

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT BOARD

Thursday, October 13, 2016 – 5:00 PM  
Vincent E. Griego Chambers, Basement Level  
City/County Government Center – One Civic Plaza NW  
Albuquerque, New Mexico

### Members Present:

Beth Mohr, Chair  
Leonard Waites, Vice Chair  
Johnny J. Armijo  
Susanne Brown  
Eric Cruz  
Joanne Fine  
Dr. Carlotta Garcia  
Dr. Lisa M. Orick-Martinez  
Rev. Dr. David Z. Ring III

### Others Present

Edward Harness, CPOA  
Mark Baker, Esq.  
Michelle Contreras, CPOA  
Amanda Bustos, CPOA

### Meeting Minutes

#### **I. Welcome and call to order**

Chair Beth Mohr called to order the regular meeting of the Police Oversight Board at 5:04 p.m.

#### **II. Pledge of Allegiance – Leonard Waites, Vice-Chair**

#### **III. Approval of the Agenda**

A motion was made by Vice Chair Waites to approve the agenda as amended. Member Fine seconded the motion. The motion was carried by the following vote:

For: 8 - Armijo, Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

#### **IV. Public Comments**

a) Mr. Charles Arasim gave a summary to the board regarding cases CPC 030-15, CPC031-15 and CPC 050-15.

b) Mr. Shawn Willoughby gave a summary to the board regarding CPC 088-16 and the NCIC/MVD process.

**V. Review and Approval of minutes from the September 8, 2016 Police Oversight Board Meeting**

A motion was made by Member Fine to approve the minutes. Vice Chair Waites seconded the motion. The motion was carried by the following vote:

For: 8 - Armijo, Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

**VI. Discussion:**

**a) Open Meetings Act Resolution.** Chair Mohr read the Open Meetings Act Resolution. (See attachment A). A motion was made by Member Fine to pass the OMA Resolution. Vice Chair Waites seconded the motion. The motion was carried by the following vote:

For: 8 - Armijo, Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

**b) CPC 088-16.**

1. Attorney Thomas Grover gave a summary to the board regarding CPC 088-16 on behalf of his client Mr. Adam Anaya.
2. Mr. Adam Anaya gave a summary to the board regarding CPC088-16.
3. CPOA Executive Director Harness discussed CPC 088-16. (See attachment "B" as follows: a) CPOA Executive Director's Memo to Chief Eden dated September 8, 2016, b) APD Recommendation Form, and c) Letter dated September 20, 2016 from Erika Wilson to Department of Public Safety.

**VII. Consent Agenda Cases.** The cases on the consent agenda have been individually reviewed by the Board members and the POB agrees with the CPOA's findings. The findings become part of the officer's file, if applicable. Copies of the full findings letters to citizens can be found at: <http://www.cabq.gov/cpoa/findings-letters/civilian-complaints-pob-findings>.

**a) Administratively Closed Cases**

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

A motion was made by Vice Chair Waites to approve the *Administratively Closed Cases* as written. Member Fine seconded the motion. The motion was carried by the following vote:

For: 7 - Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

**b) Cases investigated**

140-16

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

For: 7 - Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

**c) CIRT Cases**

C-004-16            C-029-16

A motion was made by Vice-Chair Waites to approve the *CIRT Cases* as presented. Member Fine seconded the motion. The motion was carried by the following vote:

For: 7 - Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

**VIII. POB's Review of Garrity Materials:**

- a) There are no current Officer Involved Shooting cases this month that require Garrity approval.
- b) The Garrity materials are still available for the POB to review in I-14-99, Mary Hawkes.

**IX. (Previously listed on agenda as Item XI). Meeting with Counsel re: Pending Litigation & Personnel Issues.**

- a) **Matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant pursuant to NMSA 1978, Section 10-15-1(H)(7);**
- b) **Limited personnel matters pursuant to NMSA 1978, Section 10-15-1(H)(2)**
  - 1. A motion was made by Chair Mohr to go into an executive session to discuss Executive Director Edward Harness' job performance evaluation. Member Brown seconded the motion. The motion was carried by the following vote:  
Roll call: Orick-Martinez, Fine, Mohr, Waites, Ring, Brown, Garcia, Armijo (Member Cruz arrived after the vote at 6:25 p.m.)  
  
The lunch break was combined with the executive session. The POB went into an executive session at 6:15 p.m.
  - 2. At 7:06 p.m., the POB came out of an executive session. Prior to the motion, Chair Mohr read the following statement:

*“The executive session was for limited personnel matters pursuant to NMSA 1978, Section 10-15-1(H)(2) and during our executive session, we only discussed said limited personnel matters. There was no other discussion and anything that we discussed that is going to be voted on, we will be bringing it back to this meeting for a vote.”*

3. A motion was made by Member Fine to come out of an executive session. Member Ring seconded the motion. The motion was carried by the following vote:

Roll call: Cruz, Orick-Martinez, Fine, Mohr, Waites, Ring, Brown, Garcia, Armijo

4. A motion was made by Member Fine to retain Edward Harness with a 5% raise and to send the wage increase to City Council. Member Ring seconded the motion. The motion was carried by the following vote:

For: 9 - Armijo, Brown, Cruz, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

## **X. Reports from Subcommittees**

- a) **Community Outreach Subcommittee Outreach Subcommittee – Leonard Waites, Chair.** For more information regarding POB Community Outreach Subcommittee meetings and minutes, please refer to our website located here: <http://www.cabq.gov/cpoa/subcommittees/outreach-committee>

1. **Report:** Community Outreach Subcommittee Chair Waites did not have a report.

2. **POB Mission Statement Study Session Review – Beth Mohr.**

- a. The study session took place on September 7, 2016 at Starbucks on 12<sup>th</sup> Street. (See attachment “C” for study session notes).

- b. A motion was made by Member Orick-Martinez to approve the following mission statement for the POB:

*“Advancing Constitutional policing and accountability for APD and the Albuquerque Community.”*

Member Ring seconded the motion. The motion was carried by the following vote:

For: 9 - Armijo, Brown, Cruz, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

- c) The motion was amended by Member Cruz and Member Armijo. Member Cruz would like to add the mission statement to the beginning of each meeting as a reminder for the POB. Member Armijo would like to see the mission statement added to the POB's letterhead. Member Fine seconded the motion. The motion was carried by the following vote:

For: 9 - Armijo, Brown, Cruz, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

### **3. Appointment of Community Outreach Subcommittee Participants.**

- a. A motion was made by Member Fine to appoint Member Orick-Martinez, Member Ring and Member Armijo to the Community Outreach Subcommittee members from this moment forward. Member Cruz seconded the motion. The motion was carried by the following vote:

For: 9 - Armijo, Brown, Cruz, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

- b) **Policy and Procedure Review Subcommittee – *Susanne Brown*.** For more information regarding POB Policy and Procedure Subcommittee meetings and minutes, please refer to our website located here:

<http://www.cabq.gov/cpoa/subcommittees/policy-procedure-review-committee>

Member Brown gave the following report for the Policy and Procedure Subcommittee:

1. **Report:** The Policy and Procedure Review Subcommittee met on September 22, 2016 at 10:00 a.m. The following topics were discussed:
  - a. APD vehicle accidents.
  - b. An amendment to Policy 3-1, which would require the Chief of Police to have an advanced certification from the New Mexico Law Enforcement Academy or equivalent and the completion of a nationally accredited law enforcement management program.
  - c. The POB's role in Policy on Policy
2. **3-29 Policy Development Process:**
  - a. Member Ring read the POB's proposal to 3-29 Policy Development Process. (See attachment "D" for Proposal to Policy 3-29)
  - b. Members discussed the proposed changes to Policy 3-29.

- c. A motion was made by Member Brown to accept or have further discussion regarding the POB's recommended changes to 3-29-3A and 3-29-3-B-16 (paragraph only, not the flow chart). Member Ring seconded the motion. The motion was carried by the following vote:

For: 9 - Armijo, Brown, Cruz, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

3. **Selection, Authority, and Responsibility of the Chief of Police Policy 3-1.** (See attachment "E" for 3-1 Proposal to Policy 3-1). Member Brown previously discussed Policy 3-1 in item X, b, 1, b. There was no other discussion.
4. The next meeting for Policy and Procedure Review Subcommittee will be on Wednesday, October 26, 2016 at 5:00 p.m.
5. A motion was made by Member Brown to vote on the composition of the Policy and Procedure Review Subcommittee consisting of Dr. Brown, who will remain Chair, Mr. Cruz, Mr. Waites and Ms. Mohr as alternates. Vice-Chair Waites seconded the motion. The motion was carried by the following vote:

For: 9 - Armijo, Brown, Cruz, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

- c) **Case Review Subcommittee – Leonard Waites.** For more information regarding POB Case Review Subcommittee meetings and minutes, please refer to our website located here: <http://www.cabq.gov/cpoa/subcommittees/case-review-committee-crc>. Case Review Subcommittee Chair Leonard Waites gave the following report:

1. **Report:** The Case Review Subcommittee met on October 6, 2016 at 10:00 a.m. The following topics were discussed:
  - a. In CPC 088-16, the Memorandum sent to Chief Eden, Jr. dated September 8, 2016 and the Special Order 15-21. CPC 088-16 was sent over to Department of Public Safety for evaluation.
  - b. Letter from Mr. Tom Grover, attorney for Mr. Anaya
  - c. Triage of cases for the CPOA office
  - d. Placing the Christopher Chase OIS I-2016-44 on an upcoming agenda for the next POB meeting
  - e. The Mary Hawkes case I-2014-99, which may come before the POB in 3 to 4 months depending on if any criminal charges arise out of it.

f. Consent agenda cases

**2. Discussion of tiered prioritization matrix for investigation of citizen complaints- *Joanne Fine*. (See attachment “F” Civilian Police Oversight Agency Complaint Intake Form).**

a. Discussed the CPOA complaint intake form, which will be presented to the Case Review Subcommittee for review.

b. An attorney from the Department of Justice Attorney will be convening the parties to discuss the clarification on how and when cases will be dealt with in particular ways.

