

CITY OF BERKELEY



POLICE REVIEW COMMISSION STATISTICAL REPORT 2010

CITY OF BERKELEY
POLICE REVIEW COMMISSION
2010

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Russell Bloom, Vice-Chair

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Kiran Shenoy
Michael Sherman
Sherry Smith
William White

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Kamau Edwards (through 7/10)
Jonathan Huang (through 10/10)

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INTRODUCTION

We are pleased to present our 2010 annual report of the Police Review Commission to the community of Berkeley. We hope that this report and its statistical data serves the community in understanding the nature of complaints, hearing resolutions and policy changes, as well as the work of the Police Review Commission and the performance of the Berkeley Police Department.

Extensive work was performed by the Commissioners who, in addition to attending regular Commission meetings, heard cases initiated by civilian complaints and served on several subcommittees.

We, as citizens of Berkeley, know that we have an outstanding police department, but we also know that the civilian oversight process is an important factor in ensuring their performance. Police oversight in the city came into existence through a Berkeley voter initiative more than 35 years ago. This means that you, the Berkeley citizenry, have long supported civilian oversight and it is through your continued engagement that this Commission moves forward and affects responsible, effective and community oriented policing standards.

On behalf of the Police Review Commission, I want to express our deepest appreciation to the work of the City staff in the performance of their duties. Staff takes great care to assure that complaints are handled properly and that all citizens' concerns arising from interactions with police personnel are paid heed. It is their efforts that make the work of the Commissioners an intrinsic part of the oversight process as we endeavor to serve the City and its citizens well.

Respectfully,

A large, stylized handwritten signature in black ink, appearing to read 'George Perezvelez', with a long horizontal flourish extending to the right.

George Perezvelez
Chairperson, 2010
Police Review Commission

2010 PRC STATISTICAL REPORT

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I. EXECUTIVE SUMMARY

COMPLAINTS

In 2010, the Police Review Commission (PRC) received 29 new complaints. This number is similar to 2009, when PRC received 30 new complaints.

The Commission received 3 policy complaints and closed 4 policy complaints, because 1 was filed in 2009.

The PRC received 79 allegations. At the end of an investigation, some allegations are deleted or dismissed. At the end of 2010, there were 70 allegations. Of the 70 allegations, the highest number of allegations is Discourtesy with 14 allegations or 20%, followed by Improper Force (10 allegations) and Improper Arrest, Search, Stop or Detention (10 allegations).

The Commission closed 32 cases.

COMPLAINANTS

There were a total of 34 complainants in 2010: 18 complainants were African American, 8 were Caucasian, 3 Hispanic, 2 Asian, 1 Multiethnic and 2 in the Other category. These numbers are similar to 2009.

INVESTIGATION TIME

Of the cases closed in 2010, the average time to investigate a complaint took 7 months and the average time to close a case was 8 months.

BOARDS OF INQUIRY

The Commission held 9 boards of inquiry and sustained 5 allegations or 7% of the total allegations.

The most common allegation sustained was discourtesy (3 out of the 5 sustained allegations).

84% or 26 cases of the 32 cases were closed without a sustained allegation, lacked merit or closed administratively. 16% or 5 cases of the 32 cases closed with a sustained allegation.

CALOCA OFFICER APPEALS

After a board of inquiry hearing, subject officers may appeal the sustained findings to an administrative law judge. In 2010, PRC did not have a *Caloca* appeal hearing.

PETITION FOR REHEARING

Complainants may also file for a rehearing after a board of inquiry. In 2010, the Commission received 3 petitions for rehearing. The Commission denied 1 petition, 1 was withdrawn and 1 lacked a quorum for a special meeting and so was not reheard.

MEETINGS

The Commission had 40 meetings and other Commission-related activities or an average of 3.3 activities per month.

POLICY REVIEW

The Commission had 5 Policy Subcommittees, which included: Search of Homes, Officer Involved Shooting, Regulations Review, Mutual Aid Pacts and Agreements and Ordinance Review.

TRAINING

The Commission received training on Lesbian, Gay, Bisexual and Transgender Issues related to police; Biased Based Policing; Racially Biased Policing; Mental Health Programs and Services; and, Communication Dispatch Reports.



II. MISSION STATEMENT

The Police Review Commission's mission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

III. COMMISSIONERS

The Commissioners are nine volunteers appointed by the Mayor and members of the Berkeley City Council. As representatives of the Berkeley community, Commissioners are charged with advising the City Council and City Manager on police practices and investigative findings. The City Council relies on the Commissioners to increase the variety of viewpoints raised by police issues. Commissioners expand their expertise on police issues and conduct detailed analyses by reviewing investigation reports and serving on policy subcommittees.



Top (L-R): Commissioners William White, Russell Bloom, Kamau Edwards and Jonathan Huang. Bottom: Commissioners Kiran Shenoy (appointed in 2010), Sherry Smith, George Perezvelez, Vonnie Gurgin and Michael Sherman.



IV. STAFF

The Police Review Commission staff is a division of the City Manager’s Office. Staff investigates complaints, conducts policy review and prepares cases for Boards of Inquiry. The PRC Officer assists the Commission in its functions and advises the Commission with recommendations.



Victoria Urbi, PRC Officer
 Byron Norris, Investigator
 Maritza Martinez, Office Specialist III
 Mary Matambanadzo, Office Specialist II

Student Interns
 Catherine Choe,
 Mona Fang

Top (L-R): Maritza Martinez, Mary Matambanadzo, Byron Norris and Victoria Urbi.

PRC staff worked with U.C. Berkeley’s Cal in Local Government Internship Program, where two students worked at the PRC office and learned about police oversight. The students attended Commission meetings, assisted in transcribing interviews, and learned the inner operations of working for a government agency.



Interns (L-R): Catherine Choe and Mona Fang



V. 2010 COMPLAINT STATISTICS

1. CASES OPENED

The "CASES OPENED" chart summarizes all complaints filed and received in 2010, the number of allegations received, number of subject officers involved in each case, how many interviews were conducted, the approximate investigation time and the total time before a case is closed. Complaints filed during the later months in the year are often carried over into the following year, because of the amount of time a case takes to investigate. This chart does not reflect cases that were carried over from 2009 or 2008.

In 2010, 29 complaints were filed with a total of 34 complainants. 5 complaints included co-complainants. Of those 29 cases, 13 were closed in 2010. 16 cases remained open and were carried over to 2011. 9 out of the 29 cases were closed without a sustained allegation, the complainant did not cooperate with the investigation or there was no merit to the complaint. 28% of the complaints were administratively closed.

	DATE FILED	CASE #	Total Allegation	Subject Officer/s	Total Interviews	Investigation Time or Policy Review (Months)	Total Time Case Closed (Months)
1	1-5	2253	4	Unknown	1	1	2
2	2-22	2254	1	1	2	7	7
3	2-22	2255	1	1	1	7	7
4	3-5	2256	5	1	3	6	6
5	3-15	2257	1	POLICY	N/A	6	6
6	3-23	2258	4	1	4	Pending	Pending
7	5-14	2259	*N/A	*N/A	*N/A	*N/A	*N/A
8	5-19	2260	4	1	2	4	4
9	5-19	2261	6	2	1	4	4
10	6-15	2262	4	1	3	Pending	Pending
11	6-16	2263	2	1	5	4	5
12	6-30	2264	2	1	1	3	3
13	7-16	2265	3	1	3	Pending	Pending
14	7-28	2266	1	Unknown	0	Pending	Pending
15	8-18	2267	5	3	2	Pending	Pending
16	8-24	2268	1	POLICY	N/A	2	2
17	8-24	2268	4	2	4	3	4
18	9-2	2269	1	1	2	Pending	Pending
19	9-8	2270	1	POLICY	N/A	1	1



1. CASES OPENED (continued)

	DATE FILED	CASE #	Total Allegation	Subject Officer/s	Total Interviews	Investigation Time or Policy Review (Months)	Total Time Case Closed (Months)
20	10-12	*2271	5	4	8	Pending	-
21	10-20	2272	3	2	1	Pending	-
22	11-5	2273	3	2	1	Pending	-
23	11-19	2274	5	Unknown	1	Pending	-
24	11-29	**2275	3	2	2	Pending	-
25	11-19	2276	4	Unknown	0	Pending	-
26	10-12	*2277	3	1	0	Pending	-
27	11-29	** 2278	2	1	0	Pending	-
28	12-13	2279	3	1	1	Pending	-
29	12-16	2280	1	Unknown	0	Pending	-

*N/A (Not Applicable) means that the Commission rejected this complaint, because it was filed beyond the 90-day period of the alleged misconduct and the Commission did not find the Complainant met the burden to extend the time period.

TOTAL COMPLAINTS: 29
 Misconduct Complaints: 26
 Policy Complaints: 3
 Total Complainants: 34 Note: 5 Complaints had 2 Complainants each

2. CASES CLOSED

The chart starting on page 6 shows all the cases that closed in 2010. The "Date Filed" and "Date Closed or Hearing" columns show how long the investigation process took. The chart shows that several cases that opened in 2009 were closed in 2010. The Commission closed 32 cases in 2010.

The chart also shows that the Commission held 9 Boards of Inquiry and closed 18 cases through Administrative Closure or Summary Dismissal. The Commission rejected 2 complaints, because 1 was a late file (i.e. filed after 90 days from the incident) and 1 was a policy complaint, which dealt with the shooting of a mountain lion.

84% or 26 cases of the 32 cases were closed without a sustained allegation, lacked merit or closed administratively. Of the cases closed in 2010, the average time it took for staff to investigate a case was 7 months and the average time to close a case was 8 months. In 2010, staff conducted 76 interviews. Of the 76 interviews, 48 interviews were from cases filed in 2010 and 28 were from cases filed in 2009.



2. CASES CLOSED (continued)

	NAME/ CASE #	Date Filed	Date Closed or Hearing	Hearing Held	Allegations	DISPOSITION
1	Horncliff 2239	9/17/09	1/6/10	Yes	-Improper Arrest -Improper Use of Force -Discourtesy -Inadequate Investigation -Other: Abuse of Authority	Hearing: 2 Sustained Allegations – Improper Arrest, Use of Force
2	Baker 2234	7/8/09 (Late File)	Hearing: 1/13/10 Closed: 4/14/10	No	-Improper Police Procedures	Summary Dismissal: No merit
3	Silva 2225	2/10/09	1/27/10	No	-Failure to Respond -Failure to Investigate	Admin. Closure: Complaint withdrawn
4	2230 Capurro	5/20/09	2/10/10	No	-Discourtesy -Threat -Abuse of Discretion -Lack of Discretion -Improper Police Report	Admin. Closure: Complaint withdrawn
5	Hamilton 2232	6/3/09	Hearing: 2/19/10 Closed: 4/14/10	No	-Discourtesy	Hearing Cancelled: Admin. Closure Complaint withdrawn
6	Baca 2253	1/5/10	2/24/10	No	-Improper Arrest -Improper Physical Contact -Failure to Inform of Grounds of Arrest -Failure to Provide Information	Summary Dismissal: No jurisdiction
7	Newson 2213	9/23/08 (1 Year Statute Tolled)	3/16/10	Yes	-Discrimination -Inadequate Investigation -Improper Arrest -Improper Detention Procedures -Improper Use of Force -Other: Abuse of Discretion	Hearing: No allegations sustained.
8	Mendoza 2246	10/16/09	3/24/10	No	POLICY: How police handle disabled persons during emergency.	Admin. Closure: Counseling and new language in policy.
9	O'Reilly 2247	10/26/09	3/24/10	No	-Improper Physical Contact -Discourtesy -Retaliation -Failure to Identify	Admin. Closure: Withdrawn complaint
10	McClain 2236	8/4/09	3/24/10	No	-Improper Search -Improper Stop -Improper Use of Handcuffs	Summary Dismissal: wrong date or officer



2. CASES CLOSED (continued)

	NAME/ CASE #	Date Filed	Date Closed or Hearing	Hearing Held	Allegations	DISPOSITION
11	Denney 2242	9/29/09	3/29/10	Yes	-Discourtesy -Other: Abuse of Discretion	Hearing: 1 allegation sustained - Discourtesy
12	Byias 2237	9/2/09	4/14/10	No	-Racial Discrimination/Profiling -Improper Stop	Admin. Closure: Complainant non-responsive
13	Blair 2245	10/5/09	4/21/10	Yes	-Discourtesy -Improper Search -Improper Seizure -Improper Use of Force	Hearing: No allegations sustained.
14	Rogina 2233	6/15/09	4/22/10	Yes	-Improper Use of Force -Other: Abuse of Discretion -Other: Failure to Identify Oneself	Hearing: No allegations sustained.
15	Hill 2248	11/6/09	4/28/10	No	-Abuse of Discretion -Failure to Provide Information -Discourtesy -Racial Discrimination	Admin. Closure: Complaint withdrawn
16	Kelly 2226	2/27/09 (1-Year Tolled)	4/28/10	No	-Improper Physical Contact -Improper Arrest	Admin. Closure: Complainant non-responsive
17	Fred 2244	10/5/09 (Late File)	5/24/10	Yes	- Discrimination -Improper Citation -Improper Detention -Improper Police Procedures	Hearing: No allegations sustained.
18	Rose 2259	5/14/10	5/26/10	No	-Discourtesy -Discrimination -Improper Stop -Abuse of Discretion	Late file rejected
19	Butler 2249	11/23/09	8/2/10	Yes	-Discourtesy -Discrimination -Inadequate Investigation	Hearing: 1 allegation sustained - Discourtesy
20	Duardo/ Ruckman 2256	3/5/10	9/1/10	Yes	-Discourtesy -Discrimination -Improper Use of Force -Other: Abuse of Discretion -Other: Threat	Hearing: 1 allegation sustained - Discourtesy
21	Kapp 2270	9/8/10	9/15/10	No	POLICY: Shooting Mountain Lion	Policy complaint Rejected



2. CASES CLOSED (continued)

	NAME/ CASE #	Date Filed	Date Closed or Hearing	Hearing Held	Allegations	DISPOSITION
22	Atli 2251	12/17/09	9/29/10	No	-Improper Use of Baton -Improper Physical Contact	Admin. Closure: Complainant non-responsive
23	Ward 2252	12/28/09	9/29/10	No	-Improper Stop -Improper Search -Damage to Property -Discourtesy -Racial Discrimination/Profiling	Admin. Closure: Complainant non-responsive
24	Ward 2254	2/22/10	9/29/10	No	-Retaliation	Admin. Closure: Complainant non-responsive
25	Ward 2255	2/22/10	9/29/10	No	-Discrimination/Racial Profiling	Admin. Closure: Complainant non-responsive
26	Ward 2257	3/15/10	9/29/10	No	POLICY: Racial Profiling of young African American men	Admin. Closure: Complainant non-responsive
27	Ward 2260	5/19/10	9/29/10	No	-Discourtesy -Improper Detention -Improper Police Procedure -Racial Discrimination	Admin. Closure: Complainant non-responsive
28	Ward 2261	5/19/10	9/29/10	No	-Discourtesy -Improper Arrest -Improper Display of Firearm -Improper Physical Contact -Improper Search -Improper Detention -Racial Discrimination	Admin. Closure: Complainant non-responsive
29	Smith 2264	6/30/10	9/29/10	No	-Improper Tow -Abuse of Discretion	Admin. Closure: Officer retired.
30	Denney 2268	8/24/10	11/10/10	No	POLICY: Enforcement of No Smoking Ordinance.	Comm. accepted Chief's memo re: Training Bulletin
31	Denney 2268	8/24/10	12/2/10	Yes	-Discourtesy -Improper Police Procedures -Inadequate Investigation	Hearing: No allegations sustained.
32	Simao 2263	6/16/10 (Late file)	11/10/10	No	-Inadequate investigation -False Police Report	Admin. Closure: Investigation complete, Officer retired



3. POLICY COMPLAINTS

A policy complaint can be filed by a complainant or by vote of the Commission. Policy complaints do not result in boards of inquiry hearings. Instead, the Commission will review BPD general orders, training bulletins and current regulations and develop recommendations on how to improve the current policies.

In 2010, the Commission considered 4 policy complaints:

- (1) Case #2246 – Needs of Disabled Community During Emergencies:** Complainant alleged that parking enforcement would not allow his home health worker to enter the building when there was an emergency, and he had some health care issues. When he contacted BPD, the Watch Commander was also unresponsive to his concerns.

Disposition: Complainant was satisfied with BPD's response to his complaint. The Watch Commander involved in the incident and the entire parking enforcement staff was counseled about the needs of Berkeley's disabled community during an emergency. BPD agreed to include specific language to address situations where home health workers are unable to access disabled persons when they revise their policy regarding the Americans with Disabilities Act.

