ATLANTA CITIZEN REVIEW BOARD
MINUTES OF THE LAST MEETING

OFFICIAL MINUTES
Meeting Date: July 08, 2010, 6:30 p.m.
Location: 55 TRINITY AVENUE, S.W., COMMITTEE ROOM TWO, ATLANTA, GEORGIA 30303

BOARD MEMBERS IN ATTENDANCE
BARBARA HUBBARD (Hubbard); CHARIS JOHNSON (Johnson); JOY MORRISSEY (Chair Morrissey); OWEN MONTAGUE (Montague); ALAN MORRIS (Morris); SHARESE SHIELDS (Shields); MACEO WILLIAMS (Williams)

BOARD MEMBERS ABSENT
RODERICK EDMOND (Edmond)

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

Guest Attendees: Lt. Neil Klotzer, Office of Professional Standards, Atlanta Police Department

MEETING CALLED TO ORDER:

Chair Morrissey officiated the meeting. The meeting was called to order at 6:40 p.m.

AGENDA

APPROVAL OF MINUTES OF THE LAST MEETING:

The Chair asked if there were any corrections to the minutes. There were no corrections noted. Montague moved to approve the Minutes for June 10, 2010. Morris seconded. The motion approved with one abstention (Shields).

ACTION ITEMS:

DISCUSSION OF INVESTIGATION #10-02 COMPLAINT
The Chair directed members to Director Beamud’s memo dated July 2, 2010 regarding the investigation of Complaint #10-02 / DeBorah Williams.

A. SUMMARY OF COMPLAINT

Investigator Robertson summarized the complaint.

Robertson stated that Ms. Williams filed a complaint alleging excessive force against Officer Byron Martin on January 19, 2010.

“The Complainant alleges that on December 1, 2009, she and her house guest were involved in a verbal dispute and she called for Emergency Medical assistance. The dispute took place because she did not want to leave the house guest alone in her home while she ran errands since she believed the person to be unstable. When EMS arrived and examined the guest, they concluded that she did not require hospitalization; but, due to the nature of the situation, EMS decided to call the police. Officer Byron Martin responded. He talked with the Complainant and explained that she could not evict her guest from her home without going through proper eviction procedures since the person had been staying in the home. Prior to Office Martin leaving, he told the Complainant that he did not want to have to return to deal with this matter. After Officer Martin left, the dispute continued. The house guest called 911 and reported that she was being beaten by the Complainant. The Complainant got on the call and explained to the operator what was happening. Shortly after the call, Officer Martin again appeared at the home. The Complainant alleges that he rushed in without speaking, grabbed her, threw her to the floor, placed his knee into her back and handcuffed her. The Complainant said that she complained to Officer Martin about the handcuffs being too tight. Another officer was present. Both the Complainant and house guest were arrested and charged with Disorderly Conduct. The charges were dismissed the following day when they agreed to work out their differences.”

B. WHAT THE INVESTIGATION REVEALED

Robertson reported that the 911 calls corroborated Ms. Williams’ version of the nature of the call. The radio transmission also indicate that when Officer Martin received the second call, he advised that he was en route and to send a wagon. Robertson stated, “Office Martin initially declined to be interviewed. He was then subpoenaed. At the interview, he appeared with his attorney and answered some of the questions. He acknowledged that he told the Complainant that he did not want to have to return to the residence. Upon his return, the door was open and he observed them fighting and made the decision to arrest both of them. When Martin was asked about the details of how the Complainant was arrested, his attorney invoked his Fifth Amendment right and he decline to provide any details on the how the arrest took place or if any force was applied. The other policeman (Officer Ward) that was present during the arrest was interviewed. He claims that when they responded at the residence the second time, the Complainant was very combative, argumentative and used choice words.” He said that when Officer Martin tried to arrest her, she resisted. When asked to explained how the Complainant resisted, he claims that she was sitting on her hands and refused to let him handcuff her but eventually, he cuffed her, but wasn’t able to explain how it happened. He said he didn’t
know if she was thrown on the ground but he knows that Martin did not put his knee into her back.