**d) Personnel Subcommittee – *Beth Mohr*. For more information regarding POB Personnel Subcommittee meetings and minutes, please refer to our website located here:**

**<http://www.cabq.gov/cpoa/subcommittees/personnel-committee>.**

1. Subcommittee Chair Beth Mohr did not have a report.

2. The Personnel Subcommittee will meet on Thursday, October 27, 2016 at 4 p.m.

**XI. Reports from City Staff**

**a) APD: APD Lt. Jennifer Garcia, Internal Affairs: Lt. Garcia gave a report on Statistical Data for the Month of September 2016. Copies of the following documents were distributed (See “Attachments G1, G2 and G3”):**

- Attachment G1-APD Internal Affairs, Statistical Data for the Month of September 2016
- Attachment G2- Graph: Internal Investigations, Year to Date (January through September), Year to date total received cases 2011 through 2016;
- Attachment G3- Graph: Internal Investigations January through September

1. Lt. Garcia to provide to the POB a breakdown of the ethnicity, race and gender of APD

**b) City Council: Chair Mohr gave a report for Julian Moya.**

1. City Council’s Finance and Government Operations Committee heard the CPOA’s Semi-Annual report and moved it to full council on November 7, 2016.

2. If the POB have questions, they can email Mr. Moya.

3. Director Harness will forward a copy of the Semi-Annual report to Member Armijo.

- c) **Mayor's Office:** No one present to give a report.
- d) **City Attorney's Office:** No one present to give a report.
- e) **Community Policing Councils:** No one present to give a report.
- f) **CPOA – Edward Harness, Executive Director.** Director Harness gave the following report:
  - 1. **I-44-16**
    - a. Director Harness read his findings in this matter. **(See Letter to Chief Gorden Eden, Jr. dated October 13, 2016 as attachment H).**
    - b. A motion was made by Member Ring to accept Director Harness' findings in this case. Member Brown seconded the motion. There was no discussion. The motion was carried by the following vote:
 

For: 8 - Brown, Cruz, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites
  - 2. **NCIC**
    - a. Discussed the CPOA's new process for cases involving alleged misuse of NCIC
    - b. Chair Mohr read APD's Special Order 15-21. **(See attachment B for more information)**
  - 3. For the month of September 2016, there were seven (7) Job Well Done's and twenty-three (23) new complaints.
  - 4. Director Harness and Member Fine commended Amanda Bustos for her hard work on the NACOLE Conference.
  - 5. The CPOA will be out of the office for IA Pro training from October 17, 2016 through October 20, 2016.

**XII. Other Business:**

- a) Member Garcia would like to have placed on the next agenda the topic of CABQ email addresses for POB members.
- b) The next Policy and Procedure subcommittee meeting is scheduled for October 26, 2016.
- c) The next Case Review subcommittee meeting is scheduled for November 3, 2016.

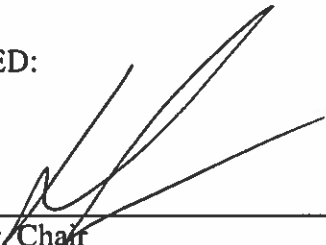


**XIII. Adjournment** - A motion was made by Vice Chair Waites to adjourn the meeting. Member Fine seconded the motion. The motion was carried by the following vote:

For: 9 – Armijo, Brown, Cruz, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites  
Meeting adjourned at 8:20 p.m.

*Next regularly scheduled POB meeting will be on  
Thursday, November 10, 2016 at 5 p.m. in the Vincent E. Griego Chambers.*

APPROVED:

  
\_\_\_\_\_  
Beth Mohr, Chair  
Civilian Police Oversight Agency

11-10-2016  
Date

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

Minutes drafted and submitted by: Michelle Contreras, Senior Administrative Assistant

# Attachments

ALBUQUERQUE POLICE OVERSIGHT BOARD RESOLUTION NO. \_\_\_\_\_

WHEREAS, the Albuquerque Police Oversight Board met in regular session in the City Council Chambers on October 13, 2016, at 5:00 p.m., as required by law; and

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978, Sections 10-15-1 to -4) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission, administrative adjudicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the Police Oversight Board to determine annually what constitutes reasonable notice of its public meetings;

NOW, THEREFORE, BE IT RESOLVED by the Police Oversight Board that:

1. All regular meetings shall be held in the City Council Chambers for the City of Albuquerque on the second Thursday of every month at 5:00 p.m., or as indicated in the meeting notice.
2. The agenda for regular meetings will be posted at least seventy-two hours prior to the meeting at the offices of the Civilian Police Oversight Agency and on the Civilian Police Oversight Agency's website at [www.cabq.gov/cpoa](http://www.cabq.gov/cpoa).
3. Notice of regular meetings other than those described in Paragraph 2 will be given ten days in advance of the meeting date. The notice will include a copy of the agenda or information on how a copy of the agenda may be obtained. If not included in the notice, the agenda will be available at least seventy-two hours before the meeting and posted on the Civilian Police Oversight Agency's website at [www.cabq.gov/cpoa](http://www.cabq.gov/cpoa).
4. Special meetings may be called by the Chairman or a majority of the members upon three days notice. The notice for a special meeting shall include an agenda for the meeting or information on how a copy of the agenda may be obtained. The agenda will be available at least seventy-two hours before the meeting and posted on the Civilian Police Oversight Agency's website at [www.cabq.gov/cpoa](http://www.cabq.gov/cpoa).
5. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the public body from substantial financial loss. The Police Oversight Board will avoid emergency meetings whenever possible. Emergency meetings may be called by the

Attachment "A"

Chairman or a majority of the members with twenty-four hours prior notice, unless threat of personal injury or property damage requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within ten days of taking action on an emergency matter, the Police Oversight Board will notify the Attorney General's Office.

6. For the purposes of regular meetings, notice requirements are met if notice of the date, time, place and agenda is posted at the offices of the Civilian Police Oversight Agency and on the Civilian Police Oversight Agency's website at [www.cabq.gov/cpoa](http://www.cabq.gov/cpoa).
7. Copies of the written notice shall also be mailed to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.
8. For the purposes of special meetings and emergency meetings, notice requirements are met if notice of the date, time, place and agenda is posted at the offices of the Civilian Police Oversight Agency and on the Civilian Police Oversight Agency's website at [www.cabq.gov/cpoa](http://www.cabq.gov/cpoa). Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.
9. In addition to the information specified above, all notices shall include the following language:

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact

Michelle Contreras at 924-3770

at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact

Michelle Contreras at 924-3770

if a summary or other type of accessible format is needed.

10. The Police Oversight Board may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Section 10-15-1(H) of the Open Meetings Act.
  - (a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the Police Oversight Board taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the

vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting.

- (b) If a closed meeting is conducted when the Police Oversight Board is not in an open meeting, the closed meeting shall not held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public.
- (c) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.
- (d) Except as provided in Section 10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Police Oversight Board in an open public meeting.

Passed by the Police Oversight Board

this 13th day of October, 2016.

Attachment "A"



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 "B"

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 "B"

# 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 inquires. Personnel must be able to articulate the criminal justice purpose for each inquiry into these systems.

400 Roma NW

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.

Albuquerque

General Order 1-37-2.A states "Unless specifically authorized by standard operating procedurc, 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.

New Mexico 87102

Some examples of misuse are:

www.cabq.gov

- A Tucson police officer running inquires 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 "B"



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: elw

Attachment "B"

**Albuquerque Police Department  
Chain of Command  
Case Review Instructions**

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Each applicable level of the chain of command will note their recommendations on the Chain of Command Recommendations Form. For all sustained findings and non-concurrences with the investigator findings, the initial reviewing chain of command (a commander or division head) will write a Chain of Command Recommendations Memo. The memo will contain the information listed below and will be forwarded to the next appropriate level. All reviewers shall sign and date the Chain of Command Recommendation Form. Each level of the Chain of Command may concur with the previous level and indicate in the space provided on the form. Non-concurrences must also be documented in a Chain of Command Recommendation Memo and attached.

Only the Chief of Police or Assistant Chief of Police will complete the Chief of Police Proposed Findings Form.

The Commander/Division Head will complete the Training and Policy Recommendations Form even when there are no recommendations. The chain of command reviewing the case will note concurrence or non-concurrence in instances where recommendations are made. Any level of the chain of command review may make training and policy recommendations if applicable.

All review and recommendations will be in compliance with SOP 3-24.

