

CIVILIAN POLICE OVERSIGHT BOARD

Thursday, January 14, 2015 – 5:00 PM
Vincent E. Griego Chambers, Basement Level
City/County Government Center – One Civic Plaza NW
Albuquerque, New Mexico

Members Present:

Leonard Waites (Chair)
Jeffrey Scott Wilson (Co-Vice Chair)
Beth Mohr (Co-Vice Chair)
Eric H. Cruz
Joanne Fine
Dr. Jeannette Baca
Dr. David Z. Ring III
Dr. Susanne Brown

Members Absent

Dr. Moira Amado-McCoy

Others Present:

Mark Baker
Michelle Contreras
Diane McDermott
Lt. Garcia, APD
Marlo Kiefer
Edward Harness (Executive Director)
Paul Skotchdopole
Amanda Bustos
Julian Moya

Minutes

- I. **Welcome and call to order:** Chair Leonard Waites called the meeting to order at 5:02 pm.
- II. **Pledge of Allegiance** – Board Member Ring led the Board in the Pledge.
- III. **Approval of the Agenda:** Copies of the agenda were distributed. Board Member Wilson moved to approve the agenda. Board Member Fine seconded the motion. Approved.
For: Waites, Fine, Wilson, Ring, Cruz, and Baca.
- IV. **Approval of Minutes:** Copies of the minutes from the December 10, 2015 POB meeting were distributed and reviewed by the Board. Board Member Ring moved to approve the minutes as written. Board Member Baca seconded the motion. Approved.
For: Waites, Wilson, Fine, Baca, Cruz, Ring, Brown, Mohr.
- V. **Public Comments:** The following is a summary of comments given to the Police Oversight Board by members of the community:
 - A. Community member Charles Powell stated that he has lived in Albuquerque for nearly 30 years and the entire time there has been a problem with APD shooting people, at times unjustifiably. He hopes the consent decree will help with these issues. The DOJ didn't find anything with regard to racial profiling, but the Board needs to see that there's a

problem. The Board needs to come up with solutions to the problem of racial profiling. Even when the police are not involved in a shooting, they are still affecting black lives by not rendering aid or concluding that a shooting was justified.

- B.** Community member Connie Vigil acknowledged the volunteer service of the board members. Ms. Vigil brought up SOP 1-05 and would like the Board to review it in the future. Ms. Vigil’s friend was in a hit and run bike accident and has experienced problems regarding the report of the accident. Ms. Vigil asks that the Board thoroughly review the policy 1-05 for issues with the way it is written. Ms. Vigil would like the Board to consider changing the meeting times for Subcommittees so that more community members can get involved. Ms. Vigil would also like all Board members to have Albuquerque City email addresses, so that they can easily be contacted by community members.
- C.** Community member Tony Pirard brought a list of people who have been killed by APD between 2010 and 2014. Mr. Pirard stated that many veterans, such as Kenneth Ellis, have been killed by APD. Mr. Pirard named several law enforcement officers, a judge, and City government officials, including the mayor, who he believes should be in jail for the crimes they’ve committed and for taking lives. The APOA should have nothing to do with the settlement agreement. Mr. Pirard identified himself as a private attorney general and referred to the citizen’s investigative police, stating they are here to correct the problem of “killer cops.”
- D.** Community member Charles Arasim sent the Board a letter regarding a news item about the release of officer’s personnel and discipline files. There was also an article about an investigation of the Chief of police at the airport that the Board may want to take a look at it. Mr. Arasim would like the Board to think about their prerequisites for going into closed sessions. The former records custodian at APD has filed a whistleblower lawsuit and he thinks the Board needs to take a hard look at that. The IG Subcommittee/study session is occurring in City Council and it looks like there will be a new request for applicants for Inspector General.
- E.** Community member Tad Niemyjski stated that the officer who shot Kenneth Ellis is now suing the Chief because he doesn’t want to promote him. We had three police shootings last year. Some of these cops are doing whatever they want, including suing. Mr. Niemyjski met Major Montano, who told him he would help him, but he still hasn’t heard anything back from him. The Oversight Board needs to take a stand and stop the problems that are occurring with APD.
- F.** Community member Don Schrader asked the Board, “Does the person who made the 911 call on James Boyd now terribly regret having made that

call?” Mr. Schrader asked if any of you had a mentally ill family member raging out of control would you call 911 knowing that they might kill your loved one? These murders breed fear, hatred and revenge toward police. If we want police to be safe and respected, we must demand that brutality, false arrests, harassment, and injustice stop now. Some police condemn police brutality but fear speaking out publicly. Mr. Schrader compliments retired officer Sam Costales for speaking honestly and passionately. He encourages Board members to meet personally with people like Sam Costales, who condemn police brutality.

