Police Review Commission (PRC)

POLICE REVIEW COMMISSION
REGULAR MEETING
THURSDAY, May 13, 2021, 7:00 P.M.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting of the City of Berkeley Police Review Commission will be conducted exclusively through teleconference and Zoom videoconference and there will not be a physical meeting location available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: https://us02web.zoom.us/j/87070468124. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **870 7046 8124**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

1. **CALL TO ORDER & ROLL CALL** (5 minutes)

2. **APPROVAL OF AGENDA** (5 minutes)

3. **PUBLIC COMMENT** (time TBD)

   (Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the PRC's jurisdiction at this time.)

4. **APPROVAL OF MINUTES** (5 minutes)

   Regular meeting of April 28, 2021.
   (To be delivered.)

The Police Review Commission (PRC) was created to provide independent civilian oversight of the Berkeley Police Department. It reviews and makes recommendations on police department policies, and investigates complaints made by members of the public against police officers. For more information, contact the PRC Office.

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Email: prc@cityofberkeley.info Website: www.cityofberkeley.info/prc/

5. **CHAIR'S REPORT**

   Report from Chair. (5 minutes)

   Update from Comm. Mizell on Reimagining Public Safety Task Force. (2 minutes)

6. **PRC OFFICER'S REPORT** (3 minutes)

   Status of complaints; other items.

7. **CHIEF OF POLICE'S REPORT** (10 minutes)

   Crime, budget, staffing, training updates, other items.

8. **SUBCOMMITTEE REPORTS (discussion and action)** (10 minutes)

   Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

   a. Outreach Subcommittee.

   b. Lexipol Policies Subcommittee – next meeting May 14 at 11:00 a.m.

   c. Warrant Service Policy Subcommittee – dissolve.

9. **OLD BUSINESS (discussion and action)**

   a. Consider draft Policy 606, Warrant Service. (15 minutes)

   b. Review Police Department issues in implementing of Policy 300, Use of Force, particularly regarding what constitutes a Level 1 UOF, and staff time needed for reporting UOF incidents. (20 minutes)
   (Policy 300 in March 24, 2021 agenda packet, p. 19; other materials to be delivered)

   c. Whether to participate in a scenario-based use-of-force training offered by the Police Department. (5 minutes)

   d. Whether Commissioners may be allowed to observe police officers being trained and, if not, whether to take further action. (10 minutes)

   e. Update on transition to new Police Accountability Board and Office of Director of Police Accountability. (10 minutes)

10. **NEW BUSINESS (discussion and action)**

    a. Consider making recommendations to the new Police Accountability Board about improving the process for handling complaints against officers. (10 minutes)
    (From: Commissioner Leftwich)

b. Discuss vaccination status of sworn officers of the Berkeley Police Department. (5 minutes)
(From: Chair Ramsey)

c. Lexipol policies for review and approval. (15 minutes)

Lexipol	G.O.	Title
324	P-29	Media Relations
403	C-52	Crime and Disaster Scene Integrity and Investigation
804	R-23	Records Maintenance and Release

From: Lexipol Subcommittee

d. Extent of hate crimes tracking in the City of Berkeley. (5 minutes)
From: Commissioner Chang

11. PUBLIC COMMENT (time TBD)

(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.)

12. ADJOURNMENT (1 minute)

Communications Disclaimer
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Communication Access Information (A.R. 1.12)
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.

SB 343 Disclaimer
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public by being posted on the Police Review Commission's web page within three business days of the meeting.

Contact the Police Review Commission at prc@cityofberkeley.info.

PRC REGULAR MEETING ATTACHMENTS
MAY 13, 2021

MINUTES	
April 28, 2021 Regular Meeting Draft Minutes. (To be delivered.)	
AGENDA-RELATED	
Item 8. – PRC Subcommittees List, updated 4-15-21.	Page 7
Item 9.b. – BPD Blue Team sample Use of Force Report.	Page 9
Item 9.e. – Presentation to Budget & Finance Committee of the Office of the Director of Police Accountability Budget, Fiscal Year 2022.	Page 13
Item 9.e. – Budget Preparation Worksheet FY-2022 – ODPA.	Page 19
Item 10.b. – 5-2-2021 Article from www.washingtonpost.com re Many police officers spurn coronavirus vaccines as departments hold off on mandates.	Page 21
Item 10.b. – 5-3-2021 email re Link to EEOC publication re COVID-19 and ADA and other EEO laws.	Page 27
Item 10.c. – BPD Policy 324: Media Relations.	Page 29
Item 10.c. – BPD General Order P-29: Public / Media Relations, issued 8-17-09.	Page 37
Item 10.c. – BPD Policy 403: Crime and Disaster Scene Integrity and Investigation.	Page 47
Item 10.c. – BPD General Order C-52: Crime Scene Management and Investigation, issued 3-15-00.	Page 51
Item 10.c. – BPD Policy 804: Records Maintenance and Release.	Page 59
Item 10.c. – BPD Policy 804 (Attachment): Guidelines for Release of Reports and Information Therein.	Page 71
Item 10.c. – BPD General Order R-23: Release of Public Records and Information, issued 11-2-09. (And attachment.)	Page 87
Item 9.a. – Draft Policy 606 from BPD. (To be delivered.)	
COMMUNICATIONS	
(None.)	

POLICE REVIEW COMMISSION SUBCOMMITTEES LIST Updated 4-15-21			
Subcommittee	**Commissioners**	**Chair**	**BPD Reps**
Lexipol Policies Formed 5-23-18 Renewed 5-22-19 Renewed 6-10-20	Juliet Leftwich Elisa Mikiten George Perezvelez Ismail Ramsey	Mikiten	Capt. Rico Rolleri Sgt. Joseph LeDoux
Outreach Formed 6-10-20	Gwen Allamby Kitty Calavita Elisa Mikiten Nathan Mizell **Public** George Lippman Hector Malvido	Calavita Mikiten	
Warrant Service Policy Formed 10-14-2020	Kitty Calavita Michael Chang Hans Moore Ismail Ramsey **Public** Kitt Saginor	Ramsey	Lt. Daniel Montgomery Lt. Melanie Turner

Berkeley Police Department
Use Of Force Report

From Chief Lovis
4.28.2021

Print

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
04/15/2021	04/01/2021	01:23
Record ID Number	**Case #**	**File #**
1206	2021-0001234	
Date/Time Entered	**Entered By**	
03/08/2021 09:20	Police Sergeant Rashawn Cummings	

Incident Summary

This Use of Force reported was created for demonstration purposes. A summary of the incident would appear here.

Incident Location

Addresses

Latitude, Longitude = [37.86961, -122.27337]
2100 Martin Luther King Jr Way, Berkeley, CA, 94704

- Location of Occurrence: Beat 01

Use of Force Details

Reason For Using Force	Service Being Rendered	More Than 1 Citizen Involved
Assault on Officer	CFS	No
Weather Condition	**Light Condition**	**Distance to Citizen**
Clear	Dark	1 feet to 3 feet
Citizen Injured	**Citizen Hospitalized**	**Citizen Arrested**
Yes	No	Yes
Citizen Build	**Citizen Height**	**Citizen Influence Assessment**
Large	6'1" to 6'3"	
Employee(s) Injured	**Employee(s) Taken to Hospital**	
Yes	No	

Crisis Details

Nature of Crisis
- Unknown

Crisis Behaviors
- Disorganized speech / communication
- Belligerant / uncooperative behavior
- Bizarre, unusual behavior
- Disorderly / disruptive behavior

Force/Violence
- Citizen brandished knife

Techniques
- Wrap

- Spit Hood
- At least one attending officer was CIT certified
- Certified crisis intervention officer arrived on-scene
- Handcuffs

Final Disposition

- Arrested
- Resources offered / declined
- MCT (Mobile crisis team)

Reporting/Involved Citizen

John Doe

Date of Birth: 02/02/1987 **Race:** White **Ethnicity:** Unknown **Gender:** Male

Addresses

, Berkeley, CA, 94702

Phone Numbers [None Entered]
Role: Arrested

Additional Snapshot Data

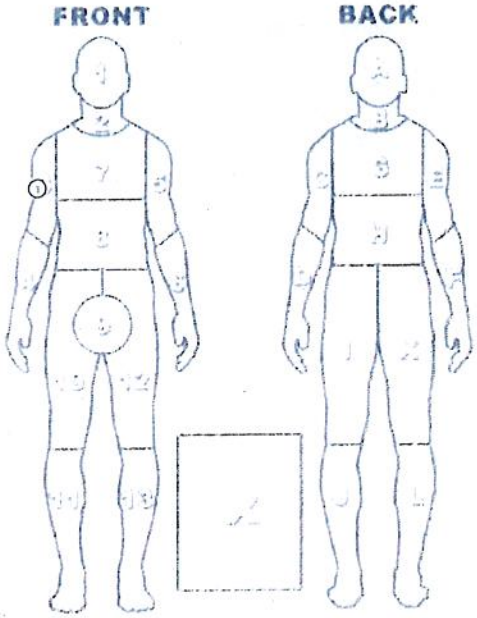
Homeless at time of involvement	Perceived Limited English	Primary Language
Unk	No	[None Entered]
Sexual Orientation	**Gender Expression**	**Experiencing Mental Crisis (Officer Assessment)**
Unknown	Unknown	Unk
Experiencing Mental Crisis (Self Reported)	**Armed at Time of Incident**	
No	Yes	

Type of Resistance Citizen Used Against Employee

- Fleeing
- Combative

Injuries Sustained By Citizen

Injury	Region	Injury Location
Minor	3	1



Charges Against Citizen

- Felony
- Misdemeanor

Incident Employees

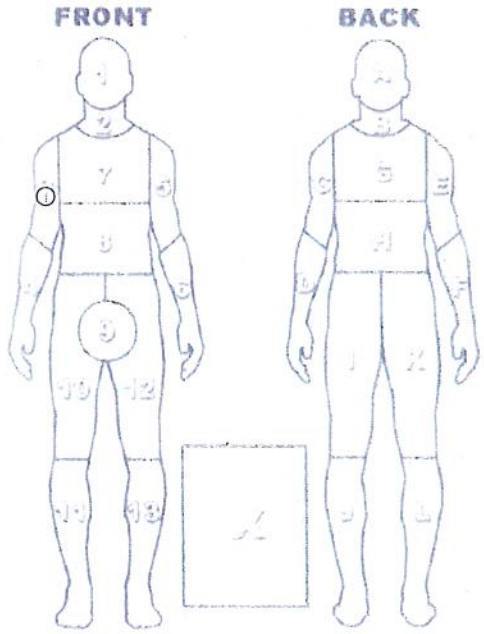
Police Sergeant Rashawn Cummings - 07407

Assignment at time of incident: Police Sergeant Office Of The Chief/Internal Affairs/ **Video Footage:** BWC
Role: Primary Assigned Unit

Force used by this Employee against Citizen
- Control Hold - Force Effective: Yes

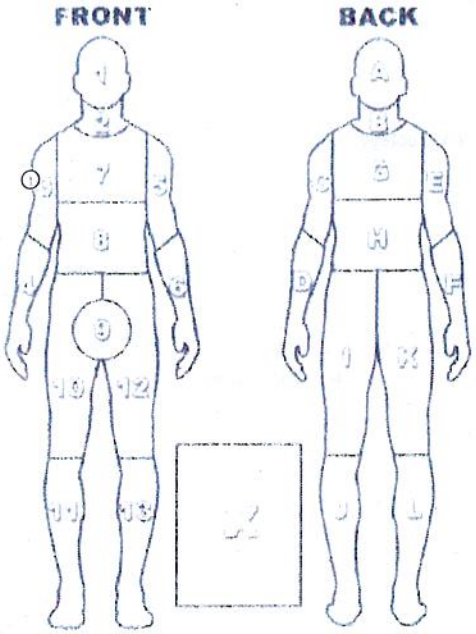
Less lethal force used by this Employee against Citizen

Force Used	Force Effective	Region	Point of Contact
Control Hold	Yes	3	1



Injuries Sustained By Employee

Injury	Region	Injury Location
Minor	3	1



Citizen Witnesses

Jane Doe

Date of Birth: Unknown **Race:** White **Ethnicity:** Unknown **Gender:** Female
Role: Witness
Addresses [None Entered]
Phone Numbers [None Entered]

Employee Witnesses

Police Sergeant Jumaane Jones - 08174

Assignment at time of incident: Police Sergeant Operations/Patrol/
Video Footage: BWC
Role: Cover Officer

Tasks

No tasks to show

Running Sheet Entries

No running sheet entries to show

Attachments

No Attachments

Assignment History

No assignment history

Chain of Command History

Author Signature Line

_____

Police Sergeant Rashawn Cummings

Presentation to Budget & Finance Committee

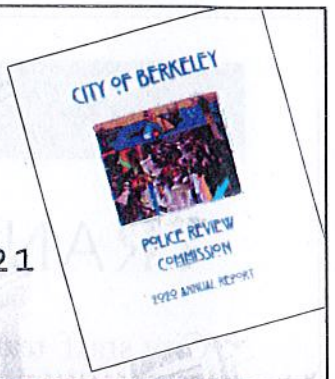
BUDGET

Fiscal Year 2022

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

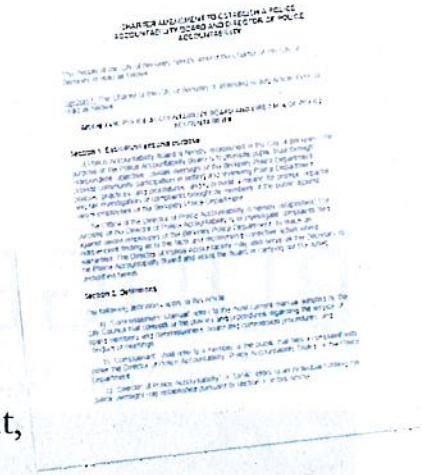
ACCOMPLISHMENTS – POLICE REVIEW COMMISSION FY2021



