



Office of the City Manager

October 9, 2019

To: Honorable Mayor and
Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: 2018 Police Review Commission Annual Report

Attached is the 2018 Annual Report for the Police Review Commission (PRC).

In 2018, the PRC received 13 individual complaints, no policy complaints, closed 15 cases and conducted five Boards of Inquiry. The Commission has been working on a number of projects, including drafting a proposed amendment to the City Charter that would restructure the PRC to vest it with greater authority in policy-making and certain disciplinary decisions.

Please let me know if you have any questions.

Attachment

cc: Paul Buddenhagen, Deputy City Manager
David White, Deputy City Manager
Department Directors
Katherine J. Lee, Police Review Commission Officer
Matthai Chakko, Assistant to the City Manager / Public Information Officer

CITY OF BERKELEY



POLICE REVIEW COMMISSION 2018 ANNUAL REPORT

CITY OF BERKELEY

POLICE REVIEW COMMISSION

Commissioners - 2018

Sahana Matthews, **Chair**
George Perezvelez, **Vice-Chair**

Gwen Allamby
Kitty Calavita
Andrea Prichett
Ismail Ramsey
Terry Roberts
Michael Sherman
Ari Yampolsky

Clarence Ford (through 2-26-18)
George Lippman (through 4-24-18)

Mayor

Jesse Arreguin

Councilmembers

Linda Maio (District 1)
Cheryl Davila (District 2)
Benjamin Bartlett (District 3)
Kate Harrison (District 4)
Sophie Hahn (District 5)
Susan Wengraf (District 6)
Kriss Worthington (District 7)
Lori Droste (District 8)

City Manager

Dee Williams-Ridley

Deputy City Manager

Jovan Grogan (through 7-15-18)
Paul Buddenhagen (interim, from 7-16-18)

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To the City and Community of Berkeley:

The Berkeley Police Review Commission presents its 2018 Annual Report. This report includes statistical data concerning misconduct complaints filed during the year, an outline of the complaint process, and the work and achievements of the Commission.

2018 was an exciting and productive year for the Police Review Commission. We commissioners evaluated the Commission's role in the City and Community of Berkeley and drafted a charter amendment to reorganize and strengthen the PRC's authority. Each commissioner, especially our subcommittee members, worked diligently in a short period of time to ensure that the PRC be structured in a way which best benefits our City and Community. This charter amendment proposal then went to the City Council, which further revised.

This year, the PRC ensured that its work and dedication to the Community was recognized by the City Council. During the year, the PRC's 2017 report, "Towards Fairness & Impartiality," was accepted by Council, which made recommendations and asked the City Manager to develop a plan of action for implementation. Additionally, Council adopted a Surveillance Technology Use & Community Safety Ordinance, based on a proposal from the PRC.

The Commission also worked tirelessly to review the Department's Body-Worn Cameras policy and learn about the officer's use of these cameras. The Commission looks forward to now having body-worn camera footage available at Boards of Inquiry.

On behalf of the PRC, I would like to thank staff, Ms. Katherine J. Lee, Mr. Byron Norris, and Ms. Maritza Martinez, for their hard work and dedication to this Commission. Their role is vital to the functioning of the PRC as an independent and effective oversight body, and we are grateful for the countless hours they put in to helping the Commission progress and achieve its goals. I would also like to thank the citizens of Berkeley, who undoubtedly influence our work, and the numerous community-based organizations who continue to contribute to our cause.

Finally, thank you to the Berkeley Police Department for its tireless efforts to keep our community safe, as well as its commitment to attending our meetings and working collaboratively with commissioners. The Department's involvement in this process is vital to ensuring we are providing the most effective oversight and guidance possible. A special thank you to Chief Greenwood for his leadership and dedication to engaging with the PRC and the Community.

The work of oversight demands constant collaboration, growth, and shared responsibility. The Commission has remained dedicated to working with the City Council, the Police Department, and the Community to continually evaluate and strengthen our oversight process. It is my hope that the partnerships we worked to build in 2018 will only strengthen in the years to come.

Respectfully,

A handwritten signature in blue ink that reads "Sahana Matthews". The signature is written in a cursive style and is positioned above a horizontal line.

Sahana Matthews
Police Review Commission
Chair 2018



Police Review Commission (PRC)

September 30, 2019

Dee Williams-Ridley
City Manager
2180 Milvia Street
Berkeley, CA 94704

Dear Ms. Williams-Ridley,

I am pleased to present to you the 2018 Annual Report for the Police Review Commission. The purpose of this report, provided in accordance with the PRC's enabling ordinance (Ord. No. 4644-N.S.), is to furnish statistical data regarding the number of complaints received, their general characteristics, and manner of conclusion.

For cases that have proceeded to Board of Inquiry Hearings, the data also includes the number of hearings, the various categories of allegations heard, and whether the allegations against an officer were sustained, not sustained, unfounded, or exonerated. This report also contains data on the ethnicity, gender and ages of complainants, as well as comparisons to statistics from the previous four years.

Finally, this report describes the other work the Police Review Commission undertook in 2018. Notably, the PRC devoted a significant amount of time to drafting a proposed amendment to the City Charter that would restructure the civilian oversight agency to vest it with greater authority in policy-making and certain disciplinary decisions.

Among the Berkeley Police Department policies, practices, and procedures reviewed this year, the PRC followed up on its 2017 analysis of pedestrian and vehicle stop data by pressing for implementation of steps to address disparate race-based treatment of civilians; began reviewing a revised body-worn camera policy issued just before the department's use of the cameras; and started on the task of reviewing the department's operational and administrative policies as they are transitioned from General Orders into the Lexipol system.

Respectfully submitted,

A handwritten signature in blue ink that reads "Katherine J. Lee".

Katherine J. Lee
Police Review Commission Officer

2018 PRC ANNUAL REPORT

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I. EXECUTIVE SUMMARY 2018

Meetings

In 2018, the Commission held 53 regular, special, and subcommittee meetings, and Board of Inquiry hearings. By comparison, 65 such proceedings were held in 2017.

Complaints

The Commission received 13 individual complaints and no policy complaints in 2018. In 2017, the Commission received 22 individual complaints and 3 policy complaints.

Complainants

The demographic distribution of individual complainants in 2018 was 7 males and 6 females; 4 Blacks, 7 Caucasians, 1 Asian, and 1 multi-ethnic person. Complainants ranged from 25 to 79 years of age; with almost half in their fifties and sixties.

Board of Inquiry (BOI) Hearings

The Commission completed 5 BOI hearings – proceedings in which a panel of commissioners considers allegations against police officers. Allegations of improper procedures, discourtesy, and discrimination were the most common of the 38 allegations considered. Two findings of police misconduct were sustained.

Caloca Appeals

Subject officers may seek review of a BOI “sustained” finding through a *Caloca* appeal. In 2018, one sustained finding was appealed; it was upheld following a hearing.

Policy Review Highlights

The PRC tackled the significant task of drafting for the City Council’s consideration a charter amendment

to broaden and strengthen the PRC’s powers. The City Council modified the PRC’s proposal, aspects of which were still being negotiated with the police union at the end of 2018.

The PRC’s efforts to reduce apparent race-based disparities in the police department’s pedestrian and traffic stops continued in 2018 with the Council’s acknowledgement of the PRC’s report analyzing the stop data, and a presentation from the Center for Policing Equity of its examination of the data.

In March, the City Council approved a Surveillance Technology Use and Community Safety Ordinance, based on a PRC proposal. The ordinance aims to ensure that the benefits of the City’s use of a surveillance technology outweighs the impacts on the public’s privacy rights and civil liberties.

Berkeley police officers began using body-worn cameras in October. The PRC had worked extensively with the BPD to develop a policy for their use.

Berkeley Police Department

At the end of 2018, BPD had 159 sworn police officers and received 74,087 calls for service. (This figure includes phone calls to BPD requesting service, calls resulting from an officer personally observing a situation requiring service, and direct contacts to BPD by a person requesting help).



II. INTRODUCTION

Berkeley's Police Review Commission (PRC) was established by voter initiative in 1973. As one of the oldest civilian oversight agencies in the nation and the first one authorized to conduct investigations, the PRC continues to be an important model and source of information for oversight bodies across the United States.