- (2) Case #2257 - Racial Profiling:** Complainant alleged that BPD engaged in racial profiling of young, African American males in South and West Berkeley. He stated that the officers, who have stopped him a number of times, have been white. He believes police need more training.

Disposition: The Commission voted to administratively close this case, because the complainant could not be reached after repeated attempts by PRC staff to contact him.

- (3) Case #2268 - Enforcement of No Smoking Ordinance in Commercial Zones:** Complainant alleged that BPD officers do not enforce the City of Berkeley's current smoking ordinance and that officers do not seem to know about the ordinance.

Disposition: The Commission recommended to the department to discuss the Ordinance during line up. BPD submitted a response that police are trained on the Training Bulletins, which are sufficient. The Commission agreed with BPD's response. See Appendix #11.

- (4) Case #2270 - Mountain Lion shooting:** Complainant alleged that BPD killed a mountain lion that wandered in a residential area, despite no indication that the animal exhibited any aggressive behavior toward residents or their property. He requested a review of how police handle animals and possibly tranquilizing or relocating animals where it has not attacked or threatened an individual or property.

Disposition: The Commission rejected the policy complaint.

NOTE: The Policy Subcommittees are available on page 23.



4. CASE DISPOSITION

This chart summarizes how cases were closed in 2010 and in prior years. The number of hearings in 2009 and 2010 were relatively the same. More hearings were held in 2009 and 2010 than were held in 2008.

In 2010, there were 3 cases that closed through summary dismissal, which are 5 less cases that closed through similar means in 2009. The number of administrative closures for 2009 and 2010 are relatively the same. In 2010, there were 4 policy cases closed: 2 are included with the administrative closure category, 1 was rejected and 1 was closed after the Chief of Police forwarded a memorandum that was satisfactory to the Commission (See Policy Memo in the Appendix section).

REASON CASE CLOSED	2010	2009	2008
Board of Inquiry Hearing	9	10	7
Summary Dismissal	3	8	11
Administrative Closure * 1-Year Expiration	17	19	*65
Other: Policy Case	1	0	1
Cases Rejected	2	1	2
Total Cases Closed	32	38	86



5. BOARDS OF INQUIRY (HEARINGS)

This chart shows all cases that were forwarded for a Board of Inquiry hearing. In 2010, 9 hearings were held. 13 hearings were scheduled, but 4 were cancelled either because the complainant withdrew their complaint or the subject officer was unavailable. The majority of the hearings (5 out of 9 hearings) resulted in no sustained allegations. The Boards of Inquiry considered a total of 38 allegations and sustained a total of 5 allegations.

3 out of the 5 sustained allegations were regarding discourtesy of the subject officer. This means that the PRC Board determined that there was clear and convincing evidence that the alleged act did occur and the action was not justified. The findings report for each hearing is forwarded to the City Manager and Chief of Police.

The complainant may file for a Petition for Rehearing. In 2010, 3 complainants filed Petitions for Rehearing. In Case #2233, the Commission denied complainant's Petition. In Case #2244, the complainant discussed the case with the PRC Officer and was satisfied with the explanation of the board's findings. In Case #2268, the Commission lacked a quorum for a meeting to consider the Petition for Rehearing, so the petition failed.

The subject officer may also appeal a Board's sustained findings under a Caloca appeal (See page 22). No Caloca appeals were filed in 2010.

Date	NAME/ CASE #	Commissioners	Hearing Cancelled	Hearing Held	Allegations	Sustained Allegations
Jan. 6	Horncliff 2239	Edwards, Sherman, White		X	-Improper Arrest -Improper Use of Force -Discourtesy -Inadequate Investigation -Other: Abuse of Authority	-Improper Arrest -Improper Use of Force
Feb. 19	Hamilton 2232	Bloom, Perezvelez, Gurgin	Complainant withdrew		Discourtesy	N/A – Hearing cancelled
Mar. 16	Newson 2213	Kidd, Sherman, Smith		X	-Discrimination -Inadequate Investigation -Improper Arrest -Improper Detention Procedures -Improper Use of Force -Other: Abuse of Discretion	None.
Mar. 29	Denney 2242	Bloom, Huang, Perezvelez		X	-Discourtesy -Other: Abuse of Discretion	Discourtesy



5. BOARDS OF INQUIRY (continued)

Date	NAME/ CASE #	Commissioners	Hearing Cancelled	Hearing Held	Allegations	Sustained Allegations
Apr. 21	Blair 2245	Gurgin, Perezvelez, Sherman		X	-Discourtesy -Improper Search -Improper Seizure -Improper Use of Force	None.
Apr. 22	Rogina 2233	Huang, Smith, White		X	-Improper Use of Force -Other: Abuse of Discretion -Other: Failure to Identify Oneself	None.
May 24	Fred 2244	Bloom, Gurgin, White		X	- Discrimination -Improper Citation -Improper Detention -Improper Police Procedures	None.
Aug. 2	Butler 2249	Edwards (absent), Shenoy, White		X	-Discourtesy -Discrimination -Inadequate Investigation	Discourtesy
Sept. 1	Duardo/ Ruckman	Edwards, Gurgin, Smith		X	-Discourtesy -Discrimination -Improper Use of Force -Other: Abuse of Discretion -Other: Threat	Discourtesy
Nov. 16	Velazquez 2250	Bloom, Gurgin, Shenoy	Unavailability of officer(s)		-Improper Use of Force -Other: Threat	N/A – Hearing cancelled
Dec. 2	Denney 2268	Bloom, Sherman White		X	-Discourtesy -Improper Police Procedures -Inadequate Investigation	None.
Dec. 7	Knight 2258	Gurgin, Perezvelez, Smith	Complainant withdrew		-Discourtesy -Improper Arrest -Improper Search -Gender Discrimination	N/A – Hearing cancelled
Dec. 15	Walker 2243	Bloom, Shenoy, Sherman	Unavailability of officer(s)		-Improper Arrest -Physical Contact -Harassment	N/A – Hearing cancelled

**6. TOTAL CASES CLOSED BY YEAR CASE OPENED**

Year Case Opened	Cases Closed in 2010
2010	13
2009	18
2008	1
Total Cases Closed	32

This chart shows that 32 cases were closed in 2010, but the majority of those cases (18 cases) were opened in 2009. 13 cases that opened in 2010 also closed in 2010. The 1 case that opened in 2008 and closed in 2010 was delayed, because a criminal matter was pending, which tolled the one year statutory deadline.



VI. STATISTICAL COMPARISONS

1. CASES OPENED BY YEAR

In 2010, the number of complaints received was 29, which is 1 less complaint received when compared to 2009. The last two years has shown a decline in the number of complaints received.

When reviewing the number of complaints filed, it is important to consider the number of contacts Berkeley police have with people on a daily basis. In a given year, the police may have close to 100,000 contacts with the public. This number includes calls for service through 911, traffic stops, street detentions and more. Given the number of total police contacts in 2010, the PRC received 29 complaints. This number shows that the total number of complaints is low when viewing the complaints within the context of total police contacts. Nevertheless, each complaint filed is taken seriously and investigated thoroughly.

YEAR	TOTAL CASES RECEIVED
2010	29
2009	30
2008	42

2. ALLEGATIONS BY YEAR

The chart on page 15 shows the total number of allegations of complaints received for 2010 by type, and compares it with the allegations from the past 2 years. The total allegations received after a misconduct complaint was filed were 79. This number does not include the policy complaint allegations, which were 3. After an investigation is completed, some allegations are deleted or dismissed. At the end of 2010, there were a total of 70 allegations.

The highest number of allegations is discourtesy, with 14 allegations or 20% of the total allegations. However, this number has decreased from 2009, when there were 23 allegations of discourtesy. The improper use of force (10 allegations) and improper arrest, search, stop or detention (10 allegations) is also high, which makes up 14.3% of the allegations. The discrimination allegation is the third highest with 9 allegations or 12.9%.



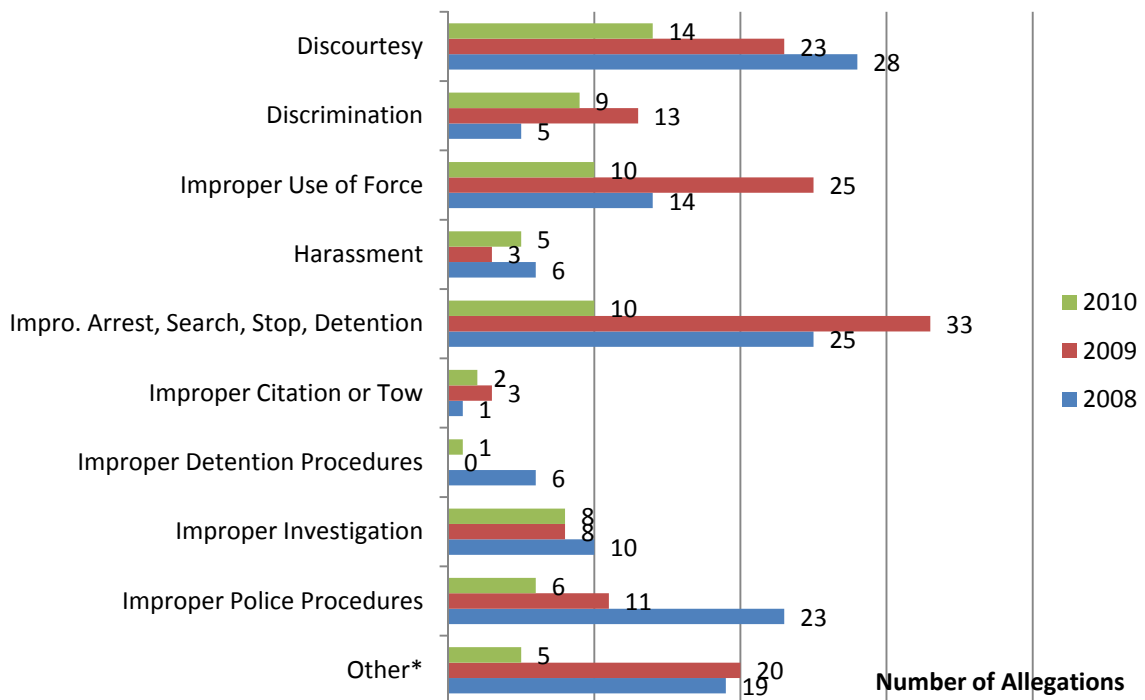
2. ALLEGATIONS BY YEAR (continued)

The most significant decline in allegations is in the category of improper arrest, search, stop or detention. In 2009, the PRC received 33 allegations in that category, but in 2010, the PRC received only 10 allegations. Additionally, the improper use of force allegation declined with 15 fewer allegations than in 2009. The discrimination allegation went down slightly with 4 fewer allegations than in 2009. The improper investigation allegation is exactly the same number as in 2009 with 8 allegations.

Of the total 79 allegations filed in 2010, 70 remained after investigation by staff. Of those 70 allegations remaining, 36 allegations were considered in 2010 by either the full Commission or a Board of Inquiry. Both the Commission and the Boards of Inquiry also considered additional allegations from cases carried over from 2009 and 2008 so that in total they considered 96 allegations over the course of 2010. Further details follow.

In 2010, the Boards of Inquiry considered a total of 36 allegations. Of the 36 allegations, 6 allegations were from a case filed in 2008, 22 allegations were from cases filed in 2009 and 8 allegations were from 2010.

In 2010, the full Commission voted to administratively close or summarily dismiss 60 allegations. Of the 60 allegations, 32 allegations were from 2009 and 28 allegations were from 2010.



*All Other allegations concerning police misconduct that do not fit into any of the other listed categories.



3. BOARD OF INQUIRY FINDINGS

In order to sustain an allegation, the board uses a “clear and convincing standard,” which means that the board must find evidence that is more than a preponderance of the evidence, but less than beyond a reasonable doubt. A sustained factual finding concludes that the alleged act did occur and the action was not justified.

The Commission sustained less allegations in 2010 than in 2009. 13% or 5 allegations of the 38 allegations considered at the board of inquiry were sustained, while 87% of the allegations were either not sustained, exonerated, unfounded or summarily dismissed. In 2010, the Commission sustained the lowest number of allegations in the last few years; in 2009, 18% were sustained and in 2008, 16% were sustained.

ALLEGATION FINDINGS	2010	2009	2008
Sustained	5	14	9
Not Sustained	11	9	20
Exonerated	6	39	20
Unfounded	15	17	9
Summarily Dismissed	1	0	0
Total Allegations	38	79	58

4. 2010 PENDING CASES

Under Government Code §3304(d) a public agency has one year to investigate an allegation of police misconduct. Since complaints filed towards the end of the year, e.g. November or December, will most likely not get investigated until the next year, several cases are carried over to the next year.

At the end of 2010, there were 18 open cases that carried over in 2011. This means that 16 cases were filed in 2010 and 2 cases were filed in 2009, but these cases were not resolved or closed in 2010. This number is lower than previous years. Each year, the number of cases carried over has declined. This is likely due to the drop in the total number of complaints filed. The PRC strives to lower the number of cases carried over to the next year, so that cases are resolved in a thorough and expeditious manner.

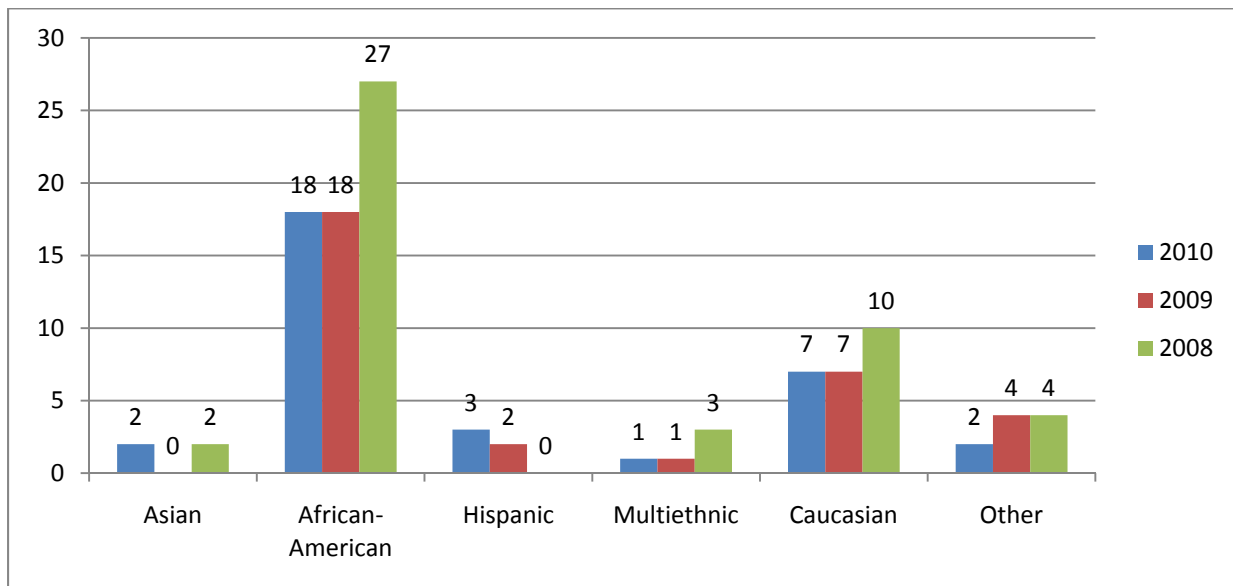


4. 2010 PENDING CASES (continued)

YEAR	CASES CARRIED OVER TO THE NEXT YEAR
2010	18 open cases carried over to 2011
2009	21 open cases carried over to 2010
2008	29 open cases carried over to 2009

5. COMPLAINANT ETHNICITY

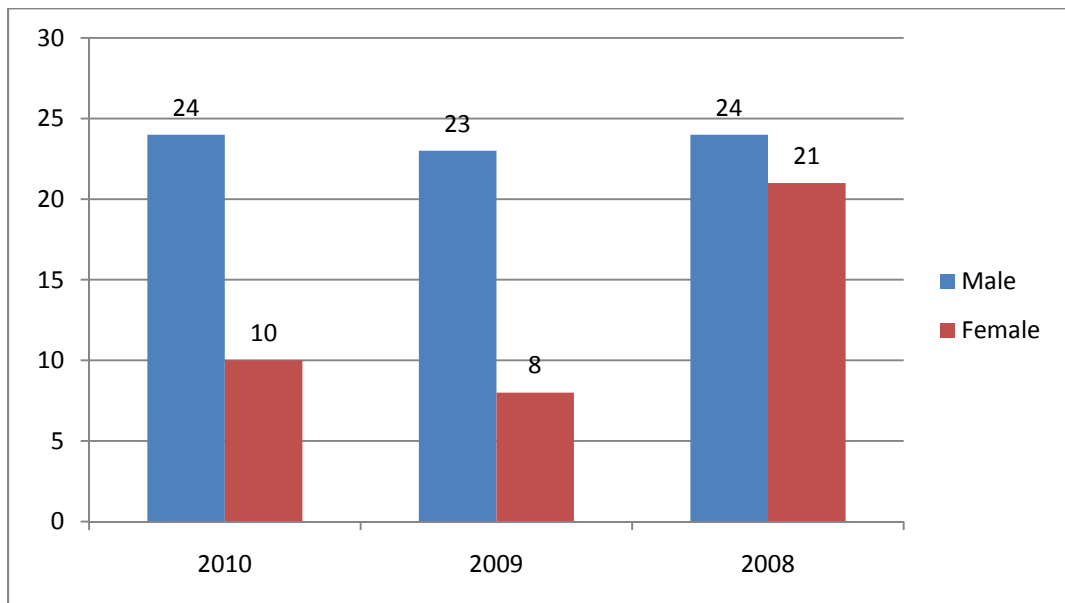
The total number of African American (18), Caucasian (7) and Multiethnic (1) complainants in 2010 and 2009 were the same. The number of Asian complainants increased to 2 in 2010, as compared with no Asian complainants in 2009. The Hispanic complainants increased to 3, as compared with 2 in 2009. The only decline in the complainant ethnicity group is in the “Other” category, which was 2 in 2010 and 4 in 2009.





