

BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 21, 2015

GENERAL ORDER W-01

SUBJECT: THE RIGHT TO WATCH

PURPOSE

- 1 - The purpose of this General Order is to adopt policies and procedures regarding a citizen's right to observe, photograph or video record officers during the course of the officers' public duties.

POLICY

- 2 - It shall be the policy of the Berkeley Police Department to ~~minimize restrictions~~ *set the least possible restriction* on public observation, photographing or video recording of police officers' performance of their duties, while ~~ensuring the safety of the public and the officers.~~

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously. Officers should restrict the practice of requesting that onlookers withdraw only to those instances where a potential threat to safety is involved.

PROCEDURES

- 3 - At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe; photograph and video record the *behavior of* ~~officers from a safe distance.~~ Citizens also have the right to communicate with the detained person, provided, however:
  - a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.
  - b. that the observer's actions or communications do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's *investigation*. An officer may instruct an observer to maintain a safe distance from the scene, ~~with the understanding that what constitutes a "safe" distance may vary depending on the circumstances.~~
  - c. that the confidentiality of the matter being discussed with a suspect, victim, witness, ~~or reporting party~~ is not compromised except with concurrence of the citizen and the officer involved.

# BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



**DATE: August 23, 1983**

**NUMBER: 91**

**SUBJECT: THE RIGHT TO WATCH**

At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe the behavior of officers. These persons also have the right to communicate with the detained person, provided, however:

- that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any public officer engaged in the duties of his/her office.
- that the observer's actions do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's investigation.
- that the confidentiality of the matter being discussed with a suspect/victim/witness is not compromised except with concurrence of the citizen and the officer involved.

It is Departmental policy to set the least possible restriction on public observation of police officer conduct.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously officers should restrict the practice of requesting onlookers to withdraw only to those instances where a threat to safety is involved.

RONALD D. NELSON  
Chief of Police

**From:** Andrea Prichett [mailto:prichett@locrian.com]  
**Sent:** Monday, February 22, 2016 9:57 PM  
**To:** PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>; Berkeley Copwatch <berkeleycopwatch@yahoo.com>  
**Subject:** Fwd: Right to Watch

To the PRC,

Although it is six months later, I am still interested in having a public hearing on this issue. Let's move forward and discuss what the people want from the department in regards to the right to watch.

Also, please note that Governor Jerry Brown signed into law AB411 in August which makes it legal to observe police and to record them. While some of us already believed we had that right, it is nice to have another source to affirm our right.

<http://lbpost.com/news/2000006811-right-to-record-act-clarifies-civilians-recording-of-public-safety-officers-is-lawful>.

Please also note:

1. Two federal courts have upheld copwatching as a right.
2. California State Law now says that the public has a right to record police.
3. There is already a law against interfering with a police officer (PC 148). Thus, there doesn't need to be an even more restrictive environment for copwatchers than there already is. If the new General Order w-1 goes through, it will provide a thin layer of justification for restricting our right to copwatch.
4. The BPD doesn't need to establish a new standard for observing- we already have this right as given to us by the Constitution, affirmed by two federal courts, and affirmed yet again by state law.

Thanks for your consideration,

Andrea Prichett

----- Forwarded Message -----

**Subject:** Right to Watch  
**Date:** Sun, 23 Aug 2015 16:22:26 -0700  
**From:** Andrea Prichett <prichett@locrian.com>  
**To:** [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info), PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>

Dear Police Review Commission,

I am writing to ask you to consider the "Right To Watch" General Order (W-0) and to examine its impact on citizen monitoring of the police.

**COMPLAINT DEADLINES REPORT**

INVESTIGATIONS										
NO.	COMPLAINANT	DATE FILED	INCIDENT DATE	20 Bus Day Notice of Alleg Due	Notice of Alleg DONE	75 day Report DUE	75-day Report Issued	BOI PACKET ISSUED	120 DAYS From Date Filed	STATUS
2385		10-19-2015	September-15	11-13-2015	11-13-2015	tbd*			02-15-2016	*criminal case pending
2386		11-18-2015	August-15	12-15-2015	12-08-2015	02-01-2016	01-22-2016		03-17-2016	Investigation
2390		12-14-2015	December-15	01-11-2016	12-21-2015	02-26-2016			04-12-2016	Investigation
2391		01-25-2016	November-15	02-22-2016	02-01-2016	04-08-2016			05-24-2016	Investigation
2394		02-10-2016	January-16	03-09-2016	02-23-2016	04-25-2016			06-09-2016	Investigation