- Use of Force Policy
- Controlled Equipment Ordinance
- 3 Commissioners on Mayor's Working Group on Fair & Impartial Policing
- PRC representative to Reimagining Public Safety Task Force

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

OVERVIEW



- Results from Measure II (adopted November 2020)
- Promotes public trust through independent, objective civilian oversight of the Police Department
- Independent of the City Manager
- Operational on or about July 1, 2021

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

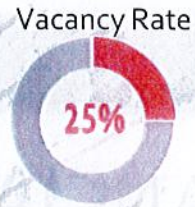
TRANSITION

- City staff team effort
  - New Board member application process
  - Recruitment for Director
  - New relationship with Police Department
- PRC webinar about applying to Board
- Community involvement

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

STAFFING

4 FTE



OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

STRATEGIC PLAN

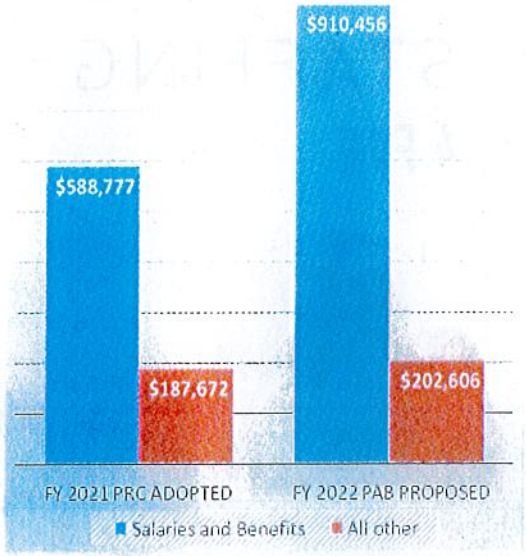
4 New Projects, including:

Title	New/ Continuing	Estimated Budget
Fair & Impartial Policing Recommendations – help implement and monitor	New	Staff time
Police Accountability Board Member Training	New	Staff time
Police Accountability Board Policy and Regulation Development	New	Staff time
Outreach	New	Approx. $1,500, plus staff time

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

FINANCIALS

- 100% General Fund.
- FY2022 proposed budget is **$1.113 million.**



OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

NEW MANDATES

- Establishing Police Accountability Board policies, procedures, and regulations
- Developing and implementing training
- Performing community outreach
- Establishing relationships with the Police Department and the Berkeley Police Association

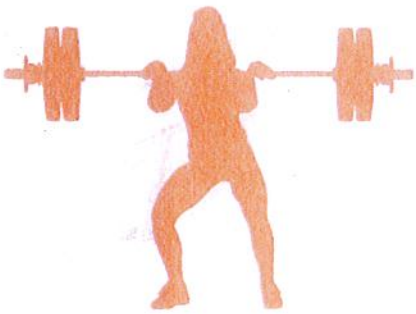
OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

CHALLENGES

- Participating in current city initiatives while implementing a new oversight model
- Redefining duties and responsibilities of the current Police Review Officer position

OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

QUESTIONS?



BUDGET PREPARATION WORKSHEET

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	FY 2021 ADOPTED	FY 2022 BASE BUDGET	FY 2022 DEPT BASELINE
POLICE ACCOUNTABILITY				
POLICE ACCOUNTABILITY				
OFF OF DIR POLIC ACCOUNT				
010-1301-410.11-01	MONTHLY RATED EMPLOYEES	0	363,673	577,205
*	PERSONAL SVCS-SAL & WAGES	0	363,673	577,205
010-1301-410.20-11	MEDICAL INSURANCE	0	46,841	58,551
010-1301-410.20-12	DENTAL INSURANCE	0	5,940	8,086
010-1301-410.20-13	LIFE INSURANCE	0	85	113
010-1301-410.20-31	PERS/MISC OTHER	0	134,888	208,222
010-1301-410.20-36	SRIP	0	7,130	9,671
010-1301-410.20-40	MEDICARE TAX	0	4,801	7,897
010-1301-410.20-63	MISC. EMP MEDICAL TRUSTS	0	6,354	10,625
010-1301-410.20-71	WORKERS COMPENSATION CHAR	0	4,509	7,157
010-1301-410.20-87	TERMINAL PAYOUTS-MISC.EMP	0	6,788	10,845
010-1301-410.20-90	OTHER EMPLOYEE BENEFITS	0	7,288	11,644
010-1301-410.20-91	COMMUTER CHECK	0	480	480
*	PERSONAL SVCS-EMP FB	0	225,104	333,291
010-1301-410.30-12	STIPENDS	0	400	40,800
010-1301-410.30-38	MISC PROF SVCS	0	4,897	26,578
010-1301-410.30-42	OFFICE EQUIP MTC SVCS	0	500	500
010-1301-410.30-47	COMPUTER SOFTWARE/LIC MTC	0	0	678
*	PURCHASED PROF & TECH SVC	0	5,797	68,556
010-1301-410.40-10	PROFESSIONAL DUES AND FEE	0	400	400
010-1301-410.40-31	TELEPHONES	0	1,261	1,261
010-1301-410.40-50	PRINTING AND BINDING	0	200	1,700
010-1301-410.40-61	COMMERCIAL TRAVEL	0	750	2,350
010-1301-410.40-62	MEALS & LODGING	0	1,771	4,271
010-1301-410.40-63	REGISTRATION/ADMIN FEES	0	950	4,500
010-1301-410.40-64	TRANSPORTATION	0	100	0
010-1301-410.40-80	BOOKS AND PUBLICATIONS	0	2,600	5,100
*	OTHER PURCHASED SERVICES	0	8,032	19,582
010-1301-410.50-10	RENTAL OF LAND/BUILDINGS	0	5,000	5,397
010-1301-410.50-30	RENTAL OF OFF EQUIP & FUR	0	4,600	20,842

* RENTALS/LEASE	0	9,600	26,239
010-1301-410.51-10 POSTAGE	0	1,100	2,100
* MAIL SERVICES	0	1,100	2,100
010-1301-410.55-11 OFFICE SUPPLIES	0	2,050	5,639
010-1301-410.55-50 FOOD	0	200	400
* SUPPLIES	0	2,250	6,039
010-1301-410.71-10 SMALL EQUIPMENT	0	500	1,500
* PROPERTY UNDER CAP LIMIT	0	500	1,500

PREPARED 04/09/21, 17:32:53 BUDGET PREPARATION WORKSHEET
PAGE 2
PRDETDEP

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	FY 2021 ADOPTED	FY 2022 BASE BUDGET	FY 2022 DEPT BASELINE
010-1301-410.75-11	1947 CENTER ST. FAC MTC	0	139,264	53,456
010-1301-410.75-25	TECH COST ALLOCATION FUND	0	18,606	18,606
010-1301-410.75-35	MAIL SERVICES	0	3,528	3,528
010-1301-410.75-60	CITY PARKING PERMITS	0	500	3,000
*	INTERNAL SERVICES	0	161,898	78,590
**	GENERAL FUND DISCRETIONAR	0	777,954	1,113,102
***	OFF OF DIR POLIC ACCOUNT	0	777,954	1,113,102
****	POLICE ACCOUNTABILITY	0	777,954	1,113,102
*****	POLICE ACCOUNTABILITY	0	777,954	1,113,102

PREPARED 04/09/21, 17:32:53 BUDGET PREPARATION WORKSHEET
PAGE 3
PRDETDEP

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	FY 2021 ADOPTED	FY 2022 BASE BUDGET	FY 2022 DEPT BASELINE
		0	777,954	1,113,102

https://www.washingtonpost.com/health/2021/05/02/police-low-vaccination-rates-safety-concerns/

Many police officers spurn coronavirus vaccines as departments hold off on mandates
Low immunization levels suggest hesitancy is pervasive, posing risks to public safety
Isaac Stanley-Becker, Washington Post
May 2, 2021

Police officers were among the first front-line workers to gain priority access to coronavirus vaccines. But their vaccination rates are lower than or about the same as those of the general public, according to data made available by some of the nation's largest law enforcement agencies.

The reluctance of police to get the shots threatens not just their own health, but also the safety of people they're responsible for guarding, monitoring and patrolling, experts say.

At the Las Vegas Metropolitan Police Department, just 39 percent of employees have gotten at least one dose, officials said, compared to more than 50 percent of eligible adults nationwide. In Atlanta, 36 percent of sworn officers have been vaccinated. And a mere 28 percent of those employed by the Columbus Division of Police — Ohio's largest police department — report having received a shot.

"I think it's unacceptable," Joe Lombardo, the head of Las Vegas police and sheriff of Clark County, said of the meager demand for the shots within his force.

The numbers paint a troubling picture of policing and public health. Because officers have high rates of diabetes, heart disease and other conditions, their hesitancy puts them at greater risk of serious illness from the coronavirus while also undermining force readiness, experts said. Police officers were more likely to die of covid-19 last year than of all other causes combined, according to data compiled by the National Law Enforcement Officers Memorial Fund.

Police hesitancy also means officers may be vectors of spread to vulnerable people with whom they interact during traffic stops, calls for service and other high-contact encounters. That could thwart efforts to restore community trust in a moment of heightened scrutiny after last month's conviction of ex-officer Derek Chauvin in the killing of George Floyd.

"Police touch people," said Sharona Hoffman, a professor of law and bioethics at Case Western Reserve University. "Imagine having a child in the car who's not vaccinated. People would want to know if a police officer coming to their window is protected."

Police ambivalence about immunization finds a parallel among other front-line workers. Just 52 percent of health-care workers surveyed by The Washington Post and the Kaiser Family Foundation between Feb. 11 and March 7 said they had received at least one dose.

One solution is for departments to make vaccination compulsory, according to experts in bioethics and public health, just as some health-care settings and institutions of higher education have begun doing.

But department leaders and union officials said in interviews that such requirements could backfire or lead to lengthy litigation. Of more than 40 major metropolitan police departments contacted by The Post, none had made vaccination compulsory for employees.

That reflects a belief among officers — and their unions — that getting a shot is a private decision.

"I hate to sound like I don't care, but I really don't," Vince Champion, the Atlanta-based southeast regional director of the International Brotherhood of Police Officers, said of low vaccination rates. "It's a personal decision. We fight [the virus] every day. We're out among every disease in the world."

Authorities in roughly half the departments, from Philadelphia to Houston to San Francisco, were not even tracking how many of their officers were protected. That baffled Chris Cosgriff, executive director of the Officer Down Memorial Page, which honors law enforcement officers killed in the line of duty.

Commanders should know whether officers are vulnerable to "getting sick and potentially dying," he said. "It's a readiness issue."

Reluctance rooted in common concerns

Hesitancy within police departments is rooted in some of the same concerns expressed by the general public, according to police chiefs, union officials and experts in policing and public health.

Officers have voiced unease about the novelty of the shots and the speed with which they were developed, along with confidence that they can avoid the virus with proper protective gear. The vast majority of police are men, who are less likely than women to be immunized.

Many officers also reject immunization because they think previous covid-19 infections have given them immunity, said Sean Smoot, director and chief legal counsel of the Police Benevolent and Protective Association of Illinois. That assumption runs counter to federal health guidance, which indicates that recovered people should be vaccinated because the duration of post-infection protection is unknown.

Some of the differences in police uptake of the vaccine reflect disparities among the communities they serve. Hawaii, where 80 percent of officers in Honolulu have received at least one dose, has administered more doses per capita than all but four states, and the Democratic governor, David Ige, has moved forward with plans for certifications known as vaccine passports, a cousin of vaccine mandates. A greater proportion of residents in Denver County are vaccinated than in, for example, Clark County, which includes Las Vegas, or Fulton County, which includes Atlanta.

Smaller cities report even lower rates of police vaccination. Just 20 percent of officers in Mobile, Ala., have been vaccinated, said the city's public safety director, Lawrence Battiste. Some may have gotten their shots without the help of the city, he said, and therefore have gone untracked.

But many are young, he said, and think the vaccines may be linked to infertility, an idea spread on social media that experts say has no basis in fact.

Amid such concerns, a few police departments stand out for their success.

In Denver, the police chief joined hands with the president of the city's police union in July to enroll in a clinical trial of Moderna's vaccine at UC Health, along with more than a dozen officers. The chief, Paul Pazen, received the placebo but got the real thing in the early days of the vaccine rollout in December, when police gained priority access along with other emergency workers.

Between clinics run at the city's crime lab and at a sheriff's department training facility, 69 percent of Denver's Public Safety Department has been vaccinated, Pazen said. That's among the highest rates disclosed by departments contacted by The Post.

"That's not an accident," the chief said. By the time those vaccine clinics opened, he said, his officers had learned about mRNA — the technology behind the Moderna and Pfizer-BioNTech vaccines — and seen a video of the union president discussing his experience in the trial. "I would do it again," the union president, Nick Rogers, says in the video, which was provided to The Post.

