



Office of the City Attorney

March 21, 2022

Rockne A. Lucia, Jr.
Rains Lucia Stern St. Phalle & Silver, PC
Via Email: rclucia@rslawyers.com

Dear Mr. Lucia,

This letter responds to your correspondence dated February 8, 2022 alleging violations of the Ralph M. Brown Act (Cal. Gov. Code § 54950 *et seq.*) and demanding the City cease and desist actions taken by the Police Accountability Board (“PAB”). The City takes its obligations under the Brown Act seriously and we have carefully considered the concerns you expressed in your letter.

The City Attorney’s Office has reviewed the allegations in your letter and determined that no violation of the Brown Act occurred during the viewing of body-worn camera footage by PAB hearing panel members.

The concerns expressed in your letter will be taken into consideration as the City Attorney’s Office continues to work closely with PAB and City staff to develop best practices for reviewing evidence, including body-worn camera footage, as part of the Board’s process for handling complaints against Berkeley Police Department employees.

Please feel free to contact us with any questions or concerns.

Sincerely,

/s/ Farimah Faiz Brown

Farimah Faiz Brown
City Attorney

cc: Police Accountability Board
Katherine Lee, Interim Director of Police Accountability

Lee, Katherine

From: Charles Clarke <cfclarke@att.net>
Sent: Thursday, March 17, 2022 9:01 PM
To: All Council
Cc: Williams-Ridley, Dee; Louis, Jennifer A.; Bellow, LaTanya; Buddenhagen, Paul; Wong, Jenny; Brown, Farimah F.; Lee, Katherine
Subject: BPD: 36 Bullets in 22 Years
Attachments: Clarke Memo 36 Bullets in 22 Years 03.17.2022.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.

Dear City Officials,

Today I received public records from the City Attorney's Office about a February 2012 BPD officer-involved shooting in Castro Valley that did not figure in my March 10, 2022, memorandum ("The Berkeley Police Department Is Worth Having, Not Halving").

The count of bullets fired by the entire Berkeley Police Department in 22 years (2000-2021) is now 36.

I repeat my urging this Council to neither forget nor endanger the Police Department's good performance as documented in the earlier memo and in an update (attached).

Sincerely,

Charles Clarke
Resident, City Council District 6

Attachment: Clarke Memo 36 Bullets in 22 Years 03.17.2022.pdf

Table 3 (Updated). Officer-Involved Shootings by BPD Officers, 2000-2021

Date	Suspect	Basis for Shooting	Bullets Fired by BPD	Result for Suspect
April 12, 2000	Christopher Garcia	Loaded gun pointed at officers	4	Death
July 25, 2003	Glennel Givens	Loaded gun pointed at officer	3	Death
Feb. 16, 2008	Anita Gay	Knife attack	2	Death
June 28, 2010	Chuong Nguyen	Loaded gun pointed at officer	9	Death
Feb. 8, 2012	Steven Oliver Moore	Stop driver striking officer with vehicle	2	Injury
April 13, 2012	Calvester Stewart	Fired gun at officers	10 + 2 n.d.	Injury
July 30, 2020	Brandon Owens	Stop driver of fleeing vehicle	3	No injury; officer released
Jan. 2, 2021	Vincent Bryant	Jack chain attack; less-lethal ineffective	1	Injury
Total			36	

n.d. negligent discharge, firearm discharged but not at a person

The Berkeley Police Department Has Fired 36 Bullets in 22 Years
 Memorandum from Charles Clarke, a resident of Berkeley, March 17, 2022,
 To the Berkeley City Council

This memorandum updates the count of bullets fired at (or near) a person by Berkeley Police Department (BPD) officers in the years 2000-2021, to 36.

The present writer reported last week that BPD officers had fired a total of 34 bullets at (or in the vicinity of) a person in Berkeley in the past 22 years.¹ A newly disclosed public record² updates that count to 36. Table 3 (Updated) presents the eight known instances since 2000 when BPD officers fired their service weapons at a person.³

Table 3 (Updated). Officer-Involved Shootings by BPD Officers, 2000-2021

Date	Suspect	Basis for Shooting	Bullets Fired by BPD	Result for Suspect
April 12, 2000	Christopher Garcia	Loaded gun pointed at officers	4	Death
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¹ Charles Clarke, "The Berkeley Police Department Is Worth Having, Not Halving," Memorandum to the Berkeley City Council, March 10, 2022, p. 4.

