

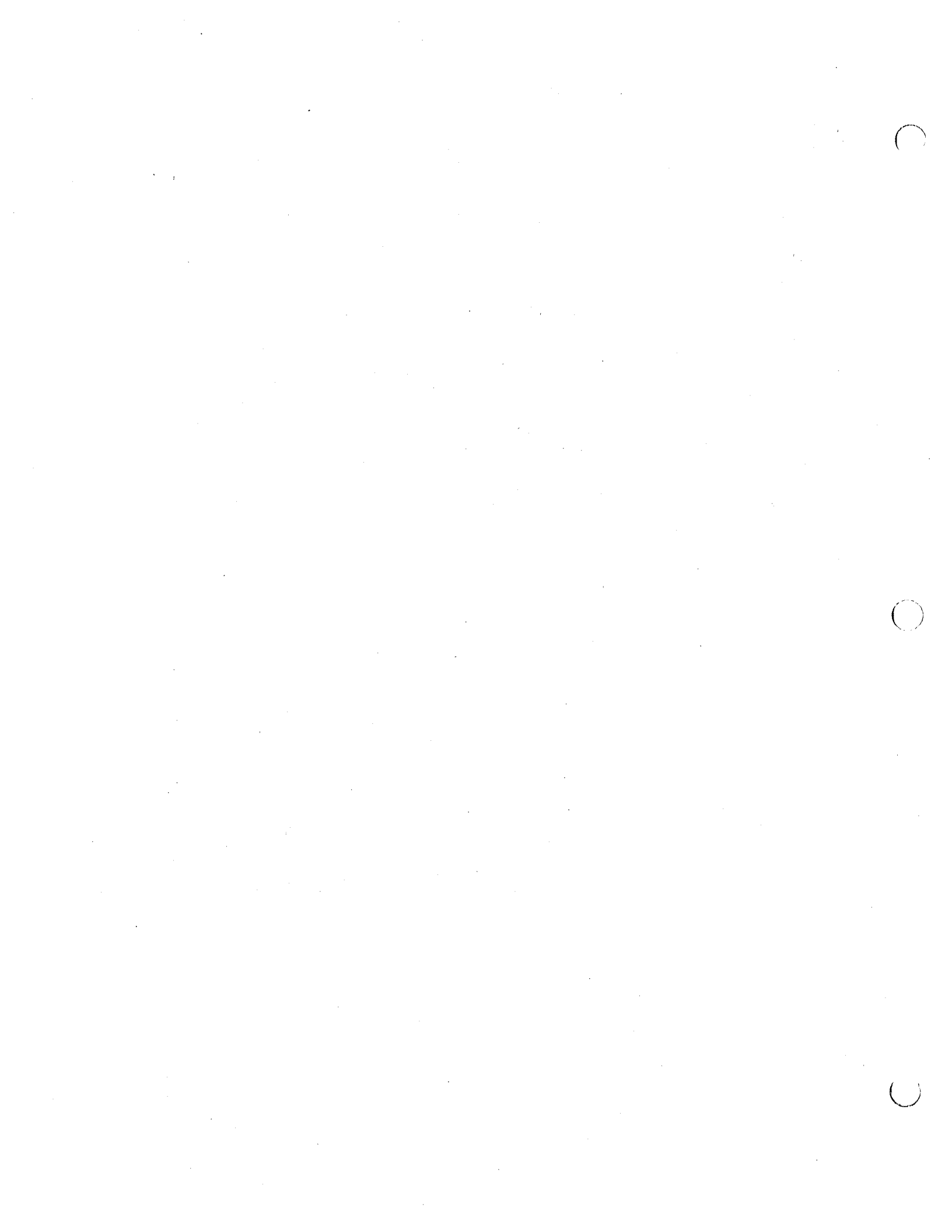
# COMPLAINT DEADLINES REPORT

INVESTIGATIONS										
NO.	Complainant	Filed Date	Incident Date	Notice of Allegations Due (20 Bus. Day)	Notice of Allegations Issued	BOI Packet (80 days)	BOI Packet Issued	BOI Findings Report Goal (105 days)	120 Days	STATUS
2391		01/25/16	Nov-15	02/22/16	02/01/16	04/14/16	04/20/16	05/09/16	05/24/16	BOI continued*
2402		08/17/16	Jul-16	09/14/16	09/16/16	11/05/16		11/30/16	12/15/16	BOI 11-15
2409		10/19/16	Oct-16	11/16/16	10/21/16	01/06/17		02/01/17	02/16/17	Investigation

\*tolled from 5/5 at officer's request

MEDIATION										
NO.	Complainant	Filed Date	Date of Election	Notice of Election to Officer Due (5 bus day)	Notice of Election Issued to Officer	Officer Agreed to Mediation	SEEDS Referral Date	Date of Mediation	Closure Due (2 weeks after mediation)	STATUS
2403		08/23/16	08/23/16	08/30/16	08/23/16	Y	09/30/16			pending mediation date
2407		08/30/16	09/09/16	09/16/16	09/09/16	Y	09/16/16	10-17-2016	10-31-2016	pending closure
2408		10/04/16	10/11/16	10/18/16	10/11/16	Y				pending mediation date

POLICY REVIEWS									
NO.	Complainant	Filed Date	Notice of Complaint to BPD	Due to Comm (30 days or next mtg.)	Initial Commission Meeting Date	Commission Resolved Y/N	Commission Vote Date	Admin. Closure Due	STATUS
2377	DENNEY, CAROL	06/22/15	07/10/14	07/22/15	07/08/15	n	07/08/15		Investigation
2384	PITCHER, STEPHEN	09/21/15	09/23/15	10/21/15	10/14/15	n	10/14/15		Investigation
2406	KEENLEY, JAMES	08/30/16	08/30/16	09/29/16	09/14/16	n	10/13/16		Investigation



## Public Recording of Law Enforcement Activity

### 426.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities that involve members of this department. In addition, this policy provides guidelines for situations where the recordings may be evidence.

### 426.2 POLICY

The Berkeley Police Department recognizes the right of persons to lawfully record members of this department who are performing their official duties. Members of this department will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.

Officers should exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

### 426.3 RECORDING LAW ENFORCEMENT ACTIVITY

Members of the public who wish to record law enforcement activities are limited only in certain aspects.