Pazen thinks too many departments waited to urge staff to get immunized. "Other places are struggling," he said.

Some cities are turning to incentives to boost participation. The Phoenix Police Department is offering a one-time $75 vaccine safety award to employees who get protected. But only 919 employees, out of 3,982 total, have submitted a completed vaccine card to receive the rewards, said a city spokesman, Dan Wilson.

Other places are using inducements of other kinds. To spur interest in the vaccines, Lombardo, the chief in Las Vegas, revoked a policy at the beginning of April that had treated all covid-19 infections as work-related. Now officers must use their own sick leave to quarantine and recuperate. But the order has had little effect, he said, as more than 30 employees have tested positive since.

Lombardo said he has also sought to make vaccination more accessible by offering shots in briefing rooms and jails. "I'm doing everything I can to make it readily available, but I hire from the human race, and sometimes people are just lazy."

Steve Grammas, a Las Vegas detective and president of the city's police union, dismissed the notion that laziness is the issue. Those who have refrained, he said, may simply be uninterested. "It's a personal choice that everyone's going to make," he said.

Committed to that view of vaccination as a personal matter, officials in scores of large cities said they are not tracking inoculations. "Because it's strictly voluntary, we prefer not to intrude in privacy issues," said Alvaro Zabaleta, a detective with the Miami-Dade Police Department.

Other departments have only partial records. In Chicago, officers who received shots at department clinics, or who used a specific code to sign up as emergency workers beginning in

January, number at least 4,000, out of 12,413 active officers, city officials said. But many may have gotten shots elsewhere.

The San Antonio Police Department stopped keeping count in late January, when eligibility expanded and officers began getting vaccinated on their own. At that point, 50 percent of officers had received shots, said Christopher Ramos, a department spokesman.

Jason Pappas, an officer in Columbus, said the department's numbers may skew low because law enforcement in Ohio only became eligible for the shots in March, months later than in neighboring states. That delay stirred anger, and may now be causing officers to withhold their vaccination status, he said.

Limited data makes it impossible to know whether mandates are appropriate, said Noel Brewer, a professor of public health behavior at the University of North Carolina.

"Requirements are best put into place once the behavior is already relatively common," he said. "Otherwise you can get immediate blowback."

The experience of the few law enforcement agencies requiring employees to be vaccinated illustrates why such decisions are often fraught.

Mandates issued in January for employees of the sheriff's department in Durham County, N.C., and emergency workers in Doña Ana County, N.M., prompted federal lawsuits contending that vaccines authorized for emergency use cannot be made a condition of employment.

The claims cite language from the Food and Drug Administration's fact sheet describing covid-19 immunization as a "choice," as well as assurances from federal health officials that "vaccines are not allowed to be mandatory." The complaint of a Durham County sheriff's deputy, who was dismissed after he refused to provide proof of vaccination, alleges that he was confronted with "the Hobson's choice of either being forced to take an experimental, unapproved vaccine against his will, or being fired, stigmatized, and having his life upended."

Mandatory vaccination, especially for police, is politically charged. The dispute in Durham County gained notice in the right-wing media, where a Facebook page called "Thin Blue Line" posted a January article attacking the requirement as "communism" in a group with more than 73,000 members titled "We Support Our Police."

Vaccine mandates are likely to pass legal muster, according to specialists in employment law, providing they adhere to guidance issued last year by the U.S. Equal Employment Opportunity Commission outlining exceptions for disability and religious belief. The broad authority of states and localities to protect public welfare would encompass compulsory vaccination of police, said Catherine Ruckelshaus, legal director of the National Employment Law Project.

But most police leaders see the legal and union fights as minefields they'd rather avoid. "We have made a very deliberate decision not to mandate it for staff," said Joseph Chacon, chief of the Austin Police Department, who has refrained from questioning officers about their immunization status, saying they have "trepidation in thinking we might be trying to track that somehow, which we're not."

Pazen, the chief in Denver, said he fears the legal ramifications of a mandate and would "prefer to get voluntary compliance."

Vaccine policy has generated intense discussion within the Major Cities Chiefs Association, said Lombardo, the Las Vegas police official. The "decision point" that would trigger a mandate for his department, he said, is a rate of covid-19 infection that would leave his force without "sufficient employees to address calls for service."

"I haven't been put into that position yet," he said.

Some officers think talk of mandates is premature. More than half of the Los Angeles Police Department has received at least one dose, said Mark Cronin, a 27-year veteran of LAPD and a union official handling virus-related issues.

Most of the questions he fields are from officers asking how to decide among the three authorized vaccines, how to arrange their vaccination and how to plan for a booster shot, he said.

And for officers who refuse vaccination, Cronin's message is blunt. "I tell our members that you're an absolute fool if you don't get it."

Lee, Katherine

From: Lee, Katherine
Sent: Wednesday, May 5, 2021 2:23 PM
To: Lee, Katherine
Subject: FW: FW: [LawEnforcementOversight] Low police vaccination rates pose public safety concerns - The Washington Post

From: Ismail Ramsey [mailto:izzy@ramsey-ehrlich.com]
Sent: Monday, May 3, 2021 10:06 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Subject: Re: FW: [LawEnforcementOversight] Low police vaccination rates pose public safety concerns - The Washington Post

Thanks. Can you distribute in the next agenda. Should probably be a discussion only item.

Also can you include the following EEOC publication.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

Thanks.

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.

(a) Within the confines of practicality and in accordance with law, it is the Department's intention to keep the community informed of and engaged in public safety issues relevant to their lives.

(b) In accordance with information release policy set forth in Policy 804, consideration shall be given to the confidentiality, integrity and security of investigations (e.g., reference to/discussion of suspect statements), compliance with applicable law, and the privacy rights of victims, witnesses and suspects prior to release of any information.

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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 Berkeley Police Department's Press information Officer (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 Commander~~supervisor~~. 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.

~~324.3~~324.6 MEDIA ACCESS

~~Authorized~~ Mmembers 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.

~~1.~~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

~~(e)~~(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 shall ~~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.

Commented [SSM2]: Per PRC

(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~~a 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.

~~324.4~~324.7 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

~~(c)~~(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.)

~~324.6~~324.10 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.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 17, 2009 GENERAL ORDER P-29

SUBJECT: PUBLIC / MEDIA RELATIONS

PURPOSE

1 - The purpose of this General Order is to establish policies and procedures regarding contacts and relations with media organizations and their representatives, and responsibilities for the release of information by the Public Information Officer (PIO) and other authorized department representatives.

POLICY

2 - 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.

(a) Within the confines of practicality and in accordance with law, it is the Department's intention to keep the community informed of and engaged in public safety issues relevant to their lives.

(b) In accordance with information release policy set forth in General Order R-23, consideration shall be given to the confidentiality, integrity and security of investigations (e.g., reference to/discussion of suspect statements), compliance with applicable law, and the privacy rights of victims, witnesses and suspects prior to release of any information.

3 - As used in this Order, "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.

PROCEDURES

Categories of Information

4 - 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.

*Entire text revised.

(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.

General

4 - Cooperation: As authorized by Police Regulation 226, and within the parameters of relevant General Orders, employees shall cooperate with members of the media.

(a) A media inquiry that cannot be answered or is inappropriate for response by an employee shall be referred to the PIO or a superior officer.

5 - Information Release: Employees shall follow policy set forth in General Order R-23 regarding release of police reports, official department documents, and information contained therein.

6 - Opinion: 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.

7 - Persons In-Custody, Intentional Exposure to Media: 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.

8 - Persons In-Custody, Media Interviews: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being interviewed by such representatives, except if all of the following conditions exist:

(a) The prisoner requests or consents to an interview after being informed adequately of the right to consult with counsel and of the right to refuse to grant an interview.

(1) A prisoner's consent to a media interview shall be obtained in writing.

(b) If the prisoner has legal counsel, the attorney affirms his/her client's request or consent to a media interview, and authorizes said activity.

(1) Whenever practical, the attorney's affirmation and authorization should be obtained in writing.

(2) 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.

(c) Unless unavoidable, department employees shall not appear in authorized and facilitated photographs or filming of prisoners.

9 - Media Conferences: Media conferences shall only be called by the City Manager, Assistant City Manager, Chief of Police or individuals serving in those capacities (ref. City of Berkeley Administrative Regulation (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.

10 - During non-business hours, the on-duty Patrol Division Watch Commander, or in his/her absence the senior on-duty Patrol Division supervisor, shall be responsible for media relations and related notifications.

11 - 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.

(a) 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.

12 - 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.

(a) 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 Patrol Division Watch Commander (non-business hours.)

13 - Media inquiries regarding department policy, personnel, or administrative investigations should be handled in accordance with General Order R-23 and, as appropriate, forwarded to the Office of the Chief of Police.

*Entire text revised.

14 - "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.

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

16 - 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.

17 - A request for information received from a private person concerning police operations, procedures, authority, or concerning interpretation of the law shall be referred to the on-duty Patrol Division Watch Commander, or, if necessary, the Office of the Chief of Police.

Public Information Officer

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

(a) 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.

19 - 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.

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

21 - 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 Barricaded Subject Hostage Negotiation Team.

(g) In all other offenses/situations, when a Patrol Division command officer determines circumstances warrant PIO notification.

22 - Subsequent to notification of an event described in paragraph 21 of this Order, the PIO shall determine the proper actions to be taken in accordance with department policy to insure that good media relationships are maintained.

23 - When the PIO receives a media request for information, he/she shall:

(a) Obtain and review a copy of the police report(s).

(b) Review the facts of the case with the investigating officer or Detail prior to release of information concerning an ongoing criminal investigation.

(1) Unless precluded by law, policy or direction of a command rank officer, employees shall provide information requested by the PIO without delay.

(c) Provide the requesting media representative relevant information permitted by law and department policy.

24 - When known or advised, the PIO should regularly report contacts with representatives of the media to his/her chain of command.

(a) The PIO will be responsible for notification of the City Manager's Office regarding non-routine contacts with media representatives as required by AR 1.14.

Involved Party's Request for "No Release"

25 - "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.

*Entire text revised.

(b) In the event a request for "No Release" is, or appears to be, for purely personal reasons, and does not fall within the provisions of paragraph 25, the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.

(1) In situations noted in paragraph 25(b), the officer may include at the top of his/her report, " Request No Release."

In-Field Media Management

26 - Whenever the media is present at a police scene, a Patrol Division Watch Commander, supervisor, or a designated liaison officer may release appropriate factual information about an incident and/or police activity in accordance with the information release policies described in this Order and General Order R-23.

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

27 - 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.

28 - 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.

(a) 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.

Media Relations at Multi-Agency Incidents

29 - For incidents involving the mutual efforts of the Berkeley Police Department and any other department or agency, the ranking department employee present at the scene shall confer with the ranking personnel from all other involved agencies to determine which agency shall be responsible for the release of information to the media.

(a) Unless upon mutual agreement or when necessary, the agency having primary jurisdiction over an incident shall be responsible for the dissemination of information to the media.

Media Access to Disaster or Accident Scenes

30 - Employees involved in the management of a disaster, accident, or riotous civil disturbance shall not prohibit duly authorized media representatives from entering and remaining in any area closed to the public pursuant to Penal Code

§409.5.

(a) Authorized media representatives are those persons possessing valid press passes issued by any bona fide law enforcement agency, or other suitable identification establishing regular news media affiliation or employment.

(1) While the Berkeley Police Department does not issue "Press Passes", official press documents issued by other law enforcement agencies shall be honored.

(2) Reporters or photographers who are not affiliated with or employed by established media entities (i.e., "Freelance") will not be considered authorized media representatives for the purpose of this policy.

(b) Authorized media representatives shall be permitted free movement in police-controlled or otherwise publicly restricted areas as long as they do not hamper, deter, or interfere with law enforcement or public safety functions.

(c) Employees allowing the entry of an authorized media representative shall advise that person of any known danger existing within the restricted area.

(d) Employees should not provide general escort services to media representatives into, through, or out of dangerous areas.

(e) Employees shall not refuse to to rescue media personnel who are in danger, providing such assistance can be provided with reasonable effort and without unnecessary hazard to rescuers.

31 - Employees shall not take action which would prohibit media aircraft from flying over disaster scenes.

(a) Notwithstanding the exemption afforded to media aircraft, law enforcement officers may employ Federal regulations to stop both commercial and civilian aircraft from flying over a disaster scene.

(1) To implement over-flight control at a disaster scene in Berkeley, the request shall be made to the Federal Aviation Administration (FAA) Office at Oakland Airport.

Media Access to Crime Scenes

32 - Employees involved in a criminal investigation may prohibit media access to a crime scene.

*Entire text revised.

(a) Media representatives shall be kept sufficiently distant from a crime scene to ensure officer safety and preservation of evidence.

(b) A crime scene located in an area of public access may be opened for media inspection after the area is secure and any search for, preservation, and processing of evidence has been completed.

33 - Employees shall, upon request of a private property owner or agent thereof, prohibit media access to private property wherein a crime scene is located.

(a) 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.

34 - The immediate area (i.e., inner perimeter) of an in-progress critical incident, including, but not limited to, a hostage situation or barricaded subject, is deemed a "crime scene" and shall be subject to the media access restrictions set forth in this Order.

(a) Authorized media representatives may be permitted access to areas within the outer perimeter of a critical incident, subject to any restrictions established by the Incident Commander.

35 - Department employees shall not jeopardize public or officer safety in order to accommodate media access or inquiry, but reasonable effort shall be made to keep the media informed of the progress of police activity.