6. COMPLAINANT GENDER

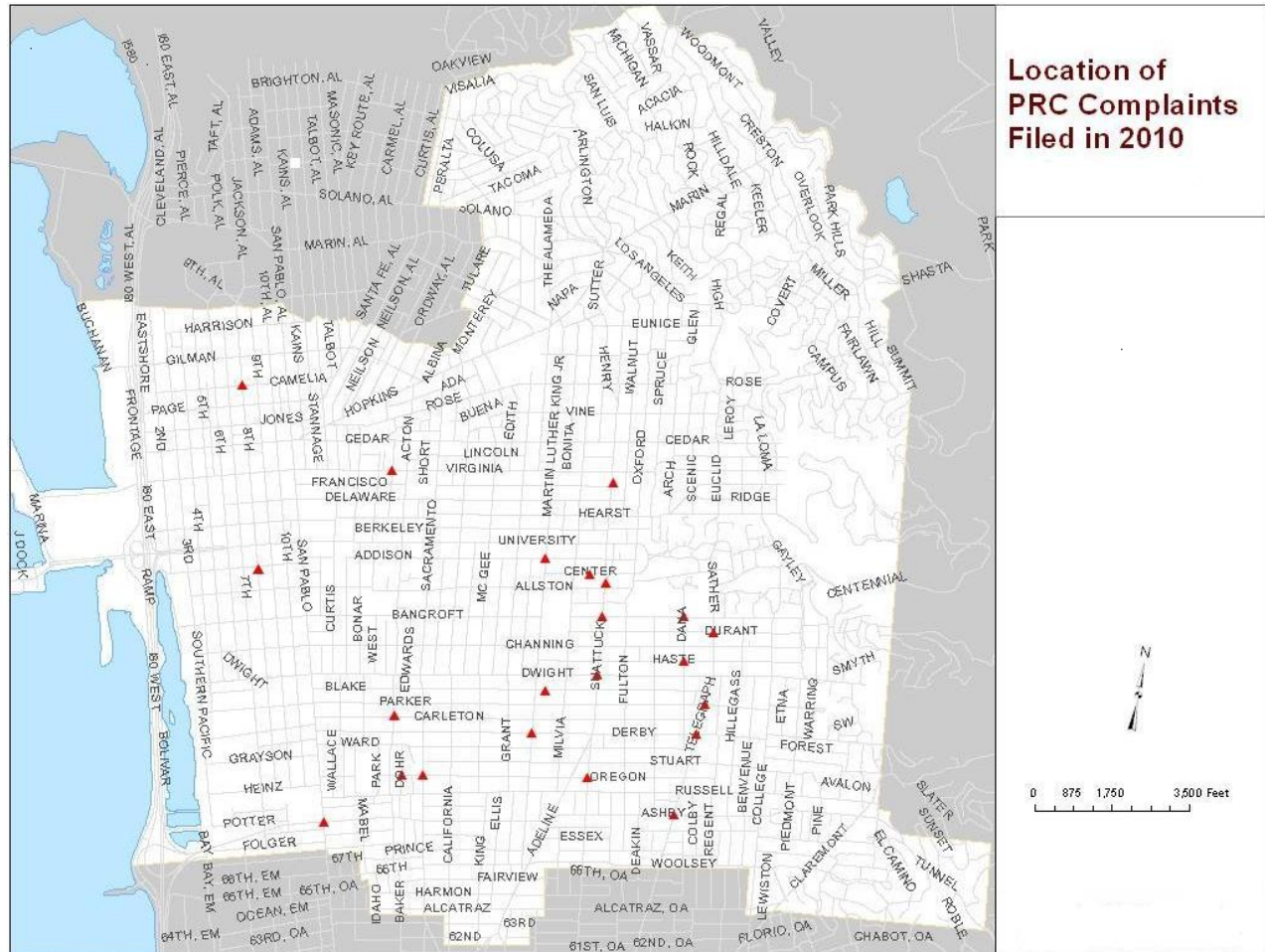
In 2010, the number of complaints was 29, which is virtually the same as 2009 at 30 complaints. However, the number of complainants was higher in 2010 at 34 as compared with 2009 at 31 complainants. The number of complainants is higher in 2010, because there were 5 complaints with co-complainants and in 2009, there were only 2 complaints with co-complainants. The number of male complainants for the last three years has remained on average 24 complainants. Finally, the number of female complainants dropped from 2008 from 21 to 10 in 2010.



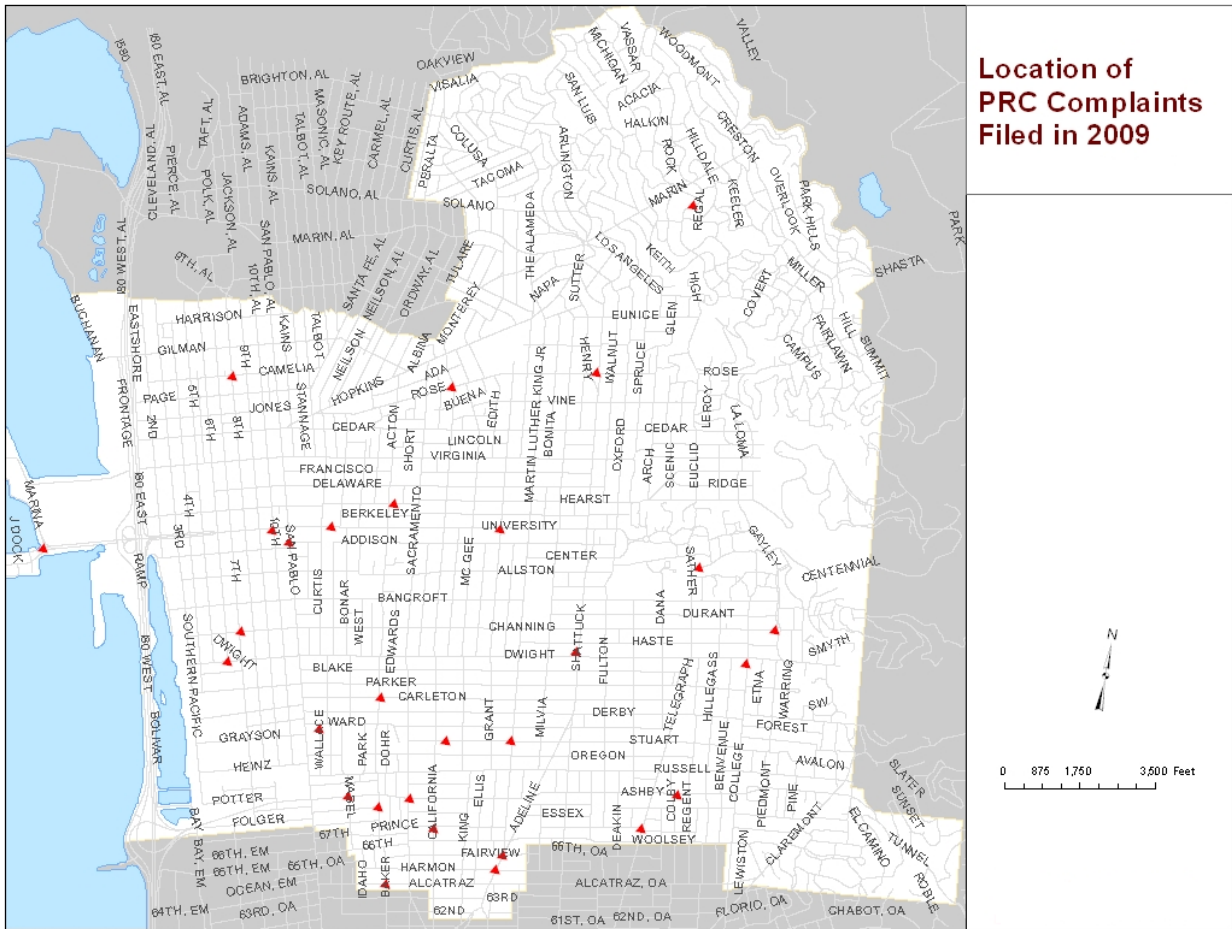


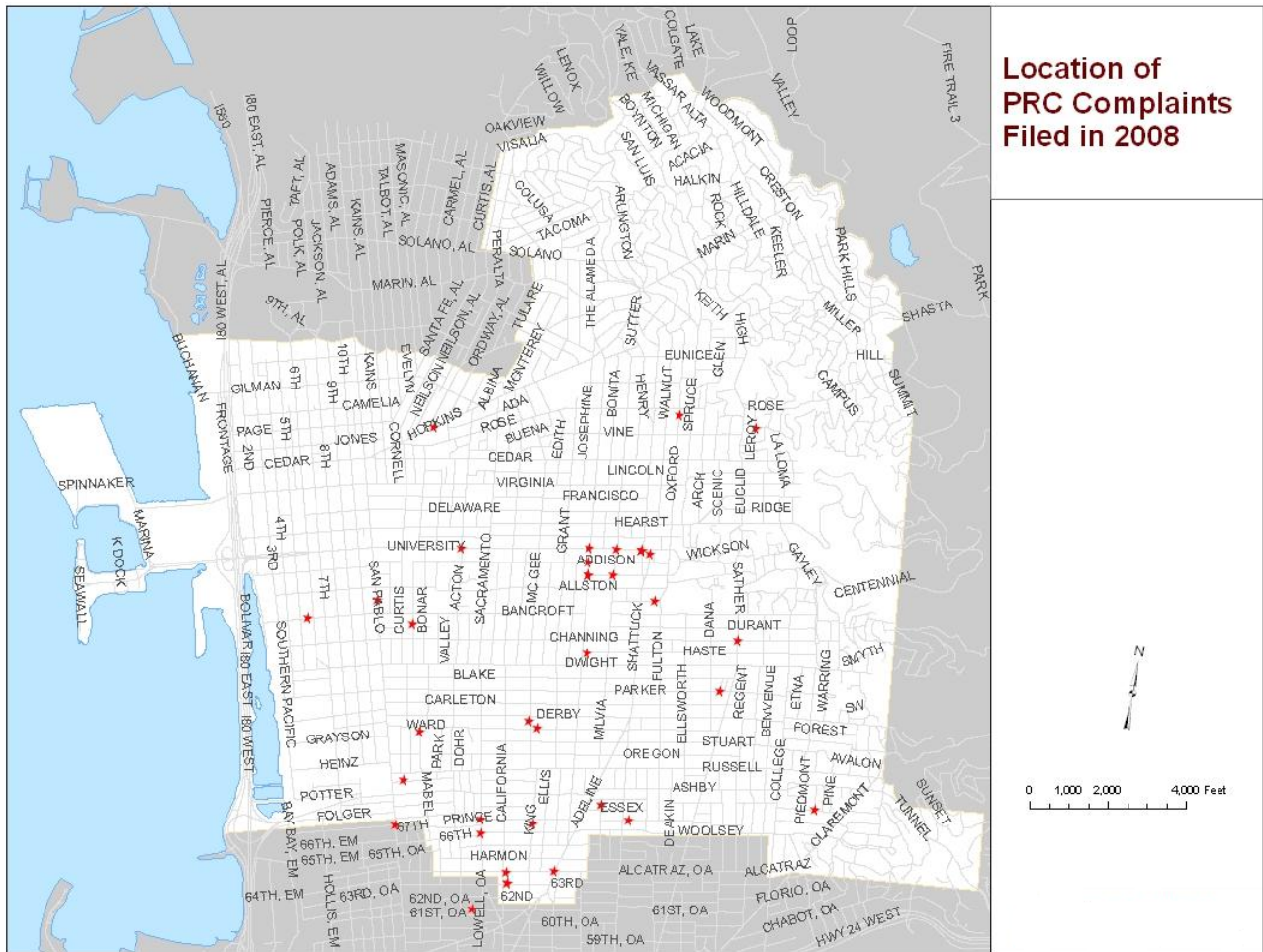
7. INCIDENT LOCATION

The incident location shows the area where complaints originated. The incident location from a complaint can provide valuable information in analyzing complaint trends and patterns when reviewing law enforcement complaints. In 2010, the complaints appear scattered throughout Berkeley and there does not appear to be any one area where most complaints originate. The distribution appears similar to prior years.



*Only 22 locations appear on the map because 7 of the locations were identical to other complaints.







8. CALOCA OFFICER APPEALS: POST PRC REVIEW

Since June 2002, the City of Berkeley has implemented an appeal process for police officers, who have had misconduct allegations sustained by the PRC (See Caloca v. County of San Diego (2002) 102 Cal. App. 4th 433 (“*Caloca*”). The City of Berkeley contracts with the Office of Administrative Hearings (OAH) in Oakland to adjudicate the *Caloca* appeal hearings.

In 2010 and 2009 PRC did not receive any appeal requests from subject officers, so no *Caloca* hearing occurred. In 2008, a PRC Board of Inquiry sustained one allegation in a case. The subject officer appealed the board’s finding to an Administrative Law Judge (ALJ) and a *Caloca* hearing was held. The ALJ affirmed the PRC’s sustained finding.

Year	Cases with <i>Caloca</i> Review	<i>Caloca</i> Findings
2010	0 Cases	N/A
2009	0 Cases	N/A
2008	1 Case, 1 Allegation	1 Sustained Allegation Upheld



Comm. Sherman and Comm. White



Vice-Chair Bloom, Comm. White and Comm. Smith



Comm. Shenoy, Comm. Sherman and Ms. Urbi



VII. POLICY REVIEW

The Ordinance establishing the Police Review Commission provides for “community participation in setting and reviewing police department policies, practices and procedures.” The PRC undertook review of several Police policies in 2010 and concluded work on many of those as further described below.

1. SEARCH OF HOMES AND THIRD PARTIES SUBCOMMITTEE

MEMBERS: Chairperson White, Commissioners Edwards, Huang and Gurgin

BPD REPRESENTATIVE: Capt. Harris, Lt. Morizono

STATUS: Closed.

This subcommittee was established to review how police conduct probation and parole searches and their impact on third parties. On September 9, 2009, the Subcommittee submitted five policy recommendations to BPD. On July 26, 2010, BPD provided the PRC with comments from the PRC’s policy recommendations. On September 29, the Commission accepted BPD’s comments from the July 26th memorandum and voted to dissolve the subcommittee. The PRC staff plans to send the final draft of the revisions to BPD in February 2011.

2. OFFICER INVOLVED SHOOTING SUBCOMMITTEE

MEMBERS: Chairperson Smith, Commissioner Perezvelez and Edwards.

BPD REPRESENTATIVE: Capt. Harris

STATUS: Open

This subcommittee was established on February 27, 2008. On February 16, 2008, an officer-involved shooting occurred. The Commission formed the subcommittee to review officer tactics and analyze best practices when police use deadly force. The subcommittee reviewed General Order P-12, Police-Involved Shootings and Fatal or Serious Injury Incidents. The Subcommittee also reviewed procedures for officer-involved shootings in other jurisdictions.

On May 28, 2009, the Subcommittee forwarded policy recommendations to BPD. On October 20, 2009, BPD provided comments on PRC’s policy recommendations. On October 28, 2009, the Commission accepted the Subcommittee’s policy recommendations, which included mandatory drug testing of officers after all officer-involved shootings. In 2010, the PRC provided BPD with the Commission’s policy recommendations. The PRC is awaiting BPD’s response, which is expected to be provided in early 2011.

