

PRC COMPLAINT DEADLINES REPORT

COMPLAINT INVESTIGATIONS										
NO.	Complainant	Filed Date	Incident Date	Notice of Allegations Due (20 Bus. days)	Notice of Allegations Issued	BOI Packet (80 days)	BOI Packet Issued	BOI Findings Report Goal (105 days)	120 Days	STATUS
2419		06/14/17	Jun-17	07/12/17	06/19/17	09/02/17		09/27/17	10/12/17	On hold; ofc unavail. no earlier than 2/13/19
2429		10/20/17	Aug-17	11/17/17	10/27/17	tbd		tbd	tbd	On hold; comp criminal case; t/b dismissed 2/1/19
2445		12/04/18	Oct-18	01/01/19	12/20/18	02/22/19			Early Feb. 19	Investigation. (Complainant filed with IA in early October 2018, so PRC will not be able to make findings within 120 days.)
2446		12/05/18	Dec-18	01/02/19	12/18/18	02/22/18		03/20/19	04/04/19	Investigation
2448		12/20/18	Dec-18	01/17/19	01/04/19	03/08/19		04/04/19	04/19/19	Investigation
2449		12/27/18	Dec-18	01/24/19	01/10/19	03/15/19		04/11/19	04/26/19	Investigation
2450		01/10/19	Dec-18	02/07/19		03/29/19		04/25/19	05/10/19	Allegations due



SIGNIFICANT LAWS AND COURT CASES AFFECTING SCOPE AND POWERS OF THE BERKELEY POLICE REVIEW COMMISSION

LEGISLATION

Berkeley Police Review Commission created (1973¹)

Voters adopt PRC Ordinance (Ordinance No. 4644-N.S., codified in Berkeley Municipal Code Chapter 3.32), effective April 17, 1973.

Purpose: to provide for community participation in setting and reviewing Police Department policies, practices and procedures; and to provide a means for prompt, impartial and fair investigations of complaints brought by individuals against the BPD.

(Some provisions were declared invalid in *Brown v. City of Berkeley* (1976), below.)

Public Safety Officers Procedural Bill of Rights Act (1976)

Calif. Government Code sections 3300 – 3313 (“POBRA”)

Provides a set of basic rights and protections afforded to all covered peace officers in California by their employing agencies in the categories of investigation procedures, imposition of discipline, privacy rights, political activity, and personnel files.

These provisions have the greatest effect on PRC investigations of individual complaints and Boards of Inquiry:

- Sec. 3303 – When any peace officer is under investigation and subjected to interrogation by a commanding officer or any other member of the employing public safety department, which could lead to punitive action, the interrogation shall be conducted under the following conditions.
 - Sec. 3303(a) – An interrogation must be conducted at a reasonable hour, preferably at a time when the subject officer is on duty, or during the normal waking hours for the officer.
 - Sec. 3303(b) – The officer is entitled to know who will be present during the interrogation, and all questions directed to the subject officer under interrogation shall be asked by and through no more than two interrogators at one time.
- Sec. 3304(d)(1) – Generally, the agency must complete its investigation and notify the officer of proposed discipline within one year of the agency's discovery by a person authorized to initiate an investigation of the alleged misconduct. [There are certain specified exceptions to this one-year rule.]
- Sec. 3304(b) – If punitive action is imposed, the officer has a right to an administrative appeal and, under Sec. 3304.5, each agency must adopt administrative appeal procedures.

¹ The dates shown for the PRC Ordinance and all statutes described in this memo are the year of initial enactment; all have been amended.

Calif. Penal Code section 832.5 (1974)

Requires law enforcement agencies to establish a process for civilians to file complaints against peace officers; provides for retention of, maintenance of, and access to records.

Pertinent provisions:

- (a)(1) Every agency that employs peace officers must establish a procedure to investigate complaints by members of the public against its personnel.
- (b) Complaints and any reports or findings relating to those complaints must be retained for at least five years. The complaints may be maintained either in the officer's general personnel file or in a separate file designated by the department or agency as provided by its policy.

Calif. Penal Code section 832.7 (1978)

Makes peace officer personnel records confidential; specifies exceptions to non-disclosure.

