

CIVILIAN POLICE OVERSIGHT AGENCY BOARD

Dr. William J. Kass, Chair *Eric Olivas, Vice Chair*
Tara Armijo-Prewitt *Chantal M. Galloway* *Doug Mitchell*
Eric Nixon *Cathryn Starr*
Edward Harness, Executive Director

BOARD AGENDA

Thursday, August 13, 2020 – 5:00 PM

Attendance: In response to the Governor’s declaration of a Public Health Emergency and ban on large public gatherings, the Civilian Police Oversight (CPOA) Board meeting on Thursday, August 13, 2020 at 5:00 pm will be held via Zoom video conference.

Viewing: Members of the public will have the ability to view the meeting through GOVTV on Comcast Channel 16, or to stream live on the GOVTV website at: <https://www.cabq.gov/culturalservices/govtv>, or on YouTube at: https://www.cabq.gov/cpoa/events/copy12_of_cpoa-board-meeting. (Please note that the link for YouTube has not yet been generated, however, the link could easily be found on the link provided above prior to the start of the meeting). The GOVTV live stream can be accessed at these addresses from most smartphones, tablets, or computers.

The video recording of this and all past meetings of the CPOA Board will also remain available for viewing at any time on the CPOA’s website. CPOA Staff is available to help members of the public access pre-recorded CPOA meetings on-line at any time during normal business hours. Please email CPOA@cabq.gov for assistance.

Public Comment: The agenda for the meeting will be posted on the CPOA website by 5:00 pm, Monday, August 10, 2020 at www.cabq.gov/cpoa.

The CPOA Board will take general public comment and comment on the meeting’s specific agenda items in written form via email through 4:00 pm on Thursday, August 13, 2020. Submit your public comments to: POB@cabq.gov. These comments will be distributed to all CPOA Board members for review.

- I. Welcome and call to order**
- II. Mission Statement – *Dr. William Kass, Chair***

*“Advancing Constitutional policing and
accountability for APD and the Albuquerque
Community.”*
- III. Approval of the Agenda**
- IV. Public Comments**
- V. Review and Approval of Minutes from July 9, 2020**

VI. Reports from City Departments

- a. **APD**
 - 1. **CACU Field Officer Training**
 - 2. **Report on Use of Military Equipment**
- b. **City Council**
- c. **Mayor's Office**
- d. **City Attorney**
- e. **CPC**
- f. **APOA**
- g. **Public Safety Committee**
- h. **CPOA – Edward Harness, Executive Director**

VII. Reports from Subcommittees

- a. **Community Outreach Subcommittee – Chantal Galloway**
 - 1. **Met July 28, 2020 at 3:00 pm (video conference)**
 - 2. **Next meeting August 25, 2020 at 3:00 pm**
- b. **Policy and Procedure Review Subcommittee – Dr. William Kass**
 - 1. **Met August 6, 2020 at 4:30 pm (video conference)**
 - 2. **Next meeting September 3, 2020 at 4:30 pm**
- c. **Case Review Subcommittee – Chantal Galloway**
 - 1. **Met July 28, 2020 at 4:40 pm (video conference)**
 - 2. **Next meeting October 27, 2020 at 4:30 pm**
- d. **Personnel Subcommittee – Doug Mitchell**
 - 1. **Met July 27, 2020 at 3:00 pm (video conference)**
 - 2. **Next meeting August 31, 2020 at 3:00 pm**

VIII. Discussion and Possible Action

- a. **Subpoena Consideration and Issuance CPC 161-20**
- b. **Approval of Executive Director's Evaluation Form**
- c. **Approval of Board Appeal Finding Letter for CPC 046-20**
- d. **Discussion of Board Members' Response to Public Inquires**
- e. **Approval of October and November 2020 Board Meeting Date Changes**

IX. Review of Cases:

- a. **Administratively Closed Cases**
147-20 155-20

X. Request for Reconsideration
098-18

XI. Serious Use of Force Cases/Officer Involved Shooting
18-0122233 18-0118590 19-0035838

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August 13, 2020
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XII. Other Business

XIII. Adjournment- *Next Regularly scheduled CPOA Board meeting will be on September 10, 2020 at 5:00 p.m.*

CITY OF ALBUQUERQUE



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Edward Harness, Executive Director

Doug Mitchell

August 13, 2020

Via Certified Mail

7018 1130 0002 3429 0791

Re: CPC #046-20 APPEAL

Dear Mr. M :

