

**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
SUPPLEMENTAL MATERIAL PACKET**

**Wednesday, November 8, 2023
6:30 P.M.**

Board Members

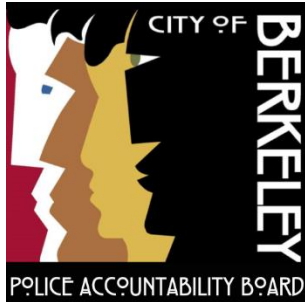
John Moore III (Chair)
Kitty Calavita
Leah Wilson
Joshua Cayetano

Regina Harris (Vice-Chair)
Julie Leftwich
Brent Blackaby

MEETING LOCATION

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA 94709
([Click here for Directions](#))

Item Number	Description
9.c.	Memo from Board Member Cayetano to the PAB with the Subject Line: 'Item 9.c. – Discussion on Procedures for Reviewing PAB Member Policies'



MEMORANDUM

To: Police Accountability Board (PAB)
From: Board Member Cayetano
Date: November 08, 2023
Subject: Item 9.c. – Discussion on PAB member policy review procedures

This memo relates to the agenda item that I have proposed: the scope and purpose of individual Board Member investigations in response to a policy complaint. The Charter says "the Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer."¹ The Charter does not explain how individual board members should investigate policy complaints. My understanding is that, to date, individual investigations have been very informal. That approach may be effective when it comes to matters that are limited in scope. The policy complaint that I am investigating requires insight into the policies, practices, and procedures of off-duty conduct by BPD, which is necessarily broad. And justifiably so — the complaint raised serious allegations regarding the off-duty conduct of some officers and questioned the existing off-duty conduct policies and their implementation. I think it a worthwhile exercise to articulate guidelines for the sake of effectiveness and transparency.

My basic understanding of an individual investigation is that an individual Board Member is assigned to further investigate the merits of a policy complaint to clarify whether and to what extent a subcommittee should be established. Because we are empowered to review the "policies, practices, and procedures" of the BPD, any inquiry may include an investigation into how BPD implements and enforces their policies. In the case of 2023-PR-0008², I understood this to include (1) how BPD interprets certain policies regarding off-duty conduct; (2) whether BPD has received any complaints regarding an off-duty conduct; (3) whether BPD has disciplined any officer pursuant to a complaint; and (4) what type of disciplinary action was taken. I limited my request to "data in the aggregate," meaning raw numbers without personal identification, and the time period mentioned in the complaint. I carefully phrased my request to avoid requests for information protected by state law or other sources of confidentiality that we are not privy to. And

¹ [Berkeley City Charter Section 125\(17\)\(a\)](#)

² [See page 76 of the 2023-10-11 PAB Agenda Packet](#)

I also phrased my request to be readily transferrable to a subpoena, should the need for one arise.

If we were to consider guidelines for individual investigations, either this one or ones in the future, we might want to generalize or modify some of the strategies mentioned above.

- First, for example, when delegating policy complaints to individual members, we as a Board may consider whether the matter is sufficiently broad to require a formal investigation, subject to guidelines, as opposed to an informal one. We might also consider whether the Board wants to leave that determination to the discretion of the individual Board Member. We may also want to consider, as a threshold issue, if any matter is sufficiently broad, it is more appropriate to continue any investigation as a policy subcommittee.
- Second, we might adopt guidelines that limit or expand the scope of the investigation. For example, if the policy complaint raises specific policies, we may limit an investigation into just those policies raised. We may also defer to the Director's findings of what policies may relate to the complaint, as I did here. We may also empower individual board members to research what other policies are sufficiently related to the complaint, since the Charter empowers the Board to raise issues in "its discretion."
- Third, we might adopt guidelines that direct the individual board member to investigate (1) how BPD interprets and enforces the relevant policy, (2) whether BPD has received any formal complaints regarding the relevant policy, (3) what disciplinary action BPD has taken in response to any policy violations, again with data in the aggregate.
- Fourth, we might establish guidelines that govern an individual board member's timeline and substantive communication with BPD's liaison. My suggestion here is that for formal investigations, any request must, at the very least, (1) state the Policy Complaint matter number, (2) identify the BPD policies in question, (3) state the substance of the information sought, and (4) suggest a timeline for responsiveness.
- Fifth, we might consider in what circumstances the Board is willing to subpoena the Department for information in response to requests for information. There are a great number of possibilities to consider. We could establish guidelines that say the Board will not issue subpoenas as part of a policy complaint being investigated by an individual board member. We could explain that an individual board member, under certain circumstances, may request the Director subpoena the documents, subject to the Director's discretion. We may say that an individual board member should make a motion to subpoena records if BPD exceeds the 10 or 30 business day timeframe at the next available regular meeting.
- Sixth, we might adopt guidelines for the final report of a formal investigation. This can be as simple as requiring an investigating board member to make a formal recommendation, and listing what possible recommendations the board member may make.

All of these suggestions I believe to be consistent with the Charter.