



**ATLANTA CITIZEN REVIEW BOARD
MINUTES OF THE LAST MEETING**

OFFICIAL MINUTES

Meeting Date: January 14, 2010, 6:30 p.m.

Location: 55 TRINITY AVENUE, S.W., COMMITTEE ROOM TWO, ATLANTA, GEORGIA 30303

BOARD MEMBERS IN ATTENDANCE

RODERICK EDMOND (*Chair/Edmond*) arrived 7:20 p.m.; SETH KIRSCHENBAUM (*Kirschenbaum*); OWEN MONTAGUE (*Montague*); JOY MORRISSEY (*Morrissey*); JOHN MICHAEL (*Michael*); ALAN MORRIS (*Morris*); SHARESE SHIELDS (*Shields*); MACEO WILLIAMS (*Williams*) arrived 7:10 p.m.

BOARD MEMBERS ABSENT

CHARIS JOHNSON (*Johnson*); J.L. BOOKER (*Booker*)

STAFF ATTENDEES

MARC ADDINGTON, Investigator (*Addington*); CRISTINA BEAMUD, Executive Director (*Director/Beamud*); SHEENA ROBERTSON, Investigator (*Robertson*); MYOLA SMITH, Administrative Analyst (*Smith/Transcriber*); WILLIAM CASTINGS, Board Legal Advisor, COA Law Department (*Castings*)

CALL TO ORDER

Vice Chair Kirschenbaum officiated the January meeting until the arrival of the *Chair*. The meeting was called to order at 6:32 p.m.

A G E N D A

APPROVAL OF MNUTES OF THE LAST MEETING:

The *Vice Chair* asked if there were any corrections to the minutes. There were no corrections noted. *Michael* moved to approve the Minutes for December 10, 2009. Vote seconded by *Morris*. Motion approved.

ACTION ITEMS:

A. DISCUSSION OF INVESTIGATION #09-25 COMPLAINT

This complaint #09-25 was filed July 17, 2009. A completed investigation was distributed to the Board on December 10, 2009.

Summary of the complaint: The complainant alleged that on January 22, 2009, at the Chevron service station, 180 Ponce de Leon, he was arrested and subjected to excessive and

unnecessary force by APD Officers Esquilin and Lewis. He alleged that he was stopped without cause at gunpoint and forcibly removed from his car, thrown face down on the pavement and was handcuffed behind his back. He also stated that Officer Esquilin pressed his boot on his neck and back as he was being handcuffed. The complainant said that he asked why he was stopped and was told to shut up. The officers searched him and his car. He asked to speak with a supervisor. When the complainant spoke with the supervisor regarding his complaint, he said the supervisor told him that he had no reason to believe him and ignored the complaint. He also alleges that he was transported handcuffed in a police wagon sitting on a bench seat, with no seat belts. He said he was thrown about the transport wagon which caused him to strike his head more than once. He stated that he experienced pain but did not suffer any physical injuries which required medical care. The Complainant contends the officers never explained why he had been stopped. He was charged with reckless driving, lane direction control signal and disorderly conduct. He did not receive the citation until he was released from jail. The complainant appeared in Atlanta Municipal Court on July 15, 2009 and the charges were dropped.

What the Investigation Revealed:

- No indication at the time of the traffic stop that the car driven by the Complainant was wanted. Officer Esquilin had a plate check performed after stopping the car.
- No use of force report was filed regarding the pointing of a firearm until the ACRB investigator requested a copy of the report.
- A Use of Force report was subsequently filed on October 22, 2009 approximately ten months later.
- When interviewed, the Owner of Chevron, observed a male officer with his weapon drawn and pointed. He also observed the officer remove the driver, put him face down on the ground and handcuff him. He did not see any resistance by the complainant nor did he see the officer striking him or doing anything which would be inappropriate.
- Sgt. Michael Pulliam revealed in his interview that the complainant did not complain that he had been assaulted or had sustained injuries.
- When Sgt McGinnis was interviewed, he indicated that he had spoken with the complainant and the officers. He said the complainant denied wrongdoing and did not complain of an assault. McGinnis said the officers told him they pulled the Complainant over and he refused to give them his driver's license. They alleged that he lowered his window and began reaching down onto the floorboard. The officers said that was when they removed him from the car and placed him under arrest.
- Officer Tracy Lewis stated in her interview that she and Officer Esquilin observed the complainant's car on Ponce de Leon driving erratically, weaving in and out of traffic and cutting off cars. They followed the car and initiated a traffic stop.
- Officer Esquilin came to the ACRB office with legal representation but refused to be interviewed. He produced a copy of his statement contained in the police report and stated that it was an accurate account of the incident in question. However, the report conflicts with the statement given by Officer Lewis. Officer Lewis indicated that Officer Esquilin approached the car with his firearm drawn which directly conflicts with the report prepared by Esquilin. His report indicates that his firearm was only pointed at the Complainant when he refused to comply with the commands to produce his license.
- Sergeants Pulliam and McGinnis both said that they were advised by Officers Lewis and Esquilin that his weapon was drawn only after contact with the complainant.

The ACRB staff recommended that the excessive force complaint against Officer Esquilin be Sustained and the excessive force allegation against Officer Lewis be Not Sustained. The not sustained recommendation was made because the Complainant was stopped for a traffic violation, not a felony. In the absence of evidence that the Complainant posed imminent danger to himself, the officers or a third party, Officer Esquilin's conduct in drawing and pointing his firearm was objectively unreasonable.

Discussion...

1. **Shields** asked when is a Use of Force Report required to be filed. "Ten months is a long time."
2. **Investigator Robertson** stated that per the officer, a Use of Force Report is not required and a report was only done to accommodate the Board. "According to the SOP, a report is required."
3. **Michael** asked if there was a reasonable suspicion as to why the Complainant was stopped.
4. **Robertson** stated that according to the MDT system, there was no data indicating a reason of suspicion.
5. **Shields** asked if the witness noticed how soon the gun was drawn.
6. **Robertson** stated that the witness saw the officer with the gun pointed at the complainant, but did not see at what point the officer first drew his weapon.
7. **Kirschenbaum** said that the law regarding reasonable suspicion is on the side of the police if what they claim is true; however, the gun seems to have come out too early in this situation. He also stated that the police claimed that the complainant stopped three times and pulled away.
8. **Michael** stated that he was not sure if part of the problem was that the complainant did not move quickly
9. **Morris** noticed that there seems to be a pattern of confusion with officers as to what should be done and when it should be done.
10. **Kirschenbaum** asked **Beamud** if a letter could be written clarifying required procedures, as they pertain to this case and other complaints similar in nature, regarding Use of Force.
11. **Shields** raised concerns about Use of Force and if there was reasonable cause to stop the complainant in the first place since the MDT did not register an alert. Could this be considered as Harassment? She noted that the Complainant was transported in a police wagon on a bench like seat unable to stabilize himself since his hands were cuffed and there were no seatbelts. Shields then asked for a definition of Harassment and she also asked, once the police van arrives, who is in charge of the person being arrested.

The **Vice Chair** recognized and introduced **Major Moses Perdue**, new Commander, Office of Professional Standards, Atlanta Police Department, who asked permission to speak. Major Perdue was on the agenda to speak later in the meeting.

12. To answer **Shields'** question, **Major Perdue** stated that once the police wagon arrived on the scene, the driver would take physical control of the prisoner. He said there is a requirement for prisoners in patrol cars or transport wagons to be handcuffed. "Transport wagons are not built to comfort nor do they have seat belts."
13. Following the discussion, **Vice Chair Kirschenbaum** entertained a motion to accept the staff recommendations. Each officer would be voted on separately.
 - a. It was moved by **Shields** to Sustain the complaint against Officer Esquilin as recommended by the staff. The motion was seconded by **Montague**. Motioned approved.
 - b. It was moved by **Morrissey** to Not Sustain the complaint against Officer Tracy Lewis. **Morris** seconded. **Shields** opposed. Motioned approved
14. Following the vote, the discussion turned to recommending discipline. Responding to **Vice Chair Kirschenbaum**, **Major Perdue** suggested oral admonishment for the sustained complaint.
15. **Montague** asked what would be the discipline required by SOP.
16. **Perdue** stated that discipline could be anything from a reprimand to termination.
17. **Kirschenbaum** asked if there was a limit on suspension. **Perdue** responded thirty days.
18. Following the discussion, it was moved by **Shields** to recommend a one (1) day suspension since the incident involved a gun. Motion was seconded by **Michael** and the vote was approved.

