



INDEPENDENT CITIZEN POLICE REVIEW BOARD

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Minutes of the Regular CPRB Meeting Held on March 23, 2021 (Mtg. No. 231)

Online Zoom Webinar # [851 9263 1425](#)
Pittsburgh, PA 15219
Neighborhood: Citywide

Video of the meeting: <https://cprbpggh.org/2789>

<p>Members Present:</p> <p>Mr. Thomas C. Waters Vice Chair Dr. Mary Jo Guercio Mr. Elwin Green Sr. Patrice Hughes Ms. Karen McLellan, LEP Mr. Sheldon Williams, LEP</p> <p>Solicitor: Atty. William F. Ward</p> <p>Staff Present:</p> <p>Ms. Elizabeth C. Pittinger, Exec. Director Ms. Stephanie Dorman, Asst. Exec. Director Ms. Michelle Gamble, Lead Investigator Ms. Sherri Bridgett, Investigator Mr. David Ellwood, Investigator</p>	<p>Excused Members: Dr. Emma Lucas-Darby</p> <p>Absent:</p> <p>Vacancy: None</p> <p>Excused staff: All present.</p>
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The entire meeting may be viewed here: [Independent CPRB Meeting 03/23/2021](#)

Mr. Waters, Vice Chair, called the online Zoom meeting to order at approximately 6:05 p.m. Mr. Waters recognized Board members present and the excused member Dr. Lucas-Darby. Public comments and questions will be addressed at the end of the meeting.

Opening remarks by Chair:

Mr. Waters expressed that since January's meeting he has wanted to make a personal statement. Mr. Waters emphasized that he is speaking from his own personal experience and expressing his own opinion and not the opinion of the Board. Mr. Waters went on to say we have seen over the past several months a number of situations where police officers have lost their lives in the line of duty and often in our meetings it can appear that we are being very picky and critical of police officers. Being critical and picky can seem at odds with the fact that officers place their lives in danger every day that they work. Mr. Waters said he wants to articulate and vocalize two exceptionally large and important things: 1) we need to recognize the danger that police place themselves in and 2) at the same time we are slated by the mission of our organization to always be seeking ways to improve the relationship between the community and the police, looking for things that could be better. Those two things can work hand and hand. Mr. Waters said that when there is a good community police relationship, police officers can do their work more

effectively, efficiently and safely. When there is a breakdown of that relationship, police officers are placed in a really difficult position. Mr. Waters said he thinks we also know that the police have a lot of stresses and pressures on them such as social, cultural and political to name a few. There are many factors that our police have to face, and Mr. Waters wanted to declare recognition of the difficulty the officers face just doing their job. Mr. Waters' hope is that the work of the Board will always find ways of helping the police work more effectively and efficiently and while remaining safe because without our police officers being safe, without them feeling like they can do their work, we can't really count on them and we, as a community, have to be able to count on them. It behooves us to make sure that we're doing what we can do to help them in every way possible.

Executive Director's Report:

Ms. Pittinger reported the current intake is at 46 complaints since January.

Ms. Pittinger advised Members that the Kopy's Bar report has been delayed but to expect the report electronically over the next couple of weeks. Staff will be prepared to discuss the report if that's the Board's desire at the April meeting.

Ms. Pittinger reported that the Densus review of police encounters and use of force on June 1, 2020 is progressing. Staff has been interacting with the Densus team and together they are coordinating the exchange of material and scheduling interviews.

CPRB is still participating in a performance audit by the City Controller's Office. The audit team has been reviewing the Board's administrative operation since last summer. Upon conclusion, an exit interview will occur, and a final audit report published.

Ms. Pittinger asked Mr. Waters if he wished to defer discussion of a recent AP article focused on a private Face Book group, "Pittsburgh Area Police Breakroom", favored by regional police personnel: [Transphobia, hostility about protesters in private cop group \(apnews.com\)](https://www.apnews.com/story/transphobia-hostility-about-protesters-in-private-cop-group/2021/03/23/17888888-1000-4e00-9000-000000000000). Mr. Waters deferred discussion to unfinished business. Mr. Williams concurred and in the interest of transparency disclosed that he is a passive member of that group. He stated that he felt it wise to monitor the activity and sentiments expressed in the group. He added that the group involves a host of different people from the region, some are police, some are not and a lot of people in the group did not express or share the negativity reported in the cited article.