3. REGULATIONS REVIEW SUBCOMMITTEE

MEMBERS: Chairperson Perezvelez, Commissioners Bloom, Kidd and Sherman.

BPD REPRESENTATIVE: None.

STATUS: Closed

This subcommittee was formed to improve the Regulations and met throughout 2009 to fine tune the Regulations. The Subcommittee invited participation and comment from both the Berkeley Police Association and BPD. The final regulations were adopted on July 14, 2010.



Lt. Randolph Files



Ms. Urbi and Vice-Chair Bloom

Some new additions to the revised Regulations included the following:

- Complaints can be filed by anyone, including those who were not aggrieved by the alleged police misconduct.
- Mediation was expanded, so that all cases where the complainant and officer choose mediation are referred to an outside mediator.
- The subject officer of a complaint can receive an investigation report with interview transcripts before an investigation is completed, since staff must complete an investigative report within 75 days from the date the complaint was filed.

4. **MUTUAL AID PACTS AND AGREEMENTS SUBCOMMITTEE**

MEMBERS: Commissioners Bloom, Kidd and Huang.

BPD REPRESENTATIVE: Captain Harris, Sgt. Curtin.

STATUS: Ongoing.

The Mutual Aid Pacts and Agreements Subcommittee is an ongoing subcommittee charged with reviewing BPD's mutual aid agreements with other law enforcement agencies when they enter Berkeley or work with BPD to perform law enforcement operations. On February 24, 2010, the Commission voted to approve the Mutual Aid Pacts and send them to City Council for approval with the suggestion that the Pacts be made available online. On April 20, 2010, the City Council approved BPD'S Agreements with Other Law Enforcement Agencies, Police Departments or Private Security Organization.

5. **ORDINANCE SUBCOMMITTEE**

MEMBERS: Commissioner Bloom, Gurgin and Perezvelez

BPD REPRESENTATIVE: None.

STATUS: Closed

The Ordinance Subcommittee reviewed whether the current PRC ordinance should be revised through a change to the City Charter. The impetus for the subcommittee came from the Regulations Subcommittee. However, the Subcommittee decided to dissolve after two meetings, because they believed the timing was not right for any changes.



VIII. TRAINING

The Commission received training and attended the following forums:

- 1. How to Review Communication Dispatch (CAD) Reports** by Capt. Harris
The Communication Dispatch Reports are the 911 reports that are included in the investigative reports. Since BPD recently changed the format and codes of the CAD reports, Capt. Harris showed the Commission how to read the new reports.
- 2. Mental Health: Welfare and Institution Code 5150** by Officer J. Shannon (BPD), Francesca Tennenbaum and Beverly Bourbin (Alameda County Patients Rights Advocate)
The Commission received training on how police deal with community members who may have special mental health needs, the role of the Berkeley Mobile Mental Health Crisis Team and services available for these clients.
- 3. Lesbian, Gay, Bisexual and Transgender (LGBT) Issues** by Leslie Ewing and Louise Monsour
The Commission received a presentation on the Pacific Center's services and possible issues that the LGBT community might have when interacting with police. Some of the issues included how police deal with LGBT during domestic violence incidents, hate crimes or potential bias. There was discussion that BPD receives diversity training through the Peace Officer Standards and Training.
- 4. Bias-Based Policing Training** by Dr. Lorie Fridell
This was a joint training sponsored by the Berkeley Police Department and Oakland Police Department. The training involved a dialogue on biased based policing (also known as racial profiling) between community stakeholders and police command staff. Participants learned about how departments could address this problem.
- 5. Bias-Based Policing Forum** by the City of Oakland's Citizen's Police Review Board
Speakers included Jim Chanin, an attorney who handles police misconduct cases, Chief Ron Davis, East Palo Alto Police Department, Capt. Paul Figueroa, Oakland Police Department, and Professor Jack Glaser, Goldman School of Public Policy. The speakers addressed problems associated with racially biased policing, the research and data, and solutions to addressing the problem.

APPENDIXES

APPENDIX 1

OVERVIEW of the POLICE REVIEW COMMISSION

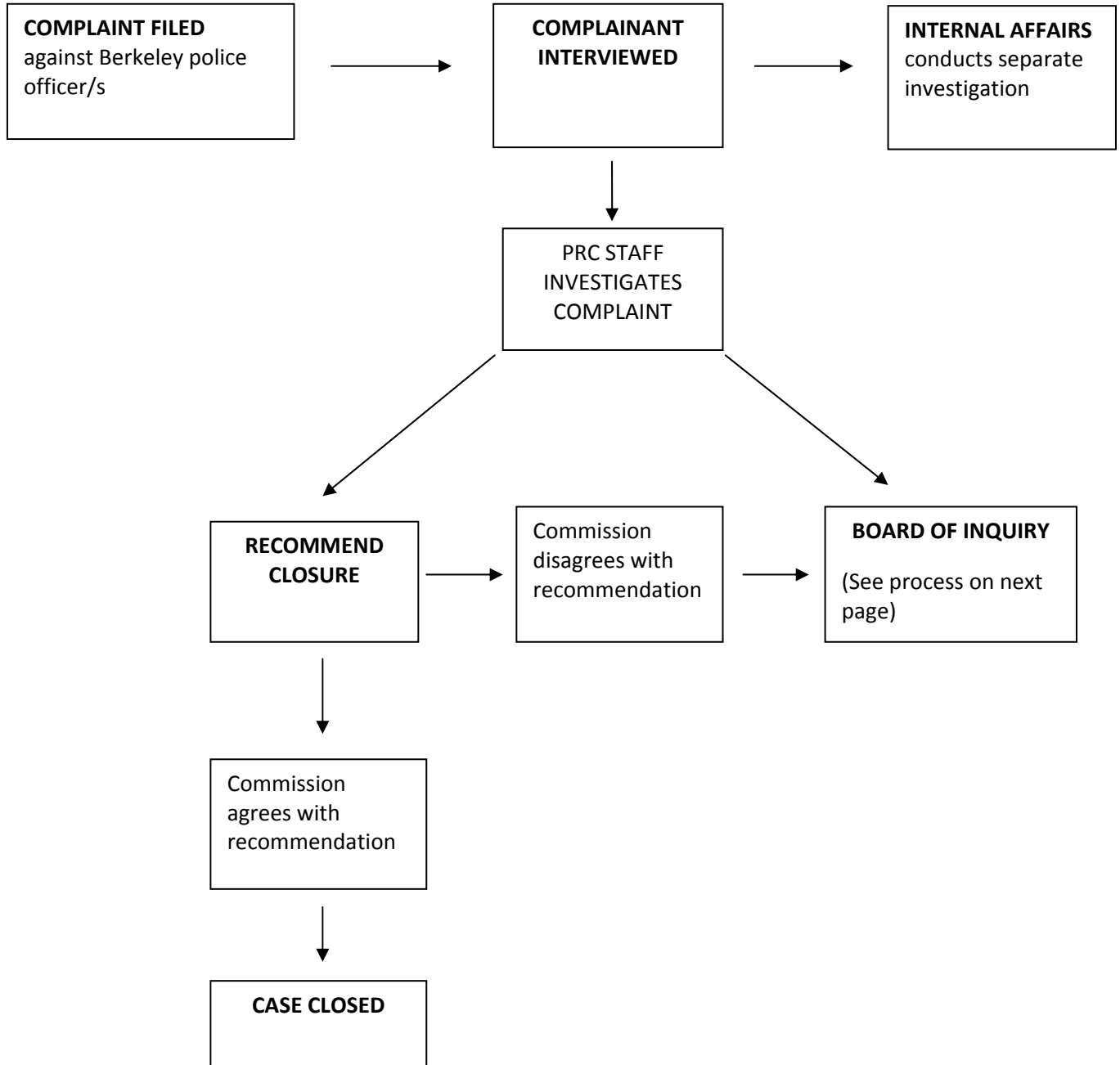
OVERVIEW OF THE POLICE REVIEW COMMISSION

Police Review Commission	An independent civilian oversight agency that investigates and hears complaints concerning Berkeley Police. External to the Police Department.
Mission	The Police Review Commission's mission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.
Commission Meetings	<ul style="list-style-type: none"> • All Commission meetings are open to the public. • Commissioners meet on the 2nd and 4th Wednesdays of each month at 7:00pm at the South Berkeley Senior Center, 2939 Ellis Street, unless otherwise noted. • Please visit website for current schedule at www.ci.berkeley.ca.us/prc/
Commissioners	9 Commissioners appointed by the City Council and the Mayor. Commissioners are volunteer members of the community and may receive stipends.
Function	<ul style="list-style-type: none"> • Conducts independent investigations of complaints concerning allegations of police misconduct. • Conducts closed administrative hearings. • Forwards recommended findings to City Manager and Chief of Police. • Makes policy recommendations on police practices and procedures.
Types of Complaints	Complaints vary from: discourtesy, excessive force, improper search, improper police procedures, abuse of discretion, and more.
Authority for oversight	Berkeley Municipal Code Ordinance No. 4644-N.S. Establishing a Police Review Commission, adopted by voter initiative on April 17, 1973
Police Department	<ul style="list-style-type: none"> • 172 sworn police officers
Complaint Outcome	Cases are either recommended for a hearing or administrative closure.
Contact	1947 Center Street, Third Floor, Berkeley, CA 94704 Tel: (510) 981-4950 TDD: (510)9 81-6903 Fax:(510) 981-4955 E-mail: prc@ci.berkeley.ca.us http: // www.ci.berkeley.ca.us/prc/

APPENDIX 2

COMPLAINT PROCESS

COMPLAINT PROCESS



APPENDIX 3

INVESTIGATION PROCESS

INVESTIGATION PROCESS

FILING COMPLAINTS

To file a complaint against a Berkeley police officer, a complainant must complete and sign a complaint form. PRC staff will screen the complaint for timeliness of complaint submission.¹ Staff will determine whether to investigate the allegations of misconduct or any BPD policy issues. PRC staff will forward a list of allegations from the complaint to BPD to provide notice that a complaint has been filed against the subject officer/s.

INVESTIGATION OF COMPLAINTS

PRC investigators interview the complainant, witnesses, police officers and they gather relevant evidence. The PRC investigator analyzes police reports, communication dispatch reports, photographs and any other physical or documentary evidence relevant to the complaint. Upon collection of all evidence, the Investigator will prepare a report and recommend whether the case should be closed or forwarded to a Board of Inquiry.

BOARD OF INQUIRY

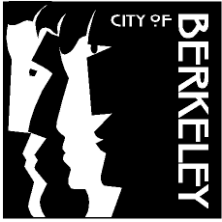
A Board of Inquiry is an evidentiary hearing of the complaint, consisting of three Commissioners, who review an investigation report and make a determination on the findings of a case. In cases involving the death of a person, the Commission shall sit as a Board of the whole. The hearing provides an opportunity for the Board to question the complainant and police officers about their version of the events forming the complaint.

After reviewing the evidence and receiving witness testimony, the Board deliberates and determines findings based upon a “clear and convincing” standard of proof. The Commission could find that the allegations of misconduct against an officer were either sustained, not sustained, unfounded or exonerated. The Commission’s findings are forwarded to the complainant, subject officer, City Manager and Chief of Police.

¹Complaints must be filed with the PRC within 90 days of the alleged misconduct; except, in circumstances specified in the PRC regulations, a 90-day extension can be granted by a vote of at least 6 Commissioners. (See Technical Appendix B, Page 3) Officers are not required to attend hearings on late-filed cases and the findings from such hearings cannot be considered for disciplinary action against the officer.

APPENDIX 4

BOARD OF INQUIRY PROCESS

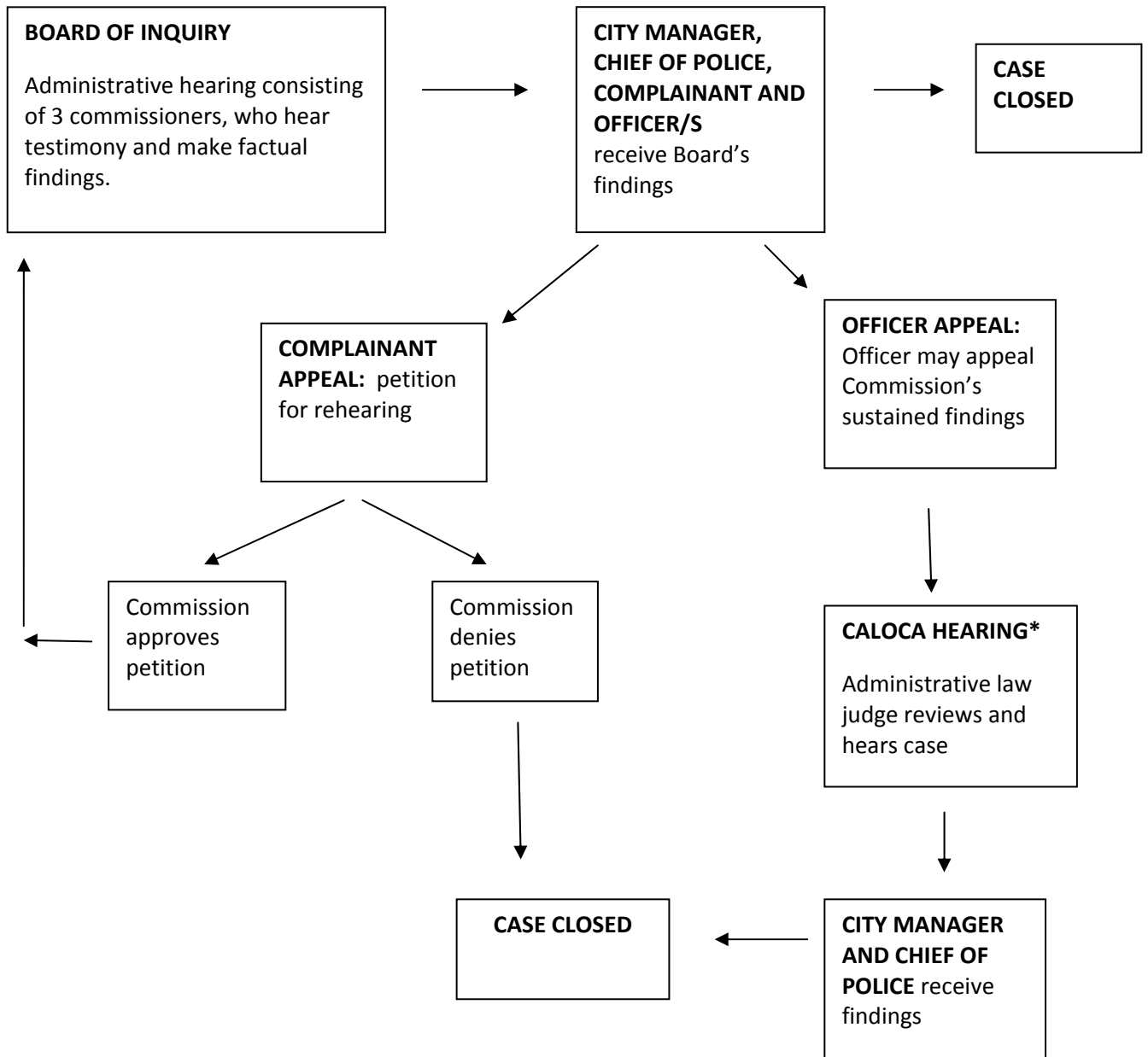


POLICE REVIEW COMMISSION BOARDS OF INQUIRY

Purpose	<ul style="list-style-type: none"> • An administrative hearing, not a court of law. • Three commissioners hear testimony, deliberate, and make factual findings. • Closed to the public.
Procedures	<p>The Police Review Commission’s (PRC) Regulations for Handling Complaints Against Members of the Police Department, Section VI-D, page 13, states the following:</p> <ol style="list-style-type: none"> 1. All BOI hearings shall be closed to the public. PRC staff may be present during the entirety of the closed hearing, and the DCO (Duty Command Officer) shall be present for all but the Commissioners’ deliberations. 2. An attorney or other person acting on behalf of any complainant or subject officer may participate in the hearing. However, a representative is not required and the complainant and subject officer is each responsible for insuring his/her counsel’s presence at the hearing. 3. If good cause is shown, the BOI may continue the hearing due to the unanticipated unavailability of a witness or a representative. 4. Absent good cause, if the complainant fails to appear within 30 minutes after the scheduled time for the hearing, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will proceed and the allegations may be sustained. 5. If a third Commissioner fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will be continued until a third Commissioner is seated unless all the parties present agree to proceed with 2 Commissioners. If the hearing proceeds with 2 Commissioners, all findings must be unanimous. 6. The PRC Officer or Investigator will present the complaint, introduce witnesses, if any, and answer appropriate questions addressed to them. 7. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officer and the officer’s representative may be present during the complainant’s and the civilian witnesses’ testimony. The complainant may make a statement or rely on the interview statements, and will then answer questions from the subject officer(s) or the subject officer’s representative(s) and the Commissioners. After questioning is completed, the complainant will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The complainant and any civilian witnesses will each be excused from the hearing room after his/her testimony is completed.