Suggested Changes to Media Relations Policy

36 - 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.

(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.

CONDUCT OF MEDIA REPRESENTATIVES

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

38 - 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.

39 - Any official action that may effect 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.

References: *South Coast Newspapers, Inc. vs. City of Oceanside* (160 Cal.App.3d 261 (1984))
T.N.G. vs. Superior Court, (4 CA, 3rd 767)
14 CFR §91.137 (Federal Aviation Administration Regulations)
Penal Code §§409.5 and 832.7
City of Berkeley Administrative Regulation 1.14
General Order R-23
Police Regulation 226
"ABA Standards for Criminal Justice: Fair Trial and Free Press" (3rd Ed., 1992), a publication of the American Bar Association

*Entire text revised.

Crime and Disaster Scene Integrity and Investigation

403.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance in handling a major crime or disaster scene.

403.2 POLICY

It is the policy of the Berkeley Police Department to secure crime or disaster scenes so that evidence is preserved, and to identify and mitigate the dangers associated with a major crime or disaster scene for the safety of the community and those required to enter or work near the scene. The initial responding officer shall treat the location as a crime scene until determined otherwise.

403.3 SCENE RESPONSIBILITY

The first officer at the scene of a crime or major incident is generally responsible for the immediate safety of the public and preservation of the scene. Officers shall also consider officer safety and the safety of those persons entering or exiting the area, including those rendering medical aid to any injured parties. Once an officer has assumed or been assigned to maintain the integrity and security of the crime or disaster scene, the officer shall maintain the crime or disaster scene until he/she is properly relieved by a supervisor or other designated person.

403.4 FIRST RESPONDER CONSIDERATIONS

The following list generally describes the first responder's function at a crime or disaster scene. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation:

(a) Broadcast emergency information, including requests for additional assistance and resources.

(b) Provide for the general safety of those within the immediate area by mitigating, reducing or eliminating threats or dangers.

(c) Locate or identify suspects and determine whether dangerous suspects are still within the area.

(d) Provide first aid to injured parties if it can be done safely.

(e) Evacuate the location safely as required or appropriate.

(f) Secure the inner perimeter.

(g) Protect items of apparent evidentiary value.

(h) Secure an outer perimeter, yellow "crime scene tape" shall be used as soon as possible to close access. The perimeter should be set wider than estimated to ensure preservation of potential evidence.

(i) Identify potential witnesses.

(j) Start a chronological log noting critical times and personnel allowed access.

403.5 SEARCHES

Officers arriving at crime or disaster scenes are often faced with the immediate need to search for and render aid to victims, and to determine if suspects are present and continue to pose a threat. Once officers are satisfied that no additional suspects are present and/or there are no injured persons to be treated, those exigent circumstances will likely no longer exist. Officers should thereafter secure the scene and conduct no further search until additional or alternate authority for the search is obtained, such as consent or a search warrant.

403.5.1 CONSENT

When possible, officers should seek written consent to search from authorized individuals. However, in the case of serious crimes or major investigations, it may be prudent to also obtain a search warrant. Consent as an additional authorization may be sought, even in cases where a search warrant has been granted.

403.6 403.6 EXECUTION OF HEALTH ORDERS

Any sworn member of this department is authorized to enforce all orders of the local health officer that have been issued for the purpose of preventing the spread of any contagious, infectious or communicable disease (Health and Safety Code § 120155).

403.7 ADDITIONAL INVESTIGATIVE STEPS

Once the scene is stabilized, the handling officer or the on-scene supervisor should begin requesting additional resources. The following list generally describes requests that may or may not fit the need for investigating the incident properly. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation.

(a) Request detectives to the scene

(b) Make proper notifications, PIO, DCO etc. (see Major Incidents policy)

(c) Photographs (See Digital Evidence policy)

(d) Request an Identification Technician to the scene for photographs and evidence collection

(e) Request a sketch of the scene (see section 403.10)

(f) Notify the coroner

403.8 IDENTIFICATION TECHNICIAN

Identification Technicians (IT Techs) are provided with special training to cover the following skills:

(a) Recovering latent fingeprints and palm prints

(b) Recovering foot, tool, and tire impressions

(c) Photographing crime or accident scenes

(d) Collecting, preserving, and transporting physical evidence, including biological

materials

ID Techs responding to a scene shall report to the handling officer to ensure knowledge of their presence and to confer on what needs to be processed, collected or photographed. The handling officer should rely upon the expert knowledge of the ID Tech for determining the most practical method for evidence collection.

To ensure their safety, officers shall remain on scene with the ID Tech until the ID Tech's work is completed or until they advise the officer that he/she is free to leave.

403.8.1 EVIDENCE COLLECTION

Most evidence can be collected at the scene by the handling or an assisting officer. However on large scale investigations, an ID Tech may be requested to collect evidence from the scene. In general, certain evidence should only be collected by the ID Technician. These items may include:

(a) Blood stained objects or dried physiological materials shall be air-dried in a protected environment, individually packaged into paper bags or bundles, and appropriately marked for identification.

(b) Occasionally, Physiological materials such as human tissue may be collected as evidence and require specific unique handling to preserve its evidentiary value. In such cases, officers should contact the Identification Technician or the Homicide Detail or, if after hours, the on-call homicide investigator for details on proper handling.

(c) Physical evidence, such as liquid blood samples, must be placed in proper containers and delivered promptly to the laboratory, or placed in the Property Room refrigerator.

(d) Other items possibly supporting latent prints and/or trace evidence must be protected from any movement or action that might destroy or contaminate the viability of this evidence

It should be noted that non-sworn personnel, including ID Techs are not trained in drug/narcotic testing and shall refer/surrender any drugs/narcotics to the handling officer for proper handling and booking (see Property and Evidence policy).

403.9 CHAIN OF CUSTODY

The chain of custody is the written record of all individuals who have maintained control of evidence. The chain of custody begins when an item of evidence is collected and is maintained until the final disposition is made. The chain of custody assures continual accountability. Each individual in the chain is responsible for evidence while under his/her control.

The chain of custody shall be documented on the outside of most evidence packaging but should also be documented in the associated case report (see also the Property and Evidence policy).

403.10 CRIME SCENE SKETCHES

If the decision is made for a crime scene sketch, the officer preparing the sketch should make sure that the sketch includes, at minimum:

(a) An arrow or indicator of the direction of north.

(b) Geographical location, such as a street address or an intersection of streets.

(c) An indicator of the type of room if the sketch is inside a building, ie., living room, bedroom, etc.

(d) Date and time of preparation.

Each sketch of a crime scene may include, as appropriate:

1. Dimensions and measurements.
2. Location of significant features, i.e., vehicles, other buildings, victims, witnesses, suspects, etc.

In large scale investigations, such as a homicide or a fatal vehicle collision, the Traffic Bureau's laser scanner may be utilized to provide more accurate measurements.

403.11 LABORATORY EXAMINATION REQUESTS

It shall the responsibility of the Detective Bureau to take appropriate action to get physical evidence to the laboratory for examination.

(a) ~~Inspectors~~ Detectives are required to evaluate each case assigned to their Detail, determine what actions will be necessary to complete the investigation, and make appropriate laboratory examination requests, (e.g. DNA test, fiber analysis, etc.)

(b) Evidence submitted to the laboratory for examination must include a record of the following information:

1. Name of the officer last having custody of the item.
2. Date and time the evidence was delivered to the laboratory.
3. Signature of the person in the laboratory receiving the evidence, including date and time of receipt.
4. Employees will request written results of laboratory analysis at the time a request for laboratory services is made.

(c) When the laboratory examinations are completed, the evidence will be picked up and returned to the Property Room.

(d) Copies of the written results will be attached to the case.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 15, 2000 GENERAL ORDER C-52

SUBJECT: CRIME SCENE MANAGEMENT AND INVESTIGATION

PURPOSE

1 - The purpose of this General Order is to establish the responsibilities and procedures for crime scene processing.

POLICY

2 - The officer assigned to a crime or accident scene must assume control of the scene immediately upon arrival and must retain control until relieved or until the investigation is completed.

EMERGENCY ACTION

3 - The first responsibility of employees is to render medical assistance to injured persons, as needed.

Fire and paramedic services personnel will be assisted by police personnel in performing any lifesaving effort if injured persons are found at the scene. When these duties have been completed, the officer in control will again restrict of access to the scene to only those actively involved in the investigation. The names of all emergency personnel, including ambulance attendants, should be recorded.

PROCEDURES

4 - No one, except personnel involved in a lifesaving role, should be permitted within a crime scene unless their presence will further the investigation being conducted All persons will report to the officer in control before entering the scene.

(a) All persons permitted within a crime scene should be listed in the police report. The details of their activity and function at the scene should be described This may include, but not be limited to, evidence collected, photographs taken, measurements and diagrams drawn, and interviews conducted.

(b) If necessary, scenes involving establishments or parking lots open to the public should be closed if access to any portion of the establishment or parking lot interferes with the security of the scene.

IDENTIFICATION, PRESERVATION AND COLLECTION OF EVIDENCE

5 - No physical object will be moved or evidence collected for any reason, other than for safety reasons or for the prevention of the destruction of evidence, until so directed by the officer in control.

* Highlighted text is new

(a) The officer in control will document and collect all the physical evidence and arrange for latent prints and photographic processing of the scene, or he/she may delegate the duties to another who will work under his/her direction. Written documentation may be supplemented by sketching or video, as needed. Written documentation will also include all the tacks performed even if the results of the evidence search and processing proved negative.

PROCESSING PHYSICAL EVIDENCE IN THE FIELD

6 - Methods used by Officers/Identification Technicians processing physical evidence in the field are those that will preserve the condition of the evidence collected, prevent the introduction of foreign materials to it, and ensure as complete a sample as possible and practical

(a) Equipment for evidence processing is maintained in the **Crime Scene Unit*** for use by the Identification Technicians.

(b) The identification vehicle is equipped with fingerprinting camera and film, measuring equipment, ladder, clipboard, paper and writing tools for sketches, containers for collection and preservation of physical evidence, and portable lights.

CHAIN OF CUSTODY

7 - The chain of custody is the written record of all individuals who have maintained control of evidence. The chain of custody begins when an item of evidence is collected and is maintained until the final disposition is made. The chain of custody assures continual accountability. Each individual in the chain is responsible for evidence while under his/her control.

8 - Officers/Identification Technicians will collect physical evidence in accordance with procedures to insure a proper chain of evidence.

(a) The initial step is marking or labeling the item at the time it is collected.

(1) Items that can be marked shall be packaged or placed in an appropriate container and sealed.

(2) Items that cannot be marked shall be placed in appropriate containers, sealed and markings or labels -,hall be placed on the seal

(b) For all items of evidence, a list is prepared containing the following information:

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(1) Description of the item (including make, model number and serial number, if any)

(2) The source (from whom or location obtained)

(3) Name of person collecting the item or items.

(4) Disposition of each item of evidence.

(c) A report will be prepared by the person assigned to process the scene. The report will be done on the Berkeley Police Department Evidence and Photographic Report form and will include the following information:

(1) Date and time of arrival at the scene.

(2) Location of the crime or accident.

(3) Name of the victim(s).

(4) Name of suspects, if known.

(5) Action taken at the scene, including the number of photographs taken, measurements taken (yes/no), and the items of physical evidence listed in Section (b).

(6) Case number.

(7) If an Identification Technician is assigned, the report should also include the date and time a request for service was received, the name of the investigating officer, the disposition of physical evidence, and of the exposed negatives.

(8) Copies of the report will be forwarded to the Detective Bureau and/or the investigating officer.

9 - The most effective use of laboratory and forensic resources can be realized only if the physical evidence is collected initially and preserved properly. When photographs are not taken, or where physical evidence is not recovered from the scene of a serious crime (including homicide, rape, robbery, major assault, burglary and arson), the investigating officer shall indicate in the narrative of the initial report the reasons why.

EVIDENCE REQUIRING SPECIAL HANDLING

10 - Stained garments or bed clothes should be air-dried and carefully packaged in individual paper bags so as not to alter stain locations. (DO NOT USE PLASTIC BAGS).

* Highlighted text is new

(a) Blood stained objects or dried physiological materials shall be air-dried in a protected environment, individually packaged into paper bags or bundles, and appropriately marked for identification.

(b) Occasionally, Physiological materials such as human tissue may be collected as evidence and require specific unique handling to preserve its evidentiary value. In such cases, officers should contact the Identification Technician or the Homicide Detail or, if after hours, the on-call homicide investigator for details on proper handling.

(c) All physical evidence, requiring forensic laboratory tests, must be processed as described in this General Order and submitted to the laboratory immediately.

11- Physical evidence, such as liquid blood samples, must be placed in proper containers and delivered promptly to the laboratory, or placed in the Property Room refrigerator.

(a) Physiological fluids should be frozen.

12 - Other items possibly supporting latent prints must be protected from any movement or action that might destroy or contaminate the prints.

SCENE ASSESSMENT AND COORDINATION

13 - The officer in control will assess the scene to determine if additional units are needed for security and if support from the Detective Bureau and/or the Identification Technician are needed The decision will be based on the amount of evidence to be collected, the need of specialized photography, and if specialized techniques of latent prints development are needed.

(a) The officer in control will be responsible for the delegation and direction of all personnel.

(b) When needed, the Identification Technician will be called immediately (within one hour).

