# CITY OF BERKELEY

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# POLICE REVIEW COMMISSION

## 2017 ANNUAL REPORT

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# CITY OF BERKELEY
# POLICE REVIEW COMMISSION

## Commissioners - 2017

George Lippman, **Chair**
Gwen Allamby, **Vice-Chair**
Clarence Ford
Sahana Matthews
George Perezvelez
Andrea Prichett
Terry Roberts
Michael Sherman
Ari Yampolsky

Alison Bernstein (through 6-2-17)
Bulmaro Vicente (through 6-27-17)
Kimberly DaSilva (through 8-7-17)
Cooper Price (6-27-17 through 8-17-17)

## Mayor

Jesse Arreguin

## Councilmembers

| | |
|---|---|
| Linda Maio | (District 1) |
| Cheryl Davila | (District 2) |
| Benjamen Bartlett | (District 3) |
| Kate Harrison | (District 4) |
| Sophie Hahn | (District 5) |
| Susan Wengraf | (District 6) |
| Kriss Worthington | (District 7) |
| Lori Droste | (District 8) |

## City Manager

Dee Williams-Ridley

## Deputy City Manager

Jovan Grogan

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To the City and Community of Berkeley:

The Berkeley Police Review Commission presents the Commission's 2017 Annual Report. This report includes statistical date concerning misconduct complaints filed during the year, an outline of the complaint process, as well as Commission work and achievements.

The City of Berkeley began the year as the shadow of the Trump Administration fell across our country. The challenge of coping with, and resisting, this polarizing political shift colored much of the work of the Commission in 2017.

The solidarity of community members and city leaders to the right-wing attacks on immigrants, Muslims, and members of other marginalized social groups was gratifying to Commissioners. Unfortunately, Berkeley became a national symbol and magnet for the far right to use as a battleground. On several occasions in 2017, hateful groups traveled to our city to incite conflict, which was particularly disturbing in the wake of the tragic killing at an anti-racist rally in Charlottesville, in August.

PRC members expressed gratitude to BPD Chief Andrew Greenwood for the department's nimble de-escalation during a confrontation in Martin Luther King Jr. Civic Center Park. Regarding this same episode, however, the Commission expressed its concerns about the passage by the City Council of an "Urgency Ordinance" giving the City Manager extraordinary powers to ban certain conduct in specified areas of town for a range of dates, carrying misdemeanor penalties. The Commission was also concerned about a Council action extending police power to use Oleoresin Capsicum (pepper spray) in crowd situations, and a new BPD rule against facial coverings, similar to a law previously declared unconstitutional by a state appeals court. A Commission letter to Council listed these concerns: "The Ordinance makes no provision for Council review. This is an abdication of elected legislative responsibility....These measures were presented to Council with only a few business days' notice....No consultation was undertaken with the Police Review Commission."

In other developments related to the national scene, PRC began its annual review of BPD's external relationships by recommending the City terminate participation in the Urban Shield exercise and further limit support for ICE enforcement activities in the City. As part of this process, several Commissioners attended the Urban Shield activity as observers, and the Commission held open subcommittee and Commission hearings to listen to many community and staff members.

PRC worked through the year to heal divisions and bring various parts of the community together. The Commission includes BPD and Berkeley Police Association representatives in its meetings, and we appreciate the opportunity to call out officers worthy of special recognition.

In a similar vein, PRC escalated its work to overcome racially disparate policing of diverse populations in Berkeley. In November, the Commission responded to a City Council referral with a 33-page report titled "Towards Fairness and Impartiality," proposing a specific action plan to understand and address such disparities. The Commission, after extensive consultation with the BPD, also proposed language for a BPD body-worn camera policy. Unfortunately, the year 2017 concluded without a deployment of cameras to field officers.

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PRC recommended changes in the Right to Watch General Order, approved a Surveillance Technology & Community Safety Ordinance for City Council consideration, and created subcommittees to investigate treatment of homeless encampments and of the police action after the June 20, 2017 Council meeting.

PRC extends its thanks to the PRC staff, Katherine Lee, Byron Norris, and Maritza Martinez; former Chair Alison Bernstein and other former Commissioners; Chief Greenwood and all other BPD staff who have supported us over the past year; and the public, Council, and other staff, all of whom are essential to the maintenance and improvement of public safety in Berkeley.

Respectfully,

George Lippman
Police Review Commission
Chair 2017

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Police Review Commission (PRC)

_____, 2018

Dee Williams-Ridley
City Manager
2180 Milvia Street
Berkeley, CA 94704

Dear Ms. Williams-Ridley,

I am pleased to present to you the 2017 Annual Report for the Police Review Commission. The purpose of this report, provided in accordance with the PRC's enabling ordinance (Ord. No. 4644-N.S.), is to furnish statistical data regarding the number of complaints received, their general characteristics, and manner of conclusion.

For cases that have proceeded to Board of Inquiry Hearings, the data also includes the number of hearings, the various categories of allegations heard, and whether the allegations against an officer were sustained, not sustained, unfounded, or exonerated. This report also contains data on the ethnicity, gender and ages of complainants, as well as comparisons to statistics from the previous four years.

Finally, this report describes the other work undertaken by the Police Review Commission in 2017 – reviewing Berkeley Police Department policies and making recommendations, and engaging in outreach activities. The policy issues examined include ongoing study of pedestrian and traffic stop data for evidence of disparate race-based treatment of civilians; a proposed ordinance for the City's use and acquisition of surveillance technology; and the BPD's handling of the numerous protests and counter-demonstrations that occurred in Berkeley in last year.

Respectfully submitted,

Katherine J. Lee
Police Review Commission Officer

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# I. EXECUTIVE SUMMARY 2017

### Meetings

In 2017, the Commission held 65 regular, special, and subcommittee meetings, and Board of Inquiry hearings. This compares to the 82 such proceedings held in 2016.

### Complaints

The Commission received 22 individual complaints and 3 policy complaints in 2017. In 2016, the Commission received 20 individual complaints and 1 policy complaint.

### Complainants

The demographic distribution of individual complainants in 2016 was 11 males and 9 females; 10 Caucasians, 8 Blacks, 2 Hispanic, and 2 multi-ethnic persons. Complainants ranged from 28 to 73 years of age; with the largest group, about a third, in their thirties.

### Board of Inquiry (BOI) Hearings

The Commission completed 7 BOI hearings – proceedings in which a panel of commissioners considers allegations against police officers – in 8 cases. Allegations of excessive force and discrimination were the most common of the 31 allegations considered. No findings of police misconduct were sustained.

### Caloca Appeals

Subject officers may seek review of a BOI "sustained" finding through a *Caloca* appeal. One sustained finding in 2016 was appealed, and was upheld following a hearing in 2017. No *Caloca* appeals were filed in 2017.

### Policy Review Highlights

Our police force was tested by a series of provocative speakers and rally organizers, and the resulting confrontations with counter-protesters. Several times the Berkeley Police Department had to call for mutual aid from other law enforcement agencies and in turn assisted the U.C. Berkeley police in campus incidents.

Fair and unbiased policing was another focus of the PRC in 2017. The PRC pushed for publication of the Center for Policing Equity's draft report analyzing BPD pedestrian and traffic stop data. A PRC subcommittee produced an extensive report, "Toward Fairness and Impartiality," with its own stop data analysis, and recommendations for how to reduce race-based disparate outcomes

Another subcommittee crafted a proposed ordinance regulating the City's purchases and uses of surveillance technology, which the Commission sent to the Council, which is expected to consider the ordinance in 2018.

### Berkeley Police Department

At the end of 2017, BPD had 159 sworn police officers and received 81,713 calls for service. (This figure includes phone calls to BPD requesting service, calls resulting from an officer personally observing a situation requiring service, and direct contacts to BPD by a person requesting help).

# II. INTRODUCTION

Berkeley's Police Review Commission (PRC) was established by voter initiative in 1973. As one of the oldest civilian oversight agencies in the nation and the first one authorized to conduct investigations, the PRC has been an important model and source of information for oversight bodies across the United States.

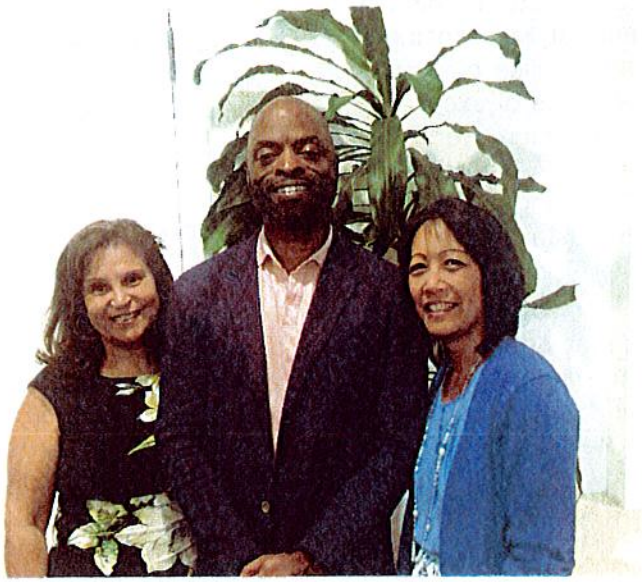
# III. MISSION STATEMENT

The mission of the Police Review Commission is 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 investigation of complaints brought by individuals against the Berkeley Police Department.

# IV. STAFF

The PRC Office is a division of the City Manager's Office with a staff of three:

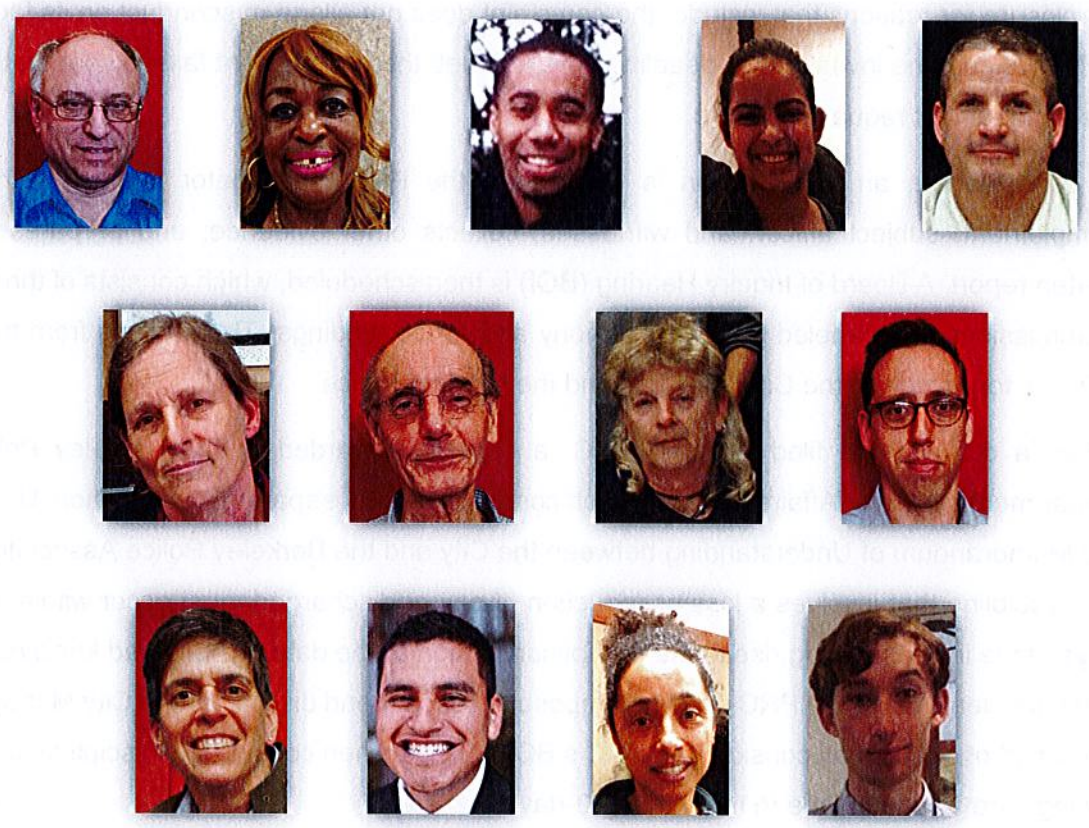
- **The PRC Officer** administers the daily operations of the PRC office, supervises staff, oversees complaint investigations, and serves as Secretary to the Commission. As Secretary, the PRC Officer staffs commission meetings and provides managerial support in the execution of PRC policies and procedures.
- **The PRC Investigator** conducts in-depth investigations of civilian complaints against members of the Berkley Police Department, assists with special projects, and periodically serves as Acting Commission Secretary.
- **The Office Specialist III** manages the front office, provides administrative support to the PRC Officer and Investigator, prepares and maintains PRC records, and compiles statistics.