**Chain of Command Recommendations Memo Instructions:**

**1. Address each Standard Operating Procedure separately to include at minimum:**

- State whether or not you concur with CPOA, POB or IA Investigator findings
- If there is non-concurrence, list the addition or deletion to the findings supported by fact
- State the sanction you are assigning to each specific SOP violation. Only SOP sections with sanctions listed next to them can be cited as violations

**2. State in a separate paragraph the recommended disciplinary action to include mitigating/aggravation factors**

- Include how this action was formulated
- Example: Two sanction 7 violations according to the Chart of Sanctions is a Written Reprimand
- Any deviation from the Chart of Sanctions must be thoroughly explained

**3. Training Recommendations should be noted here and on the attached Training and Policy Recommendation Form.**

Attachment "B"

**Albuquerque Police Department**  
Chief of Police Proposed Findings

Case Number: CPC 088-16 Investigator: Sergeant Anthony Simballa

Date of Incident: 05/05/2016 Employee Involved: Sergeant A [REDACTED]

Standard Operating Procedure Violations:  
 1-4-3(8)(a)  1-37-3(A)(3)

Investigation completed on: 8/30/16 AS IA Commander Review: [Signature] 8/30/16

Disposition:

	Sustained	Not Sustained	Exonerated	Unfounded	Sustained NBOC	Admin Close
<input type="checkbox"/> 1-4-3(8)(a)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> 1-37-3(A)(3)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Firearm Discharge:  Reasonable  Unreasonable

Action to be Taken:

No Action to be Taken  Suspension  Other:   
 Verbal Reprimand Total Hours: \_\_\_\_\_  
 Letter of Reprimand To be served: \_\_\_\_\_  
 Termination To be held: \_\_\_\_\_

Concur with CPOA/POB:  Findings  Action to be Taken  Nonconcurrency

IA use only:  
 Date to CPOA: 8/30/16 AS Date Returned from CPOA: \_\_\_\_\_ Date to AC: 9/12/16 AS Date Returned from Chief Office: 9/19/16 AS

Attachment "B"

Albuquerque Police Department  
Chain of Command Recommendation Form

CPC 088-16

Chief of Police/Assistant Chief: GORDEN E. EDEN, JR.  
(Print Name)

Agree with Assistant Chief Huntsman, and  
CONCUR with the assessment of this case by Commander  
Sullivan. Also, APD Comm Director made the required  
notifications to the NCIC Adm for NM

Signature: [Signature] Date: 9/15/16

Deputy Chief/Major/Exec Director: R. Huntsman, Assistant Chief  
(Print Name)

See Attached

Signature: [Signature] Date: 7/14/16

Commander/Division Head: JOHN SULLIVAN  
(Print Name)

Reminder: Attach Chain of Command Recommendation Memo if applicable

- REFER TO INSERT -

Signature: [Signature] Date: 9/13/16

Attachment "B"

ALBUQUERQUE POLICE DEPARTMENT  
SUPERVISOR RECOMMENDATION FORM  
SERGEANT A [REDACTED]

INVESTIGATION: CPC-088-16

FINDINGS:

SOP Violation 1-4-3(8)(A) (NOT SUSTAINED)

I concur with Commander J. Sullivan. Based on the preponderance of evidence, there is insufficient evidence to support a SOP Violation that any of the officers involved made comments that would bring the department into disrepute, shame, dishonor, disgrace or embarrassment.

SOP Violation 1-37-4(A)(3) (EXONERATED)

Sergeant A [REDACTED] admits that he did run [REDACTED] license plate through MVD/NCIC. During Sgt. A [REDACTED] interview he was able to articulate a law enforcement predicate, (suspicious behavior) which would allow him to take the action he did.

Mr. Harness refers to CASA paragraph 188 as a bases for violation of department SOP, that it is not acceptable for Sgt. Simballa, (IA), to make calls; pose hypothetical scenarios and claim that is a criminal investigation. In fact, this was not a criminal investigation by Sgt. Simballa, rather an inquiry of the U.S. Attorney's office and the Second Judicial District Attorney's office for a legal opinion as to the propensity of prosecution should this case go forward criminally.

Mr. Harness also asserts that APD has a duty to report any suspected violations of the NCIC & NMLETS to the New Mexico Department of Public Safety. He further attests that this case must be submitted to the Federal Bureau of Investigations to determine if Sgt. A [REDACTED] conduct is in violation of U.S.C. Title 18 (US Codes 641, 1030, 1343, & 1952). APD has a protocol in place that does exactly that. Ms. Wilson, Emergency Communications Center Manager, was notified and initiated the standard protocol. Ms. Regina Chacon, Bureau Chief, NCIC CJIS System Officer for the Department of NM Public Safety was notified in writing. As per their standard process, the board will review this case, and consultation with the FBI will occur.

I disagree with Mr. Harness and the subsections he cited above, as they do not apply.

Attachment "B"

## U.S.C. Title 18 (US Code 641) Public Money, Property, or Records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or of thing value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than ten years, or both, but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Sgt. A [REDACTED] had the authority to access NCIC/MVD based on what he perceived to be suspicious activity. The information he received from NCIC/MVD was not sold or conveyed to any person outside of law enforcement.

## U.S.C. Title 18 (US Code 1030). Fraud and related activity in connection with computers;

- (a) Whoever— (1) having knowingly accessed a computer without authorization or exceeding authorized access, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph y of section 11 of the Atomic Energy Act of 1954, with reason to believe that such information so obtained could be used to § 1030 TITLE 18—CRIMES AND CRIMINAL PROCEDURE Page 304 ISee References in Text note below. 2So in original. The period probably should be a semicolon. 3So in original. Probably should be followed by "or" the injury of the United States, or to the advantage of any foreign nation willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; (2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains—

(B) threat to obtain information from a protected computer without authorization or in excess of authorization or to impair the confidentiality of information obtained from a protected computer without authorization or by exceeding authorized access;

Sgt. A [REDACTED] had authorization to, and suspected or believed that a criminal predicate existed to access the systems noted. He did not disclose the information obtained to anyone outside of law enforcement and his actions did not impair the confidentiality of information obtained.

Attachment "B"

U.S.C. Title 18 (US Code 1343). Fraud by wire, radio, or television

- Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

This section does not apply to this case.

U.S.C. Title 18 (US Code 1952). Interstate and foreign travel or transportation in aid of racketeering enterprises.

- (a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to— (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.

The allegations of this CPC do not include racketeering.

**RECOMMENDATION:** Based on the available information I recommend that SOP Violation 1-4-3(B)(A) be NOT SUSTAINED, and SOP Violation 1-37-4(A)(3) be EXONERATED.

  
Robert Huntsman  
Assistant Chief of Police

FINDINGS:

SOP SECTION 1-4-3(8)(a):

After review of this case, I have no choice but to concur with Sergeant Simballa's findings of "not sustained".

There were a total of 4 people that heard (or partially overheard) the conversations between Sergeant A [REDACTED], Sergeant R [REDACTED] and Mr. Lopez. Three of the four persons interviewed stated that none of the comments made would bring the department into disrepute, shame, dishonor, disgrace, or embarrassment. [REDACTED] is the sole dissenting opinion that the comments were "derogatory". Unfortunately, however, there is only the Citizen Police Oversight Agency (CPOA) Investigator's (Ms. Erin O'Neil) interview of [REDACTED] to assess his statements. [REDACTED] declined to be re-interviewed by Sergeant Simballa during his Internal Affairs investigation. I find that CPOA Investigator O'Neil's interview of [REDACTED] was cursory at best, and failed to clarify his statements that may have indicated a possible violation of this SOP. [REDACTED] states, "I didn't take it as this big negative thing" (12:43). But, a couple seconds later, he stated, "they were being derogatory against the Department, there's no doubt" (12:47). These two statements contradict each other, however Investigator O'Neil only clarifies by asking [REDACTED] if he considered the comments disparaging. She fails to gain further clarity or specific examples of exactly what comments he considered derogatory. Therefore, we are left with generalities and vague statements of what [REDACTED] possibly felt were inappropriate. I feel confident that [REDACTED] likely had more specific examples, as he provides very specific testimony (to include names and job titles) later in the interview. Ms. O'Neil, however, was unable to illicit specific testimony to consider an SOP violation.

During Sergeant Simballa's interviews of the remaining three persons, he is able to illicit specific things that were said; specifically during his interview with Sergeant A [REDACTED]. Sergeant A [REDACTED] goes into detail about how he demonstrated what was being taught by using Sergeant R [REDACTED] as an example. He further clarifies that he spoke in a complimentary manner about another (not present) APD employee. Sergeant Simballa was able to conduct considerably more thorough interviews, and therefore provide more compelling testimony with a total of three witnesses/target of the investigation.

Based on a preponderance of evidence (3 statements to 1 incomplete statement) I find there is insufficient evidence to support an SOP violation.

Based on the facts of this case, I recommend this violation be **NOT SUSTAINED**.



SOP SECTION 1-37-3(A)(3):

After a review of this case, I concur with Sergeant Simballa's findings of "exonerated".

The facts of this case are not in dispute, Sergeant A [redacted] fully admits he did run [redacted] license plate through the Department's MVD/NCIC system. However, upon interview Sergeant A [redacted] (and his two witnesses) provide significant testimony to support his decision. Sergeant A [redacted] is able to articulate specific behaviors (highly unique seating choice, apparent use of cell phone to "record", and what appeared to be a picture taken) displayed by [redacted] during this incident. Sergeant A [redacted] states the circumstances surrounding [redacted] behavior caused him to feel [redacted] was suspicious and he related these feelings to recent attacks on law enforcement nationwide. The totality of these circumstances caused him to feel the need to attempt to identify [redacted]. Sergeant A [redacted] also clarifies his intent upon gaining this information was to hand it off to the Strategic Criminal Intelligence Unit for possible follow up. This action would be both correct and appropriate.

Upon review of the only contrary testimony to Sergeant A [redacted], I once again find the investigation to be incomplete. [redacted] states he did sense Sergeant A [redacted]/R [redacted] and Mr. Lopez knew he overheard their conversation. However Investigator O'Neil fails to inquire or clarify if [redacted] felt his actions and behavior caused them to notice. When Ms. O'Neil asks if [redacted] "recorded" the group, he emphatically states he did not. Ms. O'Neil then attaches the question of, "or take pictures or anything" to her previous question. Mr. Tyler does not provide a direct answer to the pictures question, however Ms. O'Neil either fails to notice, or chooses not to press for an answer. This question is very relevant in this investigation, as the wife of [redacted] ([redacted]) later testifies there was a picture taken. Therefore I must conclude a picture was taken at some point, thus validating the statements and concerns expressed by Sergeant A [redacted].

Based on the testimony provided by Sergeant A [redacted], Sergeant R [redacted], and Mr. Lopez (all of whom felt [redacted] was acting suspicious enough to warrant identification), and the lack of compelling testimony to the contrary, I find that Sergeant A [redacted] did not violate SOP in this incident.

I recommend this violation be EXONERATED.

CPOA Memorandum dated September 8, 2016:

Included in this case file was a memo from Executive Director Harness of the CPOA to Chief Eden. In this memo, Executive Director Harness states that Sergeant Simballa's investigation is in violation of the Court Approved Settlement Agreement with the Department of Justice (CASA). He specifically cites paragraph 188 as being violated. Mr. Harness states he feels this case should be submitted to the Federal Bureau of Investigation for violation of U.S.C. Title 18. As a part of my review I examined his position.