I. THE COMPLAINT

Mr. M said he was driving home from work when he was passed by APD vehicle P77. He said when he caught up to the vehicle their rate of speed was about 100 mph. He said he was filming this on his phone on the dash of his car. He said he followed behind the officer and as they got closer to Albuquerque, the officer noticed he was being filmed, so he started slowing down. Mr. M continued to follow behind the officer because if he would have passed the officer he would have been speeding. The officer switched lanes and Mr. M continued following behind and switched lanes behind the officer. He complained that the officer then slammed on his brakes and came to a complete stop on the freeway, putting Mr. M and other drivers at risk. He had to swerve around the officer to avoid a collision and when he did the officer put on his lights and pulled him over. Mr. M complained he hadn't broken any laws, yet he was still pulled over. The officer told him that it isn't safe for Mr. M to be following him. Mr. M said it's not against the law to film or watch officers and he just happened to be going the same way as the officer. He complained that he called 311 and felt that the woman who took his info couldn't fully understand him and couldn't report or record what needed to be recorded. He complained he still hasn't received a call back from 311.

II. THE ORIGINAL INVESTIGATION

The CPOA Investigator reviewed your complaint, Officer C.'s written report, and APD SOPS. It should be noted that Officer C. had lapel video of the incident; however, due to the 120-day automatic deletion policy, the lapel video was not available to the Investigator. Your complaint showed that you admitted to driving about 100 mph while catching up to Officer C. in your vehicle and following behind him, which is breaking the law and is contradictory to your statement that you did not break the law. Officer C.

wrote an incident report summarizing the incident from his perspective and, in it, explained that he became concerned with you following behind him when he saw a small light on your dashboard. He thought the light may have been a signal to him that you were having an emergency so after changing lanes and getting into the right lane, he applied his brakes so you passed him and that's when he activated his emergency lights and siren. He approached you and asked if everything was okay due to you following him. You told him you were recording him and that his driving was inadequate. He asked if you wanted to make a police report and you told him you wanted to file a formal complaint another way. He then provided you with a complaint form, his name and badge number so you could file a formal complaint. He then told you not to follow any police officers in the future because due to their line of work this behavior could be perceived as someone trying to ambush and kill police officers.

III. THE APPEAL

The Board for the Civilian Police Oversight granted a request for appeal in this case on May 21, 2020 for the following reasons:

- Complainant's video footage never obtained and reviewed
- Officer C.'s lapel video was said to have been unavailable due to the Department's 120-day video deletion policy
 - At the of the appeal request hearing, Director Edward Harness acknowledged that lapel footage was, in fact available.

The appeal was originally scheduled to be heard in June, but the complainant's video had not been obtained for Board review, so the appeal hearing was delayed until the July 9th meeting of the Board.

On July 8, 2020, an email was sent to Director Harness stating that Mr. M would not be able to attend the July 9th meeting. At that meeting, the Board, having reviewed the appeal documents and videos, voted to proceed with the appeal hearing even though Mr. M would not be in attendance.

IV. APPEAL CONCLUSION

The Board acknowledges that the findings letter inaccurately indicated the lack of availability of Officer C.s lapel video due to the 120-day automatic deletion policy. The lapel video was eventually made available by the CPOA and reviewed by the Board. We also acknowledge that there was a failure on the part of the CPOA to obtain the complainant's video evidence prior to the appeal hearing. Once made available to the Board, the video was used to support the findings below.

The Agency and Board originally failed to identify a **SUSTAINED** policy violation of SOP 1-1-4 (F)(2)2 which states, in part, "Personnel will operate official vehicles in a careful and prudent manner and will obey all laws and all department orders about such operations".

Officer C.'s lapel video was not activated until after the complainant had been pulled over and contact was made between the parties. However, after reviewing Mr. M cell phone video, it was unanimously determined that Officer C. was, in fact, driving at a speed of between 90 and 95 miles per hour. We note, however, that there was no evidence available to support the allegation that the officer "slammed on his brakes and came to a completed stop on the freeway".

The Board for the Civilian Police Oversight Agency thanks you for your willingness to fully engage the complaint process.

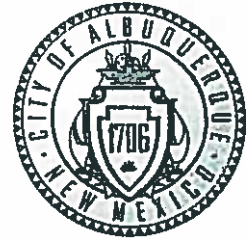
Sincerely,
The Civilian Police Oversight Agency Board by

A handwritten signature in black ink that reads "William J. Kass, Ph.D." The signature is written in a cursive style with a large initial 'W' and 'J'.