(c) In the event an Identification Technician is not immediately available (within one hour), the officer in control will advise the crime victim of the expected duration of the delay and steps to protect the crime scene pending the Identification Technician's arrival.

IDENTIFICATION TECHNICIAN

14 - Identification personnel will report to the officer in control to insure knowledge of their presence for recording and to confer prior to the start of any activity. The officer in control will establish the scope of processing

* Highlighted text is new

needed and will rely upon the expert knowledge of the Identification Technician for the most practical method to be used to complete the processing.

(a) Identification Technicians shall be provided with training covering the following skills:

(1) Recovery of latent fingerprints and palm prints.

(2) Recovery of foot, tool, and tire impressions.

(3) Photographing crime or accident scenes.

(4) Preparing crime or accident scene sketches.

(5) Collecting, preserving, and transmitting physical evidence, including biological materials.

(b) Identification Technicians shall be provided with available advanced and update training.

OUTSIDE TECHNICAL ASSISTANCE

15 - Sheriffs Department Coroners, Criminalists, or Forensic Specialists, or other Specialists not employed by Berkeley Police Department, who are involved with the investigation, will work under the direction of the officer in control

CONTROL RELIEF PROCEDURES

16 - The first officer at the scene, who assumes control of the scene, may be relieved by a supervisor, another patrol officer, or a Detective Bureau Investigator. If any change in control takes place, all assisting personnel must be notified by the person last having control.

CRIME SCENE SKETCHES

17 - The investigating officer will be responsible for determining when a sketch of a crime scene will be done and, if he/she deems it necessary, he/she will be responsible for insuring that a sketch is completed. In the case of a major crime scene where the investigating officer has several functions to perform, he/she may delegate the sketch to another officer with the approval of a supervisor.

(a) Each sketch of a crime scene must include:

(1) An arrow or indicator of the direction of north.

(2) Geographical location, such as a street address or an

* Highlighted text is new

intersection of streets.

(3) An indicator of the type of room if the sketch is inside a building, ie., living room, bedroom, etc.

(4) Date and time of preparation.

(5) Name(s) of the person(s) preparing the sketch.

(b) Each sketch of a crime scene may include, as appropriate:

(1) Dimensions and measurements.

(2) Location of significant features, i.e., vehicles, other buildings, victims, witnesses, suspects, etc.

(3) Locations of items of physical evidence recovered.

PHOTOGRAPHY OF EVIDENCE

18 - The investigating officer will determine when photographs of a crime scene is necessary. He/she will be responsible for ensuring that the Identification Technician is notified. Videotaping of crime scenes in major cases should be considered.

(a) The identification camera uses 35mm film and is maintained by the Identification Technicians.

(b) Polaroid film is available for instant photos.

(c) The technician, using the 35mm camera, will fill out the photo log with case number, date, technician's name, and a brief description of the photograph taken.

(d) If close-up photographs are taken, such as shoe prints, tire tracks, or physical injuries, a scale or ruler should be included in the photograph.

(e) When evidentiary photographs are taken, the Identification Technician must submit a report on the Berkeley Police Department Evidence and Photographic Report form, which will include the following information:

(1) Date, time, and location.

(2) Case number and name of victim.

(3) Name and badge number of technician.

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(4) Film roll number and frame number.

(5) Information about the photographs taken.

(6) Copies of the report shall be routed to the Detective Bureau and the officer requesting the photographs.

LABORATORY EXAMINATION REQUESTS

19 - It shall be a Detective Bureau Division responsibility to take appropriate action to get physical evidence to the laboratory for examination. (All suspected drugs, narcotics, or controlled substances are processed for laboratory examination by the designated property officer in the Special Investigation Bureau).

(a) Inspectors are required to evaluate each case assigned to their Detail, determine what actions will be necessary to complete the investigation, and make appropriate laboratory examination requests.

(b) Evidence submitted to the laboratory for examination must include a record of the following information:

(1) Name of the officer last having custody of the item.

(2) Date and time the evidence was delivered to the laboratory.

(3) Signature of the person in the laboratory receiving the evidence, including date and time of receipt

(4) Employees will request written results of laboratory analysis at the time a request for laboratory services is made.

(5) When the laboratory examinations are completed, the evidence will be picked up and returned to the Property Room Copies of the written results will be attached to the case.

20 - A significant degree of the value of laboratory examinations concerns the identification of substances and comparison of these with materials from known sources. This is found to be true especially in the case of the study of hairs, fibers, fabrics, paint, glass, wood, soil, and tool marks.

(a) Whenever available, Inspectors, **Detective Sergeants and Crime Scene Personnel*** will insure that materials and substances be collected from a known source for submission to the laboratory for comparison with physical evidence collected.

21 - The Detective Bureau Commander or his designee will meet with the

* Highlighted text is new

District Attorney and the judges of the Berkeley-Albany Municipal Court to coordinate investigative concerns, including the use of the crime lab to develop information for prosecution.

(a) The meeting will occur as often as needed, at least every six months.

(b) The Detective Bureau Commander will share information pertaining to laboratoryservices with the Director of the Alameda County Crime Laboratory for the purpose of enhancing prosecutions.

References: CALEA Standards
General Orders C-2,14, and P-65

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Records Maintenance and Release

804.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

804.2 POLICY

The Berkeley Police Department is committed to providing public access to records in a manner that is consistent with the California Public Records Act (Government Code § 6250 et seq.).

It shall be the policy of the Berkeley Police Department to release copies of public records, unless release would endanger a private person or law enforcement personnel, harm a law enforcement investigation, constitute an unwarranted invasion of privacy, or is prohibited by law.

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804.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Support Services Bureau ~~Lieutenant~~ Captain shall be the ~~Chief of Police shall~~ designated ~~a~~ Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

(a) Managing the records management system for the Department, including the retention, archiving, release, and destruction of department public records.

(b) Maintaining and updating the department records retention schedule including:

1. Identifying the minimum length of time the Department must keep records.
2. Identifying the department division responsible for the original record.

~~(c) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records.~~

~~(d)~~(c) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.

~~(e)~~(d) Establishing rules regarding the processing of subpoenas for the production of records.

~~(f)~~(e) Ensuring a current schedule of fees for public records as allowed by law is available (Government Code § 6253).

~~(g)~~(f) Determining how the department's website may be used to post public records in accordance with Government Code § 6253.

Commented [SSM2]: Jun 2019 update

~~(h)~~(g) Ensuring that all department current standards, policies, practices, operating procedures, and education and training materials are posted on the department website in accordance with Penal Code § 13650.

Commented [SSM3]: Jun 2019 update

~~(i)~~(h) Ensuring that public records posted on the Department website meet the requirements of Government Code § 6253.10 including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly

used internet search application.

~~(j)~~(i) Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 6270.5) is publicly available upon request and posted in a prominent location on the Department's website.

804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any department member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

804.4.1 REQUESTS FOR RECORDS

Any member of the public, including the media and elected officials, may access public~~unrestricted~~ records of this department, during regular business hours by submitting a ~~written and signed~~ request that reasonably describes each record sought and paying any associated fees (Government Code § 6253).

The processing of requests for any record is subject to the following (Government Code § 6253):

(a) The Department is not required to create records that do not exist.

(b) Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain department records or information. If identification is required, a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship or current Matricula Consular card is acceptable (Government Code § 6254.30).

(c) Either the requested record or the reason for non-disclosure will be provided ~~promptly, but~~ no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Custodian of Records or the authorized designee. If an extension is authorized, the Department shall provide the requester written notice that includes the reason for the extension and the anticipated date of the response.

1. When the request does not reasonably describe the records sought, the Custodian of Records shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request including providing assistance for overcoming any practical basis for denying access to the records or information. The Custodian of Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 6253.1).

2. If the record requested is available on the department website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.

(d) Upon request, a record shall be provided in an electronic format utilized by the Department. Records shall not be provided only in electronic format unless specifically requested (Government Code § 6253.9).

(e) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.

1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/ video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.

(f) If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure (Government Code § 6255). The written response shall also include the names, titles or positions of each person responsible for the denial.

1. The requestor may appeal the denial to the Custodian of Records

804.5 RECORDS FOR RELEASE~~R-23 content~~

The following public information shall be released subsequent to administrative review of the Custodian of Records, unless release would endanger the safety of a person involved in an investigation, or endanger the successful completion of the investigation or a related investigation:

(a) Arrest information for arrests made within six months of the date of the public information request (GC §6254(f)(1)):

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1. The arrestee's name, occupation, date of birth, and physical description, including gender, height, weight, and color of eyes and hair;
2. The date, time and location of arrest, and the date and time of booking;
3. The factual circumstances surrounding the arrest, the amount of bail set, the location where the individual is currently being held, or the time and manner of release; and,
4. All charges the individual is being held upon, including any outstanding warrants from other jurisdictions, and parole or probation holds.

(b) Complaints and requests for assistance made within six months of the date of the public information request (GC §6254(f)(2)):

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1. The time, substance, and location of all complaints or requests for assistance received by this department, and time and nature of response thereto, including, to the extent the information is recorded, the time, date and location of occurrence, and the time and date of the report.
2. The victim's name, age and address, unless his/her name and address are not be disclosed pursuant to other provisions of this policy ~~paragraph 10(e) of this Order.~~
3. Factual circumstances surrounding the crime or incident, and a general description of any injuries, property or weapons involved.

(c) Information required to be released to misdemeanor or felony crime victims, their

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agents, and insurers (GC §6254(f)):

1. Names and addresses of persons involved in the incident;
2. Names and addresses of witnesses (other than confidential informants) to the incident;
3. The description of any property involved;
4. The date, time and location of the incident;
5. Statements of parties involved in the incident;
6. Statements of witnesses (other than confidential informants), and,
7. All diagrams.

(d) Release of a complete copy, without redaction, of an identity theft (PC §530.5) police report to the victim of said offense (PC §530.6(a)).

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804.6 COMMAND OFFICER RELEASE OF INFORMATION

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Supervisory and command personnel may release verbatim excerpts from the General Orders, Training and Information Bulletins, or written policy directives of their particular command, and may quote statutory law which affects this Department and its conduct of public business.

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Subsequent to the approval of the Chief of Police, the Public Information Officer, his/her designee, and command personnel may respond to criticism of their particular command, of the activities of members of their command, or of the department, except when the criticism has resulted in an Internal Affairs investigation of alleged misconduct.

804.7 RELEASE RESTRICTIONS

Examples of release restrictions include:

(a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any department record including traffic collision reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722; Government Code § 6254.29).

~~(b) Social Security numbers (Government Code § 6254.29).~~

Commented [LJ10]: PRC subcomm rec change.

~~(c)~~(b) Personnel records, medical records, and similar records which would involve an unwarranted invasion of personal privacy except as allowed by law (Government Code § 6254; Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).

Commented [SSM11]: R-23 11f, g

1. Peace officer personnel records that are deemed confidential shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order.
2. The identity of any officer subject to any criminal or administrative investigation shall not be released without the consent of the involved officer, prior approval of the Chief of Police, or as required by law.

(c) The name and address of any person detained pursuant to WI §5150, where disclosure would constitute an unwarranted invasion of privacy;

(d) Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who are minors, and victims of certain offenses (e.g., sex crimes or human trafficking, Penal Code § 293). Addresses and telephone numbers of a victim or a witness to any arrested person or to any person who may be a defendant in a criminal action shall not be disclosed, unless it is required by law (Government Code § 6254; Penal Code § 841.5).

Commented [SSM12]: R-23 10e

1. Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, adult abuse) or their representatives shall be provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, or both, pursuant to the requirements and time frames of Family Code § 6228.

2. Victims of sexual assault, upon written request, shall be provided a free copy of the initial crime report regardless of whether the report has been closed. Personal identifying information may be redacted (Penal Code § 680.2(b)).

(e) Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code § 6254.4.5.

(f) Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved, or information that would endanger the successful completion of the investigation or a related investigation.

Commented [SSM13]: R-23 11a, b, c, d, e

~~(f)~~(g) ~~This includes a~~Analysis and conclusions of investigating officers (Evidence Code § 1041; Government Code § 6254).

1. Absent a statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 6254(f).

~~(g)~~(h) ~~Local c~~Criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.

Commented [SSM14]: R-23 11i

1. All requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney~~, City Attorney, or the courts pursuant to Penal Code § 1054.5~~.

(i) Absent a Court Order, ~~c~~Certain types of reports involving but not limited to child abuse and molestation (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), ~~and~~ juveniles (Welfare and Institutions Code § 827) sex crimes and/or domestic violence.

Commented [SSM15]: R-23 10c

Commented [SSM16]: R-23 10f

~~(h)~~(j) Incidents or investigations regarding violent or abusive conduct reported by a health care provider (PC §11163.2(b));

Commented [SSM17]: R-23 10d

~~(i)~~(k) Sealed autopsy and private medical information concerning a murdered child with the

exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws (Code of Civil Procedure §130).

~~(j) Information contained in applications for licenses to carry firearms or other files that indicates when or where the applicant is vulnerable or which contains medical or psychological information (Government Code § 6254).~~

~~(k)~~(l) Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code § 20012.

Commented [SSM18]: R-23 10b

~~(l)~~(m) Any record created exclusively in anticipation of potential litigation involving this department (Government Code § 6254).

~~(m) Any memorandum from legal counsel until the pending litigation has been adjudicated or otherwise settled (Government Code § 6254.25)~~

(n) Records relating to the security of the department's electronic technology systems (Government Code § 6254.19).

