

# City of Albany

Draft

Third Quarter Report  
May 1, 2018 - July 31, 2018

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



**CITIZENS' POLICE REVIEW BOARD**

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

May 1, 2018 - July 31, 2018

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 Third Quarterly Report so submitted in the year 2018.

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.

## **DEFINITIONS**

### **Definition of Terms**

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

### **Definition of CPRB Findings**

Section 42-344A of Chapter 42, Part 33 of the Albany City Code charges the Board with making one of the following findings on each case<sup>[AA1]</sup>, by majority vote after review and deliberation on an investigation:

(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.

## **BOARD MEMBERSHIP**

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

Larry Becker	Zach Garafalo, Vice-Chair	Matthew Ingram
Reverend Victor Collier	Warren Hamilton	Ivy Morris, Chair
John T. Evers	Veneilya A. Harden, Secretary	

As of July 2018, there is one position open for a Mayoral Appointee.

## **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. Five complaints were presented and reviewed in the third quarter of 2018.

## **COMPLAINT SUMMARIES**

The Board received two new complaints in addition to its eleven active complaints and three suspended complaints. Of the eleven complaints before the Board, four complaints were

presented for review and rendered findings for thirteen allegations. Monitors were appointed to investigate three of the four complaints presented. 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 all complaints:

**CPRB No. 24-17 / OPS No. CC2017-055 [monitor appointed]**

*Office of Professional Standards description of allegation:* The complainant alleged an officer wrote the accident report wrong by listing her at fault. Based upon the information provided by the officer, his extensive training as an Accident Reconstruction Expert, the interview from the other driver involved and the OPS detective investigation of the Dunkin' Donuts parking lot it appears that the complainant's allegation is false. The officer's reconstruction and documentation of the crash was thorough, precise and accurate.

Office of Professional Standards categorized this complaint as: Call Handling

Office of Professional Standards finding: Unfounded (The review shows that the act or acts complained[CJ2] did not occur or were misconstrued)

CPRB finding: **Unfounded**

*Office of Professional Standards description of further allegation:* The complainant alleged an officer wrote the accident report listing her at fault due to racial and sexual bias. [CJ3]The complainant admitted that there was nothing to indicate any bias against her.

Office of Professional Standards categorized this allegation as: **Biased Based Allegation**

Office of Professional Standards finding: Unfounded (The review shows that the act or acts complained did not occur or were misconstrued)

CPRB Finding: **Unfounded**

**CPRB No. 18-17 / OPS No. CC2017-033 [monitor appointed]**

*Office of Professional Standards description of allegation:* The complainant alleged Officers used excessive force against her by throwing her to the ground and stomping on her (specifically her left hand). The complainant alleged she suffered injuries that required a cast on her left hand and various bruising. There is nothing to indicate that the complainant was ever "stomped on." The complainant did not claim to have any injuries at the time of the incident and failed to provide any medical documentation to OPS. Had she just left or cooperated like she was given the opportunity several times, said incident would not have occurred. [CJ4]The amount of force used upon the complainant was reasonable and necessary as allowed by NYS Penal Law Article 35.

*Office of Professional Standards categorized this allegation as:* Use of Force

*Office of Professional Standards finding:* Unfounded (The review shows that the act or acts complained did not occur or were misconstrued.)

***CPRB Finding: Unfounded***

*Office of Professional Standards description of further allegation:* The complainant alleged officers falsely arrested her. An officer stated the complainant was given the option numerous times to just leave, but she refused. They also gave her the option to go to the hospital in order to detox and rest. The officer stated the complainant would just not calm down and was verbally abusive throughout the interaction. The complainant flailed and kicked her limbs and once she was taken to the ground and handcuffed (initially detained for safety), she kicked an officer in the thigh and continued to be combative and uncooperative. At that point it was determined she would be placed under arrest.

*Office of Professional Standards categorized this allegation as:* Arrest Authority and Procedures

*Office of Professional Standards finding:* Exonerated (the acts which provide the basis of the complaint occurred, but the review shows that such acts were proper)

***CPRB finding: Exonerated***

*Office of Professional Standards description of further allegation:* The complainant alleged that Officers broke her cell phone. The complainant provided no evidence that her cell phone was damaged in any way. She stated via a phone call that her cell phone was cracked but functional, but the OPS detective never saw said phone. Even if the complainant's cell phone was damaged on the scene at LAX, she did fight with the responding Officers and it would be possible that if it fell to the ground it could have cracked. During the interaction she fought the responding officers and it would be possible that the phone could have been cracked upon falling to the ground. [CJ5]An officer stated he saw the phone in the complainant's hand on scene and it may have fallen, but he never saw the phone after that and does not know whether or not it was damaged. The property report completed does not indicate any damage to said phone.