- (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).
- (b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:
  - 1. Tampering with a witness or suspect.
  - 2. Inciting others to violate the law.
  - 3. Being so close to the activity as to present a clear safety hazard to the officers.
  - 4. Being so close to the activity as to interfere with an officer's effective communication with a suspect or witness.
- (c) The individual may not present an undue safety risk to the officers, him/herself or others.

### 426.4 OFFICER RESPONSE

Officers should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, officers should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.

Whenever practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or behavior to be unlawful. Accompanying the warnings should be clear directions on what an

Public Recording of Law Enforcement Activity

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individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an officer could advise the person that he/she may continue observing and recording from the sidewalk across the street.

If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

**426.5 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior.

The supervisor should review the situation with the officer and:

- (a) Request any additional assistance as needed to ensure a safe environment.
- (b) Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded.
- (c) When practicable, allow adequate time for individuals to respond to requests for a change of location or behavior.
- (d) Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
- (e) Explain alternatives for individuals who wish to express concern about the conduct of Department members, such as how and where to file a complaint.

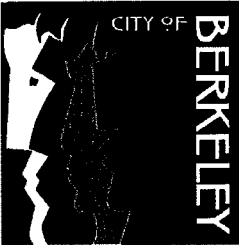
**426.6 SEIZING RECORDINGS AS EVIDENCE**

Officers should not seize recording devices or media unless (42 USC § 2000aa):

- (a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably necessary for prosecution of the person.
  1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
- (b) There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
  1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.
  2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible. Another way to obtain the evidence is to transmit a copy of the recording from a device to a department-owned device.

Recording devices and media that are seized will be submitted within the guidelines of the Property and Evidence Policy.

Item 8.c.  
PRC 10.26.16  
meeting



October 21, 2016

To: Police Review Commission  
From: Katherine J. Lee, PRC Officer   
Re: Proposed procedure for communicating complaints to Commissioners

This responds to the Commission's request of October 13, 2016, for a proposed process for informing the Commission about "citizen complaints concerning individual police officers that do not go through the BOI process," which were also referred to as "informal" complaints. You postponed a vote on how "formal" complaints should be reported. I will take this opportunity to make recommendations on that process.

**Informal v. Formal.** First, I should clarify the distinction I make between informal and formal complaints. **Formal** complaints are those that are filed with the PRC on our complaint form (policy complaints are not part of this discussion). Not all formal complaints go through the BOI process. They may be closed before going to a BOI because they are: rejected as beyond the 180-day late-file period or for lack of jurisdiction; sent to mediation; or administratively closed (because, for example, the complainant withdraws).

**Informal** complaints are any other communications received by PRC staff in which a member of the public ("civilian") claims that he or she witnessed or experienced improper police conduct. PRC staff receives, by letter or email, perhaps three informal complaints a year. Exceptions occur in widely publicized matters, such as the December 2014 protests.

**Informal complaints may become formal.** Often it is unclear whether a civilian who complains informally about alleged officer misconduct is content merely to express their displeasure or wishes to follow through with a formal complaint. In such cases, staff will always contact the complainant to explain the formal complaint process to them (including the policy complaint process, if it seems relevant), and find out whether they wish to file a formal complaint. If they do not, we tell them that their informal complaint will be forwarded to the Commissioner for their information.

Informal complaints: Proposed procedure for communicating

1. I recommend applying this process not to "all complaints that do not go through the BOI process," but to all informal complaints as defined above.
2. Informal complaints will be brought to the PRC's attention by including them as a confidential communication in a PRC agenda packet. They will be agendized for a closed session in case a Commissioner has questions about it. The PRC officer will collect the copies of complaints following the closed session.
3. Informal complaints will be agendized at the same time as the report on formal complaints, and at least 90 days after the date of the alleged misconduct complained of.

Formal complaints: Discussion and recommendation for reporting

1. I recommend that the PRC staff compile a quarterly digest of all formal complaints closed during the previous quarter. This will be sent as a confidential communication in a PRC agenda packet, and agendized for a closed session discussion in case a Commissioner has questions. The PRC officer will collect the copies of complaints following the closed session.
2. During your October 13 meeting, there seemed to be consensus about receiving, in this digest:
  - a. Complainant's name
  - b. Allegations
  - c. Findings on each allegation
3. There was a split of opinion regarding whether Commissioners wanted to see subject officers' names. Some felt that seeing the same officer's name repeatedly would prejudice them toward that officer. Others felt that they could still fairly adjudicate a case involving that officer in a BOI.
4. For the formal complaints that do not go to BOI, there will be no findings. Therefore, I suggest instead of findings (2.c. above), that I report the reason for closure.