(o) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded (Penal Code § 832.7 (b)(8)).

(p) Reports or information received from other agencies, and.

Commented [SSM19]: R-23 10g

~~(p)~~(q) Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege (Government Code § 6254).

Commented [SSM20]: R-23 10h

~~(r)~~ Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information (Welfare and Institutions Code § 827.9; Welfare and Institutions Code § 831).

Commented [SSM21]: R-23 10a

~~(q)~~(s) Any prospective operational plan and related/or tactical inventory.

Commented [LJ22]: PRC rec subcomm change

804.7.1 FIRST AMENDMENT EVENTS

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 [Policy 428]. 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. (As set by City Council on 09/25/18)

Commented [LJ23]: Added from PRC subcom

804.8 SUBPOENAS AND DISCOVERY REQUESTS

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, City Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

804.8.1

SEALED JUVENILE ARREST RECORDS

State

Upon receiving notice from a probation department to seal juvenile arrest records pursuant to Welfare and Institutions Code § 786.5, the [recordsHead] should ensure that the records are sealed within 60 days of that notice and that the probation department is notified once the records have been sealed (Welfare and Institutions Code § 786.5).

Commented [LJ24]: Mar 2021 update.

804.9 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released.

Each audio/video recording released should include the department name and to whom the record was released.

804.10 SEALED RECORD ORDERS

Sealed record orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records, or his/her designee, shall seal such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once the record is sealed, members shall respond to any inquiry as though the record did not exist (Penal Code § 851.8; Welfare and Institutions Code § 781).

When an arrest record is sealed pursuant to Penal Code § 851.87, Penal Code § 851.90, Penal Code § 851.91, Penal Code § 1000.4, or Penal Code § 1001.9, the Records Supervisor shall ensure that the required notations on local summary criminal history information and police investigative reports are made. Sealed records may be disclosed or used as authorized by Penal

Code § 851.92.

804.6 SECURITY BREACHES

The Records Supervisor shall ensure notice is given anytime there is a reasonable belief an unauthorized person has acquired either unencrypted personal identifying information or encrypted personal information along with the encryption key or security credential stored in any Department information system (Civil Code § 1798.29).

Notice shall be given as soon as reasonably practicable to all individuals whose information may have been acquired. The notification may be delayed if the Department determines that notification will impede a criminal investigation or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

For the purposes of this requirement, personal identifying information includes an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number
- Driver license number or California identification card number
- Account number or credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account
- Medical information
- Health insurance information
- A username or email address, in combination with a password or security question and answer that permits access to an online account
- Information or data collected by Automated License Plate Reader (ALPR)technology

804.9.1 FORM OF NOTICE

(a) The notice shall be written in plain language, be consistent with the format provided in Civil Code § 1798.29 and include, to the extent possible, the following:

1. The date of the notice.
2. Name and contact information for the Berkeley Police Department.
3. A list of the types of personal information that were or are reasonably believed to have been acquired.
4. The estimated date or date range within which the security breach occurred.
5. Whether the notification was delayed as a result of a law enforcement investigation.
6. A general description of the security breach.
7. The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a Social Security number or a driver license or California identification card number.

Commented [SSM25]: May 2017 - This is IT's area and they have their own system for dealing with security breaches. I confimmed IT has a protocol.

~~(b) The notice may also include information about what the Berkeley Police Department has done to protect individuals whose information has been breached and may include information on steps that the person whose information has been breached may take to protect him/herself (Civil Code § 1798.29).~~

~~(c) When a breach involves an online account, and only a username or email address in combination with either a password or security question and answer that would permit access to an online account, and no other personal information has been breached (Civil Code § 1798.29):~~

~~1. Notification may be provided electronically or in another form directing the person to promptly change either his/her password or security question and answer, as applicable, or to take other appropriate steps to protect the online account with the Department in addition to any other online accounts for which the person uses the same username or email address and password or security question and answer.~~

~~2. When the breach involves an email address that was furnished by the Berkeley Police Department, notification of the breach should not be sent to that email address but should instead be made by another appropriate medium as prescribed by Civil Code § 1798.29.~~

~~804.9.2 MANNER OF NOTICE~~

~~Notice may be provided by one of the following methods (Civil Code § 1798.29):~~

~~0. Written notice.~~

~~1. Electronic notice if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 USC § 7001.~~

~~1. Substitute notice if the cost of providing notice would exceed $250,000, the number of individuals exceeds 500,000 or the Department does not have sufficient contact information. Substitute notice shall consist of all of the following:~~

~~(-) Email notice when the Department has an email address for the subject person.~~

~~(a) Conspicuous posting of the notice on the department's webpage for a minimum of 30 days.~~

~~1. Notification to major statewide media and the California Information Security Office within the California Department of Technology.~~

~~(b) If a single breach requires the Department to notify more than 500 California residents, the Department shall electronically submit a sample copy of the notification, excluding any personally identifiable information, to the Attorney General.~~

804.11 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS

Video and audio recordings related to critical incidents shall be released upon a proper public record request and subject to delayed release, redaction, and other release restrictions as provided by law (Government Code § 6254(f)(4)).

Commented [SSM26]: Jun 2019 update

For purposes of this section, a video or audio recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by an officer, or in which the use of force by an officer against a person resulted in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) (Government Code § 6254(f)(4)).

The Custodian of Records should work as appropriate with the Chief of Police or the Internal Affairs Bureau supervisor in determining what recordings may qualify for disclosure when a request for a recording is received and if the requested recording is subject to delay from disclosure, redaction, or other release restrictions.

~~804.9.3~~804.9.1 DELAY OF RELEASE

Commented [SSM27]: Jun 2019 update

Disclosure of critical incident recordings during active criminal or administrative investigations may be delayed as follows if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source:

(a) Disclosure may be delayed up to 45 days from the date the Department knew or reasonably should have known about the incident.

(b) Delay of disclosure may continue after the initial 45 days and up to one year if the Department demonstrates that disclosure would substantially interfere with the investigation.

(c) Any delay of disclosure longer than one year must be supported by clear and convincing evidence that disclosure would substantially interfere with the investigation (Government Code § 6254(f)(4)).

~~804.9.4~~804.9.2 NOTICE OF DELAY OF RELEASE

Commented [SSM28]: Jun 2019 update

When there is justification to delay disclosure of a recording, the Custodian of Records shall provide written notice to the requester as follows (Government Code § 6254(f)(4)):

(a) During the initial 45 days, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination that disclosure would substantially interfere with the investigation. The notice shall also include the estimated date for the disclosure.

(b) When delay is continued after the initial 45 days, the Custodian of Records shall promptly provide the requester with written notice of the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Custodian of Records should work with the Chief of Police in reassessing the decision to continue withholding a recording and notify the requester every 30 days.

Recordings withheld shall be disclosed promptly when the specific basis for withholding the recording is resolved.

~~804.9.5~~804.9.3 REDACTION

Commented [SSM29]: Jun 2019 update

If the Custodian of Records, in consultation with the Chief of Police or authorized designee, determines that specific portions of the recording may violate the reasonable expectation of

privacy of a person depicted in the recording, the Department should use redaction technology to redact portions of recordings made available for release. The redaction should not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording should not otherwise be edited or altered (Government Code § 6254(f)(4)).

If any portions of a recording are withheld to protect the reasonable expectation of privacy of a person depicted in the recording, the Custodian of Records shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served (Government Code § 6254(f)(4)).

~~804.9.6~~804.9.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

Commented [SSM30]: Jun 2019 update

If the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, the Department may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following (Government Code § 6254(f)(4)):

(a) The person in the recording whose privacy is to be protected, or his/her authorized representative.

(b) If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.

(c) If the person whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased person whose privacy is to be protected.

If the Department determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination (Government Code § 6254(f)(4)).

The Department may continue to delay release of the recording from the public for 45 days with extensions as provided in this policy (Government Code § 6254(f)(4)(A)).

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

General Policy Statement Regarding Release Of Police Reports To The Public and the Police Review Commission (PRC):

It shall be the general policy of the Police Department to release a copy of a police report to any member of the public or the PRC, unless the release of the report, or a part of the report, or the information in the report would: (1) endanger a person; (2) endanger the successful completion of the investigation or a related investigation; (3) constitute an unwarranted invasion of privacy as defined in this Policy; or, (4) is prohibited by law.

A release of a police report to a City department, such as the City Attorney's office, the Office of Transportation, or the City Manager's office, is not a release to the public and is not governed by this Policy.

NAMES AND ARRESTEE INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult arrestee's name, occupation, physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held on, including any outstanding warrants from other jurisdictions and parole or probation holds.	Yes, release of this information is required by law, unless the release would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation. [Government Code §6254(f)(1)]		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult suspect name (e.g., when suspect not arrested)	No to general public, but yes to the general public, if the adult suspect's name was already released to the public through the PRC process. Release is also authorized to assist in specific public safety effort, such as locating the suspect.	Unwarranted invasion of privacy.	For PRC to investigate, when relevant to a PRC investigation, the PRC shall get the name of an adult suspect, if ALL of the following conditions apply: (1) the release will not endanger a person's safety; (2) the release will not endanger the successful completion of the investigation or a related investigation; and, (3) the release will not result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.
Juvenile arrestee name and Juvenile suspect name	No. The entire report cannot be released without a Court Order, except that the juvenile's name and address information may be released to the victim, or his/her representative, after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order, dated 4/7/1995; Welfare & Institutions Code §§ 601 and 602; [TNG v. Sup. Ct.]	Prior to release to victim, confirm status of case is no longer active in Juvenile Court.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult and juvenile victim name.	No, if there is an active criminal case pending or a criminal case is likely to be filed, the name of the victim should not be released. [Penal Code §964] If no criminal case is pending or likely to be filed, then: Yes, release of a victim's name is required by law, unless the release of the adult victim's name would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or (3) the victim of one of the crimes listed in GC §6254(f)(2) (e.g., sex crimes, domestic violence, stalking or hate crime) has been asked and has requested or, if a juvenile victim, his or her parent or guardian has requested, that his or her name be kept confidential. [GC §6254(f)(2).]	PC §964 sets forth certain restrictions on the release of a victim's name if a criminal case is pending.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult or juvenile witness or "other party" name; an "other party" is a person who is not an arrestee, suspect, or witness.	No, if there is an active criminal case pending or a criminal case is likely to be filed, the name of the witness (or other party) should not be released. [PC §964] If no criminal case is pending or likely to be filed, then, for an adult witness name: Yes, unless release of the adult witness name would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. Note: The name of a juvenile witness will not be disclosed to the general public, unless it has already been disclosed through the PRC process. The name of a juvenile witness will only be disclosed to the PRC, if the parent or guardian consents to the disclosure.	Protection of witness and potential witnesses; PC §964 sets forth certain restrictions on the release of a witnesses' name if a criminal case is pending	If the PRC requests the name of a witness, the name can only be disclosed if: (1) there is no active criminal case pending or a criminal case is likely to be filed; (2) the release of the name would not endanger a person's safety; and, (3) the release of the name would not endanger the successful completion of the investigation or a related investigation. In addition, if the witness is a juvenile, the parent or guardian must consent to the disclosure to the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

PHONE NUMBERS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Phone number of person whose name IS released under this Policy	No, to general public, but yes to the general public, if the phone number was already released to the public through the PRC process.	Unwarranted invasion of privacy.	For PRC to investigate, PRC shall get the phone number of any adult person whose name is released to the PRC. However, if the person whose name is released is a juvenile, the phone number will not be released to the PRC without the consent of the juvenile's parent or guardian.
Phone number of any person whose name is NOT released under this Policy	No.	Unwarranted invasion of privacy.	

ADDRESS INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult arrestee address. Adult suspect address Adult/juvenile victim address. Adult/juvenile witness address. Adult/juvenile "other party" address.	No, if the *name* is not released under this Policy and/or applicable law. In cases in which the *name* is released: No, to general public, but yes to the general public: if the person's address was already released to the public through the PRC process.	Unwarranted invasion of privacy	For PRC to investigate, when relevant to a PRC investigation, PRC shall get the address of an adult arrestee, or adult suspect, or any victim, witness, or other party, but only if ALL of the following conditions apply: (1) the PRC obtained the name from BPD under this Policy; (2) the person has no working telephone number; (3) the release will not endanger a person's safety; (4) the release will not endanger the successful completion of the investigation or a related investigation; [cont.]