POLICY REVIEWS								
NO.	COMPLAINANT	DATE FILED	Notice of Complaint to BPD	Due to PRC in 30 days or next Mtg.	Initial Commission Meeting Date	Commission Resolved Y/N	Admin. Closure Due	Status
2362	LINDSAY, VIRGINIA	12-23-2014	01-08-2014	01-22-2015	01-14-2015	n		BPD to report on March 23
2363	MCDONNELL, ROBIN	01-08-2015	01-08-2014	02-07-2015	01-14-2015	n		Investigation
2377	DENNEY, CAROL	06-22-2015	07-10-2014	07-22-2015	07-08-2015	n		Investigation
2384	PITCHER, STEPHEN	09-21-2015	09-23-2015	10-21-2015	10-14-2015	n		Investigation

CALOCA										
NO.	COMP	Officer Appeal Filed	PRC Records Due (60 days)	PRC Records Filed	Officer Brief Filed Y/N	PRC Brief Due	PRC Brief File Date	OAH Hearing Date	OAH Decision Due	STATUS
2380		11-25-2015	01-22-2016	01-20-2016		05-19-2016		06-02-2016	08-01-2016	

## **Leaked police files contain guarantees disciplinary records will be kept secret**

Guardian analysis of dozens of contracts revealed by hackers shows more than a third allow or require destruction of civilian complaint records.

George Joseph in New York

Sunday 7 February 2016 07:00 EST Last modified on Sunday 7 February 2016 18:33 EST

Contracts between police and city authorities, leaked after hackers breached the website of the country's biggest law enforcement union, contain guarantees that disciplinary records and complaints made against officers are kept secret or even destroyed.

A Guardian analysis of dozens of contracts obtained from the servers of the Fraternal Order of Police (FOP) found that more than a third featured clauses allowing – and often mandating – the destruction of records of civilian complaints, departmental investigations, or disciplinary actions after a negotiated period of time.

The review also found that 30% of the 67 leaked police contracts, which were struck between cities and police unions, included provisions barring public access to records of past civilian complaints, departmental investigations, and disciplinary actions.

Samuel Walker, a professor in criminology at the University of Nebraska, Omaha, said there was “no justification” for the cleansing of officers’ records, which could contain details of their use of force against civilians.

“The public has a right to know,” Walker said. “If there was a controversial beating, we ought to know what action was actually taken. Was it a reprimand? A suspension?”

Walker said that while an officer’s whole personnel file should not be readily available to the public outside of court proceedings, records of disciplinary action should be.

The leaked contracts became publicly accessible last week, when hackers breached the Fraternal Order of Police’s website and put around 2.5GB worth of its files online. These provide a glimpse into the influence of police unions, which Black Lives Matter activists have accused of impeding misconduct investigations, particularly after the death of 25-year-old Freddie Gray in Baltimore, Maryland in April.

### **Hackers post private files of America's biggest police union**

The documents date back almost two decades and include agreements from unions such as the Policemen’s Benevolent Association and the International Brotherhood of Police Officers. Many contain numerous recurring clauses that slow down misconduct investigations, prevent public access to complaints and disciplinary records, and enable the destruction of complaints and disciplinary records after a negotiated period of time.

At least as recently as 2007, if an officer in Independence, Missouri, was “involved in a shooting incident”, that officer could not be interrogated for at least 12 hours nor be “treated a suspect” unless local authorities thought there was reasonable suspicion or probable cause that a crime had been committed. This protocol was mandated in the local police union’s contract in a clause specifically designed for “officer-involved shooting investigations”.

In recent years, Independence has made headlines for cases of police brutality and police shootings.

From small towns in Nebraska and New Jersey to major cities like Cincinnati, Ohio and Jacksonville, Florida, “expungement” clauses allowed for records of formal investigations and written reprimands to be “purged” after a few years or, in some cases, months.

Chuck Canterbury, the FOP president, said that such contract provisions were designed to protect the due process rights of police officers. “Disciplinary files are removed because they affect career advancement,” said Canterbury. “People make mistakes and if they learn from them, they should be removed. This is standard HR practice.”

Other deals contained provisions focused on blocking public access to records that were preserved. A 2006-2008 contract from Burlington Township, NJ, for example, required the police department’s Investigations Commander to keep formal complaints and internal investigation documents “in a locked file”, barring access to all except the department’s investigations commander and chief law enforcement officer.