*Office of Professional Standards categorized this allegation as:* Property Handling

*Office of Professional Standards finding:* Not Sustained (the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint)

***CPRB finding: Not Sustained***

**CPRB No. 17-17 / OPS No. CC2017-042 [monitor appointed]**

*Office of Professional Standards description of allegation:* The complainant alleged he received a traffic ticket for failing to use his directional when pulling away from the curb and entering traffic when he believes he did (use his directional). Both officers stated the complainant failed to signal his intent to pull away from the curb. The complainant stated he performed the following actions: His four way flashers were on. He engaged his left hand blinker. He pulled

away from the curb. He turned off his four way flashers. He then turned his left hand blinker off. A witness stated the complainant did in fact fail to signal his turn/entry into traffic during the incident. He states that the vehicles' four way flashers were on as the complainant pulled away from the curb. (The activation of the four way flashers on the complainant's vehicle prior to engaging his left hand blinker would result in a failure to signal violation.)

*Office of Professional Standards categorized this allegation as:* Arrest Authority & Procedures

*Office of Professional Standards finding:* Exonerated (the acts which prove the basis for the complaint occurred, but the review shows that such acts were proper)

*CPRB finding:* **Exonerated**

*Office of Professional Standards description of further allegation:* The complainant alleged the officers were rude and allegedly stated: "We don't care what you have to say. We can do anything we want (and) you'll like it. We don't care that he is mentally ill (complainant witness), we can just shoot him." Officers deny making alleged statements. The witness stated the officers never threatened him in any way. He states that no one ever threatened to "shoot him if he became violent because of his mental illness." He states that the officers never said "we don't care what you have to say." When asked if any of the officers had said "we can do what we want (and), you'll like it" The witness indicated that the officers had not used those words. Lewis[CJ6] states that what he recalls the officers saying was something akin to "we are going to do what we have to do here, when we're done you can go, you're just going to have to wait." When asked if the officers were rude, the witness replied that he felt the officers were (rude) with regards to the complainant. The witness stated that the complainant demanded to know why he was pulled over and the officer replied that "the reason (for the traffic stop) will be on your (traffic) ticket." The witness believes that the officers' statement that the reason would be printed on the traffic ticket and their refusal to verbally inform the complainant was rude. The witness admitted the complainant was behaving confrontational and "vulgar."

*Office of Professional Standards categorized this allegation as:* Conduct Standards

*Office of Professional Standards finding:* Unfounded (the review shows that the act or acts complained did not occur or were misconstrued)

*CPRB finding:* **Unfounded**

*Office of Professional Standards description of further allegation:* The complainant alleged he asked for the officer's names but was not given them. Officers stated they were both asked and provided their names and badge numbers when requested. An officer stated the complainant asked for his and the other officer's names and that said information was provided along with their badge numbers and that the complainant wrote the information down. The officer also stated the complainant was also informed the one officer's information would be on the traffic ticket. The officer writing the ticket stated he had little interaction with the complainant due to being in the car writing the traffic ticket and was not asked for his identification. The witness stated the complainant did ask for the officer's names but believes that only the officer who

wrote the traffic ticket provided his name and badge number. This information is inconsistent with what the officer himself reported and it is believed the witness recollection regarding this may be inaccurate. Without a video or audio recording of the incident it is unable to prove or disprove this allegation.

*Office of Professional Standards categorized this allegation as:* Conduct Standards

*Office of Professional Standards finding:* Not Sustained (the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint)

***CPRB finding: Not Sustained***

\*\*\*\*It should be noted that the investigation found officers to be in violation of department policy in that they shall furnish their department business card to any person requesting that information when representing themselves in an official capacity. Department records indicated two officers were issued department business cards, but another officer was not issued them. Said officers were found [AA7][GC8] to be in violation of policy in that they did not issue to the complainant their department business cards.