G. DOJ Monitor, Dr. Ginger, addressed the Board and gave an update on the progress of his office. He now has an office in Albuquerque on 4th Street. He is looking for the items that are spelled out in the Settlement Agreement to be in the reports from the POB and CPOA. Dr. Ginger did not attend a previously scheduled meeting with the former CPOA Acting Director because he did not agree with a business item on the agenda and did not wish to be there when that agenda item was taken care of. Dr. Ginger commends the Board for their process of training and understanding their duties and what’s expected of them in the process. Dr. Ginger stated that it is common for departments to have a low percentage of compliance in the first report partly because the whole reason they are involved is that there are issues that need to be worked on. He is meeting next week with a website developer who will be helping with his new office website.

VI. Comments Concerning DMS – APD Planning: John Whitsitt, SOP Liaison for APD, gave the Board a presentation on how Power DMS (Document Management System) works. Mr. Whitsitt’s job includes facilitating changes with SOPs within the department, as well as managing DMS. The website organizes documents and makes them searchable. There are about 31 policies that are under DOJ review, so those will not be up to date at this time.

A. Board members requested additional training on Power DMS, in order to be able to view SOPs and make suggestions for changes.

VII. Sub-Committee Reports:

A. Outreach Subcommittee – Chair Jeannette Baca: The Outreach Subcommittee met on December 30, 2015 and also had a Special meeting on January 11, 2016 to discuss changes to the CPOA brochure.

i. The Board is invited to attend a meeting of a local advocacy group for people concerned with police response to people with mental health issues on February 23, 2016. Sam Cochran, who developed the Memphis Model for crisis intervention will be in attendance. Peter Cubra is the contact person. The CPOA can be listed a sponsor on the meeting brochure if they choose. There is also a working meeting on February 24, 2016.

a. **Board Member Ring moved to have the Board support the upcoming visit with Sam Cochran. Board Member Fine seconded. Passed.**

- ii. The CPOA brochure is being updated, which will include a Spanish translation, and will allow the citizen to use the brochure as a complaint form that can be mailed to the agency, postage paid. The Board can email comments or suggestions, including changes to the logo, to either Board Member Baca or Amanda Bustos.
- iii. Amanda Bustos gave an update on the agency's new social media presence, which includes a website, facebook, twitter, and soon LinkedIn. There is an email on the website that links directly to the CPOA. Photos of the Board will eventually be added to the website.

B. Policy and Procedures Subcommittee – Chair Susanne Brown: There have been 5 meetings in the last four months. Board Member Brown and Director Harness have also attended meetings of the Policies & Procedures Review Board.

- i. Policy on retaliation (1-4) has been finalized and written exactly the way the Subcommittee had suggested.
- ii. When the CPOA discovers criminal behavior in a complaint, it gets turned over to Internal Affairs. Director Harness will now be able to follow the case to its resolution.
- iii. Use of Force policy won't be discussed again for six months.
- iv. Board Member Brown would like the board to approve concepts to be suggested for policy change rather than initially rewriting the policy word for word.

C. Local Conference Subcommittee (NACOLE) – Chair Joanne Fine: The conference will be held September 25th through 29th.

- i. The conference is a platform to exchange best practices with others from around the country. Participants can propose workshops. The deadline for proposals is January 15, 2016.
- ii. The committee is working on fundraising for scholarships. The cost is around \$550 for all five days, but participants can pay for individual days as well.
- iii. Anyone interested in civilian oversight is invited to attend, including anyone in law enforcement. The committee is looking for ways to get the word out to the community to attend the conference.

D. Case Review Subcommittee – Chair Leonard Waites: Dr. Moira Amado-McCoy has resigned as Chair. Board Member Jeffrey Scott Wilson is the new Chair for the Case Review Subcommittee.

- i. The subcommittee decided to review all the backlogged cases.
- ii. The subcommittee has created a flow chart which illustrates the process by which complaints are investigated and reviewed.

VIII. Reports from City Staff

A. APD – Lt. Garcia

- i.** APD received 39,880 calls for service in the past month.
- ii.** Received 10 internal affairs investigations.
- iii.** 1 case was administratively closed. 5 cases total closed.
- iv.** Discipline imposed consisted of 2 letters of reprimand, 1 verbal reprimand, and 1 termination.
- v.** There are 9 pending cases for December.

B. City Council – Julian Moya:

- i.** City Council has begun its process for reappointing three board members. Councilman Moya will keep the Board updated on the progress.
- ii.** The Inspector General position has been reopened. It will be back on the agenda on February 1, 2016.

C. City Attorney – no report

D. CPOA – Edward Harness, Executive Director

- i.** Since the last POB meeting, the agency has responded to two officer involved shooting incidents. Ten new cases have been opened in 2016 and eleven Job Well Done reports received.
- ii.** In February Director Harness will attend IAPro Blue Team training.
- iii.** I.T. will contact Director Harness regarding SharePoint access and he will administer the program.
- iv.** A meeting was held with members of APD to review settlement agreement responsibilities. Final reviews will be submitted to the monitoring team on February 2, 2016.
- v.** Progress is being made on data entry. The agency is reviewing applications for the data analyst position.
- vi.** Director Harness is drafting a letter of support regarding the termination of Officer Hindi since the matter involves intimidation of one of the agency's investigators.
- vii.** The Board discussed the issue of IPRA requests, including the possibility of Board members getting their own email server for ease of processing requests.

