

Police Review Commission (PRC)

## **POLICE REVIEW COMMISSION REGULAR MEETING**

**Wednesday, June 9, 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 May 26, 2021.

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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**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 – extend term.
- b. Lexipol Policies Subcommittee – extend term.

**9. OLD 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)
- b. Lexipol policies for review and approval. (20 minutes)

Lexipol	G.O.	Title
324	P-29	Media Relations
804	R-23	Records Maintenance and Release
337	D-21	Biological Samples

- c. Whether Commissioners may be allowed to observe police officers being trained and, if not, whether to take further action. (5 minutes)
- d. Update on transition to new Police Accountability Board and Office of Director of Police Accountability. (5 minutes)
- e. Extent of hate crimes tracking in the City of Berkeley and BPD response to recent anti-Asian hate crimes. (10 minutes)  
(See materials in May 26, 2021 packet.)

## 10. NEW BUSINESS (discussion and action)

- a. Recruitment process for Chief of Police (15 minutes)
  - i. Presentation from Human Resources Department. *(To be delivered.)*
  - ii. Select representative from PRC to serve on steering committee for Police Chief selection.  
From: PRC Officer
  
- b. Review and approve certificate of appreciation for former Commissioner George Perezvelez, for 14 years of service on the PRC. (5 minutes)  
*(To be delivered.)*  
From: PRC Officer
  
- c. Commendation of BPD officers for their acts in capturing a fleeing suspect on April 30, 2021. (5 minutes)  
*(To be delivered.)*  
From: Commissioner Calavita

## 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**

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



### **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.

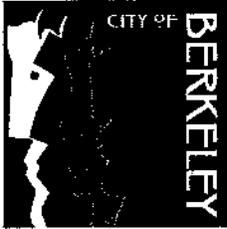
Contact the Police Review Commission at [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info).



**PRC REGULAR MEETING ATTACHMENTS  
JUNE 9, 2021**

<b><u>MINUTES</u></b>	
May 26, 2021 Regular Meeting Draft Minutes.	Page 7
<b><u>AGENDA-RELATED</u></b>	
Item 8. – PRC Subcommittees List, updated 5-14-21.	Page 11
Item 9.a – Recommendations to the new Police Accountability Board (PAB) to improve the process for handling complaints against officers.	Page 13
Item 9.b. – BPD Policy 324: Media Relations.	Page 15
Item 9.b. – BPD General Order P-29: Public / Media Relations, issued 8-17-09.	Page 23
Item 9.b. – BPD Policy 804: Records Maintenance and Release.	Page 33
Item 9.b. – BPD Policy 804 (Attachment): Guidelines for Release of Reports and Information Therein.	Page 45
Item 9.b – BPD General Order R-23: Release of Public Records and Information, issued 11-2-09. (And attachment.)	Page 61
Item 9.b. – BPD Policy 337: Biological Samples.	Page 75
Item 9.b. – BPD General Order D-21: DNA Sample Collection, issued 6-22-18.	Page 79
Item 9.b. – 5-12-21 Memorandum from Charles Clarke re Racial Disparities in Berkeley Arrests & Arrest Publicity.	Page 83
Item 9.b. – 5-26-21 Memorandum from Charles Clarke re Policy 804 – Records Maintenance and Release.	Page 85
Item 9.b. – 5-27-21 Email from Comm. Saginor attaching Notes on Lexipol Policies 324 and 804, prepared for 5-26-21 PRC meeting.	Page 97
Item 9.d. – 6-1-21 Action Calendar re Police Accountability Board – Appointment of Members.	Page 105
Item 9.d. – Resolution No. 69,874-N.S., Classification: Director of Police Accountability.	Page 109
<b><u>COMMUNICATIONS</u></b>	
Ordinance No. 7,760-N.S. Adding a New Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment.	Page 111





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**POLICE REVIEW COMMISSION**  
**REGULAR MEETING**  
**MINUTES**  
*(draft)*

**Wednesday, May 26, 2021, 7:00 P.M.**

**No physical location; meeting held exclusively through videoconference and teleconference.**

**1. CALL TO ORDER & ROLL CALL BY CHAIR RAMSEY AT 7:03 P.M.**

Present: Commissioner Ismail Ramsey (Chair)  
Commissioner Michael Chang (Vice-Chair)  
Commissioner Juliet Leftwich  
Commissioner Elisa Mikiten  
Commissioner Nathan Mizell  
Commissioner Kitt Saginor (alternate)

Absent: Commissioners Gwen Allamby, Kitty Calavita, Hans Moore

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Lt. Robert Rittenhouse, Lt. Dan Montgomery

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda.**

Moved/Second (Mikiten/Leftwich) **Motion Carried by general consent**

**3. PUBLIC COMMENT**

There was 1 speaker.

**4. APPROVAL OF MINUTES**

**Motion to approve Regular Meeting Minutes of May 13, 2021.**

Moved/Second (Mikiten/Leftwich) **Motion Carried by general consent**

**5. CHAIR'S REPORT**

Chair Ramsey reported:

-- Next step in the transition to the Police Accountability Board occurs on June 1, when nominees for Board will be considered by Council for final approval.

-- Interim Chief Louis presented to the Fair & Impartial Policing Working Group on progress of implementation of the recommendations approved Feb. 24. Hope to get a presentation to the PRC.

Comm. Mizell reported on the Reimagining Public Safety Task Force:

-- Last meeting was Thursday May 19. Joined by Chair Ramsey and Comm. Calavita, presenting on Fair & Impartial Policing recommendations, followed by Interim Chief Louis on Dept's progress so far. Next meeting June 10.

-- The Task Force released a survey to gather community's thoughts on a new public safety paradigm in Berkeley. Please share with community members.

## **6. PRC OFFICER'S REPORT**

The PRC Officer reported:

-- No new complaints filed since the last meeting. Board of Inquiry held yesterday; thanks to Comms. Leftwich, Moore, and Mizell for serving.

-- City Manager has begun the process for new Police Chief recruitment. Representative from Human Resources Dept. will present at next meeting re process; and PRC to select representative to steering committee.

-- PRC's online survey re familiarity with complaint process approved by Council yesterday. Mr. Norris sent link to poll to Commissioners and to community groups; please share widely.

-- Council also approved the classification and salary for the Director of Accountability, with some minor revisions.

## **7. CHIEF OF POLICE'S REPORT**

Lt. Rittenhouse reported on behalf of Interim Chief Louis:

-- Current staffing remains at 157, but several possible retirements upcoming, and officers leaving for other agencies. 4 conditional offers to start academy July 5.

-- Re PRC's interest in vaccination status of officers. Throughout pandemic BPD has required PPE one level higher than CDC required, e.g., N-95 masks. Have had very few cases and no cases of officers infecting member of the public. Rule: if can't maintain 6 feet of distance from community member, will wear N-95 mask.

-- CIT (Crisis Intervention Training) update. Rolling out new update in July. Trying to get as many through the longer POST-certified CIT as possible. OPD just started their 37-hour course and will start scheduling our officers to attend. Nearly 1/3 of officers have attended the 32-hour training and 114 have at least the 8-hour training.

-- Cases: shooting on 2300 block of Shattuck and 1100 block of Francisco. No injuries; homicide detail actively working the cases and have several promising leads.

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

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. Co-chair Mikiten reported that, as PRC Officer stated, the survey is out. Will be the last outreach item before transition to PAB.
- b. Lexipol Policies Subcommittee. Chair Mikiten said they are tying up loose ends.

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

- a. Discuss vaccination status of sworn officers of the Berkeley Police Department.  
  
Deputy City Manager Dave White was present to discuss and answer questions. No action taken.
- b. Consider making recommendations to the new Police Accountability Board about improving the process for handling complaints against officers.  
  
*(Heard following Item #9.f. Postponed to the next meeting.)*
- c. Lexipol policies for review and approval.

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

*(Policies 324 and 804 discussed; to be continued at the next meeting.)*

**Motion to approve Policy 403 with the following recommended revisions: 1) In 403.5, change “and/or” to “and”; 2) in 403.8.1.(b) delete “occasionally,”; 3) in 403.11, insert “be” [so that it reads, “It shall be the responsibility . . .”]; 4) In 403.11, current subsection (b)4. should be made a new subsection (c), as 4. does not follow from 1. through 3. preceding it.**

**Moved/Second (Mikiten/Leftwich) Motion Carried by general consent.**

- d. Whether to participate in a scenario-based use-of-force training offered by the Police Department.  
  
Discussed; no action taken.

- e. Whether Commissioners may be allowed to observe police officers being trained and, if not, whether to take further action.

*(Continued to the next meeting.)*

- f. Update on transition to new Police Accountability Board and Office of Director of Police Accountability.  
*(Heard following Item #9.a.)*

The PRC Officer gave a report.

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

- a. Extent of hate crimes tracking in the City of Berkeley (Old Business) and BPD response to recent anti-Asian hate crimes (New Business)

*(Discussed; to be continued to the next meeting.)*

#### **11. PUBLIC COMMENT**

There was 1 speaker.

#### **12. ADJOURNMENT**

**Motion to adjourn the meeting**

Moved/Second (Mikiten/Leftwich)

**By general consent, the meeting was adjourned at 8:55 p.m.**

**POLICE REVIEW COMMISSION  
SUBCOMMITTEES LIST**

**Updated 5-14-21**

<b>Subcommittee</b>	<b>Commissioners</b>	<b>Chair</b>	<b>BPD Reps</b>
<b>Lexipol Policies</b> Formed 5-23-18 Renewed 5-22-19 Renewed 6-10-20	Juliet Leftwich Elisa Mikiten Ismail Ramsey	<b>Mikiten</b>	Capt. Rico Rolleri Sgt. Joseph LeDoux
<b>Outreach</b> Formed 6-10-20	Gwen Allamby Kitty Calavita Elisa Mikiten Nathan Mizell  <u><b>Public</b></u> George Lippman Hector Malvido	<b>Calavita Mikiten</b>	



**Topic: Recommendations to the new Police Accountability Board (PAB) to improve the process for handling complaints against officers.**

Note: The goal is for the PRC to compile a list for the PAB to consider, not to debate the merit of these ideas. Commissioners may vote to send the recommendations as a group, if they agree, or take individual votes if not. Commissioners may offer ideas additional to those below at the June 9 meeting.

Comm. Leftwich (at May 13 meeting):

Some of the rules are unfair to complainants, and some confusing to commissioners.

1. Officers are allowed to observe our questioning of complainants but complainants aren't allowed to observe our questioning of the officer. Seems fundamentally unfair.
2. Six commissioners are needed to allow late filing of complaint. Five should be enough.
3. Four options for findings: sustained, not sustained, unfounded, and exonerated. Seem unworkable.

Comm. Calavita (per May 19 email):

4. The PAB should be able to receive 3rd party complaints, which would include complaints from witnesses as well as other third parties. The Charter Amendment defines a complainant as "a member of the public that files a complaint" and does not specify that it must be the directly aggrieved party. The latter is only referred to in the PRC's own rules and procedures and can (and I believe should) be modified by the PAB.
5. Likewise, Board Members of the PAB should be able to initiate complaints regarding incidents that have come to their attention.
6. The possibility of anonymous complaints should be considered. The Internal Affairs unit of the BPD receives anonymous complaints from officers (for example whistleblowers within the department), in recognition of their potential vulnerability and the possibility that there could be retaliation in some form. Similarly, members of the public may feel vulnerable vis a vis the police and by the same logic should be able to file complaints anonymously. Careful consideration would have to be given to how this would work, since the current process includes in-person interviews and hearings. Nonetheless, I believe it merits serious consideration.