	<p>8. The subject officers and any witness officers will be called into the hearing room to testify separately. Each officer may make a statement or choose to rely on the interview statements. The subject officer(s) will be questioned by his/her representative first, after which the officer may be questioned by 2 Board members, unless s/he waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The subject officers and any witness officers will each be excused from the hearing room after his/her testimony is completed.</p> <p>9. No person who is present at a BOI hearing shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that his/her reason for leaving was sufficient.</p> <p>For more information on hearing procedures, please see the PRC Regulations.</p>
Findings	<ul style="list-style-type: none"> • Commissioners deliberate outside the presence of the parties. • Commissioners announce findings at the conclusion of their deliberations. • Written findings are sent to the complainant, subject officer(s), City Manager and Chief of Police.
Role of Participants	<p><u>Commissioners</u>: Hear testimony, deliberate and make factual findings.</p> <p><u>Complainant</u>: A witness to the complaint. Provides testimony to the Board of Inquiry.</p> <p><u>Civilian Witness</u>: A witness to the complaint, who is not required to attend the hearing. Provides testimony to the Board of Inquiry.</p> <p><u>Subject Officer</u>: The subject of the complaint. Provides testimony to the Board of Inquiry.</p> <p><u>Witness Officer</u>: An officer, who witnessed the incident. Provides testimony to the Board of Inquiry.</p> <p><u>Berkeley Police Association Representative</u>: An attorney or union representative for the subject officer(s).</p> <p><u>Duty Command Officer</u>: A lieutenant from the Berkeley Police Department, who answers questions on police policies or procedures from the Board.</p> <p><u>PRC Officer</u>: Provides support to the board of inquiry, answers questions and coordinates the hearing.</p> <p><u>PRC Investigator</u>: Presents case summary.</p> <p>Note: PRC staff is impartial to the investigation and hearing process. Staff does not advocate for either the complainant or the subject officer.</p>
For more information or questions	<p>Please contact the PRC Officer or Investigator at (510) 981-4950.</p>

BOARDS OF INQUIRY PROCESS



* See *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, which require the City afford police officers the opportunity for an administrative appeal, under Government Code Sections 3300 et seq., of a citizen advisory board's sustained findings of misconduct.

APPENDIX 5

MEETINGS AND ACTIVITIES

2010 MEETINGS & ACTIVITIES

January

6 Board of Inquiry – Complainant Horncliff
13 Regular Meeting
27 Regular Meeting

February

10 Regular Meeting
24 Policy Subcommittee Meeting – Mutual Aid Pacts
24 Regular Meeting

March

10 Regular Meeting
10 Policy Subcommittee Meeting – Mutual Aid Pacts
16 Board of Inquiry – Complainant Newson
24 Policy Subcommittee Meeting – Search of Homes
24 Policy Subcommittee Meeting – Regulations Review
24 Regular Meeting
29 Board of Inquiry – Complainant Denney

April

14 Policy Subcommittee Meeting – Regulations Review
14 Regular Meeting
21 Board of Inquiry – Complainant Blair
22 Board of Inquiry – Complainant Rogina
28 Regular Meeting

May

12 Regular Meeting
24 Board of Inquiry – Complainant Fred
26 Policy Subcommittee Meeting - Ordinance
26 Regular Meeting

June

9 Regular Meeting
23 Regular Meeting

July

14 Regular Meeting
28 Policy Subcommittee Meeting – Ordinance
28 Regular Meeting

2019 MEETINGS (CONTINUED)

August

- 2 Board of Inquiry – Complainant Butler
- 3 National Night Out
- 17 Racially Biased Policing Training
- 18 Racially Biased Policing Training

September

- 1 Board of Inquiry – Complainant Duardo/Ruckman
- 15 Policy Subcommittee Meeting – Search of Homes
- 15 Regular Meeting
- 29 Regular Meeting

October

- 13 Regular Meeting

November

- 10 Regular Meeting

December

- 2 Board of Inquiry – Complainant Denney
- 8 Regular Meeting – Election for Chair and Vice Chair
- 9 Race Biased Policing Forum

2010 MEETING SUMMARY

Type of Meeting	Number of Meetings
Regular PRC Meetings	19
Regulations Review Policy Subcommittee	2
Mutual Aid Pacts Policy Subcommittee	2
Search of Homes Policy Subcommittee	2
Ordinance Subcommittee	2
Boards of Inquiry	9
Trainings	2
Other Activities	2
TOTAL MEETINGS	40

APPENDIX 6

PRC ORDINANCE

CITY OF BERKELEY

ORDINANCE NO. 4644-N.S.

**Establishing a Police Review Commission
Adopted by People of Berkeley
April 17, 1973**

(Referenced by Court Decision April 12, 1976)

**Amended To: April 15, 1975
Annotated: June 9, 1976
Amended To: December 3, 1982**

POLICE REVIEW COMMISSION

***1947 Center Street, 3^d Floor - Berkeley, CA 94704 - (510) 981-4950
TDD (510) 981-6903 FAX (510) 981-4955***

A10

ORDINANCE NO. 4644-N.S.

ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES AND ACTIVITIES OF SAID COMMISSION.

The people of the City of Berkeley do ordain as follows:

Section 1. The general purpose of this Ordinance is to provide for community participation in setting and reviewing police department policies, practices, and procedures and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

Section 2. There is hereby established a Police Review Commission for the City of Berkeley. Said Commission shall consist of nine (9) members. Each Council member shall appoint (1) member to the Commission. All members shall be residents of the City of Berkeley. No officer or employee of the City shall be appointed to the Commission.

~~Section 3. The term of each member shall be two (2) years commencing on October 4 of each odd-numbered year and ending on October 3 of each succeeding odd-numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or, (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council. No member shall serve more than two (2) consecutive terms or portions thereof.*~~

Section 4. Vacancies on said Commission, from whatever cause, except temporary vacancies as hereinafter provided, shall be filled for the unexpired term by the City Councilmember whose appointee has ceased to serve. The appointment of any member of the Commission who has been absent and not excused from three (3) consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term. A member of the Commission may be granted a leave of absence not to exceed three (3) months by the City Council, and a

*Section 3 amended December 3, 1982; see attachment.

temporary vacancy shall thereupon exist for the period of such leave of absence. During the period of such temporary vacancy, the Council may fill such vacancy by a temporary appointment to said Commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full and permanent membership on said Commission.

Section 5. The Commission shall elect one of its members as Chairperson and one as Vice-Chairperson, who shall each hold office for one (1) year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. Officers shall be elected no later than the second meeting of the Commission following its appointment.

Section 6. The Police Review Commission shall be a working Commission. In order to compensate Commissioners for their time and work in investigating complaints, reviewing policies and practices, and attending meetings, Commissioners shall receive \$3.00 (three dollars) per hour, but in no case shall compensation for any one Commissioner exceed \$200 (two hundred dollars) per month. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Commission and filed with the office of City Clerk.

~~Such clerical and secretarial assistance as are needed by the Commission shall be provided by the office of the City Clerk. The Commission is further authorized to secure and define the duties of same, in the manner consistent with existing law, as it may deem necessary or appropriate.*~~

Section 7. The Commission shall establish a regular time and place of meeting and shall meet regularly at least once every two weeks or more frequently as workload requires. The regular place of meeting shall be in an appropriate central location in the City capable of accommodating at least 75 people, but shall not be held in the building in which the Police Department is located. At least once every three (3) months, or more frequently if the Commission desires, the Commission may meet in other places and locations throughout the City for the purpose of encouraging interest and facilitating attendance by people in the various neighborhoods in the City at the meetings.

Special meetings may be called by the Chairperson or by three (3) members of the Commission, upon personal notice being given to all members or written notice being mailed to

* Language shown in ~~strike-out type~~ was declared invalid by the California Court of Appeal on April 12, 1976.

each member and received at least thirty-six (36) hours prior to such meeting, unless such notice is waived in writing.

All Commission meetings, and agendas for such meetings shall be publicized in advance by written notice given to newspapers, radio and television stations serving the City at least three (3) days prior to regular meetings, and at the same time as members are notified of special meetings. In addition, notice of meetings shall be posted regularly on such bulletin boards and at such locations throughout the City as are designated by the Commission.

All meetings shall be open to the public, unless the Commission, in order to protect the rights and privacy of individuals, decides otherwise and if such closed meeting is not waived by the individual concerned. The Commission shall cause to be kept a proper record of its proceedings. The records and files of the Commission and its officers shall include, but not be limited to, all official correspondence, or copies thereof, to and from the Commission and its members, gathered in their official capacities, and shall be kept and open for inspection by the public at reasonable times in the office of the Secretary of the Commission.

A majority of the appointed Commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take any action.

The Commission may appoint such subcommittees as are deemed necessary or desirable for the purposes of this ordinance, provided that, membership on such subcommittees shall not be limited to the Commission members but may include members of the public who express an interest in the business of the subcommittees. The members of such subcommittees shall serve without compensation.

Section 8. On the petition of fifty (50) or more citizens in the City of Berkeley filed in the office of the Secretary of the Commission, the Commission shall hold a special meeting in an appropriate and convenient location for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission. In no case shall the Commission meet later than five (5) working days following the date the petition is filed.

~~Section 9. In carrying out its objectives, the Commission shall receive prompt and full cooperation and assistance from all departments, officers, and officials of the City of Berkeley. The Chief of Police, or his deputy if the Chief is ill or absent from the City, shall as part of his duties attend meetings of the Commission when so requested by the Commission, and shall provide such information, documents, or materials as the Commission may request. The Commission may also require the attendance at its meeting of any other Police Department~~

~~personnel or City officials it deems appropriate in the carrying out of its responsibilities under this Ordinance.*~~

Section 10. The Commission established by this Ordinance shall have the following powers and duties:

a) to advise and make recommendations to the public, the City Council, and the City Manager;

b) to review and make recommendations concerning all written and unwritten policies, practices, and procedures of whatever kind and without limitations, in relation to the Berkeley Police Department, other law enforcement agencies and intelligence and military agencies operating within the City of Berkeley, and law enforcement generally, such review and recommendation to extend to, but not be limited to, the following:

- i) treatment of rape victims;
- ii) police relationship with minority communities;
- iii) use of weapons and equipment;
- iv) hiring and training;
- v) priorities for policing and patrolling;
- vi) budget development;
- viii) other concerns as specified from time to time by the City Council;

~~c) to request and receive promptly such written and unwritten information, documents, and materials and assistance as it may deem necessary in carrying out any of its responsibilities under this Ordinance from any office or officer or department of the city government, including but not limited to the Police Department, the City Manager, the Finance Department, the Public Works Department, and the City Attorney, each of all of which are hereby directed out of its responsibilities; provided that information the disclosure of which would impair the right of privacy of specific individuals or prejudice pending litigation concerning them shall not be required to be made available to the Commission except in general form to the extent police activities in specific cases reflect Police Department policies and; provided that the individual involved in the specific situation may consent in writing to the disclosure of information concerning him or her, in which case it shall be made available to the Commission;*~~

*The language shown in ~~strike-out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.

*The language shown in ~~strike-out type~~ A14 are declared invalid by the California Court of Appeal on April 12, 1976.

d) to receive complaints directed against the Police Department and any of its officers and employees, and fully and completely investigate said complaints and make such recommendations and give such advice ~~without limitation including disciplinary and action~~ relating to departmental policies and procedures to the City Council and the City Manager in connection therewith as the Commission in its discretion deems advisable; provided as follows:

- i) that investigation of all complaints filed with the Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible;
- ii) that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred to the Commission for investigation ~~and that the Police Department shall conduct its own investigation only at the request of said Commission, and;~~
- iii) that regular quarterly reports relating to the number, kind, and status of all such complaints shall be made by the Commission to the City Council and the City Manager; **

e) consistent with provisions of the Berkeley City Charter and to the extent permissible by law, to exercise the power of subpoena;

f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this Ordinance and its general purposes.

Section 11. That Ordinance No. 4061-N.S. and Ordinance No. 4149-N.S. and No. 4887-N.S. in amendment thereof are each and all repealed by this Bill. To assist in an orderly transition between the Citizens Committee on Public Safety, herein abolished, and the Police Review Commission established by this Bill, all files, records, books, and publications, and documents of whatever kind of the former Committee shall be promptly deposited in the Office of the City Manager for the use and benefit of the newly created Police Review Commission.

Section 12. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provisions or applications, and to this end any phrase, section, sentence, or word is declared to be severable.

**The language shown in ~~strike-out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.

In effect: April 17, 1973

ORDINANCE NO. 5503-N.S.

AMENDING SECTION 3 OF INITIATIVE ORDINANCE NO. 4644-N.S. ENTITLED "ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES, AND ACTIVITIES OF SAID COMMISSION."

BE IT ORDAINED by the People of the City of Berkeley as follows:

That Section 3 of Initiative Ordinance No. 4644-N.S., as above entitled, is hereby amended to read as follows:

Section 3. The term of each member shall be two (2) years commencing on December 1 of each even numbered year and ending on November 30 of each succeeding even numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council.

This Ordinance was approved by the electors of the City of Berkeley at the General Municipal Election held in the City of Berkeley on November 2, 1982.

In effect: December 3, 1982

INDEX TO TEXT CHANGES

	<u>Section</u>	<u>Action</u>	<u>Ordinance No.</u>	<u>Eff. Date</u>
	2	Amended	4779-N.S. (Vote of the People)	4-15-75
	3	Amended	4779-N.S. (Vote of the People)	4-15-75
Attached	3	Amended	5503-N.S. (Vote of the People)	12-3-82

APPENDIX 7

PRC REGULATIONS

CITY OF BERKELEY

REGULATIONS

**For Handling Complaints Against
Members of the Police Department**

POLICE REVIEW COMMISSION

*POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, Third Floor, Berkeley, CA 94704
510.981-4950 TDD: 510.981.6903 FAX: 510.981-4955
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BERKELEY POLICE REVIEW COMMISSION
REGULATIONS FOR HANDLING COMPLAINTS AGAINST
MEMBERS OF THE POLICE DEPARTMENT

(Adopted May 13, 1975)
(Amended August 8, 1984)
(Amended April 30, 1990)
(Amended May 26, 1993)
(Amended November 7, 2007)
(Amended July 14, 2010)

PREAMBLE

The following procedures for handling complaints against members of the Berkeley Police Department (BPD) have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, was intended to provide prompt, impartial, and fair investigation of complaints brought by individuals against the BPD and these regulations are adopted by the Commission to carry out that purpose.

That Ordinance, by setting up this Commission made up of community residents, is intended to establish a process for reviewing Police Department policies, practices and procedures and for handling individual complaints against members of the BPD that is available to any individual, free of charge and without the need for attorneys or other professional advisors. The Ordinance gives the Commission the power to adopt rules and regulations and develop procedures for its own activities and investigations. Consistent with the powers granted to it by the enabling Ordinance, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley.

These regulations incorporate the confidentiality provisions required by the Decision in Berkeley Police Association v City of Berkeley (2008) 167 Cal.App.4th 385.

I. GENERAL

- A. Application of Regulations-Confidentiality of Complaint Proceedings. The following regulations govern the receipt and processing of complaints submitted to the Police Review Commission (PRC or Commission). All Board of Inquiry (BOI) and Commission proceedings relating to the investigation of an individual complaint against an officer shall be closed to the public. Records of these investigations shall be treated as confidential and will not be disclosed to members of the public. Any public records included in, or attached to, any investigative reports shall remain public records, and copies shall be made available to the complainant and subject officer.
- B. Definitions. The following definitions shall apply in these regulations:
1. Administrative Closure: Complaint closure before a BOI hearing. Administrative closure requires a majority vote of the Commissioners, in closed session, at a regularly scheduled meeting, and does not constitute a judgment on the merits of the complaint.
 2. Allegation: A specific assertion of police misconduct by a complainant or the Commission.