The transport wagon officer was interviewed but he stated that he did not recall any of the details of what happened that particular day. He stated that usually he just respond and takes the arrestees to jail and that he did not have any other information to add.

C. STAFF RECOMMENDATION

The staff recommends sustaining the allegation of Excessive Force against Officer Martin. Robertson stated that there was no information to corroborate if the Complainant sustained any injuries from the handcuffs since no photos were available, nor did she seek medical attention and at the time of the interview, there were no burses visible.

Discussion comments:

1. Montague asked what were the key points used as a basis for the recommendation.

2. Robertson stated that when Officer Martin returned the second time, he arrived with the intent to arrest the Complainant. While en route, he immediately told the dispatcher to send a transport wagon. This corroborates the Complainant’s version that as soon as he showed up, he didn’t ask any questions, he just arrested her. Also, the fact that the Officer refused to answer any question on how he arrested her and what actually led to the arrest. Another factor was the interview of the other officer on the scene, Officer Ward. Who also couldn’t provide any information on how the arrest took place, or details on how they were able to get the Complainant handcuffed.

3. The Chair reminded the Board of the definition of Excessive Force, as defined by the ACRB, ‘the use of greater physically force then reasonably necessary to repel an attacker or terminate resistance.’ She then read the staff’s investigative conclusion indicating that Officer Martin made it known to the Complainant that he did not want to return. This was a clear understanding that if he did return, something was going to happen. Therefore, when Officer Martin was directed to return to the residence a second time, he did so with the intent to arrest Ms. Williams. This is evident from Officer Martin’s conversation with the dispatcher when he asked the dispatch to send the Prisoner Transport vehicle. He had no intent of assessing the situation upon his arrival at the residence the second time. This clearly corroborates her account of how and why she was arrested. The Complainant presented no imminent danger and she had not committed a felony. Therefore, it is not reasonably necessary for Officer Martin to use any force against the Complainant. Morrissey further questioned why it took two men to take down one woman. “Either this woman was being very resistance or something got out of hand. From the report it is noted that Officer Martin statement, contained in this report, is in direct contradiction to the Complainant account of the incident. There was no mention in Officer Martin’s statement that force was used to effectuate her arrest. Since he decline to answer and invoke his 5th Amendment right, the investigator was unable to clear the discrepancies. This is another case of us not being able to give the Officer the benefit of doubt because he is not speaking.”
4. For the record, Williams (board member) reported that he received a call from the Complainant regarding the incident and she tried to talk to him about what happened. He indicated to her that she did not need to talk with him because he had to remain impartial and advised her to contact the ACRB office and speak with the Director about filing a complaint.

5. Johnson asked if the Complainant allowed the houseguest to live at her home on a regular basis or was she just an overnight guest. "What was the extent of her being at the Complainant's home?"

6. Robertson stated that the guest had been staying at the residence for the past two weeks and there was a landlord/tenant relationship.

At the conclusion of the discussion, it was moved by Shields to accept the staff’s recommendation. Morris seconded. The motion was approved.

D. DISCIPLINE RECOMMENDATION

After the vote to Sustain was adopted, Chair Morrissey turned the discussion to recommending discipline.

Comments...

1. Robertson provided an overview of Officer Martin's disciplinary history. "Martin has been employed with APD since 2001. During his tenure, he has had 16 complaints filed against him. Ten (10) were citizen complaints, six (6) were internal. Of those complaints, six resulted in a finding of exonerated, five were sustained and four were Not Sustained and one was Exceptionally Closed. Out of the five that were sustained, three were failure to appear in court, one was failure to report Use of Force claim and the other was Unprofessional during Roll Call. The last complaint filed with OPS was in 2007.

2. When Johnson asked for the definition of "Exceptionally Closed," Lt. Klotzer said, "Regarding this particular incident, I'm not sure what took place, but it is uncommon for a current employee to have an Exceptionally Closed, because typically what that means is that due to circumstances beyond our control, we are unable to adjudicate and finish the case. So likely, in this case, there was another officer involved and that officer no longer works here and as a result, we could not get a statement from the person who could have been the actual focus of the investigation. So the total investigation became Exceptionally Closed."