## 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.

Commented [LJ1]: Agreed upon change with PRC sub

### 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

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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

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department policy to ensure that good media relationships are maintained.

#### 324.5.2 PIO RESPONSIBILITIES

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

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

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

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

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

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

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

#### 324.5.3 MEDIA REQUESTS

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

- (a) At no time shall any employee of this department make any comment or release any official information to the media without prior approval from a supervisor or the designated department media representative.
- (b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.
- (c) Under no circumstance should any member of this department make any comments to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.
- (d) When the PIO receives a media request for information, he/she shall:
  - Obtain and review a copy of the police report(s).
  - Review the facts of the case with the investigating officer or Detail prior to release

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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.

#### 324.324.6 MEDIA ACCESS

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

- (a) The media representative shall produce provide a press pass or identification and evidence.
1. Press pass: While the Berkeley Police Department does not issue press passes/credentials, we will honor those issued by outside agencies.
  2. Identification AND evidence: Identification in the form of a state ID, passport or school ID, AND evidence which shows they are active media. "Evidence" may include recently published articles or photographs bearing their name and the name of the news media outlet;
- (a)(b) Either the press pass or identification that they are active media or valid government issued press credentials passes that shall be prominently displayed at all times while in areas otherwise closed to the public.
- (b)(c) In the event of a planned/pre-publicized event or demonstration they wish to cover, media are encouraged to contact the Department's Public Information Office in advance for media specific information or details.
- (e)(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

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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

(d)f) No member of this department who is under investigation shall be subjected to media visits or interviews without the consent of the involved employee (Government Code § 3303(e)).

(g) Media interviews with individuals who are in custody 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.

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- Whenever practical, the attorney's affirmation and authorization should be obtained in writing.
  - When represented by legal counsel, any request by the media to interview or photograph a person in-custody shall be referred to the prisoner's attorney.

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

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

#### 324.3.1 PROVIDING ADVANCE INFORMATION

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

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

#### 324.4324.7 SCOPE OF INFORMATION SUBJECT TO RELEASE

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

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals (except confidential informants) involved in crimes occurring within this jurisdiction unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
- (b) The date, time, location, case number, name, birth date and charges for each person arrested by this department unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
- (c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident subject to the restrictions of this policy and applicable law

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(e)(d) Employees representing this department shall refrain from offering any opinion as to an arrestee's guilt or innocence, the merits of a particular case, or the existence, nature or value of evidence unless expressly authorized by the Chief of Police to issue such official comment.

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

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

Any requests for copies of related reports or additional information not contained in this log shall be referred to the designated department media representative, the custodian of records, or if unavailable, to the Watch Commander. Such requests will generally be processed in accordance with the provisions of the Public Records Act (Government Code § 6250, et seq.).

#### **324.8 MEDIA RELEASES**

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

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

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

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

#### **324.9 COMMUNICATIONS CENTER RESPONSIBILITIES**

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

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

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**324.6324.10 RESTRICTED INFORMATION**

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

**324.11 INVOLVED PARTY'S REQUEST FOR "NO RELEASE"**

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

- (a) Any officer requesting "No Release" shall include at the end of his/her report full justification for the request.
- (b) In the event a request for "No Release" is, or appears to be, for purely personal reasons, the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.
  - (1) In certain situations, the officer may include at the top of his/her report, "Request No Release."

**324.12 CONDUCT OF MEDIA REPRESENTATIVES**

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

- (a) The CSB Lieutenant shall investigate the allegation and, if appropriate, forward the results and action recommendation to the Chief of Police via the chain of command.
- (b) Any official action that may affect the involved media representative, including, but not limited to, communication of the complaint to the person's media organization, shall be taken only at the direction of the Chief of Police.

**324.13 SUGGESTED CHANGES TO MEDIA RELATIONS POLICY**

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

- (a) The Chief of Police shall be responsible for evaluating the suggested change and, if appropriate, directing its implementation.
- (a)(b) The PIO shall be responsible for advising the involved media representative of any changes and/or actions taken by the Department in response to their suggestion.

# 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.

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- (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.

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- (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.

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- 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.

\*Entire text revised.

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- (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 or 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.

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- (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

\*Entire text revised.

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§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.

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- (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.

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- 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" (3<sup>rd</sup> Ed., 1992), a publication of the American Bar Association



## 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.
- ~~(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.
- ~~(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

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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).

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- (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 RELEASER-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)):
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)):
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

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.

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#### 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).~~

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~~(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

(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.

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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

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

Commented [SSM18]: R-23 10b

Commented [SSM19]: R-23 10g

Commented [SSM20]: R-23 10h

Commented [SSM21]: R-23 10a

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

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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).~~

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

~~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.~~

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- (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

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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.

**804.9.3804.9.1 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)).

**804.9.4804.9.2 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.

**804.9.5804.9.3 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

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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)).

**804.9-6804.9.4 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.

<b>NAMES AND ARRESTEE INFORMATION</b>		
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>
Adult arrestee's <u>name</u> , 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)]	
		<b>Further Direction</b>

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>NAMES AND ARRESTEE INFORMATION (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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**

<b>NAMES AND ARRESTEE INFORMATION (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Adult and juvenile victim name.	<p>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]</p> <p>If no criminal case is pending or likely to be filed, then:</p> <p>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).]</p>	<p>PC §964 sets forth certain restrictions on the release of a victim's name if a criminal case is pending.</p>	

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

NAMES AND ARRESTEE INFORMATION (continued)			
Subject	Release	No Release Reason	Further Direction
<p>Adult or juvenile witness or "other party" name; an "other party" is a person who is not an arrestee, suspect, or witness.</p>	<p>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]</p> <p>If no criminal case is pending or likely to be filed, then, for an adult witness name:</p> <p>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.</p> <p>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.</p>	<p>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</p>	<p>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.</p>

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

PHONE NUMBERS		
Subject	Release	No Release Reason
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.
Phone number of any person whose name is NOT released under this Policy	No.	Unwarranted invasion of privacy.
		Further Direction 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.

ADDRESS INFORMATION		
Subject	Release	No Release Reason
Adult arrestee <u>address</u> . Adult suspect <u>address</u> . Adult/juvenile victim <u>address</u> . Adult/juvenile witness <u>address</u> . Adult/juvenile "other party" <u>address</u> .	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
		Further Direction 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

Subject	ADDRESS INFORMATION (continued)		Further Direction
	Release	No Release Reason	
Juvenile arrestee <u>address</u> and Juvenile suspect <u>address</u> .	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]	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.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>OTHER PERSONAL INFORMATION</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Date of birth of <u>non-arrestee</u> . (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	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.	Obtain approval from Office of the Chief.

THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE		
Subject	Release	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**

<b>THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)</b>		<b>Further Direction</b>
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>
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

<b>THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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)).		

<b>CRIMINAL HISTORY INFORMATION</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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 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.		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?	<p>Uninvolved parties will have access to the same information as involved parties, except in the following three situations:</p> <p>(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);</p> <p>(2) in accordance with GC §6254(f) (may withhold from an uninvolved party certain information releasable to a victim of a misdemeanor or felony crime); and,</p> <p>(3) pursuant to VC §§16005 and 20012 (release to involved parties only re: collision reports.)</p> <p>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.</p>		

GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN

REQUESTS BY UNINVOLVED PARTIES, VICTIMS, AND SPECIAL REQUESTS (continued)		
Subject	Release	No Release Reason
Can a victim of a misdemeanor or felony (but not an infraction), or their agent or insurance company, obtain a police report?	<p>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:</p> <ul style="list-style-type: none"> <li>(1) names and addresses of persons involved in the incident;</li> <li>(2) names and addresses of witnesses (other than confidential informants) to the incident;</li> <li>(3) description of any property involved;</li> <li>(4) date, time and location of the incident;</li> <li>(5) statements of parties involved in the incident;</li> <li>(6) statements of witnesses (other than confidential informants); and,</li> <li>(7) all diagrams.</li> </ul>	Further Direction

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>REQUESTS BY UNINVOLVED PARTIES, VICTIMS, AND SPECIAL REQUESTS (continued)</b>		
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>
<p>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.</p>	<p>Yes, unless:</p> <ul style="list-style-type: none"> <li>(1) the release will impact citizen privacy issues;</li> <li>(2) the potential assembly of information will reveal criminal history; or,</li> <li>(3) if gathering the information will create an undue burden on staff.</li> </ul> <p>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.)</p>	<p>Custodian of Records to decide.</p>
		<b>Further Direction</b>

<b>SEARCH WARRANTS</b>		
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>
<p>Search Warrant applications or affidavits, and any police reports attached to application.</p>	<p>Yes, unless sealed.</p> <p>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.</p>	<p>If sealed by Court.</p> <p>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.</p>
		<b>Further Direction</b>



## 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.

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- (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;

\*Highlighted text is new.

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- (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.

## BERKELEY POLICE DEPARTMENT

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- (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.

**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: November 2, 2009**

**GENERAL ORDER R-23**

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



**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.

<b>NAMES AND ARRESTEE INFORMATION</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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**

<b>NAMES AND ARRESTEE INFORMATION (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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**

<b>NAMES AND ARRESTEE INFORMATION (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Adult and juvenile victim <u>name</u> .	<p>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]</p> <p>If no criminal case is pending or likely to be filed, then:</p> <p>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).]</p>	<p>PC §964 sets forth certain restrictions on the release of a victim's name if a criminal case is pending.</p>	

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>NAMES AND ARRESTEE INFORMATION (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Adult or juvenile witness or "other party" <u>name</u> ; an "other party" is a person who is not an arrestee, suspect, or witness.	<p>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]</p> <p>If no criminal case is pending or likely to be filed, then, for an adult witness name:</p> <p>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.</p> <p>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.</p>	<p>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</p>	<p>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.</p>

Except for headers, highlighted text is new.

**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.]

Except for headers, highlighted text is new.

**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.

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>OTHER PERSONAL INFORMATION</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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.

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>MUG SHOTS</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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.

<b>THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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.		

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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 §984), 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.

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>THE POLICE REPORT NARRATIVE, STATEMENTS, DIAGRAMS, PHOTOS, AND COMMUNICATION TAPE (cont.)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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)).		

<b>CRIMINAL HISTORY INFORMATION</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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)(1)]	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]		

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>CRIMINAL HISTORY INFORMATION (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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, 11106 and 13300.	

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>OPEN AND CLOSED INVESTIGATIONS, HOMICIDE REPORTS</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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.

<b>SPECIAL POLICE REPORTS</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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.	

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>SPECIAL POLICE REPORTS (continued)</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
Reports from other agencies.	No.	Policy decision.	

<b>REQUESTS BY UNINVOLVED PARTIES AND SPECIAL REQUESTS</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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.

Except for headers, highlighted text is new.

**GUIDELINES FOR RELEASE OF REPORTS AND INFORMATION THEREIN**

<b>SEARCH WARRANTS</b>			
<b>Subject</b>	<b>Release</b>	<b>No Release Reason</b>	<b>Further Direction</b>
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.	

Except for headers, highlighted text is new.



## Biological Samples

### 337.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those individuals required to provide samples upon conviction or arrest for certain offenses. This policy does not apply to biological samples collected at a crime scene or taken from a person in conjunction with a criminal investigation. Nor does it apply to biological samples from those required to register, for example, sex offenders.

### 337.2 POLICY

The Berkeley Police Department will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state. Should force be necessary in order to obtain a sample, officers should only use the minimum amount of force necessary, and with as little reliance on force as practicable.

Commented [LJ1]: From 3/26/21 PRC subcommittee mtg.