Note: Before discussing the next action item, Chair **Edmond** arrived at 7:20 p.m. and chaired the remainder of the meeting starting at 7:30 p.m.

B. DISCUSSION OF INVESTIGATION #09-30 COMPLAINT

This complaint was filed August 25, 2009. A completed investigation was distributed to the Board on December 10, 2009.

Summary of the complaint: The complainant alleges that on August 8, 2009, he was arrested by Officer James Hines and the officer used excessive force. He stated that as he was riding his bicycle near the Carter Presidential Center, a police officer asked him to pull over. The complainant alleged that the officer used the police vehicle to knock him off of the bike and caused him to fall and sustained bruises, abrasions, three fractured ribs and a fracture to his left hand. He also alleges that an officer handcuffed him, then beat him with a baton causing him to sustain fractures to his arm and that the officer threatened to kill him by beating him with batons.

What the Investigation Revealed:

- Officer Hines' police report indicates that he stopped the complainant because he matched the description of a suspect who had robbed a woman the previous day. Hines states in the report that he followed the complainant with his patrol car and he took off into the grass, riding on a bicycle. He followed the complainant and saw him go down an embankment and fall in the grass. He caught him and fought with him and took him into custody. Officer Hines also searched the complainant and located a cellular phone which belonged to the woman who was robbed. The officer's report indicates that the complainant sustained some scrapes to his knees and elbows but was otherwise unharmed. An ambulance responded and treated Mr. Phillips for these injuries. Radio transmissions confirmed the officer's version of events.
- Officer Hines did not submit to an interview. Other officers (*Johnson & Gresham*) who were reportedly on the scene when the Complainant was taken into custody cooperated with the ACRB investigation.
- The complainant alleged that Officer Hines struck him with a police vehicle and batons. He states that Hines beat him and he offered no resistance nor did he attempt to flee. The audio tape of the incident indicates that the officer chased him on foot. Medical Records from Grady Hospital for the Complainant indicate that Mr. Phillips was treated for pain in the left hand, knee and elbow. The note in the medical records indicated that he stated that he was dragged by police and hit in the hand with a baton. He suffered a fractured finger. No other injuries were noted except some abrasions on the right knee.

Staff Recommendation...The ACRB staff recommended that the excessive force complaint against Officer Hines Not be Sustained.

Discussion...

1. ***Investigator Addington*** reviewed the case and confirmed that the complainant had a broken finger; however, he believed that it was broken during the foot chase. "Overall, this was really good police work."
2. ***Kirschenbaum*** agreed with ***Investigator Addington's*** assessment of the police work.

Following the brief discussion, it was moved by ***Morrissey*** to accept the staff's recommendation to Not Sustain. The motion was seconded by ***Kirschenbaum***. Motioned approved.

EXECUTIVE DIRECTOR'S REPORT:

A copy of the Director's report was distributed to each member.

A. INTAKE REPORT

Beamud stated that there were no complaints in the past month. "We will begin doing community outreach to the NPU's in February." She is asking interested board members to contact her regarding this effort. ***Williams*** expressed an interest in working with the ***Director***

to reach out, not only to the NPU's, but also other community and civic organizations and mass media outreach.