IX. Meeting with Counsel re: Closed session to discuss matters subject to the attorney-client privilege pertaining to threatened or impending litigation in which the CPOA is or may become a participant – Board Attorney Mark Baker.

- A.** At 6:50 p.m. Member Wilson moved to have the Board go into a closed session with Attorney Mark Baker to discuss matters subject to the

attorney-client privilege pertaining to threatened or impending litigation in which the CPOA is or may become a participant pursuant to NMSA 1978, Section 10-15-1(H)(7). Approved.

For: Waites, Fine, Wilson, Ring, Cruz, Baca, Mohr, and Brown.

- B. At 7:37 p.m. Board Member Cruz moved to have the Board officially reconvene having come back from closed session to discuss only matters subject to the attorney client privilege pertaining to threatened or impending litigation in which this public body is or may become a participant pursuant to NMSA 1978, Section 10-15-1(H)(7). Approved.
For: Waites, Fine, Wilson, Cruz, Ring, Baca, Mohr, and Brown.

- X. Discussion and possible action on Open Meeting Act complaint from Carl Foster:** A copy of the Statement Re Owens Letter was distributed to the Board and read by Board Member Fine. See “Attachment A.” The statement is a response to the allegation made by James Owens that emails between Board members violated the Open Meetings Act. A summary of the email contents was read by Board Member Fine.

- A. Board Member Fine moved to accept the statement as written. Board Member Mohr seconded the motion. Passed.
For: Waites, Fine, Wilson, Cruz, Ring, Baca, Mohr, and Brown.

- XI. POB Legal Representation Contract:** Mark Baker, attorney for the CPOA, has reached the \$75,000.00 threshold for legal fees.

- A. The Board discussed the issue of increasing the budget for Mark Baker’s fees for legal services.
B. The initial contract was approved as a first step, but there was discussion at the time that it could reach \$150,000.00.
C. Board Member Mohr moved to have Director Harness request an additional \$75,000.00 from City Council to increase the contract amount for attorney’s fees to \$150,000.00 for the year. Board Member Ring seconded the motion. Passed.
For: Waites, Fine, Wilson, Cruz, Ring, Baca, Mohr, and Brown.

- XII. Findings by POB:** Director Edward Harness read a summary of the following Citizen Police Complaints (CPC) and the Board discussed and voted on the findings of the CPOA:

- A. **CPC 146-15** – A citizen complained that during a traffic stop, an officer was biased, wrote a misleading report, berated her, and threatened her with arrest. Based on the CPOA’s investigation, including review of lapel video, some of the officer’s statements to the citizen were inappropriate and violated SOP. The CPOA found the allegations of misconduct against the officer SUSTAINED for violation of SOP 1-04-1F regarding making a

statement that was perceived as a threat of arrest. The other allegations were Not Sustained and Exonerated.

- i. Board Member Fine moved to accept the findings of the CPOA. Member Wilson seconded the motion. Passed.
- ii. Board Member Baca would like this CPC documented as relating to mental health issues.

B. The Board voted on the following group of Administratively Closed complaints:

167-12	112-14	013-15	049-15	057-15	070-15
087-15	104-15	126-15	133-15	137-15	139-15
148-15	151-15	152-15	153-15	158-15	159-15
161-15	164-15	166-15	187-15	202-15	207-15
218-15	221-15	225-15	226-15	229-15	

- i. Board Member Ring moved to approve of the Administratively Closed cases. Board Member Brown seconded. Passed.
For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

C. CPC 149-15 – A citizen complained that after she called police on a neighbor who had allegedly pulled a gun on her and her family, a responding officers did not file an accurate report, should have found the neighbor in violation of the law, and that the officer knew the neighbor personally. The CPOA investigation found the allegations against Officer M. SUSTAINED for SOP 2-24-3 (A)(5)(f), SUSTAINED for SOP 1-04-4 (0), SUSTAINED for SOP 1-04-4 (N) (Not based on original complaint) and SUSTAINED for SOP 1-4-4 (w) (Not based on original complaint). The CPOA found the allegations of misconduct against Sgt. B SUSTAINED for SOP 1-04-4 and SOP 3-18-3 (Not based on original complaint).

- i. Board Member Mohr moved to accept the findings of CPOA. Board Member Fine seconded. Passed.
For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.
- ii. The Chain of Command did not concur with the CPOA’s findings. Director Harness will inform the Chief that the POB does not agree with the discipline recommendation and will request a written explanation of the non-concurrence.