III. MISSION STATEMENT

The mission of the Police Review Commission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

IV. STAFF

The PRC Office is a division of the City Manager's Office with a staff of three:

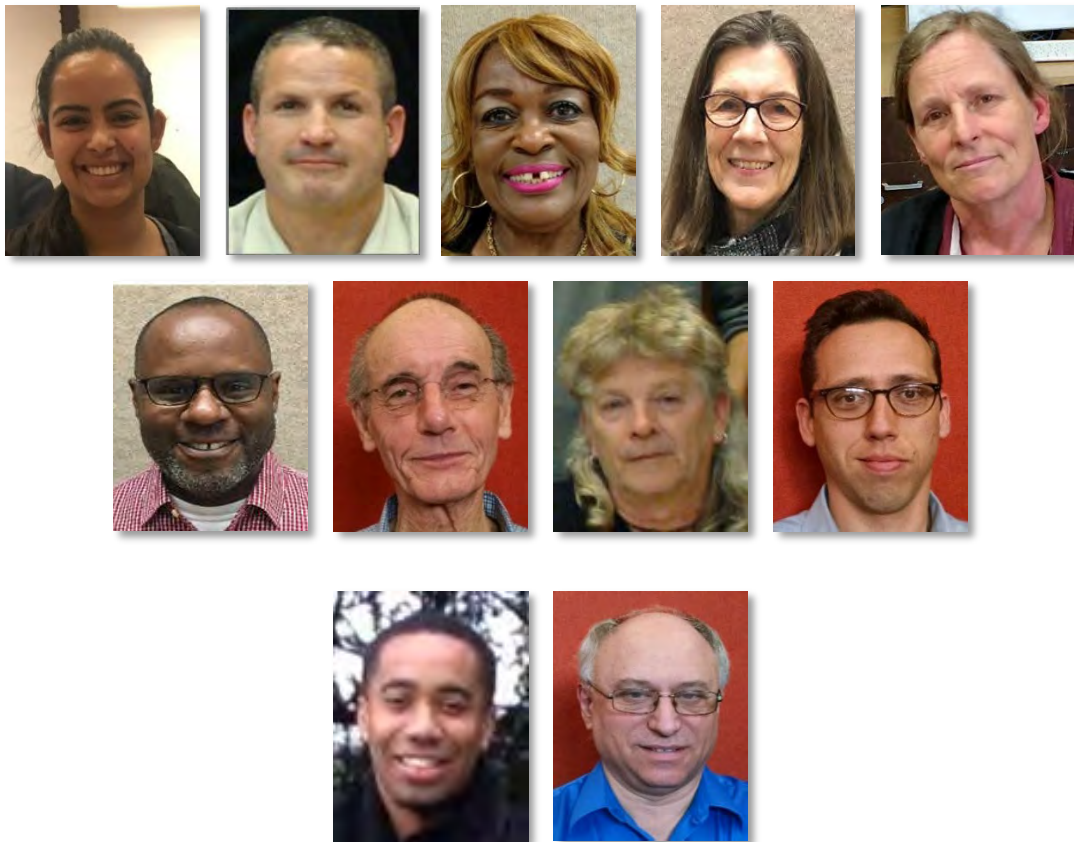
- **The PRC Officer** administers the daily operations of the PRC office, supervises staff, oversees complaint investigations, and serves as Secretary to the Commission. As Secretary, the PRC Officer staffs commission meetings and provides managerial support in the execution of PRC policies and procedures.
- **The PRC Investigator** conducts in-depth investigations of civilian complaints against members of the Berkeley Police Department, assists with special projects, and periodically serves as Acting Commission Secretary.
- **The Office Specialist III** manages the front office, provides administrative support to the PRC Officer and Investigator, prepares and maintains PRC records, and compiles statistics.



Maritza Martinez, Office Specialist III (joined staff in March 2001);
Byron Norris, PRC Investigator (joined staff in October 2009);
Katherine Lee, PRC Officer (joined staff in January 2014).

V. COMMISSIONERS

Nine Berkeley residents are appointed by the Mayor and members of the City Council to serve on the PRC. These Commissioners represent diverse backgrounds and viewpoints and therefore provide invaluable community perspectives. The Commission generally meets twice a month. Individual commissioners also attend subcommittee meetings and Board of Inquiry Hearings throughout the year. The Commissioners devote considerable volunteer time and effort toward fulfilling their duties.



Commissioners as of the end of 2018:

Top Row -- **Chair Sahana Matthews, Vice-Chair George Perezvelez, Gwen Allamby, Kitty Calavita, Andrea Prichett.**

Middle Row – **Ismail Ramsey, Terry Roberts, Michael Sherman, Ari Yampolsky.**

Other Commissioners who served in 2018:

Bottom Row – **Clarence Ford, George Lippman.**



VI. COMPLAINTS

1. INDIVIDUAL COMPLAINTS - Investigation

A complaint consists of one or more claims of alleged misconduct against one or more individual BPD officers. Timely-filed¹ complaints are investigated and prepared for hearing or, if the complainant and subject officer agree, referred for mediation. In some instances, cases are referred to the Commission for administrative closure. Cases may be submitted for closure for reasons that include: the complaint does not allege misconduct on its face or is frivolous; the investigative deadlines are not met; the complainant fails to cooperate; the complainant requests closure.

In cases where an investigation is completed, the PRC investigator interviews the complainant, subject officer, and witnesses; collects other evidence; and prepares a written report. A Board of Inquiry Hearing (BOI) is then scheduled, which consists of three Commissioners impaneled to hear testimony and render findings. The findings from the BOI are forwarded to the City Manager and the Chief of Police.

When a complaint is filed with the PRC, a copy is forwarded to the Berkeley Police Department's Internal Affairs Bureau, which conducts its own, separate investigation. Under the Memorandum of Understanding between the City and the Berkeley Police Association, any discipline that involves a loss or reduction of pay or discharge must occur within 120 days of the incident giving rise to the disciplinary action or the date the City had knowledge of the incident. While the PRC does not impose or recommend discipline, the City Manager and Chief of Police may consider the PRC's BOI findings when considering discipline, if the findings are issued in time to meet the 120-day deadline.

Separate from the disciplinary process, subject officers can appeal PRC sustained allegations, which are heard by the state Office of Administrative Hearings. (See page 18.)

The standard of proof – the amount of evidence required at a BOI to sustain an allegation – is “clear and convincing evidence.” This standard is higher than a preponderance of the evidence but lower than beyond a reasonable doubt. The four categories of findings are:

¹ Complaints must be filed within 90 calendar days of the alleged misconduct, unless a complainant is incapacitated or otherwise prevented from filing a complaint. A complaint filed between 91 and 180 calendar days of the alleged misconduct can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to timely file.



1. **Sustained:** the alleged act did occur, and was not justified;
2. **Not Sustained:** the evidence fails to support the allegation, however it has not been proven false;
3. **Unfounded:** the alleged act did not occur; and
4. **Exonerated:** the alleged act did occur but was lawful, justified and proper.

Complainant Advocates. In the fall of 2017, students at UC Berkeley Law School launched the Boalt (now Berkeley) Police Review Project to assist people who file individual complaints with the PRC and who seek representation. These services are provided free of charge. Law students have since helped several complainants prepare for their cases. Because subject officers are usually represented at hearings, the Commission believes that complainants feel less intimidated and better prepared having an advocate assist them before and during the hearing.

MEDIATION – an alternative to investigation

After an individual files a complaint, he or she may opt for mediation. This will go forward only if the officer who is the subject of the complaint agrees. Mediations are conducted by an independent, professional mediator. A mediation gives both the complainant and the subject officer the opportunity to speak and respond to each other in a respectful environment. At the conclusion of mediation, the complaint is closed and the Commission is notified. Once mediation is completed and the complaint closed, the complainant cannot opt for an investigation.

2. POLICY COMPLAINTS

A policy complaint is a request from a member of the public to the Commission to review a particular BPD policy, practice, or procedure, because the complainant believes that the policy could be improved or should be revised. Complaints or concerns about BPD policies are presented by staff to the full commission at a regular meeting. The Commission may conduct its own review; form a subcommittee to review the policy, or ask staff to conduct an investigation or take other action, and present a report at a future meeting. After conducting its own review, or receiving a report from a subcommittee or staff, the PRC may close the complaint without further action or recommend changes in policy, practice or procedures to the BPD and the City Manager.