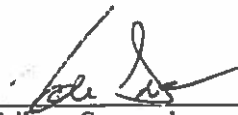
During Sergeant Simballa's investigation, he documents the steps he took to determine if criminal charges would be warranted on Sergeant A [REDACTED]. Sergeant Simballa states he spoke with the Criminal Chief Assistant United States Attorney for New Mexico (Mr. Jack Burkhead). Included in the case file are email correspondences between them. In these emails, Mr. Burkhead indicates, "it is exceedingly unlikely that the District of New Mexico would move forward with a federal prosecution". Mr. Burkhead further clarifies that charges would only be warranted if the information gained from the NCIC records were used for the purpose of financial gain, perpetuate a fraud, or further a larger conspiracy to commit a federal offense. Sergeant Simballa also states he spoke with multiple State of New Mexico Assistant District Attorneys all of whom also felt criminal charges would not be warranted.

As an additional level of investigation, I personally looked up each U.S.C. Title 18 offense mentioned by Mr. Harness. Upon my independent review, I concur with Mr. Burkhead. Without some overt act or intent to use the information gained in some criminal fashion, there is *no* violation of federal law. I furthered investigated by checking New Mexico State Statutes for any possible violation. I reviewed NM State Statutes, 30-45 (Computer Crimes). Once again, I found that unless the information was gained with the intent to defraud, embezzle, or cause damage to computer systems there would be no violation of law. I find absolutely no testimony indicating, in any fashion, that Sergeant Anaya did or intended to use Mr. Tyler's information for anything listed above.

My final step in examination of Executive Director Harness memo was to contact APD Communications Director Erika Wilson. Ms. Wilson stated, in New Mexico, when it is suspected law enforcement agents have used inappropriately used the NCIC database it must be reported. She also stated the New Mexico Department of Public Safety (DPS) would be responsible for any investigations into misuse of the system based on their regulations. Based on her statements, I formally requested she initiate a request to the DPS NCIC Security Office to investigate Sergeant A [REDACTED] use of NCIC in this case.

I review of Executive Director Harness statement that this investigation violates the CASA, specifically paragraph 188, I do not concur with Mr. Harness. I find that the Chief (via his designee- Sergeant Simballa) did consult with the relevant prosecuting agency *and* federal law enforcement regarding the initiation of a criminal investigation. Based on all fact available to me at the time of this review, I see APD has complied fully with both the spirit and intent of paragraph 188.

In summary, I do not find that the use of NCIC by Sergeant A in this case rises to the level of criminal misconduct. I base this decision on the conversations Sergeant Simballa had with federal and local prosecutors, and my own investigation into the relevant laws. I have close to 18 years of law enforcement experience, over 10 years of which has been in Criminal Investigations. I have worked in countless joint investigations with local, state, and federal law enforcement partners. I have also investigated officer and APD employee misconduct/criminal cases. I have hundreds of hours of training and practical experience in interrogation and interviews, therefore establishing a basis for my findings in the aforementioned case.



---

John Sullivan, Commander  
Northwest Area Command

Albuquerque Police Department  
Training and Policy Recommendation Form

Sergeant A [REDACTED]

Case #: CPC 088-16

This form is used to recommend training or policy changes based on the review of an administrative investigation. The Commander/Division Head will complete this form even if no recommendations for change are made.

TRAINING RECOMMENDATION

No training issue was identified in this review.

A training issue has been identified:

Individual training for an employee or group of employees is recommended. A completed "Mandatory Training Recommendation Form" (PD-2432) is attached. A copy of the form has been sent through the chain of command. Note: All training recommendations resulting from an investigation will be enforced unless negated by the Chief of Police.

Training for a group of employees is recommended as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

POLICY CHANGE RECOMMENDATION

No policy change issue was identified in this review.

A policy issue has been identified and noted in the

Chain of Command Recommendation Memorandum:

A change to the Department SOP is suggested. A copy of the proposed revision to the policy is attached. A copy of the proposed revision to the policy will be sent to the SOP Liaison per SOP 3-29.

Chain of Command signature indicates approval. Non-concurrence with the training or policy recommendations should be documented on the Chain of Command Recommendation Form or Memo

Commander/Division Head Signature: [Signature] Date: 9/13/16

Deputy Chief/Major/Executive Director Signature: [Signature] Date: 9/13/16

Non-concurrence (Initial): \_\_\_\_\_

Chief/Assistant Chief Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Non-concurrence (Initial): \_\_\_\_\_

5

Attachment "B"

# CITY OF ALBUQUERQUE

Albuquerque Police Department



Gorden E. Eden, Jr., Chief of Police



September 20, 2016

Regina Chacon  
Bureau Chief  
NCIC CJIS System Officer  
PO Box 1628  
Santa Fe, New Mexico 87504-1628

Bureau Chief Chacon,

On May 5, 2016, Albuquerque Police Department Sgt. A [REDACTED] was on a lunch break at a restaurant. On this date Sgt. A [REDACTED] was attending training at the APD Academy.

400 Roma NW  
Albuquerque  
New Mexico 87102  
www.cabq.gov

On May 10, 2016, the Civilian Police Oversight Agency (CPOA) received a complaint from a citizen regarding Sgt. A [REDACTED] which alleged possible CJIS misuse because the citizen believed his plate, New Mexico [REDACTED], was run on May 5, 2016 by Sgt. A [REDACTED] and the citizen, [REDACTED] additionally alleged the Sergeant was speaking in an unprofessional manner about the Albuquerque Police Department which could be overheard by others. Sgt. A [REDACTED] noticed the citizen watching him and observed him take a photo of his department issued vehicle which caused concern and Sgt. A [REDACTED] CAD log shows he did run the plate. I am currently not privy to all of the details regarding this situation but I have provided you with the basic details.

The investigation was passed from the CPOA to the APD Internal Affairs division for investigation as the CPOA believed there would be a criminal investigation based on the allegation of CJIS misuse.

Internal Affairs was not aware of our requirement to notify your office of any possible or potential CJIS misuse. This has since been corrected and all supervisory personnel in Internal Affairs are aware they must notify me if there is an allegation or possible allegation of CJIS misuse and I then notify you. They are also aware I provide updates to your office every 30 days along with a final outcome of the investigation and review by the chain of command.

Albuquerque Police Department  
September 20, 2016

Attachment "B"

I am aware Mr. Edward Harness from the CPOA has been in contact with your office and he and I discussed the necessary steps moving forward and have agreed on best practices.

As it relates to the complaint against Sgt. A [REDACTED], the investigation has been completed however the complaint is now being reviewed by the chain of command. Once the review by the chain of command has been completed, it is possible there may be employee hearings if the allegations are found to be valid and discipline imposed. Once all the steps of due process are completed, I will notify you of the final disposition and action if taken.

Please contact me if you have any questions.

Sincerely,



Erika L. Wilson, ENP  
Manager  
Emergency Communications Center  
Albuquerque Police Department

cc: Michelle Lopez, TAC, Emergency Communications Center  
Andrea Reider, TAC, Records Division  
Robert Huntsman, Assistant Chief  
Gordon E. Eden Jr, Chief of Police

Attachment "B"

**POB Mission Statement Study Session**  
**Saturday, September 17, 2016 – 9:30 to 11:00 AM**  
**Starbucks Conference Room**  
**2400 12th St. NW, Albuquerque, NM 87102**

**Attendance:**

Chair: Beth Mohr, Board Members: Joanne Fine, Susanne Brown, Dr. Carlotta Garcia, Eric Cruz, Dr. Lisa Orick-Martinez, Johnny J. Armijo, Rev. Dr. David Ring, CPOA: Edward Harness, Amanda Bustos

**Synopsis:**

Facilitated by Chair Mohr she asked the table what they thought the Police Oversight Board function was, the group responded with:

- \*Constitutional Policing – Hardwired
- \*Listening to Community
- \*Values Citizen
- \*Improved Community Communication
- Functional Command Structure
- \*Community Police Officers supported/ celebrate good policing, empowered
- \*Culture of Accountability- Celebrate Good – Critical of Officer/Supervisor
- \*Knowledge of Community
- Leadership- Commanders in control of Department
- Skilled leadership and HR/IA staff
- Skilled middle management- good supervisors
- Corporate Structure with communication

Chair Mohr then asked the group to identify which ones from the list above can the POB impact the most. They are identified with a star (\*).

Of those starred (\*), the group further narrowed down their focus areas:

1. Communication with Community
2. Culture of Accountability
3. Values Citizen
4. Constitutional Policing (Protecting Civil Rights)

The POB Ordinance was discussed and per the Ordinance, the POB's purpose is to focus on:

- 51% Policy and Training, which also includes Data Analysis
- 49% Case Review Complaints and Community Outreach
- Provide Governance to CPOA

Using the discussions from above, the group carefully thought out the NEW Mission Statement:

**“Advancing Constitutional Policing & Accountability for APD and the Albuquerque Community”**

Attachment “C”

