



**POLICE REVIEW COMMISSION
REGULAR MEETING
REVISED MINUTES**

**Wednesday, March 12, 2008
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

Closed Session

The Closed Session meeting was cancelled due to lack of quorum by the Commission.

Open Session

1. CALL TO ORDER BY CHAIRPERSON WILLIAM WHITE AT 7:01 P.M.

ROLL CALL AND ATTENDANCE

Present: Chairperson William White
Vice Chair Sharon Kidd
Commissioner Jonathan Huang
Commissioner George Perezvelez
Commissioner Michael Sherman

Absent: Commissioner Kamau Edwards
Commissioner Sherry Smith

PRC Staff: Victoria Urbi, PRC Officer
Rebecca Webb, Administrative Support

BPD Staff: Chief Hambleton
Lt. Juster

2. ORDER OF AGENDA

Table Item 2, Old Business to the March 26 meeting. Move Item 7, public comment, to Item 2.
Move Item 5, Berkeley Police Department Chief's Report, to Item 4.



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3. PUBLIC COMMENT

Imari Childs stated that he would like to wait to file a case until he has obtained pertinent documents.

Andrea Prichett stated that she feared that naming the Anita Gay policy case a “Domestic Violence Subcommittee” mischaracterizes the intent of what the public was asking for. Focusing on domestic violence could alienate many other issues the public wanted investigated.

Commissioner Sherman stated that there are two cases opened, and that the misconduct case would address those other issues.

Commissioner Perezvelez stated that the other case is not mentioned on the agenda to which Ms. Urbi replied that the misconduct case is a closed case, and therefore not discussed in open meetings.

4. APPROVAL OF MINUTES

A. Regular Meeting: February 27, 2008

Motion to approve minutes. M/S/C (Huang/Kidd) Motion passed.

Ayes: Huang, Kidd, Perezvelez, Sherman and White. Noes: None.

Abstain: None. Absent: Edwards and Smith.

5. BERKELEY POLICE DEPARTMENT CHIEF'S REPORT

There are three new General Orders pending stemming from the Evidence Theft Subcommittee. Chief Hambleton assigned Captain Miller to write a policy regarding drug testing for employees.

Ms. Urbi asked when the Anita Gay investigation would be complete. Chief Hambleton responded that it is mostly finished but they are awaiting the autopsy report. He expects it to be complete in six to eight weeks.

Commissioner Huang asked about the progress of the District Attorney’s investigation. Chief Hambleton stated that he is not privy to that information, since the agencies do not discuss investigations with each other.

Ms. Urbi asked will the report he was completing for the City Council meeting be available to review before the meeting. Chief Hambleton explained that this report is directed from the City Manager, who still has to approve it, so it may not be available before it is published on the City Clerk’s website.

6. PRC OFFICER'S REPORT (For Discussion or Action)

a. Hearing update

Staff plans to hold two hearings in the next three weeks.

b. Status of complaints

There are eighty-one open complaints. PRC has closed 11 cases since December.

c. Commission vacancies

There are two Commission vacancies.

d. Comments:

There is a public hearing scheduled for March 13 regarding crowd control and demonstrations related to the Marine Recruitment Center.

7. COMMITTEE REPORTS (For Discussion or Action)

a. Evidence Theft Subcommittee

Chairperson White stated that the Subcommittee made two recommendations. The first was to recommend to the City Council that BPD do a thorough audit of the 286 tampered drug envelopes. The second was to adopt policies on "Professionalism and Ethics" and "Reporting Misconduct," which are policies similar to the Oakland Police Department's policies.

Subcommittee Member Andrea Prichett asked if these recommendations are in addition to the report that was already submitted to the City Council or instead of the report. Ms. Urbi responded that the original report has already been accepted by the City Council and these are additional recommendations.

Motion to approve the second recommendation of the Evidence Theft Subcommittee to adopt the two policies from the Oakland Police Department regarding mandatory, confidential reporting of police misconduct and a stronger professionalism and ethics policies.

M/S/C (Sherman/Perezvelez) Motion carried.

Ayes: Huang, Kidd, Perezvelez, Sherman and White. Noes: None.

Abstain: None. Absent: Edwards and Smith.

VOID:

Motion to approve the first recommendation of the Evidence Theft Subcommittee that the BPD conduct a thorough audit of the 286 tampered envelopes.

M/S/C (Huang/Sherman) Motion failed.

Ayes: Huang. Noes: Perezvelez and White.

Abstain: Kidd and Sherman. Absent: Edwards and Smith.

Note: This motion should not have been voted on. See page 5 on "Substitute motion." (The minutes were revised on April 2, 2008.)