Pertinent provisions:

- (a) "Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

Exceptions under amendments effective Jan. 1, 2019:²

The following records are subject to disclosure in response to a Public Records Act request:

- Records relating to an incident involving an officer's discharge of a firearm at a person;
- Records relating to an incident in which an officer's use of force against a person resulted in death or great bodily injury;
- Records relating to an incident in which a law enforcement agency or oversight agency made a sustained finding that an officer engaged in sexual assault involving a member of the public; and
- Records relating to an incident in which a law enforcement agency or oversight agency made a sustained finding of dishonesty by an officer relating to: 1) the reporting, investigation, or prosecution of a crime; or 2) the reporting or investigation of misconduct by another officer. This includes without limitation sustained findings of perjury, false statements, filing a false report, or destroying, falsifying, or concealing evidence.

The amended statute also describes the types of records to be disclosed, what information may be redacted, and the grounds and procedures for withholding records that are the subject of an active criminal or administrative investigation.

² The retroactivity of these amendments is being litigated. Also, "great bodily injury" is not defined in the statute.

(b) However, an agency shall release to the complainant a copy of his or her own statements.

(c) Also, "an agency may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved."

(d) And, an agency can release factual information about a disciplinary investigation of an officer if that officer or his/her representative publicly makes a knowingly false statement about the investigation or the disciplinary action.

Calif. Penal Code Section 832.8 (1978)

Defines "personnel records"; includes complaints against peace officers and related investigations.

"As used in Section 832.7, 'personnel records' means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:

(a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.

(b) Medical history.

(c) Election of employee benefits.

(d) Employee advancement, appraisal, or discipline.

(e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.

(f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy."

Calif. Evidence Code sections 1043 – 1047 (1978)

Provides a process for obtaining confidential peace officer personnel records by codifying the balancing test created in Pitchess v. Superior Court (below), weighing an officer's right to privacy in those records against a defendant's right to a fair trial.

In addition to amending the Evidence Code, the Legislature amended and enacted several Penal Code sections which, together, establish procedures for obtaining information in a peace officer's personnel file in civil or criminal proceedings, including when a criminal defendant alleges that an officer engaged in misconduct related to the defendant's case. The "Pitchess statutes" provide that peace officer "personnel records," as defined in PC section 832.8, records maintained pursuant to section PC section 832.5, and "information obtained from" either category of records, are "confidential and shall not be disclosed in any criminal or civil" case unless the special discovery procedure in Evidence Code section 1043 is followed.

Calif. Public Records Act (1968)

Government Code sections 6250 et seq.

Declares that public records of state and local agencies are open to inspection by the public, while recognizing government's occasional need for confidentiality, and individuals' right to privacy.

Exemptions are specified in **Government Code section 6254**; for PRC purposes, the significant subsections exempt:

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Government Code section 6254(k) is not an independent exemption, but incorporates exemptions from disclosure found in other laws, including Penal Code sections 832.7 and 832.8.

COURT CASES

Pitchess v. Superior Court of Los Angeles County (1974)

11 Cal.3d 531

A criminal defendant being prosecuted for battery against a peace officer may obtain that officer's personnel records to show that the officer had a history of using excessive force and that the defendant acted in self-defense.

To support his claim that he acted in self-defense to excessive use of force by four deputy sheriffs, the defendant sought evidence of the deputies' propensity for violence, which he believed was contained in internal investigations conducted by the sheriff's office in response to other citizens' complaints against the same deputies. The Court struck a balance between a criminal defendant's right to a fair trial, and the constitutional right of privacy that attaches to confidential peace officer personnel records.

Brown v. City of Berkeley (1976)

57 Cal.App.3d 223

Several sections of the PRC Ordinance conflict with the Charter of the City of Berkeley and are therefore invalid. The invalid provisions are severable from the remainder of the Ordinance, which stands.

Section 10(d) of the Ordinance, giving the Commission the power to recommend specific action or discipline against police department employees and prohibiting the police department from conducting its own internal investigations and disciplinary proceedings, conflicts with the Charter provision giving the City Manager the power to hire, fire, and discipline all City employees, without interference from the City Council or any of its committees or members. (Charter, Art. VII, sec. 28(b).)

