

Handouts for PRC meetings of May 24, 2017

Special Meeting:

- May 16, 2017 email from Chief Greenwood to PRC Officer re CPE Report Update
- Press release re Police Chief Delays Release of Racial Profiling Report

Regular Meeting:

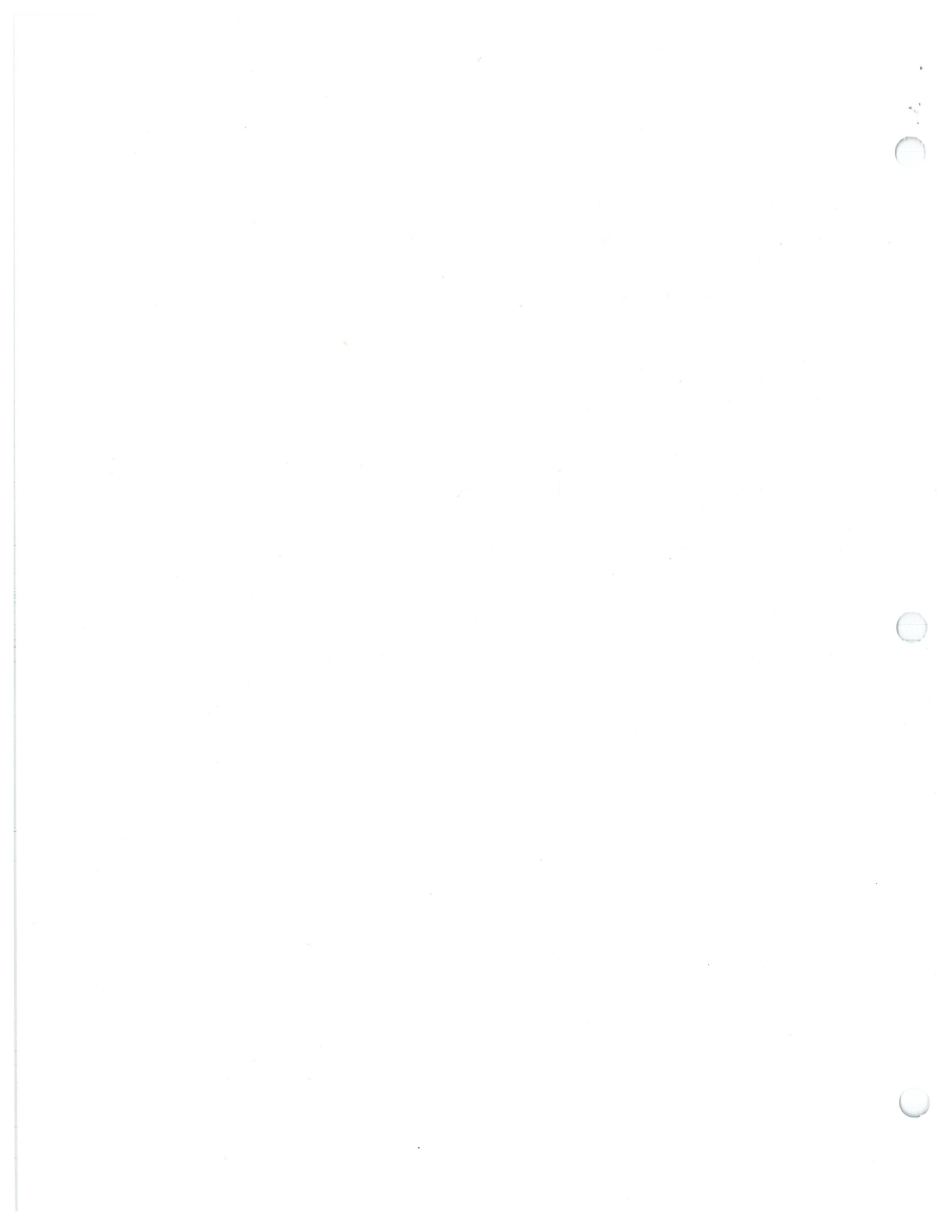
Agenda Item #6. PRC Officer's Report
Case Deadlines Report

Agenda Item #8.d. Outreach Subcommittee
Berkeley Juneteenth Festival press release

Agenda Item #9.c. Policy Review of G.O. W-1
Revised proposed Right to Watch policy

Agenda Item #10.d. Questions to City Attorney regarding scope of confidentiality requirements as to a challenge alleging bias of a PRC Commissioner

Handout: Amendment to PRC Regulations Section VII.C.3. regarding Summary Dismissal. (*Commissioners should attach this to their copy of the Regulations.*)



Lee, Katherine

From: Greenwood, Andrew
Sent: Thursday, May 18, 2017 5:57 PM
To: Lee, Katherine
Subject: CPE Report Update

Kathy,

This is to follow up on our conversation from yesterday. As outlined below, we are not in a position to present to the PRC next week.

