officer, and the Board's role is to review that decision and decide if it was properly investigated.

Chairman Edward Smart gave the complainant the floor to discuss his complaint.

The complainant stated that he had witnessed a business owner offloading supplies into his business. The local business owners had been told by the APD that it was ok to double park simply to load items into their businesses. Another business owner was issued a ticket for double parking while he was offloading supplies into his store. The complainant stated that he observed the man telling the ticket issuer that he was the business owner and that he had been told that he was allowed to do this. The complainant stated that during the discussion, the woman issuing the ticket became agitated, and at that point the man asked to speak to a supervisor. The woman issuing the ticket instead called the APD and the officers responded to the scene. One of the responding officers was disrespectful and threw the man up against a glass storefront, called the man names and arrested him, while the complainant videotaped the incident. The officer noticed that the complainant was recording the incident and told him "to get the f**k out of here," to leave the area. At that point complainant stated that he backed away from the area and moved to a location in front of his business, when he was told to get off side walk. The complainant then identified himself as the owner of the business he was in front of and the officer proceeded to tell him to move away. The complainant stated that a Metroland writer also witnessed the incident and wrote an article about it highlighting the offensive language and derogatory statements that were made by the officer. The complainant stated that the language used by the officer included language that seemed like an attempt at provocation. The complainant stated as a veteran he understood the concept of professionalism of the uniform and acting like a professional while in uniform. The complainant stated that he was upset with the officers lack professionalism in how he spoke and acted, and that attempted provocation by the officer was distressing. It was mentioned that the officer almost provoked him into doing something regretful and that he is happy that he was able to maintain his composure. He stated that he was able to speak to Detective Kathy Hendrick about the officer's conduct and actions. The complainant further stated his concerned that if the officer maintained a similar attitude towards people on the streets, he may have made arrests due only to provocation by this officer.

Chairman Smart explained that there is an Early Warning System in the APD. When there is a complaint filed against an officer or other offences against the SOP including

lateness, lazy-ness, and other demeanor offenses these actions are reported. These infractions are tallied to prevent continued officer infractions. Chairman Smart reported that this system both keeps track of infractions and also helps officers operate better in the community. The Early Warning System can help commanders to place an officer in an area that is appropriate for that officer's strengths in a community. Chairman Smart stated that if an officer is presenting issues working in a specific area, then they may be more suited to work in a different area in our city and the Early Warning System can track those possibilities.

Chairman Smart summarized the OPS finding for the conduct standards allegation as *sustained*, where the review discloses sufficient facts to prove the allegations made in the complaint. Based on the OPS investigation, the complainant and another party witnessed the arrest of another party. The arresting officer saw the witness taking pictures with his cell phone. The officer approached the complainant and used profanity on multiple instances. The complainant asked for the officer's name and badge number and he responded yelling his badge and name asking if the complainant could spell it and using other language unbecoming of an officer. The complainant was able to get the officers badge number and name. The officer requested meeting with the complainant, and there was an apology by the officer for his actions and language. This apology was extended to both the complainant and the other witness.

Chairman Smart reported that the suggested disposition was that the actions and language used by the officer was unprofessional and uncalled for, therefore he agreed with OPS on the finding of *sustained*.

Chairman Smart stated that he hopes the apology came after reflection on the officers' actions, and that he is happy with both the officer's apology and the complainant accepting that apology.

Chairman Edward Smart moved to concur with the OPS finding of *sustained* on the conduct standards allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Mickey Bradley inquired as to whether the video from the cell phone was available for review.

Detective Hendrick replied that unfortunately it was not possible for them to remove the video from the phone.

Chairman Smart thanked the complainant for being present for the meeting.

CPRB No. 46-10/OPS No. CC2010-115 (Presented by Akosua Yeboah)

Akosua Yeboah stated that this complaint was suspended by the Mayor due to a potential legal action in June of 2011. This case was unsuspending in December 2013. Ms. Yeboah noted that this case and the next case CPRB No. 48-10/OPS No. CC2010-115 have many of the same facts in common and were both suspended and unsuspending at the same time.

Akosua Yeboah summarized the complaint, in that the complainant alleged that she was in court and she had an injured foot. She was resting her foot on furniture in the court room. She further alleged that an officer approached her and forcefully removed her from the court room. The complainant alleged that the officer forcefully removed her from court injuring her arm while removing her from court.

Ms. Yeboah reported that she reviewed the file at the OPS and in that file there was no evidence in the file of that specific injury. Ms. Yeboah stated that the complainant alleged that she went to the hospital for these injuries but there were no medical records or evidence connecting a sprain the complainant had to the complaint. Ms. Yeboah reported that the complainant could not be reached by the OPS to amend the complaint or add any more information.