Sections requiring the City Clerk's office to provide clerical and secretarial assistance to the Commission (Ord. sec. 6); requiring assistance from all departments and officials, requiring the police chief to attend meetings and provide documents upon request (Ord. sec. 9); and empowering the Commission to request and receive documents, materials

and assistance it deems necessary from any City official or department (Ord. sec. 10(c)) conflict with the Charter provision that the Council deals with administrative services solely through the City Manager. (Charter, Art. VII, sec. 28(b).)

Caloca v. County of San Diego (1999) (Caloca I)

78 Cal.App.4th 1209

A subject officer has a right to an administrative appeal of a citizen review board's findings; even though the review board had no disciplinary powers, its findings "may" lead to punitive action.

Background: The County of San Diego Citizen's Law Enforcement Review Board (CLERB) issued findings of serious misconduct against Deputy Sheriff Caloca and three other deputies in separate incidents, but did not make any recommendations for discipline, recommending policy changes only.

The Deputies asked the County Civil Service Commission to hold liberty interest hearings (i.e., a hearing required before being deprived of a constitutionally protected right) or, alternatively, hear an administrative appeal of CLERB's findings under POBRA, arguing that the CLERB's findings constituted punitive action. The CLERB does not have authority to impose discipline and any recommendations for discipline are advisory only, and the Civil Service Commission refused both requests. The Deputies and the County Deputy Sheriffs Association sued to compel the action. The trial court denied the petition, finding that the Deputies failed to show a deprivation of liberty interests and that they failed to show punitive action.

The Court of Appeal found that the sustained findings are a "punitive action" under POBRA (Gov. Code sec. 3304(b)) and the Deputies therefore had the right to an administrative appeal of the CLERB's findings. Whether or not the CLERB's reports are placed in the Deputies' personnel files, the evidence establishes that the reports will be considered in future personnel decisions and *may lead* to punitive action.

The Court upheld the finding of no liberty interest deprivation.

Caloca v. County of San Diego (2002) (Caloca II)

102 Cal.App.4th 433

In the administrative appeal established in Caloca I, the subject officer is entitled to a de novo review (the case is decided anew); burden of refuting the civilian board's findings cannot be placed on the officer.

Background: After Caloca I was remanded, the Civil Service Commission adopted appeal procedures, which included requiring that officers bear burden of establishing that the misconduct findings were erroneous, and permitted the Commission to close some portions of its hearings to the public, over the objections of a deputy.

Deputies challenged these procedures through a second writ. The trial court found that the burden of proof could not be placed on the Deputies and the administrative hearing could not be closed without a Deputy's consent.

The Court of Appeal affirmed the trial court. "At a minimum, an administrative appeal requires independent fact-finding in a *de novo* proceeding. In such a proceeding, the proponent of any fact bears the burden of establishing it. . . [T]he law is clear that the

administrative appeal provided by the Public Officers Bill of Rights requires 'an *independent re-examination* of an order or decision made.'

The Court also found that the Deputies had a substantial interest in receiving any vindication in a proceeding that is open to the public. [Note: sheriffs later successfully moved to have all hearings closed.]

The Copley Press v. Superior Court of San Diego County (2006)

39 Cal. 4th 1272

Penal Code section 832.7(a), making peace officer personnel records confidential, applies not only to civil and criminal proceedings, but to administrative proceedings as well. Also, peace officer personnel records maintained by any state or local agency are confidential under Penal Code sections 832.7 and 832.8.

This case stemmed from Copley Press's filing of a series of state Public Records Act requests with the San Diego County Civil Service Commission for documents related to a deputy sheriff's administrative appeal to that body of a proposed termination.

Key holdings:

- The confidentiality of peace officer personnel records in Penal Code section 832.7(a) is not limited to criminal or civil proceedings, and includes administrative proceedings.
- Although the Civil Service Commission does not employ peace officers, it functions as part of "the employing agency," so the Commission's files regarding a peace officer's disciplinary appeal are "maintained by [the officer's] employing agency" under Penal Code section 832.7(a) as "records maintained by any state or local agency pursuant to [Penal Code] Section 832.5."
- There is no common law or constitutional right of access to the records sought.