Commissioner Huang asked the members of the Subcommittee why the first recommendation regarding the 286 tampered envelopes was made.

Subcommittee Member Andrea Prichett replied that it was to make it clear that what was asked for was the exact amounts that were missing.

Commissioner Kidd responded that Chief Hambleton explained that it would be costly.

Chief Hambleton responded that the reasons they cannot give an exact amount are: (1) they did not know exactly what was there to begin with due to cases not being prosecuted; (2) the officer could have cut the drugs with another substance resulting in inaccurate

amounts; (3) the crime lab will not test the envelopes since there is no open case; (4) sending it to an independent lab would be costly; and (5) some narcotics cannot be compared due to deterioration.

Chairperson White stated that he had voted “no” because he had asked what the Subcommittee had expected to get out of doing another inventory and did not receive a strong answer to vote for a second inventory.

Commissioner Sherman stated that he was confused because when the Commission received the memorandum from Chief Hambleton, the Subcommittee members seemed satisfied with this account, and wondered what had changed that had them continuing to pursue the inventory. He stated that he did not understand what an audit of the drug envelopes would accomplish, given Chief Hambleton’s earlier explanation.

Nick Chambers asked if it was possible that any of the criminal cases involved with those 286 envelopes were convicted with tampered evidence.

Ms. Urbi stated that public comment was over, and the Commission would have to vote to reopen public comment if they wished to hear from the public again. She urged the Commission to recognize the bigger picture. The City Council had already accepted the Commission’s report, and that BPD has already implemented many of those recommendations. The Commission has over eighty open cases and four subcommittees. She cautioned how the Commission would be perceived by the City Council if they continue to ask for more things.

Commissioner Huang stated that he would lose faith in the City Council if they thought that the Commission was not doing their job correctly in pushing this issue.

Commissioner Perezvelez stated that he believed it was time to move forward, address the situation so that it does not happen again. To continue to push the issue does not fulfill any purpose.

Chief Hambleton stated that prior to the Kent incident, there were no complaints before the Commission that an officer dealt drugs and no one has come forward that their criminal case was tampered with. Many public defenders, who knew about the Kent incident from the news, have not come forward and complained about their criminal case.

Commissioner Kidd stated that she would like to go back to the Evidence Theft Subcommittee to clarify this issue.

Ms. Urbi stated that the report will not be accepted after Friday, March 14 for the March 25 City Council Meeting, which is when City Council asked the PRC to present any additional recommendations.

**Substitute motion to table the motion to approve the first Subcommittee recommendation that City Council require BPD to conduct a thorough audit of 286 evidence envelopes until further meeting of the Subcommittee.
M/S/C (Sherman/Kidd) Motion carried.**

Ayes: Kidd, Sherman and Huang. Noes: Perezvelez and White.
Abstain: None. Absent: Edwards and Smith.

Note: This Substitute motion initially failed, because it only received three votes. The Commission returned to the original motion regarding “Motion to approve first recommendation of the Evidence Theft Subcommittee that BPD conduct a thorough audit or 286 tampered envelopes,” and received one vote. This motion failed. Ms. Urbi clarified that a quorum is met by counting the number of Commissioners present at a meeting. Thus, the substitute motion carried. (The minutes were revised on April 2, 2008.)

Commissioner Kidd asked Chief Hambleton if he would agree to present his report later than March 25, so that the Subcommittee could meet.

Chief Hambleton stated that it was his understanding that the City Council had asked him to come to the March 25 meeting to give an interim report before his final report in September. He did not believe that the PRC needed to submit a report at the March 25th meeting.

Ms. Urbi stated that according to her City Council Meeting transcription, they directed the Commission to go back and decide if they had any more recommendations.

Subcommittee member Andrea Prichett stated that she agreed that the City Council asked the Commission to report at the March 25 meeting. The Commission can request a special meeting for this topic, but it will have no impact after the March 25 meeting, when Chief Hambleton presents his report.

- b. Criminal Intelligence Subcommittee
Commissioner Sherman stated the Subcommittee met on March 10, and although the Subcommittee members, Lt. Upson and Capt. Gustafson are in agreement, it still has to be brought to Chief Hambleton for review before the report is completed.
- c. Domestic Violence Response Subcommittee
Chairperson White stated that Commissioner’s Edwards, Perezvelez and Smith have all accepted positions to the Subcommittee.

Commissioner Huang stated that he had expressed interest in being a Subcommittee member.

Commissioner Kidd expressed concern with how the Subcommittee was formed, and thought it might be prejudicial.

