



Police Review Commission

## **POLICE REVIEW COMMISSION REGULAR MEETING MINUTES**

Wednesday, July 9, 2008  
7:00 P.M.

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

### **1. CALL TO ORDER BY CHAIR WILLIAM WHITE AT 7:00 p.m. ROLL CALL AND ATTENDANCE**

Present: Chairperson William White  
Vice Chair Sharon Kidd  
Commissioner Kamau Edwards  
Commissioner Jonathan Huang  
Commissioner George Perezvelez  
Commissioner Michael Sherman  
Commissioner Sherry Smith

Absent: None.

PRC Staff: Victoria Urbi, PRC Officer

BPD Staff: Chief Hambleton, Lt. Files, Sgt. White (Internal Affairs Bureau), Sgt. Wilson (Internal Affairs Bureau),

BPA: Ofc. H. Wellington

### **2. ORDER OF AGENDA**

No changes were made.

### **3. PUBLIC COMMENT:**

None.

### **4. APPROVAL OF MINUTES**

A. Regular Meeting: June 25, 2008

**Motion to approve minutes. M/S/C (Smith/Kidd) Motion carried.**

Ayes: Huang, Kidd, Perezvelez, Smith. Noes: None.

Abstain: White. Absent: Edwards, Sherman (who arrived after this item was voted on).

### **5. OLD BUSINESS**

A. Rescind Commission vote from June 25, 2008 Closed Session meeting, item #12B (See attached minutes, Page 7)

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i. Staff report: The vote violated the Brown Act, because it was not noticed on the agenda and the public did not have an opportunity to comment on the item. The Commission could cure the violation by rescinding the vote.

ii. Commission vote

**Motion to rescind the closed session vote from June 25, 2008 that directed PRC staff to draft a letter to complainants to close cases pursuant to Government Code Section 3304 on cases that have expired beyond one year. M/S/C (Smith/Huang) Motion carried.**

Ayes: Edwards, Huang, Kidd, Perezvelez, Sherman, and Smith. Noes: None. Abstain: White. Absent: None.

**Motion to move the closed session item to open session and re-vote the June 25, 2008 item that directed PRC staff to draft a letter to complainants to close cases pursuant to Government Code Section 3304 on cases that have expired beyond one year. M/S/C (Smith/Perezvelez) Motion carried.**

Ayes: Edwards, Huang, Kidd, Perezvelez, Sherman, and Smith. White. Noes: None. Abstain: None. Absent: None.

B. Staff seeks direction on closure of cases that have expired beyond the one-year deadline pursuant to Government Code Section 3304.

i. Staff report and approval of letter to complainants (See attached Communication #1, Page 9): Ms. Urbi reported that at the last meeting, Commissioner Perezvelez requested a report on the total number of cases that will expire and number that are open. Ms. Urbi stated there are a total of 72 open cases, 42 cases have expired because of the one-year statute and 6 cases will expire in August. Thus, if the Commission closes 48 cases, there will be 24 remaining open cases.

Ms. Urbi informed the Commission that shortly after she sent out the agenda packet, she sent a revised letter to the Commission and she brought extra copies regarding the closure of cases pursuant to Government Code 3304. There was another letter sent that morning from Berkeley Police Association attorney, Allison Berry-Wilkinson. Ms. Urbi believed that Ms. Berry Wilkinson was likely commenting on the first draft letter and not the revised draft, as she did not send her the revised draft.

ii. Discussion

Comm. Smith stated that the intent of the PRC's letter to complainants to close the cases was not to blame BPA, but rather to advise them that due to the lawsuit, their case expired. After Comm. Smith reviewed the revised letter, she stated that it does not blame BPA for the expired cases.

Comm. Sherman stated that the intent was not to point fingers at anyone.

Comm. Kidd stated that she just received the revised letter that day.

Comm. Smith asked if there was any recourse for the Complainants if after receiving the letter, they show up to the next Commission meeting. She stated that staff should have a script prepared if Complainants call the PRC, because it would be a waste of energy and time if they came to the next meeting and the Commission has no choice but to close their case due to the Government Code 3304.

Mr. Wellington asked why the Complainants should even be given the opportunity to come to the next meeting, when their complaint is time barred by the Court.

Comm. Edwards stated that the Complainants still have Due Process rights, and they have the right to have notice and to be heard by the Commission if their complaint will be recommended for closure.

Chief Hambleton asked for clarification on the exact vote of the Commission from the Closed Session meeting. He thought the Commission voted to close the cases that expired at the last Closed Session meeting and why was the Commission now voting to approve a letter that allows Complainants to appear before the Commission to discuss their case.