Ms. Yeboah summarized the OPS finding for the use of force allegation as *unfounded*, where the facts reviewed shows that the act or acts complained of did not occur. The complainant alleged that she was grabbed by the arms and removed from the court house. Based on the OPS investigation, all officers assigned to the court submitted correspondence. They all denied either having knowledge about the incident or even having contact with the complaint. There is also no evidence to show any force was used upon her at this time other than her discharge instructions from St. Peter's Hospital which simply states shoulder pain. The instructions in the paper work do not indicate how this alleged injury occurred and what medical evidence was found to prove the shoulder sprain. Due to the fact that the complainant filed a notice of claim against the APD, the OPS was unable to contact her or obtain any further medical documentation regarding her allegations.

Ms. Yeboah stated that there was no evidence in the file to show that the actions occurred, and with no records showing an actual injury and how that injury occurred she would have to agree with the OPS finding of *unfounded*.

Ms. Yeboah asked if the complainant was present. It was noted that the complainant was not present.

Akosua Yeboah moved to concur with the OPS finding of *unfounded* for the use of force allegation. Eugene Sarfoh seconded the motion. The motion carried unanimously.

CPRB No. 48-10/OPS No. CC2010-115 (Presented by Mickey Bradley)

Mickey Bradley reported that this case follows a similar set of facts as the previous case and that they were both suspended pending litigation.

Mr. Bradley summarized the complaint in that the complainant alleged that while sitting in the court room waiting to be called by the judge, she put her leg up due to pain in her leg and ankle. An officer approached her and stated that "This is not a bus stop," and told her to take her sunglasses off. The complainant alleged that she walked out of the courtroom and headed toward the bathroom when her arm was grabbed and twisted by an officer. The officer removed the complainant from the building.

Mr. Bradley reported that in statements given by the court officer it is claimed that the woman was talking to herself out loud, and appeared to be placing her legs on the bench with her head tilted back like she was about to take a nap. The officer told the complainant to be quiet, advised her to stay awake and to keep her feet on the floor. The complainant responded by making noises and "sucking her teeth." The officer spoke to the complainant and explained proper courtroom demeanor and the complainant mumbled profanity at him. It was at this time the woman was asked to leave the courtroom at which time she continued to use profanity. She was then told to leave the courthouse. As the complainant was approaching the door she veered towards the restroom. As she began to enter the restroom, the officer grabbed her by the jacket and the arm in an attempt to gain control of her and prevent her from using a cane against him. When the officer threatened to arrest her she became cooperative and she was escorted outside. Another officer observed the incident and verified this statement, but stated the target officer had everything under control.

The complainant complained of pain in her arm, and sought medical treatment. She presented with pain in her arms, back, legs, left ankle, hip, and back. There were no records of any fractures. She had good range, a capillary refill and no contusions. She was prescribed some pain medication and released.

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

Mr. Bradley noted that the officer did not file a Subject Resistance Report as required by Article 2.1 which requires a report to be filed when any and all open handed technique or higher is deployed. Mr. Bradley stated that this was noted in the OPS report, and that the OPS stated that this was a Violation of Policy. Mr. Bradley reported that the OPS found the use of force allegation ***unfounded*** as the officer utilized situation appropriate force consistent with training and department policy.

Mickey Bradley moved to concur with the OPS finding of ***unfounded*** for the use of force allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

B. Appointment of New Members to the Committee on Complaint Review for April 2014

The following Board members were appointed to the Committee on Complaint Review for April 2014: Anthony Potenza, Eugene Sarfoh, and Chairman Edward Smart

C. Committee Task Force Reports

By-Laws and Rules

Committee Chairman Eugene Sarfoh stated that he had nothing new to report.

Community Outreach

Committee Chairperson Akosua Yeboah reported that the committee continued to work with the Albany Citizens Police Advisory Council (ACPAC) by both educating and presenting at that Board's monthly meetings. Chairperson Yeboah stated that they discuss aspects of this Board's operation and what it is we do here. Ms. Yeboah reported that ACPAC has asked for the Board to send a member for each meeting, and the committee has agreed to do that.

Committee Chairperson Akosua Yeboah reported that the committee attended the Helderberg Neighborhood Association community outreach meeting which was held last month. Ms. Yeboah stated that there was a police officer present at the meeting who commended the Board for its fairness and impartiality to both police officers and citizens when it is reviewing complaints.

Sharmaine Moseley reported that Mickey Bradley and David Rozen attended a meeting with the University of Albany's Police Department.