**Maritza Martinez**, Office Specialist III (joined staff in March 2001);
**Byron Norris**, PRC Investigator (joined staff in October 2009);
**Katherine Lee**, PRC Officer (joined staff in January 2014).

# V. COMMISSIONERS

Nine Berkeley residents are appointed by the Mayor and members of the City Council to serve on the PRC. These Commissioners represent diverse backgrounds and viewpoints and therefore provide invaluable community perspectives. The Commission generally meets twice a month. Individual commissioners also attend subcommittee meetings and Board of Inquiry Hearings throughout the year. The Commissioners devote considerable time and effort toward fulfilling their duties.



The first two rows show Commissioners as of the end of 2017:

*Top Row* -- **Chair George Lippman, Vice-Chair Gwen Allamby, Clarence Ford, Sahana Matthews, George Perezvelez.**

*Middle Row* -- **Andrea Prichett, Terry Roberts, Michael Sherman, Ari Yampolsky.**

Other Commissioners who served in 2017:

*Bottom Row* – **Alison Bernstein, Bulmaro Vicente, Kimberly DaSilva, Cooper Price.**

# VI. COMPLAINTS

## 1. INDIVIDUAL COMPLAINTS - Investigation

A complaint consists of one or more claims of alleged misconduct against one or more individual BPD officers. Timely-filed[1] complaints are investigated and prepared for hearing or, if the complainant and subject officer agree, referred for mediation. In some instances, cases are referred to the Commission for administrative closure. Cases may be submitted for closure for reasons that include: the complaint does not allege misconduct on its face or is frivolous; the investigative deadlines are not met; the complainant fails to cooperate; the complainant requests closure.

In cases where an investigation is completed, the PRC investigator interviews the complainant, subject officer, and witnesses; collects other evidence; and prepares a written report. A Board of Inquiry Hearing (BOI) is then scheduled, which consists of three Commissioners impaneled to hear testimony and render findings. The findings from the BOI are forwarded to the City Manager and the Chief of Police.

When a complaint is filed with the PRC, a copy is forwarded to the Berkeley Police Department's Internal Affairs Bureau, which conducts its own, separate investigation. Under the Memorandum of Understanding between the City and the Berkeley Police Association, any discipline that involves a loss or reduction of pay or discharged must occur within 120 days of the incident giving rise to the disciplinary action or the date the City had knowledge of the incident. While the PRC does not impose or recommend discipline, the City Manager and Chief of Police may consider the PRC's BOI findings when considering discipline, if the findings are issued in time to meet the 120-day deadline.

Separate from the disciplinary process, subject officers can appeal PRC sustained allegations, which are heard by the state Office of Administrative Hearings. (See page 18.)

The standard of proof – the amount of evidence required at a BOI to sustain an allegation – is "clear and convincing evidence." This standard is higher than a preponderance of the evidence but lower than beyond a reasonable doubt. The four categories of findings are:

---

[1] Complaints must be filed within 90 calendar days of the alleged misconduct, unless a complainant is incapacitated or otherwise prevented from filing a complaint. A complaint filed between 91 and 180 calendar days of the alleged misconduct can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to timely file.

1. ***Sustained:*** the alleged act did occur, and was not justified;
2. ***Not Sustained:*** the evidence fails to support the allegation, however it has not been proven false;
3. ***Unfounded:*** the alleged act did not occur; and
4. ***Exonerated:*** the alleged act did occur but was lawful, justified and proper.

Complainant Advocates. In the fall of 2017, students at UC Berkeley Law School launched the Boalt Police Review Project to assist people who file individual complaints with the PRC and who seek representation. These services are provided free of charge. Law students helped several complainants prepare for their cases, and it is anticipated that they will represent complainants at BOI hearings in 2018. Because subject officers are usually represented at hearings, the Commission believes that complainants feel less intimidated and better prepared having an advocate assist them before and during the hearing.

**MEDIATION – an alternative to investigation**

After an individual files a complaint, he or she may opt for mediation. This will go forward only if the officer who is the subject of the complaint agrees. Once a mediation is completed, the complaint is permanently removed from the investigative process.

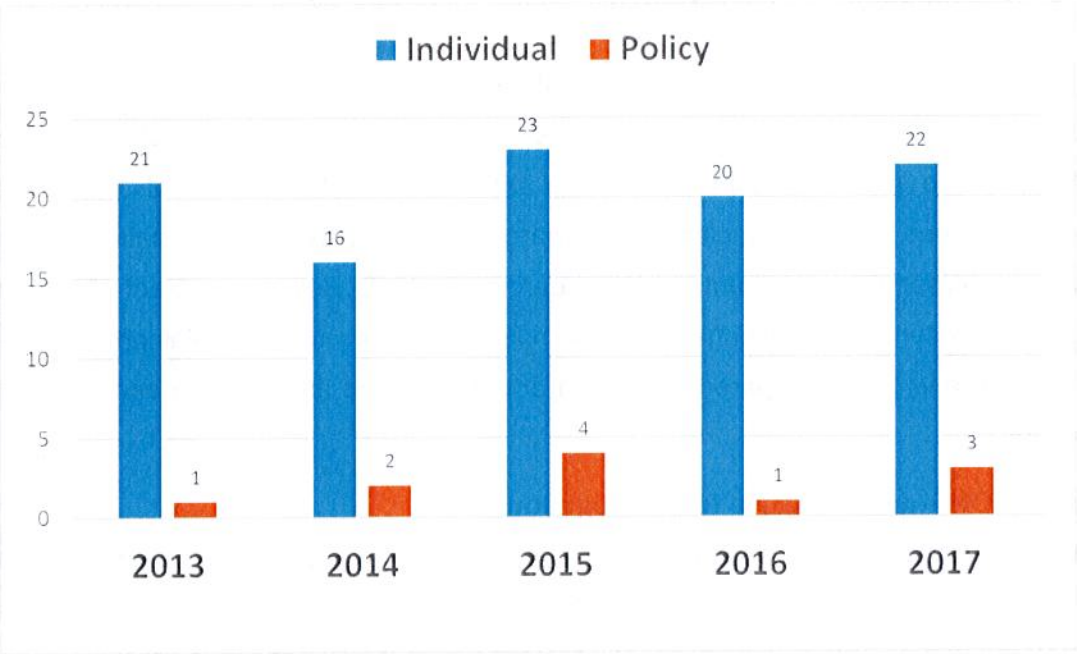
Mediations are conducted by SEEDS (Services that Encourage Effective Dialogue and Solutions), a local, nonprofit community-based organization that specializes in mediation services. A mediation through SEEDS gives both the complainant and the subject officer the opportunity to speak and respond to each other in a respectful environment. At the conclusion of mediation, SEEDS notifies the PRC staff and the complaint is forwarded to the Commission for closure.

## 2. POLICY COMPLAINTS

A policy complaint is a request from a member of the public to the Commission to review a particular BPD policy because the complainant believes that the policy could be improved or should be revised. Complaints or concerns about BPD policies, practices or procedures are presented by staff to the full commission at a regular meeting. The Commission may conduct its own review; form a subcommittee to review the policy, practice or procedure; or ask staff to conduct an investigation or take other action, and present a report at a future meeting. After conducting its own review, or receiving a report from a subcommittee or staff, the PRC may close the complaint without further action or recommend changes in policy, practice or procedures to the BPD and the City Manager.

# VII. STATISTICS 2013 - 2017

## 1. COMPLAINTS RECEIVED

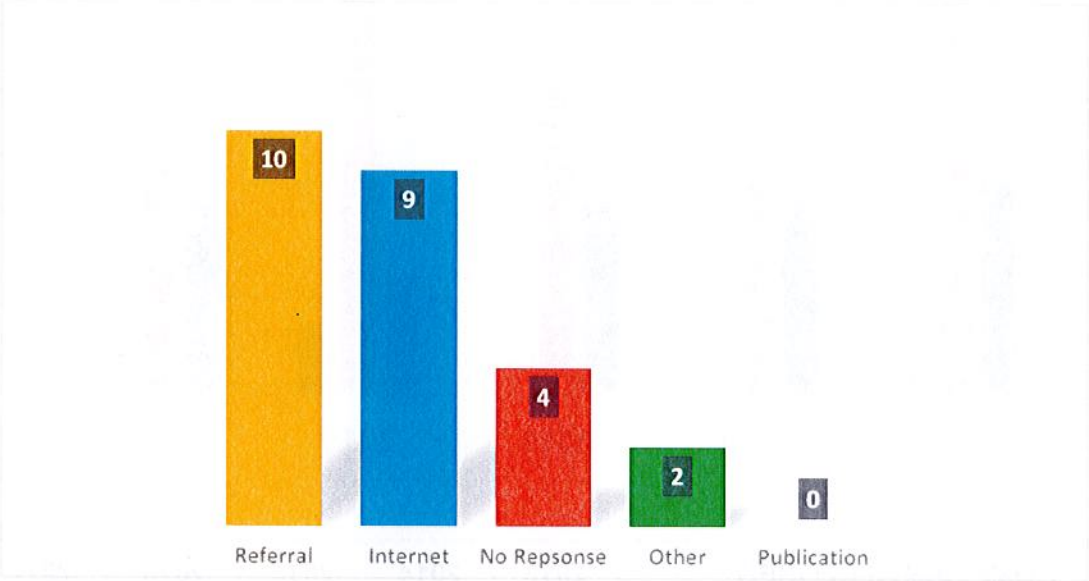



| COMPLAINTS RECEIVED | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| Individual | 21 | 16 | 23 | 20 | 22 |
| Policy | 1 | 2 | 4 | 1 | 3 |
| **Total** | **22** | **18** | **27** | **21** | **25** |

In 2017, the PRC received 22 individual complaints and three policy complaints. The average number of complaints filed over the past five years is 22.6.

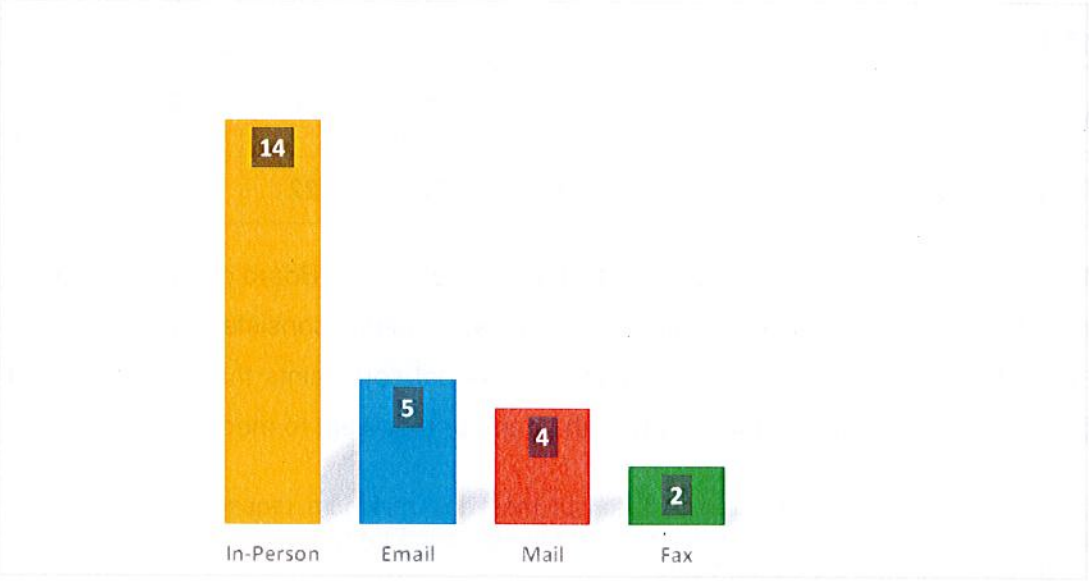
## How Complainants In 2017 Heard About The PRC

On the individual and policy complaint forms, complainants are asked to check a box stating how they learned about the Police Review Commission. Here are the responses in 2017.