D. CPC 154-15 – A citizen complained that she witnessed an APD Service Aide texting while driving. PSA S. denied the allegation. The CPOA found the allegation NOT SUSTAINED based on lack of information and/or evidence to show whether or not the misconduct occurred.

- i. Board Member Ring moved to accept the findings of the CPOA. Board Member Cruz seconded. Passed.

For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

E. CPC 156-15 – A complaint was filed by a citizen claiming that an unknown SWAT officer had extracted his DNA illegally from a cut on his finger during his arrest. The investigation into the complaint revealed that there was no visible cut on the citizen's finger and no evidence that his DNA had been collected by any SWAT officer. The allegation was found to be UNFOUNDED.

- i. Board Member Fine moved to accept the findings of the CPOA. Board Member Cruz seconded. Passed.

For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

F. CPC 157-15 – A complaint was filed by a citizen who alleged that an officer searched a homeless man's pockets illegally, and told the citizen to mind his own business when he tried to find out what was going on. The investigation showed that the officer was searching the man's pockets because he was investigating a homicide warrant involving the man. The officer repeatedly asked the citizen to not interfere with his work. The allegations against Officer T. were EXONERATED.

- i. Board Member Fine moved to accept the findings of the CPOA. Board Member Waites seconded. Passed.

For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

G. CPC 160-15 – A citizen alleged that Officer G. was unprofessional, raised his voice to him, and refused to give his name when asked. The investigation revealed that Officer G. was assisting someone in a civil matter and was there to keep the peace. The review of lapel video confirmed that Officer G. did raise his voice, had refused to give his name to the citizen, and conducted himself unprofessionally by speaking badly about the complainant to a community member. The allegations of violating SOPs 3-14-2-C, 1-04-1-F, 1-02-3 A, were SUSTAINED.

- i. Board Member Ring moved to accept the findings of the CPOA. Board Member Waites seconded. Passed.

For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

- ii. The Chain of Command did not concur with the CPOA's findings. Director Harness will inform the Chief that the POB does not agree with the Chief's findings and will request a written explanation of the non-concurrence.

H. CPC 162-14 – A complaint was filed by a citizen whose vehicle was hit by a motorcyclist who was charged with DWI. The complaint alleges that the officers involved at the time of the accident did not respond to the DA's requests for interviews or show up to scheduled court dates. A review of the records by the CPOA showed that the officers had shown up to every court date and had complied with all interview requests. The hearing had been delayed twice, and the time in which the defendant could be

prosecuted ran out. The allegations of misconduct were found to be UNFOUNDED.

- i. Board Member Fine moved to accept the findings of the CPOA. Board Member Waites seconded. Passed.
For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

I. CPC 183-15 – A citizen complained that Officer H. towed his car for dark window tint, told his sister to shut up, and caused his children to cry. The investigation, which included review of lapel video, showed that Officer H. was professional and courteous and did not interact with the kids or tell the sister to shut up. The allegations of misconduct were found to be UNFOUNDED. Officer H. was incorrect in having the vehicle towed for tint; furthermore, the citizen removed the windshield tint in the officer's presence. The allegation of unlawful towing, violation of SOP 2-48-2 (4)(A), was SUSTAINED.

- i. Board Member Waites moved to accept the findings of the CPOA. Passed.
For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.
- ii. Director Harness discussed why progressive discipline using the Chart of Sanctions needs to be examined. In this case, the recommendation of discipline seems to not fit, as the officer had already been terminated for other discipline issues.

J. CPC 188-15 – A citizen complained that Sergeant Y. was arrogant, knocked on her door aggressively, and made her uncomfortable. The investigation revealed that Sergeant Y. was responding to a custody issue and knocked on the door in a reasonable manner and was professional throughout the interaction with the complainant. The allegation against Sergeant Y. was EXONERATED.

- i. Board Member Baca moved to accept the findings of the CPOA. Board Member Brown seconded. Passed.
For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

K. CPC 190-15 – A citizen who was involved in a hit-and-run accident complained that Officer H. who responded to the accident, did not show up to two scheduled court dates, and did not respond to her messages asking him to call her back. The investigation revealed that Officer H. did not respond to the CPOA's urgings to attend the court hearing. The allegation of violation of SOP 2-01-2 C 1 was SUSTAINED.

- i. Board Member Fine moved to accept the findings of the CPOA. Board Member Cruz seconded. Passed.
For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

L. CPC 192-15 – A citizen complained that she tried to file a report about her son being missing and possible custodial interference on the part of her husband, but that both Officer N. and Officer V. would not file a report.

The CPOA investigation determined that Officer N. had done an initial investigation and determined that the citizen was still married to her husband and that there was no custody agreement. It was also determined that CYFD was involved with the family. Officer N. took a report at the citizen's request. The CPOA also learned that Officer V. is an officer who works at Metropolitan Court and had only a brief encounter with the citizen in which she spoke about conspiracies. He was not required to file a report. Officer N.'s alleged conduct was UNFOUNDED. Officer V.'s alleged conduct was EXONERATED.