Dr. William Kass, Chair
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



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Eric Nixon *Cathryn Starr*

Edward Harness, Executive Director

Doug Mitchell

August 14, 2020

Via Certified Mail

7018 1130 0002 3429 1620

Re: CPC #147-20

Dear Mr. G :

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on June 3, 2020, regarding an incident that occurred on or about December 18, 2019.

I. THE COMPLAINT

PO Box 1293 R G submitted a written complaint concerning issues with R S family. Mr. G wrote, "They break into our house, forward our mail, break into cars, hack email accounts, stalk us, spy on us, sexually harass us, sell drugs." The only thing he mentioned about police is that he has called 911 and no one responded. His complaint form provided a date of 12/18/19 and an address.

Albuquerque

II. INVESTIGATION

NM 87103 The CPOA Investigator had CADs attempt to find any call for service in that area on that date. According to CADs nothing was found.

www.cabq.gov Mr. G: phone number on the complaint was invalid and his email was illegible so a certified letter was sent to him. Mr. G responded and left a valid number on voicemail. The CPOA Investigator contacted Mr. G to see if he had more information to provide. Mr. G said he was shot at and called 911, but police did not respond. Mr. G: then spoke about the problems he has had with a former neighbor. Mr. G said this neighbor had the same officer respond to all of it and therefore nothing was being done. He said it was the same officer that did not respond to his call to police about the shooting. He said he has been trying to get help in dealing with this family, but this officer has protected them. When asked who the officer was Mr. G said he has heard different names and provided a list of common first names. Mr. G: did not know the name of the officer or have a car number. He said the same officer arrested him, but he did not have the dates.

The CPOA Investigator reviewed the NM courts records for Mr. G to try and determine an arrest date. There were no recent cases. The older cases were all involving different officers and none seemed to fit the brief description he provided. Mr. G said in email he would provide the arrest date and the information about the officer the next day. The CPOA Investigator sent an email about ten days later as a follow-up. About a week later Mr. G left another voicemail stating he had dates, but he did not provide them on the message. The CPOA Investigator sent another follow-up email, but Mr. G did not respond. During the conversation and in email Mr. G had been informed he could refile his complaint once he had more information.

III. CONCLUSION

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as there was not enough information to identify the officer or locate the incident.

Administratively closed complaints may be re-opened if additional information becomes available. Please contact the CPOA in regards to your Civilian Police Complaint if you can provide further details and wish to have the complaint re-opened.

You have the right to appeal this decision.

If you are not satisfied with the findings of the CPOA within 30 days of receipt of this letter communicate your desire to appeal in a signed writing to the undersigned. Include your CPC number.

The Board may grant a Request for Reconsideration only upon the complainant offering proof that:

The APD policy or APD policies that were considered by the Board were the wrong policies or they were used in the wrong way; or,

- A) The APD policy or APD policies considered by the Board were chosen randomly or they do not address the issues in your complaint; or,
- B) The findings of the Board had no explanation that would lead to the conclusion made by the Board; or,
- C) The findings by the Board were not supported by evidence that was available to the Board at the time of the investigation.

If you are not satisfied with the final disciplinary decision of the Chief of Police you can request a review of the complaint by Albuquerque's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

Letter to Mr. G
August 14, 2020
Page 3

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by

A handwritten signature in blue ink, appearing to read 'EH', is written over the text 'The Civilian Police Oversight Agency by'.

Edward Harness, Esq.
Executive Director

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



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Edward Harness, Executive Director

Doug Mitchell

August 14, 2020

Via Email

Re: CPC #155-20

Dear Mr. D

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint against Officers of the Albuquerque Police Department (APD) on May 1, 2020, regarding an incident that occurred on March 15, 2020.

I. THE COMPLAINT

PO Box 1293 Albuquerque NM 87103
www.cabq.gov

Mr. D submitted an emailed complaint regarding his observation that Officer P looked unhappy while standing in the background with Officer R. Mr. D wrote he was near the police car when Officer P approached. He smiled and spoke to start to introduce himself, but Mr. D claimed Officer P looked him up and down with no smile, said nothing, and got into the patrol car to use the computer. Mr. D wrote he was offended because it made him feel beneath the officer. Officer P spoke to hotel staff and it appeared to Mr. D that the officer was going through the motions. Mr. D later asked the hotel staff if Officer P was polite and the staff said he was.