Item 8.e.  
PRC 10.26.16  
meeting

The Berkeley Police Review Commission recognizes

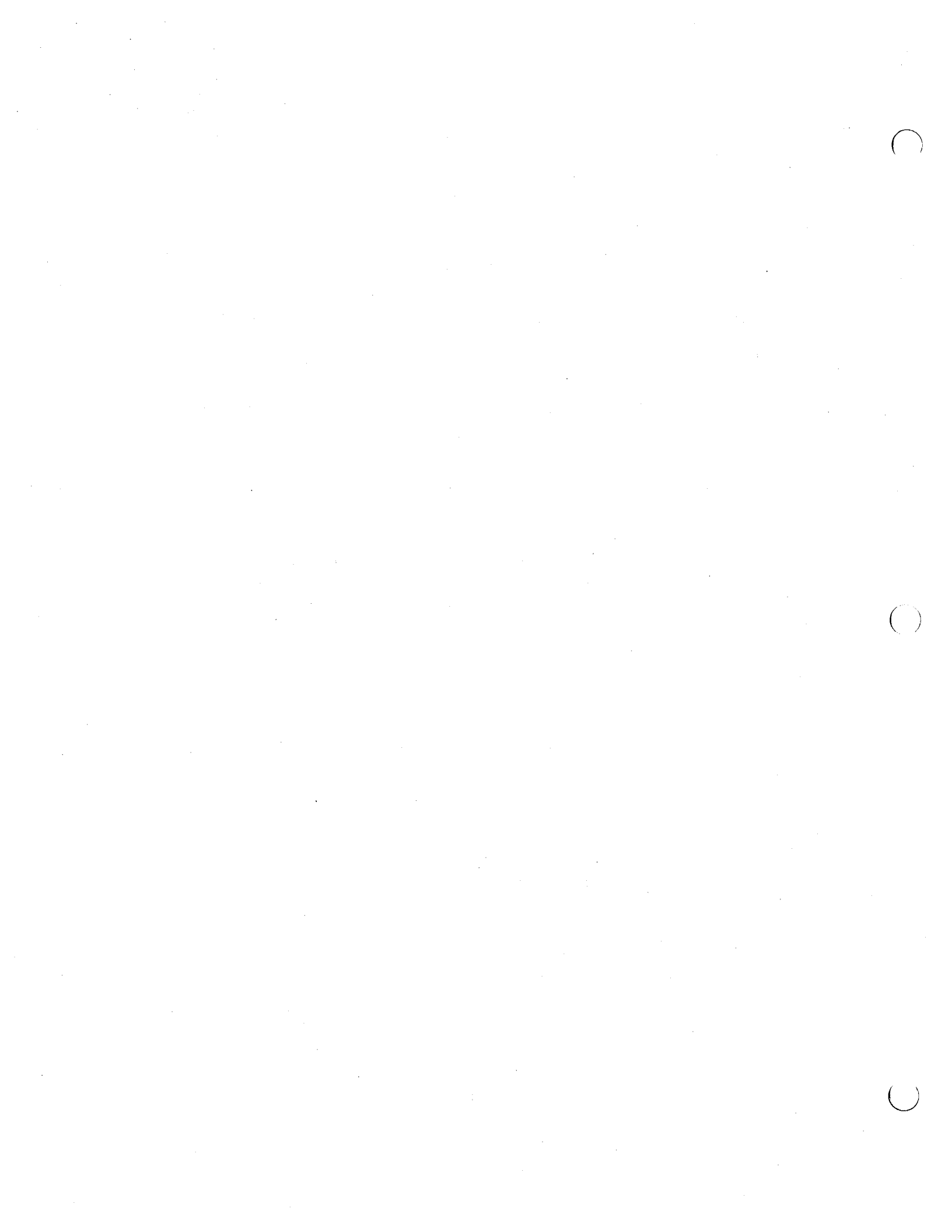
Former Chief of Police Michael Meehan

On his years of professional, diligent and community oriented service to the citizens of Berkeley, the Berkeley Police Department (BPD) and the Berkeley Police Review Commission (PRC). Chief Meehan served BPD with honor and distinction and demonstrated progressive leadership during his tenure as Chief of Police. With a commitment to transparency via engagement with the PRC, Chief Meehan effectively defined a relationship of open collaboration with the community. With the introduction and implementation of innovative methods during his tenure, Chief Meehan moved the BPD to the forefront of progressive policing and training in the nation.

Under Chief Meehan, the BPD was one of the first departments in Alameda County to implement Crisis Intervention Training. In addition, Chief Meehan introduced the department to De-escalation training and Fair and Impartial Policing training. He also implemented a general order instructing officers on the treatment of Transgender individuals as well as increased overall transparency about crime and stop data.

The PRC expresses gratitude to Chief Meehan on his dedicated commitment to the oversight process and ensuring that the values of the Berkeley Police Department are in line with those of the City of Berkeley and the community it serves.

Unanimously approved at the PRC meeting of.....





**Lee, Katherine**

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**From:** Lee, Katherine  
**Sent:** Wednesday, October 19, 2016 4:54 PM  
**To:** Lee, Katherine  
**Subject:** Answer to question raised during Oct. 13 meeting about demographic data

Dear Commissioners,

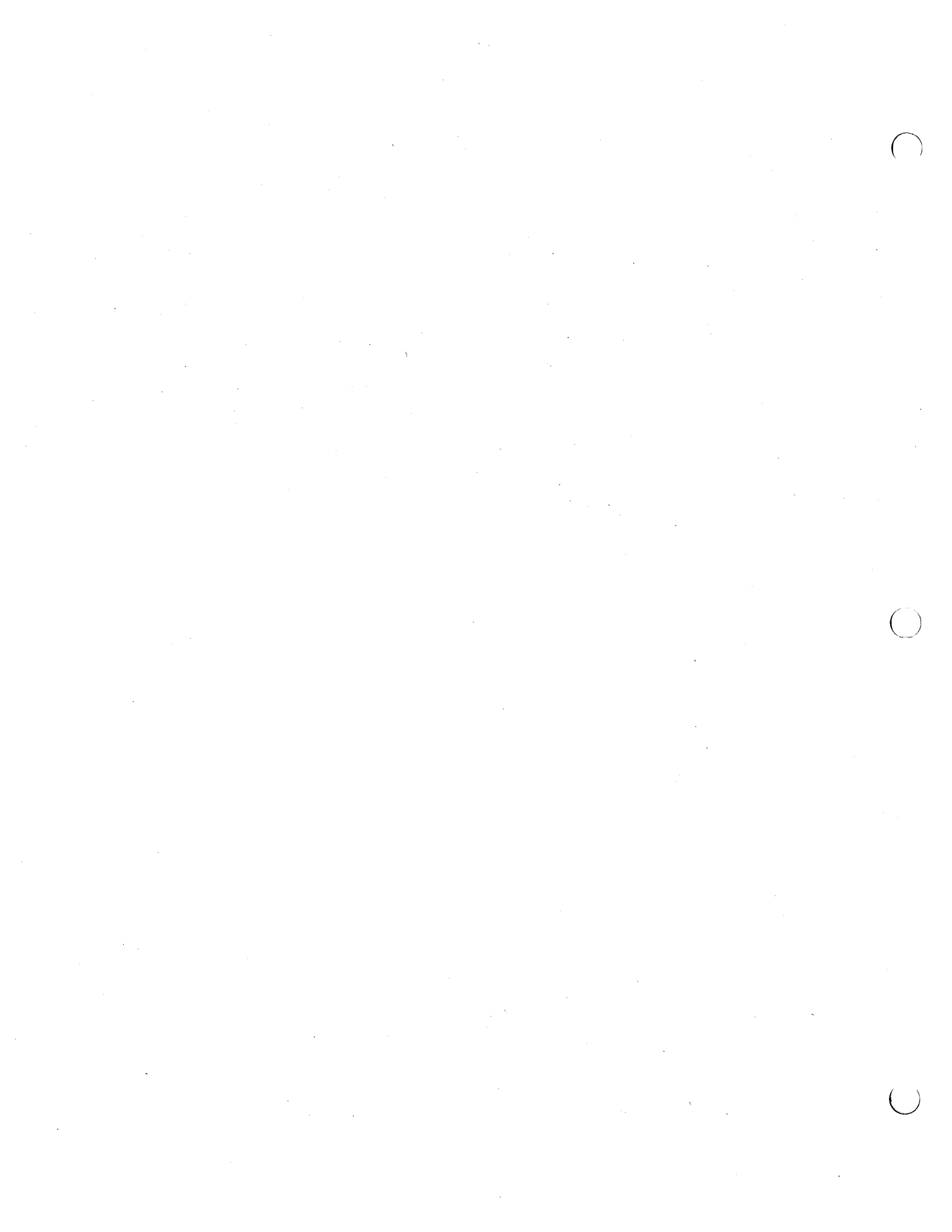
At your last meeting, I turned your attention to the demographic data that BPD supplied for its list of marijuana enforcement activity. Commissioner Smith asked why the stop data on Open Portal does not come out in this format, with race, gender and age nicely separated. Here is the answer:

Car stop and pedestrian data is typed into the MDCs (Mobile Data Computers) in a string. That's why it comes out as a string. The marijuana activity is captured in a report or citation. Because it is entered into LERMS (Law Enforcement Records Management System), a report can be run so that it shows by race, gender and/or age.

-Kathy

P.S. There was no further discussion on this item, which will be on your agenda for Oct. 26.

**Katherine J. Lee**  
**Police Review Commission Officer**  
**City of Berkeley**  
**510.981.4960**

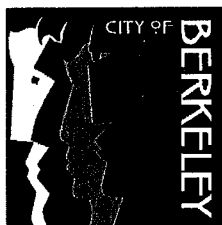


9/14/15: An individual was contacted during a "suspicious vehicle" call for service. The person provided the officer with identification in the form of a "World Passport." The individual later identified himself as a sovereign citizen. He then provided the officer with his true name, different from the name on the World Passport. According to a records check he has had a prior PC 148, PC 242, PC 415 and PC 602 arrest.

9/15/2015: An individual stated on a Facebook post regarding police ""Dirty Racist MuthaFukas keep Killing Armed Police Officers thats the Only Justice I Feel is when a Armed Police Officer is Killed" and "Fuk You u Live by it U Die by it". The individual lives on the 1300 block of Channing Way and has a Alameda County criminal history.

On 01/28/16: BPD officers arrested an individual for 273.5PC. During the booking process, he claimed to be a Sovereign Citizen, and made several threats to BPD officers including, "Punk ass bitch! Let me catch you without your uniform," and "Don't let me catch you outside by yourself." During the booking process he claimed "I see you guys every day from my balcony." The individual has an extensive and violent criminal history including but not limited to domestic violence, 422 PC, 417 PC, 148 PC, 1361. PC, 273a (a) PC, and 261.5 PC. He has been convicted of 148 PC, 243(a) PC, 459 PC, 273.5 PC, and 12021 (c) PC. He has served state prison time. He is a self-admitted Rolling Crip out of Los Angeles.





Police Review Commission

23a

ACTION CALENDAR

October 27, 2015

*(Continued from September 15, 2015)*

To: Honorable Mayor and Members of the City Council

From: Police Review Commission

Submitted by: Alison Bernstein, Chairperson, Police Review Commission

Subject: Recommended Changes to Berkeley Police Department General Order N-17, Suspicious Activity Reporting and Relationship With the Northern California Regional Intelligence Center

INTRODUCTION

At its October 28, 2014 meeting, the City Council directed the City Manager and Police Department (BPD), in consultation with the Police Review Commission (PRC), to review General Order N-17 in the first quarter of 2015. This directive was issued in conjunction with the Council's annual review and vote approving mutual aid agreements between the BPD and other law enforcement, military, and intelligence agencies.

CURRENT SITUATION AND ITS EFFECTS

Through its agreement with the Northern California Regional Intelligence Center (NCRIC) the BPD submits to it information related to potential terrorism and other violent criminal threats, in the form of Suspicious Activity Reports (SARs). The NCRIC accord was singled out for review last fall due to concerns that inappropriate and unnecessary information was being shared, raising the possibility that individuals' right to privacy and First Amendment rights were being violated.

Following the Council's October 2014 action on General Order N-17, the PRC established a Suspicious Activity Reporting Subcommittee. BPD command staff were present at the subcommittee's meetings. At its May 6 meeting, the PRC adopted the recommendation of the SAR Subcommittee to revise General Order N-17. (M/S/C Finley/Vicente. Ayes: Finley, Lippman, Rogers, Sherman, and Vicente; Noes: None; Abstentions: None; Absent: Bartlett, Bernstein, Perezvelez.) The recommended revisions, shown on Attachment 1, consist of adding language from 28 Code of Federal Regulations (CFR) Part 23, Criminal Intelligence Systems Operating Policies. While the General Order already states that those Federal guidelines must be followed, the PRC believes that restating certain pertinent sections in General Order N-17 will assist BPD in ensuring that all SARs it submits are appropriate.

The PRC clarified its direction to staff at its July 8, 2015, meeting, voting to send these recommended revisions directly to Council as an agenda item. (M/S/C Lippman/Vicente.

Ayes: Bartlett, Bernstein, Lippman, Perezvelez, Roberts, and Vicente; Noes: None;  
Abstentions: None; Absent: Rogers, Sherman.)

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the  
subject of this report.

POSSIBLE FUTURE ACTION

The Council may direct the City Manager and Police Department to revise General  
Order N-17 as recommended here.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None

CONTACT PERSON

Katherine J. Lee, Police Review Commission Officer, Police Review Commission, 510-  
981-4960.

Attachments:

1: General Order N-17 with recommended revisions redlined.