### 337.3 PERSONS SUBJECT TO DNA COLLECTION

Those who must submit a biological sample include (Penal Code § 296):

- (a) A person, including a juvenile, upon conviction or other adjudication of any felony offense.
- (b) A person, including a juvenile, upon conviction or other adjudication of any offense if the person has a prior felony on record.
- (c) An adult arrested or charged with any felony.

### 337.4 PROCEDURE

When an individual is required to provide a biological sample, a trained employee shall obtain the sample in accordance with this policy.

#### 337.4.1 COLLECTION

The following steps should be taken to collect a sample:

- (a) Verify that the individual is required to provide a sample pursuant to Penal Code § 296; Penal Code § 296.1.
- (b) Verify that a biological sample has not been previously collected from the offender by querying the individual's criminal history record for a DNA collection flag or, during regular business hours, calling the California Department of Justice (DOJ) designated DNA laboratory. There is no need to obtain a biological sample if one has been previously obtained.
- (c) Use a DNA buccal swab collection kit provided by the California DOJ to perform the collection and take steps to avoid cross contamination.

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### 337.5 INVOLUNTARY DNA COLLECTION USE OF FORCE TO OBTAIN SAMPLES

If a person refuses to cooperate with the sample collection process, officers should attempt to identify the reason for refusal and seek voluntary compliance without resorting to using force. Force will not be used in the collection of samples except as authorized by a court order and only with the approval of the Watch Commander supervisor. Methods to consider when seeking voluntary compliance include contacting:

The person's parole or probation officer when applicable.

The prosecuting attorney to seek additional charges against the person for failure to comply or to otherwise bring the refusal before a judge.

The judge at the person's next court appearance.

The person's attorney.

A chaplain.

Another custody facility with additional resources, where an arrestee can be transferred to better facilitate sample collection.

A supervisor who may be able to authorize custodial disciplinary actions to compel compliance, if any are available.

The supervisor shall review and approve any plan to use force and be present to document the process. The following employees shall be involved in the administration of an involuntary DNA collection procedure:

(a) A sworn supervisor,

(b) An assigned officer and

(c) An assisting employee

The incident supervisor shall involve as many assisting employees as may be required to ensure the restraint of the individual and to accomplish the DNA collection. The incident supervisor shall explain to the individual that their refusal will result in his/her physical restraint, and that reasonable force may be employed to promote the safety of all involved parties during the impending collection.

#### 337.5.1 RESTRAINT EQUIPMENT

When available and practical, restraint equipment should be employed if its use would enhance the safety of persons involved in an involuntary DNA collection process.

"Restraint equipment", as used in this pPolicy, may include, but is not limited to, a padded phlebotomy chair, a hospital gurney equipped with soft-restraints and "The Wrap" restraint device. The use of restraint equipment shall not preclude the physical restraint of an individual's person by an employee if such action is necessary to mitigate the potential for injury.

The incident supervisor shall monitor the restraint process to ensure only reasonable force is employed. If confronted with violent resistance, the incident supervisor may elect to terminate the

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procedure, and develop an alternate plan for the DNA collection.

Should employees use physical force to overcome an individual's violent resistance to the DNA collection process, the incident supervisor shall adhere to the reporting protocols in the Use of Force Policy. The arresting officer shall document the conduct of the individual during the DNA collection procedure in his/her report.

In the event an individual is injured, or complains of injury, as a result of police action, the incident supervisor shall ensure the medical service protocols are followed.

#### 337.5.2 VIDEO RECORDING

A video recording shall ~~ould~~ be made anytime force is used to obtain a biological sample. The recording should document all staff participating in the process, in addition to the methods and all force used during the collection. The recording should be part of the investigation file, if any, or otherwise retained in accordance with the department's records retention schedule (15 CCR 1059).

#### 337.5.3 CELL EXTRACTIONS

If the use of force includes a cell extraction, the extraction shall be video recorded, including audio. Video shall be directed at the cell extraction event. The video recording shall be retained by the Department for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained administratively (15 CCR 1059).

#### 337.6 LEGAL MANDATES AND RELEVANT LAWS

California law provides for the following:

##### 337.6.1 DOCUMENTATION RELATED TO FORCE

The Watch Commander shall prepare prior written authorization for the use of any force (15 CCR 1059). The written authorization (the BPD "Upgraded Search and DNA Collection Request" form) shall include information that the individualsubject was asked to provide the requisite specimen, sample or impression and refused, and if applicable, as well as the related court order authorizing the force.

##### 337.6.2 BLOOD SAMPLES

A blood sample should only be obtained under this policy when:

- (a) The California DOJ requests a blood sample and the individualsubject consents, or
- (b) A court orders a blood sample following a refusal.

The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. A California DOJ collection kit shall be used for this purpose (Penal Code § 298(a); Penal Code § 298(b)(2)).

##### 337.6.3 LITIGATION

The Chief of Police or authorized designee should notify the California DOJ's DNA Legal Unit in

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the event this department is named in a lawsuit involving the DNA Data Bank sample collection, sample use or any aspect of the state's DNA Data Bank Program.

**337.7 EXPUNGEMENT FROM CAL-DNA DATA BANK**

California Penal Code § 299 sets forth the criteria for DNA Database sample expungement. Expungement can be accomplished easily and quickly when a DNA sample qualifies for removal from the State database and a person provides sufficient documentation of his/ her identity, legal status and criminal history to the California Department of Justice, DNA Database Program (CAL-DNA). A petitioner whose sample qualifies for DNA database sample expungement and who provides appropriate documentation can expedite the process so that neither a court hearing, nor a 180-day waiting period permitted by Section 299, likely will be necessary.

If CAL-DNA receives sufficient documentation showing that an individual meets the criteria for expungement of his or her DNA sample, CAL-DNA will review and research the request and issue a response to the petitioner indicating that the expungement was completed and the sample destroyed, or notify the petitioner of the legal reason the Department is required to retain the sample and profile.

A form to request CAL-DNA to expunge a DNA database sample and profile can be obtained by contacting the California Office of the Attorney General. The Attorney General's website is <https://oag.ca.gov> or a petitioner can call 800-952-5225. The form to request the expungement is the "Streamlined DNA Expungement Application Form" (State of California DLE 244). Expungement of a DNA sample and profile are the responsibility of the Department of Justice. The Berkeley Police Department has no influence on this decision.

# BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

GENERAL ORDER D-21

SUBJECT: DNA SAMPLE COLLECTION

## PURPOSE

1. The purpose of this policy is to provide guidelines for the collection of DNA evidence from those individuals required to provide such samples under the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, and the State of California DNA Data Bank Program (Penal Code § 295, et seq.).

## POLICY

2. Upon a determination that any individual is qualified and required to provide DNA samples under the Act, the arresting officer, jail staff, or other employee designated by a supervisor shall obtain DNA samples in accordance with this policy.

## PERSONS SUBJECT TO DNA COLLECTION

3. While the courts may order DNA samples taken in a variety of circumstances under the Act, members of this department are only authorized to obtain DNA samples from the following individuals absent other lawful means (e.g., consent or a search warrant). Only those qualifying individuals whose DNA sample is not currently on file with the Department of Justice may be required to provide samples. Verification of DNA samples on file may be determined by a DNA collection flag on the individual's criminal history record or, during regular business hours, by calling the Department of Justice designated DNA laboratory at (510) 620-3300.
4. All DNA collection flags should be verified by contacting DOJ prior to the collection of the sample (Penal Code § 298(b)(5)).
5. It is a misdemeanor for any qualified individual to refuse to give any or all required DNA samples following written notice of the requirement to do so (Penal Code § 298.1(a)).

## ARRESTEES

6. Any adult arrested or charged with any felony offense is required to provide DNA samples. DNA samples should be collected immediately following arrest, or during the booking process, or as soon as administratively practicable after arrest but in any case prior to release on bail or other physical release from custody (Penal Code § 296.1(a)(1)(A)).

## SEX AND ARSON REGISTRANTS

7. Any adult or juvenile who is required to register as a sex offender under Penal Code §290 or arsonist under Penal Code § 457.1, including those whose

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

GENERAL ORDER D-21

registration resulted from a qualifying misdemeanor crime is required to submit a DNA sample. (Penal Code § 296(a)(3)). At the time that any such registrant registers, updates registration, or is notified by the Department of Justice or other law enforcement officer, an appointment shall be made designating the time and place for the collection of DNA samples if no such sample has already been provided (Penal Code § 296.2(c)).

### BUCCAL SWABS

8. Buccal swab samples (taken from the inside of the mouth) may only be procured by employees who have successfully completed departmentally approved training in the collection of buccal swabs and with the use of Department of Justice buccal swab collectors. (Penal Code § 298(a) and (b)(3)). A right thumbprint shall be placed on the collector along with other required identifying information.

### USE OF FORCE TO OBTAIN SAMPLES

9. If, after a written or oral request, a qualified individual refuses to provide any or all of the required DNA samples, a sworn member of this department may use reasonable force to obtain such sample(s).
10. *For the purpose of this section, the "use of reasonable force" shall be defined as the force that an objective, trained and competent officer faced with similar facts and circumstances would consider necessary and reasonable to gain compliance. (Penal Code § 298.1(c)(1)(A)).*
11. The following conditions must be met prior to proceeding with an involuntary DNA collection procedure:
  - (a) Prior to the use of reasonable force, the officer(s) shall take and document reasonable steps to secure voluntary compliance (Penal Code § 298.1(c)(1)(C)).
  - (b) Prior to the use of reasonable force, the assigned officer shall obtain written authorization from a supervisor using the "Upgraded Search and DNA Collection Request" Form. The narrative on the form shall minimally include that the individual was asked to provide the sample(s) and refused (Penal Code § 298.1(c)(1)(B)).
  - (c) If the authorized use of reasonable force includes an extraction from a jail cell, such extraction shall be videotaped (Penal Code § 298.1(c)(1)(D)).
12. The following employees shall be involved in the administration of an involuntary DNA collection procedure:
  - (a) A sworn supervisor.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

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- (b) An assigned officer.
  - (c) An assisting employee.
13. The incident supervisor shall involve as many assisting employees as may be required to ensure the restraint of a qualified individual and to accomplish the DNA collection.
  14. Prior to conducting the DNA collection, the assigned officer shall seek the consent of the qualified individual. The assigned officer will document the refusal in writing, and obtain a sworn supervisor's written authorization before proceeding.
  15. Should the qualified individual refuse the assigned officer's request for consent to collect DNA, the incident supervisor shall explain to the individual that their refusal will result in his/her physical restraint, and that reasonable force may be employed to promote the safety of all involved parties during the impending collection.
  16. Upon authorization of the incident supervisor, employees may employ physical force to restrain a qualified individual who refuses to participate in the DNA collection process.
  17. The incident supervisor shall monitor the restraint process to ensure only reasonable force is employed.
  18. If confronted with violent resistance, the incident supervisor may elect to terminate the procedure, and develop an alternate plan for the DNA collection. This section does not negate employees' duty to respond appropriately to physical assaults, or to prevent injury to involved parties if assaulted by the qualified individual.
  19. When available and practical, restraint equipment should be employed, if its use would enhance the safety of persons involved in an involuntary DNA collection process.
  20. "Restraint equipment", as used in this Order, may include, but is not limited to, a padded phlebotomy chair, a hospital gurney equipped with soft-restraints, and "The Wrap" restraint device.
  21. The use of restraint equipment shall not preclude the physical restraint of a qualified individual's person by an employee(s) if such action is necessary to mitigate the potential for injury.
  22. Should employees employ physical force to overcome a qualified individual's violent resistance to the DNA collection process, the incident supervisor shall adhere to "Use of Force" reporting protocols described in General Order U-2.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

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23. The arresting officer shall document in the criminal investigation report the conduct of a qualified individual during the DNA collection procedure.
24. In the event a qualified individual is injured, or complains of injury, as a result of police action, the incident supervisor shall ensure the medical service protocols described in General Order A-17 are followed.