- i. Board Member Fine moved to accept the findings of the CPOA. Board Member Mohr seconded. Passed.

For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

M. CPC 194-15 – A citizen alleged that Officer C. did not file a report after his tools were stolen. A review of the case showed that there was a civil dispute between the complainant and the person who allegedly stole his tools. Officer C. advised the complainant that it was a civil dispute, but that he would still file a report, which he did. The allegation of misconduct was UNFOUNDED.

- i. Board Member Ring moved to accept the findings of the CPOA. Board Member Fine seconded. Passed.

For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

N. CPC 199-15 – A citizen alleged that Lieutenant M. had used excessive force during her arrest and that he did not have cause to arrest her. The lapel video showed that Lt. M. had probable cause to arrest the citizen for drinking in public next to a liquor establishment. The evidence also showed that the citizen was resisting Lt. M.'s efforts to put her in custody. The allegations against Lt. M. were found to be EXONERATED.

- i. Board Member Fine moved to accept the findings of the CPOA. Board Member Mohr seconded. Passed.

For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

O. CPC 241-15 - A citizen complained that when she called APD, Telephone Operator K. was rude to her and hung up on her. A review of the phone recording in the complaint showed that Operator K. had continually interrupted the citizen, did not let her speak with a supervisor as she'd asked, and hung up abruptly after telling the citizen that officer's would be responding to her call. The allegation of a violation of SOP 1-04-1 G 1 was found to be SUSTAINED.

- i. Board Member Mohr moved to accept the findings of the CPOA. Board Member Cruz seconded. Passed.

For: Brown, Waites, Baca, Ring, Mohr, Wilson, Cruz, and Fine.

P. Case Summaries of Administratively Closed complaints for January 2016:

Case Summaries January 2016

CPC 167-12 – A citizen complained that when police raided her ex-husband’s home, they traumatized her two minor sons who were there, detained them for a very long time, and used aggressive tactics with them. An investigation showed that police had a warrant to raid the home based on suspected illegal activity of the ex-husband of the complainant. Police did not know the two minor sons were there before they entered the home, but because they could easily be mistaken for adult men, the police detained them during the raid. The police acted appropriately in securing the home and did not detain the boys for longer than necessary. No aggressive tactics were used. Since no SOP violations were found, and additionally, the 90 day time limit for investigating the complaint had passed, this case was ADMINISTRATIVELY CLOSED.

CPC 112-14 – An anonymous citizen complained that police were standing on an overpass walkway pointing what looked like a gun at cars travelling below on the freeway. Later it was determined that the police were using a radar to catch speeders, but it had caused her and her passengers to be in fear when they thought it was a gun. Two days prior to the complaint being filed, a woman had been shot in the face while driving her car by a person standing on a freeway overpass. Detective Z. from Internal Affairs advised that if a similar shooting occurs again, APD will revisit its policy on using radar units on overpasses. No SOP violations occurred in this matter. This case was ADMINISTRATIVELY CLOSED.

CPC 013-15 – A citizen who was involved in a traffic accident alleged that it took officers over an hour to arrive on scene, that the report contained incorrect information, that the officers were rude and unhelpful, and he had not received a copy of the report. After speaking to the CPOA Investigator, the citizen expressed a desire for his complaint to be handled informally. An APD Commander spoke with the officers involved and their Supervisor. The Supervisor spoke to the citizen who stated he was satisfied with the way the complaint was handled. This complaint was administratively closed.

CPC 049-15 – A citizen complained that two APD officers who were in a Loves gas station allegedly yelled at her son to say hello to the cashier and accused him of obstruction of justice for arguing with them. A review of the Loves surveillance video showed that the only person besides the cashier was a security guard. No APD officers were in the area at that time. The video showed that the complainant’s son only spoke to the security guard. Since there is no further information, and no evidence that any APD employee was involved, this case was ADMINISTRATIVELY CLOSED.

CPC 057-15 – A citizen complained that in 2008, an APD officer refused to read Miranda Rights, violently took him by force, and conducted an illegal search. The officer allegedly searched him and took his license. The citizen stated that the officer tossed him out of his car and left him on the side of the road. A review of the case and all records relating to the complainant failed to show any incident matching the one in the complaint. Due to a lack of information the CPOA ADMINISTRATIVELY CLOSED this case.

CPC 070-15 – A citizen complained that she had left numerous messages for Officer I. regarding problems she was having with neighbors. The investigation found that Officer I. had not received any messages from the citizen. As there were no SOP violations found, the complaint was ADMINISTRATIVELY CLOSED.

