

**CITY OF ALBANY
COMMUNITY POLICE REVIEW BOARD**

September 9, 2021 at 6:00 p.m. via Zoom

MEETING MINUTES

- **Call to Order and Roll Call** (N. Vives)

Board Members Present: Nairobi Vives, Dr. Veneilya Harden, Larry Becker, Matthew Ingram, Dr. Rev. Victor Collier, Zach Garafalo, Victor Person

Excused: Paul Collins- Hackett

Unexcused: Kevin Cannizzaro

Also Present: Deputy Chief Anthony Battuello, Commander Joshua Laiacona, Ava Ayers

N. Vives calls the meeting to order at 6:01pm.

- **Approval of the Agenda** (N. Vives)

Motion to approve agenda passes unanimously.

- **New Business** (N. Vives)

One new complaint received since August 26, 2021. Complaints will be assigned to board members soon.

Volunteer request for YouthFX outreach video.

Case Review

CC2018-013 (P. Collins-Hackett)

Review is rescheduled to the next board meeting.

CC2019-007 (Z. Garafalo)

Zach inquires about complainant is present. Complainant is not present. Al Lawrence the monitor assigned to the case is present.

Disclaimer: The complaint contains allegations of rape and unlawful surveillance on august 4, 2017. Written copies of the complaint are provided in the public record. Zach has omitted reading the complaint into the record.

Background

The complainant and Person 1 were engaged in a consensual relationship both employed at the same state agency. On August 4, 2017, complainant alleges Person 1 had nonconsensual sex

while complainant was unconscious. Complainant also alleges being recorded by Person 1 without approval. Both parties filed orders of protection against each other in Albany Co. Family Court.

The complainant alleges that the target officer did not take complainant or their allegations seriously due to failure to return phone calls, failure to update on the status of the investigation, process made complainant feel like a criminal rather than victim. Department of Corrections and Community Supervision notified Albany Police Department that they would accompany complainant to South Station to file a report. Target officer and an unidentified second officer were assigned to this case.

General orders to consider: 3.5.00-1D – Criminal investigations the order lays of the roles and responsibilities of officers sworn to CIU.

Timeline

- August 4, 2017 – complainant makes allegations of rape and unlawful surveillance by Person 1.
- June 28, 2018 – complainant alleges in family court filings from July 5, 2018 that complainant's relationship with Person 1 ended.
- July 3, 2018 – report was filed with Niskayuna police by the estranged spouse of the complainant alleging harassment by Person 1.
- July 5, 2018 – complainant petitions Albany Co. Family Court for an order of protection.
- July 6, 2018 – Person 1 petitions Albany Co. Family Court and an order of protection is granted.
- July 10, 2018 - November 20, 2018 – email exchanges between complainant and Person 1.
- February 26, 2019 – Date complaint received by Government Law Center.
- March 4, 2019 – Matter was transmitted to Office of Professional Standards (OPS).
- March 21, 2019 – OPS investigating detective was assigned.
- July 11 2019 – Complainant came to OPS for an interview with Monitor Al Lawrence.
- July 30, 2019 – OPS investigating detective attempted to contact one of the people from DOCCS and interviewed several staff.
- August 7, 2019 – OPS investigating detective interviewed someone from the Albany Co. Crime Victim and Sex Violence Center.
- August 19, 2019 – IDC was sent to unidentified second officer.
- August 21, 2019 – target officer reports to OPS for interview along with attorney and union representative.
- April 5, 2021 – Monitor report is submitted to GLC.
- June 8, 2021 – OPS delivered findings of preliminary investigation to the CPRB.
- June 10, 2021 – case was assigned to CPRB member.
- September 9, 2021 – Case scheduled for public case review.

Evidence Reviewed

Correspondence from Albany Co. Family Court, phone calls between investigating detective and complainant, multiple incident reports, location reports and call history to dispatch of Person 1 (within Albany), 76 pages of text messages, Miranda rights waiver form for Person 1, Google map images of location of reported incidents, DOCCS emails between complainant and Person 1 from March 26, 2018 - June 29, 2018, resume of complainant, email correspondence between DOCCS and DOCCS and APD, interview reports of DOCCS employees, Crime Victims office an Sex Violence Center, records of consultation with the Special Victims Unit, Bureau Chief at Albany Co. District Attorney's Office, residential address, court filings, orders of protection, and phone calls between OPS detectives and complainant.