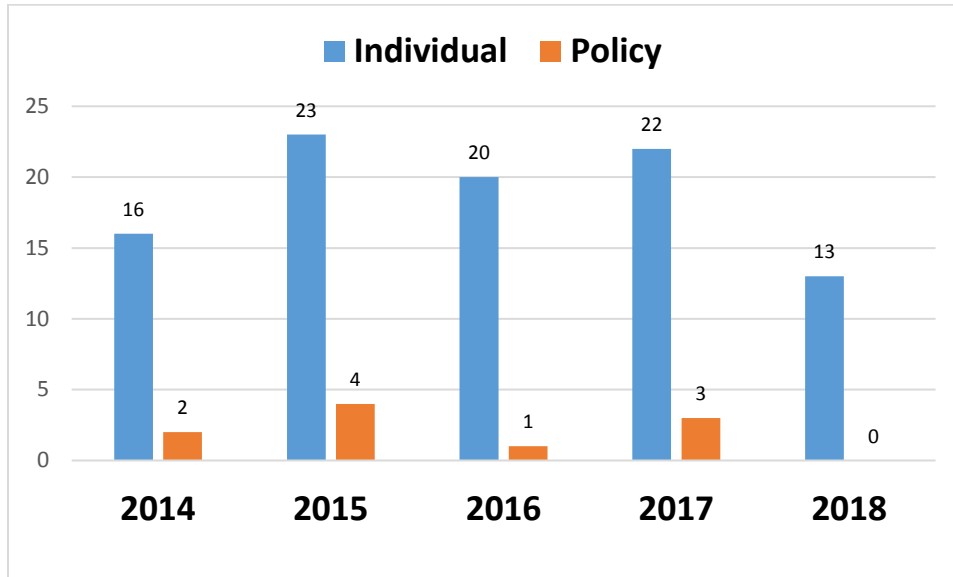


VII. STATISTICS 2014 - 2018

1. COMPLAINTS RECEIVED

In 2018, the PRC received 13 individual complaints and no policy complaints.

The average number of complaints filed over the past five years is 20.8.

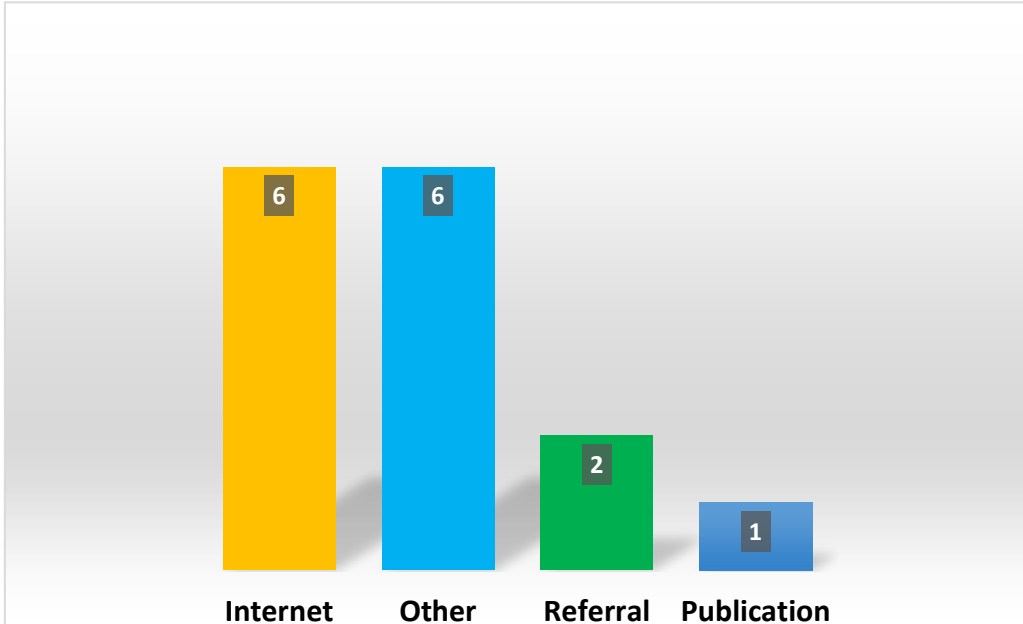


COMPLAINTS RECEIVED	2014	2015	2016	2017	2018
Individual	16	23	20	22	13
Policy	2	4	1	3	0
Total	18	27	21	25	13



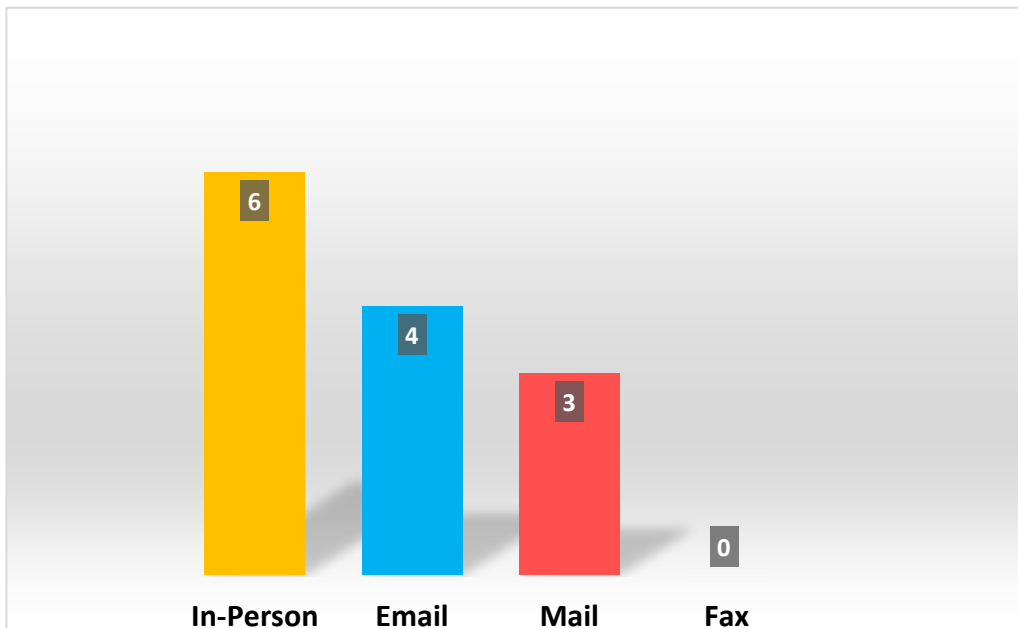
How Complainants in 2018 Heard About the PRC

On the complaint forms, complainants are asked to check a box stating how they learned about the Police Review Commission. (One of the 13 complainants checked 3 boxes.)



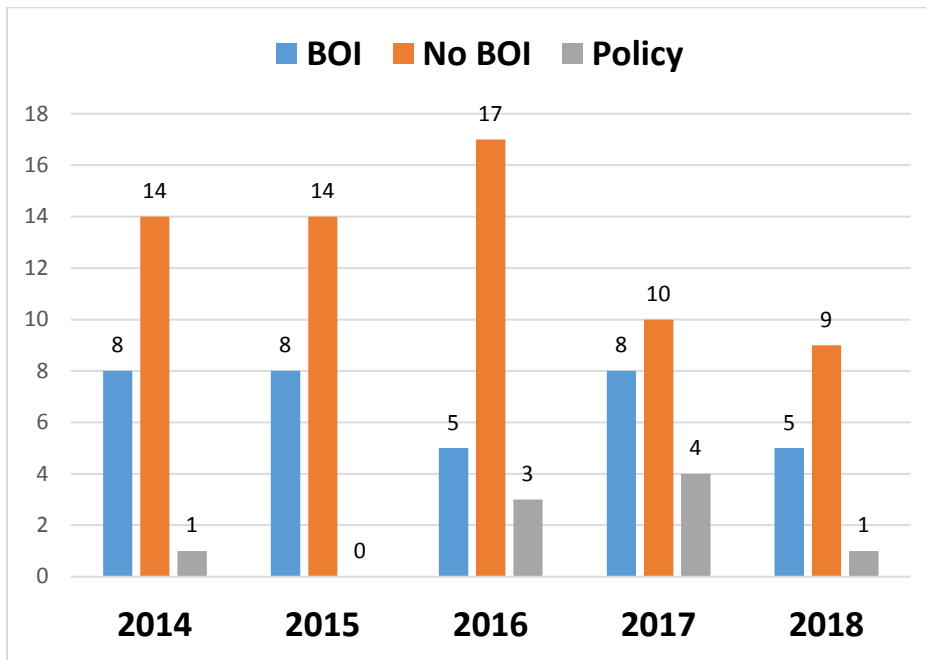
How Complainants Were Filed with the PRC in 2018

Persons may file individual and policy complaints by e-mail, U.S. mail, fax, or in person at our offices.