3. Board of Inquiry (BOI): Three Commissioners impaneled to hear and render findings on complaints; a BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.
4. BOI Hearing Packet: Evidence and information for the hearing, issued no later than 10 business days before the scheduled hearing.
5. Commissioner: A resident of Berkeley appointed by a City Council member or the Mayor to serve on the PRC.
6. Complaint: A declaration that alleges misconduct by a Berkeley Police Department (BPD) employee (including employees of the Public Safety Communications Center) while engaged in official duties.
7. Complainant: Any person who files a complaint with the PRC; is considered a witness to the complaint during a BOI hearing.
8. Duty Command Officer (DCO): A sworn BPD officer designated by the BPD's Chief of Police to appear at a Board of Inquiry and answer procedural questions clarifying BPD policy.
9. Findings Report: Summary of the BOI's findings, provided to the City Manager and the Chief of Police within 30 calendar days of the hearing.
10. Investigation: A formal process of resolving complaints.
11. Mediation: A process of resolving complaints informally, without investigation, in conjunction with a local mediation agency, if both the complainant and the subject officer agree. Mediation may be considered in all cases except those involving the death of an individual.
12. Policy complaint: A declaration alleging that a BPD policy, practice or procedure is improper or should be reviewed or revised.
13. PRC Investigator: A person employed by the City Manager and assigned to the PRC to investigate complaints.
14. PRC Officer: A person employed by the City Manager and assigned to the PRC as the office administrator and secretary to the Commission.
15. Report of Investigation: Report issued within 75 calendar days of the filing date of the complaint.
16. Subject Officer: A sworn BPD officer, or other BPD employee, against whom a complaint is filed.
17. Summary Dismissal: Dismissal of any or all of the allegations in a complaint prior to the start of a BOI hearing; requires a unanimous vote of the BOI Commissioners, and constitutes a judgment on the merits.

18. Supplemental Report of Investigation: Report issued no later than 10 business days before a BOI hearing, as part of the BOI Hearing Packet.
19. Toll: Stop the running of the clock/investigation timeline.
20. Witness Officer: A sworn BPD officer, or other BPD employee, who has personal knowledge of events described in a complaint, but is not the subject officer.

II. INITIATING THE PROCESS

A. Filing a Complaint

1. Complaint Form

Complaints and policy complaints must be filed on a form provided by the PRC and, except as provided in section 3, signed by the complainant.

Non-policy complaint forms will include information about the difference between mediation and an investigation; and language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint. Non-policy complaint forms will conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board of Inquiry shall be given under oath."

2. Filing Period

- a. To be considered timely, a complaint must be filed within 90 calendar days of the alleged misconduct, except that the 90-day period shall be tolled when a complainant is incapacitated or otherwise prevented from filing a complaint. Any complaint filed after 90 calendar days of the alleged misconduct shall be dismissed, unless accepted as a late-file. A complaint filed between 91 and 180 calendar days of the alleged misconduct must include a late-file form, and can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to file in a timely fashion. The PRC Officer or Investigator will submit a late-file to the Commission for a vote in closed session at the next regularly scheduled meeting. Any complaint filed after 180 calendar days of the alleged misconduct will not be accepted.
- b. For late-filed complaints, the subject officer(s) are not required to appear before a Board of Inquiry, and the Board's findings will not be considered in any disciplinary actions by the City Manager or the Chief of Police.

3. Unavailability of Complainant

If there is no complainant able to initiate a complaint, and in any case where a sworn officer or other BPD employee is involved in a death, 5 Commissioners may vote to authorize an investigation or take such other action they deem appropriate.

4. Sufficiency of Complaint

- a. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory shall be referred by the PRC Officer or Investigator to the Commission for administrative closure at the next regularly scheduled meeting, provided there is sufficient time to give the complainant notice (see Sec. IV(A)(2)), and before the Notice of Allegations is issued. If a majority of the Commissioners agree, the case will be closed; if not, the Notice of Allegations will be issued within 10 calendar days after the date of the vote rejecting the PRC Officer's recommendation for closure, unless the complainant has elected mediation.
- b. Policy complaints will be brought to the Commission, within 30 calendar days of filing, at a regularly scheduled meeting for discussion or action. If a majority of the Commissioners feel that a policy review is warranted, they may take appropriate action, including, but not limited to, initiating a formal investigation or establishing a subcommittee; a subcommittee, if established, will seek BPD involvement in its review of a BPD policy. Upon completion of its review, the subcommittee will present its conclusions and recommendations to the full Board.

5. Right to Representation

Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but an attorney is not required. If PRC staff is notified that a complainant or subject officer is represented by an attorney, PRC staff shall thereafter send copies of any materials and notification provided to the complainant or the subject officer(s) to their representative.

B. Mediation

1. Election

- a. The PRC Officer or Investigator shall, prior to, or concurrent with, the filing of a complaint, provide the complainant with information about the difference between mediation and an investigation. PRC staff shall make all reasonable efforts, and document their efforts, to contact the complainant within 2 business days of the filing of the complaint to discuss the complainant's preference, provided the complaint is appropriate for mediation.
- b. If the complainant elects mediation, the PRC staff shall provide the subject officer with a copy of the complaint and notify him or her of the complainant's election, within 10 calendar days.
- c. If the subject officer agrees to mediation, s/he shall notify the PRC Officer or the Investigator within 10 calendar days of being informed of the complainant's election. A subject officer who agrees to mediation must agree to toll the City's 120-day disciplinary deadline should the mediation break down and the mediator determine that the officer is acting in bad faith.¹

¹ Bad Faith: An intentional dishonest act by not fulfilling legal or contractual obligations, misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others. (West's Encyclopedia of American Law, edition 2, Copyright 2008).

2. Conclusion

- a. Mediation may continue as long as the mediator feels that progress is being made; it may be terminated if the mediator determines that either party is acting in bad faith. If the mediator terminates the mediation because the subject officer is acting in bad faith, the complainant will be advised of his/her right to proceed with the PRC investigation and hearing. If the mediator terminates the mediation because the complainant is acting in bad faith, the PRC Officer or Investigator shall submit the complaint to the Commission for administrative closure.
- b. If mediation is successfully concluded, the mediator will provide written notice to the PRC and the BPD within 5 calendar days of the last mediation session. The PRC will consider the matter resolved and the complaint will be submitted for administrative closure.

3. Records retention

Mediation records will be destroyed 1 year from the date of election by the complainant.

III. COMPLAINT INVESTIGATION

A. Notice and Availability of Complaint

1. Notice of Allegations

Within 20 business days of the date a timely-filed complaint is received at the PRC office, unless it is submitted to the Commission for administrative closure or the complainant elects mediation, the Investigator shall prepare a Notice of Allegations. The Notice of Allegations shall be sent in hard copy and, when feasible, electronically, to the complainant, the Chief of Police and/or BPD Internal Affairs, and, by delivery to the BPD, each identified subject officer. If the Notice of Allegations is not issued in the time required, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay.

2. Availability of Complaint

The complaint shall be available at the PRC office, and a copy shall be provided to the subject officer with the Notice of Allegations. PRC staff shall maintain a central register of all complaints filed.

B. Investigation Process

1. Nature of Investigation

The investigation of a complaint shall consist of conducting recorded interviews with the complainant, the subject officer(s), and any witnesses to the incident that gave rise to the complaint;² collecting relevant documentary evidence, including, but not limited to: police reports and records, photographs, and visual or audio records; and issuing a Notice of Allegations, Report of Investigation, and a Board of Inquiry Hearing (Hearing) Packet.

² Recordings of interviews shall be kept for 100 days or until the Board of Inquiry's Findings Report has been provided to the City Manager, whichever is later.

2. Time for Investigation

- a. The investigation must be completed within one year, unless a Government Code Sec. 3304(d) exception applies.
- b. If the investigation is not completed within one year, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the case shall be closed, unless the Commission determines that a Government Code Sec. 3304(d) exception applies.
- c. If a Government Code Sec. 3304(d) exception to the one-year limitation period applies, the BOI Hearing Packet shall state the applicable exception.

3. Pending Criminal Action

If the complainant or the subject officer is the subject of criminal proceedings related to the matter of the complaint, the PRC shall not undertake an investigation until the criminal matter has been adjudicated or dismissed. All time limitations applicable to the processing of PRC complaints shall be tolled during the pendency of any such criminal proceedings. Within one week of the filing of the complaint, or as soon thereafter as possible, the PRC Officer shall determine the status and anticipated resolution of the criminal proceedings by communicating, in writing, directly with the District Attorney's Office.

C. Interviews

1. Conduct

Interviews should be conducted in a manner that will produce a minimum of inconvenience and embarrassment to all parties. BPD officer interviews must be conducted in compliance with the Peace Officers Procedural Bill of Rights, Government Code Section 3303. When possible, BPD employees should not be contacted at home, and others should not be contacted at their places of employment.

2. Notice

PRC staff shall notify subject and witness officers at least 2 weeks before the scheduled interview date by providing a hard copy and, when feasible, an electronic mail notification. Follow-up notices will be sent at least one week before the scheduled date. An officer who is unavailable for an interview shall contact the PRC Officer or the Investigator immediately to state the reason for his/her unavailability.

3. Exercise of Constitutional Rights

Subject officer testimony shall be required, in accordance with the City Manager's policy (see Exhibit B). While all BPD employees have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the PRC regarding conduct and observations that arise in the course of their employment and may be subject to discipline for failure to respond. The exercise of any or all constitutional rights shall not be considered by the Commission in its disposition of a complaint.

D. Reports

1. BPD Reports

- a. The PRC should receive un-redacted police reports from BPD once the PRC Officer has established and implemented security and chain of custody procedures that satisfy the City Manager and the Chief of Police. Police reports will be redacted when distributed to BOI Commissioners, but un-redacted reports will be available at the PRC Office for BOI Commissioners to review.
- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
 - (2) The original Communications Center tapes relevant to the complaint.
 - (3) All police reports, records, and documentation.
 - (4) Names, addresses, telephone numbers, and statements of all witnesses.

2. Report of Investigation

- a. The PRC Officer or the Investigator shall assemble all relevant information in a confidential Report of Investigation. The Report shall list the allegations, provide a summary of the complaint, provide the applicable BPD, state or local rules and regulations, and include a copy of the interview transcripts.
- b. The Report shall be provided to the subject officers, with a copy to the Chief of Police, within 75 calendar days of the date of filing of the complaint. If the Report is not timely, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay.

IV. PRE-HEARING COMPLAINT DISPOSITION

A. Administrative Closure

1. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- a) Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- b) Request for closure by complainant.
- c) Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- d) Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means (e.g. mediation).

- e) Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a Board of Inquiry hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- f) Failure to timely issue the Notice of Allegations, as set forth in Section III(A)(1).
- g) Failure to timely issue the Report of Investigation, as set forth in Section III(D)(2)(b).
- h) Failure to timely complete its investigation, as set forth in Section III(B)(2).
- i) A policy complaint that has been considered by the Commission.

2. Procedure

A complaint may be administratively closed by a majority vote of Commissioners during closed session at a regularly scheduled meeting. The complainant shall be notified of the opportunity to address the commission during closed session at this meeting and such notice shall be sent no later than 5 calendar days prior to said meeting. Cases closed pursuant to this section shall be deemed “administratively closed” and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

A policy complaint may be administratively closed by a majority vote of Commissioners during open session at a regularly scheduled meeting.

3. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

B. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before a hearing. Upon receipt of a "no contest" response, the PRC Officer or Investigator shall refer the file and the response to the City Manager and the Chief of Police for appropriate action.

C. Waiver of Hearing

Either the complainant or the subject officer may request that findings be rendered without a hearing. If both the complainant and the subject officer sign a written waiver of their right to a hearing, a Board of Inquiry may issue findings based on interview statements and documentary evidence.

V. BOARDS OF INQUIRY

A. Composition.

A Board of Inquiry (BOI) shall consist of 3 Commissioners, who shall designate one of them to be Chairperson. In cases involving the death of a person, and in such other cases as the Commission shall determine by a vote of 6 Commissioners, the Commission shall sit as a Board of the whole, with a minimum of 6 Commissioners.

B. Designation

1. Obligation to Serve

Commissioners will volunteer for dates upon which hearings have been scheduled, without knowledge of the factual dispute to be heard. PRC staff will keep a record of the number of cases heard by each Commissioner, who will be expected to hear an approximately equal number of cases over each three-month period. A BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.

2. Unavailability of BOI Member

If any member of a Board of Inquiry becomes unavailable, s/he shall be replaced by another Commissioner. Notice of this substitution shall be made as soon as possible to the subject officer. If a Commissioner is substituted within 7 calendar days of a Board of Inquiry, the subject officer will retain the right to challenge said Commissioner for cause under Section 4(C) below. The notice of challenge of a substituted Commissioner must be made at least 3 business days prior to the convening of a Board of Inquiry and shall be deemed as just cause for a continuance of the hearing.

3. Effect of Continuance

If a hearing is rescheduled due to the unanticipated unavailability of the complainant(s), the subject officer(s) or the complainant's or subject officer's attorney, the case may be reassigned to another Board of Inquiry. The Board composition shall not change once a hearing has been convened, however.

C. Challenge of BOI Commissioner

1. Basis for Challenge

A Commissioner who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:

- a) a familial relationship or close friendship with the complainant or subject officer;
- b) witnessing events material to the inquiry;
- c) a financial interest in the outcome of the inquiry;
- d) a bias for or against the complainant or subject officer.

2. Procedure

- a. Within 7 calendar days from the date of mailing of the Board of Inquiry hearing packet, which includes the names of the Commissioners constituting that Board, the complainant or the subject officer(s) may file a written challenge for cause to any Commissioner. Such challenge must specify the nature of the conflict of interest.

- b. The PRC Officer or his/her designee shall contact the challenged Commissioner as soon as possible after receipt of the challenge.
- c. If the Commissioner agrees, PRC Officer or his/her designee shall ask another Commissioner to serve.
- d. If the Commissioner does not agree that the challenge is for good cause, PRC Officer or his/her designee shall poll the other members of the Board and, if both agree that the challenge is for good cause, shall inform the challenged Commissioner and ask another to serve.
- e. If a challenge to a Commissioner is rejected, and the Commissioner serves, the written challenge and the Commissioner's written response shall be part of the record of the complaint.

3. Replacement of Commissioners

Any Commissioner who is unable to serve for any reason shall be replaced by another Commissioner, except in cases involving a death.

D. Responsibilities of BOI Commissioners

1. Confidentiality

- a. Each Commissioner shall maintain strict confidentiality.
- b. Each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff after the hearing has been concluded.

2. Conduct

- a. Commissioners shall not publicly comment on any complaints.
- b. Commissioners shall not discuss any of the facts or analysis of a pending complaint.
- c. Commissioners shall not pledge or promise to vote in any particular manner in a pending complaint.

3. Breach

Failure to comply with these provisions shall be grounds for removing a Commissioner from a BOI. In addition, a Commissioner or the PRC Officer may bring a violation to the attention of the full Commission, for discussion or action, at a regularly scheduled meeting. Possible action, which requires a two-thirds vote, may include notification of the breach to the appointing City Councilmember.

E. Function

- 1. The BOI members shall review the confidential Hearing Packet and the evidence gathered in connection therewith, hear testimony in closed session, prepare findings, and advise the Chief of Police and the City Manager of its findings.
- 2. The BOI members shall accept court disposition of traffic or parking citations. It shall assume that uncontested citations are justified, and shall make no assumptions regarding dismissed citations.

F. Subpoena Power

The Commission's subpoena power shall be used to the extent necessary to insure fairness to all parties.

VI. HEARINGS

A. Scheduling and Notice

1. BPD Schedules

The Chief of Police, or his designee, shall provide PRC staff with a subject officer's schedule prior to the scheduling of a hearing. Hearings shall not be held on an officer's regular days off, scheduled vacation, or authorized leave of absence. PRC staff shall determine the complainant's and the subject officer's availability before scheduling a hearing.

2. Notice

No later than 10 business days before the hearing date, the PRC Officer or the Investigator shall provide written notice of the date, time and location of the hearing, and the composition of the Board of Inquiry, to the complainant, the subject officer(s), any representatives, civilian witnesses, witness officers, the BOI members and the Chief of Police.

B. Board of Inquiry Hearing Packet

No later than 10 business days before the hearing date, the PRC Officer or the Investigator shall provide a Hearing Packet to the BOI members, the complainant, the subject officer(s), any representative(s), any witnesses, the DCO and the Chief of Police.

1. The BOI members shall receive a Hearing Packet that contains:

- a) The PRC Officer's or the PRC Investigator's recommendations, if any, concerning summary disposition or procedural matters.
- b) A copy of the complaint.
- c) The Supplemental Report of Investigation, which includes a summary of the complaint, a summary of the interview statements, the applicable BPD, state or local rules and regulations, and a brief analysis.
- d) Police reports and any other relevant documentary evidence, including evidence submitted by the complainant.
- e) A copy of all the interview transcripts.

2. The subject officer(s), the officer's representative, the DCO, and the Chief of Police shall receive a Hearing Packet that contains the documents listed in Section V(B) (1)(a, c, d) above; a copy of the complaint (Section V(B) (1)(b)) and the interview transcripts (Section V(B) (1)(e)) shall be provided only if they have not been provided previously.