Garafalo provides a timeline of email exchanges between complainant and Person 1. Garafalo provides a timeline of correspondence between APD detectives and target officer.

Case disposition

OPS Findings:

1. Conduct Standards – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
2. Call Handling – Not Sustained – where review fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
3. Call Handling – Unfounded – where review shows that the act or acts complained did not occur or were misconstrued.

Motion to accept OPS findings. Motion seconded accepting OPS on the first allegation. Motion passes unanimously.

CPRB Findings:

1. Conduct Standards – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
2. Call Handling – Not Sustained – where review fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
3. Call Handling – Unfounded – where review shows that the act or acts complained did not occur or were misconstrued.

Discussion:

Question: Ingram requests for Garafalo to clarify if the last finding is unfounded or not sustained.

Garafalo provides that he agrees with OPS findings of unfounded and modifies motion.

Becker requests monitor Lawrence report.

Monitor Lawrence states that for the third allegation, complainant believes that on the date in question in 2017 that she was administered a drink with a drug that left her unable to consent and

unable to fully remember what occurred. She stated her memory was spotty. This goes to the difficulty in proof in terms of the investigation.

The target officer did interview in a presence of a lawyer, Person 1 and Person 2. Person 2 is estranged husband. Person 3 is the owner of the property of where the incident occurred but had no firsthand knowledge of what occurred.

I find no deficiencies in the witnesses questioned, in the questions asked of them or in the documents or other evidence obtained. The investigation was thorough, competent and professional.

CC2019-026

(Ingram)

Ingram inquired about if complainant is present.

Background

The incident occurred on September 8, 2019 the complaint was submitted a few days later on September 12, 2019. OPS sent its preliminary report to CPRB in March 2021. All of the conduct that is the target of the complaint took place off duty and outside of the City of Albany.

Ingram reads the specific details of the complaint. Complainant's son was riding his dirt bike down the street when the target officer yelled at him and then proceeded to block the driveway and screamed and threatened him. Target officer refused to leave after several requests and a second officer came to pull target officer away from complainant's home.

July 2021 - Ingram contacted Detective Shane to review the following materials: OPS case file and report, interview with target detective and second officer who lives in the neighborhood, sheriff's reports, incident reports for specific address, no videos were available to review because officers were off duty at the time, audio of phone calls with staff of village hall in Voorheesville, investigator at this sheriff's department, target detective's disciplinary history, visited neighborhood of where incident occurred, and reports from Sheriff's office.

Detective Shane attempted to contact the two adult sons but neither of them replied. One of them was the individual involved in the interaction.

No monitor was assigned to this case. Kleinmeier was assigned but retired before conducting a review. No replacement monitor was assigned. Ingram does not believe it was consequential in this case.

There is a long series of events in the neighborhood that lead up to the nature of the complaint. Ingram describes the geographic and cultural details of the neighborhood (i.e. small kids play in the street riding bikes and skateboarding, very narrow street, nearby path that leads to a larger street). Ingram describes village-wide and neighborhood concern about dirt bikes riding in local parks and through town.

Disposition

OPS Findings:

1. Off Duty Conduct – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
2. Off Duty Conduct – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
3. Off Duty Conduct – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
4. Off Duty Conduct – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.

Motion to accept OPS findings. Motion seconded. Motion passes unanimously.

CPRB Findings:

1. Off Duty Conduct – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
2. Off Duty Conduct – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
3. Off Duty Conduct – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.
4. Off Duty Conduct – Not Sustained – where review shows fails to disclose sufficient facts to prove or disprove the allegations made in the complaint.

Discussion:

Question: Vives inquires about if complainant listed other witnesses besides her sons and the second officer? Additionally, if APD officers are required to live in the City of Albany?

Ingram and Cdr. Battuello state that it is not a requirement for APD officers to live in the City of Albany. Ingram states that no other witnesses were listed. Cdr. Battuello states the police and fire are exempt from the City of Albany residential requirements. The requirement has been released for new hires as well. Officers are required to live within Albany County or an adjacent county per NYS Civil Service laws.

Question: Becker asks about what efforts the investigating detective made to attempt to contact the complainant's adult sons?

Ingram states that phone calls went unanswered. Detective Shane did talk to the complainant but he does not know if she was encouraged to have the sons get in contact with her. Detective Shane is not present during tonight's case review.