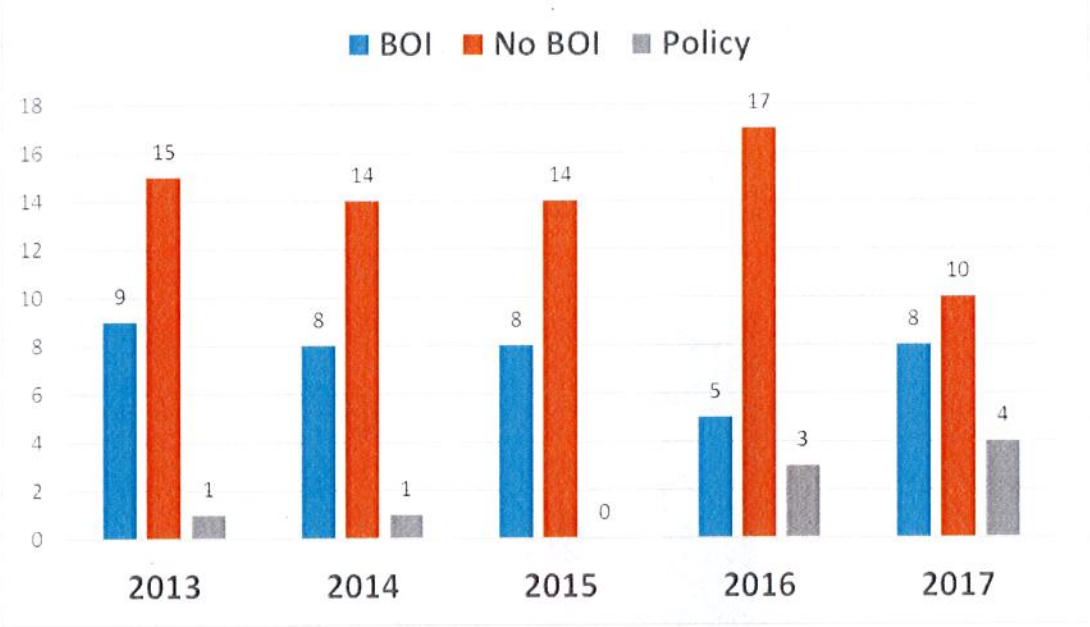



## How Complainants Filed With The PRC In 2017

Persons may file individual and policy complaints by e-mail, U.S. mail, fax, or in person at our offices.



## 2. COMPLAINTS CLOSED




| COMPLAINTS CLOSED | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| **Board of Inquiry Hearings Completed** | **9** | **8** | **8** | **5** | **8** |
| **Closed without BOI** | **15** | **14** | **14** | **17** | **10** |
| Admin. Closure (includes withdrawn) | 8 | 11 | 6 | 5 | 5 |
| Mediation | 3 | 0 | 1 | 5 | 1 |
| Dismissal | 0 | 1 | 4 | 2 | 0 |
| Reject** | 4 | 2 | 3 | 5 | 4 |
| **Policy** | **1** | **1** (reject) | **0** | **2** **1** (reject) | **2** **2** (reject) |
| **Total Cases Closed** | **25** | **23** | **22** | **25** | **22** |

In 2017, the number of individual complaints that proceeded to a Board of Inquiry Hearing compared to the number closed without a hearing was roughly consistent with the ratios from 2013 to 2105. In 2016, the proportion of individual complaints that closed without going to a hearing was lower due mostly to the number that went to mediation that year.

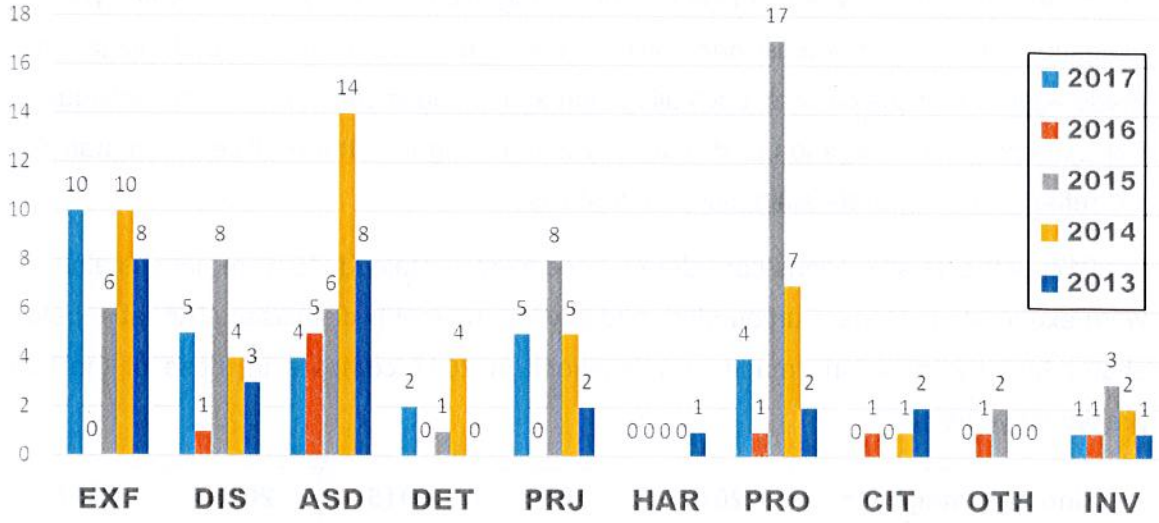
** Individual complaints that are rejected do not meet the minimum requirements of a valid complaint, for instance, the person filing was not the aggrieved party, or the complaint was filed more than 180 days after the incident date.

## 3. ALLEGATIONS HEARD AT BOARDS OF INQUIRY

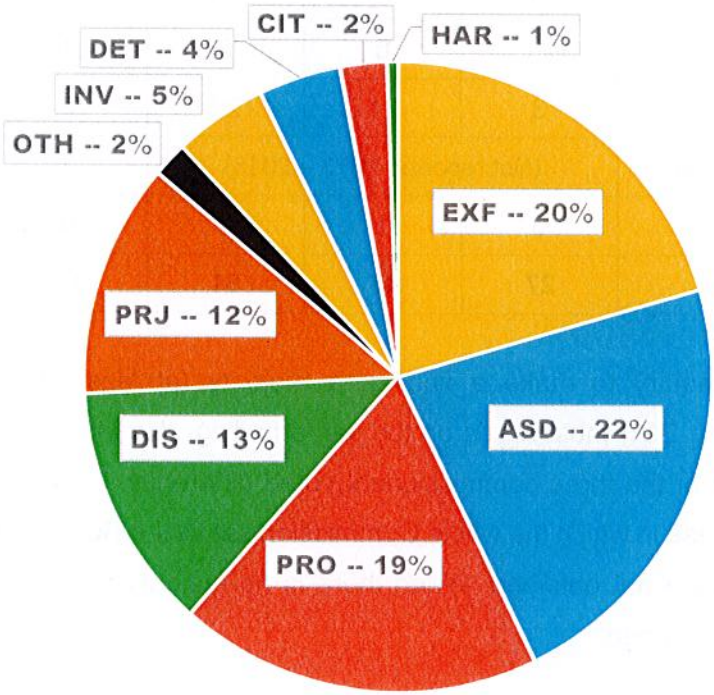
**Allegation categories:**

**EXF**=Excessive Force
**DIS**=Discourtesy
**ASD**=Improper Arrest, Search, Seizure, or Stop/Detention
**DET**=Improper Detention Procedures
**PRJ**=Discrimination
**HAR**=Harassment
**PRO**=Improper Police Procedures
**CIT**=Improper Citation or Tow
**OTH**=Other (see p. 13 for examples)
**INV**=Improper Investigation

### BY CATEGORY AND YEAR




### BY PERCENTAGE, for the years 2013-2017 combined



## 4. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY

In 2017, a Board of Inquiry hearing was convened in eight cases to make findings on allegations. Two of the cases involved the same incident, and were heard together. In another case, both allegations were summarily dismissed. Summary dismissal occurs when the BOI determines an allegation is wholly without merit.

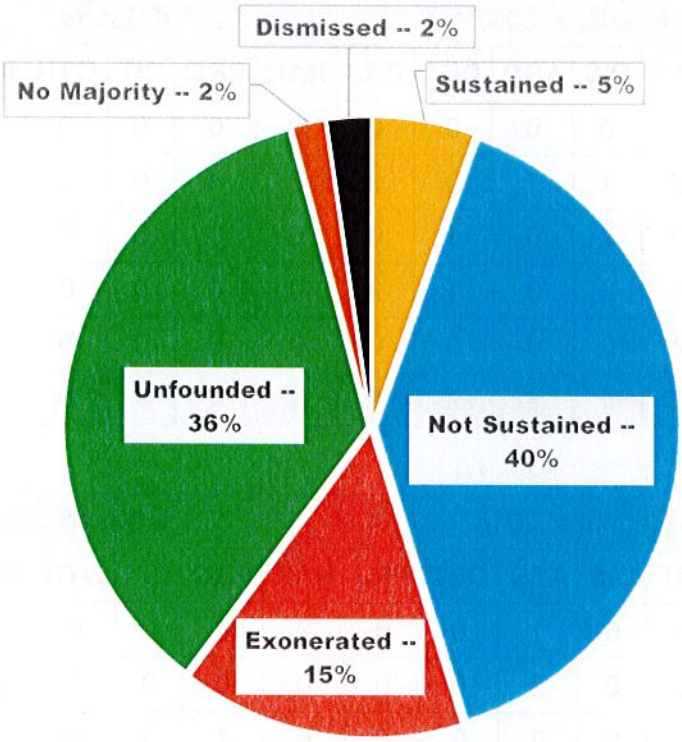
Thirty-one allegations were decided in those eight cases. Whether separate types of allegations are lodged against one officer in the same case, or one type of allegation is made against multiple officers, each allegation against each officer is counted individually. For example: if an allegation of discourtesy is made against three officers, the statistics will reflect three separate allegations for that case.

In 2017, of the 31 allegations considered, none were sustained, 15 were not sustained, 3 were exonerated, 11 were unfounded, and 2 were summarily dismissed. The table below shows how the decisions made on allegations in 2017 compare to those of the four preceding years.

| Finding Categories | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| Sustained | 4 | 2 | 1 | 2 | 0 |
| Not Sustained | 9 | 15 | 24 | 3 | 15 |
| Exonerated | 11 | 8 | 2 | 1 | 3 |
| Unfounded | 3 | 21 | 22 | 2 | 11 |
| Summary Dismissal | (Not reported 2013 – 2015) | | | 2 | 2 |
| No Majority Vote | 0 | 1 | 2 | 0 | 0 |
| **Total** | **27** | **47** | **51** | **10** | **31** |

For the Board of Inquiry to make a finding, a majority (at least two of the three commissioners on the BOI) must agree on the same finding. "No Majority Vote" in 2015 occurred when each of the three commissioners voted differently. In 2014, "No Majority Vote" occurred in a case in which the whole Commission sat as the BOI, and the five votes needed to sustain were not obtained. When there is no majority finding in a case, the matter is essentially dropped.

**BOARD OF INQUIRY FINDINGS**
**(Percentage by category, for the years 2013 – 2017 combined)**




## RATES OF "SUSTAINED" FINDINGS 2013 – 2017

The percentage of allegations sustained of the total number of allegations heard at a Board of Inquiry Hearing for 2013-2017 are shown on this table. * No allegations were sustained in 2017.

| | | |
|---|---|---|
| 2017 | 0 of 31 allegations sustained | 0% |
| 2016 | 2 of 10 allegations sustained | 20% |
| 2015 | 1 of 51 allegations sustained | 2% |
| 2014 | 2 of 47 allegations sustained | 4.25% |
| 2013 | 4 of 27 allegations sustained | 14.75% |

* Percentages in the last column are rounded to the nearest ¼ of 1 percent.

## DECISIONS ISSUED WITHIN 120 DAYS OF THE COMPLAINT

Of the eight cases in which a BOI hearing was held in 2017, findings were issued within 120 days of the complaint date in five of them.