² BPD Incident Report 2012-00007070, City of Berkeley Public Record Request 22-140 produced March 17, 2022, <https://cityofberkeleyca.nextrequest.com/requests/22-140>

³ City of Berkeley PRA Responses (suspect, PRA response date, pages): Garcia 5/23/2019 p. 20 of 478; Givens 5/23/2019 pp. 112, 348 of 708; Gay 5/3/2019 p. 3 of 1069; Nguyen 5/3/2019 pp. 20, 288 of 393; Moore 3/17/2022 p. 20 of 37; Stewart 5/3/2019 pp. 2-3 of 1062; Owens 8/2/2020 Miller interview pp. 63-65, 68-69 of 108; Bryant 2021-0223, 1/5/2021 Albrandt interview p. 128 of 216.

The present writer is unaware at this writing of any other officer-involved shootings in the sample period, but it bears repeating from the earlier memorandum:

The Berkeley Police Department is not trigger-happy.

The newly disclosed historical example of a 2012 shooting in Castro Valley⁴ wherein the driver of a stopped vehicle backed his car into a BPD officer (“He tried to kill me.”)⁵ makes BPD’s apparent doctrine discussed in the earlier memorandum⁶ seem more compelling than ever:

A BPD officer should not step in front of a vehicle so as to create the necessity to shoot the driver.

Confronting people at their worst is sometimes part of the duty of a Berkeley Police Department officer. *Even so* the sanctity of life in their performance of that duty remains paramount. That is the standard that the Berkeley Police Department sets for itself.⁷ The setting *and meeting* of that standard has the unwavering support of the present writer, a resident of Berkeley.

The Berkeley City Council should set out to reimagine public safety by preserving the good and desirable elements of the Police Department we have – such as its very rare use of lethal force – while improving those elements in genuine need of improvement.

⁴ BPD News Release, “Officer Involved Shooting During Narcotics Investigation,” February 9, 2012, https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Officer%20Involved%20Shooting%20During%20Narcotics%20Investigation%20020912.pdf

⁵ BPD Incident Report 2012-00007070, supra n. 2, p. 20 of 37.

⁶ Clarke, “BPD Worth Having, Not Halving,” supra n. 1, pp. 5-7.

⁷ BPD Policy 300, *Use of Force*, section 300.1 Sanctity of Life, p. 1, https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Use_of_Force.pdf

STATUS OF DPA COMPLAINTS 2021 – 2022
As of 3/24/2022

Case#	Filed Date	F&R to PAB	PAB Hearing	F&R to Chief	Chief's Tentative or Final Decision	DPA Contest to CM	CM Final Decision	240-day Deadline	Status
2483	Mar 2, 2021							TBD	active criminal tolling
2488	Jun 8							Sep 2	awaiting release of BPD records
1	Jul 7	Dec 8	n/a	Jan 12	Jan 19	Jan 28	Feb 25	Mar 4	closed
2	Jul 7	Dec 8	n/a	Dec 17	Dec 27	Jan 6	Feb 7	Mar 4	closed
3	Jul 19	Jan 5	Jan 31	Feb 10	Feb 16	Feb 25	Mar 15	Mar 16	closed
4	Jul 23	Nov 10	n/a	Nov 19	Dec 17	Dec 27	Jan 21	Mar 20	closed
5	Jul 23	Jan 12 (2 officers)	Feb 4	Feb 15	Mar 10	n/a	n/a	Mar 20	closed
5	Jul 23	Feb 14 (1 officer)							Hearing Panel t/b scheduled
6	Jul 16	Feb 23	n/a	Mar 7	Feb 25	n/a	n/a	Mar 13	closed
7	Sep 13								PAB subcommittee formed
8	Sep 17		PAB Administratively Closed						
9	Sep 21		PAB Administratively Closed						
10	Oct 22		PAB Administratively Closed						
11*	Nov 2		PAB Administratively Closed (Policy)						
12	Nov 12		PAB Administratively Closed (Policy)						
13	Nov 17		Staff Rejected (not timely and incomplete)						
14	Nov 23		Staff Rejected (incomplete)						
15	Dec 3		Staff Rejected (incomplete)						
16	Dec 21								closed
17	Jan 5, 2022							Sep 2	Awaiting release of BPD records
18	Jan 27								
19	Jan 12							Sep 9	Awaiting release of BPD records

* Note: Complaints 11 through 15 were filed by the same individual.