Cdr. Laiacona states that in addition to Detective Shane calling the adult sons, she provided the complainant with her contact information to provide to them and they never reached out.

OPS Case Updates

(Cdr. Battuello)

There are no updates at this time. D/Lt. Decker will be reaching out to GLC and Rev. Collier to follow up.

• Committee Reports

i. *By-Laws and Rules*

(M. Ingram)

There are no updates. The next meeting will be September 14th or 21st.

ii. *Outreach*

(Harden)

There are no updates.

iii. *Mediation*

(Collier)

There are no updates.

iv. *Police Department Liaison Committee*

(Harden)

There are no updates.

iv. *Public Official Liaison Committee*

(Vives)

There are some things happening that will be reported in next month's meeting.

v. *Monitor Task Force*

(Becker)

There are no updates.

• Report from Government Law Center

(Harkness & Ayers)

We have appointed Former NY Court of Appeals Judge Leslie Stein as the new Director of the Government Law Center who starts next week in a part-time capacity and will go full time in January 2022. We also have selected Patrick Woods from the Attorney General's office as the Deputy Director of the Government Law Center who starts around mid-October.

We have two GLC students, Neha Goel and Rebekah Carson, who will be assisting the board with outreach.

Our GLC Fellows, Gienabou Diallo, Andrew Doody, Megan McKay, continue to work with Professor Ayers on CPRB-related research assignments. Professor Ayers inquires about what else would be helpful for the Fellows to work on at this time and suggests consolidating Operating Procedures, Bylaws and Reference Manual.

Ingram agrees that the Bylaws and Operating Procedures should be consolidated. **Ingram inquires if the board can look at an aggregate sample of disciplinary history for officers.**

Cdr. Battuello states that IA Pro can water down categories but he thinks it can categorize incident type or actions to be taken. They will have to look into it because the software has undergone several updates.

Ayers states that there are further reform proposals that will be going to Common Council. The proposal she assisted with drafting involved creating a Public Safety Commission and advise the board to keep up with proposals.

Garafalo wants to see how the board and OPS can work together with the data that currently exists.

- **Report from OPS** (Deputy Chief Battuello)

D/C Battuello final report before Cdr. Laiacona takes over. D/C Battuello still plans to be involved behind the scenes.

Hiring

Non-sworn personnel – In the Communications Division, up to 7 candidates finishing the onboarding process to get started by the end of this month. It will take a few months to get those candidates up to speed.

Sworn personnel - They are in the interview and background stage for candidates from the Civil Service list. They are aiming for the academy to start around mid-Fall in late October and early November. They will be having back to back hiring phases.

Congratulations to Nairobi for time and commitment for reaching a favorable arbitration decision.

D/Lt. Decker should be reaching out to GLC to coordinate training for new monitors.

Introduction of Cdr. Joshua Laiacona who will be overseeing OPS.

- **Report from the Chair** (Vives)
Thanking members for participation in advocating for increased power for the board. Empowers board to continue efforts in digital and in-person outreach.

Ingram offers to have an outreach event in lieu of Bylaws and Rules Committee meeting this month, suggests university town hall or forum. Harden agrees that is a good idea and is willing to make herself available.

Harkness informs board about local coalition that met last night in support of Local Law J. Garafalo agrees there is a lot of energy and enthusiasm in this group. Vives suggests that the board connect with this group to advance outreach efforts.

- **Public Comment**
Thanking the board for their time in investigating their complaint. Complainant wants to know what is the status of her request for an independent investigation?

Vives states that in the last meeting the board voted to accept the findings from OPS. The board is unable to investigate on their own, they would have to vote to have the Common Council use

its subpoena power to do so. However, that was not the vote at the last meeting which accepted the findings of OPS. Vives invited complainant to have a conversation offline.

Complainant asked if the board disagreed with OPS findings. Vives states that the board agreed with the finding. Vives explains complaint review process.

Complainant states that she disagrees with the findings and seeks direction for what to do when she disagrees with the CPRB findings. **Vives invites complainant to an offline discussion. Harden invites complainant to a meeting to review the recommendations made by the board. Complainant confirms that she would like to meet. Vives states that if she would like for the board to review the video footage prior to meeting, we will arrange to do so.**

- **Meeting Adjournment**
Meeting adjourned at 7:58PM

(Vives & Collier)