



POLICE REVIEW COMMISSION (PRC) MINUTES

**Meeting of Wednesday, July 12, 2006 – 7:00 P.M.
South Berkeley Senior Center, 2939 Ellis Street, Berkeley, California**

1. CALL TO ORDER BY ACTING CHAIRPERSON SHARON KIDD at 7:07 P.M.

2. ROLL CALL AND ATTENDANCE

Present: Acting Chairperson Sharon Anne Kidd
Acting Vice Chairperson Sherry Smith
Commissioner Danny Herrera
Commissioner Jack Radisch
Commissioner David Ritchie
Commissioner Michael Sherman
Commissioner William White

Absent: None.

PRC Staff: Victoria Urbi, PRC Officer
Dan Silva, Investigator

BPD Staff: Chief Hambleton
Lieutenant Lee
Sergeant Juster

3. ORDER OF THE AGENDA

New Business was moved to Item #4 on the agenda. Item #6 was moved to Item #7. Item #5 was moved to Item #9.

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4. NEW BUSINESS

Case Proposed for Administrative Closure Pursuant to PRC Regulations Section II.6, Violation of Regulations.

1. Case No. 2069, Haro Halton

The Commission was handed a letter from Chris Morray-Jones, representative for complainant, opposing the closure of the case. The Commission reviewed the letter.

a. Staff Report

PRC Officer Urbi: The recommendation for closure had nothing to do with the merits of the case. The case had a number of procedural violations. The Commission needs to uphold their own Regulations. At the first hearing, the Commissioners concluded the case violated the 75-Day Rule and closed the case. The Findings Report stated the Panel considered the “Good Cause” exception, but they unanimously agreed that there was no good cause to continue to hear the case.

Complainant submitted a Petition for Rehearing, which the Commission granted. Under the Regulations, there are two reasons to rehear a case: 1) if there is a procedural error, or 2) if there is substantial new evidence. None of these reasons existed in this case. When the Commission granted the rehearing, the rehearing should have occurred within 35 days after the petition was submitted, as stipulated in the Regulations. The rehearing occurred 75 days after the petition was submitted.

Staff reminded the Commission to not allow the Complainant’s representative to speak on the merits of the case, since the case could still go to a board of inquiry.

The Commissioners discussed whether to accept the staff’s recommendation.

b. Public Comment

Mr. Jones met with PRC Officer Urbi at length and he is fully satisfied that they resolved the communication problem issue and there is no more problem with his statement regarding discourtesy.

Mr. Jones stated the Complainant has been patient throughout the entire process and they did everything they were asked. If the Commission closes the case, the Commission should consider the effect on the Complainant and the community. Mr. Jones also argued that after the first summary dismissal, there was a procedural error that warranted a rehearing. The Complainant did not receive advanced notice from the officer’s representative that he planned to propose the case for summary dismissal, as required by the Regulations.

c. Discussion

Acting Chairperson Kidd stated that the hearing had occurred and they continued the hearing for a later date. She asked how did this case get to the point of summary dismissal.

PRC Officer Urbi stated she reviewed the file and found a number of violations. PRC

Officer Urbi addressed Mr. Jone's comments that he has a job to do in representing his client, but her job is to ensure that the board of inquiries is administered in a fair and impartial manner. Mr. Jone's argued that the complainant was patient and did everything he was asked. PRC Officer Urbi stated she could make the same argument for the officers as they were also patient and did what they were asked, but she was not arguing on anyone's behalf. She was only making the case that the Commission needs to ensure that the process is fair to all parties. By upholding the Regulations, we keep this process objective.

Acting Chairperson Kidd stated that the PRC Officer should not attempt to close cases that occurred prior to her appointment and that she was not telling her to not do her job, but it makes the Commission look bad because of a procedure that was overlooked. Commissioner Sherman stated that since the hearing already occurred and had not been completed, they should continue to hear the case.

d. Action

M/S/C (Sherman/Smith) Unanimous to reject the proposal for administrative closure and continue hearing Case #2069. Ayes: Kidd, Herrera, Radisch, Ritchie, Sherman, Smith, and White. Noes: None. Abstain: None. Absent: None.