CPC 087-15 – A citizen complained that after his wife was in a traffic accident, it took APD over an hour and a half to arrive. APD dispatch had informed the citizen that they were especially busy that day. Since no individual officer could be identified, and since the issue had to do with the volume of calls to APD that day, the case was ADMINISTRATIVELY CLOSED. The citizen was informed that the issue would be brought up to the Police Oversight Board.

CPC 104-15 – A complainant alleged that he witnessed an APD officer speeding, and he caught up to the officer and video-taped him. The complainant spoke to an APD Lieutenant, but refused to answer certain questions and told the Lt. that he'd erased the video. The case was referred to Internal Affairs for possible criminal activity. It was returned to CPOA after no criminal activity could be found. The CPOA could find no evidence of SOP violation and due to lack of information it was ADMINISTRATIVELY CLOSED.

CPC 126-15 – A citizen complained that he was falsely arrested and that APD officers placed an illegal wire-tap device in his vehicle. The citizen stated that he was also arrested on a later date and his vehicle was impounded. The complaint alleged that during this arrest, APD officers stole his watch and damaged his cell phone, which he alleged were inside his impounded vehicle. Due to the allegations of criminal misconduct, the CPOA referred this complaint to Internal Affairs. No SOP violations were identified in a review of this complaint. No information could be found regarding the second arrest. This complaint was ADMINISTRATIVELY CLOSED.

CPC 133-15 – A citizen complained that APD SWAT had used tear gas or some similar gas in the neighborhood where they live, which forced them to have to leave their home because of irritation from the gas. The citizen felt APD should have warned people they would be using gas. A preliminary investigation into the complaint determined that APD had followed protocol for using gas to get a suspect out of a neighboring house, including an announcement over a PA system with the warning that residents should stay inside. The citizen did not respond to numerous attempts to contact him after filing this complaint. Because no SOP was violated, this case has been administratively closed.

CPC 137-15 – A citizen complained that they called APD because their neighbor kept putting branches from the citizen's tree that had fallen into their yard back into the citizen's yard. The police allegedly told the neighbors that it was okay to do that. The citizen requested that someone from APD come out and tell the neighbor that it was unlawful for them to do that. During the CPOA investigation, Chief Eden had two officers go back to the neighbor's home to inform them that what they were doing was not lawful and Chief Eden reported back to the citizen that it had been taken care of. Since

this complaint was resolved to the citizen's satisfaction, it was ADMINISTRATIVELY CLOSED.

CPC 139-15 – A complaint was filed by a citizen who claimed that she was yelled at by an officer who was at the scene of an accident as she tried to pass by the officer's vehicle. The investigation revealed that the officer is no longer employed by APD. Since the CPOA lacks jurisdiction to investigate further, this case was ADMINISTRATIVELY CLOSED.

CPC 148-15 – A complaint was filed by a citizen who alleged that APD used excessive force in apprehending a man, who was Tased and subsequently knocked unconscious. The investigation revealed that police were responding to a 911 call by a woman who was being attacked by a home invader. The attacker fled when police arrived and physically assaulted officers while trying to get away. Another officer chose to use the least amount of force necessary to apprehend the man, and used his Taser on him. The man hit his chin on the sidewalk when he fell. Upon learning the details of the case, the complainant asked to withdraw the complaint and agreed that the police had not used excessive force. The complaint was ADMINISTRATIVELY CLOSED.

CPC 151-15 – A citizen alleged that in 2008, Officer K., Officer G., and Officer P. bullied, harassed, and intimidated him. The citizen claimed that the officers lied and were disrespectful of him and determined that he was suicidal and incapable. The investigation showed that the citizen previously filed the same complaint. There is no record of the incident alleged in the complaint. All three officers have retired. Due to a lack of any SOP violations, lack of information, and lack of evidence of the incident, this complaint was ADMINISTRATIVELY CLOSED.

CPC 152-15 – A citizen alleged that when she called to report her car stolen, the Telephone Reporting Unit (TRU) operator refused to take a report because the car was not insured. Several months later, the citizen claimed she discovered the car had been towed by APD, but the driver was not arrested because the car had not been reported as stolen. During the investigation, the phone records were extensively reviewed, but no record of the call was found. Because it was impossible to determine who the operator was, no further investigation was conducted. The Supervisor for TRU was asked to inform all personnel that insurance is not required to file a report of a stolen car. This complaint was ADMINISTRATIVELY CLOSED.

CPC 153-15 – A citizen alleged that he requested a welfare check on his child and had asked to remain anonymous, but that Officer G. had identified him to his ex-wife. A preliminary investigation showed that Officer G. discovered the citizen's ex-wife had a restraining order against him and by sitting across the street from her home and calling APD about his ex-wife he was in violation of the restraining order. In addition, Officer G. had not been given the ex-husband's name and only identified that the same person texting the ex-wife had called in the anonymous complaint. Since no violations of SOPs had occurred, this case was ADMINISTRATIVELY CLOSED.

