

City of Albany

CITIZENS' POLICE REVIEW BOARD

Second Quarterly Report February 1, 2018 - April 30, 2018

Submitted by:
The Government Law Center of Albany Law School
on behalf of
The City of Albany Citizens' Police Review Board



Second Quarterly Report of the City of Albany
Citizens' Police Review Board

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Submitted to:

The Mayor of the City of Albany
The Common Council of the City of Albany
The Police Chief of the City of Albany

BACKGROUND

Section 42-340 of Chapter 42, Part 33 of the Albany City Code requires the Government Law Center of Albany Law School to file, on behalf of the Albany Citizens' Police Review Board (CPRB), quarterly reports containing "statistics and summaries of citizen complaints, including a comparison of the CPRB's findings with the final determinations of the [Police] Department." This is the Second Quarterly Report so submitted in the year 2018.

DEFINITIONS

For purposes of this Report, the following words and phrases shall have the following meanings:

APD - City of Albany Police Department

COMPLAINT - A written statement concerning police conduct which is either submitted to the Citizens' Police Review Board for filing with the Albany Police Department or filed directly with the Albany Police Department

CPRB or BOARD - Citizens' Police Review Board

GOVERNMENT LAW CENTER - The Government Law Center of Albany Law School

GRIEVANCE FORM - An APD form used to gather contact information from the complainant and forwarded to the Government Law Center for CPRB outreach purposes

MEDIATION - A structured dispute resolution process in which a neutral third party assists the disputants to reach a negotiated settlement of their differences

OFFICER - Any sworn police officer of the City of Albany Police Department affected by a citizen complaint

OFFICE OF PROFESSIONAL STANDARDS (OPS) - Professional Standards Unit of the City of Albany Police Department

INTRODUCTION

The Government Law Center of Albany Law School was retained by the City of Albany to provide a number of services to the Board, the City, and the community. Many of these services are discussed, as appropriate, below.

ORGANIZATION OF THE BOARD

The following members constituted the Board during the second quarter of 2018:

Larry Becker, Esq.
Zachary Garafalo
Veneilya Harden

Ivy Morris
Reverend Dr. Victor Collier
Matthew Ingram

John T. Evers
Warren Hamilton

During the second quarter, the Board's elected officers were:

Chair	Ivy Morris
Vice-Chair	Zach Garafalo
Secretary	Veneilya Goodwin-Harden

Vacancies and Re-Appointments

As of April 2018, there is one Mayoral Appointee position open.

COMPLAINT REVIEW

Under Section II, Subsection I of the Board's Operating Procedures, each of the eight appointed members of the Committee on Complaint Review, in addition to the Chair of the Committee, will be responsible for the presentation of a particular complaint to the Board at its monthly meetings as assigned by the Chair of the Committee. Four complaints were presented and reviewed in the second quarter of 2018.

COMPLAINT SUMMARIES AND STATISTICS

During the second quarter of 2018, the Board received four new complaints in addition to its eleven active complaints and three suspended complaints. Monitors were appointed to investigate all four new complaints. Of the eleven complaints before the Board, the Board presented four complaints for review and rendered findings for twelve allegations contained in the four complaints. As to the four complaints that were reviewed and closed, the Board made findings consistent with the preliminary findings of the Office of Professional Standards in a total of three complaints.

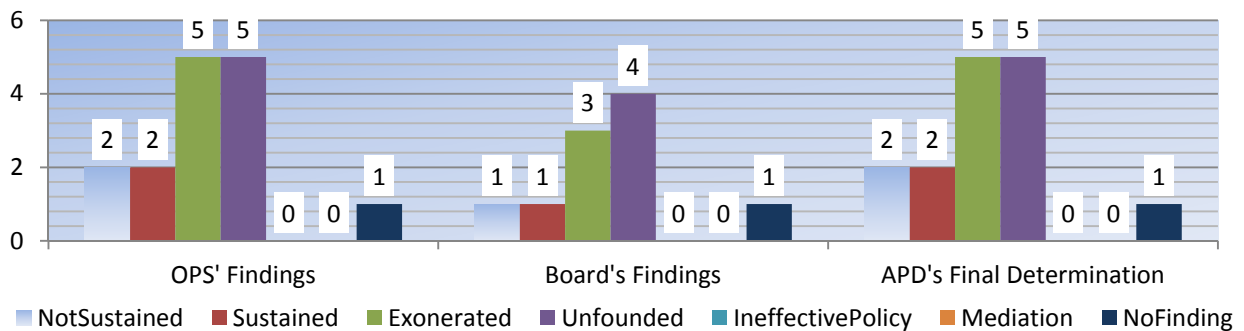


Figure 1: Comparison of findings made by the OPS, the Board, and the Albany Police Department during the second quarter of 2018.