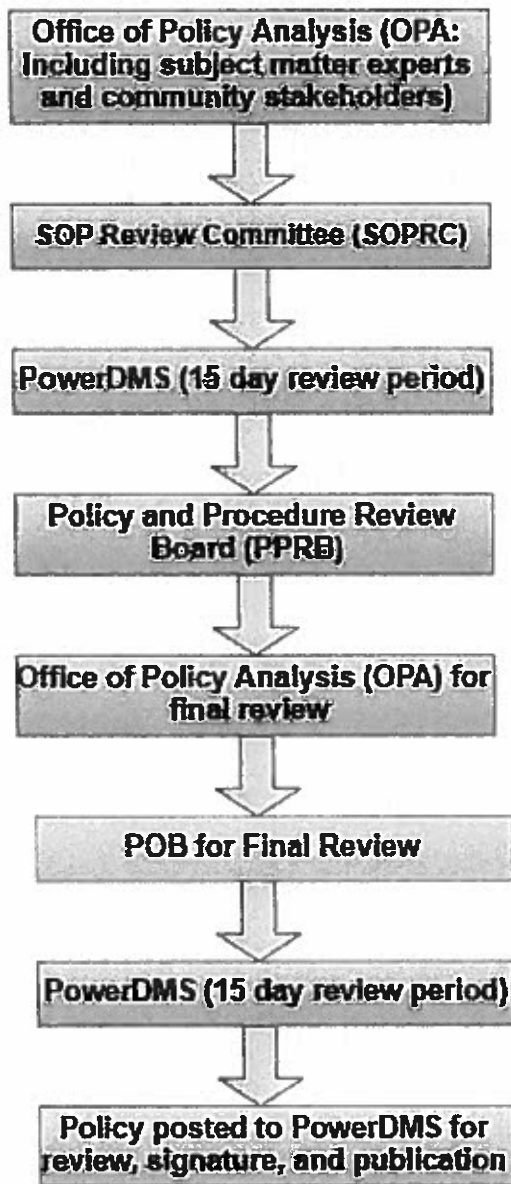
### **3-29 POLICY DEVELOPMENT PROCESS**

The POB recommends the following changes to 3-29 Policy Development Process:

1. 3-29-3-A Flowchart will insert the Police Oversight Board after Policy and Procedure Review Board (PPRB) and before the Office of Policy Analysis for final review to ensure appropriateness and consistency with other APD policies
2. 3-29-3-B-16 shall read: If the policy proposal(s) are passed, the policy will be submitted to the Police Oversight Board for its review. Upon completion of the POB's review of the policy proposal, if passed, the SOP Liaison shall publish the revised policy on the DMS, once the Chief of Police gives final approval. If policy does not pass, the Chief will accept and review the POB's recommendations. The chief shall then have 45 days to submit his written response to the POB, in accordance with Albuquerque City Ordinance Sec. 9-4-1-4(C)(5)(b).



**3-29 Recommendation:** After some discussion, the Policy and Procedures Review Committee would like to again recommend that the board add POB as a 4<sup>th</sup> body to APD's current Policy review procedure. This would allow a policy to go to OPA, SOPRC, PPRB and finally to POB before publication. The monitor has continually suggested that the POB should have some place where they, as a whole board, get to see and review APD policy before it is published. This change would allow the POB to consistently monitor the review of policy as it goes through APD's current review process. Furthermore, it would allow the POB to remain a policy oversight entity once DOJ is no longer involved in monitoring APD. This change would not preclude the POB from having other committees or systems for policy monitor and review.



Attachment "D"



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

SOP 3-29

Effective: 05/10/16 Expires: 11/06/16 Replaces: 05/10/12

**3-29 POLICY DEVELOPMENT PROCESS**

**3-29-1 Policy**

Policies and procedures are necessary for the Department to operate predictably, objectively, and transparently, as well as to ensure accountability for meeting the Department's mission to provide effective and constitutional policing. Policies and procedures should be clear, up-to-date, and accessible to Department personnel as they fulfill their duties. The Department is developing and expanding a system designed to encourage personnel to contribute their input in the development of policies and procedures for the Department.

**3-29-2 Definitions**

**A. Citizen Police Oversight Agency (CPOA)**

An independent agency of City Government, not part of either the City Administration or City Council that consists of a Police Oversight Board (the "POB") and an Administrative Office led by the CPOA Executive Director. The Administrative Office serves as the administrative and investigative unit of the Police Oversight Board (POB).

**B. Police Oversight Board (POB)**

A volunteer citizen board members of which are selected by the City Council and which is tasked with hearing civilian complaints, reviewing administrative investigations of officers, and analyzing Department policies and making recommendations for improvements to those policies.

**C. Policy and Procedures Review Board (PPRB)**

An administrative body which conducts the final review of policies and procedures forwarded by the SOPRC.

**D. Policies**

Policies summarize the department's position on specific matters. Policies are concise position statements based on underlying organizational principles, goals, values, and operational philosophies. They are designed for broad general direction and guidance primarily designed for use by all members of the department or by more than one operational division.

**E. PowerDMS**

Intra-agency Document Management System possessing a comment function that allows all Department employees, CPOA, and POB to comment on proposed new policies and those being reviewed.

Attachment "D"



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

SOP 3-28

Effective: 05/10/16 Expires: 11/06/16 Replaces: 05/10/12

F. Standard Operating Procedure Liaison

A department civilian employee assigned to the Policy and Planning Division tasked with the upkeep and logistical responsibilities related to department SOPs.

G. Standard Operating Procedure Review Committee (SOPRC)

Committee tasked with assisting PPBR with reviewing, correcting, and updating new and current Department Standard Operating Procedures.

Published on 05/10/16

Attachment "D"



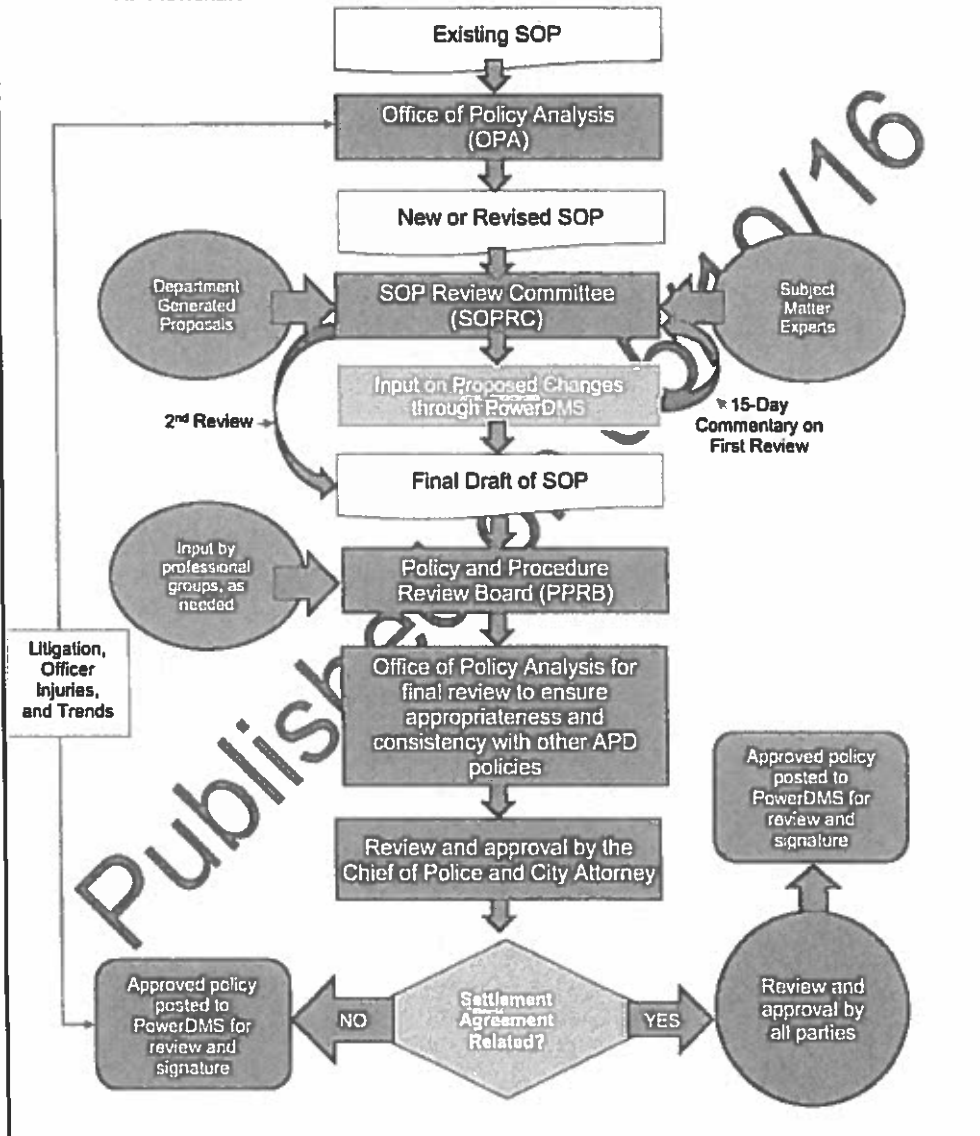
ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

SOP 3-29

Effective: 05/10/16 Expires: 11/08/16 Replaces: 05/10/12

3-65-3 Policy Development Process

A. Flowchart



Attachment "D"



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

SOP 3-29

Effective: 05/10/16 Expires: 11/06/16 Replaces: 05/10/12

B. Policy Development Overview

1. Anyone, including but not limited to any employee of the department, members of the CPOA, APOA, POB, OPA, and the general public, may submit their ideas and proposals for a new policy or revision of current department policy.
2. Any member of this department who requests, or is made aware of a request for a new policy or revision of current policy shall inform the department SOP Liaison and provide him or her with the proposed revision and/or contact information for the party requesting the revision.
3. Before initiating the policy development process, the SOP Liaison shall, using his or her best judgment, training and experience, review and ensure that the submitted request for a new policy or proposed revision to current policy is feasible, reasonable, within the best interests of the public, and within the best interests of the department. If any questions arise as to possibility of introducing the proposal, the SOP Liaison shall consult with department personnel, as appropriate.
4. If the SOP Liaison determines that a proposed policy revision or new policy submittal is not feasible, unreasonable, not in the best interest of the public and/or the department, he or she shall draft a letter to the submitting party and to the Chief of Police through his or her chain of command and provide the reason(s) why the proposal was not considered.
5. All new policy proposals and requests to revise existing SOPs shall enter the policy development process at the Standard Operating Procedures Review Committee (SOPRC).
6. The sponsor of the policy proposal may be present at the SOPRC at the request of any SOPRC member to answer questions and provide input.
7. Any policy relating to mental health response will be forwarded to the Mental Health Response Advisory Committee (MHRAC) for review and comment. This involvement from MHRAC will occur prior to posting a potential policy on PowerDMS for commentary. The chairs of MHRAC will be invited to PPRB when the relevant SOP is considered. MHRAC involvement will also be encouraged during public meetings of the OPA.
8. Once a policy proposal is reviewed by the SOPRC to ensure that it meets best practices, department practices, and legal standards/case law, it is placed on the DMS for 15-Day Commentary.
9. At the end of the 15-Day Commentary, the comments generated during this process will be reviewed by the SOPRC. The SOPRC will make appropriate changes based on the comments.