Berkeley Police Association v. City of Berkeley (2008)

167 Cal.App.4th 385

Berkeley Police Review Commission has a duty to keep its investigative records and findings confidential and close its [BOI] hearings to the public, under Penal Code sec. 832.7 (extending the reasoning of Copley Press), and subject officers must be afforded all rights and protections under POBRA.

The Berkeley Police Association (BPA) filed a writ against the City and the PRC alleging that the PRC's complaint procedures and public hearings violated the confidentiality of police officer personnel records under Penal Code section 832.7, and failed to provide officers all rights under POBRA. Trial court granted BPA's petition on both issues and the City appealed.

The Court of Appeals held:

- The confidentiality provision of Penal Code section 832.7 applies to a local government commission even though it does not have a role in imposing or hearing appeals of discipline. The *Copley Press* rationale is not limited to appeals from internal affairs investigations, but applies to "all aspects of disciplinary matters and citizen complaints," regardless of the mechanism the local agency

sets up to handle them, or whether entities independent of the agency's police department play a role in investigating or hearing such matters.

- Records and findings of the PRC are protected from disclosure under Penal Code section 832.7(a) because: 1) they are "records maintained by any state or local agency pursuant to [PC] Section 832.5" because the PRC is a governmental agency that investigates complaints by members of the public against peace officers; and 2) they are "personnel records" because they related to complaints or investigations of complaints pertaining to the manner in which BPD officers perform their duties. (See PC sec. 832.8(e).)
- BOI hearings must be closed, as open hearings violate Penal Code section 832.7(a) by disclosing information obtained from confidential records, including the identity of officers subject to complaints and the content of investigative files and memoranda compiled by PRC investigators before the hearing.
- Officers' rights under POBRA apply to PRC proceedings because BPD officers are subject to interrogation or a fact-finding hearing by order of their employer and under penalty of disciplinary sanction (it is tantamount to being subject to interrogation by officer's "commanding officer, or [another] member of the employing public safety department" (Gov. Code sec. 3303)); and because the PRC investigations "could lead to punitive action" (Gov. Code sec. 3303), since the police chief or city manager can take disciplinary action against a BPD officer based on PRC findings.

1-17-2019



SUMMARY OF SIGNIFICANT LAWS AND COURT CASES AFFECTING SCOPE AND POWERS OF THE BERKELEY POLICE REVIEW COMMISSION

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Requires law enforcement agencies to establish a process for civilians to file complaints against peace officers; provides for retention of, maintenance of, and access to records.

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Makes peace officer personnel records confidential. Significant exceptions to non-disclosure effective January 1, 2019.

Calif. Penal Code section 832.8 (1978)

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Calif. Evidence Code sections 1043 – 1047 (1978)

*Provides a process for obtaining confidential peace officer personnel records by codifying the balancing test created in *Pitchess v. Superior Court* (below), weighing an officer’s right to privacy in those records against a defendant’s right to a fair trial.*

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1-17-2019

Berkeleyside

CRIME & SAFETY

Berkeley says it has no records to share under new police transparency law

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By Emilie Raguso, Jan. 18, 2019, 4:57 p.m.



Berkeley Police station. Photo: Emilie Raguso

The city of Berkeley says it has no records of sexual assault or dishonesty-related police misconduct from the past five years and does not have to release police use-of-force records that resulted in death or great bodily injury from incidents before 2019.

Berkeleyside sought those records this month under the California Public Records Act after Sen. Nancy Skinner's new police transparency law, SB 1421, went into effect Jan. 1. The law said agencies must release records related to police use of force that resulted in death or great bodily injury, incidents involving an officer's discharge of a firearm, sustained findings about any sexual assault of the public while on duty, and sustained findings of dishonesty-related misconduct.

Skinner wrote in September that her bill "breaks open a 40-year lock on public access to police records" and "lifts the veil of secrecy that has made California the only state that denies all public access to records on law enforcement misconduct. SB 1421 opens access to records on use of deadly force and on the job sexual assault or dishonesty, such as witness interference or evidence tampering."