In early May, I contacted CPE regarding our concerns around the report draft's consideration of the data elements on the stops, as I noted on May 10, below. Following several subsequent conversations with CPE and my staff, my concerns around the data in the draft remained, as did concerns about analysis of use of force. We clarified that the draft did not have 2016 stop data, which is relevant and vital to analysis and interpretation, and which will support the discussions that will arise from the report.

As you may recall, after becoming interim Chief, I elected to provide CPE with our data on force as well. CPE has a voice on the national level regarding analysis of stop and force data, and we want to be part of the fundamental work of establishing consistent approaches across the country for analysis of *both* stop and use of force data. Part of their analytic approach on use of force includes a "climate survey." This involves a site visits, and focus on staff understanding and completing a survey. This could not be accomplished in the interim report—which meant their analysis of force would be incomplete.

Our desired end-state is that CPE to produce a single, comprehensive report on stop data and use of force, using their *full* analytical approach and most reliable, current data. The full report will review stop data from at least 2015 *and* 2016, address our approach to disaggregation of the data, and utilize their complete analytic approach on use of force. We remain committed to having Dr. Phil Goff present the report to PRC as well. We need to ensure we have enough time for meaningful review of the final report by our staff, and that we have time to provide the report to the PRC *before* the presentation.

These needs will cause a significant delay in the final report, but we want the report to be complete and comprehensive, to have rock-solid data in its analytical framework, and to provide the most value for our community and our discussion of the issues. I think anything less undermines the opportunity for success and legitimacy in the important conversations we are trying to inform.

Regardless of the delay of the completion of the report, we *are* moving forward on some related issues that the Commission should be aware of:

1. We are working on adding information to our stop data collection, including around the issue of tracking the "hit rate."
2. We are moving forward with revising our use of force reporting thresholds.

Finally, I'd like to ensure the Commission is aware that this report is not intended to be a "one-off", but rather serve as the first of a series of annual reports from CPE. We plan to continue working with CPE beyond the coming report—by providing them with our data on an annual basis, so that we establish an annual, active review of analysis results, track developments and/or changes in policy, training, and procedures, and most effectively map our way forward.

I am planning to attend next week's PRC meeting as well.

Best regards,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700

From: Greenwood, Andrew
Sent: Wednesday, May 10, 2017 4:56 PM
To: Lee, Katherine <KLee@cityofberkeley.info>
Cc: Norris, Byron <BNorris@cityofberkeley.info>; Reece, David K. <DReece@cityofberkeley.info>
Subject: RE: CPE; my vacation

Kathy, Byron,

Here's the update on the CPE report.

I've received the draft midweek last week. During our preliminary staff review, we identified a concern that data on stops may not have been broken down by the analysts to separate and account for pure officer-initiated stops from stops where the officer was making a stop due to a previous event/description/previous information, like stopping a person known to be wanted.

I've been in touch with CPE to ask they clarify these issues on their end, and they are following up.

Once we have a sense for potential impact on our timeline, I'll report back to you.

I believe we share a collective interest in ensuring accuracy in the analysis of the data, even if this impacts our timeline.

Capt. Reece is attending tonight's meeting, as I'm headed back from a Cal Chiefs event with legislators in Sacramento.

Best regards,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700

FOR IMMEDIATE RELEASE

May 23, 2017

Contact: Stephanie Maurer (646) 334-2433

Andrea Prichett (510) 229-0527

Email: berkeleycopwatch@yahoo.com

BERKELEY POLICE CHIEF DELAYS RELEASE OF RACIAL PROFILING REPORT

Berkeley Police Chief Andy Greenwood has told the Police Review Commission that, although a report on racial profiling has finally been provided to him by the Center for Equity Policing (CPE) he doesn't want to release it yet. While the chief would like the report to be revised and delayed further, Berkeley Copwatch is demanding its immediate release.