## 5. FINDINGS ON ALLEGATIONS HEARD AT BOIs
**(Detailed by finding and type of allegation)**

| Board of Inquiry Hearings 2017 | | | | | | | | | | | 8 Cases |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Categories** | **EXF** | **DIS** | **ASD** | **DET** | **PRJ** | **HAR** | **PRO** | **CIT** | **OTH** | **INV** | **Totals** |
| Sustained | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | **0** |
| Not Sustained | 5 | 1 | 1 | 0 | 3 | 0 | 4 | 0 | 0 | 1 | **15** |
| Exonerated | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | **3** |
| Unfounded | 3 | 2 | 3 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | **11** |
| Summarily Dism. | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | **2** |
| **Totals** | **10** | **5** | **4** | **2** | **5** | **0** | **4** | **0** | **0** | **1** | **31** |

| Board of Inquiry Hearings 2016 | | | | | | | | | | | 5 Cases |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Categories** | **EXF** | **DIS** | **ASD** | **DET** | **PRJ** | **HAR** | **PRO** | **CIT** | **OTH** | **INV** | **TOTALS** |
| Sustained | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | **2** |
| Not Sustained | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | **3** |
| Exonerated | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | **1** |
| Unfounded | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | **2** |
| Summarily Dism. | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | **2** |
| **Totals** | **0** | **1** | **5** | **0** | **0** | **0** | **1** | **1** | **1** | **1** | **10** |

| Board of Inquiry Hearings 2015 | | | | | | | | | | | 8 Cases |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Categories** | **EXF** | **DIS** | **ASD** | **DET** | **PRJ** | **HAR** | **PRO** | **CIT** | **OTH** | **INV** | **TOTALS** |
| Sustained | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | **1** |
| Not Sustained | 1 | 6 | 0 | 0 | 2 | 0 | 13 | 0 | 0 | 2 | **24** |
| Exonerated | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | **2** |
| Unfounded | 5 | 1 | 5 | 0 | 6 | 0 | 3 | 0 | 1 | 1 | **22** |
| No Majority Vote | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | **2** |
| **Totals** | **6** | **8** | **6** | **1** | **8** | **0** | **17** | **0** | **2** | **3** | **51** |

(See next page for explanation of allegation categories.)

| Board of Inquiry Hearings 2014 | | | | | | | | | 8 Cases | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Categories** | **EXF** | **DIS** | **ASD** | **DET** | **PRJ** | **HAR** | **PRO** | **CIT** | **OTH** | **INV** | **TOTALS** |
| Sustained | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | **2** |
| Not Sustained | 7 | 0 | 4 | 0 | 0 | 0 | 2 | 1 | 0 | 1 | **15** |
| Exonerated | 0 | 0 | 5 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | **8** |
| Unfounded | 3 | 3 | 5 | 2 | 5 | 0 | 2 | 0 | 0 | 1 | **21** |
| No Majority Vote | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | **1** |
| **Totals** | **10** | **4** | **14** | **4** | **5** | **0** | **7** | **1** | **0** | **2** | **47** |

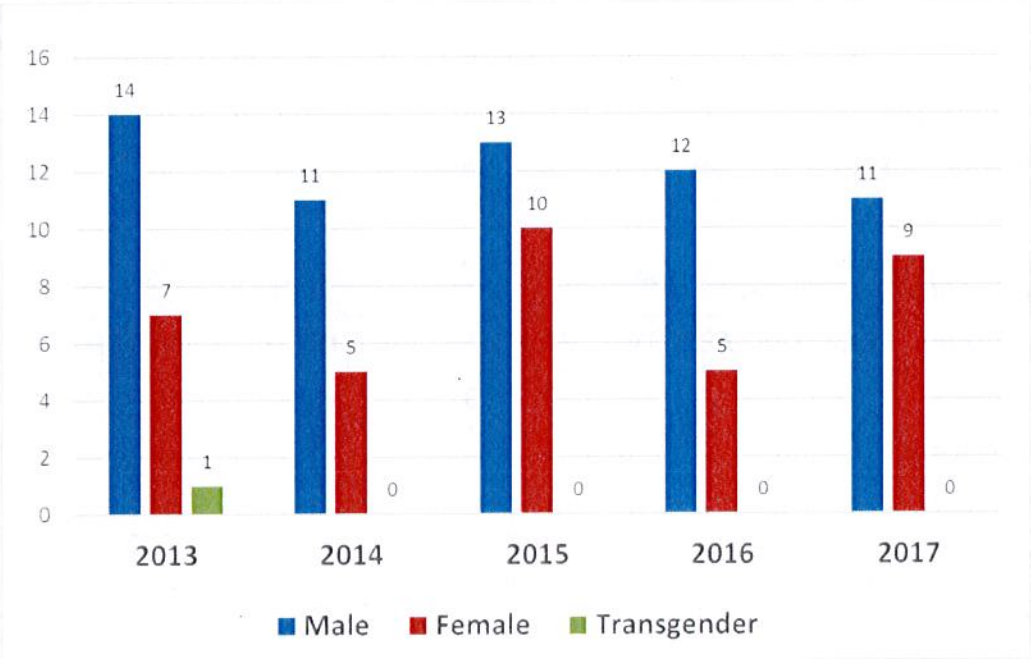
| Board of Inquiry Hearings 2013 | | | | | | | | | 9 Cases | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Categories** | **EXF** | **DIS** | **ASD** | **DET** | **PRJ** | **HAR** | **PRO** | **CIT** | **OTH** | **INV** | **TOTALS** |
| Sustained | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | **4** |
| Not Sustained | 5 | 1 | 0 | 0 | 0 | 0 | 2 | 1 | 0 | 0 | **9** |
| Exonerated | 1 | 0 | 7 | 0 | 1 | 0 | 0 | 1 | 0 | 1 | **11** |
| Unfounded | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | **3** |
| **Totals** | **8** | **3** | **8** | **0** | **2** | **1** | **2** | **2** | **0** | **1** | **27** |

**Allegation Categories**
**EXF**=Excessive Force
**DIS**=Discourtesy
**ASD**=Improper Arrest, Search, Seizure, or Stop/Detention
**DET**=Improper Detention Procedures
**PRJ**=Discrimination
**HAR**=Harassment
**PRO**=Improper Police Procedures
**CIT**=Improper Citation or Tow
**OTH**=Other (includes Abuse of Discretion, Breach of Confidentiality, Failure to Identify Oneself, Lack of Discretion, Threat, Abuse of Authority, and Retaliation)
**INV**=Improper Investigation

## 6. COMPLAINANT DEMOGRAPHICS

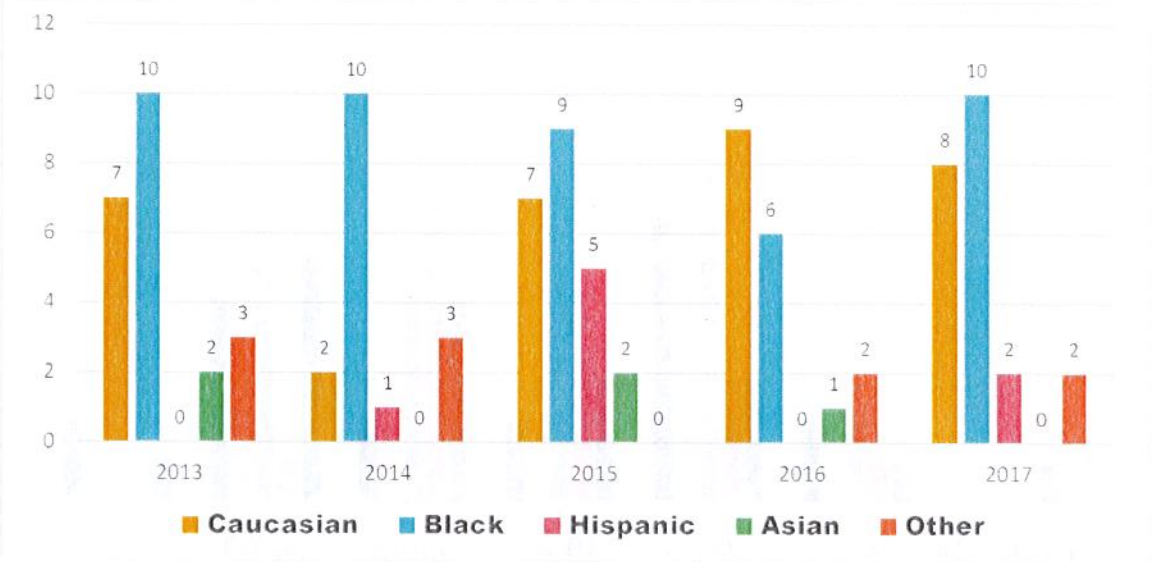
Complainants are asked to report their ethnicity, gender, and age, so that the PRC can track this information for statistical purposes. For 2017, the gender, ethnicity, and age statistics are reported for the 22 people who filed individual complaints.

### COMPLAINANTS' GENDER



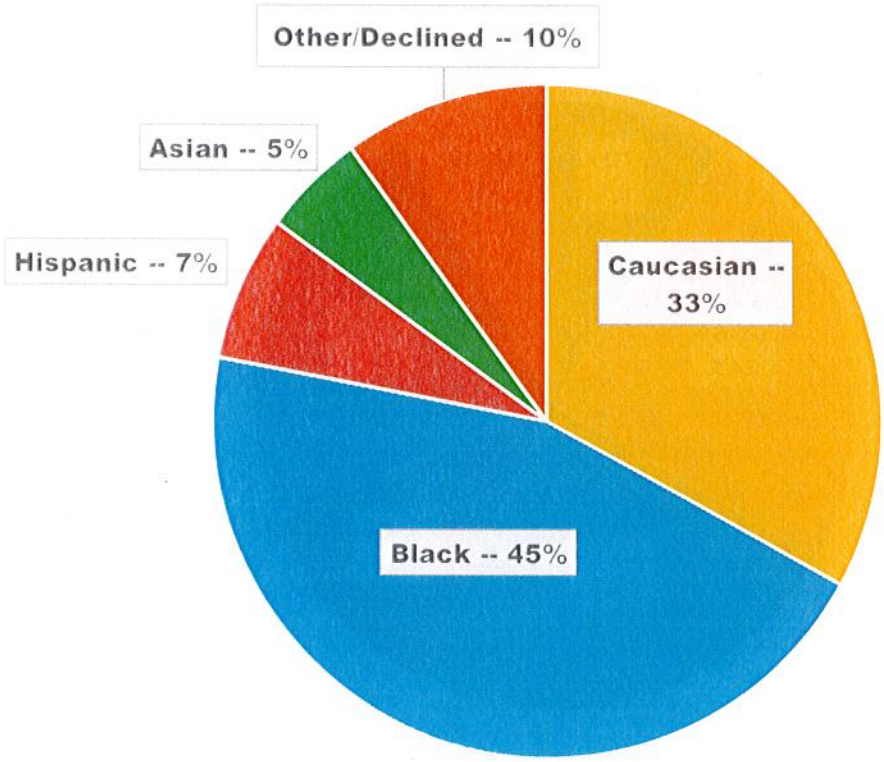

In 2017, males comprised just over half of the 20 complainants who reported their gender. (Two persons declined to state their gender.) Male complainants have consistently outnumbered female complainants over the past five years, although to varying degrees.

## COMPLAINANTS' ETHNICITY

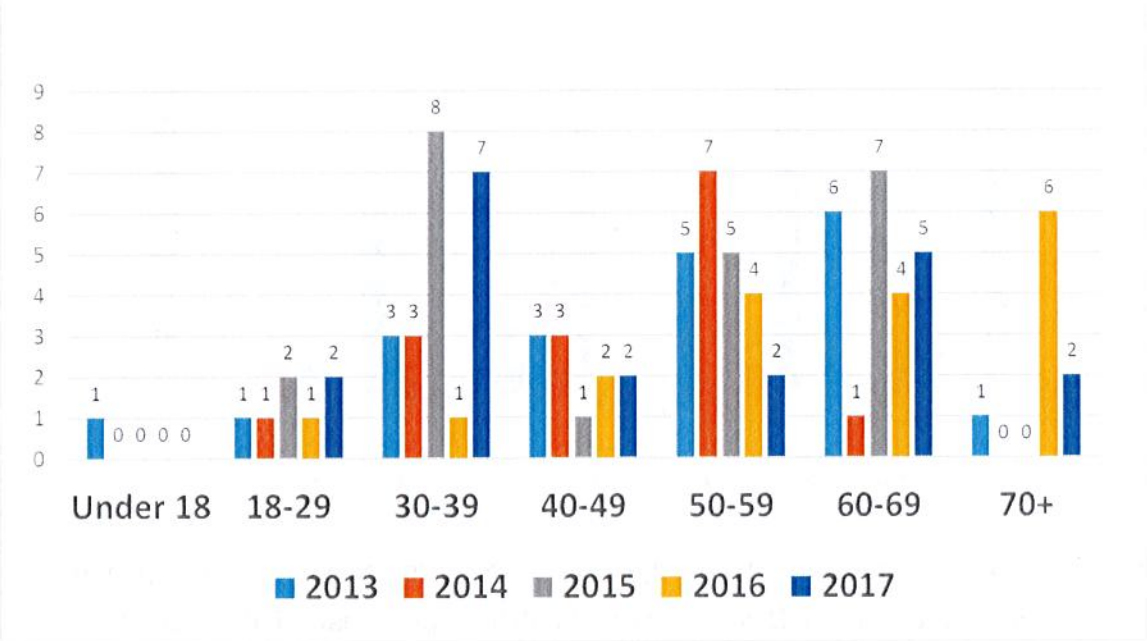



In 2017, the great majority (18) of the 22 individual complainants who reported their ethnicity were Caucasian or Black, consistent with most prior years. There were 2 Hispanic complainants and no Asian complainants. The two complainants in the "Other" category in 2017 were multi-ethnic.