2. COMPLAINTS CLOSED



COMPLAINTS CLOSED	2014	2015	2016	2017	2018
BOI Hearings Completed	8	8	5	8	5
Closed without BOI	14	14	17	10	9
Admin. Closure (includes withdrawn)	11	6	5	5	6
Mediation	0	1	5	1	0
Dismissal	1	4	2	0	1
Reject**	2	3	5	4	2
Policy	1 (reject)	0	2 1 (reject)	2 2 (reject)	1 (reject)
Total Cases Closed	23	22	25	22	15

** Staff may reject individual complaints if they do not meet the minimum requirements of a valid complaint, for instance, the person filing was not the aggrieved party, or the complaint was filed more than 180 days after the incident date.



3. ALLEGATIONS HEARD AT BOARDS OF INQUIRY

Allegation categories:

EXF=Excessive Force

DIS=Discourtesy

ASD=Improper Arrest, Search, Seizure, or Stop/Detention

DET=Improper Detention Procedures

PRJ=Discrimination

PRO=Improper Police Procedures

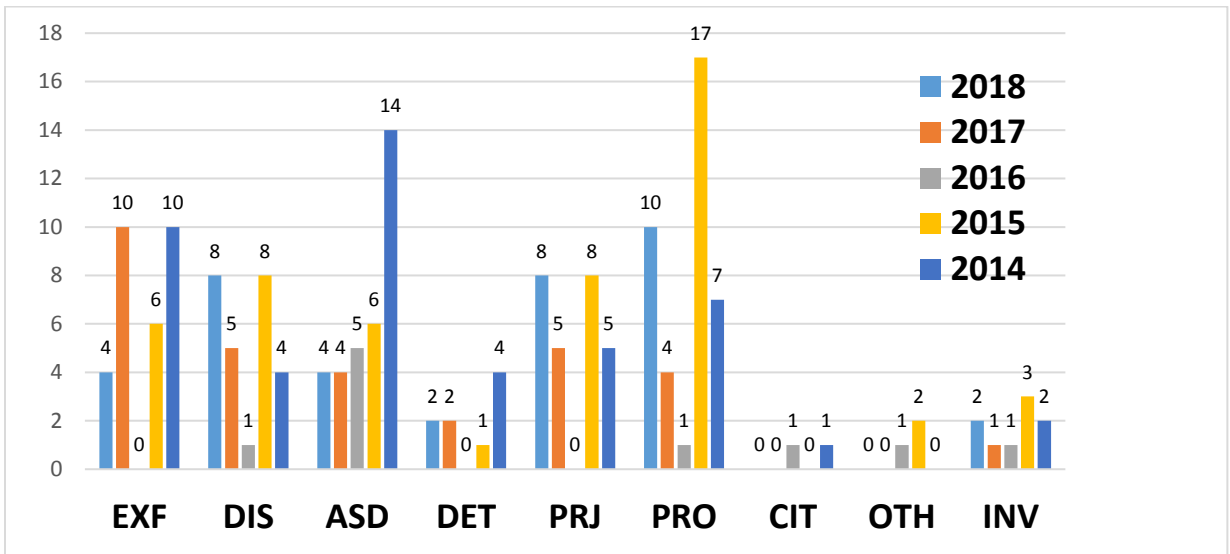
CIT=Improper Citation or Tow

OTH=Other (see p. 13 for examples)

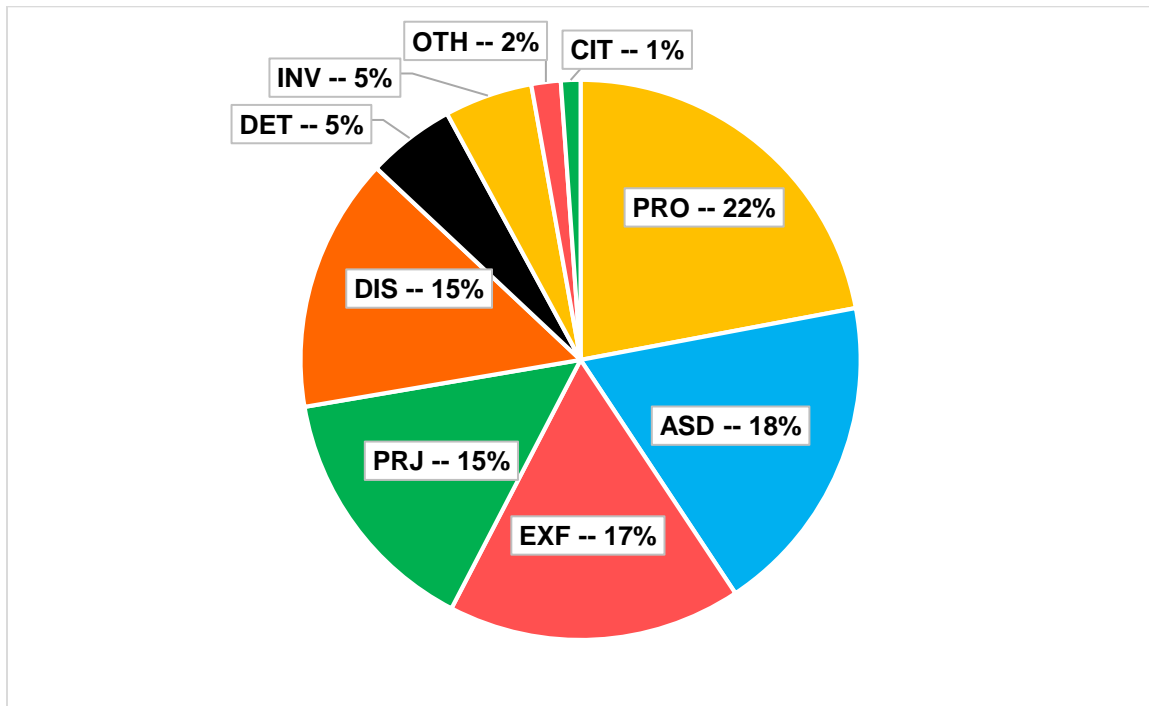
INV=Improper Investigation

HAR=Harassment (no allegations heard 2014 – 2018)

BY CATEGORY AND YEAR



BY PERCENTAGE, for the years 2014-2018 combined





4. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY

In 2018, a Board of Inquiry hearing was convened in five cases to make findings on allegations. A Summary Dismissal occurs when the BOI determines an allegation is wholly without merit.

Thirty-eight allegations were decided in those five cases. Whether separate types of allegations are lodged against one officer in the same case, or one type of allegation is made against multiple officers, each allegation against each officer is counted individually. For example: if an allegation of discourtesy is made against three officers, the statistics will reflect three separate allegations for that case.

Of the 38 allegations considered, 2 were sustained, 23 were not sustained, none were exonerated, and 13 were unfounded. The table below shows how the decisions made on allegations in 2018 compare to those of the four preceding years.