It is almost two years since Berkeley Copwatch, the NAACP, ACLU and the NLG held a press conference to highlight the disparities in police stops in Berkeley. BPD and the City Council were notified that BPD police stops showed outrageous disparities in the races of those stopped. The chief claimed that he wanted a more professional analysis of the data before he could create a plan for dealing with this problem. He contacted the Center for Policing Equity and, after a two-year period of waiting, they finally gave him a report. Now it is time to distribute the report and to start talking about what to do about racism within BPD.

Chief Greenwood must let the people read the report and stop the delaying tactics. The City of Berkeley needs to know about their profiling problem and take steps to address it. People of Color in Berkeley have endured a two-year delay waiting for the city's response to police based racism in our city. The Chief should not be trying to co-write the report at this point. He should comment on the report as it was submitted to him, and respect the fact that racism is an urgent matter and every day that racism is allowed to continue unchecked is another day of violence against communities of color.

ATTEND THE POLICE REVIEW COMMISSION MEETING TO DEMAND THAT

THE CHIEF RELEASE THE RACIAL PROFILING REPORT

Wednesday May 24, 2017 at 7pm

1901 Hearst Ave. Berkeley

<http://www.berkeleyside.com/2015/09/29/berkeley-coalition-says-police-stops-show-racial-bias/>

<http://www.berkeleycopwatch.org/2015-racial-profiling>

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
2413	DELMASTRO, BRUCE	01/19/17	Oct-16	02/14/17	01/23/17	04/09/17	04/07/16	05/04/17	05/18/17	BOI 6-23
2418	ADDISON, DON-QUE	05/10/17	Apr-17	06/07/17	05/17/17	07/28/17		08/23/17	09/07/17	Investigation

CALOCA APPEALS										
NO.	Complainant	Officer Appeal Filed	PRC Records Due (60 days)	PRC Records Filed	Officer Brief Due	PRC Brief Due	PRC Brief Filed	OAH Hearing Date	OAH Decision Due	STATUS
2402	JACKSON, CHARLES	12/13/16	02/11/17	02-10-2017	03-23-2017	04/06/17	04-06-2017	04/20/17	06/19/17	awaiting OAH decision

POLICY REVIEWS									
NO.	Complainant	Filed Date	Notice of Complaint to BPD	Due to Comm (30 days or next mtg.)	Initial Commission Meeting Date	Commission Approval Date	Commission Resolved? y/n	Policy Issue	STATUS
2415	GOTTSCHALK, KARLA	04/04/17		05-04-2017	04-26-2017			biased policing	pending 5-24 vote

Agenda Item #6
PRC meeting
5.24.17

Handwritten text, possibly a signature or date, located in the top left corner.

May 18, 2017



CONTACT

DELORES NOCHI COOPER
berkeleycajuneteenth@gmail.com
510-524-8804

FOR IMMEDIATE RELEASE:

The 30th Annual Berkeley Juneteenth Festival will be held on Father's Day, Sunday, June 18, 2017, from 11am to 7pm, on Alcatraz @ Adeline in the city of Berkeley. Admission is free and open to the public. For easy access, festival-goers are encouraged to take BART- Ashby Station, walk south on MLK to Alcatraz Av.

This year's theme is "SANKOFA- RESTORING THE VILLAGE". The Akan people of Ghana use an Adinkra symbol called a Sankofa bird with its head turned backwards taking an egg off its back, which symbolizes "taking from the past what is good and bringing it into the present", and African villages were communal and worked to meet the needs of everyone.

The "village" concept was continued in Black communities post slavery and throughout the civil rights movement. As a result Black communities, not unlike the South Berkeley community in the 1950-1970s, thrived and spawned a generation of activists who made a difference in their community and in the city of Berkeley. The Berkeley Juneteenth Festival, a freedom celebration, is a yearly call to recommit to working together as community; making it a better place to live now and in the future. Sankofa proposes retrieving what has been lost or left behind: A community working together for the good of all. Indeed. "It takes a village..."(African proverb).

Berkeley Juneteenth is a community event offering local talent featuring the African Diaspora musical genre. We invite the entire community to come and enjoy.