**Percentage of complainants by reported ethnicity, for the years 2013 to 2017 combined.**

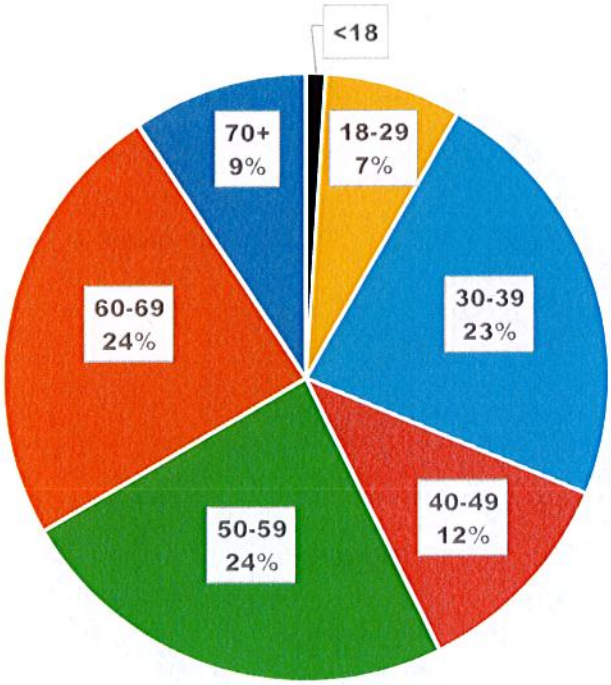


## COMPLAINANTS BY AGE GROUP

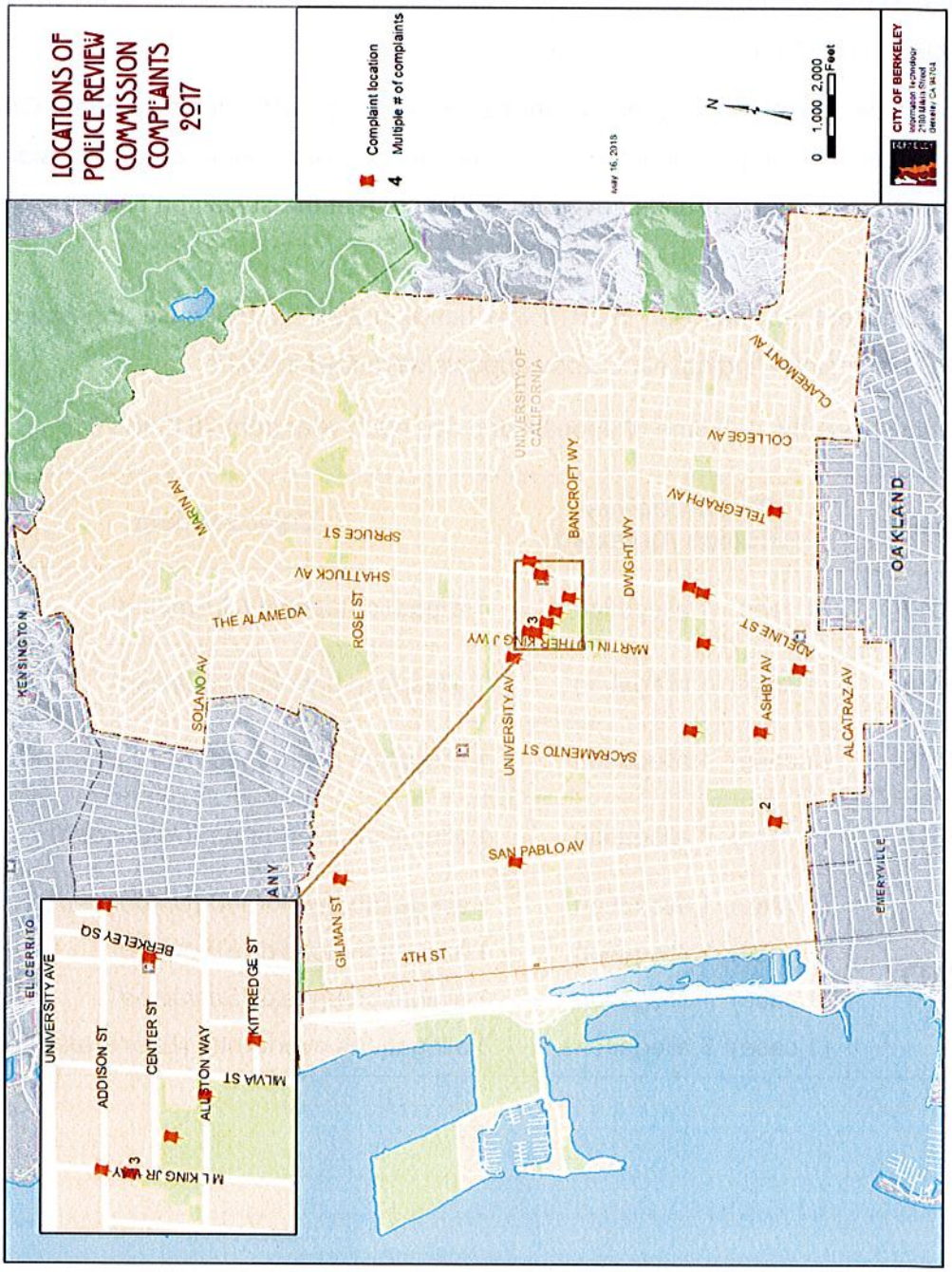



Of the 20 complainants who reported their age in 2017, the largest group, just over one-third, were in their thirties, followed by those in their sixties.

**Percentage of complainants by reported age, for the years 2013 to 2017 combined.**



## 7. INCIDENT LOCATION MAP FOR 2017




This map shows where misconduct is alleged to have occurred in 2017. Twenty-one locations are shown for 22 individual complaints; the complaint alleging misconduct in Emeryville is not shown. Three instances of alleged misconduct show as occurring at 2100 Martin Luther King, Jr. Way, which houses the Berkeley Police Department. That address was used for allegations that an officer's investigation was inadequate and stemming a civilian's interaction with an officer there.

## 8. APPEALS OF BOARD OF INQUIRY FINDINGS - *CALOCA*

Police officers can appeal findings of misconduct that are sustained at a Board of Inquiry Hearing. These are referred to as *Caloca* appeals, in reference to the court cases that established the officers' right to appeal.[2]

In the *Caloca* appeal process, an administrative law judge (ALJ) from the State Office of Administrative Hearings conducts an *"independent re-examination"* of the decision. The PRC must prove, by clear and convincing evidence, that the sustained finding should be upheld.

A *Caloca* appeal that was filed in 2016 was heard in 2017. In that case, the ALJ upheld the PRC's sustained finding. No *Caloca* appeals were filed in 2017.

This table shows the outcome of appeals decided each year from 2012 to 2016.

| Year | PRC Sustained Findings Appealed | *Caloca* Ruling |
|---|---|---|
| 2017 | (1 case) 1 allegation | 1 allegation upheld *(Sustained)* |
| 2016 | (1 case) 1 allegation | 1 allegation upheld *(Sustained)* |
| 2015 | (1 case) 1 allegation | 1 allegation overturned *(Not Sustained)* |
| 2014 | (1 case) 1 allegation | 1 allegation overturned *(Unfounded)* |
| 2013 | (1 case) 1 allegation<br>(1 case) 1 allegation<br>(1 case) 1 allegation<br>(1 case) 3 allegations | 1 allegation overturned *(Unfounded)*<br>1 allegation upheld *(Sustained)*<br>1 allegation upheld *(Sustained)*<br>3 allegations overturned *(Exonerated)* |

[2] See *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433.

# VIII. POLICY WORK, TRAINING, AND OUTREACH

## 1. POLICY REVIEW

A policy review is an examination by the commission of a particular BPD policy to determine whether the department has faithfully executed the policy or whether to recommend changes to the policy. Policy reviews are initiated by one of three ways: a member of the public files a PRC Policy Complaint; the City Council refers a policy issue to the Commission; or the Commission on its own initiative votes to conduct a policy review.

### FAIR & IMPARTIAL POLICING

A longstanding concern of this community and of the PRC has been race-based disparate treatment of civilians by Berkeley police officers. In late 2015, the police department agreed to have the Center for Policing Equity (CPE) conduct an analysis of the BPD's pedestrian and vehicle stop data; an analysis of use of force statistics and a climate survey were later added to the scope of work. In May 2017, the CPE sent a draft report to the BPD, who did not initially plan to release it publicly. The PRC successfully lobbied the City Manager and the City Council for release of the stop data portion of the draft analysis.

At the same time, the PRC's Fair & Impartial Policing Subcommittee, established in 2016, continued its work in 2017, culminating with the publication of its report, "Towards Fairness & Impartiality – Report and Recommendations from the Berkeley Police Review Commission." The report includes the Subcommittee's own examination of stop data, as well as its review of analyses by the CPE and others, finding significant disparities in stop, search, and yield rates, between Whites and African Americans and Latinos. The Subcommittee made numerous recommendations for measures to address the disparities shown in the data, practices to ensure more respectful interaction with civilians, and steps to strengthen community relations.

In November, the Commission approved the Subcommittee's report for submittal to the City Council, in hopes that the Council will provide policy guidance on the recommendations. The PRC and the CPE reports can be accessed through the PRC's website:

https://www.cityofberkeley.info/Police_Review_Commission/Home/Special_Reports.aspx

## RESPONSE TO RALLIES AND COUNTER-PROTESTS

Police response to the political clashes in the City throughout 2017 was observed with great interest by the PRC. Crowd management policies that the BPD revised with Commission input (following review of how the PBD handled the December 2014 demonstrations) were put to the test. On several occasions, the Berkeley Police Department called for mutual aid from neighboring law enforcement agencies, while our department assisted U.C. Berkeley police in responding to campus incidents. BPD's management of the various events was generally found appropriate.

In advance of "Free Speech Week" events in September, the City Council took two actions without consulting the Police Review Commission. The Council passed an urgency ordinance authorizing the City Manager to issue rules for street events without permits, and modified the ban on use of pepper spray for crowd control. The PRC formally voiced its concerns to the Council, reminding it of its advisory role in police policies, and pointing out the critical role that the enabling Ordinance gives the PRC in providing for community participation and input into shaping these policies.

## BODY-WORN CAMERA POLICY

In 2016, the PRC approved a recommended policy for the use of body-worn cameras and at the City Council's direction, representatives from the PRC and BPD met to resolve differences between their proposed policies. In 2017, the PRC approved some compromises, but was still awaiting final language from the BPD. In the meantime, the Department purchased the body-camera equipment and software, and the BPD demonstrated how the cameras work at the Commission's December meeting. The PRC expects to receive final policy language for approval in 2018, so that deployment of the cameras will occur very soon thereafter.

## RIGHT-TO-WATCH GENERAL ORDER

The Commission reviewed the BPD's General Order W-1, the Right to Watch, governing the public's ability to observe and record police activity. They drew on the Department's prior versions of the order and the San Francisco Police Department's policy. The PRC approved a proposed alternative general order to the department in late 2017.

## SUBCOMMITTEES

Ad-hoc (temporary) subcommittees are established as needed to address BPD policy issues and policy complaints by members of the community, and to research and provide

recommendations to the full commission pertaining to other police-related issues or referrals from City Council.

Each subcommittee is comprised of two to four commissioners, appointed by the PRC Chairperson. Some committee memberships listed below will show more than four commissioners, due to turnover. The PRC Ordinance allows for members of the general public to serve on subcommittees, and two subcommittees established in 2016 with public members concluded their work in 2017. Representatives from the Berkeley Police Department often attend PRC subcommittee meetings.

### SURVEILLANCE & COMMUNITY SAFETY ORDINANCE SUBCOMMITTEE

**Commissioners Yampolsky (Chair), DaSilva, Roberts, Vicente, Allamby, Halpern** (temporary commissioner)
**Public members Brian Hofer, Julie Leftwich, Tracy Rosenberg**

This Subcommittee was formed in late 2017 following a City Council referral to propose an ordinance governing the acquisition and use of all surveillance technologies by all City departments. It worked diligently on a comprehensive ordinance to require a public discussion of potential intrusions into civil liberties and privacy rights implicated by using a particular surveillance technology, and to ensure that any such intrusions are outweighed by the benefits of that technology The Commission approved a draft ordinance in July 2017 to recommend to the Council; Council's consideration was delayed from late 2017 into early 2018.