Attachment "D"



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

SOP 3-29

Effective: 05/10/16 Expires: 11/06/16 Replaces: 05/10/12

10. The SOPRC, upon completion of its review and appropriate changes, shall forward the policy proposal to the PPRB.
  11. The PPRB shall review the policy proposal and changes made by the SOPRC, if applicable. The sponsor of the policy proposal and members of the SOPRC will be present to explain the proposal and the changes made.
  12. The PPRB may make additional changes as they see fit to the policy proposal.
  13. The PPRB has the final authority to pass, table, or deny a policy proposal.
  14. If the policy proposal is tabled, the Chair shall appoint a member to make necessary corrections or complete the necessary research to ensure that the policy may be heard at the next regular scheduled meeting.
  15. If the policy proposal is denied, the PPRB shall provide explanation and further instruction, if applicable, to the SOPRC.
  16. If the policy proposal is passed, the SOP Liaison shall publish the revised policy on the DMS without unreasonable delay once the Chief of Police gives final approval.
  17. The OPA will be involved in continuously reviewing department policies at six month intervals after implementation and annually thereafter. Part of that review process will be to engage with community groups for their input on policy changes over time to reflect the experience of the department and the community with existing policies.
- C. Office of Policy Analysis (OPA)
1. OPA is designed to gather information on national standards and best practices and to integrate their findings into existing APD policy while providing a "big picture" view and deep analysis of APD policy.
  2. OPA will also review collected information on lawsuits, officer injuries, and trend data that may indicate the need for policy change.
- OPA is composed of the following individuals:
- a. The SOP Liaison provides guidance and context regarding APD SOPs.
  - b. A representative from the City Attorney's Office is a resource providing information concerning legal standards and lessons learned from litigation.
  - c. A representative from the Civilian Police Oversight Administration provides insight into trends regarding citizen complaints.
  - d. A representative from the Albuquerque Police Officer Association provides insight into the usability aspect of SOPs.

Attachment "D"



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

SOP 3-29

Effective: 05/10/16 Expires: 11/06/16 Replaces: 05/10/12

- e. A representative from the Albuquerque Police Department Academy provides insight into the training process of new and experienced police officers.
  - f. Volunteer officers and department personnel provide fresh analysis and helpful review of current policy.
4. Although not subject to the Open Meetings Act, the OPA will hold some of its meetings in a public location so as to provide access to all who wish to participate. The general public is welcome to attend and provide input at those meetings.
  5. Recommendations generated by OPA for improvements of department policy will be submitted to the SOPRC for review and approval.
  6. Part of the OPA's work will be to initiate reviews of department policies six months after implementation and annually thereafter to ensure that the policy provides effective direction to department personnel and remains consistent with the department's mission, best practices, and human law. Recommendations from the OPA for policy changes based upon these periodic reviews will be reviewed by the SOPRC and the PPRB according to the normal policy development process set forth in this policy.
- C. Standard Operating Procedures Review Committee (SOPRC)
1. The SOPRC vets newly-submitted policies as to best practices and reviews existing policies to ensure continuing compliance with case law and union contracts. New policies or suggestions for improving existing policies may be presented by intra-departmental sources, members of the CPOA, and OPA.
  2. This committee will have a chair and seven members. The SOP Liaison will serve as the chair of the SOPRC. The members will consist of four Lieutenants, one Quality Assurance Auditor, one representative from the CPOA, and one representative from the APOA. These members will apply for their position on the committee and will be selected by the Chair of the PPRB. Members will serve for a term of one year.
  3. The SOPRC meets at a regular time on a weekly or bi-weekly basis. The Chair will be responsible for the scheduling of meetings.
  4. The SOPRC will review and revise policies that have been:
    - a. Submitted for the first time and require an initial review.
    - b. Returned from 15-day commentary.
    - c. Rejected by the PPRB.
  5. The SOPRC may request the presence of the sponsor of the SOP revision or the new SOP at the SOPRC meetings to answer questions and provide input.

Attachment "D"





ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

SOP 3-29

Effective: 05/10/16 Expires: 11/06/16 Replaces: 05/10/12

6. Proposed changes will be marked clearly on the existing policy so that the future reviewers will be able to easily see proposed changes.
7. Upon the initial approval by the SOPRC, the policy will be posted on PowerDMS for a maximum of 15 days for APD employees, CPOA and POB to review and comment.
8. At the conclusion of the 15 days, the comments will be reviewed by SOPRC for additional changes and then the policy will go to PPRB for a broader group discussion.

**D. Policy and Procedure Review Board**

1. The PPRB is established under the direct authority of the Chief of Police and has the power to:
  - a. Initiate, review, and evaluate department policies and procedures.
  - b. Involve personnel, who may also attend meetings, by encouraging them to supply facts pertinent to the proposed policy.
  - c. Advise and assist the Chief of Police on policy development.
  - d. Receive and recommend approval/disapproval policies and procedures via PowerDMS.
2. The Chief of Police appoints PPRB members.
3. Appointed representatives will serve on the PPRB for one year, unless removed by the Chief of Police. However, the Executive Director, Deputy Chiefs, Majors, a City legal representative, the CPOA Director, and the union representative shall be standing members.
4. The Executive Director is the chairman (presiding officer) of the PPRB.
5. This PPRB is permanent within the Department and will conduct regular meetings, as necessary. The scheduling of necessary meetings will be the responsibility of the SOP Liaison.
6. The PPRB is composed of:
  - a. Executive Director, Administrative Support Bureau
  - b. Deputy Chief, Investigative Bureau
  - c. Deputy Chief, Special Services Bureau
  - d. Major, Field Services Bureau West Division
  - e. Major, Field Services Bureau East Division
  - f. Major, Training Division
  - g. One Representative, Investigative Bureau
  - h. One Representative, Special Services Bureau
  - i. Two Representatives, Field Services Bureau



ALBUQUERQUE POLICE DEPARTMENT  
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- j. Legal Advisor
- k. Technical Services Division Manager
- l. Two Representatives, Emergency Communications
- m. One Representative, APOA
- n. CPOA Investigator (non-voting)
- o. CPOA Director
- p. POB representative

7. The PPRB will evaluate proposals for the following elements:

- a. Clarity of language;
- b. Conflict with other existing policies and procedures;
- c. Compatibility with federal, state, and local laws;
- d. Compatibility with union contracts;
- e. Compatibility with City administrative orders or directives; and
- f. Other applicable issues.

8. If a member should transfer during this period, the member's replacement shall serve a period of one year from the date of appointment.

- a. If a member is transferred, the member shall notify the Chairman.
- b. The member shall be replaced within the area that the member is being transferred from.
- c. The transferred member may continue to serve at the discretion of the Chairman or until any unfinished business is completed.

9. Any changes made to a policy by the PPRB will be final, subject to final approval by the Chief of Police. If the proposed changes are rejected, reasoning must be provided by the PPRB to the SOPRC for future planning.

9. All policies, once approved by the Chief of Police, will be marked with an effective date and the date for re-evaluation.

10. The SOP Liaison will publish the approved policy on PowerDMS.

Attachment "D"

**3-1 Recommendation:** the Policy and Procedures Review Committee would like to recommend that 3-1 be sent to OPA for review. The changes to this policy have already been reviewed and accepted by the POB however, the committee has added two qualifications to the section 3-1-3. These added qualifications include an advanced certification from NMLEA and a certification from a law enforcement management program, or ability to acquire these certifications within 1 year of hired date. These requirements are based on national standards and best practices for the hiring of a Chief of Police. The new revision of 3-1 and the original 3-1 are attached.

## **SOP 3-1 Selection, Authority, and Responsibilities of the Chief of Police**

### **3-1-1 Purpose**

The chief of police is the community's chief peace officer and is responsible for the overall functioning of the department, staff, policies and budget. The chief of police is the face of the department to the public, serves as an appointee of the mayor, and is confirmed by City Council.

### **3-1-2 Selection**

The appointment shall be made by the mayor with confirmation by the City Council. The qualifications of the candidate and their vision for APD will be made available for public inspection prior to any confirmation vote by City Council.

### **3-1-3 Qualifications**

1. Certified law enforcement officer.
2. Progressive experience over at least 10 years with an additional 5 years of supervisory experience.
3. Master's degree from an accredited College or University preferred; bachelor's degree required.
4. No conviction of a felony, a misdemeanor crime of domestic violence, or other state or federal law that results in the prohibition of possession of a firearm.
5. Advanced Certification from the New Mexico Law Enforcement Academy or equivalent preferred, or ability to acquire within 1 year of hired date.
6. Completion of a law enforcement management program (i.e. FBI National Academy, PERF Senior Management Institute, Northwestern Police Staff and Command) preferred, or ability to acquire within 1 year of hired date.

### **3-1-4 Duties**

1. Oversee all the staff, sworn officers, and civilian employees.
2. Conduct annual written performance evaluations of deputy chiefs and majors.
3. Respond to correspondence directed to the chief.
4. Call for audits as appropriate for deployment of staff, budget expenditures, and department property to improve overall police operations.
5. Formation of the department budget in conjunction with City Council.
6. Determination of the on-duty status of any officer involved in a shooting or other high profile case.
7. Spokesperson for high profile cases.
8. Declaration of honorary events as parades and other tributes.
9. Commemoration of officers for outstanding services.
10. Spokesperson for any major changes in policy and procedures.