3. When the Chair asked about the Board’s options based on the SOP grid that was generally applied, Robertson stated that it could fall under a Category B or C violation. "A Category B would mean anything from a written reprimand to one to three days suspension. A Category C violation which would be four to fifteen days suspension. The most he has ever received in terms of discipline is a written or oral reprimand."
4. **Williams** reiterated that this officer had only been employed since 2001 and that the last complaint was filed in 2007; therefore, within a relative short span of time (six years), Office Martin received sixteen complaints.

5. **Johnson** stated, “Clearly there are some issues relative to anger management and may need some reinforcement of the training on how to resolve situation. Since there is no evidence of a physical injury, I would recommend Category B, one day suspension with written reprimand.”

6. **Shields** indicated that she would also be in favor of a one day suspension and if available, training in deescalating situations without having to make arrest. “He could probably benefit from this type of domestic training.”

**Chair Morrissey** agreed and entertained a motion to recommend discipline. **Johnson** moved for a written reprimand of one day suspension and specialized training with emphasis on deescalating domestic situations for Officer Martin. **Williams** seconded the motion. The motion was approved.

Before moving on to the next agenda item, **Chair Morrissey** pointed out that she noticed in Office Martin’s disciplinary history, there was one case of a complaint that was opened August 2006 and was not closed until February 2008. “I know that OPS is working on clearing-up such cases to prevent them from remaining open for so long. I want to applaud OPS for checking on these backed-up cases and moving forward in such a manner so that typically, they do not stay open quite so long.”

**DISCUSSION OF PROPOSED POLICIES AND PROCEDURES**

Each member received a draft copy of the Proposed Policies and Procedures Manual at the last board meeting.

**A. DISCUSSION**

1. **Director Beamud** stated that a lot of hard work and time had gone into completing the manual. “Most of the editing was done by former board member and Vice Chair Seth Kirschenbaum before he left. Kirschenbaum also made some revisions after the new ordinance was passed concerning the open meetings law, etc. Providing it is the Board’s will, I think they are in pretty good shape to be accepted because when policies and procedures are drawn up, it usually becomes evident after you start to use them, what the glitches are. Keep in mind, they don’t have the force of law and they are only intended to be a guideline so if there is something that doesn’t fit what the Board wants to do, you can always come back to it.”

2. The **Chair** stated that she has reviewed the manual. “I am not an attorney, but they seem right to me. I want to thank everyone on the board, past and present, for the labor of love that was put into these policies and procedures. I would also like to point out that **Johnson** and **Shields**, **Edmond** and **Kirschenbaum** did the majority of the work, and this truly has been work. Thank you all very much.”
3. Referring to Section 3.13 (Removal of Board Members), Montague asked for clarity regarding the meaning of the following phrase “without good cause or grossly fails to perform his/her duties”. He cited a ‘lack of substance’ in the language used. Johnson stated that the Board would have to show a higher standard to require a member to be removed. “If a member would do anything gross or inappropriate this would be considered as a higher standard that the Board would have to consider.”

4. Montague asked if there is a city law that states that a board member cannot have a felony or acquire a felony during tenure. The Chair stated that background checks are complete on nominees. Director Beamud stated, “In the ordinance, nominees, not sitting board members, have a criminal record check and if a nominee is determined to have committed a felony, the nomination will be withdrawn. I think by inference, we can expect those same qualifications that are necessary before becoming a board member, to be maintained by sitting board members.”

5. Johnson added that if a member was involved in an incident that interfered with the Board’s ability to perform its duties such as a neglect homicide or vehicle homicide and the member were put on trial and the trial became a public spectacle or something similar, could possibly be a problem. “I personally think it would be depended on a case by case basis”. Director Beamud agreed, “I also think it would be a Board decision based on the individual circumstances.”

6. Referring to the same section, Williams raised the question regarding the number of votes required to remove a member. “Given our current situation, meaning a lack of members, does the Board still want to require a vote of seven (7) members or should we just require a majority vote?”

