



Police review panels operating in the dark

Boards receive limited access to cases due to Civil Rights Law

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Citizen review boards that were established to monitor police conduct and give the public a venue to air complaints have been hobbled by the arguably weak rules governing their oversight and the barrier of a state statute that keeps disciplinary records of police officers secret.

In New York, the review panels are usually blocked from even knowing the identity of the officers they investigate or the details of their disciplinary histories.

Police-community relations dominated the discussion at a public forum in Schenectady a few months ago where Richard Homenick, who chairs the Schenectady Civilian Police Review board, sat in the audience watching the event. He recalled wondering how the review panel could be more responsive to city residents, whose complaints range from officers being rude to the use of excessive force.

At the time, Homenick said he subsequently reached out to his fellow board members and City Councilman Ed Kosiur, chair of the city's public safety committee, with a proposal to allow the review board to hire an independent investigator to help conduct probes of police misconduct.

Under the current system, the police department internally investigates the complaints and reports its findings to the CPRB.

"We are in the end relying on a police report about other police officers," said Homenick, executive director of the Municipal Housing Authority, noting that some of the cases they inspect show that the officer has already been disciplined. "I think it's a problem when I'm a person in the community that may have some distrust with the police department."

But questions about the best models and the effectiveness of police review have for years dogged places like Schenectady and Troy, where a Police Objective Review Committee has been inactive for more than a year. There are also inconsistencies in the policies of review boards. In

Schenectady, the review panel is not allowed access to any video or audio evidence, which police officials contend is to guard against bias. But in Albany, the review panel is allowed to view any video and audio evidence, and that panel has a paid investigator who helps examine cases involving civil rights violations, including excessive force.

Still, all of the review boards receive limited access to the cases they investigate because of a state statute, Section 50-a of the Civil Rights Law, that was signed into law in 1976 to prohibit the release of police officers' disciplinary records to defense attorneys in criminal cases. Through the years the law has been broadly interpreted by various courts, and the result is that review boards do not know the identities of the police officers they investigate, whether they received any discipline from their respective agencies, or any details of their employment histories, including whether they have a history of misconduct.

"I think we're still able to do a pretty thorough review of the facts, but the lack of information can be an impediment to community trust," said Mickey Bradley, chairman of the Citizen's Police Review Board in Albany. Even when a citizen's complaint has been sustained by the board, the members never find out if or how officers are punished. Bradley said he's had preliminary conversations with Albany police Chief Brendan Cox, noting the chief has been receptive, about "ways the department can bring more transparency to the process while still respecting 50-a."

Additionally, Bradley said the police review board in Albany is studying how other communities handle the public's right to know against the limitations set forth under 50-a.

"One of the ways in which boards like this are effective is by creating more communication and hopefully more trust between police departments and the community and one of the key ways you do that is with more transparency," Bradley said. "So whenever there is less transparency instead of more transparency, you run the risk of eroding some of the trust that the public can have in knowing that the department is doing what it should be doing to protect citizens, protect officers and the department's reputation."

The nine-member Albany Citizens Police Review board falls under the auspices of the Government Law Center of Albany Law School, a nonprofit public policy organization that is funded annually with \$250,000 from the city of Albany. Like Schenectady, Albany's panel is guided by the findings of an internal probe conducted by the police department.

"We look at it to see if it is complete, was it done professionally, did they consider all the factors they need to, whether to bring the community voice, and to help make sure the complainant's concerns have been properly addressed," Bradley said. If a majority of the panel doesn't sign off on the internal probe, they can request a deeper investigation, ask to see more information or recommend their own findings to the police chief.

But not having access to the personnel and misconduct records of cops makes the job of police review boards more difficult.

"No one is trying to subvert 50-a but are there other ways to work around that law," Bradley asked.

Tim Lynch, director of the project on criminal justice for the Cato Institute, a Washington D.C.-based public research policy group that tracks reports of police misconduct, said with few exceptions, police review boards are overrated and don't do much to instill public confidence or improve police accountability.

He said those that receive funding from their municipalities, coupled with members with the experience and knowledge to make intelligent critiques of police internal probes, tend to be more effective.

Still, "Even when they're set up, they don't really have a track record of effectiveness on checking or reducing police misconduct," Lynch said, adding that the recommendations of many panels often make it to the desk of a mayor or police chief only to be ignored.

But he said places like Portland, Oregon, have police review boards that could serve as a model for the others struggling to meet their mandate.

Portland, a city of about 600,000 people and a police force of roughly 1,000 officers has an Independent Police Review panel with 14 paid staffers, half of them experienced in law enforcement, and including a civilian investigator. The panel's director, Constantin Severe, said they conduct independent investigations on wide-ranging complaints, including ones filed against high-ranking police officials.

The Portland panel has a \$2.5 million operating budget and is also empowered to review any investigations by the city's police department, Severe said. In addition, the city has a separate police review board made up of civilians and police officers that advises the chief on cases involving excessive force, officer-involved shootings and incidents when a person dies in police custody. Additionally, there is a board called the Citizen Review Committee that hears appeals involving police misconduct allegations and can also make policy recommendations.

In 2015, the Portland review panel received about 400 complaints, Severe said, adding that complaints must be resolved within 180 days.

In Schenectady, Homenick said he doesn't have a budget. There is a community forum upcoming in Schenectady to discuss possible reforms to the police review board and Homenick said he intends to familiarize himself more with the 50-a statute and discuss it with his fellow members before taking a public position.

"I would have to talk about that, I would have to think about that, if that's a good or bad thing to have access to," said Homenick. "I can't see immediately yes or no on that."

Albany Police Chief Brendan Cox said that the CPRB has been a good partner.

"They help us do our job, they help us to see if there's anything that we're lacking especially when it comes to training or policy," Cox said.

Schenectady Police Chief Eric Clifford, who participated in the Sept. 14 panel discussion, said he doesn't see a problem with the current set up of the CPRB.

His remarks came on the heels of a revelation by Lt. Edward Barbagelta, who oversees the department's Office of Professional Standards, that the CPRB has made just one recommendation to the police department's internal affairs unit despite reviewing dozens of complaints in the past 6.5 years.

"What that tells me is that (internal affairs) are doing a very good job investigating complaints, and they're being reviewed, and the community at large isn't pounding on anybody's door saying that 'we don't feel that these complaints aren't being investigated thoroughly,'" Clifford said.

But not everyone agrees with Clifford's assessment and are pushing for changes to the CPRB in the Electric City.

"It's important that we come to the table and begin to talk about the concerns that we have in race relations in this country," said the Rev. Horace Sanders of Mount Olivet Missionary Baptist Church, which hosted the community forum.

Sanders, who also serves as the chief diversity officer for the Schenectady Inner City Ministry, said the meeting showed some people had no idea the CPRB existed.