



Police Review Commission (PRC)

LEXIPOL POLICIES SUBCOMMITTEE
Commissioners Perezvelez (Chair), Ramsey, Roberts

AGENDA

Wednesday, May 8, 2019
5:30 p.m.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER

2. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

3. APPROVAL OF AGENDA

4. OLD BUSINESS (discussion and action)

a. Complete review of the following Lexipol policies:

Lexipol #	G.O.	Title
316	M-01	Missing Persons
321	P-26	Standards of Conduct
324	P-29	Media Relations
325	C-62	Subpoenas and Court Appearances
327	M-02	Mutual Aid and Outside Agency Assist

(See March 27, 2018 packet, except for revised Policy 324, attached.)

b. Reconsider the following Lexipol policies:

Lexipol #	G.O.	Title (Notes)
303	F-02	Control Devices and Techniques (PRC Feb. 27 asked for further review)
307	V-06	Vehicle Pursuits (Subcomm. Sept. 17 wanted to discuss further)
319	H-04	Hate Crimes (PRC Feb. 27 asked for further review)

418	Council Res. 51.408-N.S.	Obtaining Air Support (Subcomm. & PRC approved but conflict with Council policy discovered)
429	C-64	First Amendment Assemblies (Feb. 27 PRC asked for further review)
506	T-18	Disabled Vehicles (PRC Mar. 13 asked for further review)

(See April 10 packet, except for 418, in May 1 packet.)

5. NEW BUSINESS (discussion and action)

a. Review the following Lexipol policies:

Lexipol #	G.O. (if any)	Title
304		Conducted Energy Device
322	E-12	Information Technology Use
329	A-49	Major Incident Notification
333	A-50	Private Persons Arrest
337	D-21	Biological Samples
341	V-08	Volunteer Program
342		Service Animals
343		Gun Violence Restraining Orders
344		Off Duty Law Enforcement Action

(See April 10 packet.)

b. Decide which policies to review next.

6. SCHEDULE NEXT MEETING DATE

7. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.

**Communication Access Information (A.R.1.12)**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

Media Relations

324.1 PURPOSE AND SCOPE

This policy provides guidelines for media releases and media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

As used in this policy, "Media" shall mean entities, their employees and official agents, whose primary service and professional purpose is the communication of news and information to the general public via print, radio, television or digital/electronic means.

324.2 POLICY

It is the policy of this department to provide accurate and timely information about crime, public safety and departmental activities to the news media and public.

324.3 CATEGORIES

Categories of information that may be released to the media are:

- (a) Routine: These are reports of incidents of human interest which would not affect normal police operations, and information about available police services.
- (b) Major: These are reports of incidents that impact normal police operations and create a large volume of media interest, information about which is disseminated via the department's PIO, in conjunction with involved investigators.
- (c) Policy News Release: These are reports about the internal operations of the Police Department, which originate from the Office of the Chief.
- (d) Publicity Releases: These are reports about incidents and programs designed to arouse public interest, understanding, or involvement, dissemination of which are coordinated by the PIO upon the approval of the Chief of Police.
- (e) Newsworthy Events: These are reports of major crimes, arrests, disasters, unusual occurrences, or traffic accidents which would be of interest to the media, including, but not limited to:
 - 1. Any information necessary to obtain public assistance in the investigation of a crime or apprehension of a criminal suspect.
 - 2. Any information warning the public of danger, or of the nature and frequency of crime in the community.

324.2324.4 RESPONSIBILITIES

The ultimate authority and responsibility for the release of information to the media shall remain with the Chief of Police, however, in situations not warranting immediate notice to the Chief of Police and in situations where the Chief of Police has given prior approval, Division Captains~~commanders~~, Watch Commanders and designated Public Information Officer(s) may

prepare and release information to the media in accordance with this policy and the applicable law.

- (a) The release of police reports, official department documents, and information contained therein shall comply with the Records Maintenance and Release Policy.
- (b) During non-business hours, the on-duty Watch Commander, or in his/her absence the senior on-duty Patrol Sergeant, shall be responsible for media relations and related notifications.
- (c) Unless dissemination is authorized by policy and appropriate given the circumstances of the inquiry, media requests for information concerning any incident under investigation shall be referred to the PIO.
- (d) When an employee of this Department provides information to the media, that employee shall, as soon as practical, inform the PIO of the scope of media's inquiry and of the information provided.

324.5 PUBLIC INFORMATION OFFICER

The PIO shall be a department employee appointed by the Chief of Police to serve as the primary liaison with representatives of the media.

324.5.1 PIO NOTIFICATIONS

The PIO shall be notified as soon as practical of the following offenses/situations.