### EXPUNGEMENT FROM CAL-DNA DATA BANK

25. **California Penal Code section 299 sets forth the criteria for DNA Database sample expungement. Expungement can be accomplished easily and quickly when a DNA sample qualifies for removal from the State database and a person provides sufficient documentation of his/ her identity, legal status and criminal history to the California Department of Justice, DNA Database Program (CAL-DNA). A petitioner whose sample qualifies for DNA database sample expungement and who provides appropriate documentation can expedite the process so that neither a court hearing, nor a 180-day waiting period permitted by Section 299, likely will be necessary.**
26. **If CAL-DNA receives sufficient documentation showing that an individual meets the criteria for expungement of his or her DNA sample, CAL-DNA will review and research the request and issue a response to the petitioner indicating that the expungement was completed and the sample destroyed, or notify the petitioner of the legal reason the Department is required to retain the sample and profile.**
27. **A form to request CAL-DNA to expunge a DNA database sample and profile can be obtained by contacting the California Office of the Attorney General. The Attorney General's website is <https://oag.ca.gov> or a petitioner can call 800-952-5225. The form to request the expungement is the "Streamlined DNA Expungement Application Form" (State of California DLE 244). Expungement of a DNA sample and profile are the responsibility of the Department of Justice. The Berkeley Police Department has no influence on this decision.**

#### References:

California Penal Code §§ 290, 295, 296(a), 296.1, 296.2, 298, 298.1, 299, 457.1  
General Orders A-17, P-65, U-2

Berkeley, California  
May 12, 2021

To: Police Review Commission  
Cc: Katherine Lee, Executive Officer  
Subject: Racial Disparities in Berkeley Arrests & Arrest Publicity

The attached memorandum documents Berkeley Police Department (BPD) arrests, and publicity of arrests, for the two-year period April 2019 to March 2021 (see pp. 1-8 of attached memorandum). I have compiled public-use datasets of arrests and arrestees in that two-year period, available on [Berkeleypedia.com](http://Berkeleypedia.com), a volunteer-led community resource.<sup>1</sup>

This memorandum may help inform this Commission in its review of Policy 804, Records Maintenance and Release.<sup>2</sup>

In answer to a question about mugshots that arose at the April 28, 2021, meeting of this Commission: California law, specifically the California Public Records Act, requires that BPD disclose booking photos, subject to certain exceptions, to any member of the public requesting them. Draft Policy 804 complies with California law.

But in view of the documented racial disparity in arrest publicity, and California law that protects that publicity, I suggest that Policy 804 be amended to promote greater use of the City's NextRequest portal to fulfill BPD public records requests (see pp. 9-10 of attached memorandum).

As always, I urge this Commission to review the police department that Berkeley actually has.

Sincerely,



Charles Clarke  
Resident, District 6

Attachment: Racial Disparities in Berkeley Arrests & Arrest Publicity, May 12, 2021

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<sup>1</sup> [Berkeleypedia.com, Public Use Datasets of Berkeley Police Department Arrests, https://www.berkeleypedia.com/index.php?title=Crime in Berkeley#Public Use Datasets of Berkeley Police Department Arrests](https://www.berkeleypedia.com/index.php?title=Crime%20in%20Berkeley#Public%20Use%20Datasets%20of%20Berkeley%20Police%20Department%20Arrests)

<sup>2</sup> BPD Policy 804, in Police Review Commission packet, May 13, 2021, pp. 59-85, [https://www.cityofberkeley.info/uploadedFiles/Police Review Commission/Commissions/2021/2021-05-13-prc-pkt.pdf](https://www.cityofberkeley.info/uploadedFiles/Police%20Review%20Commission/Commissions/2021/2021-05-13-prc-pkt.pdf)

# Racial Disparities in Berkeley Arrests & Arrest Publicity

Memorandum from Charles Clarke, a resident of Berkeley, May 12, 2021,  
To the City of Berkeley Police Review Commission

**Background.** At the April 28, 2021, Police Review Commission (PRC) meeting Commissioner Leftwich noted a crime story published the preceding day that featured nine booking photos (“mugshots”) credited to the Berkeley Police Department (BPD).<sup>1</sup> Commissioner Leftwich asked BPD whether Department policy prohibited the release of booking photos. Chair Ramsey thought that a City ordinance also applied. BPD Interim Chief Louis did not have a ready answer but thought that, as public records, those booking photos could have been obtained through Alameda County.<sup>2</sup>

**Overview.** This memorandum apprises the Commission of (1) what has been learned about BPD disclosure of booking photos relative to BPD’s arrest activity, and (2) how these disclosures inform the current evaluation of racial disparities in Berkeley policing.

This memorandum concludes with recommendations (pp. 9-10) to amend public disclosure toward greater informativeness about (1) whom BPD arrests and (2) the terms on which BPD makes information available.

**State Law.** Public records, including those maintained by BPD, are generally releasable upon request by a member of the public under the California Public Records Act (CPRA),<sup>3</sup> with some exceptions. A most pertinent exception allows BPD to withhold access to records relating to an ongoing criminal investigation.<sup>4</sup>

**City Law.** At its meeting on September 25, 2018, the City Council adopted a policy prohibiting BPD and the City from releasing on social media certain identifying information, including booking photos, of persons arrested for non-violent offenses at First Amendment Events as defined in BPD General Order C-64 (since superseded by BPD Policies 428 and 429).<sup>5,6</sup>

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<sup>1</sup> Emilie Raguso, “Crime log: Guns seized, elders attacked, hate crime arrests, more,” *Berkeleyside*, April 27, 2021, <https://www.berkeleyside.com/2021/04/27/berkeley-crime-log-hate-crime-arrests-guns-seized-elders-attacked>

<sup>2</sup> Police Review Commission recording, April 28, 2021, 40:15 to 42:07, available from the PRC upon request.

<sup>3</sup> California Public Records Act, Government Code § 6250 *et seq.*, [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?division=7.&chapter=3.5.&lawCode=GOV&title=1.&article=1](https://leginfo.ca.gov/faces/codes_displayText.xhtml?division=7.&chapter=3.5.&lawCode=GOV&title=1.&article=1).

<sup>4</sup> Government Code § 6254(f), [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=6254](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=6254).

<sup>5</sup> Annotated Agenda, Berkeley City Council Meeting, September 25, 2018, “Item D. City of Berkeley Policy Limiting the Publishing of Arrest Photos (doxing) of people arrested by the Berkeley Police Department,” pp. 12-13, [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/09\\_Sep/Documents/09-25\\_Annotated\\_Agenda\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/09_Sep/Documents/09-25_Annotated_Agenda_pdf.aspx)

<sup>6</sup> BPD Policy 428, “First Amendment Assemblies,” [https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/First\\_Amendment\\_Assemblies.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/First_Amendment_Assemblies.pdf); BPD Policy 429, “Intelligence Procedures for First Amendment Activities,” [https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/Intelligence\\_Procedures\\_for\\_First\\_Amendment\\_Activities.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Intelligence_Procedures_for_First_Amendment_Activities.pdf)

Berkeley, California  
May 26, 2021

To: Police Review Commission  
Cc: Katherine Lee, Executive Officer  
Subject: Policy 804 – Records Maintenance and Release

**Suggestion.** This Commission should revise Policy 804 (Records Maintenance and Release),<sup>1</sup> specifically 804.4.1 Requests for Records, to emphasize that the Berkeley Police Department (BPD) will handle all public records requests through the City of Berkeley NextRequest portal.<sup>2</sup>

#### 804.4.1 REQUESTS FOR RECORDS

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

**Background.** My May 12 letter and associated memorandum (“Memo”)<sup>3</sup> documented that the City’s policy is generally to not publish booking photos (“mugshots”). (Memo, pp. 1-2)

The California Public Records Act (CPRA) requires the City (including BPD) to fulfill requests for booking photos, resulting in a media outlet’s oversampling of Black and Hispanic arrestees’ mugshots for publication. (Memo, pp. 4-5) The City possesses no authority to *prevent* this biased portrayal of crime in Berkeley. (Memo, pp. 7-8)

What the City *can* do is publicize such requests, which accords with the goal the City has set for NextRequest, so as to introduce a measure of accountability to the decision by a media outlet to publish mugshots.

**Update.** On May 19 Emilie Raguso, Berkeleyside’s crime reporter, revealed that “BPD often repackages what I ask about for their own Nixles. You may see the Nixles and assume I’m writing about something BPD has put out, when actually the converse is true.”<sup>4</sup> (The Nixle notification system is used by BPD to publicize its activities.<sup>5</sup>) This revelation lends unfortunate weight to the “connivance” of the Department with a

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<sup>1</sup> BPD Policy 804, in Police Review Commission packet, May 13, 2021, pp. 59-85, [https://www.cityofberkeley.info/uploadedFiles/Police Review Commission/Commissions/2021/2021-05-13-prc-pkt.pdf](https://www.cityofberkeley.info/uploadedFiles/Police%20Review%20Commission/Commissions/2021/2021-05-13-prc-pkt.pdf). 804.4.1 at p. 60.

<sup>2</sup> City of Berkeley Open Public Records, <https://cityofberkeleyca.nextrequest.com>

<sup>3</sup> Charles Clarke, “Racial Disparities in Berkeley Arrests & Arrest Publicity,” letter to the PRC, May 12, 2021, [https://www.cityofberkeley.info/uploadedFiles/Police Review Commission/Commissions/2021/Clarke%20ltr%20BPD%20Arrest%20Disparities%2005.12.2021.pdf](https://www.cityofberkeley.info/uploadedFiles/Police%20Review%20Commission/Commissions/2021/Clarke%20ltr%20BPD%20Arrest%20Disparities%2005.12.2021.pdf)

<sup>4</sup> Emilie Raguso e-mail to author, “Re: question / your analysis,” May 19, 2021.

<sup>5</sup> Berkeley Police Department: Nixle, <https://local.nixle.com/berkeley-police-department>

media organization that I counted as a public detriment when the outcome is a distorted picture of crime in Berkeley. (Memo, p. 7, #8)

Further confirmation of the lasting pernicious effect of mugshots can be gained from an exchange between Ms. Raguso and a commenter on a July 2020 crime story that, interestingly, did not include mugshots:<sup>6</sup>

Commenter Big\_Brothers\_Big\_Brother:

"...If Berkeleyside ( or any paper ) did a proper follow-up to crime stories, the booking photos would not be necessary....Unless the "story" is extremely notorious, the follow-up barely gets written about...."

Moderator emraguso (Emilie Raguso):

"You might be interested to know that most of the stories we actually write about sentencing get only a fraction of the interest that the initial incident drew. So, in addition to the impossible temporal [sic] demands it would take to follow all cases thru to the end, there's also just minimal public interest in those outcomes, unfortunately."

Berkeleyside's asymmetric business interest against publishing acquittals or non-prosecutions – costly to ascertain, unremunerative to publish – leads to a public detriment I have already identified. (Memo, p. 6, #4) This "bad news bias" is especially harmful when combined with a discernible "confirmation bias" that some readers may harbor about different races. Berkeleyside's interest in clicks and controversy does not align with the City's – *my City's* – interest in justice or fully truthful information about crime in Berkeley.

Admitting the sunlight of NextRequest to BPD public records requests may disinfect this process.