CPC 158-15 – A citizen complained that Detective P. asked him if he owed anyone money for drugs during an investigation into who may have embezzled his motorcycle. A CPOA investigation showed that Detective P. was never assigned to the case and only had one brief interaction with the citizen. Det. P. did not remember what the citizen had described. The CPOA made several attempts to contact the citizen to get more information, but was not successful. This complaint was ADMINISTRATIVELY CLOSED.

CPC 159-15 – An anonymous complainant alleged that Officer M. gave him numerous citations and towed his scooter. The complaint did not allege wrongdoing by Officer M., but stated that the officer could have handled things differently. A review of the lapel video showed that Officer M. was professional and courteous during the stop. Since no SOPs were violated, this complaint was ADMINISTRATIVELY CLOSED.

CPC 161-15 – A citizen alleged that he called APD to report an assault against him, but stated that officers didn't tell him what was happening and he hasn't heard from either officer who responded. A review of the complaint revealed that two officers responded, and issued the citizen and his neighbor citations for battering each other. The citation informed the citizen of what was happening. This case was ADMINISTRATIVELY CLOSED.

CPC 164-15 – A citizen filed a complaint alleging that she was told by an officer that if she kept calling APD she could lose her housing voucher. She stated she had called police because her bank card was stolen on a previous occasion. A CPOA Investigator attempted to contact the citizen to get more information because no date of the incident was provided. When contacted, the citizen stated she did not wish to pursue the complaint. The Investigator ensured she was dropping the complaint of her own free will. Without further information, and since the citizen wished to withdraw the complaint, the case was ADMINISTRATIVELY CLOSED.

CPC 166-15 – A citizen complained that he was pulled over and had his car towed because he is African American. He alleged that the officer called him the "N" word as he walked away. The CPOA investigation revealed that the car was towed because the citizen had a suspended license. Lapel video showed that the man was visibly upset at having his car towed, and also showed that the officer never called him the "N" word. The citizen told the CPOA Investigator that he was angry at the time that he filed the complaint, but now wished to withdraw the complaint. Since no SOP violations occurred and the citizen wished to withdraw the complaint, the case was ADMINISTRATIVELY CLOSED.

CPC 187-15 – A citizen stated that she witnessed an APD officer run a red light. The police vehicle did not have lights or sirens on. A review of the complaint revealed that the officer had been responding to a fight in progress. The citizen indicated she would be satisfied with the officer's supervisor speaking to the officer about safely operating a police vehicle. The officer's Sergeant spoke with him about the importance of following

SOP while driving his vehicle. The citizen was satisfied with the informal handling of the complaint, and so it was ADMINISTRATIVELY CLOSED.

CPC 202-15 – A citizen complained that an APD officer had used his air horn to get the citizen to pull out of the spot he was in to pick up his child from school, only to have the officer take his spot, pick up his own child, and drive away. Numerous attempts were made by the CPOA to contact the officer and his supervisor. It was eventually discovered that both the officer and the supervisor had retired. Since the CPOA lacks jurisdiction to investigate complaints against former APD officers, this case was ADMINISTRATIVELY CLOSED.

CPC 207-15 – A citizen complained of misconduct on the part of a Bernalillo County Sheriff's Officer. Since the CPOA has no jurisdiction to investigate complaints against BCSO, the case was ADMINISTRATIVELY CLOSED.

CPC 218-15 – A citizen alleged that a 911 operator had been rude, argumentative, and disrespectful when she'd called to file a report. The operator's supervisor reviewed the call and determined that the operator did not handle the call appropriately. The supervisor addressed the operator's attitude, issued a counseling memorandum, and reviewed policy with the operator.

CPC 221-15 – A citizen alleged that an APD officer had kicked him while he was lying down in a park. He stated that he already has a lawsuit against the city. Efforts were made by the CPOA to identify the officer in the complaint. No officers who were assigned to the area on the date of the incident matched the description given by the citizen. Due to a lack of information in this case, it was ADMINISTRATIVELY CLOSED.

CPC 225-15 – A citizen complained that she witnessed an APD officer speeding without service lights engaged, and that when she asked the officer if he was running code, the officer responded rudely to her. The CPOA exhausted every lead in trying to identify the officer, but without further information the agency is unable to conduct an investigation. This case was administratively closed.

CPC 226-15 – An employee with APD Records Division filed a complaint regarding an incident in which an irate customer had threatened to file a complaint on the employee and other staff. The employee had already filed a complaint with Internal Affairs. Because filing a complaint on behalf of a citizen is invalid, the CPOA ADMINISTRATIVELY CLOSED this case.

CPC 229-15 - An emailed complaint was received allegedly from a Judge of the Metropolitan Court. The complaint stated Officer B posted inappropriate content about the Judge on Facebook in response to a news story. The CPOA Investigator spoke to the Judge, who stated that the complaint did not come from him, and that he was unconcerned with the comment and did not wish to file a complaint. This case was ADMINISTRATIVELY CLOSED.