Comm. Smith stated that at the last Closed Session meeting, the Commission voted to have staff draft a letter advising Complainants that their case would be closed. That vote violated the Brown Act because the agenda item was not properly noticed. The Commission rescinded the closed session vote, voted on the same vote in open session, and approved the draft letter prepared by PRC staff. Comm. Smith appreciated everyone's comments. The PRC is supposed to be the Complainant's redress point, but we are not really offering them an opportunity for redress.

iii. Commission vote

**Motion to approve the revised letter to Complainants advising them that PRC would close their case at the next meeting due to the one year expiration, pending approval by the City Attorney in light of BPA's letter from Allison Berry Wilkinson.**

**M/S/C (Smith/Perezvelez) Motion carried.**

Ayes: Edwards, Huang, Kidd, Perezvelez, Sherman, Smith and White.

Noes: None. Abstain: None. Absent: None.

C. Allegations from Statistical Report

i. Staff report on clarification of allegations (See attached Communication #2, Page 10) and approval for posting on the PRC website.

Ms. Urbi stated that she prepared the memorandum on the allegations at the request of Comm. Perezvelez. Also, Chief Hambleton had concerns that the numbers were inflated. If the Commission approved the memorandum, the clarification on the allegations would be posted on the website and also be included in the next statistical report.

Comm. Smith stated that staff did a good job and asked Chief Hambleton if the memorandum addressed his concerns.

Chief Hambleton stated that it was fine.

ii. Commission vote

**Motion to approve the memorandum clarifying the allegations in the statistical report. M/S/C (Perezvelez/Smith) Motion carried.**

Ayes: Edwards, Huang, Kidd, Perezvelez, Sherman, Smith and White.

Noes: None. Abstain: None. Absent: None.

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

A. Status of complaints: 72 total.

B. Hearing update: July 24 with Comm. Huang and Smith. Ms. Urbi asked Comm. Sherman and Edwards to sign up.

C. Comments: Findings reports for the hearings on Complainants Zhuo and Wesley have gone out.

**7. BERKELEY POLICE DEPARTMENT CHIEF'S REPORT**

Chief Hambleton reported that there are ten new officers in field training, and he anticipates very few vacancies for the rest of the year. Three officers have returned from medical leave. There are three dispatcher vacancies and two community service officer vacancies, which when filled, will be charged with moving the drug evidence into the main property unit.

Chief Hambleton stated that there is a crime alert in place due to several recent sexual assaults. Commissioner Smith commented about a suspect referred to as "Stinky" from years ago. Chief Hambleton responded that he was identified although never prosecuted, and has since passed away.

Chairperson White asked if there is a Mutual Aid Agreement with the UC Police Department with regards to the tree-sitters. Chief Hambleton responded there is not specifically for the tree-sitting situation, although there is a general Mutual Aid Agreement. He added that BPD has made it clear to UCPD that the tree-sitting situation is UCPD's responsibility, and that BPD will only respond if there is a public safety emergency.

**8. COMMITTEE REPORTS (For Discussion or Action)**

A. Evidence Theft Subcommittee: Ms. Urbi reported that she included the final reports to City Council in this meeting's agenda packet. She also asked the Subcommittee members if there is anything else she needs to follow up on. Comm. Smith stated that their work is done.

B. Criminal Intelligence Subcommittee: Ms. Urbi reported that Capt. Gustafson had some final suggestions from the Subcommittee that he would discuss with the Chief. The Chief has reviewed those suggestions and there is still disagreement about whether PRC should audit their intelligence files or if BPD should only provide a statistical report. The Chief also added that there really are not a lot of criminal intelligence files that BPD keeps.

The Chief also stated that typically when people review those files, they are required to determine if they have a "right to know" or a "need to know." PRC does not have a right to know. Comm. Huang stated that the Subcommittee believed that the PRC should have an audit function on the files, as that is the job of the Commission is to provide oversight of the Police Department.

C. Crowd Control Policies Subcommittee: Comm. Huang stated that the Subcommittee plans to meet on July 15.

**9. COMMUNICATIONS**

**Motion to send a letter to State Senator Gloria Romero, from the Chair on behalf of the Commission, to thank her for her efforts at working on opening police records and that the Commission hopes she will reintroduce such legislation.**

**M/S/C (Smith/Sherman)**

**Friendly amendment to motion by Comm. Sherman to send copies of the letter to Assembly Members Jose Solario, Hector De La Torre, and Anthony Portantino, who abstained on the bill.**

**Friendly amendment to the motion by Comm. Huang to also send a copy of the letter to Assembly Member Fiona Ma, who opposed the bill.**

**Motion carried.**

Ayes: Edwards, Huang, Kidd, Sherman, Smith and White.

Noes: None. Abstain: Perezvelez. Absent: None.

**10. PUBLIC COMMENT:** None.

<b>Closed Session</b>
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**The Police Review Commission will recess into closed session to discuss and take action on the following items:**

**11. RECOMMENDATION FOR SUMMARY DISMISSAL**

A. Case No. 2191 – Complainant John Phelps

**Motion to close Case No. 2191. M/S/C (Sherman/Kidd) Motion carried.**

Ayes: Edwards, Huang, Kidd, Perezvelez, Sherman, Smith and White.

Noes: None. Abstain: None. Absent: None.

**12. ADJOURNMENT**

Meeting was adjourned at 8:10 p.m.