Mr. Waters called for a motion to approve the minutes of the regular Board meeting conducted on March 23, 2021. *A motion to approve the March 23, 2021, meeting minutes was offered by, Dr. Guercio seconded by Ms. McLellan and the motion was approved unanimously.*

Unfinished Business:

Mr. Waters invited Members to resume the conversation about how the Board would like to enhance its transparency and accessibility of their endeavor to improve community/police relations. Ideas that were discussed in the last meeting included holding fact finding hearings, hosting pre-meeting speakers and discussion, discussion between board members during public meetings and the use of executive sessions for board members to have discussion outside of the

public meeting with the understanding that votes and deliberations cannot occur during an executive session.

Mr. Williams returned to the dilemma faced by the Board when a high-profile incident occurs but the involved officer is no longer employed by the Bureau of Police and is therefore out of the Board's jurisdiction. The incident occurred, it was serious, the public is interested but there is no mechanism for the Board to hold the officer accountable. That incapability can negatively affect the public's confidence in the Board. Similarly, an incident might occur, but the Board has no victim/complainant or the incident does not implicate a policy deficiency.

The fact that the officer is no longer in our reach does not mean that the incident was erased. Mr. Williams appreciates the variety of perspectives on the Board, and while we don't always agree, we respectfully hear each other out and he's thankful for that. But when he and Ms. McLellan offer something from their police experience and the rest of the Board offers something as well, the general public sentiment comes into it, it would be valuable to have candid discussion in an executive session and wrestle with the issues. Mr. Williams noted that he is constantly asked questions about matters like this and he would love to say this Board has come together collectively and this is what we discussed about that matter.

Ms. McLellan agreed with Mr. Williams. She is also asked question quite often and it would be nice to be able to say that that is something we are pondering even if there is nothing we can do about it such as in the case of an officer that's no longer with the PBP. If the officer violates rules and regulations, there is nothing that we can do about it after the fact, especially if he/she has moved on but agreed with Mr. Williams that it would be helpful to have candid conversations.

Mr. Waters invited Ms. Pittinger and Mr. Ward to expand on the options available to the Board that might facilitate candid discussion among the Members. He acknowledged public meetings, which are announced and publicized and a second option, an executive session which has limitations. Occasionally there are sensitive matters that may require discussion that includes protected information such that public discussion may not be feasible. Ms. Pittinger deferred to Mr. Ward.

Mr. Ward replied that the Board's discussions fall within the parameters of the [PA Sunshine Act](#). Recognizing the Board's desire to be as transparent as lawfully possible, Mr. Ward described looking for a balance between the statutory restrictions that are set forth versus presenting a dialogue to each other as well as to members of the public, curious to see that transparent effort.

The Sunshine Act does provide for an agency to have a closed meeting to discuss certain specific types of matters that would otherwise be held in public. That's controlled by § 708 of the Sunshine Act which sets forth seven types of categories ([§ 708](#)). Personnel matters, and it is questionable as to whether the personnel matter pertaining to a police officer under investigation would fit under that enumerated factor though it would seem intended for an internal staff matter; second would be the negotiation of a collective bargaining agreement; third would be considering the purchase or lease of property; fourth would be consulting with (Mr. Ward) as your solicitor to discuss active or pending litigation for example the civil action pending in the Federal Court for the Kopy's Bar incident; fifth, and this may be the one area of statutory relevance for this Board, provides that an agency can have a meeting to discuss agency business which if it were conducted in public would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law. Mr. Ward raised Criminal History Record Information (CHRIA)

considerations with respect to certain criminal record history information that cannot be discussed publicly. The sixth statutory provision pertains to certain academic matters but that is primarily limited to institutions of higher education and the seventh is to discuss certain public safety issues if disclosure of the information discussed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection. That exception might pertain to certain strategies or policies that are not public regarding how the police would act to protect the safety of the public.