11. Establishes the department's strategic objectives, policies, directives, regulations, and procedures based on the needs of the community and the police department.
12. Continually monitors and evaluates the effectiveness and responsiveness of the department.
13. Responsible for training programs being in compliance N.M. Department of Public Services, APD policy, and in accordance with existing state and federal guidelines.
14. Cooperates with law enforcement officials from other jurisdictions on investigations and in the apprehension and detention of suspects.
15. Plans, implements, and maintains effective community relations and public education programs.
16. Serves as primary representative of the department with civic organizations, public interest groups, elected representatives, and civilian police councils by attending meetings related to public safety problems.
17. Insures that any complaints against the department or its personnel are handled effectively and in a timely manner.
18. Actively participate in professional law enforcement associations.
19. Prepare and present concise and meaningful oral and written material relating to the activities of the Department.
20. During a state of emergency such as a large civil disturbance, natural disaster, nuclear accident, the chief will assume the leadership role for the department in planning, coordinating and directing all activities to restore peace

**3-1-5 Evaluation**

The mayor performs a written evaluation of the chief of police performance of duties annually and submits it to city council for consideration of contract renewal.

**3-1-6 Succession**

In the event that the chief becomes incapacitated they will be replaced by the deputy chief on an interim basis.

\*Formulated with fragments from observed duties of APD chief, City of Albuquerque Policies, the Duties of the Chief of Police from Seattle, LAPD, Kensington, New Hampshire, and Wikipedia.



ALBUQUERQUE POLICE DEPARTMENT  
ADMINISTRATIVE ORDERS

SOP 3-01

Effective: 01/15/16 Expires: 01/15/17 Replaces: 04/27/15

**3-1 AUTHORITY AND RESPONSIBILITIES**

**3-1-1 Rules**

**A Chief of Police**

1. Is appointed by the Mayor of Albuquerque and is directly responsible to the Chief Administrative Officer for the efficient conduct and operation of the Police Department.
2. Has the responsibility for the assignment and reassignment of all personnel and the efficiency, discipline, general conduct, and appearance of such personnel. In this capacity, the Chief of Police shall have the authority to prescribe, promulgate, and enforce rules and regulations for the operation of the department.
3. May authorize personnel to deviate from the provision of these manuals when the Chief of Police believes such deviation to be in the public interest.

## CIVILIAN POLICE OVERSIGHT AGENCY COMPLAINT INTAKE FORM

**Intake Process:**

Complaints received by the CPOA will be subject to each section of the Intake process to determine appropriate action.

**Intake and Case Type Information**

**Complaint Tracking Information**

Received Date:

Type of Complaint: Informal Complaint Resolution: Mediation: Admin Closed: Investigation:

**Complainant Information**

Last Name: First Name: Title:  Mr.  Ms.

Phone: Email:

**Officer Information**

Last Name: First Name: Title:  Mr.  Mrs.

Phone:

**Request Archive of Logs**

Has it been less than 20 days since the date of incident?

Date of Incident: Less than 20 days? YES NO Request for Video Archive? YES

**Informal Complaint Resolution**

Could this Complaint be resolved informally?

Informally Resolved Yes NO

Please describe briefly the process of resolution:

**Criminal Allegations**

Are the allegations made by the complainant criminal in nature?

Criminal Yes NO

If the allegations are criminal please refer case to IA for investigation.

**Steps for Admin Closed**

Does the case meet the criteria for an admin closed? If so please select a category from the selection below.

- Withdrawn
- No Jurisdiction
- No SOP Violation
- No Officer ID
- Mediated
- Lack of Evidence
- Minor Policy Violation
- Allegations are Duplicative

**Steps for Mediation**

Does the case meet the criteria for mediation? If the case meets any of the criteria below it should not be considered for mediation

Eligible for Mediation? Yes NO

Civilian Police Oversight Agency Complaint Intake Form  
CONFIDENTIAL - INTERNAL USE ONLY

Attachment "F"

# CIVILIAN POLICE OVERSIGHT AGENCY COMPLAINT INTAKE FORM

**Intake Process:**

Complaints received by the CPOA will be subject to each section of the intake process to determine appropriate action.

The following cases should not be considered for mediation absent exceptional circumstances:

- 1) Cases listed as 1-5 offenses in the Chart of Sanctions
- 2) Cases involving substantial injury to either complainant or officer;
- 3) Cases involving sexual or racial slurs;
- 4) Cases involving use of force allegations;
- 5) Cases regarding criminal charges or questions of law such as search or detention issues.

Mediation will not be available to officers who have any of the following in their file:

- 1) Sustained case within the past year;
- 2) A prior mediation within the past six months;
- 3) Three mediations within the past two years.
- 4.) Serious similar misconduct allegation or a similar misconduct allegation within the previous 12 months

**Categorization and Prioritization of Cases**

Categorization of Case Allegation: What is the general nature of the complaint?

- |  |   |
|--|---|
| <input type="checkbox"/> Operations/Personnel Violations | <input type="checkbox"/> Supervisor Responsibilities    |
| <input type="checkbox"/> Illegal Search                  | <input type="checkbox"/> Conduct Becoming (On/Off Duty) |
| <input type="checkbox"/> Use of Force                    | <input type="checkbox"/> Criminal Misconduct            |
| <input type="checkbox"/> False Arrest                    | <input type="checkbox"/> Alcohol Abuse                  |
| <input type="checkbox"/> Lockup Procedures               | <input type="checkbox"/> Bribe/Official Corruption      |
| <input type="checkbox"/> Verbal Abuse                    | <input type="checkbox"/> Harassment                     |
| <input type="checkbox"/> Domestic                        | <input type="checkbox"/> Mismanagement                  |
| <input type="checkbox"/> Traffic                         | <input type="checkbox"/> Misappropriation of Property   |

**Context and Conditions for Categorization**

Conditions to Consider

- A. Consider the seriousness of the allegation;
- B. Consider mitigating and aggravating circumstances;
- C. Consider the disciplinary record of the individual involved;
- D. Consider whether the conduct was intentional or merely negligent;
- E. Consider whether the violation caused injury to another individual;
- F. Consider whether the conduct damaged the department's reputation.
- G. Is the complaint about a crime? If so, is there a report? Officer availability, access to the complaint, and available evidence for investigation.

**Priority Level of Case Based on Categorization**

- Level 1
- Level 2
- Level 3

\*Intake Supervisor should assign 1 as soon as possible. Next 2, and should assign level 3 last.

**Intake Completion**

Assignment Date and Investigator

Assigned Date:	Extension Request Date:	Case completion Date:
Investigator Assigned:	Intake Supervisor:	

Civilian Police Oversight Agency Complaint Intake Form  
CONFIDENTIAL - INTERNAL USE ONLY



**POLICE OVERSIGHT BOARD**  
**INTERNAL AFFAIRS**  
**STATISTICAL DATA FOR THE MONTH OF SEPTEMBER 2016**

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APD 911 Communications Center  
Dispatched calls for Service for SEPTEMBER 2016: 45,530

**INTERNAL CASES FOR THE MONTH OF SEPTEMBER 2016**

**I's**

Internal Cases Received: 11  
Comprised of:

- 6-Internal Affairs Investigated case
- 5-Area Command Investigated cases

Internal Cases Administratively Closed: 0

Internal Cases Mediated: 0

Total Internal Cases Completed the Month of SEPTEMBER: 8  
Comprised of:

- 4-Internal Affairs Investigations
- 4-Area Command

Discipline imposed for Internal Cases/ SEPTEMBER 2016:

4: Verbal Reprimand  
4: Letter of Reprimand  
1: 80hr Suspension

**Standard Operating Procedures (recommended)**

Admin Orders:

3-66-3C2a

Conduct:

1-04-1C1&2    1-04-1G1    1-04-4D20    1-04-6H

General Order:

1-13-2C1    1-37-3A3

Procedural Orders:

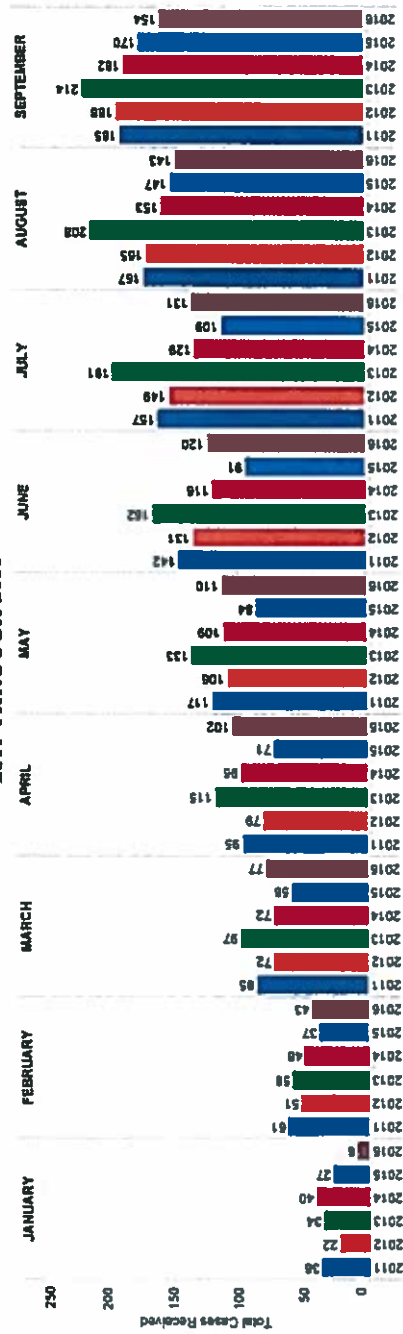
2-52-2E    2-52-3A1    2-52-3B    2-52-3C    2-52-3D    2-52-3G  
2-52-4A    2-52-6I1&2

