



## POLICE OVERSIGHT BOARD CASE REVIEW SUBCOMMITTEE

Thursday, October 6, 2016 at 10:30 a.m.  
Plaza del Sol Building, 600 2nd Street NW  
Basement Hearing Room #160

### Members Present

Leonard Waites, Chair  
Joanne Fine  
Carlotta A. Garcia

### Others Present

Edward Harness, Exec. Director  
Michelle Contreras

## Meeting Minutes

### I. Welcome and call to order

Case Review Subcommittee Chair Leonard Waites called to order the regular meeting of the Case Review Subcommittee at 10:30 a.m.

### II. Approval of the Agenda

A motion was made by Subcommittee Member Fine to approve the agenda as written. Subcommittee Member Garcia seconded the motion. The motion was carried by the following vote:

For: 3 - Fine, Garcia, Waites

### III. Review and Approval of the Minutes from the September 6, 2016 Case Review Subcommittee Meeting.

A motion was made by Subcommittee Member Garcia to approve the minutes. Member Fine seconded the motion. The motion was carried by the following vote:

For: 3 – Fine, Garcia, Waites

### IV. Public Comments: There were no public comments.

### V. CPOA Report – *Edward Harness, Executive Director*. Director Harness gave the following report:

a) **CPC 088-16:** Copies of the CPOA Executive Director’s memorandum dated September 8, 2016 and copies of the Albuquerque Police Department’s Special Order 15-21 were distributed (See Attachment A).

1. Discussed the Executive Director’s findings in CPC 088-16.

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2. APD Internal Affairs has sent this file for evaluation by the Department of Public Safety.
3. Discussed the letter Director Harness received from Mr. Tom Grover, the attorney who represents the officer involved in CPC 088-16. The letter will be presented to the Personnel Subcommittee for further review.

**b) CPOA Internal Triage of cases**

The CPOA is working on an internal triage of cases in order to deal with some of the resource workload issues. Director Harness will keep the board informed of any changes to the work load.

**c) Christopher Chase OIS I-2016-44**

Adding this case on the agenda for the next POB meeting was discussed.

**d) Mary Hawkes OIS I-2014-99. Members discussed the following:**

1. This case is on the agenda for a civil settlement with the Citizen Review Board on 17<sup>th</sup> or 18<sup>th</sup> of October, 2016. Chris Melendres from City Council will be attendance at the settlement conference.
2. Assistant City Attorney Stephanie Griffin will be representing at least one of the officers involved in this case and possibly a second officer.
3. Assistant Lead Investigator Paul Skotchdopole will be reviewing the depositions of the civil action before he conducts his interviews in the administrative investigation in CPC 101-16.
4. The Internal administrative investigation in I-2017-99 was done by Internal Affairs Investigator Sgt. Norris. His deposition testimony has been sealed.
5. This case may come before the POB in 3 or 4 months depending on if any criminal charges arise out of it.

**VI. Review of Cases:** The Subcommittee members agreed with the CPOA's findings of the following Citizen Police Complaints (CPCs) and to add them to the consent agenda for the next POB meeting scheduled on October 13, 2016.

**a) Administratively Closed Cases**

081-16            104-16            144-16            145-16

1. Members discussed CPC 081-16

2. A motion was made by Subcommittee Member Fine to accept all the *administratively closed* cases as written. Subcommittee Member Garcia seconded the motion. The motion was carried by the following vote:

For: 3 – Fine, Garcia, Waites

**b) Cases investigated**

140-16

A motion was made by Subcommittee Member Garcia to approve *Cases investigated* as written. Member Fine seconded the motion. The motion was carried by the following vote:

For: 3 – Fine, Garcia, Waites

**c) CIRT Cases C-004-16 and C-029-16**

**1. CIRT Case C-004-16:**

- a. Director Harness does not concur with the CIRT Investigator’s findings in C-004-16.
- b. Director Harness will send a memorandum to Chief Eden with his findings and training recommendations for the officer.

**2. CIRT Case C-029-16:**

- a. Director Harness concurs with the CIRT Investigator’s findings in C-029-16.
- b. Director Harness will send a memorandum to Chief Eden with his findings.

3. A motion was made by Subcommittee Member Fine to accept all **CIRT CASES** as written. Member Garcia seconded the motion. The motion was carried by the following vote:

For: 3 – Fine, Garcia, Waites

**VII. Review of Appeals**

There were no appeals to be heard.

**VIII. Other business**

- a) Members discussed if citizens can legally videotape POB and Subcommittee meetings, which they are authorized to do so.
- b) Members discussed threatening comments posted by online blogs and if there is any recourse available to the Board Members regarding those threats. Director Harness deferred that question to their Counsel Mark Baker.
- c) There was no other business.

**IX. Next Meeting**

The next meeting of the Case Review Subcommittee will tentatively be held on Thursday, November 3, 2016 at 10:30 a.m.

**X. Adjournment**

A motion was made by Subcommittee Member Fine to adjourn the meeting. Member Garcia seconded the motion. The motion was carried by the following vote:

For: 3 – Fine, Garcia, Waites

Meeting Adjourned at 11:44 a.m.