5. PUBLIC COMMENT

None.

6. APPROVAL OF JUNE 28, 2006 MINUTES

M/S/C (Ritchie/Radisch) Unanimous to approve the minutes of the June 28, 2006 Regular Meeting as written. Ayes: Kidd, Herrera, Radisch, Ritchie, Sherman, Smith, and White. Noes: None. Abstain: None. Absent: None.

7. BERKELEY POLICE DEPARTMENT CHIEF'S REPORT

Chief Hambleton reported that he met with PRC Officer Urbi and discussed a number of issues that he wished to share with the Commission.

Citizen Police Awareness Academy will begin in late August or mid-September. His staff is working on putting it together. It will take place on Thursday evenings for fourteen weeks.

P.O.S.T. (Peace Officer Standards and Training) Review of Narcotics Handling: Chief Hambleton stated that the POST person conducted fieldwork six weeks ago and he is now out ill. He will follow up on his findings.

Staffing: Chief Hambleton stated they are down 5-6 positions. There are 20-25 vacant positions for special assignments and patrol. Patrol is almost fully staffed and they had to make up the difference with over time. The priority is to keep patrol staffed. There are 20 reserved officers.

It takes time to recruit and hire new officers, and they had five unexpected departures. The academy takes five to six months, field training takes about 18 weeks and for entry-level officers it takes a minimum of a year to fill a vacancy. BPD tests applicants for officer positions every six months. During the last test, 86 applicants showed up and 10% or 7-8 officers were hired. The officers hired still had to go through a number of tests including physical agility, oral board and

background and character checks. BPD has high standards for recruitment.

Commissioner Sherman asked if the shortage of staffing is affecting crime. Chief Hambleton reported that violent crime is actually down and the lowest level in many years. 60% of property crimes are related to automobiles, so BPD is trying to get the word out to people not to leave valuables in their vehicles.

Criminal Intelligence and First Amendment Activities: Chief Hambleton reported that BPD is still working on the policy that the PRC subcommittee drafted. Lieutenant Lee and Captain Gustafson have been on vacation. They need to meet with the City Attorney to discuss the language, but she has been busy working on a Supreme Court brief. He understands the PRC subcommittee's concerns and he assured the PRC that BPD is not infiltrating political groups and they are not violating First Amendment activities.

8. OLD BUSINESS (For Discussion or Action)

A. Berkeley Mental Health Policy Proposal regarding 5150 incidents and the use of police.

- a. Report from Terence Kalahar: Spoke as a concerned citizen and not representing Berkeley Mental Health (BMH). He proposes that BMH adopt a similar 5150 policy and the use of police as that of San Francisco, Alameda and Santa Cruz. In San Francisco, police are called on 5150 calls if there is serious bodily injury, imminent danger or a weapon used. He believes it is wasteful for police resources, being mentally ill isn't a crime and the current policy erodes trust with the police and particularly with communities of color. He would also argue that having police present during 5150 calls perpetuates the myth that the mentally ill are violent. Police presence can exacerbate the mentally ill person.

Lt. Lee stated that the mental health policy is not a police policy and BPD does not respond to every call.

Harvey Tureck, Manager at BMH: If it is not an emergency situation, the BMH staff will call the dispatch on the non-emergency number. BMH has a policy and a practice, which is loose, and their current 5150 policy is silent. The practice has shifted. His goal is to have a more thoughtful process on this issue. A small number of clients are dangerous and he is concerned about the safety of employees. BMH is currently studying and collecting data on when 5150 calls are made and the types of situations occurring with police and these calls. They are looking into a more discretionary policy with checks and balances.

b. Request from Mental Health Commission that PRC designate a liaison to the Berkeley Mental Health Commission

Commissioner Sherman volunteered to act as liaison to the BMH Commission.

c. Public Comment

Leland Johnson: Mental Health worker. This is an opportunity for PRC to help transform mental health and treating the mentally ill in a humane and respectful way.