Sincerely,



Charles Clarke  
Resident, District 6

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<sup>6</sup> Disqus comments to Emilie Raguso, "Berkeley police arrest 3 people after armed robbery at Dollar Tree," Berkeleyside, July 21, 2020, <https://www.berkeleyside.org/2020/07/21/berkeley-police-arrest-3-people-after-armed-robbery-at-dollar-tree>

Two years later the San Francisco Police Department adopted a policy similar to Berkeley's concerning social media posting of booking photos.<sup>7</sup> The policy would end the practice of releasing booking photos "except in circumstances where their release is necessary to warn the public of imminent danger or to enlist the public's assistance in locating individuals, including at-risk persons."<sup>8</sup>

**Department Policy.** According to BPD's public information officer, the Department has extended the City Council policy concerning non-violent arrestees to *all* arrestees generally: "in the spirit of the language and community conversations about the subject, our Public Information Office has made a point of limiting posting of booking photos in only the most serious of cases."<sup>9</sup> However, in accordance with the CPRA the Department would provide booking photos to members of the public upon *their* request. The public information officer confirmed that Berkeleyside had requested, and BPD had supplied, the booking photos in the Berkeleyside April 27 crime log that prompted Comm. Leftwich's April 28 query.

**Berkeley Population Data.** Following the Berkeley City Auditor's recent report,<sup>10</sup> this memorandum makes use of the July 1, 2019, U.S. Census Bureau QuickFacts estimate of the Berkeley city population and its major racial/ethnic categories.<sup>11</sup>

- *Asian* = "Asian alone";
- *Black* = "Black or African American alone";
- *Hispanic* = "Hispanic or Latino";
- *Other* = "American Indian and Alaska Native alone" + "Native Hawaiian and Other Pacific Islander alone" + "Two or More races"; and
- *White* = "white alone, not Hispanic or Latino."

**BPD Arrest Data.** Arrests lead to collection of personal information about the arrestee, including one or more post-arrest photos captured during the booking process. The Department discloses its Arrest Log for the past 30 days on the City's Open Data Portal.<sup>12</sup> The Arrest Log discloses an adult arrestee's name and physical traits (date of birth, race, sex, hair color, eye color), but *not* the booking photo pursuant to Department policy and practice.

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<sup>7</sup> San Francisco Police Department, Department Notice 20-112, July 1, 2020, "Department Media Relations and Social Media – Booking Photos and Arrestee Information," <https://www.sanfranciscopolice.org/sites/default/files/2020-07/SFPDDN20.112.20200701.pdf>

<sup>8</sup> San Francisco Police Department press release 20-063, "SFPD Bill Scott ends the release of most booking photos, saying new reform aims to reduce bias, affirm procedural justice," July 1, 2020 <https://www.sanfranciscopolice.org/news/sfpd-chief-bill-scott-ends-release-most-booking-photos-1>

<sup>9</sup> Author's e-mail exchange with BPD Public Information Officer Ofc. Byron White, May 3, 2021.

<sup>10</sup> Berkeley City Auditor, Data Analysis of the City of Berkeley's Police Response, Audit Report, April 22, 2021, p. 28, [https://www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/Data%20Analysis%20of%20the%20City%20of%20Berkeley's%20Police%20Response.pdf](https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Data%20Analysis%20of%20the%20City%20of%20Berkeley's%20Police%20Response.pdf)

<sup>11</sup> U.S. Census Bureau, "QuickFacts: Berkeley city, California," July 1, 2019, <https://www.census.gov/quickfacts/berkeleycitycalifornia>

<sup>12</sup> City of Berkeley Open Data, "Berkeley PD Log – Arrests," <https://data.cityofberkeley.info/Public-Safety/Berkeley-PD-Log-Arrests/xi7q-nji6>

Two full years of BPD arrest data – April 2019 to March 2021 – have been collected into a public-use sample of *arrests* available on [berkeleypedia.com](http://berkeleypedia.com), a volunteer-led community resource. The arrests have been further processed to assemble the set of distinct *arrestees*.<sup>13</sup>

**BPD Arrest Summary.** Within the 2-year sample time frame available, BPD charged 7,063 statutory violations pursuant to 4,464 arrests of 2,785 different persons (arrestees). These counts evidence recidivism (multiple arrests of a single individual within the sample time frame) and incident severity (multiple statutory violations within a single arrest). The vast majority (77%) of arrestees was arrested exactly once during the sample time frame.

Table 1. Racial/Ethnic Composition of Berkeley Population & Arrests, April 2019-March 2021

Race/Ethnicity	Population	Statutory Violations	Arrests	Distinct Arrestees
Black	8%	50%	48%	49%
Hispanic	11%	13%	13%	15%
Other	9%	5%	5%	6%
Asian	21%	3%	3%	3%
White	53%	29%	31%	28%
<i>Count</i>	121,363	7,063	4,464	2,785

Sources: U.S. Census Bureau QuickFacts, July 1, 2019; Berkeley PD – Arrest Logs, 2019-2021.

**Racial Disparities in Berkeley Arrests.** Disparate police treatment of minorities, especially Black people, relative to white people has become an especially pressing public concern since last year’s murder of George Floyd in Minneapolis. This disparity is obvious and observable in the Arrest Logs for the past two years reported in Table 1 (49% of arrestees Black vs. 28% white).

Comparison of arrest rates to population percentages by racial/ethnic category is a standard practice, qualified by the fact that many arrestees have not been counted in the Berkeley census due to residency outside Berkeley or to transience. As the Center for Policing Equity (CPE) noted in 2017:

“The methodology for measuring whether or not law enforcement is fairly policing all racial groups is based on an assumption about the size of the underlying population of each racial group...the people present in Berkeley at any given time may come from other parts of the Bay Area (or of the state, or of the world), whose demographics may be different from those of Berkeley proper....At this time, though, there is no way to control for this effect or to benchmark the effective representation of each racial group in the city. As a

<sup>13</sup> Both datasets are available at [Berkeleypedia.com](http://Berkeleypedia.com), Public Use Datasets of Berkeley Police Department Arrests, [https://www.berkeleypedia.com/index.php?title=Crime\\_in\\_Berkeley#Public\\_Use\\_Datasets\\_of\\_Berkeley\\_Police\\_Department\\_Arrests](https://www.berkeleypedia.com/index.php?title=Crime_in_Berkeley#Public_Use_Datasets_of_Berkeley_Police_Department_Arrests)

**result, census-based comparisons are essential, but should be viewed with caution.”<sup>14</sup> (bolding added)**

BPD’s Arrest Log does not report an arrestee’s city of residence (nor absence of fixed address) so CPE’s caution can only be noted, not systematically assessed. A third-party data source that purports to identify arrestees’ cities of residence has placed only 36% of the arrests in Table 1 above as being of Berkeley residents; the remaining locales were: cities other than Berkeley, “transient,” or missing (no data). This source supports the existence of this effect, but is not cited here for precise quantification of its importance.

A second caution is more logical than quantitative: From the arrest data alone an analyst cannot readily measure the racial/ethnic distribution of those who *should have been* arrested because the data contain information only on those who *were* arrested. (Failing to arrest the arrest-worthy is sometimes known in statistics as a “false negative” or “Type II” error.)

Racially differential – that is, *invidiously discriminatory* – enforcement standards would be difficult to detect merely by counting arrests and comparing to a population benchmark. (Wrongly arresting the innocent is known as a “false positive” or “Type I” error. Justice in law enforcement demands minimization of Type I error.) Experimental means to diagnose invidious discrimination in the available arrest data have not been developed (certainly not by this author). Such means would be useful to measure the problem so as to target an effective solution, as has been done with the “veil of darkness” test to ascertain discriminatory traffic stop patterns.<sup>15,16</sup>

**The available arrest data indicate that the Berkeley Police arrested more Black persons than any other racial or ethnic category in the sample time frame. That fact alone, regardless of the population benchmark to which it might be compared, warrants explanation, which this preliminary analysis of currently available data is unable to provide.**

**Racial Disparities in Berkeley Arrest Publicity.** Although Department policy operates against posting booking photos on the City Web site or on social media, State law (CPRA) requires release of photos upon request by a member of the public, who may in turn post those photos on their own site. One media outlet, Berkeleyside.com, has posted booking photos liberally but selectively during the sample time frame: 173 distinct persons, or 6% of the 2,785 distinct arrestees in the two-year sample time frame. (Occasionally Berkeleyside will post a known arrestee’s photo from a source other than BPD, giving rise to the more colloquial term “mugshots” for photos Berkeleyside uses to illustrate its crime stories.)

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<sup>14</sup> Center for Policing Equity, City of Berkeley Draft Interim Report, released July 14, 2017, pp. 13-14, [https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/CPE%20Draft%20Report%2007142017\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/CPE%20Draft%20Report%2007142017(2).pdf)

<sup>15</sup> Jeffrey Grogger & Greg Ridgeway, “Testing for racial profiling in traffic stops from behind a veil of darkness,” *Journal of the American Statistical Association* 101:878-887, September 2006, [https://www.rand.org/content/dam/rand/pubs/reprints/2007/RAND\\_RP1253.pdf](https://www.rand.org/content/dam/rand/pubs/reprints/2007/RAND_RP1253.pdf)

<sup>16</sup> Emma Pierson et al., “A large-scale analysis of racial disparities in police stops across the United States,” *Nature Human Behavior* 4:736-745, May 2020, <https://www.nature.com/articles/s41562-020-0858-1>

How likely would the observed racial disparity in Berkeleyside’s mugshot selection be, given the known disparate proportion of Black and Hispanic arrestees in Berkeley?

**Table 2. Racial/Ethnic Composition of Published Mugshots & Berkeley Arrestees, April 2019-March 2021**

Race/Ethnicity	Mugshots Selected by Berkeleyside		Distinct Arrestees (%)
	(Count)	(%)	
Black	93	54%	49%
Hispanic	31	18%	15%
Other	9	5%	6%
Asian	6	3%	3%
White	34	20%	28%
<i>Count</i>	173	173	2,785

Sources: Berkeleyside Crime & Safety, 2019-2021; Berkeley PD – Arrest Logs, 2019-2021.

This question can be specialized to the data at hand. Suppose that the long-run probability of an arrestee’s being Black matches the observed probability within the sample time frame (49%, or 0.4862 to four significant digits). How frequently would as many as 93 mugshots of Black arrestees be selected from a set of 173 when the expected value of such mugshots is only 84? (i.e.,  $0.4862 \times 173$ )

A parsimonious model of Berkeleyside’s decision-making process has its mugshot selections drawn from a binomial distribution  $B(n,p)$  with probability  $p=0.4862$  of choosing a Black arrestee’s mugshot among the  $n=173$  reported arrests featuring a mugshot.

In this model the likelihood that Berkeleyside would publish as many as 93 Black mugshots given BPD’s arrest history would be only 10%.<sup>17</sup>

A parallel model of Black *and* Hispanic mugshot selection finds that the likelihood of Berkeleyside’s publishing as many as 124 Black and Hispanic mugshots (as it did), when the expected value is 109, is only 1.2%.<sup>18</sup>

**This statistical analysis suggests that Berkeleyside oversamples Black and Hispanic mugshots among BPD arrestees.**

**Public Concerns About Oversampling Black and Hispanic Mugshots.** Berkeleyside’s oversampling was noted in a public comment to the City Council as

<sup>17</sup> Binomial Probability Calculator, <https://stattrek.com/online-calculator/binomial.aspx>

Probability of success on a single trial = 0.4862; Number of trials = 173; Number of successes (x) = 93; Cumulative probability  $P(X \geq 93) = 0.10101418964 \approx 10\%$ .

