

# **CITIZENS' REVIEW BOARD**

## **ANNUAL REPORT**

August 1, 2016 through August 31, 2017

### History of the Board, Charge, Meetings and Attendance

The Citizens' Review Board (CRB) came into existence in September 1997. The Board reviews appeals from the outcome of citizen complaints to the Police Department concerning use of force, unbecoming conduct, arrest, and search and seizure and complaints of arbitrary profiling involving a sworn police officer. In addition, the disposition of the review of any discharge of a firearm by an officer, which results in the death or injury of a person, may be appealed to the Board. The Board also serves in an advisory role to the Chief of Police, the City Manager, and the City Council. It is charged with making annual reports to the Chief of Police, the City Manager, the City Council and the Community Relations Committee. The Board typically meets on the second and/or fourth Tuesday of the month when appeals are received or as needed. There have been eight (8) meetings during this reporting year.

### Current Membership

The eleven members are appointed each for three year terms, with no member serving more than two consecutive terms. Five members are appointed by City Council. The Mayor and City Manager each have three appointments. Currently, those serving are: Ms. Sandra Donaghy (Chair), Ms. Theresa Halsey (Vice-Chair), Mr. Henry Black, Jr., Mr. Clarence Darnell, Mr. Antonio Gaither, Ms. Nancy Hightower, Mr. Marc Jensen, Ms. Diane Langevin, Mr. David Smith, and Mr. Nicholas X Wind-McJetters. Ms. Deborah Stevenson did not meet attendance requirements and was recently removed from the board pursuant to the Council's Attendance Policy. Ms. Migaliz Giraud was appointed to serve the remainder of Ms. Stevenson's term. All other Board members have met the attendance policy. All members serving as of February 1<sup>st</sup> submitted the 2017 Ethics Disclosure Statement, as required by Council policy. During the August 2017 annual meeting, Mr. Wind-McJetters was elected as the new Vice-Chair.

### Board Activity During this Reporting Period

With input from various community stakeholders, Charlotte Mecklenburg Police Department (CMPD), members of the CRB and the Charlotte Community Relations Committee, the governing ordinance of the Citizens' Review Board was amended in November 2013.

The amended ordinance requires that the Board hold an initial hearing within forty-five (45) calendar days of the date a citizen complainant files a timely appeal. Under the amended ordinance, an appeal is timely if filed within thirty (30) days of the date the citizen receives notice from CMPD of the disposition of the complaint. The initial hearings and the evidentiary fact-finding proceedings must be conducted pursuant to new Section 16-60 of the ordinance. If during the initial hearing the Board finds there to be a "substantial evidence of error" – which, for example, could mean that CMPD's investigation appears not to have resolved important questions concerning facts and issues that the Board believes a thorough investigation should have resolved, or that an initial review of the record reasonably suggests the Chief's determination was in error – the amended ordinance provides that the Board must

hold an additional evidentiary fact-finding proceeding regarding the disposition of the disciplinary charges entered by the Chief of Police in order to allow the Board to make a fully-informed final determination regarding the complainant's appeal.

During this reporting period, the board considered five (5) appeals and has conducted three (3) evidentiary fact-finding proceedings, each in accordance with the amended ordinance. One of those five appeals remains open, pending an evidentiary proceeding scheduled for September 6, 2017.

The first appeal, filed by Sheana Shirley, concerned the fatal shooting of her son, Daquan Westbrook, by a CMPD officer on December 24, 2015. Following an initial hearing, the Board found there was substantial evidence of error regarding the Chief's determination that the shooting of Mr. Westbrook was justified. An evidentiary fact-finding hearing was held on September 6, 2016. The Board considered sworn testimony and other evidence and determined, by a vote of 7 to 2, that the Complainant had not sustained her burden of proving by the greater weight of the evidence that the Chief clearly erred in his determination that the shooting was justified. The Board did, however, submit policy recommendations to the Chief, including a recommendation that officers working "off-duty" in uniform be required to wear a body camera as part of that uniform. We understand that CMPD has implemented a policy change in response to the Board's recommendation.

The second appeal, filed by Dawond McKinney, concerned an alleged violation of CMPD's "Arrest, Search and Seizure" policy. Mr. McKinney alleged that officers unlawfully searched his apartment without a warrant and without his consent. Following an initial hearing, the Board found there was substantial evidence of error regarding CMPD's determination that Mr. McKinney's complaint was "Not Sustained." The Board held an evidentiary fact-finding hearing on January 31, 2017. After considering sworn testimony and other evidence the Board determined, by a vote of 8 to 1, that Mr. McKinney had not sustained his burden of proving by the greater weight of the evidence that the Chief clearly erred in his disposition of the disciplinary charges. The Board made a policy recommendation in connection with its decision, specifically requesting that the Department require officers to better document their activities when conducting warrantless "knock and talks" designed to obtain voluntary consent to search a citizen's home. The Department has indicated that it is reviewing its policies in this regard.