Ms. Urbi read the regulations that stated that the Commission or the Chairperson can choose the Subcommittee members, and then the Commission must vote them in.

**Motion to approve Commissioners Edwards, Perezvelez and Smith to the Domestic Violence Response Subcommittee.
M/S/C (Sherman/Perezvelez) Motion carried.**

Ayes: Huang, Kidd, Perezvelez, Sherman and White. Noes: None.
Abstain: None. Absent: Edwards and Smith.

Commissioner Huang asked if he could nominate himself to the Subcommittee and also add two community members to the Subcommittee. Chairperson White stated that the Subcommittee could only consist of three commissioners.

Ms. Urbi clarified that it is up to the Commission to decide if they want non-commissioners invited to the Subcommittee. A vote could decide.

Chief Hambleton stated that he remembered a discussion at the last meeting and that several commissioners expressed that they did not see fit to add community members since commissioners themselves are community members.

Commissioner Huang asked what the threshold of qualification was to sit on a subcommittee, to which Chairperson White responded all commissioners are qualified.

Andrea Prichett stated that at the previous meeting it was discussed to bring in two community members to the subcommittee and that they had already researched candidates to recommend.

Motion to add two members of the public to the Domestic Violence Response Subcommittee, who should be approved by the Subcommittee itself.

M/S/C (Huang/Kidd) Motion failed.

Ayes: Huang. Noes: Kidd, Perezvelez, Sherman and White.
Abstain: None. Absent: Edwards and Smith.

Commissioner Kidd stated that the reason they had added non-commissioners to the previous Subcommittee was because the non-commissioners completed reading the full 800-page report concerning former Sergeant Kent. She felt that the Domestic Violence Response Subcommittee should remain as just Commission members, unless the Subcommittee decided at a later time that they would like to add non-commissioners.

Commissioner Huang stated that because of the turnout to the previous Commission meeting, and that the public reached out to the Commission, it would be tragic not to include them.

Commissioner Kidd answered that all Commission meetings are open to the public, and that by forming the Subcommittee, they are addressing the communities' needs.

Ms. Urbi spoke about Commissioner Huang's tabled motion from the previous meeting. With regard to item 1a, PRC staff determines the priority of investigations, as PRC staff conducts investigations. Item 2b, commissioners are community members, as had been addressed earlier in this meeting. Item 2c, it is not within the purview of the Commission or the Subcommittee. Some of the points made in the motion are already in effect. For example, item 2e, Subcommittee meetings are already open to the public. Items 3a and 3h, staff already does that. Law prohibits items 3d and 3e.

Ms. Urbi recommended a meeting with Commissioner Huang to revise the motion in accordance with the Regulations and the law. Commissioner Huang agreed.

Motion to table the motion discussed until a revision could be made.

M/S/C (Sherman/Kidd) Motion carried.

Ayes: Huang, Kidd, Sherman and White. Noes: None.

Abstain: Perezvelez. Absent: Edwards and Smith.

8. COMMUNICATIONS

Attached.

Closed Session

The Police Review Commission recessed into closed session to discuss and take action on the following items:

9. RECOMMENDATION FOR CLOSURE

A. Case No. 2115 – Complainant Andrea Prichett

Motion to table closure until after consultation with City Attorney regarding legal question on Case #2115.

M/S/C (Sherman/Kidd) Motion carried.

Ayes: Huang, Kidd, Sherman, and White. Noes: None.

Abstain: Perezvelez. Absent: Edwards and Smith.

B. Case No. 2110 – Complainant Judith Anderson

Motion to administratively close Case #2110.

M/S/C (Perezvelez/Kidd) Motion carried.

Ayes: Huang, Kidd, Perezvelez, Sherman and White. Noes: None.

Abstain: None. Absent: Edwards and Smith.

C. Case No. 2089 – Complainant Erica Smith

Motion to administratively close Case #2089.

M/S/C (Sherman/Kidd) Motion carried.

Ayes: Huang, Kidd, Perezvelez, Sherman and White. Noes: None.

Abstain: None. Absent: Edwards and Smith.

D. Case No. 2161 – Complainant Cynthia Lee

Motion to summarily dismiss Case #2161.

M/S/C (Sherman/Perezvelez) Motion carried.

Ayes: Kidd, Perezvelez, Sherman and White. Noes: None.

Abstain: Huang. Absent: Edwards and Smith.

Open Session

10. POSSIBLE REPORT OF ACTION TAKEN AT CLOSED SESSION

No report given because no public were present.

11. ADJOURNMENT

Meeting was adjourned at 9:35 P.M.