<sup>18</sup> Probability of success on a single trial = 0.6323; Number of trials = 173; Number of successes (x) = 124; Cumulative probability  $P(X \geq 109) = 0.01195157253 \approx 1.2\%$ .

early as June 2020: "I also want to ask why Berkeleyside is so fond of publishing mugshots of Black suspects. It's a violation of their right to a fair trial."<sup>19</sup> When this author asked Berkeleyside's editors for comment about this public comment,<sup>20</sup> Berkeleyside refused to reply.

Publishing mugshots of a select subset of arrestees, while withholding others, slants the truth. The public detriments of a racially distorted picture of crime in Berkeley are myriad:

1. As the June 2020 public commenter suggested, more intensive pretrial publicity in the shape of a widely disseminated mugshot may be prejudicial against the accused – certainly more than merely printing the accused's name, which the CPRA already requires BPD to do.
2. As a federal appellate court held in 2016, "Individuals enjoy a non-trivial privacy interest in their booking photos...More than just 'vivid symbol[s] of criminal accusation,' booking photos convey *guilt* to the viewer."<sup>21</sup> Consequently federal agencies became empowered to deny Freedom of Information Act requests for booking photos under the statutory FOIA exemption for "unwarranted invasion of personal privacy."<sup>22</sup> This is now the law in the Sixth, Tenth, and Eleventh Circuits and the practice of some federal agencies.
3. Berkeleyside's bland legalism "*Arrestees are innocent until proven guilty*," often tacked onto other text, affords a semblance of fairness to Berkeleyside while depriving the substance of fairness to the arrestee whose name and photograph have been permanently indexed in the publication's Crime section and by various Internet-wide search engines with which Berkeleyside may share business interests.
4. The prejudicial effect against the accused is especially pernicious if the initial arrest report (with mugshot) is the last widely and permanently published information about the case, as can happen when prosecutorial discretion to refrain from charging, or even acquittal at trial, remains unpublished.
5. The cumulative impact of oversampling certain minorities' mugshots creates a vivid impression among the reading public that those minorities are arrested at a rate even greater than their true rate (which itself demands explanation: see p. 4 above). This oversampling widens racial division in Berkeley by stirring

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<sup>19</sup> Berkeley City Council meeting video excerpt, June 23, 2020, [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=cde0a7c4-b677-11ea-888f-0050569183fa&starttime=1925&stoptime=1959&autoplay=0&embed=1](http://berkeley.granicus.com/MediaPlayer.php?publish_id=cde0a7c4-b677-11ea-888f-0050569183fa&starttime=1925&stoptime=1959&autoplay=0&embed=1)

<sup>20</sup> Author's e-mail to editors@berkeleyside.com and tips@berkeleyside.com, "Black Mugshots in Berkeleyside Crime Stories," June 23, 2020.

<sup>21</sup> *Detroit Free Press Inc. v. U.S. Dept. of Justice*, 829 F.3d 478, 481 (6<sup>th</sup> Cir., 2016) (*en banc*) (internal citations omitted, original italics), *cert. denied* May 22, 2017. See slip opinion 14-1670, July 14, 2016, p. 4, <https://www.opn.ca6.uscourts.gov/opinions.pdf/16a0164p-06.pdf>

<sup>22</sup> 5 U.S.C. § 552(b)(7)(C) <https://www.law.cornell.edu/uscode/text/5/552>

suspicion against Black and Hispanic people generally, and creating an environment where those people may feel "as one who is being hunted."<sup>23</sup>

6. Oversampling by a media outlet that emphasizes the most violent or exotic crime distracts the public from the crime that they are likeliest to experience.
7. Oversampling by a media outlet can distract the Department from addressing the racial disparity that *does* exist in its arrest data by having to answer for a racial disparity that does *not* exist in its data.
8. Oversampling by a media outlet complicates the public information activity of the Department, whose State-mandated legal obligation to supply booking photos upon request can be mistaken for connivance with the agenda of a self-styled "independent" media organization.
9. Mugshot publication seems to have evolved into a media-created (social) sanction in lieu of an effective judicial sanction prosecuted and imposed according to the law. An "independent" media organization driven by its own business interest thus substitutes for the prosecutorial and judicial functions of the government, and, by substituting, reduces those functions' incentives to improve.

The fairness of publishing the photograph of one unconvicted arrestee is wanting. By definition the arrestee has been apprehended but has not been convicted or even arraigned in court, and may never be. **A cascade of arrestee photographs oversampled from certain minorities does not serve the Department, the City, its people, nor the cause of justice for the reasons enumerated above.**

**California Law Permits Release of Mugshots.** The public concerns enumerated above have been met with arguments to promote the public interest in freedom of information. Those arguments have prevailed in California.

1. The dissent in the 2016 federal appellate decision above (p. 6, #2) derided the majority's protection of "only a vague privacy interest in inherently non-private matters [that] obscures our government's most coercive functions – the powers to detain and accuse – and returns them to the shadows. Open government is too dear a cost to pay for the mirage of privacy that the majority has to offer."<sup>24</sup>  
Nonetheless federal agencies (e.g. the U.S. Marshals Service) following the 2016 appellate court ruling can deny access to mugshots by invoking the FOIA statutory exemption for "unwanted invasion of privacy."<sup>25</sup> The issue seems settled at the federal level for the time being.
2. The most pertinent statement on mugshots in California law was a 2003 California Attorney General opinion: "Importantly, furnishing a mug shot to a member of the general public, including the news media, would **not** violate the arrested person's constitutional right of privacy....a sheriff may provide copies of

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<sup>23</sup> Sermon of Father Steven Bell, Newman Hall-Holy Spirit Roman Catholic Parish, Berkeley CA, May 30, 2020, at 55:44, [https://www.youtube.com/embed/i5ucNwvR3\\_I?start=3225&end=3510](https://www.youtube.com/embed/i5ucNwvR3_I?start=3225&end=3510) (excerpt 53:45 to 58:30)

<sup>24</sup> *Detroit Free Press*, *supra* n. 21, slip opinion, p. 12.

<sup>25</sup> FOIA Exemption 7(C), *supra* n. 22

mug shots in response to a request from a member of the general public, including the news media, in order to comply with the directive of [Government Code] section 6254, subdivision (f). [the CPRA]" <sup>26</sup> (bolding added)

This strong statement permitting release of mugshots was issued years before the federal appellate decisions referenced above (p. 6, #2). Although the California Supreme Court has noted in the past that the CPRA was modeled on the federal FOIA, California's interpretations have not proceeded in lock-step with the federal appellate decisions.

3. The California Supreme Court's most recent (2017) construction of the CPRA makes emulation of federal denial of access to mugshots unlikely in California. "CPRA establishes a basic rule requiring disclosure of public records...In CPRA cases, this standard approach to statutory interpretation is augmented by a constitutional imperative....Proposition 59 [in 2004] amended the [California] Constitution to provide: 'A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be *broadly* construed if it furthers the people's right of access, and *narrowly* construed if it limits the right of access.' ...'all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary.'" <sup>27</sup> (internal citations omitted, italics added by the court)

To this author's knowledge no California legislative action has curtailed the release of booking photos, so **the Department is bound to comply with requests from members of the public for booking photos, as the California Supreme Court's construction of the CPRA requires.**

**Media Outlets Are Rethinking Mugshots.** Even before George Floyd was murdered, the Marshall Project – a nonprofit news organization specializing in the U.S. criminal justice system – reported that a few media outlets had started to forego publishing the sensationalized "clickbait" of arrestees' mugshots.<sup>28</sup>

In July 2020, the *Sacramento Bee* announced that it would no longer publish mugshots, with some exceptions such as public figures, suspected serial killers, suspects of hate crime, or immediate and widespread threats to public safety. "Publishing these photographs and videos disproportionately harms people of color and those with mental illness, while also perpetuating stereotypes about who commits crime in our community." <sup>29</sup>

The Nieman Journalism Lab, part of the Nieman Foundation at Harvard University to promote higher journalism standards, listed as one of its *Predictions for Journalism 2021*

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<sup>26</sup> Opinion of Bill Lockyer, Attorney General, No. 03-205, July 14, 2003, p. 6, <https://oag.ca.gov/system/files/opinions/pdfs/03-205.pdf>

<sup>27</sup> *City of San Jose et al. v. Superior Court of Santa Clara County (Ted Smith, Real Party in Interest)*, S218066, March 2, 2017, pp. 4-5, <https://www.courts.ca.gov/opinions/archive/S218066.PDF> (city employee writings about public business subject to CPRA disclosure even if transacted through personal account)

<sup>28</sup> Keri Blakinger, "Newsrooms Rethink a Crime Reporting Staple: The Mugshot," February 11, 2020, <https://www.themarshallproject.org/2020/02/11/newsrooms-rethink-a-crime-reporting-staple-the-mugshot#>

<sup>29</sup> Ryan Lillis, "Why the Sacramento Bee will no longer publish police 'mugshots,' with limited exceptions," July 9, 2020, <https://www.sacbee.com/news/local/article244097082.html>

an even wider-ranging initiative, “Defund the crime beat,” within which newsrooms’ no longer publishing mugshots was listed as a “positive change.”<sup>30</sup>

**BPD Policy 804: Records Maintenance and Release.** The attachment of legacy media outlets to mugshots may be loosening, but California law still mandates that requests for mugshots be fulfilled, except if disclosure “would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.”<sup>31</sup>

**The draft guidelines of Policy 804 (April 27, 2021) comply with current California law,<sup>32</sup> but will do nothing to redress oversampling of minority mugshots by any media outlet.**

**Recommendations.** The Police Review Commission – indeed, any part of the City of Berkeley – cannot override the California Public Records Act as construed by the California Supreme Court. Hence, the Department must fulfill requests for booking photos from any member of the public, including a representative of a media outlet. Restricting release of booking photos would be unavailing.

What the City (through the Department) *can* do is provide additional details beyond those specified by State law.

**1. The Department should disclose in the Arrest Log each arrestee’s (1) city of residence (when ascertained) and (2) presence (or absence) of fixed address.** This information is currently not systematically provided but is authorized by the CPRA for a request made for “political [or] governmental purpose.”<sup>33</sup> Such purpose would be Berkeley’s residents knowing the locale of those whom their Police Department is arresting. In this proposal the arrestee would retain the privacy of the specific address within that city (if ascertained).

**2. The Berkeley Police Department should fulfill all public records requests through the NextRequest public records online portal by amending Policy 804.**

In November 2020 the City of Berkeley activated its instance of NextRequest, a public records request platform.<sup>34</sup>

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<sup>30</sup> Tauhid Chappell and Mike Rispoli, “Defund the crime beat,” NiemanLab Predictions for Journalism 2021, December 2020, <https://www.niemanlab.org/2020/12/defund-the-crime-beat/>

<sup>31</sup> Government Code 6254(f), [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=6254](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=6254)

<sup>32</sup> BPD Policy 804 attachment, Guidelines for Release of Reports and Information Therein, issued April 27, 2021, in Police Review Commission packet, May 13, 2021, p. 78, [https://www.cityofberkeley.info/uploadedFiles/Police\\_Review\\_Commission/Commissions/2021/2021-05-13-prc-pkt.pdf](https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2021/2021-05-13-prc-pkt.pdf)

<sup>33</sup> Government Code 6254(f)(3), supra n. 31.