In a Jan. 18 letter to Berkeleyside, City Attorney Farimah Brown wrote that the city's position is that any records created before Jan. 1 are personnel records and remain confidential. A number of law enforcement agencies and police unions throughout the state have taken that position, but attorneys in Southern California have already mounted a legal challenge to that stance.

Those familiar with SB 1421 have said legislators absolutely intended the law to apply to historical records of misconduct and use of force — not just records going forward. Skinner — who was a Berkeley City Council member and represented Assembly District 15 before becoming Berkeley's senator — told the Los Angeles Times recently that "her intent was for the new law to apply to any records in a department's possession."

David Snyder, executive director of the First Amendment Coalition, said some law

enforcement agencies are “acting in good faith, taking the bill at its word and following the law.” But a “large number,” he added, are “misreading the law and forcing a delay of access.”

Snyder said the city’s interpretation of SB 1421 is wrong.

“The bill’s plain language and the legislative history of the bill make very clear that the legislature intended this law to apply to all records, not just records created this year and later,” he said Friday. “Their legal argument is just incorrect.”

In its letter to Berkeleyside, the city said it did not have to release any records created prior to Jan. 1, 2019. But the Berkeley Police Department “was able to perform a good faith and diligent search for records going back 5 years” and “determined that there are no responsive records” to the request for sexual assault and dishonesty-related misconduct during that period or this year.

“There were no sustained investigations during that time,” said city spokesman Matthai Chakko shortly after publication.

As to the use-of-force question, the city provided a slightly different response. Again, the city said, the new law does not “apply retroactively, and therefore records predating January 1, 2019, are confidential personnel records and exempt from disclosure.” For the use-of-force records, the city made no mention of records from the past five years. It said only that there are no releasable use-of-force records from 2019.

Even if the law is deemed by the courts one day to apply to historical records, Berkeley may not have extensive documents to share. But there certainly would be some applicable cases. There has been one known in-custody

death in recent years — that of Kayla Moore in 2013 — as well as the police use of force that took place during the December 2014 Black Lives Matter demonstrations, among other incidents that could be considered. BPD has not had an officer-involved shooting since 2012.

“It’s really disappointing for the city of Berkeley not to side with transparency”

Berkeley Police Review Commission (PRC) member Ari Yampolsky, a whistleblower attorney, said he was surprised at the city’s position.

“The author of the legislation, who is from Berkeley, has made clear — in no uncertain terms — that the legislature intended for the law to apply retroactively,” Yampolsky said, speaking for himself, not the PRC.

He described a recent court hearing in Orange County where the sheriff’s union fought to keep county staff from releasing misconduct records. In Berkeley, the city attorney’s office seemed to be siding instead with the position of many police unions in the state: that pre-2019 records cannot be released. That’s disappointing, Yampolsky said.

“As a kind of basic accountability measure, it’s very surprising that Berkeley would try to kind of wipe the slate clean or to suggest that’s what the legislature wanted the city to do in providing this information to the public,” he said. “I don’t think there’s really any evidence of that. And it’s certainly not responsive to the larger social and political context of increased demands for police transparency. In fact, it pushes in the opposition direction.”

George Perezvelez, PRC vice chair, had a similar take.

“It’s always disappointing when the city evaluates a transparency law — that was made by a former City Council member, AD 15 representative and now our senator — at a baseline level,” he said, also speaking for himself rather than the PRC. “If the city of Berkeley wants to continue to look at transparency as something that’s a hindrance to its operations then it will continue to do a disservice to the community.”

Perezvelez, who also chairs the police oversight board of BART, said the city’s letter was particularly concerning coming from a community that prides itself on its progressive and forward-thinking values. He said the City Council might need to get involved and have discussions with the city manager and city attorney.

“It’s something I would expect in a place like Texas or Florida, not Berkeley,” he said. “It’s really disappointing for the city of Berkeley not to side with transparency but to wait until someone tells them, ‘No, you’re wrong, your interpretation is incorrect and you have to comply.’”