**Pending Cases for the Month of SEPTEMBER 2016: 11\***

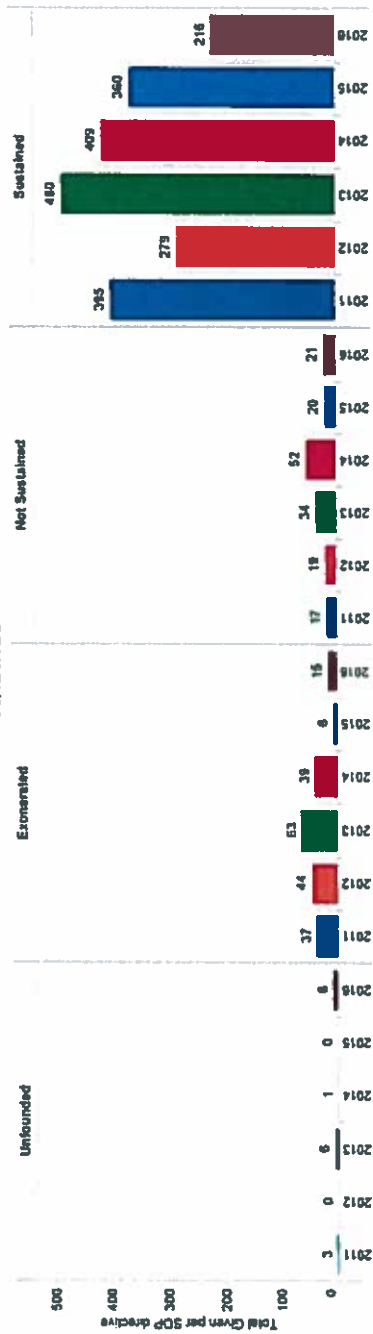
**\*Is related to the number of cases opened within SEPTEMBER**

**INTERNAL INVESTIGATIONS  
YEAR TO DATE  
(JANUARY THROUGH SEPTEMBER)**

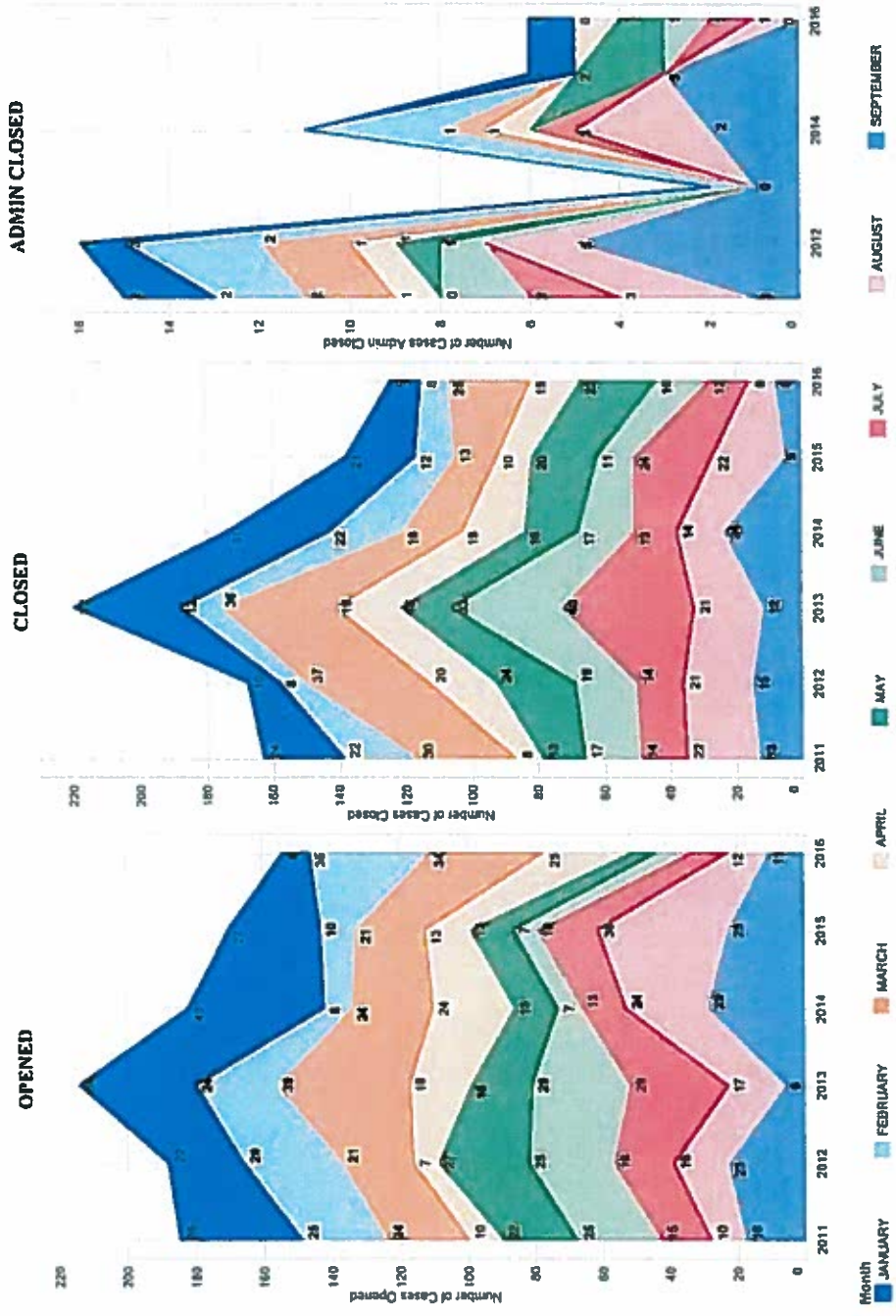
**YEAR TO DATE TOTAL RECEIVED CASES  
2011 THROUGH 2016**



**FINDINGS**



**INTERNAL INVESTIGATIONS**  
**JANUARY THROUGH SEPTEMBER**



**CIVILIAN POLICE OVERSIGHT AGENCY**

**Police Oversight Board**    *Beth Mohr, Chair*    *Leonard Waites, Vice Chair*  
*Johnny J. Armijo*    *Dr. Susanne Brown*    *Eric H. Cruz*  
*Joanne Fine*    *Dr. Carlotta A. Garcia*    *Dr. Lisa M. Orick-Martinez*  
*Rev. Dr. David Z. Ring III*  
Edward Harness, Esq., Executive Director

October 13, 2016

Gorden Eden Jr., Chief of Police  
C/O Internal Affairs Unit  
Albuquerque Police Department  
400 Roma NW  
Albuquerque, NM 87102

**Re: I-44-16**

Dear Chief Eden:

The shooting occurred on October 26, 2013. The Multi-jurisdictional Investigative team concluded its investigation March 4, 2015. The Bernalillo County District Attorney has not ruled on the use of Deadly Force.

As to the officers who used Deadly Force,

**§2-52-3 Use of Deadly Force**

**B: "Officers are authorized to use Deadly Force. By any means in order to:**

- 1. Protect the officer or others from what is reasonable believed to be an immediate threat of death or serious physical injury;**
- 2. Prevent the escape of one reasonable believed to have committed a felony, but only when:**
  - a. There is probable cause to believe the suspect poses an immediate threat of death or serious physical injury to the officer or others."**

Attachment "H"

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

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

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

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

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

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

#### STATEMENT OF THE CASE

On October 26, 2013 a male later identified as Christopher Chase told several citizens to call 911 and tell the police he would be waiting for them. APD officers were dispatched to the intersection of Broadway and Avenida Cesar Chavez SE.

Mr. Chase was armed with an AK-47 rifle and a .45 caliber pistol. His clothing was green camouflage, including black Kevlar gloves, a ballistic vest with front and back ceramic

Attachment "H"

ballistic panels, and a black ballistic mask. He also had in his possession a backpack containing drums of .762 rifle ammunition.

Officer M was traveling Southbound on Broadway when Mr. Chase stepped into the street at Hazeldine and began shooting the AK-47 at Officer M. Officer M. exited his squad car sought cover, and discharged his department issued handgun at Mr. Chase. Another responding officer, Officer Carlson arrived on scene and immediately came under fire from Mr. Chase, as well. Officer M. suffered gunshot wounds as a result of his encounter with Mr. Chase. Officer Carlson's squad was struck several times by shots from the rifle of Mr. Chase. During this exchange of gunfire Officer S. and Officer Drager arrived on scene and also came under fire from Mr. Chase. Both officers exited their vehicle seeking cover from the gunfire. Officer S discharged her department issued shotgun.

Officer Carlson observed Mr. Chase commandeer Officer M.'s squad car (P69). As Mr. Chase dove northbound on Broadway he fired at several APD squad cars causing damage and injuring another APD officer. Sgt Locky, Officer P and several other officers began pursuing Mr. Chase. While driving southbound on 4<sup>th</sup> Mr. Chase fired at Officer Burton and BCSO Deputy Hopkins. BCSO Deputy Hopkins was struck when fired upon. Sgt. Locky disengaged from the pursuit to render aid to Deputy Hopkins.

As the pursuit continued Officer C and Officer D became the lead APD squads in the pursuit. Officer C began to engage squad P69 with his AR-15 through his front windshield in an attempt to stop the actions of Mr. Chase. Mr. Chase drove into a gas station and struck a gas pump protective barrier. Officer C exited his vehicle and fired his AR-15 into squad P69. Officer D exited his vehicle and fired his handgun into P69. Officer Mc exited his vehicle and fired his shotgun into P69.

Mr. Chase sustained multiple gunshot wounds and died on the scene.

Mr. Chase's actions resulted in: 4 victims of injury, 18 victims of property damage, 24 vehicles damaged or towed, 143 witnesses were contacted, 161 APD Officers from 10 division responded to the incident along with 50 BCSO Deputies and New Mexico State Police Officers.

Review of the investigative file of Internal Affairs and any opinion expressed in this letter are pursuant to the duties of the CPOA as described in the POB Ordinance and are not intended for any other purpose.

Attachment "H"

I-44-16  
October 13, 2016  
Page 4

Please contact me if there are questions or concerns. I look forward to your response to the concerns and recommendations contained in this letter.

Please ensure the findings are placed in the officer's retention file.

Sincerely,

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

Attachment "H"