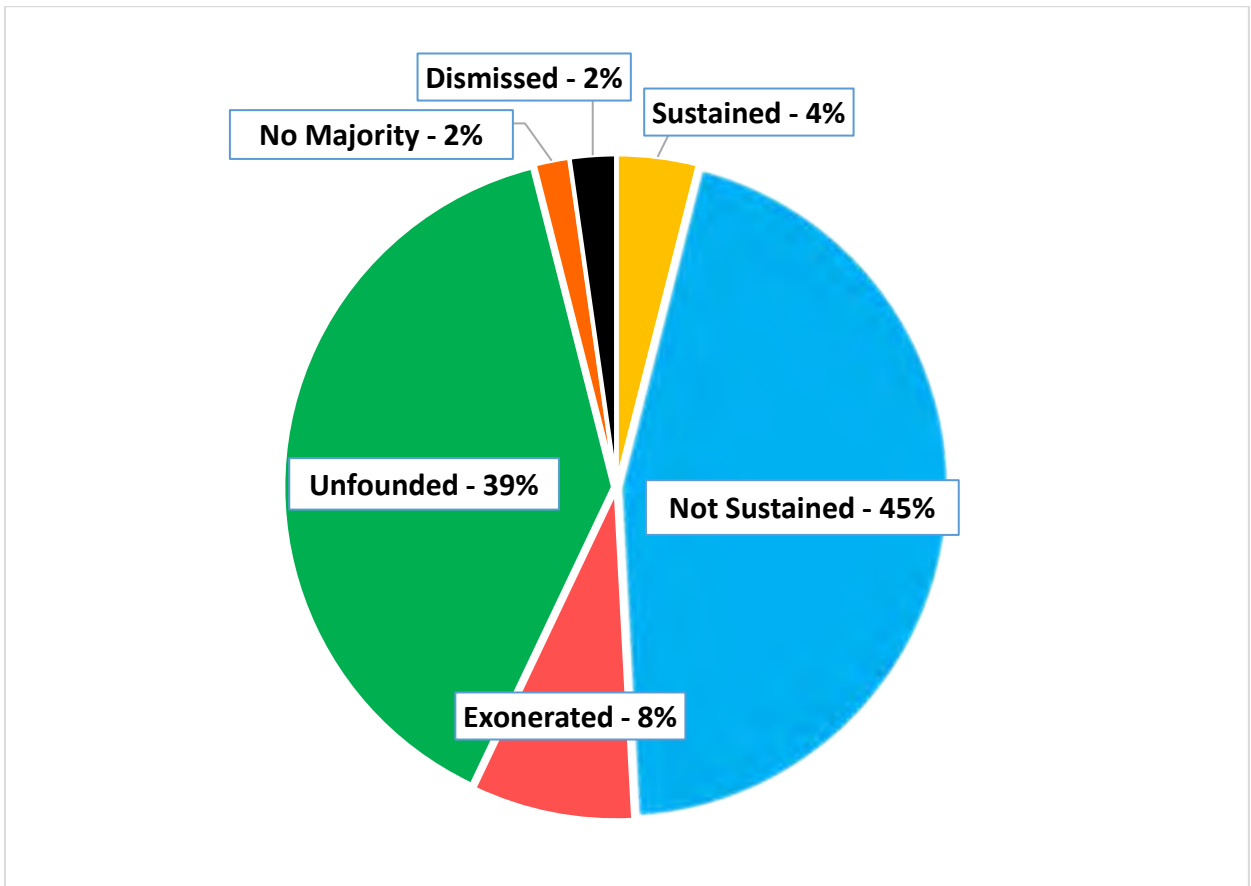
Finding Categories	2014	2015	2016	2017	2018
Sustained	2	1	2	0	2
Not Sustained	15	24	3	15	23
Exonerated	8	2	1	3	0
Unfounded	21	22	2	11	13
Summary Dismissal	0	0	2	2	0
No Majority Vote	1	2	0	0	0
Total	47	51	10	31	38

For the Board of Inquiry to make a finding, a majority (at least two of the three commissioners on the BOI) must agree on the same finding. “No Majority Vote” in 2015 occurred when each of the three commissioners voted differently. In 2014, “No Majority Vote” occurred in a case in which the whole Commission sat as the BOI, and the five votes needed to sustain were not obtained. When there is no majority finding in a case, the matter is essentially dropped.

A dismissal of a complaint, as opposed to a summary dismissal of an allegation, occurred in 2018 when the complainant failed to appear within 30 minutes of the scheduled hearing time. The PRC Regulations require dismissal in such situations. The allegations in that complaint are not included in the above statistics.



**BOARD OF INQUIRY FINDINGS
(Percentage by category, for the years 2014 – 2018 combined)**



RATES OF “SUSTAINED” FINDINGS 2014 – 2018

The percentage of allegations sustained of the total number of allegations heard at a Board of Inquiry Hearing for 2014-2018 are shown on this table. * No allegations were sustained in 2017.

2018	2 of 38 allegations sustained	5%
2017	0 of 31 allegations sustained	0%
2016	2 of 10 allegations sustained	20%
2015	1 of 51 allegations sustained	2%
2014	2 of 47 allegations sustained	4.25%

* Percentages in the last column are rounded to the nearest ¼ of 1 percent.

DECISIONS ISSUED WITHIN 120 DAYS OF THE COMPLAINT

Of the five cases in which a BOI hearing was held in 2018, findings were issued within 120 days of the complaint date in three of them.



5. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY (Detailed by finding and type of allegation)

Board of Inquiry Hearings 2018											6 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	Totals
Sustained	0	1	0	0	0	0	1	0	0	0	2
Not Sustained	4	7	1	0	2	0	7	0	0	2	23
Exonerated	0	0	0	0	0	0	0	0	0	0	0
Unfounded	0	0	3	2	6	0	2	0	0	0	13
Totals	4	8	4	2	8	0	10	0	0	2	38

Board of Inquiry Hearings 2017											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	0	0	0	0	0	0	0	0	0	0
Not Sustained	5	1	1	0	3	0	4	0	0	1	15
Exonerated	0	2	0	1	0	0	0	0	0	0	3
Unfounded	3	2	3	1	2	0	0	0	0	0	11
Summarily Dism.	2	0	0	0	0	0	0	0	0	0	2
Totals	10	5	4	2	5	0	4	0	0	1	31

Board of Inquiry Hearings 2016											5 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	0	1	0	0	0	0	0	0	1	2
Not Sustained	0	0	2	0	0	0	0	0	1	0	3
Exonerated	0	0	0	0	0	0	1	0	0	0	1
Unfounded	0	1	0	0	0	0	0	1	0	0	2
Summarily Dism.	0	0	2	0	0	0	0	0	0	0	2
Totals	0	1	5	0	0	0	1	1	1	1	10

(See next page for explanation of allegation categories.)



Board of Inquiry Hearings 2015											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	1	0	0	0	0	0	0	0	0	1
Not Sustained	1	6	0	0	2	0	13	0	0	2	24
Exonerated	0	0	1	0	0	0	1	0	0	0	2
Unfounded	5	1	5	0	6	0	3	0	1	1	22
No Majority Vote	0	0	0	1	0	0	0	0	1	0	2
Totals	6	8	6	1	8	0	17	0	2	3	51

Board of Inquiry Hearings 2014											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	1	0	0	0	0	1	0	0	0	2
Not Sustained	7	0	4	0	0	0	2	1	0	1	15
Exonerated	0	0	5	2	0	0	1	0	0	0	8
Unfounded	3	3	5	2	5	0	2	0	0	1	21
No Majority Vote	0	0	0	0	0	0	1	0	0	0	1
Totals	10	4	14	4	5	0	7	1	0	2	47

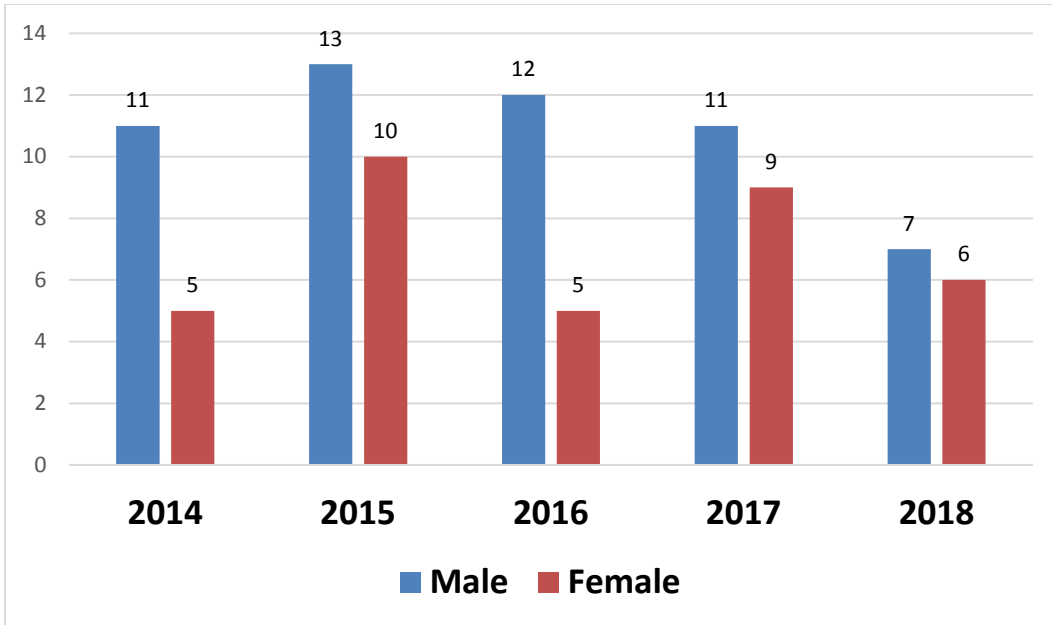
Allegation Categories**EXF**=Excessive Force**DIS**=Discourtesy**ASD**=Improper Arrest, Search, Seizure, or Stop/Detention**DET**=Improper Detention Procedures**PRJ**=Discrimination**HAR**=Harassment**PRO**=Improper Police Procedures**CIT**=Improper Citation or Tow**OTH**=Other (includes Abuse of Discretion, Breach of Confidentiality, Failure to Identify Oneself, Lack of Discretion, Threat, Abuse of Authority, and Retaliation)**INV**=Improper Investigation



6. COMPLAINANT DEMOGRAPHICS

Complainants are asked to report their ethnicity, gender, and age, so that the PRC can track this information for statistical purposes. For 2018, the gender, ethnicity, and age statistics are reported for the 13 people who filed individual complaints.