Mr. Ward noted that there is some case law that might be more helpful. An opinion from 2013 provides that closed gatherings may also be upheld if they are solely for the purpose of collecting information or educating agency members about an issue. In that case, there were some township supervisors that held four closed door meetings. They were found to have not violated the Sunshine Act because those meetings were held for informational purposes only and did not involve deliberations. This is the statutory side.

The other side, as raised by Mr. Waters, the need for transparency, is sometimes comparable to how you make sausage, you may not want to know how it's done but at the end it tastes good. The Board has taken on the responsibility to share its sentiments publicly, including matters over the past year where there may have been disagreements. Each person is treated with respect, decisions are made, votes are taken publicly and then the Board moves on. A balance for this Board is to determine whether the types of actions you want to discuss in a closed meeting or executive session are worth running the risk that an allegation would arise that you are less transparent or that you did things behind closed doors in violation of the Sunshine Act. That is a quick analysis and combination of statute and public policy.

Mr. Green thanked Mr. Waters and Mr. Williams for raising the discussion and thanked Mr. Ward for the quick analysis noting that he found it remarkably helpful given its brevity. Mr. Green expressed the importance of remaining aware of the distinction between discussion and deliberation. He suggested that following a public incident where jurisdiction to investigate is absent or a policy review inappropriate, the Board publicly discuss the matter and issue a statement acknowledging the Board's awareness of the situation, its inability to review it through to a recommendation, express the associated concerns and solicit the efforts of the community, the Bureau of Police, and the Board to work together in a manner that would preclude a repeat occurrence of the situation.

Mr. Ward thanked Mr. Green for his compliments and said it is very rare for attorneys to get compliments but as a springboard into Mr. Green's observations, the Commonwealth Court also held in 1993, that the specific reason for an executive session must be announced in the public meeting either before or directly after the executive session and that the reasons stated by the public agency must be specific to a real, discrete matter. This suggests that you cannot just simply disappear somewhere and have a meeting and not tell anybody. Mr. Ward opined that the most cautious way would be to announce in advance that you are going to have an executive session and following that closed meeting, articulate the specific matters which indicate that what you were discussing was a real, discrete matter best addressed in private. It provides you the opportunity to go into executive sessions for informational purposes as long as the session does not involve deliberations or decisive actions.

Mr. Waters asked about transparency and publication of an executive session. Ms. Pittinger explained the process associated with executive sessions. At the next public meeting following an

executive session, the presiding Chair of the meeting announces that the session was held and the specific matter discussed. If it is known in advance that there is going to be an executive session, Members receive a 24 hour notice. If in the course of a public meeting Members decide to go into an executive session, it must be announced and upon return to the public meeting, the specific matter discussed is reported without disclosing confidential or protected information.

Mr. Waters added an option of the Board having more frequent open-ended discussions about topics within the public meeting itself much like last month and tonight. He observed that some Members are less vocal and asked if there are ways that discussions could be facilitated to encourage full participation and conducive to a well-rounded and an engaged discussion? Dr. Guercio expressed her belief that the Board has a responsibility to have engaged discussions. Mr. Green agreed.

Sr. Patrice added that everyone expresses their thoughts and reactions, there is not a concern that people are holding back. Everyone tries to be engaged and also to be as prepared as possible by reading the packet received from Ms. Pittinger and her team before the meeting and also reviewing the minutes after a meeting. Sr. Patrice agreed with Mr. Waters that this is a very engaged group and the variety really stimulates the discussions.

Mr. Waters observed the appearance that the Members were in common agreement that more discussion among them is desirable and that options were available to protect a discussion if appropriate. He also recognized Mr. Green's suggestion to issue a statement acknowledging the Board's consideration of an issue outside of the review protocol. Mr. Waters noted that expanded meeting minutes are also an effective means to report to the public on Board discussions.

Mr. Waters asked Ms. Pittinger to explain the concept of implementing a fact finding hearing as a preliminary investigative process.