APPROVED:



Leonard Waites, Chair  
Case Review Subcommittee

11/7/16

Date

CC: Julian Moya, City Council Staff  
Natalie Howard, City Clerk  
Dan Lewis, City Council President

# Attachments



City of Albuquerque  
Civilian Police Oversight Agency

Richard J. Berry, Mayor

Edward W. Harness, Esq., Executive Director

Interoffice Memorandum

September 8, 2016

To: Gordon Eden, Jr. – Chief of Police Albuquerque Police Department  
From: Edward W. Harness, Esq., Executive Director   
Subject: CPC 088-16

Chief Eden:

After reviewing the investigative materials in CPC 088-16 *I do not concur* with the findings of Sgt. Simballa.

This investigation is in violation of the City of Albuquerque Settlement Agreement. Paragraph 188 states:

*"If at any time during misconduct complaint intake or investigation the investigator determines that there may have been criminal conduct by any APD personnel, the investigator shall immediately notify the Internal Affairs Bureau commanding officer. If the complaint is being investigated by the Civilian Police Oversight Agency, the investigator shall transfer the administrative investigation to the Internal Affairs Bureau. The Internal Affairs Bureau commanding officer shall immediately notify the Chief. The Chief shall consult with the relevant prosecuting agency or federal law enforcement agency regarding the initiation of a criminal investigation. Where an allegation is investigated criminally, the Internal Affairs Bureau shall continue with the administrative investigation of the allegation. Consistent with Paragraph 186, the Internal Affairs Bureau may delay or decline to conduct an interview of the subject personnel or other witnesses until completion of the criminal investigation unless, after consultation with the prosecuting agency and the Chief, the Internal Affairs Bureau deems such interviews appropriate."*

APD has a duty to report any suspected violation of the NCIC & NMLETS to the New Mexico Department of Public Safety. In addition, this case must be submitted to the Federal Bureau of Investigations to determine if Sgt. A's conduct is in violation of U.S.C. Title 18 (US Codes 641, 1030, 1343, & 1952) as detailed in your Special Order 15-21 dated March 19, 2015.

Attachment "A"

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Presently this administrative investigation is premature and incomplete. It is not acceptable for Sgt. Simballa to make calls; pose hypothetical scenarios and claim that is a criminal investigation. APD Internal Affairs cannot conduct any portion of the criminal investigation. The administrative investigation and criminal investigation must separate in order comply with paragraph 188 of the CASA.

I recommend this case be referred to the New Mexico Department of Public Safety NCIC Division for investigation. Also, the Chief must meet with the FBI, so that a proper assessment can be made to determine if a criminal investigation is warranted.

  
Edward W. Harness, Esq.  
Executive Director  
CPOA

### **Attachment "A"**

# CITY OF ALBUQUERQUE

Albuquerque Police Department



Gorden E. Eden, Jr., Chief of Police



March 19, 2015

## DEPARTMENT SPECIAL ORDER 15-21

**TO: ALL DEPARTMENT PERSONNEL**

**SUBJECT: Use of NCIC and NMLETS**

The National Crime Information Center (NCIC) and the New Mexico Law Enforcement Telecommunications System (NMLETS) are a few of the secure databases which can be accessed by NCIC certified employees. The information contained within the system is confidential and can only be utilized for Law Enforcement purposes. The databases cannot be accessed or utilized for personal reasons or for curiosity inquiries. Personnel must be able to articulate the criminal justice purpose for each inquiry into these systems.

Monitoring of these systems is accomplished by the New Mexico Department of Public Safety and the Federal Bureau of Investigation. Sanctions to employees and the law enforcement agency the employee works for can be significant when there is misuse of the databases and the information contained within the databases.

400 Roma NW

Albuquerque

New Mexico 87102

General Order 1-37-2.A states "Unless specifically authorized by standard operating procedure, personnel will not disseminate information from computers or reveal to any unauthorized person information contained in a computer database. All privacy and security precautions apply to computer data". 1-37-2.A is a level two sanction when there is a violation of the policy.

www.cabq.gov

Some examples of misuse are:

- A Tucson police officer running inquiries on the estranged wife of a friend. The officer provided the wife's address and phone number from NCIC databases to the friend despite knowing there was a restraining order. The officer also came across warrants for the friend and failed to take police action. The officer was indicted on 12 felony counts of computer tampering and could have been sentenced to up to two years in prison. The judge sentenced the officer to three years' probation stating the loss of his law enforcement career was punishment as well.
- A detective in Ohio was sentenced to 18 months imprisonment for the unlawful access of law enforcement databases, specifically license plate, driver's license and warrant information. The detective ran the license plate of a person believed to be having an affair with the detective's spouse. Additionally, the detective ran a plate for a friend who was a known felon which endangered an undercover detective and an undercover investigation.

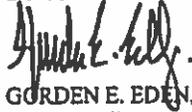
*Albuquerque - Making History 1706-2006*

## Attachment "A"

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Misuse of these systems may also result in felony criminal indictments against the employee who uses the system inappropriately. Federal charges under United States Code, Title 18 (US Codes 641, 1030, 1343, 1951 and 1952) are possible and sanctions including the loss of NCIC access for the individual and the agency can be assessed when there is inappropriate use.

BY ORDER OF:



GORDEN E. EDEN, JR.  
Chief of Police

GEE: etw

## Attachment "A"