### HOMELESS ENCAMPMENTS SUBCOMMITTEE

**Commissioners Prichett (Chair), Bernstein, Yampolsky, Da Silva, Sherman**

This Subcommittee was formed in February 2017 to look into the BPD's involvement in dismantling homeless encampments, addressing questions such as who is issuing directives to conduct enforcement, the legality and appropriateness of seizing personal property, compliance with the Americans with Disabilities Act, and the right of bystanders to watch and record enforcement actions.

In June, the PRC authorized this subcommittee to hold meetings in conjunction with the Homeless Commission's homeless encampments subcommittee. The two bodies met together several times, focusing on the City's development of a policy for taking and storing personal property. This work is anticipated to continue in 2018.

## MUTUAL AID PACTS SUBCOMMITTEE

**2016 – 2017: Commissioners Bernstein, DaSilva, Sherman**
**2017 – 2018: Commissioners Lippman (Chair), Matthews**

The Commission forms a subcommittee each year to review BPD's mutual aid agreements and memoranda of understanding with other law enforcement agencies and organizations (referred to as the "MOU Compendium"). As there are dozens of agreements to consider, the PRC generally focuses on the new or revised ones, and selects others of particular interest.

The recommendations of the Subcommittee formed in October 2016 were adopted by the PRC and communicated to the City Council in early 2017. Among the recommendations were to support the BPD's continued participation in Urban Area Security Initiative (UASI) – funded programs, including the Urban Shield exercise, with a more robust reporting requirement; and approve the MOU with the Northern California Regional Intelligence Center (NCRIC), with provisos for auditing access to the license plate reader database.

A new Mutual Aid Pacts Subcommittee was formed in December 2017, and its recommendations will be made in early 2018.

## JUNE 20, 2017 SUBCOMMITTEE (Review of BPD Response at City Council Meeting)

**Commissioners Roberts (Chair), Prichett, Matthews**
**Public member Elliott Halpern**

The City Council called a special meeting on June 20, 2017, to consider the BPD's MOU Compendium. The BPD's continued participation in the annual Urban Shield exercise again generated considerable community interest. At the end of the meeting, BPD arrested two protesters who rushed the dais, and the commotion spilled onto the street, where a person in the crowd was struck on the head, allegedly by a police officer wielding a baton. The PRC formed the June 20, 2017 Subcommittee to investigate whether the police response that night was appropriate. The Subcommittee is expected to present a draft report to the Commission in January 2018.

## FAIR & IMPARTIAL POLICING SUBCOMMITTEE

**Commissioners Lippman (Chair), Javier, Roberts, Smith, Allamby, Ford**
**Public members Christina Murphy, Paul Kealoha-Blake, Elliot Halpern**

(See discussion of "Fair & Impartial Policing" on p. 19 above.)

## 2. TRAINING AND OUTREACH

- The PRC Officer and PRC Investigator attended the **23nd Annual NACOLE Conference** in Spokane, Washington in September. The National Association for Civilian Oversight of Law Enforcement is a non-profit comprised of agencies and individuals working to establish and improve oversight of law enforcement in the U.S. The conference gives PRC staff the opportunity to attend training sessions and educational workshops. It also provides a chance for PRC staff to meet and compare notes with other oversight practitioners from around the country and the Bay Area about common and unique challenges of police oversight in their communities.
- At the Berkeley Police Chief's invitation, PRC Chairperson Lippman joined him and other members of his command staff in attending the annual conference of the **International Association of Chiefs of Police** in October. The conference, a multi-day event in Philadelphia, offered dozens of educational and training opportunities.
- This year's outreach efforts to publicize the work of the Police Review Commission included Commissioners staffing a table at the **Summer of Love 50th Anniversary** event in April and at the **Berkeley Juneteenth Festival** in June. Additionally, some Commissioners participated locally in **National Night Out** in August, an evening of neighborhood strengthening and crime prevention awareness.
- Three Commissioners joined Councilmembers and City staff in attending the annual **Urban Shield exercises** over two days in September. They observed the BPD Special Response Team as it engaged in several tactical training scenarios, and attended the vendor show. The Commissioners reported on their impressions to help the PRC formulate a recommendation to the City Council on continued participation in 2018.

## POLICE CHIEF EVALUATION AND BPD COMMENDATIONS

- In 2017, City Manager Dee Williams-Ridley began a series of one-one one meetings with members of the Police Review Commission for their input into the job performance of Police Chief Andrew Greenwood as part of her appraisal of the Chief. These meetings resulted from the Commission's request to the City Manager for a role in the City Manager's process for evaluating the chief.
- In recognition of outstanding service to the community, the Commission extended commendations to 91 BPD police officers and civilian staff of the BPD in 2017.

# IX. MEETINGS AND HEARINGS

**2017**

| **Type of Meeting or Hearing** | **Number** |
|---|---|
| Regular PRC Meetings | 20 |
| Special PRC Meetings | 2 |
| Boards of Inquiry (BOI) (including 2 continued hearings) | 9 |
| BOI Special Meetings | 1 |
| Mutual Aid Pacts | 2 |
| Surveillance and Community Safety Ordinance | 8 |
| Fair & Impartial Policing | 9 |
| Outreach | 1 |
| Homeless Encampments | 5 |
| June 20, 2017 (Review of BPD Response at City Council Meeting) | 7 |
| General Orders on Crowd Control, etc. | 1 |
| **TOTAL** | **65** |

# 2017 MEETINGS AND HEARINGS

**January**

| | |
|---|---|
| 4 | Mutual Aid Pacts |
| 11 | Surveillance and Community Safety Ordinance |
| 11 | Regular Meeting |
| 13 | BOI, Complaint #2409 |
| 23 | Fair & Impartial Policing |
| 25 | Regular Meeting |

**February**

| | |
|---|---|
| 1 | Special PRC Meeting |
| 8 | Regular Meeting |
| 22 | Regular Meeting |
| 27 | Fair & Impartial Policing |

**March**

| | |
|---|---|
| 1 | Outreach |
| 1 | Homeless Encampments |
| 8 | Regular Meeting |
| 14 | BOI Special Meeting |
| 16 | BOI, Complaint #2411 |
| 22 | Homeless Encampments |
| 22 | Regular Meeting |

**April**

| | |
|---|---|
| 12 | Surveillance and Community Safety Ordinance |
| 12 | Regular Meeting |
| 17 | BOI, Complaint #2391 |
| 21 | BOI, Complaint #2412 and Complaint #2413 |
| 26 | Regular Meeting |
| 27 | Surveillance and Community Safety Ordinance |

**May**

| | |
|---|---|
| 3 | Surveillance and Community Safety Ordinance |
| 10 | Regular Meeting |
| 16 | Surveillance and Community Safety Ordinance |
| 24 | Special PRC Meeting |
| 24 | Regular Meeting |

**June**

| | |
|---|---|
| 14 | Regular Meeting |
| 21 | Surveillance and Community Safety Ordinance |
| 23 | BOI, Complaint #2413 (cont.) |
| 28 | Regular Meeting |

**July**

| | |
|---|---|
| 6 | Fair & Impartial Policing |
| 10 | Surveillance and Community Safety Ordinance |
| 11 | Homeless Encampments |
| 12 | Regular Meeting |
| 17 | Surveillance and Community Safety Ordinance |
| 26 | Regular Meeting |

**August**

| | |
|---|---|
| 3 | Fair & Impartial Policing |
| 8 | Homeless Encampments |
| 9 | June 20, 2017 (Review of BPD Response at City Council Meeting) |
| 10 | General Orders C-64, etc. |
| 15 | Fair & Impartial Policing |
| 17 | BOI, Complaint #2418 |
| 30 | June 20, 2017 (Review of BPD Response at City Council Meeting) |

**September**

| | |
|---|---|
| 6 | Fair & Impartial Policing |
| 6 | Regular Meeting |
| 12 | June 20, 2017 (Review of BPD Response at City Council Meeting) |
| 20 | BOI, Complaint #2420 |
| 27 | Regular Meeting |
| 28 | Fair & Impartial Policing |

**October**

| | |
|---|---|
| 4 | June 20, 2017 (Review of BPD Response at City Council Meeting) |
| 11 | Regular Meeting |
| 12 | Fair & Impartial Policing |
| 24 | BOI, Complaint #2422 |
| 25 | Regular Meeting |

**November**

| | |
|---|---|
| 2 | Fair & Impartial Policing |
| 7 | June 20, 2017 (Review of BPD Response at City Council Meeting) |
| 15 | Regular Meeting |
| 17 | BOI, Complaint #2418 (cont.) |
| 30 | June 20, 2017 (Review of BPD Response at City Council Meeting) |

**December**

| | |
|---|---|
| 6 | Mutual Aid Pacts |
| 12 | Homeless Encampments |
| 13 | Regular Meeting |

The Police Review Commission joined the Berkeley Police Department in mourning the passing of Officer Alan Roberds, badge #53, on July 15, 2017.

**Lee, Katherine**

**From:** Lee, Katherine
**Sent:** Wednesday, September 26, 2018 2:08 PM
**To:** Lee, Katherine
**Subject:** Council motion on Item D from last night

**From:** Numainville, Mark L.
**Sent:** Wednesday, September 26, 2018 1:56 PM
**To:** Lee, Katherine <KLee@cityofberkeley.info>
**Subject:** RE: Council motion on Item D from last night

**Action:** 21 speakers. Councilmember Bartlett added as a co-sponsor. M/S/C (Hahn/Arreguin) to adopt the following policy:

*Except as required by State and Federal law, no employee of the Berkeley Police Department or any other City of Berkeley employee shall actively broadcast through Twitter, Facebook, Nixle, or other social media, the addresses, legal names, booking photos or other identifying information of people arrested for non-violent offenses by the Berkeley Police Department or other departments acting in mutual aid at First Amendment Events, as defined in Berkeley General Order C-64. The Berkeley Police Department and other City employees may broadcast the fact of arrests having been made, and details of the reasons and circumstances of such arrests, so long as personal identifying information is not included.*

*Restrictions on broadcasting identifying information about individuals arrested for non-violent violations in conjunction with First Amendment Events shall not limit or diminish the City's obligation to release arrestee information as required by State law, subject to personal safety-based and other limitations.*

*The Berkeley City Council unequivocally opposes the actions of anyone bringing weapons of any kind into our streets, sidewalks, and parks to commit violence, and we support our Police Department's efforts to stop violence.*

**Vote:** Ayes – Maio, Hahn, Wengraf, Droste, Arreguin; Noes – Davila, Bartlett, Harrison; Abstain – None; Absent – Worthington.

Mark Numainville
City Clerk
City of Berkeley
(510) 981-6909

07

Kriss Worthington
Councilmember, City of Berkeley, District 7
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EMAIL kworthington@cityofberkeley.info

CONSENT CALENDAR
October 2, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington

Subject: Refer the Police Review Commission to extend time period to impose discipline on Berkeley Police Department officers pursuant to Police Review Commission findings

RECOMMENDATION:
Recommend that the Council refer to the Police Review Commission to extend the time limit for Police Review Commission investigations and notification of discipline from the current limit to one calendar year.

BACKGROUND:
While certain structural reforms to the Berkeley Police Review Commission (PRC) necessitate an amendment to the City Charter, it is possible to extend the time limit for PRC investigations and notification of discipline on Berkeley Police Department officers without such an amendment. There is no legal obstacle to enacting this reform, so long as meet-and-confer occurs in good faith between the City and any bargaining units affected by this change.

Berkeley's current time limit of 120 days for the investigatory and disciplinary process lags far behind neighboring jurisdictions such as San Francisco, BART, and Oakland. We must ensure that Berkeley's PRC is in line with the best regional practices for conducting police oversight.

FINANCIAL IMPLICATIONS:
Unknown

ENVIRONMENTAL IMPLICATIONS:
No Negative Impact.

CONTACT PERSONS:
Councilmember Kriss Worthington 510-981-7170

ATTACHMENTS:

1. City Attorney's Memo regarding meet-and-confer over proposed Charter Amendment
2. Comparison of time limits on Investigation/Discipline for neighboring Police Commissions

Not included here. See Sept. 12, 2018 PRC Agenda Packet, pp. 61-69.

## Oakland

"**The [Police Review] Agency shall make every reasonable effort to complete its investigations within one hundred and eighty (180) days of the filing of the complaint with the Agency. Within thirty (30) days of completion of the investigation, the Director of the Agency shall issue written findings and proposed discipline regarding the allegations stated in the complaint to the Commission and the Chief of Police.** The City Administrator shall not have the authority to reject or modify the Agency's findings and proposed discipline."