- (a) Arson (e.g., major events, series, offense with injuries).
- (b) Bombing and explosions.
- (c) Escapes.
- (d) Kidnapping.
- (e) Homicide.
- (f) Deployment of the Special Response Team (SRT).
- (g) In all other offenses/situations, when the Watch Commander determines circumstances warrant PIO notification.

Upon notification, the PIO shall determine the proper actions to be taken in accordance with department policy to ensure that good media relationships are maintained.

324.5.2 PIO RESPONSIBILITIES

The PIO is responsible for providing relevant, timely, and accurate information to the media at disasters, major crime scenes, catastrophes, special events, and unusual occurrences.

During normal business hours when the PIO is absent, or on-duty but unavailable, the PIO's supervisor shall either serve as Acting PIO or designate a trained subordinate to temporarily serve in that capacity.

The PIO shall coordinate the preparation and release of factual information regarding all major Departmental incidents, major crimes, or other newsworthy events.

Whenever necessary or appropriate, the PIO may be called to an incident scene by the Watch Commander to perform in-field media liaison duties.

In the event of a major disturbance, disaster, or state of emergency, a second PIO may be designated to assist the primary PIO with media relations and public dissemination of information.

In the event the National Incident Management System (NIMS) is employed, the PIO will report to the Incident Commander (Command Section) and perform media liaison activities in support of the PIO Branch.

If a Joint Information Center (JIC) is activated, the department PIO, or his/her designee, will report to that location to coordinate information management with other involved agency PIOs.

324.5.3 MEDIA REQUESTS

Any media request for information or access to a law enforcement situation shall be referred to the designated department media representative, or if unavailable, to the first available Watch Commandersupervisor. Prior to releasing any information to the media, employees shall consider the following:

- (a) At no time shall any employee of this department make any comment or release any official information to the media without prior approval from a supervisor or the designated department media representative.
- (b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.
- (c) Under no circumstance should any member of this department make any comments to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.
- (d) When the PIO receives a media request for information, he/she shall.
 - Obtain and review a copy of the police report(s).
 - Review the facts of the case with the investigating officer or Detail prior to release of information concerning an ongoing criminal investigation.
 - Unless precluded by law, policy or direction of a command rank officer, employees shall provide information requested by the PIO without delay.
 - Provide the requesting media representative relevant information permitted by law and department policy.
 - When known or advised, the PIO should regularly report contacts with representatives of the media to his/her chain of command.
 - The PIO will be responsible for notification of the City Manager's Office regarding non-routine contacts with media representatives as required by COB AR 1.14.

324.5.4 MEDIA CONFERENCES

Media conferences shall only be called by the City Manager, Assistant City Manager, Chief of Police or individuals serving in those capacities, see COB AR 1.14.

- (a) The department's PIO will act as a liaison between the media and the department in arranging for, or coordinating media conferences.

324.3324.6 MEDIA ACCESS

~~Authorized-M~~Members of the media shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities subject to the following conditions (Penal Code § 409.5(d)):

- (a) The media representative shall ~~produce~~ provide a press pass or identification and evidence.

1. Press pass: While the Berkeley Police Department does not issue press passes/credentials, we will honor those issued by outside agencies.
2. Identification AND evidence: Identification in the form of a state ID, passport or school ID, AND evidence which shows they are active media. "Evidence" may include recently published articles or photographs bearing their name and the name of the news media outlet.

- (a)(b) Either the press pass or identification that they are active media or valid government issued ~~press credentials passes that~~ shall be prominently displayed at all times while in areas otherwise closed to the public.

- (b)(c) In the event of a planned/pre-publicized event or demonstration they wish to cover, media are encouraged to contact the Department's Public Information Office in advance for media specific information or details.

- (c)(d) Media representatives may be prevented from interfering with emergency operations and criminal investigations.

1. Reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations.
 - Employees allowing the entry of an authorized media representative shall advise that person of any known danger existing within the restricted area.
 - Employees should not provide general escort services to media representatives into, through or out of dangerous areas.
 - Employees shall not refuse to rescue media personnel who are in danger, providing such assistance can be provided with reasonable effort and without unnecessary hazard to rescuers.

All information released to the media should be coordinated through the department Public Information Officer or other designated spokesperson.