The opening ceremony at 11am, will begin with a presentation of the Emancipation Proclamation by a young equestrian, KYSARIAH BRINSON. Continuous live entertainment on two stages will promptly start afterwards. We are proud to welcome one of the most versatile musicians, singers and entertainers, ALVON JOHNSON and band. Also appearing: THE CHARLES BLACK EXPERIENCE; SAMBA FUNK; SISTAHS W DRUMS; CALIFORNIA JAZZ CONSERVATORY feat. SHAVON MOORE; AHSATINU; NO LOVELY THING feat. MELISSA JONES; SOUL PROGRESSIONS; SOUNDS OF JOY; C5; DBRAX; IMERALD BROWN; ANDREA SPEARMAN; EMIAH; DE'SHA BOYNTON; JOY ELAN; Excerpts from the play showing during Festival week: "BROWNSVILLE SONG (b-side for Tray)" at SHOTGUN PLAYERS; Masters of Ceremony: DAVEY D and JAY RICH; and DJ: O'ACES.

The Festival will offer a wide array of crafts, ethnic arts and great food. Health agencies will offer education and screenings. There will be historical exhibits. We encourage families and their children to visit the KIDS ZONE. New attractions are STEM activities, science activities by BAYER, slides and a bouncy house, a rock wall, face painting by LADYBUG CLOWN, slime and bubble activities, and Home Depot will return offering children hands-on woodworking activities. All activities in the KIDS ZONE are free.

The 30th Annual Berkeley Juneteenth Festival is sponsored by: the City of Berkeley, Berkeley Juneteenth Cultural Celebrations, Cooperative Center Federal Credit Union, BART, Mechanics Bank, Home Depot, Berkeley NAACP, People's Bazaar, Whole Foods, Shotgun Players, AC Transit, and Panoramic Interests.

In 1986, RD Bonds organized the first Berkeley Juneteenth Festival and started an organization whose primary mission was to celebrate Juneteenth annually, and thus promote the economic and social well-being of the south Berkeley community. RD Bond's legacy continues to thrive. The organization has rebranded to Berkeley Juneteenth Cultural Celebrations (BJCC), produces an annual Black History Month event, and has plans for producing other cultural events. BJCC is committed to creating programs that highlight African American music; educating the community about African American history and accomplishments; highlighting Berkeley's significant and rich history of civil rights and community activism; and providing opportunities for the entire community to learn about African American culture.

For more information about Berkeley Juneteenth, go to our website www.berkeleyjuneteenth.org.

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THE RIGHT TO WATCH PROPOSAL TO REVISE: GENERAL ORDER W-01

(revised 5-24-17)

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 that reflect these clarifications.

POLICY

It shall be the policy of the Berkeley Police Department to place 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. The "least possible restriction" means that the officer's mindset should be to only limit observation if necessary for law enforcement purposes.

It is Departmental policy that any restriction an officer imposes on public observation of police officer conduct should be narrowly tailored to meet legitimate law enforcement purposes. 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

It is the policy of this Department that persons not involved in an incident be allowed to remain **in the immediate vicinity** to witness stops, detentions and arrests of suspects occurring in public areas, except under the following circumstances:

1. When the safety of the officer or the suspect is jeopardized.
2. When persons interfere or violate law.
3. When persons threaten by words or action, or attempt to incite others to violate the law.

Citizens also have the right to communicate with the detained person, provided, however:

1. 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.
2. 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 attention. 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.

3. If the conditions at the scene are peaceful and sufficiently quiet, and the officer has stabilized the situation, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:
 - i. The suspect objects to persons overhearing the conversation.
 - ii. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.
4. 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 cameras or recording media.
5. 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 become~~ **that is** unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance.
6. 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.

SUPERVISOR RESPONSIBILITIES

7. 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 and 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 or 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

Agenda Item # 10. d.
PRC meeting 5.24.17

Lee, Katherine

From: Alison Bernstein <alibernstein@gmail.com>
Sent: Friday, May 19, 2017 12:21 AM
To: Lee, Katherine
Subject: Re: FW: Commander's Guide and questions for Kristy

Follow Up Flag: Follow up
Flag Status: Flagged

Questions for city attorney re scope of confidentiality when a commissioner is challenged:

Is it the opinion of the City attorney that the fact that an officer (or her or his representative) has challenged a commissioner sitting on a BOI confidential? if so, what is the authority for this information being confidential?

Is it the opinion of the City attorney that the outcome of the challenge is confidential? If so, what is the authority for the outcome of the challenge being confidential?

Is it the opinion of the City Attorney that the basis for the challenge is confidential regardless of whether it is related to the subject officer? In other words, if the basis for the challenge is to alleged conduct by the challenged commissioner, having no connection to the subject officer, is the basis for the challenge confidential? if so, what is the authority for the basis of the challenge being confidential?