**BERKELEY POLICE DEPARTMENT**

**ISSUE DATE: September 18, 2012**

**GENERAL ORDER N-17**

**SUBJECT: SUSPICIOUS ACTIVITY REPORTING AND RELATIONSHIP WITH THE  
NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER**

PURPOSE

- 1 - The terrorist attacks of September 11, 2001, and subsequent attacks throughout the world have demonstrated the necessity of an organized and integrated information sharing system at all levels of law enforcement. In order to prevent, prepare for, respond to, and investigate potential acts of terrorism and other violent criminal threats, it is necessary to establish an efficient system of communication whereby critical information can be quickly disseminated within the Berkeley Police Department (BPD) and to various local, state and federal law enforcement agencies.
- 2 - National guidelines have been developed and implemented throughout the United States through the National Criminal Intelligence Sharing Plan, the Findings and Recommendations of the Suspicious Activity Report Support and Implementation Project and the Nationwide Suspicious Activity Reporting Initiative (NSI) to establish a means for the sharing of information, known as Suspicious Activity Reporting (SAR). The information sharing plan was developed by law enforcement agencies to establish an all-crimes approach to gathering, processing, reporting, analyzing, and sharing of suspicious activity related to potential terrorism and crime. By maximizing information from citizens, law enforcement, and public safety officials, criminal acts can be detected and disrupted and incidents that have occurred can be properly investigated.
- 3 - The Berkeley Police Department will continue to attempt to detect crime before it occurs, including terrorism, through various means such as Suspicious Activity Reporting (SAR). The SAR program will provide a format for the Department to accurately and appropriately gather record, analyze and share suspicious activity or, in cases of named or identified individuals or groups, information that gives rise to a reasonable suspicion of criminal activity, including those activities related to foreign or domestic terrorism.

LIMITATIONS

- 4 - If the information gathered is developed into criminal intelligence, the Department will ensure that the information privacy and legal rights of all persons will be recorded and maintained in strict compliance with existing federal, state and Department guidelines regarding criminal intelligence systems as defined in (28 Code of Federal Regulations (CFR), Part 23 (including subsections 23.20(a) and 23.20(b)), the California Constitution and the California Attorney General's Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities and the California State Threat Assessment System Concept of Operations.

(a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.

(b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

- 5 - Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.
- 6 - SARs must not be submitted based on ideology, social or political opinion or advocacy or religious beliefs or association with a particular group. Criminal activity that would not ordinarily result in a SAR does not become worthy of a SAR report when the subject's speech or expression indicates a particular ideological viewpoint or association.

#### POLICY

- 6 - Effective immediately, all sworn BPD personnel will document incidents with an actual or potential terrorism nexus or other suspected criminal activity and submit those proposed Suspicious Activity Reports as outlined in this policy. All Department members will adhere to the procedures and responsibilities described in this policy whenever potential terrorism related activity is encountered, observed or reported.

#### DEFINITIONS

- 7 - Suspicious Activity: Behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, or criminal activity. Suspicious behavior must have a criminal predicate (defined below), and must rise to the level of reasonable suspicion (defined below) in order to be reportable as a SAR in circumstances involving a named or identified individual or group.
- 8 - Criminal Predicate: The standard by which the determination as to whether information may be used to create a SAR is made in circumstances involving a named or identified individual or group. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount to a misdemeanor or felony.
- 9 - Reasonable Suspicion: Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization is involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.



PROCEDURES

- 10 - Examples of behaviors that could be reported as a SAR are as follows (all of these behaviors have been verified as behaviors which have preceded and been linked to actual terrorist incidents as well as common criminal acts):

<b>DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY</b>	
<b>ISE-SAR CRITERIA GUIDANCE Category Description</b>	
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Theft/Loss/Diversion	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents {classified or unclassified}, which are proprietary to the facility).
Sabotage/Tampering/ Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Aviation Activity	Operation of an aircraft in a manner that reasonably may be interpreted as suspicious, or posing a threat to people or property. Such operation may or may not be a violation of Federal Aviation Regulations.

<b>POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT INFORMATION DURING INVESTIGATION<sub>1</sub></b>	
Eliciting Information	Questioning individuals at a level beyond mere curiosity about particular facets of a facility's or building's purpose, operations, security procedures, etc., that would arouse suspicion in a reasonable person.
Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.

**GENERAL ORDER N-17**

- 11 - Examples of behavior which cannot be reported as a SAR unless: 1) the activity rises to the level of criminal conduct, or 2) the person taking part in the activity is not identified, and therefore, not subject to possible investigation by state and federal investigative agencies:

Recruiting	Building of criminal operations teams and contacts, personnel data, banking data or travel data
Photography	Taking pictures or video of facilities, buildings, or infrastructure in a manner that would arouse suspicion in a reasonable person. Examples include taking pictures or video of infrequently used access points, personnel performing security functions (patrols, badge/vehicle checking), security-related equipment (perimeter fencing, security cameras), etc.

- 12 - **Employee's Responsibilities:** All personnel are reminded that Constitutional rights will be honored at all times and nothing in this policy diminishes Constitutional protections. Personnel are specifically reminded of Fourth Amendment protections and that persons cannot be arrested without probable cause, detained without reasonable suspicion, and that evidence cannot be seized except pursuant to a warrant or an existing recognized exception to the warrant requirement. Any BPD employee receiving any information regarding suspicious activity potentially related to terrorism shall:

- (a) Notify their direct supervisor.
- (b) Notify a department Terrorism Liaison Officer (TLO)
- (c) Document the incident as described in this policy.

- 13 - **Responsibilities of Supervisors:** Upon notification that personnel have received information regarding a potential SAR, the BPD Supervisor shall:

- (a) Determine if any further law enforcement response is needed, will consult with a BPD (TLO) if available and determine if immediate notifications to the Chief of Police, and/or the City Manager or his/her designee is required.
- (b) Provide the information in written form to the TLO for consideration of SAR submittal.
- (c) Review the reports and ensure the proper reporting has been completed.

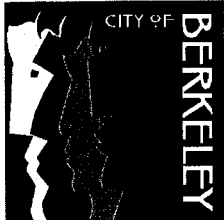
- 14 - **Responsibilities of the TLO and TLO Coordinator (TLOC):** Terrorism Liaison Officers (TLOs) have received training in the identification, handling and reporting of potential terrorism related incidents. TLOs will be available as a resource for SAR related incidents.

- (a) TLOs will review proposed SARs from officers, and supervisors, and forward them to the TLO Coordinator (TLOC) for further review. If the report meets sufficient criteria for submission as a SAR, the TLOC will submit it to the Operations Division Commander or his designee for submission approval.