3. The complainant shall receive a Hearing Packet that contains:

- a) A copy of the complaint.

- b) Police reports and any other non-confidential, relevant documentary evidence, including evidence submitted by the complainant.
 - c) A copy of the complainant's interview transcript.
4. Each witness shall receive a copy of his/her interview transcript.

C. Pre-Hearing Motions

1. Newly Discovered Evidence and/or Witnesses.

The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the PRC Officer or Investigator no later than 10 business days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. The PRC Officer or Investigator shall inform the BOI of the newly discovered evidence or witnesses as soon as possible.

The BOI shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and the PRC Officer or Investigator shall notify both the complainant and the subject officer of the Board's decision.

2. Procedural Issues.

The complainant and subject officer shall raise any procedural issues, by submitting them to the PRC Officer in writing, no later than 5 business days before the scheduled hearing date. Procedural issues can include, but are not limited to, the expiration of the 1-year limitation period and/or whether an officer should testify.

3. Summary Disposition

a. Summary Dismissal

After reviewing the Hearing Packet, the BOI may summarily dismiss any or all of the allegations that it finds clearly without merit, by unanimous vote, on the recommendation of the PRC Officer or Investigator, its own motion, or that of the subject officer. Parties to the complaint shall be notified of the summary dismissal, and may appear to argue for or against summary disposition.

b. Summary Affirmation

After reviewing the Hearing Packet, the BOI may summarily sustain any or all of the allegations that it finds clearly meritorious, by unanimous vote, on the recommendation of the PRC Officer or Investigator, or its own motion. The subject officer shall be notified of the summary affirmation, and may appear to object to the summary affirmation, which shall not occur over the subject officer's objection.

4. Continuances

- a. A continuance may be granted by a majority of the BOI. In considering whether to grant such a continuance, the BOI members shall consider the reason for the request; the timeliness of the request; the prejudice to the other party; the date of the filing of the complaint; previous continuance requests; and other relevant information.
- b. A continuance request shall be presented to the BOI as soon as the cause for continuance arises.
- c. A continuance shall not be granted in the absence of good cause.
- d. A request for continuance made within 3 business days of the hearing date shall not be granted unless the moving party can demonstrate a grave emergency that will unduly prejudice him or her if the hearing is not continued.
- e. A continuance granted at the request of the subject officer shall toll any BPD disciplinary time period.

D. Procedure

1. All BOI hearings shall be closed to the public. PRC staff may be present during the entirety of the closed hearing, and the DCO shall be present for all but the Commissioners' deliberations.
2. An attorney or other person acting on behalf of any complainant or subject officer may participate in the hearing. However, a representative is not required and the complainant and subject officer is each responsible for insuring his/her counsel's presence at the hearing.
3. If good cause is shown, the BOI may continue the hearing due to the unanticipated unavailability of a witness or a representative.
4. Absent good cause, if the complainant fails to appear within 30 minutes after the scheduled time for the hearing, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will proceed and the allegations may be sustained.
5. If a third Commissioner fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will be continued until a third Commissioner is seated unless all the parties present agree to proceed with 2 Commissioners. If the hearing proceeds with 2 Commissioners, all findings must be unanimous.
6. The PRC Officer or Investigator will present the complaint, introduce witnesses, if any, and answer appropriate questions addressed to them.
7. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officer and the officer's representative may be present during the complainant's and the civilian witnesses' testimony. The complainant may make a statement or rely on the interview statements, and will then answer questions from the subject officer(s) or the subject officer's representative(s) and the Commissioners. After questioning is completed, the complainant will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The complainant and any civilian witnesses will each be excused from the hearing room after his/her testimony is completed.

8. The subject officers and any witness officers will be called into the hearing room to testify separately. Each officer may make a statement or choose to rely on the interview statements. The subject officer(s) will be questioned by his/her representative first, after which the officer may be questioned by 2 Board members, unless s/he waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The subject officers and any witness officers will each be excused from the hearing room after his/her testimony is completed.
9. No person who is present at a BOI hearing shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that his/her reason for leaving was sufficient.

E. Evidence

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. "Hearsay evidence" is evidence of a statement that was made by someone other than the witness testifying at the hearing.

Evidence shall be taken in accordance with the following provisions:

- a) The complainant and subject officer(s) shall have the right to testify and refer to any relevant documentary evidence and exhibits. If the complainant or subject officer does not testify on his/her own behalf, he/she may be called and examined as if under cross-examination.
- b) Oral evidence shall be taken only under oath.
- c) The Chairperson shall exclude irrelevant and unduly repetitious evidence.
- d) The Chairperson shall exclude unruly or disruptive persons from the hearing.
- e) The Chairperson will conduct the hearing subject to being overruled by a majority of the BOI members. BOI members shall be primarily responsible for obtaining testimony. The PRC Officer or his/her designee will answer Commissioner's questions on the evidence, points of law, and procedure.
- f) The City Attorney's opinion will be sought whenever the interpretation of City of Berkeley Ordinance is contested and pivotal in the case, or when a case raises substantial legal issues of first impression.
- g) If the BOI needs additional evidence to reach its findings, it will continue the hearing to a future date, unless the parties agree to allow the Board to receive such material in writing without reconvening.

- h) If, upon the petition of either party, the hearing is continued for consideration of motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.

VII. DELIBERATION AND FINDINGS

A. Deliberation

After the hearing has been concluded, the Board will deliberate outside of the presence of the complainant, the subject officer(s), and any witnesses or representatives. The Board shall not consider any information not received in the Hearing Packet or during the hearing.

B. Majority Vote

All action by the Board shall be by majority vote, except as specified in these procedures. A dissenting member shall set forth the reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.

C. Standard of Proof

No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of the evidence, but less than beyond a reasonable doubt.

D. Categories of Findings

1. If the evidence shows that the alleged act did not occur, the finding shall be "Unfounded".
2. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be "Not Sustained".
3. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be "Exonerated".
4. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be "Sustained".

E. Findings Report and Notification

1. Within 7 calendar days of the hearing, the PRC office shall inform the complainant and subject officer, in writing, whether the allegation was sustained, not sustained, unfounded or exonerated, and about the right to petition for rehearing.
2. Within 30 calendar days of the hearing, the PRC office shall submit a Finding Report, together with the Hearing Packet, to the City Manager and the Chief of Police.

F. Petition for Rehearing.

1. Within 15 calendar days of the mailing of the Board's findings, any party to the complaint may petition in writing for a rehearing. A rehearing may be granted only if the applicant establishes that: there is newly discovered, material evidence that, with reasonable diligence, could not have been discovered and produced at the hearing; or, that there was substantial procedural error likely to have affected the outcome.
2. Within 21 calendar days of the receipt of a petition for rehearing by either party, the Commission shall vote in closed session whether to grant or deny it. Both the complainant and the subject officer shall receive notice that the Commission will vote on the petition for rehearing. If, by a majority vote of the Commissioners, a rehearing is granted, it shall be held within 35 calendar days of the receipt of the petition. If the officer makes the request, the officer must agree to toll the 120-day disciplinary period, provided the request is granted; tolling reverts back to the date the request is submitted and continues until the hearing is concluded and the findings are issued. However, there shall be no tolling if the 120 days has already passed.

VIII. AMENDMENT AND AVAILABILITY OF REGULATIONS

- Amendments to the Regulations for Handling Complaints Against Members of the Police Department (Regulations) require a majority vote of the Commission.
- Amendments shall be distributed to Commissioners, the Berkeley Police Association, the City Manager, the City Attorney, and the Chief of Police.
- The PRC office shall maintain a complete set of the current Regulations.

SUBJECT OFFICER TESTIMONY

MEMORANDUM

July 20, 1990

To: Ronald D. Nelson, Chief of Police
Police Review Commission
Berkeley Police Association

From: Michael F. Brown, City Manager

Subject: SUBJECT OFFICER TESTIMONY

The purpose of this memorandum is to set forth my policy regarding testimony by accused officers at Police Review Commission (PRC) Boards of Inquiry.

Subject officer testimony has been required since July 1, 1983 based on agreements reached in negotiations between the PRC, the Berkeley Police Association (BPA), and the City Manager's Office (CMO) in the fall of 1982.

The requirement is as follows:

Each Subject Officer, each BPD Member Witness, the Duty Command Officer (DCO), the Complainant, and the Police Review Commission's Investigator shall be present at PRC Boards of Inquiry and shall testify unless otherwise directed by the City Manager.

If the DCO observes actions which in his/her opinion constitute a violation of PRC rules and Regulations, the DCO shall request of the Chairperson that the violation be corrected. If the violation is not corrected, the DCO may direct the Subject Officer to leave the hearing. Such a decision should only be reached under very extreme circumstances after all other means of resolving the situation have failed.

The requirement of the Subject Officer to testify shall not apply in cases where the complaint was filed during the 90-day filing extension period.

The requirements to testify before the PRC shall not apply to non-sworn employees of the Parking Division.

APPENDIX 8

COMPLAINT FORM



COMPLAINT FORM

Police Review Commission

1947 Center Street, 3rd Floor, Berkeley, CA 94704

Website: <http://www.ci.berkeley.ca.us/prc>

E-mail: prc@ci.berkeley.ca.us

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received: _____

PRC CASE #: _____

1

Name of Complainant: _____
Last First Middle

Primary Complainant Co-Complainant

Home Address: _____
Street/Apartment City State Zip

Home Phone: (____) _____ Work Phone: (____) _____ Cell Phone (____) _____

E-mail address: _____

Occupation _____ Gender: _____ Date of Birth: _____

Ethnicity (For statistical purposes only)

- Asian Hispanic/Latino
- Black/African American Multiethnic: _____
- Caucasian Other: _____

Do you need a translator? Yes No If yes, what language? _____

2

Did the incident involve a Berkeley Police Officer (excluding Parking Enforcement)? Yes No
(If no, please speak to a PRC staff person. Do not complete this form.)

Location of Incident: _____

Date _____ Time: _____

(Complaints must be filed within 90 days of the time you became aware of the incident. The Commission may extend this time limit another 90 days under certain conditions.)

Please describe any injuries suffered: _____

Where and by whom were the injuries treated? _____

If injuries were treated, would you authorize the release of your medical information to the PRC? Yes No
If yes, please sign and return the Medical Authorization Form provided by the Police Review Commission.

Were photos taken of the injuries? Yes No If yes, by whom? _____

Was the incident videotaped? Yes No If yes, by whom? _____

Were you arrested? Yes No Are criminal charges pending? Yes No

Is there a Berkeley Police Department Report? Yes No If yes, police report/incident/citation number _____

Note: If you have criminal charges pending, you should consult an attorney before filing your PRC complaint.

3

POLICE OFFICER INFORMATION

Badge #	Name	Sex	Race

If Badge number or name is unknown, please provide a physical description:

4

WITNESS INFORMATION

Name	Relation to Complainant	Address	Phone Number

5

Please provide a factual description of the incident that forms the basis of your complaint. (Use additional pages if necessary).

6

ALLEGATIONS Please check all allegations that apply:

- Discourtesy
- Discrimination
- Harassment
- Improper Arrest, Search, Seizure, Stop, or Detention
(Circle all that apply)
- Improper Citation or Tow
- Improper Police Procedures
- Improper/Excessive Use of Force
- Inadequate or Improper Investigation
- Other _____

7

MEDIATION ALTERNATIVE

Has a PRC staff person explained the difference between mediation and an investigation? Yes No

Have you received and read the mediation materials attached to this Complaint form? Yes No

If appropriate, would you consider mediation as a means of resolving your complaint? Yes No

8

REPORTING

Date incident reported to other Berkeley departments: _____

Berkeley Police Department: _____ City Manager: _____
City Councilmember: _____ Mayor: _____ Other: _____

9

VERIFICATION

- A PRC investigator must interview you in order to process your complaint.
- Complainants must advise the Police Review Commission (PRC) of any changes of address or phone.
- All PRC complaints will be forwarded to the BPD Internal Affairs Bureau, which will conduct its own investigation into the same matter.
- The PRC has one year to investigate the complaint. (Government Code Section 3304 (d).)

I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before a Board of Inquiry shall be given under oath.

Signature of Complainant

Date signed

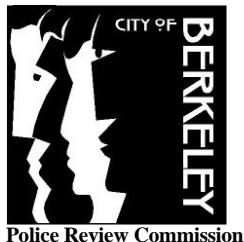
10

How did you hear about Berkeley's Police Review Commission?

- Internet
- Publication: _____
- Referral: _____
- Other: _____

For Office Use Only

Complaint Received By _____



Filing a Complaint with the Police Review Commission (PRC)

The Police Review Commission (PRC) is a nine-member independent body appointed by the City Council and the Mayor. One of the Commission's duties is to investigate citizen complaints against Berkeley Police Department (BPD) personnel, except for Parking Enforcement Officers.

To File a Complaint of Misconduct Against a BPD Employee:

- Complete and **sign** the attached complaint form. The form can also be obtained at the PRC website: <http://www.ci.berkeley.ca.us/prc/>.
- Information on mediation is attached for your review and consideration. Mediation is an alternative to an investigation. PRC Staff will discuss this option with you.
- A copy of the PRC Regulations, which are the procedures for handling complaints, may be obtained at the PRC website or office.
- A complaint must allege facts that, if true, would establish that misconduct occurred. Any complaint that does not allege such facts or that is frivolous or retaliatory may be referred to the commission for closure.

Representation

You may represent yourself or obtain a representative. The following groups may be helpful and provide assistance and referrals:

- Neighborhood Justice Clinic – 3130 Shattuck Ave. – (510) 548-4064
- Alameda County Bar Association Lawyer Referral Service – (510) 302-2222
- Ella Baker Center for Human Rights – Bay Area PoliceWatch – (510) 428-3939

Complainant's Responsibilities

As a complainant, you have certain responsibilities.

- You must be available for an interview with a PRC Investigator, preferably when you file your complaint. If the PRC Investigator is not available, or if your schedule does not permit, you should make an appointment for an interview when you file your complaint.
- You should provide contact information for any witness(es) to the incident.
- You must inform PRC Staff if you change address, phone, or message number. Your case will be recommended for closure if the PRC Investigator cannot contact you.
- You must submit any documentary evidence you want to be considered by the Board of Inquiry at least 10 business days prior to a Board of Inquiry hearing.
- You must attend the Board of Inquiry hearing.

A40



Investigation Process

- Within 3 weeks of filing the complaint, you should receive a copy of the formal allegations of misconduct under investigation. These are the only allegations that will be investigated and heard by the PRC. If you have questions about the allegations, please discuss your concerns with the PRC Investigator.
- You will be contacted before the hearing is scheduled, and will receive written notice at least a week before the hearing date with information about hearing procedures. The Board of Inquiry is a three-member panel of Commissioners, who will hear testimony from you, the subject officer(s), and any witness(es). The subject officer(s) or their representative(s) will have an opportunity to cross-examine you. The Commissioners will ask questions as appropriate.
- The decision of the Board of Inquiry will be mailed to the parties soon after the hearing. You have the right to appeal to the full Commission for a new hearing within 15 days of the mailing of the decision, if "... there is newly discovered evidence ... or if it is shown that there was substantial procedural error likely to have affected the outcome." (PRC Regulations, Section III.21)
- The findings are then sent to the City Manager and Chief of Police, and may be considered in any disciplinary action.

If you have any questions about this process, please call (510) 981-4950; or, send an e-mail to prc@cityofberkeley.info.

Help SEEDS Grow in Your Community

Name: _____

Address: _____

City: Zip: _____

Phone(s): _____

Email: _____

- Please add me to your mail and email list to receive SEEDS updates.
- I would like to have SEEDS come to my group to give a presentation about effective options for making decisions and resolving conflict.
- I am interested in becoming a SEEDS community volunteer.
- I would like to donate computer assistance, publication design, clerical help, or other in-kind goods or services to SEEDS.
- I would like to support SEEDS' work. Enclosed is my donation of:
 - \$50
 - \$100
 - \$250
 - \$_____

SEEDS is a 501(c) 3 non-profit community-based organization.

We depend on donations from individuals and businesses to operate. Please accept our thanks ahead of time for all gifts. Send your tax-deductible contributions to:

SEEDS Community Resolution Center
1968 San Pablo Avenue
Berkeley, CA 94702

SEEDS

Community Resolution Center

SEEDS Administrative Office

Mailing address:

1968 San Pablo Avenue

Berkeley, CA 94702

SEEDS Satellite Offices

By appointment only:

1212 Preservation Park Way, 2nd Fl.

Oakland, CA 94612

39155 Liberty Street, Room D450

Fremont, CA 94538

Wheelchair accessible

Contact SEEDS

Phone: (510) 548-2377

Fax: (510) 548-4051

E-mail: info@seedscrc.org

Website: www.seedscrc.org

SEEDS represents the union of three organizations:

Conciliation Forums of Oakland (CFO),
Berkeley Dispute Resolution Service (BDRS), and
Mediation Services. A-42

SEEDS

Community Resolution Center

Mediation | Facilitation | Training

Services that

Encourage

Effective

Dialogue and
Solutions

For More Information, call

(510) 548 - 2377

www.seedscrc.org

Formerly East Bay Community Mediation

cultivating common ground

Mediation

GOT CONFLICT?