Attorney Snyder, who is part of a lawsuit in Los Angeles County where the police union has argued against the release of pre-2019 misconduct records, noted that SB 1421 clearly references “any” and “all” records. It does not include a time limitation. Attorneys in the suit have argued that the legislature intended to

pass a law that applied to all records, and that’s what it did. Further, calling the law “retroactive” is a red herring because the new legislation regulates the release of records, not the records themselves.

The next hearing for that case comes in early February, and there will likely be other legal challenges as municipalities around the state grapple with how to handle the new law.

Snyder said he believes the California Supreme Court will ultimately rule in favor of the release of pre-2019 misconduct records. But that process will take time.

“This is really, unfortunately, a game of delay,” he said. “It’s really too bad because I think the bill is very clear about how it’s supposed to apply.”

Note: This story was updated shortly after publication with a statement from the city.

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Berkeleyside

OPINION

Opinion: Racial disparities in policing must not be brushed aside

Racial disparities in policing in Berkeley are well documented, and in fact, are worsening. City management must act soon to address these and other concerns.

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By Mansour Id-Deen, Winston Burton, Elliot Halpern, George Lippman, Willie Phillips, Laura Babbitt, Moni Law, Jan. 18, 2019, 9:50 a.m.

The recent Berkeleyside article “As staffing crisis continues for Berkeley police, officers who left reveal why” raises serious concerns about officer morale, but brushes off community concerns about racial disparities in policing that are well documented, and in fact are worsening, along with other concerns.

We believe that the people of Berkeley have spoken clearly through their council representatives that they support updating the Berkeley police department (BPD) policies, addressing racial disparities in police interactions, and establishing truly independent oversight. We will work together with the mayor, council and city manager to achieve the goals stated above and to enact reforms passed by council. As we begin a new year, we will strive to attain higher democratic principles for the good of the community and the department.

At the height of the Black Lives Matter movement in 2015, protesters successfully sued the department to overhaul its use of force policy. That same year, a coalition including the local National Lawyers Guild,

NAACP, and ACLU uncovered significant evidence of racial disparities in BPD stop data.

In 2015, then-BPD Chief Michael Meehan acknowledged the pervasiveness of bias in every institution of society, including policing, and committed to working with the NAACP, ACLU and police review commission (PRC) to implement a fair and impartial policing program. He published police stop data online and engaged expert data analysis with the Center for Policing Equity (CPE) in order to understand the causes of the disparities. The CPE report found:

“[c]ompared to White individuals in Berkeley, Black individuals were nine times more likely per capita to have force used upon them ... these disparities are not explained by poverty, neighborhood crime rates, or neighborhood demographics, and are not attributable to chance. These disparities, like the disparities in BPD pedestrian and vehicle stops, are unexplained, and warrant further investigation.”

The council, responsible for police policy under the city charter, forged a thoughtful

path: it sought to revive reform efforts while simultaneously addressing the officer shortage. Council recognized that responsibility for disparities does not fall solely upon the police and that policing outcomes in Berkeley are better than in many other cities.

We will continue to fight for the full participation of the entire city of Berkeley government in the effort to engage fair and impartial policing. Issue areas where we need to see improvements are:

- Chief Greenwood's June 2017 effort to delay the release of the CPE policing data analysis report.
- The year-long (and continuing) delay in fulfilling the 2017 council mandate to report all uses of force.
- In October 2018, the city manager disregarded council's deadline to report on efforts to address racial disparities.
- There has been no effort to date to convene the broad task force mandated by council to develop an action plan for fair and impartial policing by spring 2019.
- Berkeley's 2018-2019 strategic plan doesn't provide performance metrics for racial equity in policing.
- BPD has not prioritized hiring a data analyst to ensure full implementation of the city's fair and impartial policing policy.
- Council's proposed charter amendment for an independent police commission has not materialized, due to the delay in the city manager's meet and confer process with BPD officers' union. This action prevented the charter amendment from being placed on the 2016 ballot on a timely basis. Meet and confer must be completed in the very near future.