The third appeal, filed by Anas Ebraheem, concerned allegations that officers unlawfully detained him in violation of CMPD's "Arrest, Search and Seizure" policy. We would note that the Chief sustained Mr. Ebraheem's complaint and disciplined the officers. Mr. Ebraheem's appeal challenged the discipline imposed as not being severe enough. At the conclusion of an initial hearing on June 20, 2017, the Board determined, by a vote of 9 to 0, that there was not substantial evidence of error regarding the Chief's disposition of the disciplinary charges. Therefore, no further proceedings were held in this matter. However, CMPD reported to the Board that Mr. Ebraheem's complaint led the Department to focus on ways to improve practices and procedures to address the issues raised by this incident.

The fourth appeal, filed by the family of Keith Scott, concerned the fatal shooting of Mr. Scott by a CMPD officer on September 20, 2016. Following an initial hearing, the Board found there was substantial evidence of error regarding the Chief's determination that

Mr. Scott's shooting was justified. An evidentiary fact-finding proceeding was conducted over three days, from August 8, 2017 through August 10, 2017. After considering sworn testimony and other evidence, the Board was evenly split, 4 to 4, on the question whether the greater weight of the evidence showed the Chief clearly erred in determining that Mr. Scott's shooting was justified. Because the Board can only act by majority decision, the Board will not be recommending that the Chief reverse his decision. By a unanimous vote of 8 to 0, however, the Board voted to make policy recommendations to CMPD concerning policies applied and decisions made by the officers involved in the September 20, 2016 incident. The Board is in the process of drafting those recommendations and will be submitting those to the Department in the near future.

The fifth appeal, filed by James Yarborough, remains pending. This appeal challenges the Chief's determination that Mr. Yarborough's complaint concerning violations of CMPD's "Use of Force" policy was "not sustained." Following an initial hearing on July 31, 2017, the Board determined by unanimous vote, 9-0, that there was substantial evidence of error regarding the disposition of the disciplinary charges. An evidentiary hearing in this matter is scheduled for September 6, 2017.

In response to recent action taken by City Council to amend the ordinance governing the Board, a 90-minute training session on "Implicit Bias" was conducted on August 22, 2017 by representatives of the organization *Race Matters for Juvenile Justice (RMJJ)*. The training was conducted by Mecklenburg County Clerk of Superior Court Elisa Chinn-Gary, the Honorable Judge Louis A. Trosch, and RMJJ Executive Director Derrick Anderson. Several CRB members have since expressed interest in continuing to explore the subject of implicit bias by participating in RMJJ's two-day workshop on the subject. That and additional training opportunities will be made available for members later in the year.

City Clerk staff designed a website for the Citizens' Review Board that contains pertinent information about the Board, including history, statistics, current board roster, online appeal form, and links to related information.

### Recommendations to Council

All cases reviewed by the Board are reminders of the role the CRB plays in holding our police department accountable and in ensuring citizens have a forum to challenge CMPD's decisions regarding officer-involved shootings and police misconduct. We wish to express our appreciation to the Mayor, City Manager and City Council for the opportunity to serve our community in this fashion. We respectfully submit this annual report and request thorough consideration of the following recommendations offered to enhance the appeal process and effectiveness of this board:

1. It is important that membership of this Board remain diverse with respect to age, race, gender, sexual orientation, ethnicity, religious beliefs, disabilities, etc.
2. The Board would ask City Council to consider revisions to the CRB Ordinance to allow an attorney representing a citizen or family to complete and file an appeal form meeting the requirements of the CRB Ordinance.

3. In furtherance of the Board's duty to "promote its visibility within the community by adopting procedures to educate citizens about the board process" (see Section 16-64(d) of the CRB Ordinance), the Board would ask City Council to direct the City Manager to work with CMPD to prepare a report of the policy recommendations the CRB has made to CMPD over the years and to indicate in the report the action taken by CMPD with respect to each recommendation. The Board would further request that this report be published on the CRB's webpage and updated from time to time as appropriate.

4. The Board would request that City Council continue to press the General Assembly to grant subpoena power to the CRB.



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Sandra Donaghy  
Chairperson

cc: Police Chief Kerr Putney  
Marcus Jones, City Manager  
Willie Ratchford, Community Relations Cmte.  
Patricia Albriton, Community Relations Cmte.