## GENERAL ORDER N-17

- (b) The TLOC shall maintain a written log of all SARs submitted, and prepare an annual report to be provided to City Council.
- 15 - Responsibilities of the Operations Division Commander:
  - (a) Review of proposed SARs, and approval/rejection as appropriate.
  - (b) Forward all SARs to the City Manager and Chief for review
  - (c) Ensure that a written log is maintained and an annual report prepared by the TLOC.
- 16 - Responsibilities of the NCRIC: It is the policy of the NCRIC to make every effort to accurately and appropriately gather, record, analyze, and disseminate information that could indicate activity or intentions related to threats to homeland security and submit such information to the Federal Bureau of Investigation – Joint Terrorism Task Force (FBI-JTTF) and the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) in the form of an NSI suspicious activity report. These efforts shall be carried out in a manner that protects the information and the privacy, civil rights, and civil liberties of individuals. Suspicious activity information shall be recorded and maintained in strict compliance with existing federal and state guidelines.
- 17 - The NSI has established a unified process for reporting, tracking, and assessing terrorism-related SARs throughout the nation. The NSI adheres to the guidelines established by the Intelligence Reform and Terrorism Prevention Act and the Information Sharing Environment Suspicious Activity Reporting (ISE-SAR) Functional Standard. These guidelines call for all terrorism-related suspicious activity reporting to be routed through designated fusion centers for appropriate vetting and review before the information can be shared within the nationwide system. The NCRIC as a component of California's State Threat Assessment System has been designated as the review agents for all terrorism-related suspicious activity reporting in the region.
- 18 - The NCRIC will then make the decision to share the SAR information with the NSI based on the standards established by the NSI. The NCRIC is also responsible for ensuring that all TLOs, line officers and other first responders in the region have received appropriate training in the collection and reporting of terrorism-related suspicious activities and the responsibilities related to protection of privacy, civil rights and civil liberties of individuals. The NCRIC also works closely with the NSI Program Management Office to ensure a statewide implementation of suspicious activity reporting.
- 19 - Reporting a SAR: All Suspicious Activity Reports (SARs) will be submitted through the [www.ncric.org](http://www.ncric.org) website. When the SAR involves a criminal act or attempted criminal act, a written BPD police report shall be submitted (and BPD case number created) identifying the suspected criminal behavior and referencing the systems and personnel notified of the SAR.





Office of the City Manager

**23b**

ACTION CALENDAR  
October 27, 2015

To: Honorable Mayor and Members of the City Council  
From: *DWR* Dee Williams-Ridley, Interim City Manager  
Submitted by: Michael K. Meehan, Chief of Police  
Subject: Revisions to General Order N-17

RECOMMENDATION

Accept the recommendations for revisions to General Order N-17 made by the Police Review Commission.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On June 19, 2012, a Special Meeting was held to provide information to the Council about community concerns regarding the Northern California Regional Intelligence Center (NCRIC) and the submission of Suspicious Activity Reports (SARS). Council also directed staff to return at the September 18, 2012 meeting with a new policy regarding submitting SARs to the NCRIC (Attachment 1 – General Order N-17). At this subsequent meeting N-17 was adopted. Currently, the Police Review Commission has submitted an information item suggesting additional revisions to General Order N-17.

Proposed Revisions to Suspicious Activity Reports

The Police Department is committed to collaborating with the Police Review Commission (PRC) on policy issues. In this case, had the PRC consulted with the Department there would have been no objection to including the additional language.

On May 6, 2015, the Police Review Commission recommended the police department add language directly from 28 CFR Part 23 subsections 23.20 (a) and (b).

Paragraph 4 subsection additions:

- (a) *A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.*
- (b) *A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business,*

*partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.*

Addition of new Paragraph 6:

- 6 - *SARs must not be submitted based on ideology, social or political opinion or advocacy or religious beliefs or association with a particular group. Criminal activity that would not ordinarily result in a SAR does not become worthy of a SAR report when the subject's speech or expression indicates a particular ideological viewpoint or association.*

The above recommendations were incorporated into General Order N-17 "Suspicious Activity Reporting and Relationship with the Northern California Regional Intelligence Center". In addition, the understanding with NCRIC had already been reduced to writing in the 2011 MOU Binder approved by Council and additionally set forth in General Order N-17.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Michael K. Meehan, Chief of Police, 981-5700

**BERKELEY POLICE DEPARTMENT**

**ISSUE DATE: TBD**

**GENERAL ORDER N-17**

**SUBJECT: SUSPICIOUS ACTIVITY REPORTING AND RELATIONSHIP WITH THE  
NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER**

**PURPOSE**

- 1 - The terrorist attacks of September 11, 2001, and subsequent attacks throughout the world have demonstrated the necessity of an organized and integrated information sharing system at all levels of law enforcement. In order to prevent, prepare for, respond to, and investigate potential acts of terrorism and other violent criminal threats, it is necessary to establish an efficient system of communication whereby critical information can be quickly disseminated within the Berkeley Police Department (BPD) and to various local, state and federal law enforcement agencies.
- 2 - National guidelines have been developed and implemented throughout the United States through the National Criminal Intelligence Sharing Plan, the Findings and Recommendations of the Suspicious Activity Report Support and Implementation Project and the Nationwide Suspicious Activity Reporting Initiative (NSI) to establish a means for the sharing of information, known as Suspicious Activity Reporting (SAR). The information sharing plan was developed by law enforcement agencies to establish an all-crimes approach to gathering, processing, reporting, analyzing, and sharing of suspicious activity related to potential terrorism and crime. By maximizing information from citizens, law enforcement, and public safety officials, criminal acts can be detected and disrupted and incidents that have occurred can be properly investigated.
- 3 - The Berkeley Police Department will continue to attempt to detect crime before it occurs, including terrorism, through various means such as Suspicious Activity Reporting (SAR). The SAR program will provide a format for the Department to accurately and appropriately gather record, analyze and share suspicious activity or, in cases of named or identified individuals or groups, information that gives rise to a reasonable suspicion of criminal activity, including those activities related to foreign or domestic terrorism.

**LIMITATIONS**

- 4 - If the information gathered is developed into criminal intelligence, the Department will ensure that the information privacy and legal rights of all persons will be recorded and maintained in strict compliance with existing federal, state and Department guidelines regarding criminal intelligence systems as defined in 28 Code of Federal Regulations (CFR), Part 23 (including subsections 23.20(a) and 23.20(b)), the California Constitution and the California Attorney General's Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities and the California State Threat Assessment System Concept of Operations.