## San Francisco

**(Charter Amendment- Department of Police Accountability: https://sfgov.org/elections/sites/default/files/Documents/candidates/Department%20of%20Police%20Accountability%20Legal%20Text.pdf)**

"DPA shall promptly, fairly, and impartially investigate all complaints regarding police use of force, misconduct or allegations that a member o[the Police Department has not properly performed a duty. except those complaints which on their face clearly indicate that the acts complained of were proper and those complaints lodged by other members of the Police Department. **DPA shall use its best efforts to conclude investigations of such complaints and,if sustained transmit the sustained complaint to the Police Department within nine months of receipt thereof by DPA.** If DPA is unable to conclude its investigation within such nine-month period, the Director, within such nine-month period, shall inform the Chief of Police of the reasons therefor and transmit information and evidence from the investigation as shall facilitate the Chiefs timely consideration of the matter."

## BART

**(BART Oversight Model:**
https://www.bart.gov/sites/default/files/docs/BART%20Citizen%20Oversight%20Model%20-%20Amended%2011.19.15_0.pdf)

"Chapter 1-11 TIMELINESS
Nothing in this section is intended to delay or interfere with the timely investigation and disposition of internal affairs investigations of alleged police misconduct. **The Auditor and BART Police Citizen Review Board shall jointly develop a timeline for completion of the disciplinary process that will be concluded within 365 days.**"

08

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CONSENT CALENDAR
October 2, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington

Subject: Refer the Police Review Commission to create training requirements for Police Review Commissioners

RECOMMENDATION:
Request that the Police Review Commission establishes mandatory training requirements for Police Review Commissioners, with input from the Police Review Commission Officer and Chief of Police.

BACKGROUND:
Currently, there are no mandatory training requirements for Berkeley Police Review Commissioners.This is a significant loophole in City law, considering that the Police Review Commission (PRC) provides a quasi-judicial function in reviewing police personnel and policy complaints. To effectively carry out a responsibility of such magnitude, the PRC ought to be provided substantial training on efficiently performing these tasks, with appropriate input from experts such as the PRC Officer and Police Chief.

According to the Citizen Oversight Model established by the BART Police Citizen Review Board (BPCRB), the staff of BPCRB maintains and upholds the "Provision of training including a curriculum designed for newly-appointed BPCRB members," as well as the "Provision and maintenance of an ongoing in-service training program" for these new members.[1] The enabling legislation for Berkeley's PRC does not, but should, contain this kind of specific training provision for its Commissioners.

Under the recently proposed Charter amendment to reform the PRC, mandatory training requirements would have been imposed on all Police Review Commissioners. However, since the August 10th, 2018 deadline for submitting ballot measures has passed, the Council should take action through this proposal to prevent the abandonment of simple, common sense reform that is necessary for Commissioners to efficiently perform their quasi-judicial functions.

[1] https://www.bart.gov/sites/default/files/docs/BART%20Citizen%20Oversight%20Model%20-%20Amended%2007.12.18%20%282%29_0.pdf (pp. 11-12)

FINANCIAL IMPLICATIONS:
Unknown

ENVIRONMENTAL IMPLICATIONS:
No Negative Impact.

CONTACT PERSONS:
Councilmember Kriss Worthington 510-981-7170

ATTACHMENTS:
1. 2018 Commission Training Tracker for Oakland Police Commissioners
2. Sections of BART Citizen Oversight Model which pertain to Commissioner training

Mandatory training is highlighted. The other items listed are recommended training as determined by the Commission and/or community.

| | Deadline (per enabling ordinance) | Expected Length of Training | Provider | Scheduled dates |
|---|---|---|---|---|
| | | | | |
| OIG - Overview of Responsibilities | | 30 minutes | OPD | 2/10/2018 |
| Negotiated Settlement Agreement | within 3 months of appt. | 1 hour | J. Chanin/K. Bliss | 4/26/2018 |
| Procedural Justice | | 1 hour | OPD | 2/10/2018 |
| Body Worn Camera Policy | | 30 minutes | OPD | 2/28/2018 meeting |
| CPRA Orientation | | 2 hours | Juanito Rus | 1/22, 1/27, 1/30/2018 |
| Measure LL Orientation | within 3 months of appt. | 2 hours | Alison Dibley | 1/31/2018 (two times) |
| Ride Alongs | within 12 months of appt. | 6-8 hours | Jenny Cam/OPD | self-scheduled |
| CA Brown Act and Oakland Sunshine Act | within 3 months of appt. | 90 minutes | City Attorney's office/TBD | 5/10/2018 |
| Calif Public Records Act | within 3 months of appt. | | | 7/26/2018 |
| legal requirements for confidentiality of personnel and other records | within 3 months of appt. | 1 hour | City Attorney's office/TBD | |
| constitutional civil rights guaranteed to all citizens as affected by law enforcement | within 3 months of appt. | | John Burris | 6/14/2018 |
| National Standards of Constitutional Policing | | | | |
| Best Practices for Conducting Investigations | | Part of a 4 hour training | | |
| OPD Internal Investigations & Police Discipline | | | OPD (2/10/2018) | 2/10/2018; TBD |
| Dept Use of Force Policy & Pursuit Policy/Force Science | | 4 hours | | |
| Police Officers Bill of Rights | | 1 hour | | |
| Implicit Bias and Racial Profiling | within 12 months of appt. | 1 hour | Neighbors for Racial Justice | 6/28/2018 |

| | | | | |
|---|---|---|---|---|
| OPOA | | | | |
| Risk Management (incl. conflict resolution) & Stop Data Collection | | 30-60 minutes | | |
| Law of Arrest/Search & Seizure (POST Learning Domains 15 and 16) | within 12 months of appt. | 2 hours | | |
| MILO (Shoot/Don't Shoot) | | 2 hours | | |
| Community Policing | | | Jose Dorado | |
| Crisis Interventional Training | within 12 months of appt. | | OPD | |

https://www.bart.gov/sites/default/files/docs/BART%20Citizen%20Oversight%20Model%20-%20Amended%2007.12.18%20%282%29_0.pdf

**(p. 11)**

"F. Community Outreach. The BPCRB shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public in the BART service area. The BPCRB community outreach program shall seek to educate the public about the responsibilities and services of OIPA and functions of the BPCRB.
i) The DSO will provide staff support to and facilitate training for the BPCRB.
ii) The BPCRB should endeavor to conduct meetings in varying locales, where feasible to increase exposure of its work to a wider array of community members."

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**(p. 12)**

"K. Staff Support for the BPCRB. The DSO will provide staff support to the BPCRB including but not limited to the following:
i) Facilitation of training for the BPCRB.
ii) Preparation and maintenance of records of meetings of the BPCRB.
iii) Distribution of reports by the BPCRB to the Board and the public. iv) Facilitation of the application process for appointment to the BPCRB and coordination of the selection and ratification processes with the Board.
v) Provision of training including a curriculum designed for newly-appointed BPCRB members.
vi) Provision and maintenance of an ongoing in-service training program"

3 articles

https://www.theguardian.com/us-news/2018/sep/14/berkeley-police-california-twitter-anti-fascist-protesters?CMP=share_btn_link

# Berkeley police posted activists' mugshots on Twitter and celebrated retweets, emails reveal

City has an explicit policy of targeting protesters with mugshot tweets to 'help create a counter-narrative'

Sam Levin in Oakland

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Fri 14 Sep 2018 17.03 EDT Last modified on Sat 15 Sep 2018 15.38 EDT

A California police agency that published the names and photos of anti-fascist protesters on Twitter said it was creating a "counter-narrative" on social media and celebrated its high rate of retweets and "engagement", internal records reveal.

The Berkeley police department (BPD) faced widespread backlash last month after posting the personal information of arrested activists online, leading to Fox News coverage and harassment and abuse against the leftwing demonstrators at a far-right rally. New emails have shown that the city has an explicit policy of targeting protesters with mugshot tweets, with the goal of using "social media to help create a counter-narrative".

Officials have further praised the "unusually deep and broad publication and attention" to activists' mugshots, saying it helped create a "narrative about the city's ability to enforce the rule of law".

The records have sparked fresh scrutiny of the northern California police department, with critics accusing law enforcement of aiding the "alt-right" by shaming anti-fascists online after making questionable arrests. City lawmakers, citing the Guardian's reporting, have now proposed an ordinance that would ban police from posting mugshots on social media unless the arrested individuals posed an immediate public safety threat.

"It is devastating that BPD would endanger people for the sake of their public relations campaign," said Andrea Pritchett, an activist with Berkeley Copwatch.

Police arrested 20 people on 5 August, and all were counter-protesters and anti-fascists who came to demonstrate against a far-right event, according to the National Lawyers Guild (NLG) of San Francisco, which is representing some of the activists.

Many arrested were cited for "possession of a banned weapon", which police said included "anything" that could be used in a "riot". Some were arrested for bandanas and scarves that

police considered "masks" and sign poles cited as "weapons", according to the NLG, which is representing activists.

A spokeswoman for the local prosecutor's office told the Guardian on Friday that the district attorney had declined to file charges for eight people and had no records for two others whose mugshots were tweeted. She did not immediately have information about the other cases.

The records, obtained by police accountability group Lucy Parsons Labs and reported by the East Bay Express, shed light on how officials internally have defined and justified the social media policy for protests. Officials said the "social media-driven protests" have created the need for a "Twitter protocol for mug shots" and acknowledged that the tweets would get "broad national exposure". One police email had the subject line, "Info flow from Jail to Twitter."

The policy also made clear that police would post mugshots on Twitter only when the arrests were "protest related", drawing criticisms that the practice was aimed at discouraging free speech activities.

"They are just trying to punish people who haven't had a trial," said Blake Griffith, a Democratic Socialists of America activist whose mugshot was posted on Twitter last month. "They don't really care whether or not we actually did anything wrong. They just care that they look good and that their response looks publicly justified."

One protocol document officials wrote last year said police should post the name, age, city of residence, charges and booking photos on Twitter, noting that they would be "quickly reprinted across television, online and print media platforms". Police received more than 8,000 retweets, 11,000 "likes" and 1.7m "impressions" (times people saw the tweets) in one case, the document said.

"They considered the likes and retweets, but they didn't count the number of death threats that were made in the replies – and the rape threats," said Griffith, who was cited for misdemeanor vandalism. The prosecutor, however, declined to file charges, a spokeswoman said.

Eddy Robinson, one of the first anti-fascist activists targeted under the Twitter mugshot policy last year, said he was shocked on Thursday to read that Berkeley had a policy outlining this tactic.

"I already felt like my civil rights had been infringed by that arrest," said Robinson, who was jailed for a "banned weapon" because, he said, he was carrying protest signs. "To see that it was done in pursuit of a messaging goal was just bizarre."

His mugshot was posted again when he was later accused of "participating in a riot", but he was not convicted. His mugshot remains on Berkeley's Twitter page.

"It seems fundamentally unethical," he added.

Veena Dubal, a University of California law professor and former Berkeley police review commissioner, said the mugshot policy was "really deviating from the role of the police department, which is public safety".

She said she was also stunned by the "counter narrative" language: "If the prevailing narrative is these rightwing, white supremacist rallies should be stopped, and we don't want them in the city, then the 'counter-narrative' is we do want them in our city, and the counter-protesters are the problem."

The documents have come to light at a time in which law enforcement in California and across the US have come under fire for their response to neo-Nazi rallies. Activists have repeatedly accused police of shielding far-right groups while aggressively targeting anti-fascists for prosecution – releasing records that could be used for "doxing", the practice of publishing people's personal information to encourage abuse.

Matthai Chakko, a city spokesperson who outlined the policy in the internal emails, defended the practice in an interview Friday, saying the strategy was a response to "exceptional circumstances" and "exceptional amounts of violence in Berkeley" at previous rallies.

He could not, however, provide specific details about any alleged acts of violence on 5 August when police posted mugshots. One individual was cited for "battery", but he said he had no further information about the circumstances. Police reported smashed windows at the time, but said there were no injuries.

"What we're trying to do is prevent violence," he said. "Removing weapons from people before they get to the site of conflict is a strategy … We have never identified anyone's particular views."

Asked if police considered possible abuse and doxing risks when creating the mugshot policy, Chakko declined to comment.

"They broke the law," he said.

He also declined to comment on why the cases have repeatedly resulted in no formal charges or convictions, saying: "We are comfortable with our arrests."

https://www.theguardian.com/us-news/2018/jun/15/police-pro-trump-berkeley-leftwing-activists-court-case

# Police worked with violent pro-Trump activist to prosecute leftwing group

Anti-fascist defendants in Berkeley case say police behavior shows 'a pretty clear statement of choosing sides'

Sam Levin in Oakland

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Fri 15 Jun 2018 06.00 EDT Last modified on Fri 15 Jun 2018 11.17 EDT

A pro-Trump demonstrator who admitted hitting protesters at a far-right rally received help and support from California police, who worked with him to prosecute leftwing activists, records show.