II. INVESTIGATION

The CPOA Investigator reviewed the lapel videos from the incident. An elderly couple called police regarding the theft of items from their vehicle in the hotel parking lot. Officers P and R responded with Officer R doing most of the talking. Mr. D sat several feet away having breakfast while the officers were at the front desk. Officer R's video caught a few glimpses of Officer P and he did not have an obvious expression on his face at those times. The officers and the couple were in the lobby very briefly. The video showed Officer P was professional and engaged with the couple while they were at their vehicle discussing the incident. Officer P left Officer R and the couple to input some information into the computer. As Officer P approached the patrol car, Mr. D said something to Officer P from approximately thirty-five to forty feet away. The video did not capture what Mr. D said other than it ended with "you guys." Mr. D said nothing additional when Officer P was closer or passed him. Officer P did not say anything, did not pause, and got in his car to use the computer for the call. He completed his task and returned to Officer R and the couple. The video showed Officer P then

approached the front desk and asked about camera access. Mr. D was in the lobby looking at his phone. Officer P concluded his business with the hotel staff, thanked them, and left.

Mr. D: __ was not interviewed as his complaint expressed how he felt and the lapel videos covered the full extent of the officer's conduct with the victims and Mr. D:

III. CONCLUSION

The CPOA has made the decision to **ADMINISTRATIVELY CLOSE** the complaint, as Mr. D __ was not involved in the call for service and filed the complaint based on his perception of the officer's expression and the officer's lack of acknowledgement of him while on a call. The available evidence showed Officer P was professional with the victim and the hotel staff. Mr. D written complaint stated the hotel staff considered Officer P polite. The complaint should be administratively closed as there was no violation of any SOP.

You have the right to appeal this decision.

If you are not satisfied with the findings of the CPOA within 30 days of receipt of this letter communicate your desire to appeal in a signed writing to the undersigned. Include your CPC number.

The Board may grant a Request for Reconsideration only upon the complainant offering proof that:

- A) The APD policy or APD policies that were considered by the Board were the wrong policies or they were used in the wrong way; or,
- B) The APD policy or APD policies considered by the Board were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the Board had no explanation that would lead to the conclusion made by the Board; or,
- D) The findings by the Board were not supported by evidence that was available to the Board at the time of the investigation.

If you are not satisfied with the final disciplinary decision of the Chief of Police you can request a review of the complaint by Albuquerque's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

Letter to Mr. D
August 14, 2020
Page 3

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by

A handwritten signature in blue ink, appearing to read 'E. Harness', with a stylized flourish extending upwards and to the right.

Edward Harness, Esq.
Executive Director

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



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Eric Nixon *Cathryn Starr*

Edward Harness, Executive Director

Doug Mitchell

September 9, 2020
Via Certified Mail
7018 1130 0002 3429 1255

Re: CPC 098-18

Dear Mr. H.

The Board may grant an Appeal only upon the complainant's timely request offering proof that:

- A) The APD policy or APD policies that were considered by the CPOA were the wrong policies or they were used in the wrong way; or,
- B) The APD policy or APD policies considered by the CPOA were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the CPOA had no explanation that would lead to the conclusion made by the CPOA; or,
- D) The findings by the POB were not supported by evidence that was available to the CPOA at the time of the investigation.

On August 13, 2020 the Board considered your submission for Appeal and request for hearing. The Board deemed your request did not meet the standards set forth in City of Albuquerque' Oversight Ordinance. Therefore, your request for hearing in front of the Board has been denied.

Sincerely,

/s/Edward W. Harness
Edward Harness, Esq.
Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



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Edward Harness, Executive Director

Douglas Mitchell

August 13, 2020

Michael Geier, Chief of Police
C/O Internal Affairs Unit
Albuquerque Police Department
400 Roma NW
Albuquerque, NM 87102

RE: APD Case # 18-0118590, IAFD Case # C2018-000097

Dear Chief Geier:

My review of this case included:

- Responding to the incident and being briefed on December 12, 2018
 - Computer Aided Dispatch Reports
 - APD Field Services Reports
 - Criminalistics Reports
 - Crime scene photos
 - Internal Affairs Reports
 - Officer Interviews
 - Internal Affairs Force Division Reports
 - Command Review
 - Multi Agency Task Force Reports
 - Office of Medical Investigators Report
 - Witness statements
 - On Body Recording Device Videos
 - APD Policy 2-52 Use of Force
 - Attending the Force Review Board Briefing February 20, 2020
- PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

My review of the evidence shows on December 12, 2018 the victim (Mr. R) approached Ms. H. with a handgun and tried to rob her. He fled that scene in the arroyo near San Mateo and Montgomery. Ms. H gave responding officers a description, while a Mr. W who observed the attempted robbery called 911 and gave officers details on Mr. R's escape route.