7. Johnson indicated there were a several discussions about the number of people needed for different kinds of action that the Board would have to perform and regarding the removal of a member, the thinking was there would be a full composition of eleven members.

8. Shields stated that Williams point was well taken. “If we were to make a decision now, we couldn’t do it based on that number. Speaking as a member of the Committee that drafted the policies, the idea was for something this serious, it would be better to have slightly more than a quorum. I suggest we leave in seven members and add ‘or ¾ of the current sworn board membership.’ Also, we probably need to make this correction throughout the manual.”

9. Beamud indicated that she agreed with Shields and to answer Montague’s question as to why not just reference ‘a majority vote’ as opposed to seven votes or ¾ votes, Beamud said, “We are trying to create a situation where five people (a quorum) could not call a special meeting, and theoretically, if you require just a majority then three people could get together and remove a member.”

B. VOTING ON THE POLICIES AND PROCEDURES MANUAL
In order to avoid another delay, the Chair suggested that the language in Section 3.13 be amended as discussed and proceed with the vote of adopting the Policies and Procedures tonight.

It was moved by Johnson that with reference to the Policy and Procedures, the Board accepts all the policies and procedures as drafted by the Policy and Procedures Committee with the exception of Section 3.13, page 10. We move to amend and change the language in this section beginning with “Board upon vote of seven (7) members” and add “or three fourths (3/4) of the sworn members sitting on the board.” Williams seconded the motion. The motion was approved.

INTAKE REPORT

A copy of the Intake Report was included in the handout distributed to the members. Director Beamud reported that the office received seven (7) complaints for June:

- three (3) False Arrest
- one (1) Excessive Force
- two (2) Harassment
- one (1) Failure to Investigate

Details of each complaint were outlined in the report.

It was moved by Montague to accept the Director’s Intake Report. Morris seconded. The motion was approved.

EXECUTIVE DIRECTOR’S REPORT

Director Beamud reported the following:

A. OFFICER INTERVIEWS

1. Beamud stated that officer interviews were going well. “Since the new Ordinance has been enacted, we have had officers appear without invoking the Fifth Amendment, etc. As you know the new ordinance would require the Chief of Police to impose discipline, but so far, so good. I had a meeting with Interim Chief Turner and he said he was consulting with the Law Dept and Human Resources before deciding exactly what kind of discipline he would impose. Right now, I don’t know what the answer is going to be or when I will have an answer. We are probably waiting on the test case or for the first officer to refuse and until then, we will have to wait and see.”

2. Chair Morrissey indicated that she did not understand the problem. She asked, “Besides what’s wrong with using the methods of punishment already in place? The OPS grid, is that not good enough? Is Acting Chief Turner consulting with the Law Department on every complaint made to OPS? Perhaps this is yet another, not so cleverly disguised, round-about way to avoid compliance of the ordinance. In the spirit of even handedness, I
propose we observe the unfolding and posturing of the Law Department and Human Resources and keep us apprised of any movements.”

3. Montague asked if the Board was represented by the same Law Department that represents the Police. Beamud answered, “It is.” Montague asked, “Do they interface? Legal Counselor Castings stated, “The main problem, at this time, is in a few weeks, we will have a new City Attorney and nothing will be done definitively, until then. Probably, if they sign something now, it would be changed once a new City Attorney is selected. We were told that a decision about a City Attorney would problem come sometime this month.”

B. CORRESPONDENCE

Regarding the Askew case, Beamud reported that the Board decided in January to sustain the allegation. “This was largely based on the fact that the police officer who was accompanying this officer, witness the complaint about conduct and testified to it. However, without explanation, Interim Chief Turner Not Sustain the allegation.”

We received correspondence saying that OPS has initiated an investigation into the Jeremiah Perdue complaint. The Board made a recommendation to the Interim Chief in April and he responded on May 3rd, saying that he had initiated an investigation.

Regarding the third case of the Eagle employee, the Board made a recommendation in June to Sustain. Beamud reported that Interim Chief Turner has said that he has initiated the investigation. Beamud stated that the Ordinance requires the Chief to respond in 30 days. “One of the things the Board is going to have to decide is how much you want to push this. Sometimes the delay is understandable but some of it just does not comport with the Ordinance. If this is going to happen a lot, we are going to have to look at it more closely.”