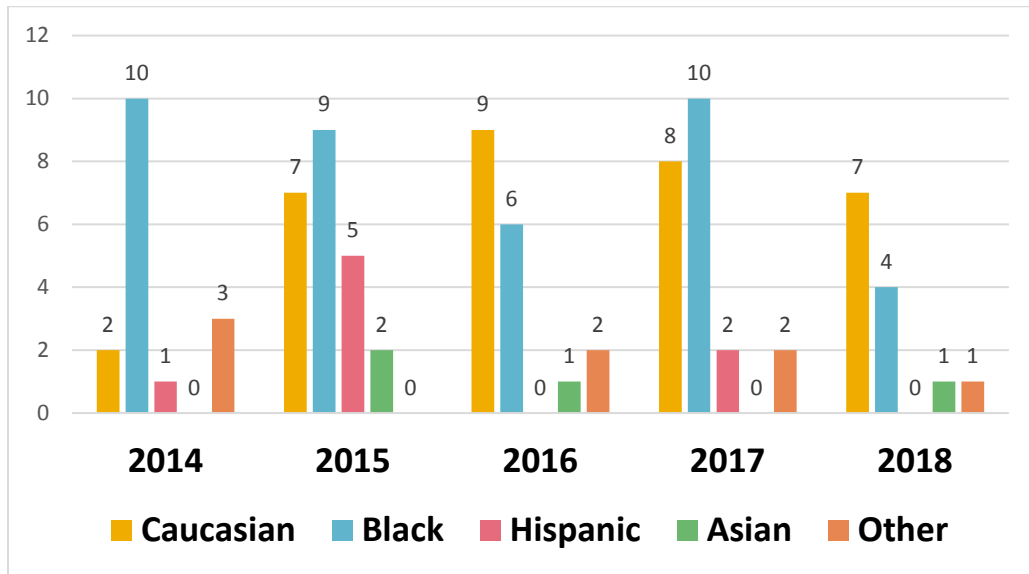
COMPLAINANTS' GENDER



In 2018, males comprised just over half of the 13 complainants who reported their gender. Male complainants have consistently outnumbered female complainants over the past five years, although to varying degrees.

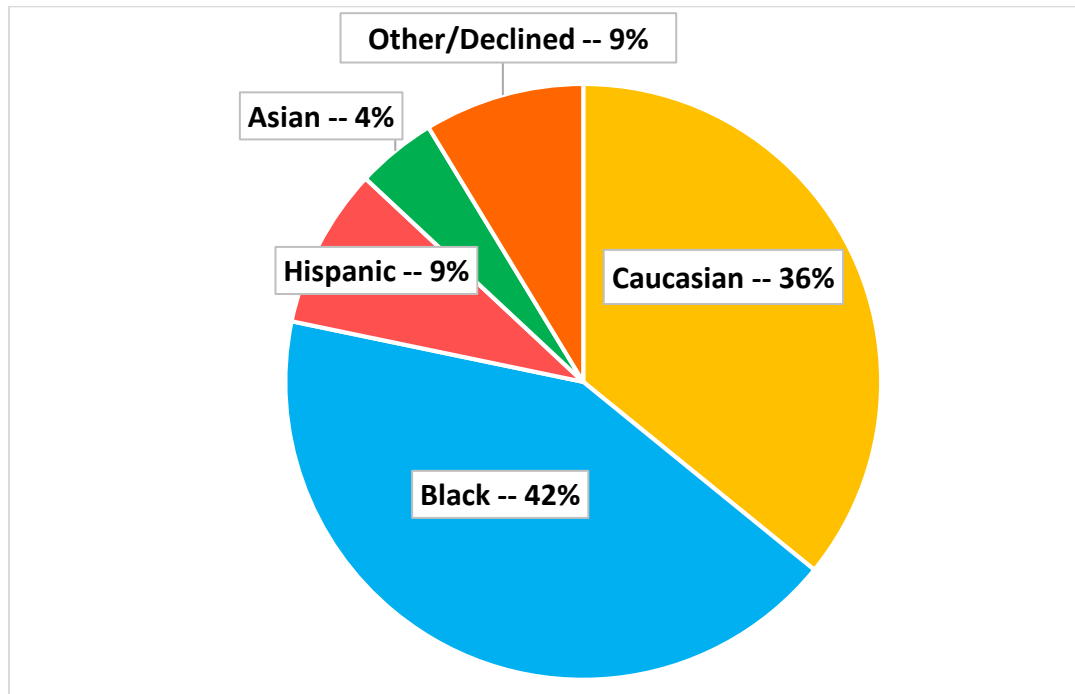


COMPLAINANTS' ETHNICITY



In 2018, the majority (11) of the 13 individual complainants who reported their ethnicity were Caucasian or Black, consistent with most prior years. There was 1 Asian complainant. The one complainant in the “Other” category in 2018 was multi-ethnic.

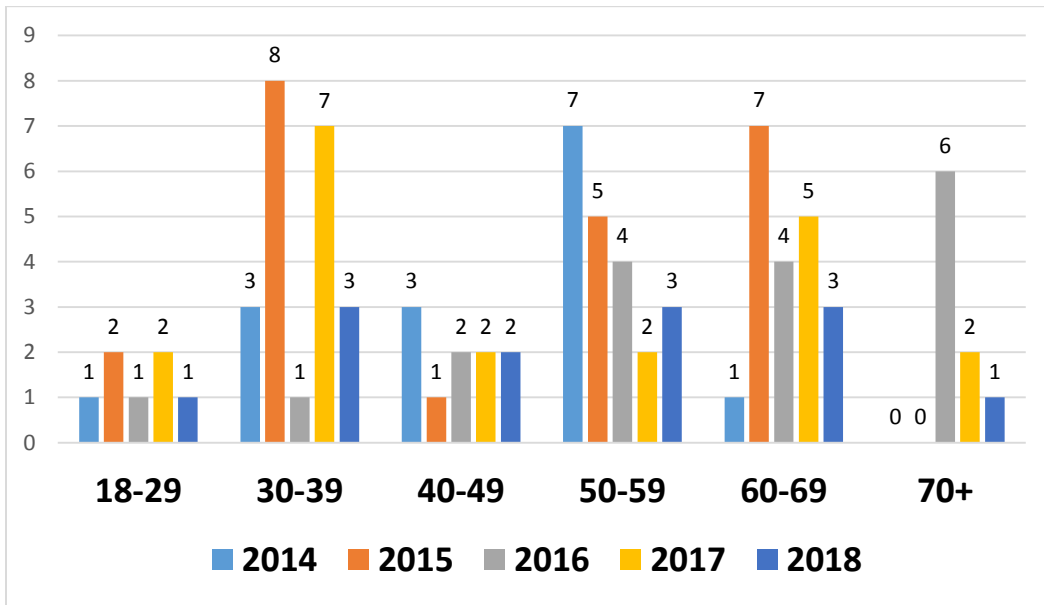
Percentage of complainants by reported ethnicity, for the years 2014 to 2018 combined.