We believe that it is a necessity for the City Council and city manager to close ranks to ensure that our elected officials exercise full

authority to oversee the Urban Shield debate and the BPD training and their broader police-related policy purview. [1]

Regardless of the bureaucratic headwinds, we cannot afford to brush aside the continuing impact of racially disparate policing on African Americans and Latinos. The BPD's 2018 statistics still show that African Americans were two and a half times more likely to suffer police stops that did not justify even a citation, compared to white civilians. This data corroborates accounts of multiple Black and Latino Berkeleyans. Unwarranted stops are not simply an inconvenience; they bring a cascading series of negative effects on people's lives, legally, financially, and psychologically.

We can see from the CPE analysis and anecdotes from our fellow citizens suggesting that white civilians have a generally positive experience with police, while civilians of color tend to have a more negative experience.

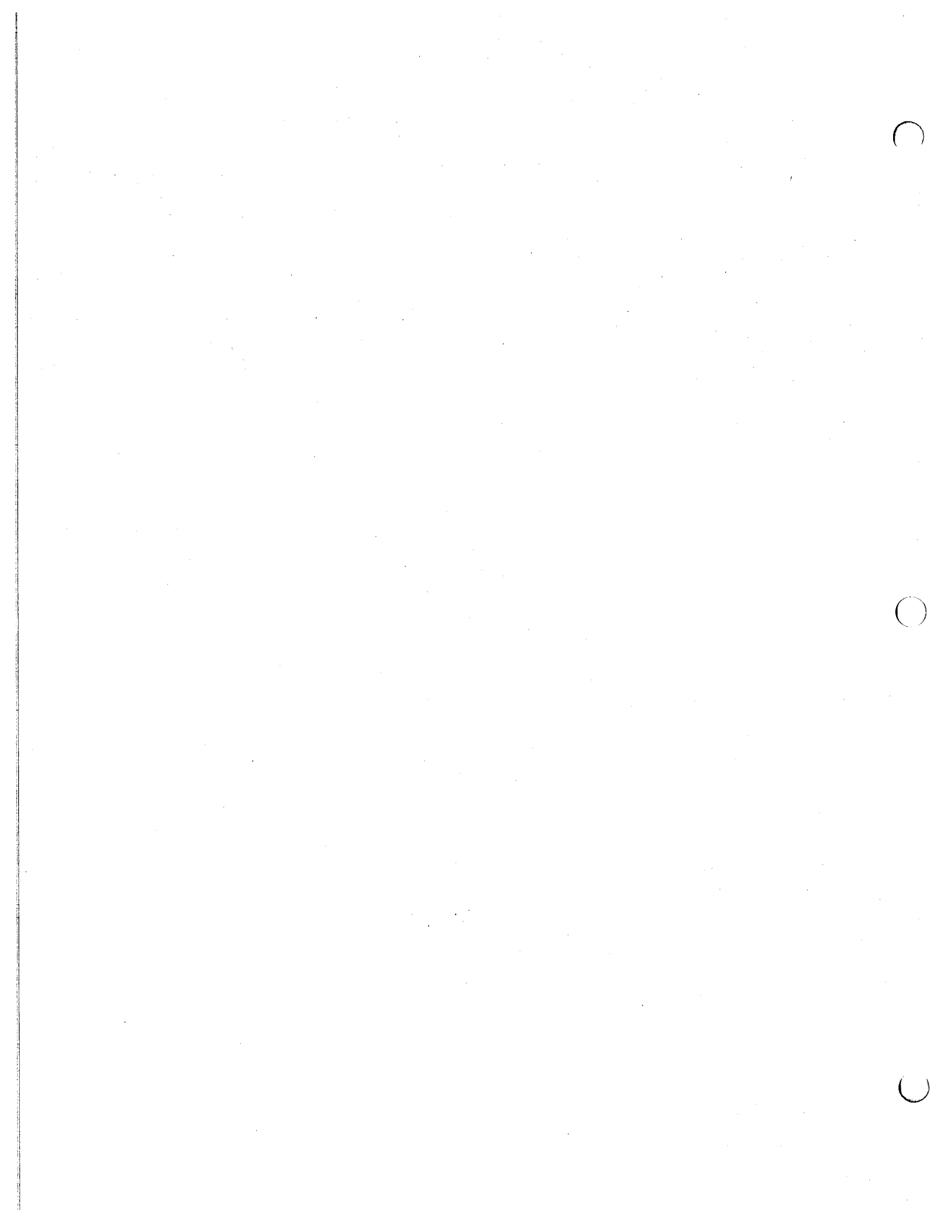
Since we do not yet know if the root cause of disparate treatment lies with the behavior of a subset of the officers, or an overall problem of BPD policy or training, the next step in addressing disparate treatment has to be a serious investigation of its causes, as recommended in the CPE, PRC and Council reports.