Documents and testimony in a trial surrounding a rightwing demonstration in Berkeley reveal that police and prosecutors pursued charges on behalf of Daniel Quillinan, a conservative activist who has posted fascist memes and came to the event with Kyle Chapman, now a celebrated figure amongst the "alt-right". The authorities consistently treated Quillinan as a victim even though he was visibly armed with a knife, a wooden "shield" and a "flagpole" – and had told law enforcement that he "hit someone in the head", according to court files.

The resulting criminal trial against five anti-fascist protesters – who are accused of assaulting Quillinan during a roughly 15-second altercation – is, according to activists, the latest example of US law enforcement aggressively targeting leftwing demonstrators and favoring members of the far-right after violent clashes. In another California case, police have worked directly with neo-Nazis to go after counter-protesters, including a black activist stabbed at a white supremacist rally.

"This makes a pretty clear statement of choosing sides," Dustin Sawtelle, one of the anti-fascist defendants, said in an interview this week before the trial began. "We figured maybe they were trying to use charges as a scare tactic ... It feels like they have to prosecute somebody."

At the trial in a crowded Oakland courtroom, defense attorneys argued that local police were tolerant of the pro-Trump violence on 4 March last year, that Quillinan was an armed aggressor and fascist provocateur, and that prosecutors lacked basic evidence about the alleged assault. The prosecutor, along with several police witnesses, argued that the men were observed attacking Quillinan with punches and kicks during a short confrontation outside of the rally.

The event, billed as a "March for Trump" and "free speech" event, attracted interest from members of the alt-right and was linked to the Proud Boys, a far-right pro-Trump group of self-proclaimed "western chauvinists" that has been classified by watchdogs as a hate organization. Quillinan arrived at the rally wearing a red Trump hat, and a shirt referencing the Chilean dictator General Pinochet and a far-right meme with the words "physical removal", which he said in court referred to the removal of "communists and Democrats".

Quillinan testified that he was "conservative" and pro-Trump, but said he was not "alt-right" nor a white nationalist and alleged that his shirt and online posts referencing fascism were "jokes". The audience of anti-fascists supporting the defendants, who some have called the "Berkeley 5", groaned loudly when the prosecutor described the rally as a "free speech" event.

Police video showed that when Quillinan arrived, an officer noted he had a knife, but said he could "keep it", despite a local ordinance restricting the carrying of "dangerous weapons", said the defense attorney, Shanta Driver.

Quillinan said in court that he brought the knife as a "deterrent" and the wooden board he carried like a shield was a "poster". On cross examination, he admitted he might have hit someone with the board "by accident" and also said he had used his pole to try to break up fights and struck two people.

Law enforcement is aware of Quillinan's use of the pole as a weapon. Prosecutor James Logan wrote that Quillinan admitted "he swung his flagpole" and at one point struck a man in the head. Quillinan said he offered to give the man money after he realized he was conservative.

When the alleged attack by the five defendants occurred, Quillinan was receiving medical aid for a head injury. Quillinan and Jesse Grant, a police officer who was nearby, testified that the anti-fascists were walking by when one kicked Quillinan and then others started punching and kicking. The defense, however, said Quillinan tripped one of the men and then hit him with his shield. Both sides said the interaction was brief.

Sergeant Grant testified that he couldn't specify the exact actions of several of the defendants, saying it was a "scrum" and "arms and legs were flying". A fire captain present during the incident testified that he couldn't recognize or identify the defendants seated in the courtroom.

Quillinan had also originally said one of his attackers had "red hair", which does not match any of the defendants. Asked about this discrepancy in court, he said: "I may have misremembered."

In an interview with Quillinan the day of the incident, Grant raised the idea of charges, according to a recording, saying: "The people who attacked you – do you want them to go to jail?"

"Very much so," Quillinan replied.

Jeff Armstrong, another defendant, told the Guardian that he showed up to the march to help protect people from rightwing violence: "We went to do medical aid for people and also to defend people who can't defend themselves."

Police and prosecutors declined to comment. Quillinan, who was ordered not to speak about the case while the trial is ongoing, could not be reached.

It's unclear if any rightwing demonstrators faced assault charges for the 4 March fight. Chapman, the rightwing activist, was charged with possession of a leaded stick in a case that is still pending.

Even if the five anti-fascist protesters are acquitted, the case that has dragged on for more than a year has already impacted their lives, said Sawtelle, a 41-year-old tattoo artist and martial arts teacher. He said his personal information was posted online, leading to threats, and that he lost a job as a result of the charges. He said he has also been forced to be more cautious about his activism and participation in protests.

"I think that's part of the tactic – to get people away from these things," he said, adding: "I don't plan on quieting down."

https://www.theguardian.com/world/2018/may/25/neo-nazi-rally-california-stabbing-police-target-black-activist

# Stabbed at a neo-Nazi rally, called a criminal: how police targeted a black activist

**Exclusive:** records show police surveilled and tried to charge a citizen journalist attacked at a California rally. Does it fit a pattern of punishing black protesters?

Sam Levin in Oakland
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Fri 25 May 2018 05.00 EDT

Cedric O'Bannon tried to ignore the sharp pain in his side and continue filming. The independent journalist, who was documenting a white supremacist rally in Sacramento, said he wanted to capture the neo-Nazi violence against counter-protesters with his GoPro camera.

But the pain soon became overwhelming. He lifted up his blood-soaked shirt and realized that one of the men carrying a pole with a blade on the end of it had stabbed him in the stomach, puncturing him nearly two inches deep. He limped his way to an ambulance.

But the police did not treat O'Bannon like a victim. Records obtained by the Guardian reveal that officers instead monitored his Facebook page and sought to bring six charges against him, including conspiracy, rioting, assault and unlawful assembly. His presence at the protest – along with his use of the black power fist and "social media posts expressing his ideals" – were proof that he had violated the rights of neo-Nazis at the 26 June 2016 protests, police wrote in a report.

None of the white supremacists have been charged for stabbing O'Bannon.

"The judicial system is supposed to find the people who attack me, and they come after me with all these crazy charges," O'Bannon said in a recent interview in Oakland, where he lives. "It's outrageous."

O'Bannon's case is the latest example of police in the US targeting leftwing activists, anti-Trump protesters and black Americans for surveillance and prosecution over their demonstrations and online posts. At the same time, critics say, they are failing to hold neo-Nazis responsible for physical violence.

After the attacks at the California capital, which left at least 10 people injured, police investigators expressed sympathy with the white supremacists and worked with them in an effort to target "anti-racist" demonstrators for charges, the Guardian reported in February. Though nearly all the victims were counter-protesters, prosecutors have brought criminal cases against three anti-fascist activists. Only one member of the Traditionalist Workers party (TWP), the neo-Nazi group behind the rally, is facing charges.

O'Bannon, 47, arrived early to the state capitol grounds the morning of the rally. The father of three, who grew up in northern California, has long been involved in activist groups fighting police brutality and said he wanted to be in a good position to document the events.

Chaos and violence quickly erupted. The neo-Nazis were the aggressors, O'Bannon recalled: "It was clear who was trying to attack me and who was trying to defend me." Police later identified at least seven TWP men who were armed with knives.

One white supremacist with a long pole broke O'Bannon's camera rig, knocking his GoPro to the ground, he said, adding that when he went to pick up his equipment from the ground, that was when he was speared on the right side of his body.

Police, he alleged, did little to protect him and others from the stabbings: "They let this battle go down."

O'Bannon was soon rushed to a hospital, where he became worried that police would confiscate his footage, which could aid in revealing his perpetrator. When he awoke after surgery, his memory card was gone. Police left a note saying they had seized it as evidence.

When he eventually got his property back, he said, the card was empty, leading him to suspect police wiped it. Police denied erasing the footage.

But O'Bannon, who spent two weeks in the hospital, soon had other reasons to be suspicious of the police. When the California Highway Patrol (CHP) investigator Donovan Ayres called him months later as part of the investigation, the officer asked a series of questions about the anti-fascist activists and their supporters – and seemed much less interested in O'Bannon's attack.

After O'Bannon provided a detailed account of the moment he was stabbed, Ayres interjected and said, "Hey, what's your impression of Yvette Felarca?" according to a police recording of the call. Felarca was one of the anti-fascist activists who was also stabbed, but ultimately charged with assault based on Ayres' investigation.

At one point on the call, Ayres said the TWP men had likely stabbed O'Bannon because they thought his camera rig was a weapon: "I kind of get why they may have perceived you as a threat."

The investigator also asked O'Bannon to encourage anti-fascist activists to talk to the police and inquired about upcoming protests.

The call sharply contrasted with the tone of CHP's communications with a TWP member when officers said officers told the neo-Nazi, "We're pretty much going after [anti-fascists]", and assured him, "We're looking at you as a victim."

**'Empowering groups that kill'**

In his 26-minute call with O'Bannon, Officer Ayres did not ask him to comment on the many allegations he would later put in his report to prosecutors recommending a litany of charges.

Ayres' report did not provide any evidence or even specific claims of O'Bannon committing acts of violence, but said he was "amongst the protesters" who allegedly attacked two local television reporters.

While repeatedly admitting that O'Bannon was filming the protests, the CHP report argued that he should still be charged with a range of serious offenses since he was standing in the area and "knew violence and criminal activity would be eminent".

Ayres' also noted O'Bannon's history of activism, saying he "routinely attended protests and other controversial events as a journalist". The officer claimed that one video showed O'Bannon "working in concert" with activists to "assault and falsely imprison" a Trump supporter outside a GOP event. The footage, however, simply showed O'Bannon and a group of journalists filming as protesters yelled at the Trump fan walking down the street.

Ayres further used numerous Facebook photos of O'Bannon raising a black power fist alongside two other black men stabbed in Sacramento to argue that the images revealed their "support for anti-racist activism" and motives to impede the rights of Nazis.

"It's this white nationalist sentiment of trying to make it out like I'm a 'black extremist'," said O'Bannon, who was ultimately not charged. Noting the US government's secretive efforts to monitor black activists, O'Bannon said he believed a white journalist would not have faced the same scrutiny.

The CHP declined to comment. Prosecutors have previously argued that there was no bias in the investigation. Ayres did not respond to a request for comment on Thursday.

Michael German, a former FBI agent, said the Sacramento case was part of a pattern of police in the US siding with far-right groups and targeting their critics. "They have been trained to look into these counter-protesters as if they are the primary threat."

Statistics, noted German, who is a fellow with the Brennan Center for Justice's liberty and national security program, show that white supremacists are a danger, adding that this strategy "seems to give state sanctions to these groups that are hyper violent … empowering groups that kill."

In Charlottesville, a black man beaten by white supremacists was charged with a felony, and leftwing activists who protested at Standing Rock and at Trump's inauguration continue to face aggressive prosecutions years later.

O'Bannon, who has large scars on his stomach from the knife wound and the surgery, said his concerns that police were still targeting him would not prevent him from telling his story.

"We have to expose these things ... before it gets worse," he said, adding: "I'm 100% committed to speaking out against police terror, because I have that first amendment right."

PRC "Guiding Principles" for BPD and BPA Relations

The Berkeley Police Review Commission (PRC) was established in order to strengthen trust between the BPD and BPA and Berkeley community, and provide a level of accountability. The PRC would like to emphasize our role in collaboration with the Department to reach this shared goal of trust. The PRC adopts these "Guiding Principles" as a way of strengthening support between the Berkeley Police Department, Berkeley Police Association, and the PRC. We hope that by abiding by these principles, we can create an environment of mutual respect, which will further our ability to collaborate in an efficient and effective manner.

In order to strengthen the relationship between the BPD and BPA and PRC, the commissioners will:

- Make every effort to ask for Department and Association input during discussions on items that affect Department policies and practices.
- Attend community and Department events that the Chief invites the commissioners to.
- Participate in ride-alongs and Department tours when able.
- Support the Department in staffing (and other issues that may arise) by reaching out to community networks (to the extent applicable).
- Establish formats to open up consistent dialogue with BPD and BPA administration.
- Process commendations and recommendations in a timely manner.
- During the Chief's report commissioner's keep their inquiry limited to questions only.
- When relevant, acknowledge the hard work of the BPD and BPA, and their many achievements.
- Work hard to establish an atmosphere of respect between the BPD and BPA and commissioners.

It is the Commission's hope that these principles will be followed in a way that promotes a better two-sided relationship between the PRC and Department/ BPA and increases trust between the BPD and broader community. We adopt these principles with the understanding that a strong relationship between these entities is mutually beneficial to both our shared and individual goals.