**CPRB No. 03-18 / OPS No. CC2018-008 & 9 [monitor appointed]**

*Office of Professional Standards description of allegation:* The complainant alleged an officer did not have probable cause to pull him over. The officer stated, “While patrolling the area we observed NY registration GTZ7935 traveling eastbound on Sherman St when it failed to signal at least 100 feet before continuing South on Lexington Av.” As a result of witnessing said infraction, the officer conducted a traffic stop and issued the complainant a citation for such. Said traffic infraction itself was not captured on any cameras, however, the complainant and all people who receive traffic and parking tickets can argue their case in Traffic Court. The CO has every right to dispute his ticket. The complainant stated and the video shows he did utilize his right directional when pulling away from the curb in front of 147 Sherman St; however this is irrelevant as the traffic violation according to the UTT and the officer occurred at Lexington Av and Sherman St (which is approximately 400-500 feet East of 147 Sherman St; There are four utility poles from 147 Sherman St to Lexington Av; On average, in a City, they are 100-150 feet apart, with the average in a city being about 125ft (Google), making said distance approximately 400-500 feet).

*Office of Professional Standards categorized this allegation as:* Arrest Authority & Procedures

*Office of Professional Standards finding:* Not Sustained (the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint)

***CPRB finding: Not Sustained***

*Office of Professional Standards description of further allegation:* The complainant believes an officer circled the block to watch him and then took too long to pull him over. Surveillance video shows the officer parked near Robin St and Sherman St. This is due to him and his partner being assigned to a specific detail where two patrol vehicles are detailed to a certain area that has an increased crime activity.



The complainant's friend/witness happens to live within the boundaries of said initiative. Said surveillance video does not show any patrol vehicle passing the complainant or circling the block to watch him. The complainant's listed witness also stated he never saw any police around. The distance from where the traffic infraction occurred and where the CO was stopped is 0.2 miles, once probable cause exists that a traffic violation occurred it is the officer's discretion to determine when to affect the stop.

*Office of Professional Standards categorized this allegation as:* Arrest Authority and Procedures

*Office of Professional Standards finding:* Not Sustained (the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint)

**CPRB Finding: Not Sustained**

*Office of Professional Standards description of further allegation:* The complainant alleged this was a case of "racial profiling" as he is a "white guy in a black neighborhood." There is nothing to indicate the complainant was pulled over because he is a "white guy in a black neighborhood" or that he was pulled over for any other reason than the "Failure to Signal" traffic violation; the complainant is the one describing the area as a "black neighborhood." The conversation was not captured on video, however the Trooper assigned with the officer, stated in the patrol car that the complainant was making that allegation and the Trooper supposedly told him that "it's dark; we can't even see who's driving." During the nighttime hours most officers do not know who they are pulling over; it is very difficult to determine who is driving a vehicle (Gender, Race). While reviewing the surveillance footage and DVR, the OPS detective could not determine who was driving said vehicle until the officer's body camera showed him approaching the complainant.

*Office of Professional Standards categorized this allegation as:* Biased Based Conduct

*Office of Professional Standards finding:* Not Sustained (the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint)

*CPRB finding:* Not Sustained

*Office of Professional Standards description of further allegation:* The complainant alleged he told a supervisor that he wanted to file a complaint against an officer for an illegal traffic stop and have the officer arrested, but the supervisor refused. The supervisor stated he explained to the complainant he would not arrest the officer as he was doing his job and that if he felt the ticket was in error, he could take it up in court. Said traffic infraction itself was not captured on any cameras, however, the complainant can argue his case in Traffic Court.

*Office of Professional Standards categorized this allegation as:* Call Handling

*Office of Professional Standards finding:* Exonerated (the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper)

*CPRB Finding:* Exonerated

*Office of Professional Standards description of further allegation:* The complainant alleged the supervisor stated he will never take a complaint against an officer. An officer could kill as many people as they wanted and the supervisor would say they did their job. The complainant alleged that the supervisor stated “the only reason a white man is in a black neighborhood after dark is to buy crack”. The supervisor denied making said statements and another supervisor who was present stated he did not hear the statements being made.

*Office of Professional Standards categorized this allegation as:* Conduct Standards

*Office of Professional Standards finding:* Not Sustained (the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint)

***CPRB Finding: Not Sustained***

## MEETINGS

The Board met as a whole 2 times for the conduct of business during the third quarter of 2018. Meetings were held on May 10<sup>th</sup>, and June 17<sup>th</sup>. Both meetings were held at the Albany Community Development Agency, 200 Henry Johnson Blvd., Community Room (2<sup>nd</sup> Fl.), at 6:00 p.m. 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 third quarter, which included: the Board meeting as a whole two times, reviewing five complaints and rendering findings for thirteen allegations contained in five 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: TBD