The roll-out of body cameras, community meetings, and updated training are welcome developments, but cannot substitute for institutional reform. Neighboring jurisdictions including the city of Oakland, city of San Francisco and BART have begun implementing new policies for a 21st century era of policing; most require internal reporting of substantially all uses of force; Oakland and San Francisco have a civilian review process that does not report to the city manager/administrator and have

substantial access to internal information from, and influence over the police department. The city has the resources to enact the recommendations for fair and impartial policing proffered by the CPE and the PRC. The Constitution requires that communities of color receive equal treatment before the law. In the coming year, the ACLU, NAACP, and many other organizations will be watching closely to see that the mayor and the City Council hold city management accountable for implementing constitutional requirements and the City Council's directions.

Mansour Id-Deen is the president of the Berkeley branch of the NAACP, Winston Burton is the vice-president, Elliot Halpern is a board member of the ACLU Berkeley/Northeast Bay (for identification purposes only), George Lippman is the chair of the Peace and Justice Commission (for identification only), Willie Phillips is a member of the Friends of Adeline; Laura Babbitt is a community activist, Moni Law is a Berkeley resident.

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DRAFT 1/22/19

REGARDING PRC AND PUBLIC ACCESS TO POLICE INFORMATION

Whereas some members of the public and media have complained that BPD has been slow to respond to requests for information including a standard claim of exemption from the 10 day requirement to respond to CPRAs, sometimes without justification.

Whereas the PRC does not have access to even redacted Use of Force reports or even information about BPD uses of force and so cannot monitor whether or to what degree BPD use of force is reasonable.

Whereas the PRC has recently disbanded the Homeless Encampment Subcommittee due to a lack of access to information about the many agencies that are part of encampment dissolution. After Action Reports are not released, despite G.O. U-4 and rec. S from "BPD Response to Civil Unrest" (pg. 60) that calls for After Action reports to be written. The question of whether the PRC has access to After Action Reports is still in dispute.

Whereas the PRC has been unable to acquire copies of source documents related to the August 5th, 2018 inventory of munitions and an individual's CPRA to BPD requesting source documents was denied on 12/14/18 on the basis that: "*...our source documents are protected from release pursuant to GC 6254(f) as they are considered "records of intelligence information or security procedures"*."

Whereas the PRC operates on the basis of almost no statistical data or information by BPD about arrest rates, number of convictions, number of investigations, closure rates for cases, types of cases addressed, or even information about police budget expenditures/preparations/recommendations/analysis.

Whereas, on the advice of the City Attorney, BPD has refused to make available information about serious uses of force prior to 2019 pursuant to new legislation 1421 (<https://www.berkeleyside.com/2019/01/18/berkeley-says-it-has-no-records-to-share-under-new-police-transparency-law-sb-1421>)

Whereas meaningful civilian oversight and all related inquiries depend on the ability of the agency to access reliable information about police functioning.

Whereas the PRC is dependent upon the BPD and the City to provide data and information for examination and consideration in the formulation of policy.

Therefore be it resolved that:

1. The PRC will initiate a policy investigation into BPD compliance with the CPRA as it relates to requests by members of the public and city commissions.

2. The PRC will contact the Open Government Commission in order to learn more about what information is available to the Commission and how we can access it.
3. PRC will also seek opinions of private attorneys not employed by the city about how to facilitate the flow of information between the BPD and the public and BPD and the PRC.
4. We will write a letter to the City Manager and City Council reminding them of this situation and requesting that they create a list of which police documents we **will** have access to so that we can perform the oversight function that was envisioned for the PRC by public votes in 1973.
5. We affirm that the PRC must have access to information in order to evaluate BPD compliance with policies and the effectiveness of the policies, especially of the ones we have affirmed with an actual resolution and vote.