XIII. Other Business:

- A. The Board discussed hearing complaints at the beginning of the POB meeting since as it gets later most community members have already left. A shorter synopsis can be read and a brief description of the SOP would be adequate. In future meetings, the Board will hear cases directly after public comments in order to have more of the public present during that time.
- B. Board members need to make sure to do their ride-along with APD.
- C. The POB will select a new Chair at the next POB meeting.
- D. Board Member Cruz reiterated the following action items:
 - 1. **The CPOA will post IPRA emails as soon as possible.**
 - 2. **Director Harness will present a quarterly budget report.**
 - 3. **Board members will email Member Baca or Amanda Bustos with their comments on the brochure draft.**

XIV. Adjournment: Member Baca moved to adjourn the meeting. Board Member Cruz seconded the motion. Passed. For: Waites, Cruz, Baca, Brown, Wilson, Ring, Fine, and Mohr. The meeting adjourned at 9:24 p.m.

- Next regularly scheduled POB meeting will be on Thursday, February 11, 2016 at 5 p.m. in the Vincent E. Griego Chambers.

APPROVED:

Leonard Waites, Chair
Civilian Police Oversight Agency

Date

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

“Attachment A”

STATEMENT RE OWENS LETTER

We now address the letter sent to the Board by James Owens, which alleges violations of the Open Meetings Act by the Board. Generally, Mr. Owens's letter expresses concern that certain email correspondence among Board members violated the Open Meetings Act because the emails were circulated to a quorum of Board members. To address his concerns, counsel has reviewed the Board members' emails that were produced in response to several requests under the Inspection of Public Records Act. Some emails from Board members were circulated to a quorum of the Board. These emails include emails addressed to an email address – pob@cabq.gov – which automatically forwards emails sent to that address to each member of the Board. This email address was created as a result of a settlement involving the Board's predecessor, the Police Oversight Commission. It appears that some members of the Board copied this email address on emails discussing Board business under the mistaken impression that the address was a repository to preserve emails for public records requests. We have found no emails from Board members circulated to a quorum of Board members after September 3, 2015.

The Board is committed to conducting its business in accordance with our state's strong commitment to open government. Not only are the Board's meetings broadcast on Gov TV, but archives of the video of the meetings are available on the Board's website. In addition, the Board has retained counsel experienced in open government matters. The Board also made a special request to the New Mexico Foundation for Open Government for a training session to the Board on the Open Meetings Act, and that training took place on April 29, 2015. Finally, after receiving Mr. Owens's letter, Board counsel contacted the Attorney General's Office to seek guidance.

It is not clear whether any of the Board's email correspondence actually constitutes a violation of the Open Meetings Act. Nevertheless, the Act provides the Board with an opportunity to address a claimed violation by providing "a summary of comments made at the meeting at which the claimed violation occurred." Out of an abundance of caution, I now provide such a summary. The emails address the following:

- Routine correspondence circulating agendas, minutes, and materials to be discussed at upcoming meetings;
- Business cards for the Board members;
- Cancellation of subcommittee meetings;
- A commendation for Officer Sharon Saavedra, who has been invaluable in training the Board on police policy and procedure;
- The proper role and subject matter for the Board's subcommittees;
- The selection process to hire an Executive Director. These emails only discuss process; there is no discussion of individual candidates;
- Document management for meetings;
- The protocol to responding to citizen emails regarding public records requests;
- Emails to, and occasionally about, staff: requesting information from staff, assigning tasks to staff, thanking staff for tasks performed, and informing staff of the failure to adequately perform assigned tasks and allegations made about a

particular staff member. These also include emails discussing the division of oversight over the CPOA between the Board and the City;

- Retention of Independent Counsel;
- Retaliation policies;
- How to handle media inquiries;
- The timeline for CPOA review of citizen complaints;
- A meeting between a Board member and two city councilors;
- The ride-along policy for Board members;
- The process for filling the vacancy on the Board after Ms. Sandoval resigned;
- Links to materials for discussion;
- Questions about the CPOA's semi-annual report;
- Appointment of Paul Skotchdopole as Office Manager by Chair Waites to fill the gap before Director Harness came on board;
- Board members announcing that they were resigning or taking a back seat on subcommittees to focus on either other subcommittees or the Board as a whole; and
- Finally, there are numerous emails reflecting the Board's efforts to comply with the Open Meetings Act.

In his letter, Mr. Owens identifies some of these emails, and while he states that actions taken in violation of the Open Meetings Act are invalid, he has not identified any actions of the Board or its Subcommittees that he contends are invalid. Under the Act, all actions are entitled to a presumption of validity, and while we will certainly make every effort to address any invalid action, we cannot reverse that presumption and assume that any of the Board's prior actions are invalid. It is therefore inappropriate for us to revisit any previous Board action at this time.