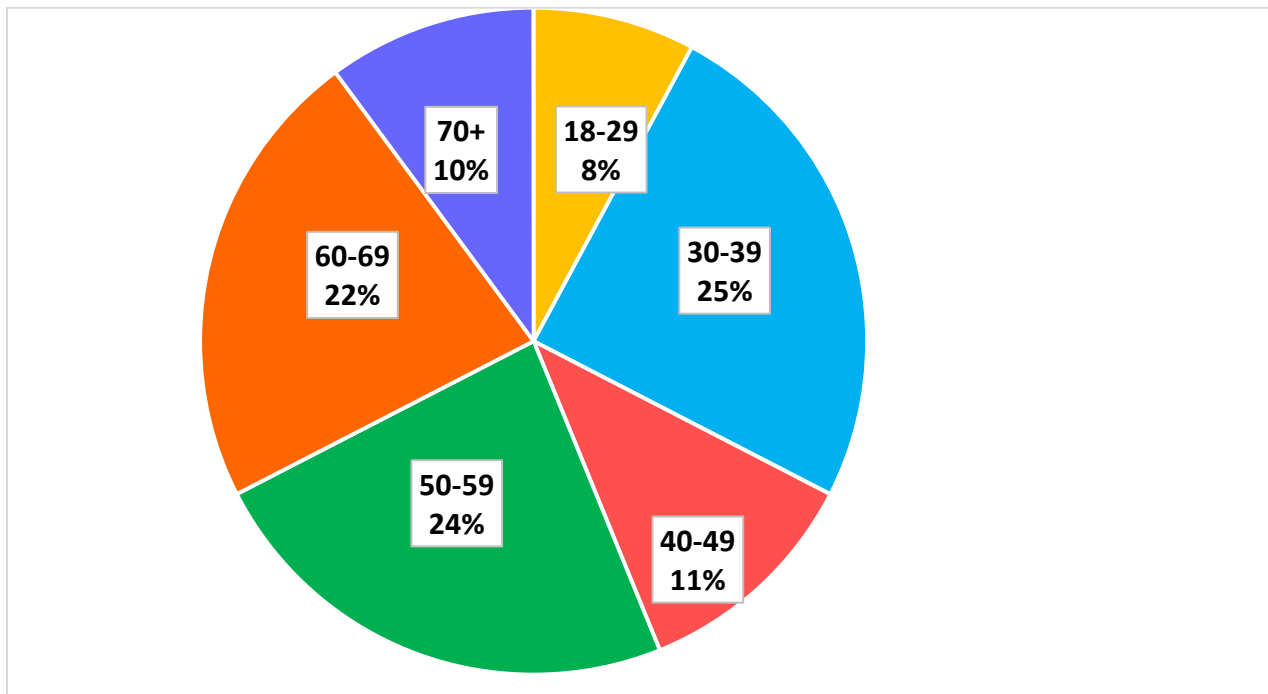


COMPLAINANTS BY AGE GROUP

Of the 13 complainants who reported their age in 2018, almost half (six) were in their fifties or sixties.



Percentage of complainants by reported age, for the years 2014 to 2018 combined.





7. INCIDENT LOCATION MAP FOR 2018



This map shows where misconduct is alleged to have occurred for the complaints filed in 2018. Two instances of alleged misconduct occurred at 2100 Martin Luther King, Jr. Way, which houses the Berkeley Police Department. That address is used for allegations that the officers' investigations were inadequate.



8. APPEALS OF BOARD OF INQUIRY FINDINGS - CALOCA

Police officers can appeal findings of misconduct that are sustained at a Board of Inquiry Hearing. These are referred to as *Caloca* appeals, in reference to the court cases that established the officers' right to appeal.²

In the *Caloca* appeal process, an administrative law judge (ALJ) from the State Office of Administrative Hearings conducts an "*independent re-examination*" of the decision. The PRC must prove, by clear and convincing evidence, that the sustained finding should be upheld.

One *Caloca* appeal was filed in 2018, and it was heard and decided that year. In that case, the ALJ overturned the PRC's sustained finding.

This table shows the outcome of appeals decided each year from 2014 to 2018.

Year	PRC Sustained Findings Appealed	<i>Caloca</i> Ruling
2018	(1 case) 1 allegation	1 allegation overturned (<i>Unfounded</i>)
2017	(1 case) 1 allegation	1 allegation upheld (<i>Sustained</i>)
2016	(1 case) 1 allegation	1 allegation upheld (<i>Sustained</i>)
2015	(1 case) 1 allegation	1 allegation overturned (<i>Not Sustained</i>)
2014	(1 case) 1 allegation	1 allegation overturned (<i>Unfounded</i>)

² See *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433.



VIII. POLICY WORK, TRAINING, AND OUTREACH

1. COMMISSION RESTRUCTURING – CHARTER AMENDMENT

The PRC undertook a major task in 2018, of drafting a proposed amendment to the City Charter to broaden the PRC's powers and strengthen its authority. This was in response to a City Council referral of late 2017. In its present form, the PRC is an advisory body only, without the ability to establish policies or impose discipline. Moreover, under the City Charter, the City Manager has authority over the performance and administration of all staff, including the Police Department. Accordingly, creation of an independent body with decision-making authority requires that it be established by amending the Charter.

The PRC formed a **COMMISSION REFORM SUBCOMMITTEE**, consisting of **Commissioners Perezvelez (Chair), Allamby, Roberts, and Sherman**. This group worked diligently in a compressed time frame, holding ten meetings over five weeks. In contrast to typical subcommittee meetings, which usually draw little public attention, between five and ten members of the public came to Subcommittee meetings, and were allowed to provide their suggestions. Both the PRC Officer and PRC Investigator attended as well, not only to provide administrative support, but to offer their insights on the day-to-day workings of the PRC, relay their views as to needed changes, and furnish information on other oversight agencies' practices.

The Subcommittee crafted a proposed Charter amendment, which the full Commission considered over two meetings, where they heard additional input from the community and from Police Chief Greenwood. The Commission revised the Subcommittee's draft slightly and submitted it to the City Council in June. The Council further modified the proposal and directed the City Manager to commence meet-and-confer proceedings with affected unions. While this did not leave enough time for resolution with the unions in time to place a measure on the November 2018 ballot, meet-and-confer is continuing into 2019, and could result in a Charter amendment proposal for the 2020 ballot.

2. POLICY REVIEW

A policy review is an examination by the commission of a particular BPD policy to determine whether the department has faithfully executed the policy or whether to recommend changes to the policy. Policy reviews are initiated by one of three ways: a



member of the public files a PRC Policy Complaint; the City Council refers a policy issue to the Commission; or the Commission on its own initiative votes to conduct a policy review.

FAIR & IMPARTIAL POLICING

Much of the activity in 2018 related to addressing apparent race-based disparities in policing built on significant milestones in 2017. In November 2017, the PRC published and submitted to the City Council, “Towards Fairness & Impartiality – Report and Recommendations from the Berkeley Police Review Commission,” which found significant disparities in pedestrian and traffic stop, search, and yield rates, between Whites and African Americans and Latinos. The report included an examination of recommendations from the Center for Policing Equity (CPE), which had been performing an analysis of five years of BPD stop data and issued an interim draft report in July 2017.

In April 2018, the City Council accepted the PRC’s report, and referred some of its key recommendations, supplementing prior recommendations on this subject, to the City Manager to develop an action plan for implementation. Then in May, the CPE issued its final report. CPE representatives presented their findings at a Commission meeting that was attended by dozens of community members and BPD command staff and other officers. When the BPD’s September 2018 report back to the Council did not occur, the PRC pressed the police chief to prioritize the implementation of the PRC and CPE recommendations.

BODY-WORN CAMERA POLICY

The BPD began using body-worn cameras (BWCs) in October 2018. The PRC had approved a recommended policy for the use of BWCs in 2016, following extensive subcommittee work. The BWC policy issued shortly before the deployment of the cameras had been revised following negotiations with the police union. The PRC began its review of the policy in late 2018, and expects to complete this review in early 2019. Staff anticipates that footage from body-worn cameras will be helpful evidence in its investigations and at Board of Inquiry hearings.

SURVEILLANCE TECHNOLOGY USE & COMMUNITY SAFETY ORDINANCE

In 2018, the City Council adopted a Surveillance Technology Use & Community Safety Ordinance, based on an ordinance proposed by the PRC. The ordinance sets up a process for the acquisition and use of surveillance technologies by all City departments,



which includes a public discussion of potential intrusions into civil liberties and privacy rights implicated by using a particular surveillance technology, to ensure that any such intrusions are outweighed by the benefits of that technology. PRC review is a part of that process.

OTHER POLICY ACTIONS

Other recommendations the PRC made in 2018 include:

- Supported a policy for BPD's use of its new specially equipped panel van, with one proposed language change regarding its deployment during unlawful assemblies.
- Expressed its desire to the City Manager that the City develop a "good governance accountability plan" for the BPD to establish annual goals, a training plan, a budget plan, data sources and metrics to aid in internal and external evaluations of the department's effectiveness, and regular audits of assets and expenses.
- Requested that the City Council order a performance and financial audit of the BPD to assess how the BPD is using its financial and human resources, including whether some tasks performed by sworn officers could be carried out by non-sworn personnel.