<sup>34</sup> Berkeley City Manager off-agenda memo to Mayor and City Council, “New Public Records Act (PRA) Portal,” December 11, 2020, [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/New%20Public%20Records%20Act%20Portal%20121120.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/New%20Public%20Records%20Act%20Portal%20121120.pdf)

Very little activity has been recorded on the City's NextRequest site in its first six months of operation.<sup>35</sup>

The City of Oakland has fulfilled over 50,000 public records requests on its NextRequest site, including some dating back to 2013.<sup>36</sup> Over 60% of Oakland's requests have been directed to the Oakland Police Department.<sup>37</sup>

By contrast the City of Berkeley has fulfilled 16 requests in the past 6 months, none of which was directed to the Berkeley Police Department. According to the Department's public information officer, requests to the Department's Records section or the public information officer are handled by direct e-mail, not on NextRequest.

The Department's practice undermines the premise of NextRequest as stated by the City itself: "If you need Berkeley records that [may] have been previously released, please search past requests. You may find what you need!"<sup>38</sup> A member of the public will *not* find what she needs if back-channel requests never appear on the NextRequest platform.

Transparency in public records fulfillment, specifically booking photo dissemination, honors current State law (CPRA), makes more effective use of an existing City resource, and may reduce oversampling minority mugshots by subjecting that universe to public scrutiny.

**Policy 804.4.1 Requests For Records could be amended by adding underlined text.**<sup>39</sup>

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

Provisions relating to the fulfillment of public records requests could be similarly amended.

**Summary.** A slide on the next page summarizes this memorandum.

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<sup>35</sup> Public Records Requests – City of Berkeley, <https://cityofberkeleyca.nextrequest.com/requests>

<sup>36</sup> Public Records Requests – Oakland, CA, <https://oaklandca.nextrequest.com/requests>

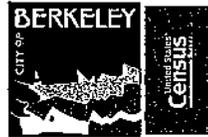
<sup>37</sup> As of May 12, 2021, Oakland had logged 50,101 requests, of which 31,413 were directed to Oakland Police Department or Police Department. (author's observation)

<sup>38</sup> City of Berkeley NextRequest, supra n. 35.

<sup>39</sup> BPD Policy 804 draft, in Police Review Commission packet, May 13, 2021, p. 60, supra n. 32

# Racial Disparities in Arrests & Arrest Publicity

Berkeley, California, April 2019-March 2021



Population estimates, July 1, 2019

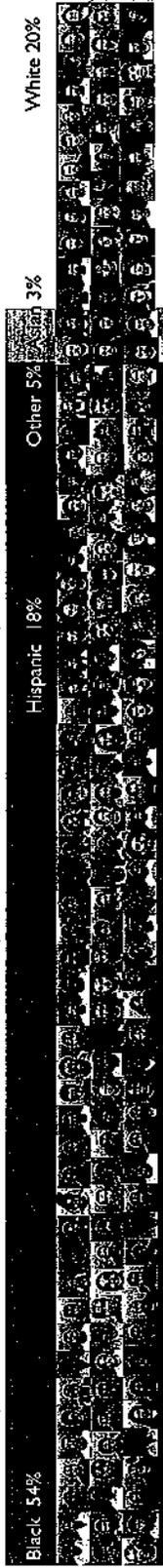
Black=Black or African American alone, Hispanic=Hispanic or Latino, White=white alone, not Hispanic or Latino  
 Other=American Indian and Alaskan Native alone + Native Hawaiian and Other Pacific Islander alone + Two or More Races  
 Percentages do not sum to 100% due to category overlap and rounding.



Arrestees, April 2019-March 2021

Observation: Berkeley Police arrest many persons not counted in the City census.

Berkeleyside



n=173

Mugshots selected by Berkeleyside staff, April 2019-March 2021.

Arrestees are innocent until found guilty in a court of law.

Observation: Berkeleyside oversamples mugshots of Black and Hispanic arrestees.



Compiled by Charles Clarke, a resident of Berkeley

Sources: [www.census.gov/quickfacts/berkeleycitycalifornia](http://www.census.gov/quickfacts/berkeleycitycalifornia)  
[data.cityofberkeley.info/Public-Safety/Berkeley-PD-Log-Arrests/x17q-nj16](http://data.cityofberkeley.info/Public-Safety/Berkeley-PD-Log-Arrests/x17q-nj16)  
[www.berkeleyside.com/crime-safety](http://www.berkeleyside.com/crime-safety)

**Lee, Katherine**

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**From:** Kitt Saginor <[ksaginor@gmail.com](mailto:ksaginor@gmail.com)>  
**Sent:** Thursday, May 27, 2021 2:50 PM  
**To:** [prc.emikiten@gmail.com](mailto:prc.emikiten@gmail.com)  
**Cc:** Lee, Katherine; Ismail Ramsey; Kitty Calavita  
**Subject:** Notes on Lexipol Policies 324 and 804  
**Attachments:** Lexipol324&804.pdf

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Commissioner Mikiten,

Attached please find my notes on Lexipol Policies 324 and 804. Because I was serving as an alternate for Commissioner Calavita, I am cc'ing her and also PRC Chair Ramsey, and well as the PRC Director.

I hope these notes are helpful to the process of providing Berkeley with clear, unambiguous policies.

Thank you for your service to our communities.

Sincerely,

Kitt Saginor  
[ksaginor@gmail.com](mailto:ksaginor@gmail.com)  
415-860-4173



First page number for each section is from the packet for the May 13th PRC meeting

## 324 Media Relations

### 324.4 (p. 30, p.2) Punctuation correction

#### ~~324.4~~ 324.4 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.

End sentence after "remain with the Chief of Police" and start new sentence with "However..." Or use semicolon.

- (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.

Is clause (d) about employee informing PIO after the fact, that consistent with 324.5.3 (a) (p.31 p.3) which says employees must have prior approval.

### 324.6 (h) (p.33 p.5)

- (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.
- (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.

Does the requirement for written consent from a person in custody apply in a situation where a journalist shouts a question a person handcuffed at the scene? Can that person in custody be forbidden to answer?

324.7 (p.34 p.6)

324.4324.7 SCOPE OF INFORMATION SUBJECT TO RELEASE

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

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals (except confidential informants) involved in crimes occurring within this jurisdiction unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation

Should say "type of **alleged** crime...." "involved in **alleged** crimes..."

Also, it would seem that the release of names will very frequently endanger the safety of individuals, at least to some extent.

- (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

Same question for (b) – especially birth date. (birth year seems more reasonable, but date?) Is birth date release a legal requirement? Birth date increases vulnerability to security breaches and scams. This is also a question for 804.5(a)1

324.8 (p.35 p.7) SECOND TO LAST CLAUSE

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

This instruction doesn't seem like a policy statement. It looks like a procedure that might change.

324.8 (p.35 p.7) (go back up the page a bit)

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.

(a) what does "high media and public interest" mean – how is that decided? Does "high" modify both nouns? -- "high media interest and **high** public interest"

Related questions for 324.3 Categories pp.29-30 – pp.1-2 (See Excerpt below)

(a) Routine – What is meant by "human interest?"

(e) Newsworthy Events – "reports of major crimes, arrests..." does this mean major arrests? or all arrests? When officers find a firearm during a traffic stop, is that (e) 2 - a warning? what does it warn the public to do? Example: <https://www.cityofberkeley.info/PoliceNews.aspx?id=158578>

### 324.10 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) News-worthy 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.

1.50  
1.50  
Personal

### 324.10 (p.36 p.8) Restricted Information

#### 324.6324.10 RESTRICTED INFORMATION

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

Provide Reference here to 804.7 ?? where Restricted is explained.

### 324.11 (p.36 p.8) Request for no Release.

"when disclosures of event information would subject the victim of an alleged crime to serious embarrassment or mental distress."

"requesting persons" in (b) implies that request can originate with civilian rather than officer. If so, are civilians informed that they may request "no release"? - this is an equity issue because some people feel empowered to ask for exceptions, while others don't realize they can ask for exceptions.

#### 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 or 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."

## 804 Records Maintenance and Release

804.5(a)1 (p.61 p.3)

### 804.5 RECORDS FOR RELEASER-33 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)):

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

Is birth date release a legal requirement? Birth date increases vulnerability to security breaches and scams. This is the same question asked for 324.7(b)

804.7(a) (p.62 p.4) Release restrictions

### 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).

This paragraph restricts release of name and address, but that conflicts with other sections which mandate disclosure of name and address. And its not immediately clear that the restricted photograph is the license photograph. I would suggest rewriting this paragraph to make it immediately clear that the source of the data is the cause of the restriction:

- (a) Personal identifying information pertaining to driver license records, motor vehicle records, traffic collision reports or other department records 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 (cite statutes). Information not to be released may include an individual's photograph, Social Security number, driver identification number, telephone number, and medical or disability information.

804.7(b)2 (p.62 p.4)

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.

"Identity of officer subject to any criminal or administrative investigation shall not be released..." - It is not clear whether this overrides the general policy of public access to arrest records – including the posting of information on the open data website. Does this pertain to an off-duty BPD peace officer arrested for aggravated assault? How about peace officers who employed by other jurisdictions within California or in other states?

p. 4

804.5(c)2 (spanning p. 61-61 p.3-4)

- (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;

This specifies that **witness information** shall be released to victims of alleged crime. Is it partially contradicted by 804.7 (d) (p.63 p.5)

- (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).

804.7.1 (p.65 p.7)

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)

How does this statement affect the restriction of release of records? It doesn't have a visible connection to the policy statements of 804.7

804.9.1 (p.68 p.10) Delay of Release

~~804.9.1~~ 804.9.1 DELAY OF RELEASE

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:

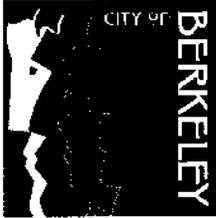
- (a) Disclosure may be delayed up to 45 days from the date the Department knew or reasonably should have known about the incident.

How is (a) first 45 days different from (b) up to a year – they seem to have the same requirements.

- (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)).

P.5

2007



Office of the City Manager

ACTION CALENDAR

June 1, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: Police Accountability Board – Appointment of Members

RECOMMENDATION

Adopt a Resolution appointing nine members to the Police Accountability Board nominated by the Mayor and City Councilmembers, and appointing one alternate member.

FISCAL IMPACTS OF RECOMMENDATION

All commissioners are eligible to receive a stipend of \$100 per meeting.

CURRENT SITUATION AND ITS EFFECTS

The City Charter provides for the appointment of members to the newly created Police Accountability Board. Article XVIII, Section 125, Part 6 states, "The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council and that each individual nominee must be approved by a majority vote of the City Council."

Members of the Police Accountability Board must:

- Be a resident of the City;
- Be at least 18 years of age
- Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers; and
- Be fair minded and objective with a demonstrated commitment to community service.

The City Charter indicates that desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations and that the City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City.

The Mayor and Members of the City Council were provided with a pool of eligible applicants that submitted applications by the March 29, 2021 deadline. From this pool of applicants, the following nominations were submitted to the City Clerk to present to the City Council for approval.

Nominee	Nominated By
Ismail Ramsey	Mayor Arreguin
Cheryl Owens	Councilmember Kesarwani
Regina Harris	Councilmember Taplin
John Moore	Councilmember Bartlett
Kitty Calavita	Councilmember Harrison
Michael Chang	Councilmember Hahn
Juliet Leftwich	Councilmember Wengraf
Nathan Mizell	Councilmember Robinson
Deborah Levine	Councilmember Droste

The appointments to the Board represent a diverse group from the Berkeley Community. Demographic data obtained from the applications is as follows.

<u>Gender</u>	<u>Age Range</u>
Female – 5	18-25 – 1
Male – 4	36-55 – 1
	46-55 – 2
<u>Race/Ethnicity</u>	56-65 – 3
Black – 5	66+ – 2
White – 3	
Asian/Pacific Islander – 1	<u>Sexual Orientation</u>
	Gay or Lesbian – 1
	Heterosexual or Straight – 8

Pursuant to the recently adopted amendment to Section 3.02.035 of the Berkeley Municipal Code, at the time that City Council appoints the initial nine (9) commissioners to the Board, the City Council will also approve an alternate commissioner. This alternate will be required to undergo the same 40-hour training requirement as the regular Board members.