Ms. Pittinger responded that technically our public hearings are for the purpose of finding facts but they are directed towards reaching a conclusion and a determination of whether or not there was misconduct. Pittinger was proposing investigative hearing which would be similar to a preliminary hearing or a probable cause hearing. It would occur prior to an investigation, with a determination of probable cause made by the Board (or appointed panel of the Board). Currently, a preliminary inquiry is conducted by the executive director and the Board receives a summary with a recommendation to go forward or dismiss the complaint based on the evidence determined in the course of the preliminary inquiry. Then the complaint goes through the Board's review process.

The rules call for the preliminary inquiry to occur within the first 10 days of receipt of a complaint and then it goes to the Board at the next meeting with a recommendation to go forward or dismiss and the Board makes the decisions on all of these steps. In 2003, because of the 10-day preliminary inquiry period, the Board delegated to the Executive Director the probable cause finding but that is not a terminal finding; the complaint always goes to the Board for disposition. Pittinger offered the suggestion that for some cases, not all, a Board panel convene a probable cause hearing in which staff lays out what is known, and the Board panel decides if the case should proceed or be dismissed. The panel could call witnesses if they deemed it helpful. The witnesses can testify, the panel can evaluate their credibility and then determine to go forward or dismiss it. A dismissal could be ratified at the next Board meeting. It might be a means by which the Board can take notice of a high visibility or controversial incident. The Board would still need a

sworn statement and we know people don't always come forward in those instances which is why Pittinger files a sworn statement so that we have the authority to investigate.

Mr. Ward compared the proposal as similar to a preliminary hearing in state court or a grand jury investigation in federal court. Basically, in criminal cases the process focuses on two things, was an offense committed and is there probable cause to believe that the offense that was committed was committed by this particular person. The probable cause component presently in this Board's jurisdiction has been delegated close to 20 years ago to the Executive Director to keep things moving and to recognize that sometimes it's difficult to get all the Board members or even a panel of the board members to participate at the probable cause level. The only concern, and Ms Pittinger captured that concern, is that it would not apply to all future cases but only to some and from that I assume that it would be either the high profile or those cases that may trigger issues of policy concern.

Mr. Waters asked for any other feedback from other Board members around the idea of introducing an investigatory fact finding hearing as part of the preliminary process. Ms. McLellan replied that it sounds like it would bog down the system that is working now. What we're talking about here seems to be something that circumstances necessitating conversation outside of the normal venues would be few and far between.

The entire meeting may be viewed here: [Independent CPRB Meeting 03/23/2021](#)

New Business:

No new business

Case Review:

Mr. Waters moved to the Case Review Agenda (copy attached). Each group of recommendations was voted upon as recorded on the attached Case Review Actions

Mr. Waters asked about case 005-20. The rationale states that we cannot prove that the person was pulled over under false pretenses but there are seven allegations that were raised in this case. How do all seven of the allegations play into this case and what bearing does the possession of a scale have on this case? Mr. Waters asked if the Law Enforcement Professionals could speak to the legality of carrying a scale.

Mr. Williams explained that just the possession of a scale is not illegal but if there are other supportive evidentiary things that raise a reasonable suspicion for the officer, then they will continue their investigatory stop to determine if there are other items that would be indicative of some criminal behavior. There can be assumptions when items like that are found no matter how odd they may seem for individuals to possess, but people do weigh food so to suggest that it was used with a criminal intent would not be fair. That officer would need to be able to articulate what are those other items, that in the totality of the circumstances, one could reasonably assume or reasonably suspect that these are all parts of a criminal event. At that point, they would go forward to make their arrest.

Next Meeting

Mr. Waters announced the time and location of the next Board meeting: Tuesday, April 27, 2021, at 6:00 p.m. via Zoom. The meeting link will be posted on the cprbpg.org website and Face Book page.

Public Comment:

Mr. Ozark thanked the Board for the public discussion.

Mr. Waters called for a motion to adjourn, and the motion was offered by Mr. Green and seconded by Dr. Guercio and the motion was adopted unanimously.

The entire meeting may be viewed here: [Independent CPRB Meeting 03/23/2021](#)

Respectfully Submitted,



Stephanie M. Dorman
Assistant Executive Director

Attachments (1): 03/23/2021 Case Review Actions