C. CONFLICT OF INTEREST

1. Beamud reported Seth Kirschenbaum contacted her and gave her a case that was published in the Georgia Bar Journal concerning the Public Defender’s Office. “He believes that many of the things that were stated in that opinion would apply to the representation of the Law Department of this Board because regardless of how many ‘Chinese Walls’ you build, we are sharing resources that have to be distributed and it creates a situation where you might develop a conflict of interest. This is not something I can decide because it is a Board decision and you will need to decide.” A copy of the opinion was included in the handout.

2. Regarding the Georgia Bar advisory opinion on the Conflict of Interest, Shields stated that she propose that the Board present the issue to the State Bar and get an advisory opinion on whether or not a conflict exist. “We have been talking about our concerns regarding a conflict of interest since day one and its time we got an opinion and the State Bar is in the best position to do that.” The Chair agreed. Beamud indicated that she will work with Johnson and Shields on submitting a request to the Bar.
3. The Chair encouraged each member to please read the attached opinion provided in the handout. She also expressed her appreciation to former board member Seth Kirschenbaum for bringing the opinion to the attention of the Board.

4. Johnson cautioned the Board, “This does not necessarily mean there is a conflict but a lot of corporate and governmental agencies have this issue. Often, to avoid the appearance of a ‘fake wall,’ some legal business is sent on the outside to another law firm. With many organization, there is always a constant issue where you may end up having two separate departments/divisions ultimately, having a conflict with each other. The idea that Shields suggested regarding getting an opinion from the State Bar, is an excellent idea.”

D. PERF INVITATION

Beamud reported that she received an invitation from PERF (Police Executive Research Forum) to participate in a roundtable and executive session in Philadelphia, August 3, 2010. PERF is a national organization that does a lot of policy development and research. Beamud said, “The purpose of the conference is to discuss taser issues and given some of the difficulties that have arisen more recently with taser use, they want to revisit 2006 recommendations. PERF is convening this group of police executives to make new recommendations and I am honored to have been asked to participate. It is a one day conference at a cost of less than $600 and I would like the Board’s approval to attend.”

The Chair entertained a motion. It was moved by Williams to send Beamud to the conference in Philadelphia with the full support of the Board. Shields seconded and the motion was approved.

CLOSING COMMENTS:

A. NEW BOARD MEMBER

Chair Morrissey introduced Ms. Barbara Hubbard to the Board. Hubbard stated that she was nominated by APAB to represent NPUs G through L. “I feel that I can do a good job of representing my communities: Adamsville, Collier Heights, Carol Heights and the Fredrick Douglass High School area. I have been a resident of Atlanta for a long time but I am originally from western New York.” The Chair welcomed Hubbard and stated that the Board looked forward to her being sworn in.

B. OTHER COMMENTS FROM THE BOARD

Williams took a moment to clarify an issue regarding what may have been deem to be a conflict of interest. He stated, “As a member of this Board’s Community Outreach Committee, I made a comment to Director Beamud suggesting that we should try to get her on Good Day Atlanta. Consequently, I drafted an email; however, after apologizing for sending the email without the proper authorization, I later realized that it did not go as I had assumed. Nevertheless, I want to make it known to the Board that although the email was not
sent, I now realize that any correspondence going out under the Board’s name, has to go out on authorized letterhead. I further would like to make it known that I would do nothing to jeopardize this Board or myself without the full permission of the Board to move forward. I felt this was important to mention because I am putting together some Outreach material that I previously told you about and should have the information ready to be presented at the next meeting.”

PUBLIC COMMENTS:

Chair Morrissey opened the floor for public comments.

John Michaels addressed the Board. He wished Ms. Hubbard well and as a former member of the Board, expressed his continued support.

ADJOURNMENT:

Following Public Comments, the Chair entertained a motion to adjourn. Johnson moved to adjourn and Williams seconded. The meeting adjourned at 7:50 p.m.

Approved as to form and content,

Charis Johnson
Board Secretary,

[Signature]