**BACKGROUND**

Measure II was adopted on November 3, 2020 by the voters of Berkeley to establish an Office of the Director of Police Accountability and create a new Police Accountability Board (hereafter "Board"), both of which are independent of the City Manager. The members of the Board are approved by vote of the full Council.

The City received a total of 37 applications for the Mayor and City Council to consider. These applications were reviewed and the eligibility of the applicants was verified by city staff against the requirements of the Charter.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable effects on sustainability or the environment associated with the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The appointments are directed by the City Charter and pursuant to the nominations submitted by the Mayor and Councilmembers.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Dave White, Deputy City Manager, (510) 981-7000

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

APPOINTMENT OF NINE MEMBERS TO THE POLICE ACCOUNTABILITY BOARD  
AND ONE ALTERNATE MEMBER

WHEREAS, Measure II was adopted on November 3, 2020 by the voters of Berkeley to create a new Police Accountability Board; and

WHEREAS, Article XVIII, Section 125, Part 6 provides for the Council's appointment of board members; and

WHEREAS, the Mayor and Councilmembers have submitted nominees for appointment by the full council; and

WHEREAS, the Municipal Code provides for the appointment of an alternate board member.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the following applicants are hereby appointed to the Police Accountability Board:

Nominee	Nominated By
Ismail Ramsey	Mayor Arreguin
Cheryl Owens	Councilmember Kesarwani
Regina Harris	Councilmember Taplin
John Moore	Councilmember Bartlett
Kitty Calavita	Councilmember Harrison
Michael Chang	Councilmember Hahn
Juliet Leftwich	Councilmember Wengraf
Nathan Mizell	Councilmember Robinson
Deborah Levine	Councilmember Droste

BE IT FURTHER RESOLVED that <<<First Last>>> is hereby appointed as the alternate board member to the Police Accountability Board.

RESOLUTION NO. 69,874-N.S.

CLASSIFICATION: DIRECTOR OF POLICE ACCOUNTABILITY

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, the City Manager's Office had requested the Human Resources Department establish the Director of Police Accountability classification; and

WHEREAS, City Manager's Office and Human Resources Department have completed a classification review; and

WHEREAS, the Personnel Board recommended on April 12, 2021 to establish the classification of Director of Police Accountability, exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and eligible for Administrative Leave, Unrepresented Unit, with a monthly salary range of \$11,862.93 - \$17,794.40 effective May 25, 2021.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 69,538-N.S., Classification and Salary Resolution for Unrepresented is amended to establish the classification of Director of Police Accountability with a salary range as shown in Exhibit A, effective May 25, 2021.

The foregoing Resolution was adopted by the Berkeley City Council on May 25, 2021 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numairville, City Clerk

EXHIBIT A

<b>SALARY SCHEDULE</b>									
<b>Job Code</b>	<b>Classification Title</b>	<b>Rep Unit</b>	<b>FLSA</b>	<b>Step A</b>	<b>STEP B</b>	<b>STEP C</b>	<b>STEP D</b>	<b>STEP 5</b>	<b>Effective Date</b>
#####	Director of Police Accountability	Z1	E	\$11,862.93	\$17,794.40				25-May-2021

ORDINANCE NO. 7,760-N.S.

ADDING A NEW CHAPTER 2.100 TO THE BERKELEY MUNICIPAL CODE  
REGULATING POLICE ACQUISITION AND USE OF CONTROLLED EQUIPMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 2.100 is amended to read as follows:

**Chapter 2.100**  
**POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE**

**Sections:**

**2.100.010 Name of Ordinance**

**2.100.020 Definitions**

**2.100.030 Controlled Equipment Use Policy Requirement**

**2.100.040 Acquisition and Use of Controlled Equipment**

**2.100.050 Reports on the Use of Controlled Equipment**

**2.100.060 Enforcement**

**2.100.070 Transparency**

**2.100.080 Whistleblower Protections**

**2.100.090 Severability**

**2.100.010 Name of Ordinance**

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance.

**2.100.020 Definitions**

(A) "Controlled Equipment" is equipment that is militaristic in nature and includes, but is not limited to, all of the following:

(1) Vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are: built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck; or built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

(3) Tracked vehicles that are built or modified to provide ballistic protection to their

occupants and utilize a tracked system instead of wheels for forward motion.

(4) Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons.

(5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature. Items designed to remove a lock, such as bolt cutters, small gauge frangible rounds, or a handheld ram, are excluded from this policy.

(6) Firearms of .50 caliber or greater.

(7) Ammunition of .50 caliber or greater.

(8) Specialized firearms, including the Colt M4, and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.

(9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag," rubber bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents.

(10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.

(11) Explosives, pyrotechnics, such as "flashbang" grenades, and chemical weapons such as "teargas," CS gas, pepper spray, and "pepperballs".

(12) Batons 30 inches or longer in length.

(13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, and water cannons and the Long Range Acoustic Device (LRAD). Use of the LRAD for the purpose of communicating lifesaving information to residents during disasters, in evacuation exercises, to conduct search and rescue operations, or communicate to persons threatening suicide who are in an inaccessible location shall be exempt from the reporting requirements under Section 2.100.050 of this Chapter.

(14) Any other equipment as determined by a majority of the City Council to require additional oversight.

(B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.

(C) "Controlled Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:

(1) **Description:** A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.

(2) **Purpose:** The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.

(3) **Fiscal Cost:** The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) **Impact:** An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.

(5) **Mitigations:** Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) **Alternatives:** Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, and rationale for selection over alternative methods.

(7) **Third Party Dependence:** Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.

(D) Except as provided below, "Deployed" means to utilize or employ Controlled Equipment for a deliberate purpose in the presence of members of the public during management or control of crowds, during any Special Response Team deployment or to affect some response from members of the public during any other operation or critical response. "Deployed" shall not mean an officer merely wearing a piece of Controlled Equipment on their belt or elsewhere on their person.

(1) Batons 30 inches or longer in length shall only be deemed "deployed" when used for management or control of crowds.

(E) "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires the use of unapproved Controlled Equipment.

(F) "Police Accountability Board" means the body established by Charter Article XVIII. The Police Review Commission, established by Ordinance No. 4,644-N.S., as amended, shall serve any and all functions and duties set forth by this chapter before and until they are transferred to the Police Accountability Board pursuant to Charter Article XVIII.

**2.100.030 Controlled Equipment Use Policy Requirement**

Controlled Equipment requires a publicly available use policy that identifies the purpose, any prohibited uses, training requirements, and any process required prior to use.

**2.100.040 Acquisition and Use of Controlled Equipment.**

**(A) Restrictions Prior to Submission and Approval**

(1) The Police Department shall not engage in any of the following activities regarding a piece of Controlled Equipment before the Berkeley Police Accountability Board ("Police Accountability Board"), or any successive agency, reviews and recommends, and the City Council approves, a Controlled Equipment Impact Report and a Controlled Equipment Use Policy for that equipment in compliance with this section.

(a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title 10 of the United States Code.

(b) Seeking funds for Controlled Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(c) Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.

(d) Using any new Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the City Council pursuant to this Ordinance.

(e) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Controlled Equipment.

**(B) Submission to Police Accountability Board**

(1) At least 15 days prior to any public meeting to consider the adoption of any Controlled Equipment Use Policy or Controlled Equipment Impact Report, the Use Policy and Impact report shall be published for public review.

(2) The final Controlled Equipment Impact Report and Controlled Equipment Use Policy shall be made publicly available on the Department's website for as long as the Controlled Equipment is available for use.

(3) The Police Accountability Board shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a meeting.

**(C) Criteria for Police Accountability Board Recommendations**

(1) The Police Accountability Board shall recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter only if it determines all of the following:

(a) The Controlled Equipment is needed and there is no practicably available alternative equipment which is not Controlled Equipment that is sufficient for the purposes.

(b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(c) The Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.

(2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, the Police Accountability Board's recommendation for approval for the funding, acquisition, or use of the Controlled Equipment shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need for the Police Department to take proactive steps to minimize those effects.

**(D) Temporary Use in Exigent Circumstances**

(1) Notwithstanding the provisions of this Chapter, the Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the requirements in Section 2.100.040. However, if the Department does so, it must take all of the following actions:

(a) Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state or federal law;

(b) If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Section 2.100.040; and

(c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

**(E) Police Accountability Board Review Required Before City Council Consideration of Approval.**

(1) The Police Accountability Board shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy, and notify the Police Department

of its recommendations.

(2) The Police Accountability Board shall present its recommendations to City Council.

(3) Failure by the Police Accountability Board to make its recommendation on a proposal within ninety (90) days, or thirty (30) days in instances where the proposal is subject to a time-sensitive grant application, of submission shall enable City Staff to proceed to the City Council for approval of the proposal.

**(F) Police Accountability Board Review of Prior Recommendations**

(1) The Police Accountability Board shall determine, as part of its annual Work Plan, whether to include the review of any Controlled Equipment use policy in the coming year.

(2) A Police Accountability Board recommendation to City Council that a prior approval be revoked shall be presented to Council. If City Council does not act on such a recommendation within four (4) City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment.

**(G) Review Process for Previously-Acquired Equipment**

(1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. If the Department fails to do so, it must cease use of such equipment.

(2) To ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of such Controlled Equipment, and the Police Accountability Board shall consider this ranking in determining the order in which to perform its review.

**(H) City Council Approval Process**

(1) After the Police Accountability Board review requirements have been met, the Police Department shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy, and include Police Accountability Board recommendations, at least fifteen (15) days prior to a public meeting.

(2) If the City Council does not approve such item within four (4) regular City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment until such review and approval occurs.

**2.100.050 Reports on the Use of Controlled Equipment.**

**(A) Annual Report on Controlled Equipment**

(1) The Police Department shall submit a report on Controlled Equipment to the Police Accountability Board within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The report shall be provided no later than March 15<sup>th</sup> of each year, unless the Police Accountability Board advises the Department that an alternate date is preferred. The Department shall also make each annual report publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

(a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.

(b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to equipment that is Deployed, not to transfers of location or placement of equipment inside Department vehicles.

(c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days or instances in which Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.

(d) A summary of any complaints or concerns received concerning Controlled Equipment.

(e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

(B) Compliance or Revocation of Approval

(1) Within 60 days of the Police Department submitting an annual report, the Police Accountability Board shall place the report as an agenda item for an open session of a regular meeting. The Police Accountability Board shall determine, based on the report, whether each piece of Controlled Equipment reported on has complied with the standards for approval set forth in Section 2.100.040.

(2) If the Police Accountability Board determines that any Controlled Equipment has not complied with the standards for approval set forth in Section 2.100.040, it shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations shall be forwarded to City Council in accordance with the approval process in Section 2.100.040.

(3) After review by the Police Accountability Board, the Police Department shall submit the annual report to City Council, indicating its approval or lack of compliance for each piece of Controlled Equipment.

## **2.100.060 Enforcement.**

### **(A) Remedies for Violations of this Ordinance**

This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees.

## **2.100.070 Transparency**

### **(A) Disclosure Requirements**

(1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

## **2.100.080 Whistleblower Protections.**

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016, and including any updates or replacements thereto, shall apply.

## **2.100.090 Severability**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on April 27, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on May 11, 2021, this Ordinance was adopted by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

ATTEST:   
\_\_\_\_\_  
Mark Numainville, City Clerk

Date signed: May 17, 2021