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

ADDRESS INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
			and, (5) the release will not result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. In the case of a juvenile victim, juvenile witness, or juvenile other party, in addition to the above conditions, the address shall not be released to the PRC without consent of the juvenile's parent or guardian. Juvenile arrestee and juvenile suspect addresses are not releasable to the PRC. See below.
Juvenile arrestee address and Juvenile suspect address.	No. The entire report cannot be released without a Court Order, except that name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/1995; WIC §§601, 602. [TNG v. Superior Court]	Prior to release to victim confirm status of case is no longer active in Juvenile Court.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

OTHER PERSONAL INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Date of birth of non-arrestee. (Date of birth of arrestee is required by law to be released. See above)	No.	Unwarranted invasion of privacy and potential identity theft.	As an alternative, release victim, witness, or suspect's age.
CDL, Social Security #, Bank Account #.	No.	Unwarranted invasion of privacy and potential identity theft.	
Vehicle license plate numbers.	No.	Unwarranted invasion of privacy.	
Medical treatment records.	No, unless a person is requesting his or her own medical records, or the person whose medical records are being requested has signed an authorization for the release of the medical records to the requesting party.	Civil Code §56, et seq. provides that medical records are to be kept confidential; WIC §5328 provides that WIC §5150 records (such as the Berkeley Mental Health staff person's report re a WIC §5150) are confidential. Note: An officer's report re a WIC §5150 call is not a medical treatment record; it is a police report. Information provided by a medical treater noted in a police report is not a medical treatment record, but it should be deleted as an unwarranted invasion of privacy if it is highly sensitive information such as information involving sex crimes, suicide, or mental health.	Medical records can be given to the PRC if the person whose medical records are being requested has signed an authorization for the release of the medical records to the PRC. Alternatively, a person can obtain his or her own medical records held by BPD, if any, directly from BPD, and then give them to the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

MUG SHOTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
PFN photos taken by BPD (mug shots.)	Yes, unless release would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation.		Obtain Detective Bureau approval for release in all criminal cases.
PFN photos taken by another agency.	No, unless release is made for a public safety purpose.	Policy decision.	Obtain approval from Office of the Chief.

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE			
Subject	**Release**	**No Release Reason**	**Further Direction**
Oral (paraphrased) and written statements from victims, witnesses, and suspects. Investigative narrative. Diagrams. Evidence list.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Evidence photographs.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result the release of highly personal information of a very sensitive nature such as the condition of person's body or a corpse. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		
Communications center audio tapes	Yes, unless release is prohibited under PC §964 (pending criminal case), or release results in an unwarranted invasion of a citizen's privacy. No, as to continuing police radio communications in lengthy incidents occurring more than one hour after the incident first started.	Unwarranted invasion of citizen's privacy and undue burden on staff.	For PRC to investigate, PRC shall get the tapes. However, if witness or victim information is not releasable to the PRC under this Policy or by law (e.g., PC §964), then that information must be deleted. Also, if the tape contains highly personal information of a very sensitive nature such as a victim screaming as she is violently assaulted or killed, such segments shall be deleted before release to the PRC, unless the only person affected is the requesting party, and the person has filed a complaint with the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Investigative techniques: Trackers, undercover, surveillance locations, 'Johns'/decoy, tactics, interview tactics.	No.	Evidence Code §§1040-1042	
Confidential informant's name or identifying information.	No.	EC §§1040-1042	If the report uses "x" to refer to the confidential informant, release is permitted as no identifying information is included.
Complete, unredacted police report in ID theft (PC530.5) cases.	Yes, to victim only (PC §530.6(a)).		

CRIMINAL HISTORY INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
PFN Number.	No.	Unwarranted invasion of privacy.	
Criminal history: Actual RAP sheet or actual RMS print-out for an individual.	No. However, local criminal history information contained in the RMS print out must be released to the subject of that information, if requested by the subject. [PC §13330(b)(11)]	PC §§11075, 11076, 11105 and 13300.	Okay to release serious felony conviction information only to Housing Authority managing Section 8 program.
Limited criminal history: Fact of prior crime or similar arrests relevant to the investigation, or relevant to the arrest charge, such as felon with a gun.	Yes. Although this information may be contained within a Rap sheet, it can be disclosed as a relevant part of a single police report, which in itself is not a Rap sheet. It can also be disseminated to the public generally for the purpose of assisting in the apprehension of a wanted person. [PC §13305]		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

CRIMINAL HISTORY INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Information taken out of CLETS.	No.	CLETS "Policies, Practices & Procedures" provides that CLETS information (which includes DMV) is confidential and for OFFICIAL USE ONLY.	
Probation or parole hold on an arrestee.	Yes. Release of this information is required by law, unless the release of the probation or parole hold on the arrestee would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation. [GC §6254(f)(1)]		
Probation or parole status when it is related to the investigation or arrest charge.	Yes, unless release of the arrest charge or investigation would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation.		
Probation or parole, general status when there is no "hold" and it is not related to the investigation or arrest charge, and it is not being disclosed for a public safety purpose.	No.	PC §§11075, 11076, 11105 and 13300.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

OPEN AND CLOSED INVESTIGATIONS, HOMICIDE REPORTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Open, Suspended, and Closed investigations.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		Obtain approval from effected Detective Bureau unit prior to release, if a criminal prosecution is still possible. For homicide reports, obtain approval from Homicide Unit and Custodian of Records prior to release.

SPECIAL POLICE REPORTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Juvenile arrest or juvenile suspect reports.	No. The entire report cannot be released without a Court Order, except that the name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/1995; WIC §§601 and 602. [TNG v. Superior Court]	Prior to release to victim confirm status of case is no longer active in Juvenile Court.
Child abuse reports.	No.	PC §§11167 and 11167.5.	
Elder abuse reports.	No.	WIC §15633 prohibits release.	
Vehicle collision reports.	No, except to persons authorized in VC §20012.	VC §20012 limits the release of collision reports to certain interested parties.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

SPECIAL POLICE REPORTS (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Reports from other agencies.	No.	Policy decision.	

REQUESTS BY UNINVOLVED PARTIES, VICTIMS, AND SPECIAL REQUESTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Can an uninvolved party obtain a police report?	**Uninvolved parties will have access to the same information as involved parties, except in the following three situations:** **(1) in compliance with Alameda County Superior Court Juvenile Court Order dated 4/7/95 (release certain information to victim only in juvenile cases in certain circumstances, except if it will endanger a person or investigation);** **(2) in accordance with GC §6254(f) (may withhold from an uninvolved party certain information releaseable to a victim of a misdemeanor or felony crime); and,** **(3) pursuant to VC §§16005 and 20012 (release to involved parties only re: collision reports.)** **A release of information to a crime victim, involved party, or their representative, under these three circumstances does not modify otherwise applicable rules regarding release to others.**		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

REQUESTS BY UNINVOLVED PARTIES, VICTIMS, AND SPECIAL REQUESTS (continued)			
Subject	Release	No Release Reason	Further Direction
Can a victim of a misdemeanor or felony (but not an infraction), or their agent or insurance company, obtain a police report?	In part. Release of the following information to the victim (or their agent or insurer) is required under Government Code section 6254(f), except where: the release is prohibited by law (e.g., certain juvenile cases (see above)); is witness information in pending criminal cases; the release would endanger a person's safety; or, impede the successful completion of the investigation or a related investigation: (1) names and addresses of persons involved in the incident; (2) names and addresses of witnesses (other than confidential informants) to the incident; (3) description of any property involved; (4) date, time and location of the incident; (5) statements of parties involved in the incident; (6) statements of witnesses (other than confidential informants); and, (7) all diagrams.		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

REQUESTS BY UNINVOLVED PARTIES, VICTIMS, AND SPECIAL REQUESTS (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Categorical requests, such as all reports pertaining to a certain address, all reports regarding a certain type of incident, or all reports related to a particular individual.	Yes, unless: (1) the release will impact citizen privacy issues; (2) the potential assembly of information will reveal criminal history; or, (3) if gathering the information will create an undue burden on staff. Yes, when release will enhance public safety (e.g., in a neighborhood effort to abate a nuisance such as drug dealing at a certain property where the reports are needed for a civil lawsuit.)		Custodian of Records to decide.

SEARCH WARRANTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Search Warrants and Returns.	Yes, unless sealed.	If sealed by Court.	
Search Warrant applications or affidavits, and any police reports attached to application.	Yes, but delete all identifying information pertaining to a victim or a witness in the application, affidavit, or a police report attached to the application.	PC §964 prohibits the release of a witness or victim's identifying information in a Search Warrant application or a police report attached to the application.	

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 2, 2009 GENERAL ORDER R-23

SUBJECT: RELEASE OF PUBLIC RECORDS AND INFORMATION

PURPOSE

1 - The purpose of this Order is to establish the policy for release of public records to the public.

POLICY

2 - It shall be the policy of the Berkeley Police Department to release copies of public records, unless release would endanger a private person or law enforcement personnel, harm a law enforcement investigation, constitute an unwarranted invasion of privacy, or is prohibited by law.

DEFINITIONS

3 - Public Record: any writing or archival record containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

4 - Member of the Public: any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(a) Notwithstanding the definition of "member of the public," an elected member or officer of any state or local agency is entitled to access public records of that agency on the same basis as any other person.

5 - Person: any natural person, corporation, partnership, limited liability company, firm, or association.

6 - Custodian of Records: The Support Services Division Captain, or his/her designee, shall serve as Custodian of Records for written incident and investigative reports. For all other records maintained by this department, the Administrative Division Captain, or his/her designee, shall serve as Custodian of Records.

PROCEDURES

7 - The Custodian of Records shall be the person responsible for release of public records. No record shall be released to the public without his/her approval.

(a) Release of information by the Public Information Officer, in accordance with General Order P-29, shall adhere to the standards set forth in this Order.

8 - A request for a public record shall be received in any form, including an oral request.

*Highlighted text is new.

(a) Any question or concern regarding the nature or propriety of a public record request shall be forward to the Custodian of Records for review and determination.

9 - The Support Services Division Service Bureau will be primarily responsible for receiving public record requests and disseminating records authorized for release.

10 - The following reports, documents or information shall not be released unless specifically authorized by law or Court Order:

(a) The name or address of a juvenile arrested, detained, or who is a suspect in a police investigation, or any information which might lead to his/her identification;

(b) Vehicle collision reports involving death or personal injury, except to "persons with a proper interest therein" (Vehicle Code §20012);

(c) Incidents or investigations involving child neglect or abuse, either physical or emotional (Penal Code §§11167 and 11167.5);

(d) Incidents or investigations regarding violent or abusive conduct reported by a health care provider (PC §11163.2(b));

(e) The name and address of a victim of a sex crime, domestic violence, child abuse, stalking, or a hate crime, if confidentiality is requested by the victim, or if a minor, his/her parent or guardian (Government Code §6254(f)(2));

(f) Reports of suspected abuse of an elder or dependent adult (Welfare and Institutions Code §15633);

(g) Reports or information received from other agencies; and,

(h) Any other report or other information not listed above, the release of which is prohibited by Federal or State law.

11 - The Department has discretion to withhold release of a police report, document or information contained therein, when its release would:

(a) Endanger the safety of a witness or other person involved in an investigation;

(b) Endanger the safety of law enforcement personnel;

(c) Impede the successful completion of an investigation;

(d) Reveal confidential investigative techniques or procedures;

(e) Reveal the identity of confidential informants or sources of information, including names, statements, and locations;

(f) Reveal information constituting an unwarranted invasion of privacy;

(g) Reveal the name and address of any person detained pursuant to WIC §5150, where disclosure would constitute an unwarranted invasion of privacy;

(h) Reveal information maintained in confidential or law enforcement sensitive databases or information management systems (e.g., NCIC, CLETS, DMV files, etc.); or,

(i) Reveal a person's criminal history information.

12 - The following public information shall be released subsequent to administrative review of the Custodian of Records, unless release would endanger the safety of a person involved in an investigation, or endanger the successful completion of the investigation or a related investigation:

(a) Arrest information for arrests made within six (6) months of the date of the public information request (GC §6254(f)(1)):

(1) The arrestee's name, occupation, date of birth, and physical description, including gender, height, weight, and color of eyes and hair;

(2) The date, time and location of arrest, and the date and time of booking;

(3) The factual circumstances surrounding the arrest, the amount of bail set, the location where the individual is currently being held, or the time and manner of release; and,

(4) All charges the individual is being held upon, including any outstanding warrants from other jurisdictions, and parole or probation holds.

(b) Complaints and requests for assistance made within six (6) months of the date of the public information request (GC §6254(f)(2)):

(1) The time, substance, and location of all complaints or requests for assistance received by this department, and time and nature of response thereto, including, to the extent the information is recorded, the time, date and location of occurrence, and the time and date of the report.

*Highlighted text is new.

(2) The victim's name, age and address, unless his/her name and address are not be disclosed pursuant to paragraph 10(e) of this Order.

(3) Factual circumstances surrounding the crime or incident, and a general description of any injuries, property or weapons involved.

(c) Information required to be released to misdemeanor or felony crime victims, their agents, and insurers (GC §6254(f)):

(1) Names and addresses of persons involved in the incident;

(2) Names and addresses of witnesses (other than confidential informants) to the incident;

(3) The description of any property involved;

(4) The date, time and location of the incident;

(5) Statements of parties involved in the incident;

(6) Statements of witnesses (other than confidential informants); and,

(7) All diagrams.

(d) Release of a complete copy, without redaction, of an identity theft (PC §530.5) police report to the victim of said offense (PC §530.6(a)).

13 - Appeals relating to a denied request for the release of public records shall be forwarded to the Custodian of Records for review and disposition.

14 - Supervisory and command personnel may release verbatim excerpts from the General Orders, Training and Information Bulletins, or written policy directives of their particular command, and may quote statutory law which effects this Department and its conduct of public business.

15 - Subsequent to the approval of the Chief of Police, the Public Information Officer, his/her designee, and command personnel may respond to criticism of their particular command, of the activities of members of their command, or of the department, except when the criticism has resulted in an Internal Affairs investigation of alleged misconduct.

16 - Guideline Matrix. A guideline matrix for public record release is attached to this Order, and is provided to facilitate clarity and efficiency regarding the evaluation and satisfaction of public record requests.