Figure 1 depicts a comparison of the findings made by the Board and the findings made by the Police Department, including the preliminary findings of the Office of Professional Standards and the Albany Police Department's final determinations. The following is a summary of those complaints:

CPRB No. 12-17 / OPS No. CC2017-031 [no monitor appointed]

Nature of the Allegation(s):

1. The complainant alleged an officer pulled him over 3 times without cause and subsequently arrested him for possession of crack cocaine each time. Officers stated they conducted a traffic stop of the complainant. The officers observed the complainant dropping off passengers and failing to signal when pulling back into the roadway. Officers then observed in plain view items used to smoke crack cocaine, which were inside the vehicle. When the complainant admitted he did not possess a valid hack (taxicab) license, he was removed from the cab. When the complainant stepped from the cab, the officer stated he observed a bag containing crack cocaine. The officer had probable cause to stop the complainant when he observed the failure to signal and the crack cocaine was later observed in plain view. In subsequent stops, the officers had reasonable suspicion that the complainant would be in possession of crack cocaine. This was based upon the fact the complainant failed to signal 100 feet prior to making a turn during both incidents. After observing the failure to signal, the officers had probable cause to initiate the traffic stops and conduct a preliminary investigation.

Arrest Authority & Procedures – Unfounded, where the review shows that the act or acts complained of did not occur or were misconstrued.^[AA1]

2. Following his arrest on August 15, 2017, the complainant alleged that \$20 in U.S. currency and two lottery tickets were never returned to him. An officer stated the complainant was in possession of a ten-dollar bill (\$10) and a five-dollar bill (\$5) which were placed on top of his vehicle when he was being placed into custody. Said money was lost during the towing of the vehicle. The officer stated there were no lottery tickets on the complainant. Although there is a discrepancy in the amount of currency and whether the complainant was in possession of lottery tickets, both officers admit that money was placed on top of the complainant's vehicle during the arrest and that said money was lost.

Prisoner's Property Handling – Sustained, where the review discloses sufficient facts to prove the allegations made in the complaint.

CPRB Finding(s): 1) **Unfounded**

 2) **Sustained**

CPRB No. 12-17 / OPS No. CC2017-033 [monitor appointed]

Nature of the Allegation(s):

1. The complainant alleged an officer told her he can follow her for his entire shift. The officer admits to making that statement, which can further be heard on the digital video recorder (DVR) from the officer's in-car video system. The officer spoke to the complainant in a calm manner explaining how he can legally follow her. While individuals may have a reasonable expectation of privacy in their own bodies, they generally don't have the same expectation when in public. The complainant was followed for a total of 10 minutes before being stopped.

CPRB No. 25-17 / OPS No. CC2017-055 [monitor appointed]

Nature of the Allegation(s):

1. The complainant alleged she called APD to report larceny of her mail and harassment from her upstairs neighbor. The complainant alleged the officer refused to write a police report for her. Harassment as defined as “A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person: 1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or 2. He or she follows a person in or about a public place or places; or 3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.” The complainant wanted to file a report based on the third subsection of the law; however, there would need to be some sort of evidence to indicate something had occurred. Further, the complainant alleged a larceny of her mail, which is defined as “A person is guilty of petit larceny when he steals property.” The complainant wanted to file a report; however, there would need to be some sort of evidence to indicate something had occurred. Officers are required to conduct preliminary investigations when presented with allegations of criminal activity. Part of the investigation process involves the interviewing of persons and the collection of information in order to determine if the required elements of a crime exist or not. The officer must determine if the prosecutorial merit of the allegation is sufficient to substantiate the generation of a Police Crime Report. The officer stated he asked relevant questions in an attempt to establish the necessary elements for the complainant to file a harassment charge; the complainant was unable to provide any evidence that harassment had occurred that day. The officer stated that had there been enough evidence presented to him to qualify as “Harassment” or “Larceny,” he would have completed a Standard Incident Report.

Call Handling - Exonerated, where the acts which prove the basis for the complaint occurred, but the review shows that such acts were proper.