Don't Stress. Don't Fight. Don't Litigate. MEDIATE.

SEEDS offers trained neutral mediators to help you and others in conflict find constructive solutions that meet everyone's needs.

SEEDS can MEDIATE

- Family/Relationships
- Business/Workplace
- Landlord-Tenant
- Zoning/Land Use
- Schools/Youth
- Neighbor
- And more!

SEEDS Mediation services are:

RESTORATIVE

Mediation honors relationships and fosters better communication and understanding

EFFECTIVE

75-80% of cases mediated end with a satisfactory resolution for all

CONFIDENTIAL

Statements made in mediation cannot be used in civil court without your permission

AFFORDABLE

Sliding scale, no one turned away for inability to pay

Already have a court case pending? Ask us about our court-based mediation services.

Facilitation

COULD YOUR GROUPS AND MEETINGS BE MORE PARTICIPATORY AND PRODUCTIVE?

SEEDS will custom design a process to help your group, organization or community work collaboratively and achieve desired goals and outcomes.

SEEDS can FACILITATE

- Newly formed teams and partnerships
- Complex, multi-party, multi-issue disputes
- Group, Board, or organization retreats and strategy sessions
- Community forums and town hall meetings for civic engagement and dialogue

SEEDS Facilitation services are:

PRODUCTIVE

Achieve goals while building and balancing relationships in your group

PARTICIPATORY

More people involved – more voices heard – more effective outcomes

FLEXIBLE

We utilize a variety of facilitation strategies and styles to accommodate your group's needs

COST EFFECTIVE

Priced to fit a wide range of organizational and community budgets

Training

WOULD YOU LIKE TO IMPROVE YOUR ABILITY TO COMMUNICATE AND PROBLEM-SOLVE?

SEEDS will help you or your organization cultivate your skills and capacity to manage conflict, communicate more effectively, and develop lasting solutions.

SEEDS Sample WORKSHOPS

- Effective Communication & Feedback
- Managing Conflicts in the Workplace
- Dealing with Cross-Cultural Differences
- Mediation Skills Certificate Program
- Facilitation Skills Certificate Program

SEEDS Training Workshops are:

PRACTICAL

Skills easily transfer to work and personal life

PERSONALIZED

We customize trainings to suit your group's needs and provide individual attention to participants.

INTERACTIVE

We use experiential/hands-on methods that engage all types of learning styles

COMPETITIVELY PRICED

We work to accommodate your organization's budget and financial constraints

Revenues from SEEDS fee-based workshops underwrite our community program

What to Expect at Community Mediation

1) *Telling your Side, and Listening*

- First, each party gets 5-10 minutes to explain his/her side of the situation. You can talk about what it is that you see as the problem, and how you feel about it. While you are explaining your side, the other party and the mediators will listen.
- Then, you and the mediators will listen as the other party explains his/her view.
- The mediators may ask some clarifying questions and will summarize what they heard you say to make sure they understand the situation from your point of view and that all issues are on the table.

2) *Dialogue*

- The parties then talk with each other. They communicate their interests and concerns so that each understands how the conflict has impacted the other.
- The mediators help to ensure that each person has a chance to express him or herself and hear the other's perspective. The mediators also help to clarify new understandings and identify what facts and issues you agree on and disagree on.

3) *Resolution*

- At the appropriate time, the discussion will turn to problem-solving. Together, you and the other party will generate possible solutions to the situation and talk about them.
- The mediators will help you assess the different options. If an agreement is reached, the mediators will help ensure that it is satisfactory to each person and that the expectations are clear. A mediated agreement can be oral or written.
- The mediators WILL NOT make any judgments or tell you what to do. The agreement will not be legally binding, but if both parties agree, you may have the agreement re-drafted outside the mediation process so that it will be enforceable in a court of law.

Other Points to Remember:

- **Length of Mediation:** Sessions usually take 2-3 hours. Please allow for the maximum time. If you have a time restriction, please let us know prior to the mediation. Additional sessions can be scheduled if the parties feel they are making progress but need more time.
- **Sliding Scale Fee:** There is a sliding scale administrative charge per party, per session for our service. Our standard fee for mediation is \$50; \$100 for business and real estate cases. (For cases under Berkeley Tree View/Solar Access Ordinance, the Complainant must cover the full cost of mediation (\$100), unless other arrangements are agreed to.) ***If the fee is a financial burden, please notify the office and we will lower or waive it.***
- **Who May Attend:** If you want to bring someone involved in the dispute to participate or observe, please let us know in advance, as we will need to get the consent of the other party or parties. If you are represented by a lawyer in the dispute to be mediated, he or she may attend the session, if all parties consent. *The level of attorney participation will be decided on a case by case basis.*
- **Children at the Mediation:** Unless an older child is a party to the mediation, it is not appropriate to bring children. If childcare is not available to you, please discuss this with your Case Manager at SEEDS CRC ***prior*** to the mediation.

Please use this form to prepare yourself for mediation. Should you have any questions or concerns please call us. Alternatively, we may contact you to discuss mediation preparation so that your experience is optimized.

A brief description of the mediation session

In your mediation session each party will make an opening statement (5- 10 minutes) to a panel of two or three mediators. The mediators will summarize each statement to make sure that they have a full and accurate understanding of each party's views. The mediators will then encourage the parties to talk directly to each other to discuss the issues. At some point, the discussion turns to problem-solving, where various solutions are generated and evaluated by the parties. Mutually-acceptable solutions are then used to create an agreement.

Questions and tips to help you prepare for the mediation.

- How do I view the situation?
- What are my interests?
- What are the main issues?
- How do these issues affect you and your interests?
- How do I want things to be different?
- What do I think is needed from the other person in order to make those changes?
- What do I think is needed from me to make those changes?
- Any speculations on how I think the other person would like things to change?
- What can I do during the meeting that will help the other person to be able to understand my point of view?

Be prepared to listen to the other Party's view of the situation.

What are the issues in the view of the other party? How do those issues affect the other party? Many conflicts occur because neither party has enough accurate information about the other to truly understand the situation. Without enough information, it is hard to come up with a solution that both parties can live with.

Have a clear idea of what you can do to satisfy your interests if you can't come to an agreement in mediation.

In the mediation session you need to have some way to evaluate proposed solutions, so it is good to have something to compare them to.

Be prepared to work with the mediators

The mediators help you and the other parties discuss the issues in a respectful and productive manner. They do not decide who is right or wrong, or impose solutions.

They are trained to help you speak to one another effectively.

APPENDIX 9

POLICY COMPLAINT FORM



POLICY COMPLAINT FORM

Police Review Commission

1947 Center Street, 3rd Floor, Berkeley, CA 94704

Website: <http://www.ci.berkeley.ca.us/prc>

E-mail: prc@ci.berkeley.ca.us

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received: _____

PRC POLICY CASE #: _____

1 Name of Complainant: _____
Last First Middle

Home Address: _____
Street City State Zip

Home Phone: (____) _____ Alt. Phone: (____) _____

E-mail address: _____

Occupation _____ Gender: _____ Date of Birth: _____

Ethnicity: Asian Hispanic
 Black Multiethnic: _____
 Caucasian Other: _____

2 Please identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

3 Please provide a factual description of the incident that forms the basis of your complaint. Please be specific, and include the date, time, place, what transpired, and how the incident ended.

4

What changes to BPD policy, practice, or procedure would you propose?

5

Is there any additional information you can provide the PRC about your complaint?

6

VERIFICATION

I hereby certify that, to the best of my knowledge, the statements made herein are true.

Signature of Complainant

Date signed

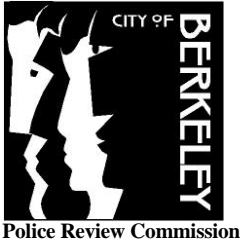
7

How did you hear about Berkeley's Police Review Commission?

- Internet
- Publication: _____
- Referral: _____
- Other: _____ A47

For Office Use Only

Complaint Received By:



Filing a Policy Complaint with the Police Review Commission (PRC)

The Police Review Commission (PRC) is a nine-member independent body appointed by the City Council and the Mayor. One of the Commission's duties is to review Berkeley Police Department (BPD) policies, practices and procedures; such review can be initiated by a member of the community who alleges that a policy, practice or procedure is insufficient or improper and should be examined by the PRC.

To File a Policy Complaint:

- Complete and **sign** the attached policy complaint form. The form is also available at the PRC website: <http://www.ci.berkeley.ca.us/prc/>.

Complainant's Responsibilities

As a complainant, you have certain responsibilities.

- You must be available for an interview with a PRC Investigator, preferably at the time you file your complaint. If the PRC Investigator is not available or your schedule does not permit, you should make an appointment for an interview when you file your complaint.

Policy Review Process

- If a majority of commissioners agree that a policy review is warranted, they may take appropriate action, including initiating an investigation or establishing a subcommittee to review the policy.
- If a subcommittee is created, it will seek BPD involvement in its review of the BPD policy, and present its conclusions and recommendations to the entire Commission.
- If the Commission endorses the subcommittee's recommendations, it will send them to the City Manager and Chief of Police, who will consider whether to adopt them.

If you have any questions about this process, please call (510) 981-4950; or, send an e-mail to prc@cityofberkeley.info.



APPENDIX 10

CATEGORIES OF ALLEGATIONS

ALLEGATION CATEGORIES, CODES AND ABBREVIATIONS

Categories

Abbreviations

IMPROPER USE OF FORCE

EXF

All allegations concerning the unnecessary use of force that goes beyond reasonable or lawful limits of physical power that may be used upon a person including:

Improper Use or Display of Firearm

(As defined in Police Regulation 200)

Improper Physical Contact

(As defined in Police Regulation 318 or 321)

Improper Use of Any Object: e.g. Handcuffs, Baton, Mace
Pepper Spray, Flashlight.

DISCOURTESY

DIS

All allegations concerning a failure to be courteous and civil to the public. All employees are expected to be quiet, orderly, attentive, and respectful and to exercise patience and discretion in the performance of their duties. (PR. 239) Complaints may include improper hand gestures or signs and/or the failure of an employee to give a proper response or explanation to a citizen.

Discourtesy

Abusive or Obscene Language

Failure to Give Proper Explanation to Citizen

Failure to Provide Information

Failure to Respond

Misrepresentation of Vehicle Code

A49

IMPROPER ARREST, SEARCH, SEIZURE, STOP OR DETENTION ASD

All allegations concerning police actions conducted without sufficient lawful reason, particularly as they relate to improper stops, street detentions, searches, seizure and arrests. This category does not include complaints about improperly issued traffic citations or improper police tows. (May be based upon proper police conduct defined in Police Regulation 401).

Improper Arrest

Improper Search (home)

Improper Search (car)

Improper Search (person)

***Formerly Improper Search**

Improper Seizure

Improper Stop

Improper Detention

IMPROPER DETENTION PROCEDURES DET

All allegations concerning a failure to follow proper procedures for arrest, booking, incarceration and release of prisoners. May include allegations concerning a failure to advise of the reasons for an arrest; failure to "Mirandize" a suspect; failure to utilize the proper citation release procedure; a failure to follow proper bail procedures; failure to allow phone calls and/or access to attorneys, and unnecessary delays in releasing prisoners.

(May be defined in reference to Police Regulations 400, 401, 211, 212, 213, 201, 202, 203, 204, 205, 206, 207 and General Orders.

Failure to Inform of Grounds of Arrest

Failure to Provide Notice of Intent to Cite or Arrest

Failure to Provide Medical Assistance

Failure to Read Miranda Rights

Improper Bail Procedure

A50

INADEQUATE OR IMPROPER INVESTIGATION

INV

All allegations concerning a failure to adequately and impartially investigate and to accurately provide a written account of an incident. May include the failure of an employee to take a report or to make a lawful arrest. (May be defined in Police Regulation 276 and 401, General Order R-24.4 and appropriate Penal Code Sections).

Failure to Investigate

Failure to Make Police Report

False Police Report

Improper Police Report

DISCRIMINATION

PRJ

All allegations concerning a favorable or unfavorable treatment of action by a police employee, which exhibits partiality or prejudice based upon a person's race, sex, religion, political persuasion or appearance. (May be defined in Police Regulation 237, 239, 240 and 401)

Racial Discrimination

Sexual or Gender Discrimination

Religious Discrimination

Political Discrimination

Discrimination by Appearance

Discrimination by Sexual Orientation

Selective Enforcement

Disability Discrimination

A51

HARASSMENT

HAR

Any allegation asserting a consistent, deliberate annoyance by police employees where the complainant can attest to repetitious contact over a period of time. (May be defined in Police Regulation 257)

Harassment

IMPROPER POLICE PROCEDURES

PRO

Any allegation concerning a failure to follow approved Departmental policies, procedures, orders or guidelines. (May be defined in official Police Training Bulletins, Captain's instructions, Police Regulations or General Orders).

- Damage to Property
- Failure to Arrest
- Failure to Honor Citizen's Arrest
- Improper Confiscation of Property
- Failure to Return Property
- Failure to Provide Medical Assistance
- Improper Police Dispatch
- Interference with Taking of Evidence
- No Badge Visible
- Making False Statements
- Improper Police Procedures
- Improper Use of Handcuffs

IMPROPER CITATION OR TOW

CIT

All allegations of improperly issued traffic citations or improper towing by a police employee. (May be defined by the California Vehicle Code or local ordinance).

- Improper Citation
- Improper Tow Tag
- Improper Tow

A52

OTHER

OTH

All other allegations concerning police employee misconduct that do not fit into any of the other listed categories. These allegations may include, but are not limited to complaints concerning criminal misconduct, abuse of discretion, or failure of a police employee to properly identify self.

Abuse of Discretion

Breach of Confidentiality

Failure to Identify Oneself

Lack of Discretion

Threat

Abuse of Authority

Retaliation

SUSTAINED: The allegation did occur and the action is not justified.

NOT SUSTAINED: The evidence fails to support the allegation; however, it has not been proven false.

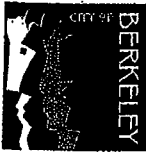
UNFOUNDED: The alleged act did not occur.

EXONERATED: The alleged act did occur, but was lawful, justified, and proper.

The standard of evidence is “clear and convincing” more than preponderance, but less beyond a reasonable doubt.

APPENDIX 11

BERKELEY POLICE DEPARTMENT
TRAINING AND INFORMATION



BERKELEY POLICE DEPARTMENT MEMORANDUM



To Victoria Urbi
Police Review Commission Officer

Date October 6, 2010

From Michael K. Meehan *MKM*
Police Chief

COMMUNICATION No. 4393

Subject **BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN #276**

After a comprehensive review of the Berkeley Police Department policy and procedure regarding enforcement of the "City of Berkeley Smoking Restrictions" (BMC Chapter 12.70), I have determined that a well-established policy is in place, and that this policy complies with the mandates and goals of the ordinance.

Training and Information Bulletin #276 (September 23, 2008) describes the aforementioned ordinance; clearly defining the locations where it applies, and manner in which it should be enforced. The Training and Information Bulletin also affirms the Berkeley Police Department's commitment to education of the individual violator and encourages voluntary compliance with the City Ordinance. If an Officer is dealing with a "known, chronic violator" or "someone who has been repeatedly warned," "an officer may exercise discretion and issue a citation."

If a community member is "insistent in their request to have a citation issued" and "an officer observes the violation, a citation may be issued."

All sworn personnel in the Berkeley Police Department have received this Training and Information Bulletin, and are expected to understand and implement the policy it outlines.

The City of Berkeley's Smoking Control policies are designed to eliminate public health hazards caused by smoking, and exposure to second hand smoke and/or tobacco product residue. The purpose of this legislation is to protect the health and safety of non-smokers, who have an established right to breath smoke-free air.

Additionally, the Berkeley Police Department works in cooperation with the Public Health Department to promote smoking cessation programs; in recognition of the fact that smoking presents an inherent threat to public health.

The City's ordinance seeks to gain public compliance through education, and through outreach to increase self-enforcement. The goal and policy of the Berkeley Police Department is to cooperate fully with the City's effort to create a smoke-free public environment.

APPENDIX 12

NACOLE Code of Ethics

NACOLE CODE OF ETHICS

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.