AB

PRC REGULATIONS AMENDMENT

On May 10, 2017, the Police Review Commission adopted the following amendment to the PRC Regulations for Handling Complaints Against Members of the Police Department, section VII.C.:

3. Summary Disposition

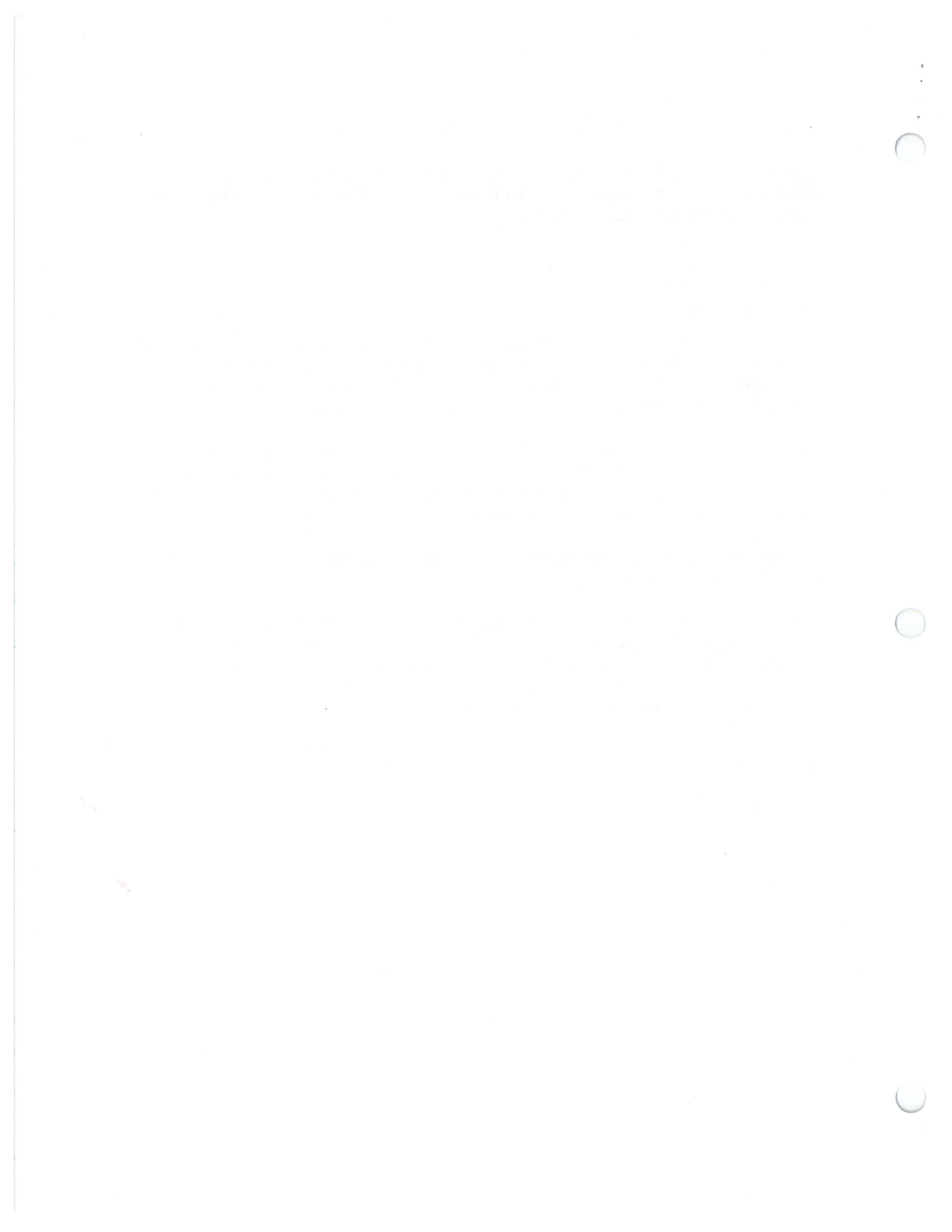
a. Summary Dismissal

After issuance of the BOI Hearing Packet, and upon the motion of the subject officer or its own motion, the BOI may summarily dismiss any or all of the allegations that it finds clearly without merit based on the evidence contained in the BOI Hearing Packet. A vote to summarily dismiss an allegation must be unanimous.