Dan Ezekiel: Patient rights advocate, who spoke as a citizen, not employee. He advocates the least restriction for the mentally ill. They have insurance problems and may need a

medication tune up. Staff safety isn't jeopardized as they exercise clinical judgment and discretion all the time without police presence.

Pat Wall: Homeless Action Center. Has an agency that helps 150 people per year for the last 11 years. When the Mobile Crisis Team is called the police disrupts her office, which is supposed to be a warm and loving place for the clients.

Andrew Phelps: Accountability Caucus. He survived not being involuntarily hospitalized for the last 35 years. He believes there is a lot of mistrust and miscommunication with mental health and police.

Pamela Wilson: Mental Health Commission and patient rights advocate. She cited a study that when the expectation of violence is low, the incidents of violence are less likely.

Fiona Glas: Psychiatric Social Worker: This is a PRC issue because PRC has the power to recommend to the City Council. She believes having a psychiatric breakdown is not a crime. She's impressed with the dignity of BPD and their handling of mentally ill people.

d. Discussion

Acting Vice Chairperson Smith had a process concern because the PRC is not in a position to bring to the Council this item without data and PRC is not in a position to give direction until we have more information.

e. Action

M/S/C (Ritchie/Sherman) moved to accept the 5150 policy that police not be called unless there exists a threat to serious bodily harm, a life threatening situation or a weapon is being used. Ayes: None. Noes: None. Abstain: None. Absent: None.

M/S/C (Smith/Radisch) to table the motion to accept the 5150 policy that police not be called unless there exists a threat to serious bodily harm, a life threatening situation or a weapon is being used, until BMH Commission holds their public hearing on the issue. Ayes: Kidd, Herrera, Radisch, Ritchie, Smith, and White. Noes: None. Abstain: Sherman. Absent: None.

B. Bay Area Police Oversight Network (BAPON) – Commissioner White
This will be discussed at the next meeting.

9. PRC OFFICER'S REPORT (For Discussion or Action)

A. Proposal to hold business meetings once a month.

a. Staff Report: Staff (Urbi) reported that the Commission meets on average four to six times per month including the policy subcommittee meetings and boards of inquiries. The Ordinance requires a minimum of two meetings a month, so the PRC is meeting more than what is required by the Ordinance. Due to the number of meetings per month, it has been a problem for staff to get Commissioners to sit on the boards of inquiries, leading to the cancellation of some hearings. The meetings require a great deal of staff time to prepare and coordinate.

b. Public Comment: None.

c. Discussion: The PRC Ordinance requires two Commission meetings a month. The Commission believed the two meetings a month requires the entire Commission to be present. Boards of inquiries and subcommittee meetings do not require the attendance of the full Commission. However, the PRC Officer may choose to cancel a full Commission meeting if there is insufficient agenda items.

d. Action: None.

B. Commissioner Vacancies

Staff reported that there are two Commissioner vacancies. Mayor Bates and Councilmember Anderson's vacancies have not been filled. Staff has reported this to Deputy City Manager Lisa Caronna, who is working on this. Commissioner Herrera's appointment was terminated due to three consecutive absences from meetings. Councilmember Worthington has reinstated his appointment.

C. New Filings

None.

D. Boards of Inquiry

August 3 – Case #2092, Popa: Comm. Smith, White, Kidd.

October 4 – Case #2079, Crawford: Herrera, White, _____.

E. Findings Reports

- Case #2078 – Writer: Herrera. Due April 26.
- Case #2100 – Writer: Kidd (minority opinion). Due June 15.
- Case #2075 – Writer: Sherman. Due July 7.

8. COMMITTEE REPORTS (For Discussion or Action)

A. Subcommittee: Draft Regulations for Investigations of First Amendment Activities.
See BPD Chief's Report, above.

B. Subcommittee: Review of BPD Case #06-3074.
This will be discussed at the next meeting.

10. COMMUNICATIONS

Attached.

11. ADJOURNMENT

The Board adjourned at 10:00 P.M.