Mediation

Committee Chair Mickey Bradley reported that the committee has met to review the applications for potential mediators which included reviewing resumes and cover letters. Committee Chair Bradley reported that the committee had already reviewed seven (7) resumes and had scheduled four (4) interviews in the next week. Mr. Bradley stated that it is his hope to be able to start the mediation process very quickly.

Chairman Edward Smart stated that he is happy with corporation counsel, OPS, the Board, and the GLC with our progress in creating the mediation process. Chairman Smart stated that with our mediation process now in place we are one of the few review Boards with that capability and other cities have reached out to Board to find out how it happened.

Police Department Liaison-Policy Review/ Recommendations

Committee Chair Anthony Potenza stated that he had nothing new to report.

Chairman Edward Smart stated that he would recommend a meeting with the police chief to consider working on condensing the SOP because currently it is a rather lengthy document. Chairman Smart stated that the Board also requested a discussion about the use of a ruse in luring a suspect of a noise violation out of his/her apartment and whether that was appropriate.

Public Official Liaison

Chairman Edward Smart stated that Committee Chair David Rozen not present at this time to give his report.

Chairman Edward Smart reported that once the committee members are decided on and the Common Council creates its committees, the Board would meet with the public safety committee.

Task Force on Monitors

Committee Chair Eugene Sarfoh stated that he had nothing new to report at this time, but he hopes to have a report for the meeting in April. Sarfoh reported that he has met with the current monitors and they are working on some issues which have arisen. Mr. Sarfoh stated that once the meetings are completed he will be presenting recommendations for new protocols to the Board.

Mickey Bradley asked what other Board members could do if they had recommendations regarding new protocols.

Committee Chair Sarfoh replied that he had intended the next report to be a presentation of where the monitor protocols are now, and an accounting as to any short comings, but he would be willing to take any input from the Board.

D. Committee/ Task Force Chair Elections

Chairman Edward Smart stated that the Committee/ Taskforce structure remained the same as the 2013 list.

Mickey Bradley requested to be added as a member of the task force on monitors. This request was granted by Chairman Edward Smart.

E. 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 fifty-one (51) active complaints before the Board for review. Of those fifty-one (51) active complaints, five (5) were reviewed and closed by the Board at tonight's meeting. One (1) complainant was received by the Board and closed without review. This leaves the Board with forty-six (46) active complaints. There are at least ten (10) cases ready for review at the Board's next meeting.

It was reported that five hundred and eighty-three (583) complaints have been closed. The total number of complaints that are suspended from review is nine (9). The total number of complaints filed to date is six hundred and thirty-seven (637).

It was further reported that since the Board's last meeting, the GLC received twenty (20) grievance forms, bringing the total number of forms received to five hundred and eighteen (518). In response to the GLC's outreach to all individuals, the GLC has

received one hundred forty (140) CPRB complaint forms, which is 27 percent complaint forms.

Citizen's Police Academy

The Citizens' Police Academy will begin on March 20th. It was reported that new member Bill McCarthy was not currently signed up but would be signing up and attending this sixteen (16) week program to fulfill the new member legislative requirement.

Commander Michael Hicks stated that there are not many seats left for the program so any potential mediators should sign up as soon as possible to guarantee a spot in the program. He further reported that some common council members have already signed up.

NACOLE

It was reported that this year's NACOLE conference is in Kansas City, Missouri from September 14 – 18. Chairman Smart stated that he hoped everyone on the Board could attend.

E. Report from the Office of Professional Standards

OPS Detective Kathy Hendrick and Commander Michael Hicks were present. Commander Hicks reported that there are eight (8) cases on his desk approaching completion.

Commander Hicks mentioned that on the topic of the SOP, the department is currently in the process of condensing, updating and redefining terms. Commander Hicks further stated that they are probably two (2) years from completing the SOP, and that this has been a long process taking about five (5) years. It was stated that there is a new draft which is on the department website for officers to use. Commander Hicks stated that he would ask if a completed and approved electronic SOP could be forwarded to the Board, for the Board's use. Commander Hicks stated that condensation may actually lead to an increased length to the SOP.

Commander Hicks stated that the department will lose 4 or 5 officers to retirement next month. Commander Hicks reported that the department will begin hiring new officers soon, and that they have already sent out canvassing letters looking for new recruits.

F. Report from the Chair

Chairman Edward Smart stated that he gave his report as the Board has moved through its agenda.

VII. Public Comment

Chairman Edward Smart opened the floor for public comment. It was noted that there were no comments from the floor.

VIII. Adjournment

Chairman Edward Smart adjourned the meeting at 7:05 p.m.

Respectfully Submitted,



Akosua Yeboah
Secretary