



FOR IMMEDIATE RELEASE

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INDEPENDENT INVESTIGATION REGARDING RECENT OFFICER-INVOLVED SHOOTING BY BERKELEY POLICE DEPARTMENT TO BE CONDUCTED BY THE CITY'S POLICE ACCOUNTABILITY OFFICE

Berkeley, CA - The Office of the Director of Police Accountability (ODPA) and the Police Accountability Board (PAB) have announced that they will be conducting an independent investigation into the November 6th, 2023 Berkeley Police Department (BPD) Officer Officer-Involved Shooting (OIS) incident, which took place on Grayson and 7th Street.

While it is not the usual practice or policy of the ODPA and PAB to comment on personnel-related matters, these entities recognize the paramount importance of transparency within legally permissible boundaries. Effective January 1, 2019, California Senate Bill 1421 (SB1421) amended Cal. Penal Code Section 832.7 and grants public access to specific peace officer personnel records under certain circumstances.

SB1421 authorizes access to records related to incidents where an officer fired a gun at a person, used force resulting in serious injury or death, committed sexual assault against a member of the public, or engaged in dishonesty related to investigations, reporting, or prosecution. Currently, there are at least two ongoing independent investigations, with a third set to commence soon:

- **Criminal Investigation by the Alameda County District Attorney's Office:** To determine whether the actions of the involved officers were criminal in nature.
- **Administrative Investigation by Berkeley Police Department Internal Affairs Bureau (IAB):** To evaluate any potential violations of Departmental policies by the officers involved.
- **Additional Administrative Investigation by ODPA/PAB:** To assess potential policy violations by the officers involved (independent of the IAB investigation and after the criminal investigation is completed).

As outlined in the Interim Regulations for Handling Complaints Against Sworn Officers, the ODPA refrains from commencing an investigation when the complainant or subject officer is involved in concurrent criminal proceedings. Presently, the ODPA has initiated contact with the Alameda County District Attorney's Office Public Accountability Unit (PAU), confirming an ongoing investigation. The ODPA will closely monitor the progress of this investigation with the PAU and wait until its conclusion, as required by the Interim Regulations, so that it can commence its independent investigation.

Section 125(14)(f) of the City Charter mandates the ODPA to ensure a timely, thorough, complete, objective, and fair investigation. Within sixty (60) days of completing the investigation (which will commence after any criminal proceedings), the ODPA will present findings to the Police Accountability Board. A confidential personnel hearing may be convened if warranted. The Director of Police Accountability will provide the Board with all evidence and documentation gathered during the investigation for review.

The investigation will consider the BPD Law Enforcement Manual, and local, state, and federal laws pertinent to the allegations. The investigations will scrutinize BPD policies, including Policy 300 - Use of Force and Policy 425 - Body Worn Cameras, among others. Constitutional standards set by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989) and state standards under Cal. Penal Code Section 835(a) are the floor or merely set the minimum standard for police conduct, but BPD Policy 300 mandates that officers' actions must exceed the minimum constitutional standards and state laws. It requires officers to act in a manner that safeguards the life, dignity, and liberty of all community members.

Policy 425 outlines guidelines for the use of portable Body-worn cameras (BWCs) by BPD members during their duties. It recognizes that video recording of interactions between officers and the public provides an objective record, enhancing transparency, professionalism, and safety.

In determining officer misconduct, the ODPa and the Board will apply the "preponderance of evidence" standard, ensuring fair, unbiased, and evidence-based decisions. According to the California Judicial Council of California, Civil Jury Instructions, 2023 Edition "Preponderance of the evidence" means that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed.

The ODPa and PAB remain committed to upholding the highest standards of transparency and accountability while ensuring a thorough investigation into this matter. We encourage members of the public with knowledge about the incident to come forward and share information with the investigative bodies. Your information holds significant value in ensuring a comprehensive investigation into this matter.

Next Meeting:

The PAB is expected to hold a regular Meeting on Wednesday, December 6, 2023, at 6:30 pm at the North Berkeley Senior Center 1901 Hearst Avenue Berkeley, CA 94709, and via Zoom. At this final meeting of the calendar year, the Board will consider other pre-planned agenda matters unrelated to this OIS incident. Interested parties can attend the meeting in person or by accessing the Zoom webinar link: <https://us02web.zoom.us/j/82136328053>

About the Police Accountability Board (PAB):

The purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

About the Office of the Director of Police Accountability (ODPA):

The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts, and to recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assist the Board in carrying out the duties prescribed herein.

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