



City of Cambridge
Police Review & Advisory Board
51 Inman St. Cambridge, MA 02139
(617) 349-6155

Following the arrest of Professor Henry Louis Gates last summer, the Police Review & Advisory Board ("PRAB") received complaints from non-involved third parties regarding the incident. At its meeting on June 28, 2010, the Police Review & Advisory Board concluded its investigation into these complaints. Although PRAB does not make it a practice to release publicly information regarding its investigations, it has done so in this instance because of the high level of public interest.

**REPORT CONCERNING THE PUBLIC COMPLAINTS FILED
WITH THE POLICE REVIEW & ADVISORY BOARD**

Complaint

Three complaints were accepted by the Police Review & Advisory Board ("PRAB") in September 2009 concerning the arrest of Professor Henry Louis Gates on July 16, 2009 by Sergeant James Crowley ("July Incident") regarding the legitimacy of Gates' arrest for disorderly conduct and the question of whether Gates' First Amendment rights had been violated. The complainants are non-involved third parties who requested that PRAB investigate the July Incident.

Preliminary Investigation

A preliminary review of the July Incident indicated that there may have been issues within the jurisdiction of PRAB to investigate. Specifically, there were concerns whether the policies regarding police discretion to arrest had been violated. See Arrests, Policy 2006-2, Cambridge Police Department.

In the course of its investigation, PRAB members and staff reviewed the following: (i) the incident reports from Sergeant Crowley and Officer Figueroa; (ii) notes from interviews of various witnesses that were performed by Cambridge Police Department ("CPD") staff immediately following the July Incident; (iii) CPD policies and procedures, specifically the arrest policy; (iv) disorderly conduct guidelines provided by the CPD; (v) CPD disorderly conduct statistics from 2004-2008; and, (vi) statements received from the American Constitution for Law and Politics, the Anti-Violence Project of Massachusetts, National Police Accountability Project regarding free speech. In addition, PRAB members and staff interviewed Commissioner Robert Haas and Sergeant Crowley with respect to the pending complaint.

Having heard from Sergeant Crowley in May 2010, the board once again extended an invitation to Professor Gates, both through his executive assistant and through counsel, to see if he would be willing to meet with PRAB to discuss the incident. These overtures received no response.

Conclusion

The cases involving disorderly conduct arrests in violation of free speech are highly fact specific. Without evidence directly contradicting Sergeant Crowley's account that Professor Gates was exhibiting tumultuous behavior that was causing alarm among the public gathered, it is impossible for PRAB to make a conclusive statement that the arrest was unlawful. Further, PRAB believes that First Amendment issues are more appropriately addressed in a court of law.

Recommendations

As has been discussed, the board may turn its attention to the second function delineated in the ordinance ("reviewing Police Department policies, practices and procedures") and propose recommendations to the Cambridge Police Department. This second function seems particularly appropriate in a situation where the individual directly involved in an incident does not wish to utilize the complaint and investigation process but where it is understood that there is a need to address issues and concerns that were presented by the incident.

PRAB makes the following recommendations to the Cambridge Police Department:

- That emphasis on civilians' First Amendment rights are to be included in Cambridge Police Department trainings and in writing.
- Because there exists a potential for misuse of discretion in arrests involving simple disorderly conduct where the target of the disorder was the arresting officer and/or the police, PRAB recommends that the department continue to closely monitor and investigate each one of these arrests regardless of whether they result in any formal complaints filed through the Department or PRAB.
- The Cambridge Police Department should convene a public meeting to address community concerns regarding disorderly conduct arrests. The Department can use this meeting as an opportunity to inform the public regarding its training efforts on police discretion/legitimacy and its efforts to combat bias in policing.
- PRAB should be allowed to review and comment upon any changes in Cambridge Police Department policies.
- Cambridge Police Department complaint forms should state that complaints can also be filed with PRAB. In addition, the CPD should encourage officers and citizens to utilize our complaint process during their encounters with the public and their peers.

Dated: June 28, 2010