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- 4.2. Employees shall not take action which would prohibit media aircraft from flying over disaster scenes. Whenever the presence of media or other aircraft pose a threat to public or officer safety or significantly hampers incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Watch Commander. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration should be contacted (14 CFR 91.137).
- (e) Employees shall, upon request of a private property owner or agent thereof, prohibit media access to private property wherein a crime scene is located.
1. Regarding access to crime scenes located on private property, media representatives have no right of access greater than the general public and, therefore, are subject to any access restrictions established by the owner or person in charge of the property
- (d)(f) No member of this department who is under investigation shall be subjected to media visits or interviews without the consent of the involved employee (Government Code § 3303(e)).
- (g) Media interviews with individuals who are in custody should not be permitted without the approval of the Chief of Police and the express consent of the person in custody. Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being photographed or televised.
- (h) Persons in-custody shall not be interviewed by the media unless the following conditions exist:
1. The prisoner requests or consents to an interview (in writing) after being informed of the right to refuse to grant an interview.
 2. If the prisoner has legal counsel, the attorney affirms his/her their client's request or consent to a media interview, and authorizes said activity.
 - Whenever practical, the attorney's affirmation and authorization should be obtained in writing.
 - When represented by legal counsel, any request by the media to interview or photograph a person in-custody shall be referred to the prisoner's attorney.
- (e)(i) Unless unavoidable, department employees shall not appear in authorized and facilitated photographs or filming of prisoners.

A tactical operation should be handled in the same manner as a crime scene, except the news media shall be permitted within the outer perimeter of the scene, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a tactical operation in order to accommodate the news media. All comments to the media shall be

coordinated through [the Watch Commander supervisor](#) or the Public Information Officer.

324.3.1 PROVIDING ADVANCE INFORMATION

To protect the safety and rights of officers and other persons, advance information about planned actions by law enforcement personnel, such as movement of persons in custody or the execution of an arrest or search warrant, should not be disclosed to the news media, nor should media representatives be invited to be present at such actions except with the prior approval of the Chief of Police.

Any exceptions to the above should only be considered for the furtherance of legitimate law enforcement purposes. Prior to approving any exception the Chief of Police will consider, at minimum, whether the release of information or presence of the media would unreasonably endanger any individual, prejudice the rights of any person or is otherwise prohibited by law.

324.4324.7 SCOPE OF INFORMATION SUBJECT TO RELEASE

The Department ~~will~~ maintain a daily information log ([available through the City of Berkeley's Open Data Portal](#)) of significant law enforcement activities that shall be made available, upon request, to media representatives through the Watch Commander. This log will generally contain the following information:

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals (except confidential informants) involved in crimes occurring within this jurisdiction unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
- (b) The date, time, location, case number, name, birth date and charges for each person arrested by this department unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
- (c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident subject to the restrictions of this policy and applicable law
- ~~(e)~~(d) [Employees representing this department shall refrain from offering any opinion as to an arrestee's guilt or innocence, the merits of a particular case, or the existence, nature or value of evidence unless expressly authorized by the Chief of Police to issue such official comment.](#)

At no time shall identifying information pertaining to a juvenile arrestee (13 years of age and under), victim or witness be publicly released without prior approval of a competent court. The identity of a minor 14 years of age or older shall not be publicly disclosed unless the minor has been arrested for a serious felony and the release of such information has been approved by the Watch Commander (Welfare and Institutions Code § 827.5).

Identifying information concerning deceased individuals shall not be released to the media until notification of next of kin or otherwise cleared through the Coroner's Office.

Any requests for copies of related reports or additional information not contained in this log shall

be referred to the designated department media representative, the custodian of records, or if unavailable, to the Watch Commander. Such requests will generally be processed in accordance with the provisions of the Public Records Act (Government Code § 6250, et seq.).

324.8 MEDIA RELEASES

"Media Releases" or other official media-directed documents shall be disseminated by the PIO, Patrol Division Watch Commander, or the Office of the Chief of Police in accordance with department information release policy.

- (a) A press release of high media and public interest should be forwarded by the PIO to the City Manager's Office, when feasible, for review prior to public dissemination.
- (b) Publications intended for the media which require significant Department time and effort (e.g., in-depth articles, feature stories, etc.) should be prepared by the PIO.

Documents intended for distribution to media representatives may be left at the Front Counter of the Public Safety Building.

Employees are encouraged to collaborate with the PIO to develop media releases regarding outstanding service performed by members of this department, significant events, community participation, and proactive projects that enhance the quality of life in Berkeley.

324.9 COMMUNICATIONS CENTER RESPONSIBILITIES

When the Communications Center receives a media inquiry for routine matters including, but not limited to, traffic conditions in Berkeley, Communications Center personnel shall furnish the information requested.

Specific or general media requests for information on newsworthy cases, (e.g., rape, major burglaries or robberies, felony assaults/batteries, cases involving death, etc.) received by the Communication Center shall be referred to the PIO (normal business hours) or Watch Commander (non-business hours.)

324.6324.10 RESTRICTED INFORMATION

It shall be the responsibility of the authorized employee dealing with media requests to ensure that restricted information is not inappropriately released to the media by this department. When in doubt, authorized and available legal counsel should be obtained.