(a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved

in criminal conduct or activity and the information is relevant to that criminal conduct or activity.

(b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

- 5 - Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.
- 6 - SARs must not be submitted based on ideology, social or political opinion or advocacy or religious beliefs or association with a particular group. Criminal activity that would not ordinarily result in a SAR does not become worthy of a SAR report when the subject's speech or expression indicates a particular ideological viewpoint or association.

### POLICY

- 7 - Effective immediately, all sworn BPD personnel will document incidents with an actual or potential terrorism nexus or other suspected criminal activity and submit those proposed Suspicious Activity Reports as outlined in this policy. All Department members will adhere to the procedures and responsibilities described in this policy whenever potential terrorism related activity is encountered, observed or reported.

### DEFINITIONS

- 8 - Suspicious Activity: Behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, or criminal activity. Suspicious behavior must have a criminal predicate (defined below), and must rise to the level of reasonable suspicion (defined below) in order to be reportable as a SAR in circumstances involving a named or identified individual or group.
- 9 - Criminal Predicate: The standard by which the determination as to whether information may be used to create a SAR is made in circumstances involving a named or identified individual or group. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount to a misdemeanor or felony.
- 10 - Reasonable Suspicion: Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization is involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.



PROCEDURES

- 11 - Examples of behaviors that could be reported as a SAR are as follows (all of these behaviors have been verified as behaviors which have preceded and been linked to actual terrorist incidents as well as common criminal acts):

<b>DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY</b>	
<b>ISE-SAR CRITERIA GUIDANCE Category Description</b>	
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Theft/Loss/Diversion	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents {classified or unclassified}, which are proprietary to the facility).
Sabotage/Tampering/ Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Aviation Activity	Operation of an aircraft in a manner that reasonably may be interpreted as suspicious, or posing a threat to people or property. Such operation may or may not be a violation of Federal Aviation Regulations.

<b>POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT INFORMATION DURING INVESTIGATION<sup>1</sup></b>	
Eliciting Information	Questioning individuals at a level beyond mere curiosity about particular facets of a facility's or building's purpose, operations, security procedures, etc., that would arouse suspicion in a reasonable person.

Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.
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- 12 - Examples of behavior which cannot be reported as a SAR unless: 1) the activity rises to the level of criminal conduct, or 2) the person taking part in the activity is not identified, and therefore, not subject to possible investigation by state and federal investigative agencies:

Recruiting	Building of criminal operations teams and contacts, personnel data, banking data or travel data
Photography	Taking pictures or video of facilities, buildings, or infrastructure in a manner that would arouse suspicion in a reasonable person. Examples include taking pictures or video of infrequently used access points, personnel performing security functions (patrols, badge/vehicle checking), security-related equipment (perimeter fencing, security cameras), etc.

- 13 - **Employee's Responsibilities:** All personnel are reminded that Constitutional rights will be honored at all times and nothing in this policy diminishes Constitutional protections. Personnel are specifically reminded of Fourth Amendment protections and that persons cannot be arrested without probable cause, detained without reasonable suspicion, and that evidence cannot be seized except pursuant to a warrant or an existing recognized exception to the warrant requirement. Any BPD employee receiving any information regarding suspicious activity potentially related to terrorism shall:

- (a) Notify their direct supervisor.
- (b) Notify a department Terrorism Liaison Officer (TLO)
- (c) Document the incident as described in this policy.

- 14 - **Responsibilities of Supervisors:** Upon notification that personnel have received information regarding a potential SAR, the BPD Supervisor shall:

- (a) Determine if any further law enforcement response is needed, will consult with a BPD (TLO) if available and determine if immediate notifications to the Chief of Police, and/or the City Manager or his/her designee is required.
- (b) Provide the information in written form to the TLO for consideration of SAR submittal.
- (c) Review the reports and ensure the proper reporting has been completed.

- 15 - **Responsibilities of the TLO and TLO Coordinator (TLOC):** Terrorism Liaison Officers (TLOs) have received training in the identification, handling and reporting of potential

terrorism related incidents. TLOs will be available as a resource for SAR related incidents.

- (a) TLOs will review proposed SARs from officers, and supervisors, and forward them to the TLO Coordinator (TLOC) for further review. If the report meets sufficient criteria for submission as a SAR, the TLOC will submit it to the Operations Division Commander or his designee for submission approval.
- (b) The TLOC shall maintain a written log of all SARs submitted, and prepare an annual report to be provided to City Council.

16 - Responsibilities of the Operations Division Commander:

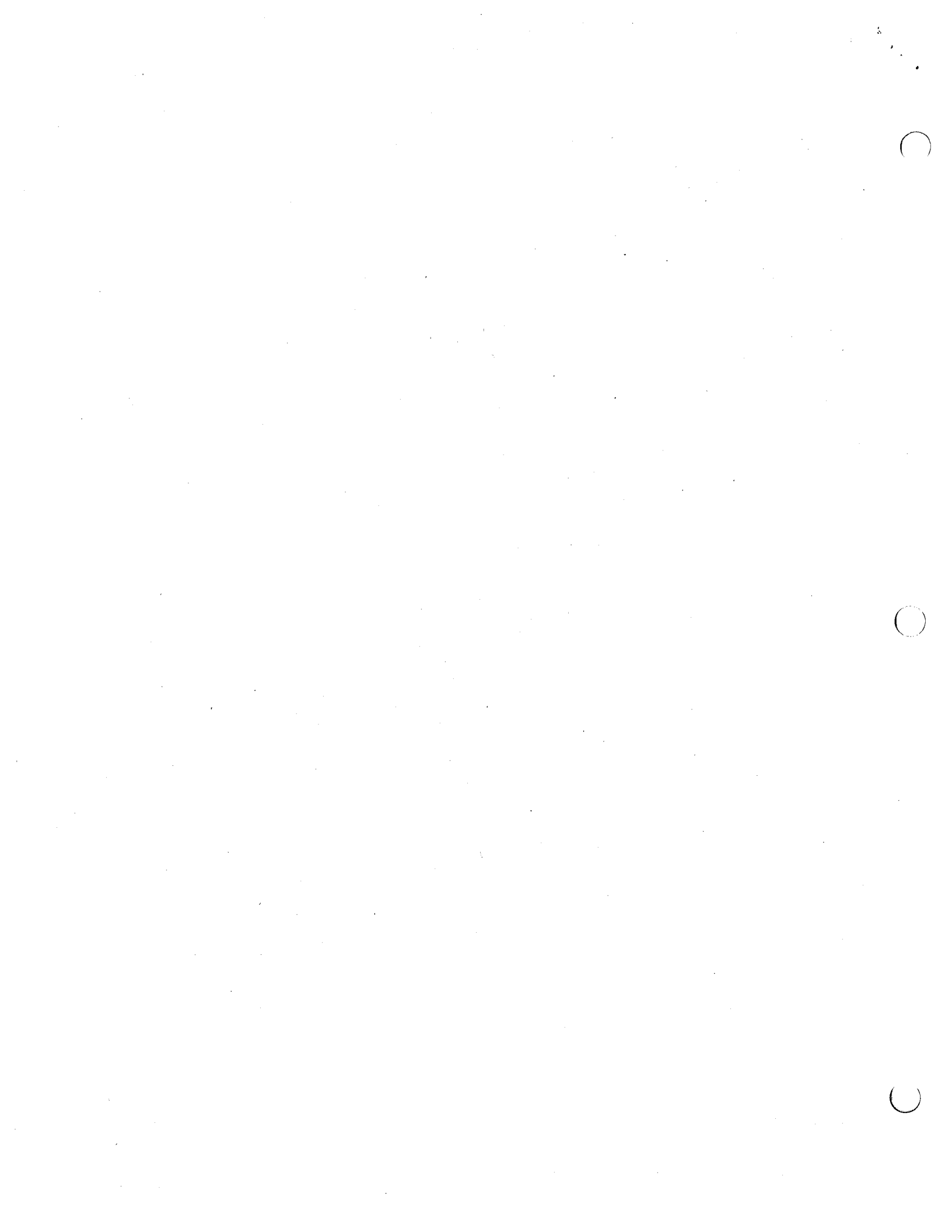
- (a) Review of proposed SARs, and approval/rejection as appropriate.
- (b) Forward all SARs to the City Manager and Chief for review
- (c) Ensure that a written log is maintained and an annual report prepared by the TLOC.

17 - Responsibilities of the NCRIC: It is the policy of the NCRIC to make every effort to accurately and appropriately gather, record, analyze, and disseminate information that could indicate activity or intentions related to threats to homeland security and submit such information to the Federal Bureau of Investigation – Joint Terrorism Task Force (FBI-JTTF) and the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) in the form of an NSI suspicious activity report. These efforts shall be carried out in a manner that protects the information and the privacy, civil rights, and civil liberties of individuals. Suspicious activity information shall be recorded and maintained in strict compliance with existing federal and state guidelines.

18 - The NSI has established a unified process for reporting, tracking, and assessing terrorism-related SARs throughout the nation. The NSI adheres to the guidelines established by the Intelligence Reform and Terrorism Prevention Act and the Information Sharing Environment Suspicious Activity Reporting (ISE-SAR) Functional Standard. These guidelines call for all terrorism-related suspicious activity reporting to be routed through designated fusion centers for appropriate vetting and review before the information can be shared within the nationwide system. The NCRIC as a component of California's State Threat Assessment System has been designated as the review agents for all terrorism-related suspicious activity reporting in the region.

19 - The NCRIC will then make the decision to share the SAR information with the NSI based on the standards established by the NSI. The NCRIC is also responsible for ensuring that all TLOs, line officers and other first responders in the region have received appropriate training in the collection and reporting of terrorism-related suspicious activities and the responsibilities related to protection of privacy, civil rights and civil liberties of individuals. The NCRIC also works closely with the NSI Program Management Office to ensure a statewide implementation of suspicious activity reporting.

20 - Reporting a SAR: All Suspicious Activity Reports (SARs) will be submitted through the [www.ncric.org](http://www.ncric.org) website. When the SAR involves a criminal act or attempted criminal act, a written BPD police report shall be submitted (and BPD case number created) identifying the suspected criminal behavior and referencing the systems and personnel notified of the SAR.



**First Reading Vote:** All Ayes.

**Financial Implications:** See report

**Contact:** Eric Angstadt, Planning and Development, 981-7400

**Action:** Moved to Consent Calendar.

1. Adopted second reading of Ordinance No. 7,433–N.S.

2. Adopted second reading of Ordinance No. 7,434–N.S.

3. Adopted second reading of Ordinance No. 7,435–N.S.

23. **a. Recommended Changes to Berkeley Police Department General Order N-17, Suspicious Activity Reporting and Relationship With the Northern California Regional Intelligence Center** *(Continued from September 15, 2015)*  
**From:** Police Review Commission  
**Contact:** Katherine Lee, Commission Secretary, 981-4950

Tuesday, October 27, 2015

ANNOTATED AGENDA

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## Action Calendar – Old Business

23. **b. Revisions to General Order N-17**  
**From:** City Manager  
**Recommendation:** Accept the recommendations for revisions to General Order N-17 made by the Police Review Commission.  
**Financial Implications:** None  
**Contact:** Michael Meehan, Police, 981-5900  
  
**Action:** 10 speakers. M/S/C (Arreguin/Moore) to adopt Item 23.b. with a request that the Police Review Commission and City Council be provided with available documents regarding the SARs submitted by Berkeley Police.  
**Vote:** All Ayes.
24. **City Manager Referral: Reinstate Inviting Community Agencies to Make Presentations During the Commission Funding Process** *(Continued from September 15, 2015)*  
**From:** Councilmember Worthington  
**Recommendation:** Refer to the City Manager to increase transparency by reinstating a practice of inviting community agencies to present to city commissions on proposals during the funding allocation process.  
**Financial Implications:** Minimal  
**Contact:** Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Item held over to January 19, 2016. Requested a report from the City Manager that includes background on the allocation process and the ability of agencies to present to commissions in person.
25. **Housing Trust Fund Loan for \$1,000,000** *(Continued from September 29, 2015)*  
**From:** Councilmember Worthington  
**Recommendation:** Loan \$1,000,000 to the Housing Trust Fund.  
**Financial Implications:** \$1,000,000