A subject officer's motion for summary dismissal must be in writing and submitted no later than 7 calendar days before the date of the BOI Hearing. The BOI shall consider the motion either at a special BOI meeting or at the scheduled BOI hearing. Parties to the complaint shall be notified of the request for summary dismissal.

The BOI may summarily dismiss, upon its own motion at a scheduled BOI hearing, any or all of the allegations.

When the summary dismissal is being considered the BOI shall not hear arguments or ask questions of the parties to the complaint. Following public comment, the BOI shall excuse everyone, except PRC staff, from the meeting and deliberate. The BOI shall consider only the information included in the BOI Hearing Packet when making its decision on summary dismissal. The decision of the BOI will be announced orally and issued in writing.



Commissioner Perezvelez's proposal (strikeout in black; additions in red) with further changes discussed by Commission at April 26, 2017 meeting (strikeout in red, underline and strikeout in green; with suggested language from staff noted as such).

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~~ affiliations, 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.

~~e) making statements about the complainant, subject officer and or allegations outside of the hearing and deliberation process.~~

2. Procedure

- a. Within 7 calendar days from the date of mailing of the notice of a Board of Inquiry hearing ~~packet, which that~~ includes the names of the Commissioners constituting that Board, or 10 calendar days before the BOI hearing date, whichever occurs first, the complainant or the subject officer(s) may file with the PRC a written challenge for cause to any Commissioner. Such challenge must specify the nature of the conflict of interest accompanied by all evidence and argument supporting the challenge.
- b. The PRC Officer or his/her designee shall ~~contact~~ notify the challenged Commissioner and send him or her a copy of the challenge and supporting materials ~~[staff]~~ as soon as possible **within 1 calendar business day** (24 hours) ~~[staff]~~ after receipt of the challenge.
- c. A commissioner challenge and a commissioner's response to being challenged may be filed via email to prc@cityofberkeley.info. PRC staff may serve a notice of challenge and supporting materials, and response to a challenge and supporting

materials, via email. [staff]

- d. If the Commissioner agrees, the PRC Officer or his/her designee shall ask another Commissioner to serve.
- ~~e.~~ If the Commissioner does not agree that the challenge is for good cause, the Commissioner has 3 calendar days from the date of contact by staff to file a written response with supporting materials, if he or she desires, and PRC staff must send the response and supporting materials to the challenging party within 1 business day of receipt. The PRC Officer or his/her designee shall poll the other members of the Board and, if both agree the challenge is for good cause, convene a special BOI meeting of the two other Commissioners to occur as soon as practicable to hear the challenge to the commissioner. In order for the challenge and removal petition of the commissioner to be granted, both Commissioners must agree that the challenge is for good cause using the clear and convincing standard. If the challenge is granted the PRC Officer or his/ her designee shall inform the challenged Commissioner and ask another Commissioner to serve. If there is not an unanimous agreement by the two other sitting Commissioners, the challenged Commissioner will be allowed to serve. [1st sentence per commission; remainder staff]
- ~~e.~~ All materials pertinent to the challenge shall be submitted no later than 5 calendar days to the PRC officer and board commissioners before the special meeting to hear the challenge is convened. [staff: This deadline is not needed, as all pertinent materials will have been sent by the time the challenged commissioner files his/her response.] Both the challenged commissioner and the subject officer's representative or complainant will be able to read the argument and counterargument to the challenge and be given the opportunity to respond in writing 2 days before the hearing is convened.
- f. At the special meeting to hear the challenge, All parties will be allowed the opportunity to present arguments, witness testimony and answer questions as part of the hearing process. [staff]
- g. [formerly 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 file. [staff] If a challenge is upheld, the commissioners

voting to uphold must prepare a written decision explaining their reasoning. This decision will be furnished to the challenging party and the challenged Commissioner, and is confidential.

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, at which time the full commission will sit as a board.~~In cases where the full commission sits as a Board of the whole under Section VI.A., a Commissioner who agrees to a challenge or is successfully challenged will not be replaced.[staff: “unable to serve for any reason” is too broad for this section on commissioner challenges, and is covered under VI.B.2.]

4. Tolling of time [Staff inserted heading. Also, note that this subsection was not discussed on 4-26.]

A challenge to a commissioner that is granted at the request of the subject officer shall toll any BPD disciplinary time period.