324.11 INVOLVED PARTY'S REQUEST FOR "NO RELEASE"

"No Release" shall be requested sparingly, and only when it is necessary for the successful investigation or prosecution of a case or the security of principals, witnesses, or the premises involved, when disclosure of event information would subject the victim to serious embarrassment of mental distress, or when required by law (e.g., PC §293).

- (a) Any officer requesting "No Release" shall include at the end of his/her report full justification for the request.
- (b) In the event a request for "No Release" is, or appears to be, for purely personal reasons,

the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.

(1) In certain situations, the officer may include at the top of his/her report, "Request No Release."

324.12 CONDUCT OF MEDIA REPRESENTATIVES

An employee having a complaint regarding the conduct of any media representative should submit the complaint in writing to the Community Service Bureau Lieutenant.

(a) The CSB Lieutenant shall investigate the allegation and, if appropriate, forward the results and action recommendation to the Chief of Police via the chain of command.

(b) Any official action that may affect the involved media representative, including, but not limited to, communication of the complaint to the person's media organization, shall be taken only at the direction of the Chief of Police.

324.13 SUGGESTED CHANGES TO MEDIA RELATIONS POLICY

Any suggestion for significant change in department policy and/or procedure concerning media relations received from a media representative shall be forwarded in writing to the Chief of Police via the recipient employee's chain of command.

(a) The Chief of Police shall be responsible for evaluating the suggested change and, if appropriate, directing its implementation.

(a)(b) The PIO shall be responsible for advising the involved media representative of any changes and/or actions taken by the Department in response to their suggestion.

Conducted Energy Device

304.1 PURPOSE AND SCOPE

This policy provides guidelines for requesting a Conducted Energy Device (CED) from an outside agency and assisting the outside agency if the CED is deployed or discharged, the use of Tasers.

304.2 POLICY

The Conducted Energy Device (CED) is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to officers and suspects.

The use of police CEDs at the request of the Berkeley Police Department may be permitted with the approval of the Chief of Police or City Manager. Once approved, a CED will only be deployed by outside agency personnel responding to a request for assistance.

304.3 ISSUANCE AND CARRYING CEDS

Members of the Berkeley Police Department are not issued CEDs and shall not carry a CED while on duty.

304.4 VERBAL AND VISUAL WARNINGS

When an outside agency has been called in to assist, a A verbal warning of the intended use of the CED should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that a CED may be deployed.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the case officer in the related report.

304.5 USE OF THE CED

The CED has limitations and restrictions requiring consideration before its use. The CED should only be used when its operator can safely approach the subject within the operational range of the device. Although the CED is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

304.5.1 APPLICATION OF A CED

A CED may be requested (with the approval from the Chief of Police or City manager) used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person. Examples include circumstances wherein: :

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- (a) The subject is violent or is physically resisting.
 - (b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

~~Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the CED to apprehend an individual.~~

304.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS

The use of a CED on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

- (a) Individuals who are known to be pregnant.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals with obviously low body mass.
- (d) Individuals who are handcuffed or otherwise restrained.
- (e) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray.
- (f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

304.5.3 ACTIONS FOLLOWING DEPLOYMENTS

Officers shall notify a supervisor of all CED discharges. Confetti tags, ~~should be collected and~~ the expended cartridge, along with both probes and wire, should be collected by the outside agency and handled according to their procedures. submitted into evidence. ~~The cartridge serial number should be noted and documented in the police report.~~

304.5.4 DANGEROUS ANIMALS

A CED may be requested in order to be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

304.6 DOCUMENTATION

Officers shall document the request for, deployment and/or discharge of a CED in a related police report.

304.6.1 REPORTS

The officer should include the following, if applicable, in the arrest/crime report:

- (a) Identification of all personnel firing CEDs

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- (b) Identification of all witnesses
 - (c) Medical care provided to the subject
 - (d) Observations of the subject's physical and physiological actions
 - (e) Any known or suspected drug use, intoxication or other medical problems

(e)(f) A "Use of Force" Report is not necessary when an outside agency deploys or discharges a CED. However, the outside agency may be required to document its use according to their own policy or procedure.

304.7 MEDICAL TREATMENT

Consistent with local medical personnel protocols and absent extenuating circumstances, only appropriate medical personnel should remove CED probes from a person's body. Used CED probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken.

All persons who have been struck by CED probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol.
- (b) The person may be pregnant.
- (c) The person reasonably appears to be in need of medical attention.
- (d) The CED probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- (e) The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of a CED.

304.8 SUPERVISOR RESPONSIBILITIES

Supervisors shall respond to any call wherein a CED was requested. A supervisor should review each incident where a person has been exposed to an activation of the CED. Photographs of probe sites should be taken and witnesses interviewed.