2. The complainant alleged the officers focused more on whether or not she had bipolar disorder and was on any medications rather than why she called. An officer stated he never called the complainant crazy or focused on whether or not she had mental health issues. He stated another officer may have asked if the complainant has been to the Capital District Psychiatric Center (CDPC), but it was based on the complainant’s demeanor. The officer stated he was focused on trying to help the complainant and find an amicable solution for all involved. Another officer stated the complainant displayed manic bipolar-like behavior during the call; she was crying on and off, screaming while speaking, interrupting during questioning, and unable to stay focused. Due to her unquantified^[MM3] claims and her behavior, she appeared to be in crisis. It was then the officer asked if she suffered from bipolar disorder. She took that as a personal attack and demanded the officers leave. The issue for which the complainant called the police was not ignored, and due to her perceived behavior she was briefly asked if she was diagnosed with anything. The question could have caught the complainant off guard and upset her, but based on her actions and statements made to the officers from management, it was a possibility that the complainant may have mental health issues. The officers are not wrong for inquiring if they feel her state of mind may be the cause of the perceived problems with her upstairs neighbor.

Call Handling - Unfounded, where the review shows that the act or acts complained of did not occur or were misconstrued. [AA4][GC5]

3. The complainant alleged when she came to Headquarters, the people there already knew who she was as if the responding officer warned them about her. The officer advised Administrative Services Bureau (ASB) staff at Headquarters that the complainant may be coming in to file a complaint. He even stated he showed the complainant the door to enter to file a complaint. There is no reason why an officer can't tell someone to expect a person may be coming in if they feel like that person would. In this case, the complainant, on scene, asked the officer how to file a complaint and told him she would. When the officer came to Headquarters to follow up on some claims the complainant made previously, he told staff she may be coming in so they would know she was here to speak with an OPS detective; it was not made in an effort to deter or prevent the complainant from filing a grievance with the department.

Call Handling - Exonerated, where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

4. The complainant alleged she called the police in the past and no one shows up (specifically, on November 18, 2017, the complainant alleged she called the police twice between 9pm and 10pm and no one showed up). A check with RMS (premise history and phone history) from 11/18/17 shows there were no calls entered for the complainant's address. A check was made of 911 calls to the Center and South Stations during that time, and no calls were found to be made by the complainant.

Call Handling - Not Sustained, where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.

- CPRB Finding(s):
- 1) **Exonerated**
 - 2) **Unfounded**
 - 3) **Exonerated**
 - 4) **Not Sustained**

DEFINITION OF CPRB FINDINGS

Section 42-344A of Chapter 42, Part 33 of the Albany City Code charges the Board with, after review and deliberation of an investigation, shall, by majority vote, make one of the following findings on the case:

(1) *Sustained* - where the review discloses sufficient facts to prove the allegations made in the complaint.

(2) *Not Sustained* - where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.

(3) *Exonerated* - where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

(4) *Unfounded* - where the review shows that the act or acts complained [of] did not occur or were misconstrued.

(5) *Ineffective Policy or Training* - where the matter does not involve guilt or lack thereof, but rather ineffective departmental policy or training to address the situation.

(6) *No Finding* - where, for example, the complaint failed to produce information to further the investigation; or where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; or where the complainant withdrew the complaint; or where the complainant is unavailable to clarify the complaint; or where the officer is no longer employed by the City.

(7) *Mediation* - where the complaint is resolved by mediation.

GRIEVANCE FORM PROCESS

Background

In the second quarter of 2008, former Chief of Police James Tuffey introduced a new system to the Albany Police Department, where complainants who have a grievance with a member of the APD, but opt not to complete a CPRB Complaint Form, would have their contact information provided to the CPRB using Grievance Forms so that the CPRB can reach out to them. This process ensures that individuals would not lose out on having their complaint reviewed by the Board. The OPS agreed to implement this Grievance Form process as part of its Standard Operating Procedure. Under this system, every complainant who files a Grievance Form with the OPS will have a full opportunity to complete a CPRB Complaint Form.

Summaries and Statistics

During the second quarter of 2018, the Board received 4 new Grievance Forms from the OPS. Out of the 4 new Grievance Forms that were filed in the second quarter of 2018, No Citizen Complaint Forms were filed.

MEETINGS

The Board met as a whole 3 times for the conduct of business during the second quarter of 2018. Meetings were held on March 9, 2018, and April 13, 2018. Both of the meetings were held at the University at Albany SUNY Downtown Campus, Levitt Room in Milne Hall, 135 Washington Avenue. There was a public comment period at each meeting.

The Board meets on the second Thursday of every month so as not to conflict with the monthly meetings of the County Legislature, and to encourage media and public participation at its meetings.

CONCLUSION

The Board had a productive second quarter, which included: the Board meeting as a whole four[CJ6] times, reviewing four complaints and rendering findings for eleven allegations contained in four complaints. The Albany Citizens' Police Review Board continued to work collaboratively with the Albany Police Department.

Respectfully submitted,

Clay Gustave
Government Law Center of Albany Law School
Approved by and submitted on behalf of the
City of Albany Citizens' Police Review Board

Approved by the CPRB: May 9, 2018