As Mr. R continued to flee the robbery scene he is confronted by Officer #2. Mr. R disregards the commands of Officer #2 to stop and get on the ground. Instead Mr. R continues to flee eastbound, climbing a wall and jumping into the back yard of a residence on Kiowa Ave NE.

A civilian, Mr. H. contacts APD Officer #4 stating Mr. R jumped into the back yard where his children were home. Also, that Mr. R had shot and killed the family dog. Officer #4 advises other officers on the scene of these details.

Officers #1 and #2 enter an adjacent backyard to search for Mr. R. Officers announce their presence in the backyard and command Mr. R to show himself. Mr. R. is observed hiding behind a wheelbarrow, holding a handgun, pointed at Officer #1. Officers #1 discharges his duty weapon.

Officers render medical treatment, but Mr. R dies at the scene.

Finding: The CPOA finds Officer 1's conduct "**Exonerated,**" regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

The investigation of this case by Albuquerque Police Department Internal Affairs Division is deficient. It did not interview the officers involved in this force incident. It relied on the statements given to the MATF Detectives. APD IA must interview the officers involved because the standard being examined is an administrative review, different than a criminal review.

Sincerely,



Edward Harness, Esq.
Executive Director
Civilian Police Oversight Agency
(505) 924-3770

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Douglas Mitchell

August 13, 2020

Michael Geier, Chief of Police
C/O Internal Affairs Unit
Albuquerque Police Department
400 Roma NW
Albuquerque, NM 87102

RE: APD Case # 19-0035838, IAFD Case # C2019-000029

Dear Chief Geier:

My review of this case included:

- PO Box 1293
- Albuquerque
- NM 87103
- www.cabq.gov
- Responding to the incident and being briefed on April 18, 2019
- Computer Aided Dispatch Reports
- APD Field Services Reports
- Criminalistics Reports
 - Crime scene photos
- Internal Affairs Reports
 - Officer Interviews
- Internal Affairs Force Division Reports
 - Command Review
- Multi Agency Task Force Reports
 - Office of Medical Investigators Report
 - Witness statements
- On Body Recording Device Videos
- APD Policy 2-52 Use of Force
- Attending the Force Review Board Briefing April 23, 2020

My review of the evidence shows on April 18, 2019 officers were dispatched to a home invasion robbery. Upon arrival officers observe Mr. D sitting on stairs outside of . Mr. D matches the description given of the offender.

Officers ask Mr. D to walk over and talk to them, and request he show them his hands. Mr. D fails to comply. Within a matter of minutes Mr. D raises and handgun a fires at the officers.

Officers seek cover. Mr. D begins to flee on foot westward through a parking area. Officers #1, 2, and 3 discharge their duty weapons striking Mr. D.

Officers take Mr. D into custody, and render medical treatment. Mr. D is transported to the UNMH for treatment.

Albuquerque Police Department SOP 2-52-4 (3)(A)(ii) states in the context of Lethal Force – “Officers will adhere to all firearms safety rules as outlined in department training.”

Department personnel are trained to consider the back drop and surroundings when discharging their duty weapons.

The MATF investigation details several rounds impacted and penetrated

Finding: The CPOA finds Officer 1’s conduct “**Sustained**,” where the investigation determines, by a preponderance of the evidence, the alleged misconduct did occur.

Finding: The CPOA finds Officer 2’s conduct “**Sustained**,” where the investigation determines, by a preponderance of the evidence, the alleged misconduct did occur.

Finding: The CPOA finds Officer 1’s conduct “**Sustained**,” where the investigation determines, by a preponderance of the evidence, the alleged misconduct did occur.

The investigation of this case by Albuquerque Police Department Internal Affairs Division is deficient. It did not interview the officers involved in this force incident. It relied on the statements given to the MATF Detectives. APD IA must interview the officers involved because the standard being examined is an administrative review, different than a criminal review. The investigation also failed to identify additional victims of force.

RECOMMENDATION: IAFD open a Force Investigation to identify victims of Lethal Force at [redacted] and evaluate the force used against those victims related to this incident.

Sincerely,



Edward Harness, Esq.
Executive Director
Civilian Police Oversight Agency
(505) 924-3770