SUBCOMMITTEES

Ad-hoc (temporary) subcommittees are established as needed to address BPD policy issues and policy complaints by members of the community, and to research and provide recommendations to the full commission pertaining to other police-related issues or referrals from City Council.

Each subcommittee is comprised of two to four commissioners, appointed by the PRC Chairperson. The PRC Ordinance allows for members of the general public to serve on subcommittees. Representatives from the Berkeley Police Department often attend PRC subcommittee meetings. In addition to the **Commission Reform Subcommittee** described above, the following Subcommittees were active in 2018:

MUTUAL AID PACTS SUBCOMMITTEE

Commissioners Lippman (Chair), Matthews

The Commission forms a subcommittee each year to review BPD's mutual aid agreements and memoranda of understanding with other law enforcement agencies and organizations (referred to as the "MOU Compendium"). By ordinance, the BPD must submit this compendium to the City Council each year for review and approval. Of the dozens of



agreements submitted by the BPD each year, the PRC generally focuses on the new or revised agreements, and selects others of particular interest.

The Mutual Aid Pacts Subcommittee that made recommendations to the PRC in 2018 met in December 2017. Based largely on the subcommittee's advice, the PRC recommended to the City Council in March 2018 the following: 1) cease participation in the Urban Shield exercises; 2) place a one-year moratorium on the BPD's participation in the Northern California Regional Intelligence Center (NCRIC); 3) modify the Law Enforcement Mutual Aid Plan; 4) approve the MOU with the U.S. Dept. of Homeland Security, Immigration and Customs Enforcement with certain provisos; and 5) approve all other agreements and understandings.

**JUNE 20, 2017 SUBCOMMITTEE (Review of BPD Response at City Council Meeting)
Commissioners Roberts (Chair), Prichett, Matthews
Public member Elliott Halpern**

The PRC formed the June 20, 2017 Subcommittee in 2017 to investigate whether the police response on the night of a special City Council meeting was appropriate. The meeting generated considerable community interest, as the BPD's continued participation in the Urban Shield exercise was being addressed. At the end of the meeting, BPD arrested two protesters who rushed the dais, and the commotion spilled onto the street, where a protester was struck on the head, allegedly by a police officer wielding a baton. In January 2018, the Commission voted to send the Subcommittee's draft report to the police chief for review and comment; however, the chief said that he had to withhold comment until litigation related to the evening's activity was concluded. The lawsuit was still ongoing as of the end of 2018.

HOMELESS ENCAMPMENTS

Commissioners Prichett (Chair), Sherman, Yampolsky

This Subcommittee continued the work it started in 2017, holding meetings in conjunction with the Homeless Commission's homeless encampments subcommittee to look into the BPD's involvement in dismantling homeless encampments and evaluate the City's development on a policy for taking and storing the personal property of those without shelter. The subcommittee ended its tenure while awaiting a comprehensive policy regarding the treatment of homeless persons to be finalized by the City Council.



LEXIPOL POLICIES

Commissioners Perezvelez (Chair), Ramsey, Yampolsky

This Subcommittee was given the sizeable responsibility of reviewing the BPD's operational and administrative policies, rules, and procedures, as they are transitioned from General Orders, Police Regulations, and Training and Information Bulletins to the Lexipol policy format. First, the full Commission received a presentation from Chief Greenwood, his staff, and Lexipol representatives about how the Lexipol system works and how the BPD intended, where appropriate, to tailor the Lexipol language to best reflect Berkeley standards. As the subcommittee is reviewing the converted policies, it is comparing them to the former policies and probing BPD staff, who are present at all subcommittee meetings, about any substantive policy changes. The subcommittee began meeting in late June 2018 and is expected to continue its work well into 2019. Groups of policies approved by the subcommittee were (and continue to be) brought to the full Commission for further review and approval; the Commission has returned a few policies to the Subcommittee for further scrutiny.

GENERAL ORDERS ON CROWD CONTROL

Commissioners Prichett, Calavita

This Subcommittee met once to review the Commander's Guide to Crowd Control & Crowd Management, which was a final task of this subcommittee, which had worked in 2016 to follow up on the numerous recommendations stemming from the review of Black Lives Matters protests of December 2014.

PRIORITIZING SAFETY FOR SEX WORKERS

Commissioners Ramsey (Chair), Calavita, Matthews Public member Julie Leftwich

Formed late in 2018, this Subcommittee met once, and is expected to conclude its work in 2019. This group was convened to consider amending a policy regarding victim and witness assistance, to protect sex workers from arrest for certain offenses when they report that they are the victim of or witness to a sexual assault or other violent crime.

2. TRAINING AND OUTREACH

- The PRC Officer, the PRC Investigator, Commissioner Allamby, and Police Chief Greenwood attended the **24th Annual NACOLE Conference** in St. Petersburg, Fla. in October. The National Association for Civilian Oversight of Law Enforcement is a non-profit comprised of agencies and individuals working to establish and improve



oversight of law enforcement in the U.S. The conference gives PRC staff and commissioners the opportunity to attend training sessions and educational workshops, and to meet and compare notes with other oversight practitioners from around the country and the Bay Area about both common and unique challenges of police oversight in their communities. Chief Greenwood was a panelist in a session on Law Enforcement and the Homeless, sharing the BPD's approach to interactions with this vulnerable population.

- At the Berkeley Police Chief's invitation, Commissioner Ramsey joined him and other members of his command staff in attending the annual conference of the **International Association of Chiefs of Police** in October. The conference, a multi-day event in Orlando, offered dozens of educational and training opportunities.
- In October, BPD Sgt. Spencer Fomby conducted a presentation for the PRC on **Tactical De-escalation**. Commissioners learned about tactical principles, how officers are trained to recognize escalating behavior, and when they should use de-escalation techniques.
- This year's outreach efforts to publicize the work of the Police Review Commission included Commissioners staffing a table at the **Berkeley Juneteenth Festival** in June. Additionally, some Commissioners participated locally in **National Night Out** in August, an evening of neighborhood strengthening and crime prevention awareness.

BPD COMMENDATIONS

In recognition of outstanding service to the community, the Commission extended commendations to 101 BPD police officers and civilian staff of the BPD in 2018.



IX. MEETINGS AND HEARINGS

2018

Type of Meeting or Hearing	Number
Regular PRC Meetings	20
Special PRC Meetings	2
Boards of Inquiry (BOI) (including 2 continued hearings)	6*
BOI Special Meetings	1
June 20, 2017 (Review of BPD Response at City Council Meeting)	2
Homeless Encampments	2
Commission Reform	11
General Orders on Crowd Control, etc.	1
Lexipol Policies	7
Prioritizing Safety for Sex Workers	1
TOTAL	53

* One of the six cases brought to a BOI was dismissed because the complainant did not come to the hearing. Dismissal is required under the PRC Regulations for failure to appear.



2018 MEETINGS AND HEARINGS

January

4	June 20, 2017 (Review of BPD Response at City Council Meeting)
10	June 20, 2017
10	Regular Meeting
12	BOI, Complaint #2428
16	Homeless Encampments
24	Regular Meeting
31	Homeless Encampments

February

14	Regular Meeting
22	BOI, Complaint #2434
28	Regular Meeting

March

14	Regular Meeting
19	Commission Reform
23	Commission Reform
27	Commission Reform
28	BOI Special Meeting
28	Regular Meeting
29	Commission Reform

April

2	Commission Reform
3	BOI, Complaint #2437
5	Commission Reform
9	Commission Reform
11	Regular Meeting
12	Commission Reform
16	Commission Reform
19	Commission Reform
25	Commission Reform
25	Regular Meeting
30	BOI, Complaint #2438

May

7	Special Meeting
9	Regular Meeting
23	Regular Meeting

**June**

7 General Orders on Crowd Control, etc.
13 Regular Meeting
27 Lexipol Policies
27 Regular Meeting

July

11 Regular Meeting
25 Regular Meeting

August

8 Lexipol Policies
29 Lexipol Policies
31 BOI, Complaint #2442*

September

12 Regular Meeting
17 Lexipol Policies
20 BOI, Complaint #2439
26 Lexipol Policies
26 Regular Meeting

October

10 Lexipol Policies
10 Regular Meeting
17 Special Meeting
24 Regular Meeting

November

7 Lexipol Policies
14 Regular Meeting

December

12 Regular Meeting
13 Safety for Sex Workers Meeting

* Dismissal for failure to appear.

The end.