B. RESPONSES FROM CHIEF OF POLICE

Beamud gave an update on Chief Pennington's responses to correspondence previously sent to him from the Board regarding complaints:

1. Complaint #09-11 and #09-14 - Chief Pennington was mailed a letter on October 19, 2009, regarding recommendations concerning these two complaints. To date, there has been no response despite reminders.
2. Complaint #09-15 and #09-23 - Correspondence regarding recommendations concerning these complaints was sent to Chief Pennington on December 16, 2009. The Chief did not respond; however, the Chief has thirty (30) days to respond to the Board's recommendation. **Beamud** also sent the letters to the Interim Chief for his consideration.

C. KATHRYN JOHNSTON MATTER UPDATE:

Beamud announced that the first of a three part report is being completed after the review of the shooting and death of Ms. Johnston. The first report concerns the individual responsibility of unindicted officers. "There may be some confidentiality issues; therefore, we will need to consult with the Law Department about how to properly disseminate the report. We may need to meet in Executive Session, perhaps in February, if the Police Department objects to any public discussion." The Office of Professional Responsibility has yet to conclude its investigation.

D. ELECTION OF OFFICERS

Beamud reminded the Board that the election of officers will need to take place next month as required by the Ordinance.

OTHER BUSINESS:

A. MAJOR MOSES PERDUE, NEW COMMANDER OF OFFICE OF PROFESSIONAL RESPONSIBILITY

1. **Major Perdue** introduced himself to the Board and provided a brief summary of his background and training as a police officer for past twenty-four years. He expressed his eagerness to work in a new *spirit of cooperation* with the Board and staff. He also stated that he would continue to talk with the **Executive Director** to keep paper work flowing.
2. **Shields** asked the **Major Perdue** what the department planned to do when police officers do not cooperate with the ACRB. "This is our number one priority where we need help. A dozen or so officers have just not cooperated."
3. **Perdue** stated, "We will meet with the Chief early next week and get back with the **Executive Director** following that meeting."

4. **Chair Edmond** stated that the Board requested and received a legal opinion regarding the officers' rights. "The officers do not seem to understand that they are protected by Garrity; therefore, the statement given to ACRB cannot be used in the criminal prosecution of the individual officer."
5. **Kirschenbaum** agreed with the **Chair** and voiced frustration regarding the lack of cooperation by the officers reiterating the law does indeed require access and full cooperation from them. Referring to what the Board believed to be a relatively non-complex complaint filed last year, **Kirschenbaum** asked **Perdue** about the length of time it takes to complete an investigation in OPS. He asked him how he views his job and the requirements of the ordinance.
6. **Perdue** stated that his job is to find out the truth. "We will not sit on files. We have also complained that the investigations take too long. When an investigation remains open, it hangs over the officer's head."
7. **Kirschenbaum** asked how soon Mrs. Johnson's murder investigation will be completed. "When will the investigation end?"
8. **Perdue** answered, "We are looking at hopefully, one month."
9. **Michael** stated, "I sense that you care. I am concerned that when people really have a complaint, they are afraid to speak out. This Board has a job to do and we can't do it when we don't get timely cooperation from the police. Hopefully, we can now create a real spirit of cooperation. Thank you for coming."
10. **Montague** expressed his appreciation to **Major Perdue** for attending and asked him if it was possible to have representation from the police department at monthly board meetings. **Perdue** stated that he would make every effort to attend.
11. **Chair Edmond** stated, "The public needs to have the confidence and assurance that the ACRB and Police are looking and investigating complaints. The word will get out when this is happening and that will boost confidence and trust." **Edmond** also stated that he would like to see more public outreach including interviewing time on Channel 26.
12. **Williams** reiterated his desire to work with the **Executive Director** regarding outreach and marketing ideas.

PUBLIC COMMENTS:

There was one speaker, Ryan Johnson from NPU-O. Mr. Johnson expressed concerns about the complaint process and made a recommendations regarding changing the complaint form to expedite comments. The **Chair** thanked Mr. Johnson for his comments and for attending.

ADJOURNMENT:

The Chair entertained a motion to adjourn. *Morris* moved to adjourn and *Montague* seconded. Motion approved. Meeting adjourned at 8:17 p.m.

Transcribed by Smith / Reviewed by Morrissey & Beamud