References: Evidence Code §§1040 – 1042
Government Code §§6251 – 6265 and 13960
Penal Code §§530.5, 530.6(a), 841.5, 964, 11075, 11076, 11105, 11163.2(b), 11167, 11167.5 and 13300 et seq.
Welfare and Institutions Code §§5328 and 15633
Vehicle Code §§16005 and 20012
TNG v. Superior Court (4 C.3d 767 (1971))
City of Berkeley Administrative Regulations
General Order P-29
Support Services Division Manual

*Highlighted text is new.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

General Policy Statement Regarding Release Of Police Reports To The Public and the Police Review Commission (PRC):

It shall be the general policy of the Police Department to release a copy of a police report to any member of the public or the PRC, unless the release of the report, or a part of the report, or the information in the report would: (1) endanger a person; (2) endanger the successful completion of the investigation or a related investigation; (3) constitute an unwarranted invasion of privacy as defined in this Policy; or, (4) is prohibited by law.

A release of a police report to a City department, such as the City Attorney's office, the Office of Transportation, or the City Manager's office, is not a release to the public and is not governed by this Policy.

NAMES AND ARRESTEE INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult arrestee's name, occupation, physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held on, including any outstanding warrants from other jurisdictions and parole or probation holds.	Yes, release of this information is required by law, unless the release would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation. [Government Code §6254(f)(1)]		

Excluding headers, highlighted text is new.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult suspect name (e.g., when suspect not arrested)	No to general public, but yes to the general public, if the adult suspect's name was already released to the public through the PRC process. Release is also authorized to assist in specific public safety effort, such as locating the suspect.	Unwarranted invasion of privacy.	For PRC to investigate, when relevant to a PRC investigation, the PRC shall get the name of an adult suspect, if ALL of the following conditions apply: (1) the release will not endanger a person's safety; (2) the release will not endanger the successful completion of the investigation or a related investigation; and, (3) the release will not result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.
Juvenile arrestee name and Juvenile suspect name	No. The entire report cannot be released without a Court Order, except that the juvenile's name and address information may be released to the victim, or his/her representative, after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order, dated 4/7/1995; Welfare & Institutions Code §§ 601 and 602; [TNG v. Sup. Ct.]	Prior to release to victim, confirm status of case is no longer active in Juvenile Court.

Except for headers, highlighted text is new.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult and juvenile victim name.	No, if there is an active criminal case pending or a criminal case is likely to be filed, the name of the victim should not be released. [Penal Code §964] If no criminal case is pending or likely to be filed, then: Yes, release of a victim's name is required by law, unless the release of the adult victim's name would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or (3) the victim of one of the crimes listed in GC §6254(f)(2) (e.g., sex crimes, domestic violence, stalking or hate crime) has been asked and has requested or, if a juvenile victim, his or her parent or guardian has requested, that his or her name be kept confidential. [GC §6254(f)(2).]	PC §964 sets forth certain restrictions on the release of a victim's name if a criminal case is pending.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult or juvenile witness or "other party" name; an "other party" is a person who is not an arrestee, suspect, or witness.	No, if there is an active criminal case pending or a criminal case is likely to be filed, the name of the witness (or other party) should not be released. [PC §964] If no criminal case is pending or likely to be filed, then, for an adult witness name: Yes, unless release of the adult witness name would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. Note: The name of a juvenile witness will not be disclosed to the general public, unless it has already been disclosed through the PRC process. The name of a juvenile witness will only be disclosed to the PRC, if the parent or guardian consents to the disclosure.	Protection of witness and potential witnesses; PC §964 sets forth certain restrictions on the release of a witnesses' name if a criminal case is pending	If the PRC requests the name of a witness, the name can only be disclosed if: (1) there is no active criminal case pending or a criminal case is likely to be filed; (2) the release of the name would not endanger a person's safety; and, (3) the release of the name would not endanger the successful completion of the investigation or a related investigation. In addition, if the witness is a juvenile, the parent or guardian must consent to the disclosure to the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

PHONE NUMBERS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Phone number of person whose name IS released under this Policy	No, to general public, but yes to the general public, if the phone number was already released to the public through the PRC process.	Unwarranted invasion of privacy.	For PRC to investigate, PRC shall get the phone number of any adult person whose name is released to the PRC. However, if the person whose name is released is a juvenile, the phone number will not be released to the PRC without the consent of the juvenile's parent or guardian.
Phone number of any person whose name is NOT released under this Policy	No.	Unwarranted invasion of privacy.	

ADDRESS INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Adult arrestee address. Adult suspect address Adult/juvenile victim address. Adult/juvenile witness address. Adult/juvenile "other party" address. (Juvenile arrestee address: No: See below) (Juvenile suspect address: No: See below)	No, if the *name* is not released under this Policy and/or applicable law. In cases in which the *name* is released: No, to general public, but yes to the general public if the person's address was already released to the public through the PRC process. Note: Juvenile arrestee and juvenile suspect addresses are not releasable. See below.	Unwarranted invasion of privacy	For PRC to investigate, when relevant to a PRC investigation, PRC shall get the address of an adult arrestee, or adult suspect, or any victim, witness, or other party, but only if ALL of the following conditions apply: (1) the PRC obtained the name from BPD under this Policy; (2) the person has no working telephone number; (3) the release will not endanger a person's safety; (4) the release will not endanger the successful completion of the investigation or a related investigation; [cont.]

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

ADDRESS INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
			and, (5) the release will not result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. In the case of a juvenile victim, juvenile witness, or juvenile other party, in addition to the above conditions, the address shall not be released to the PRC without consent of the juvenile's parent or guardian. Juvenile arrestee and juvenile suspect addresses are not releasable to the PRC. See below.
Juvenile arrestee address and Juvenile suspect address.	No. The entire report cannot be released without a Court Order, except that name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/1995; WIC §§601, 602. [TNG v. Superior Court]	Prior to release to victim confirm status of case is no longer active in Juvenile Court.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

OTHER PERSONAL INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
Date of birth of non-arrestee. (Date of birth of arrestee is required by law to be released. See above)	No.	Unwarranted invasion of privacy and potential identity theft.	As an alternative, release victim, witness, or suspect's age.
CDL, Social Security #, Bank Account #.	No.	Unwarranted invasion of privacy and potential identity theft.	
Vehicle license plate numbers.	No.	Unwarranted invasion of privacy.	
Medical treatment records.	No, unless a person is requesting his or her own medical records, or the person whose medical records are being requested has signed an authorization for the release of the medical records to the requesting party.	Civil Code §56, et seq. provides that medical records are to be kept confidential; WIC §5328 provides that WIC §5150 records (such as the Berkeley Mental Health staff person's report re a WIC §5150) are confidential. Note: An officer's report re a WIC §5150 call is not a medical treatment record; it is a police report. Information provided by a medical treater noted in a police report is not a medical treatment record, but it should be deleted as an unwarranted invasion of privacy if it is highly sensitive information such as information involving sex crimes, suicide, or mental health.	Medical records can be given to the PRC if the person whose medical records are being requested has signed an authorization for the release of the medical records to the PRC. Alternatively, a person can obtain his or her own medical records held by BPD, if any, directly from BPD, and then give them to the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

MUG SHOTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
PFN photos taken by BPD (mug shots.)	Yes, unless release would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation.		Obtain Detective Bureau approval for release in all criminal cases.
PFN photos taken by another agency.	No, unless release is made for a public safety purpose.	Policy decision.	Obtain approval from Office of the Chief.

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE			
Subject	**Release**	**No Release Reason**	**Further Direction**
Oral (paraphrased) and written statements from victims, witnesses, and suspects. Investigative narrative. Diagrams. Evidence list.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result in the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Evidence photographs.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result the release of highly personal information of a very sensitive nature such as the condition of person's body or a corpse. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		
Communications center audio tapes	Yes, unless release is prohibited under PC §964 (pending criminal case), or release results in an unwarranted invasion of a citizen's privacy. No, as to continuing police radio communications in lengthy incidents occurring more than one hour after the incident first started.	Unwarranted invasion of citizen's privacy and undue burden on staff.	For PRC to investigate, PRC shall get the tapes. However, if witness or victim information is not releasable to the PRC under this Policy or by law (e.g., PC §964), then that information must be deleted. Also, if the tape contains highly personal information of a very sensitive nature such as a victim screaming as she is violently assaulted or killed, such segments shall be deleted before release to the PRC, unless the only person affected is the requesting party, and the person has filed a complaint with the PRC.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Investigative techniques: Trackers, undercover, surveillance locations, 'Johns'/decoy, tactics, interview tactics.	No.	Evidence Code §§1040-1042	
Confidential informant's name or identifying information.	No.	EC §§1040-1042	If the report uses "x" to refer to the confidential informant, release is permitted as no identifying information is included.
Complete, unredacted police report in ID theft (PC530.5) cases.	**Yes, to victim only (PC §530.6(a)).**		

CRIMINAL HISTORY INFORMATION			
Subject	**Release**	**No Release Reason**	**Further Direction**
PFN Number.	No.	Unwarranted invasion of privacy.	
Criminal history: Actual RAP sheet or actual RMS print-out for an individual.	No. However, local criminal history information contained in the RMS print out must be released to the subject of that information, if requested by the subject. [PC §13330(b)(11)]	PC §§11075, 11076, 11105 and 13300.	Okay to release serious felony conviction information only to Housing Authority managing Section 8 program.
Limited criminal history: Fact of prior crime or similar arrests relevant to the investigation, or relevant to the arrest charge, such as felon with a gun.	Yes. Although this information may be contained within a Rap sheet, it can be disclosed as a relevant part of a single police report, which in itself is not a Rap sheet. It can also be disseminated to the public generally for the purpose of assisting in the apprehension of a wanted person. [PC §13305]		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

CRIMINAL HISTORY INFORMATION (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Information taken out of CLETS.	No.	CLETS "Policies, Practices & Procedures" provides that CLETS information (which includes DMV) is confidential and for OFFICIAL USE ONLY.	
Probation or parole hold on an arrestee.	Yes. Release of this information is required by law, unless the release of the probation or parole hold on the arrestee would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation. [GC §6254(f)(1)]		
Probation or parole status when it is related to the investigation or arrest charge.	Yes, unless release of the arrest charge or investigation would: (1) endanger a person's safety; or, (2) endanger the successful completion of the investigation or a related investigation.		
Probation or parole, general status when there is no "hold" and it is not related to the investigation or arrest charge, and it is not being disclosed for a public safety purpose.	No.	PC §§11075, 11076, 11105 and 13300.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

OPEN AND CLOSED INVESTIGATIONS, HOMICIDE REPORTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Open, Suspended, and Closed investigations.	Yes, unless release would: (1) endanger a person's safety; (2) endanger the successful completion of the investigation or a related investigation; or, (3) result the release of highly personal information of a very sensitive nature such as sex crimes information, suicide, or mental health information. With respect to this third category, if the only person affected is the requesting party, and the person has filed a complaint with the PRC, then this information can be released to the PRC.		Obtain approval from effected Detective Bureau unit prior to release, if a criminal prosecution is still possible. For homicide reports, obtain approval from Homicide Unit and Custodian of Records prior to release.

SPECIAL POLICE REPORTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Juvenile arrest or juvenile suspect reports.	No. The entire report cannot be released without a Court Order, except that the name and address information may be released to the victim or his or her representative after the criminal case against the juvenile suspect/arrestee is final in Juvenile Court, but only if the victim is seeking damages in civil court.	Release prohibited (except in limited circumstance noted) by Alameda County Court Order dated 4/7/1995; WIC §§601 and 602. [TNG v. Superior Court]	Prior to release to victim confirm status of case is no longer active in Juvenile Court.
Child abuse reports.	No.	PC §§11167 and 11167.5.	
Elder abuse reports.	No.	WIC §15633 prohibits release.	
Vehicle collision reports.	No, except to persons authorized in VC §20012.	VC §20012 limits the release of collision reports to certain interested parties.	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

SPECIAL POLICE REPORTS (continued)			
Subject	**Release**	**No Release Reason**	**Further Direction**
Reports from other agencies.	No.	Policy decision.	

REQUESTS BY UNINVOLVED PARTIES AND SPECIAL REQUESTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Can an uninvolved party obtain a police report?	Yes, unless prohibited by law or this Policy, the same report or information released to involved parties should be released to any other person requesting the report.	Examples of selective release required by law include Alameda County Superior Court Juvenile Court Order dated 4/7/95 (release to victim in certain circumstances); GC §6254(f) (release to victim of certain crimes, except in specific circumstances); and, VC §§16005 and 20012 (release to involved parties re: collision reports.)	
Categorical requests, such as all reports pertaining to a certain address, all reports regarding a certain type of incident, or all reports related to a particular individual.	Yes, unless: 1) the release will impact citizen privacy issues; 2) the potential assembly of information will reveal criminal history; or, 3) if gathering the information will create an undue burden on staff. Yes, when release will enhance public safety (e.g., in a neighborhood effort to abate a nuisance such as drug dealing at a certain property where the reports are needed for a civil lawsuit.)		Custodian of Records to decide.

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

SEARCH WARRANTS			
Subject	**Release**	**No Release Reason**	**Further Direction**
Search Warrants and Returns.	Yes, unless sealed.	If sealed by Court.	
Search Warrant applications or affidavits, and any police reports attached to application.	Yes, but delete all identifying information pertaining to a victim or a witness in the application, affidavit, or a police report attached to the application.	PC §964 prohibits the release of a witness or victim's identifying information in a Search Warrant application or a police report attached to the application.	