


Office of the City Manager

July 10, 2014

To: Mayor and City Councilmembers

From: Christine Daniel, City Manager 

Subject: Police Review Commission: Regulation Changes  
and Actions Concerning Confidentiality

I am writing to inform you of recent actions taken by the Police Review Commission (PRC) to address concerns about handling of confidential police personnel records. You will recall that in late April 2014, the Daily Californian indicated it would publish an article which would include confidential police personnel information that had been "leaked" to it. The Daily Californian subsequently published that article and declined to disclose the identity of the individual or individuals who had provided the information.

I directed that a personnel investigation be undertaken to determine whether any City employees had disclosed the information. On May 9, 2014, I informed the PRC that the investigation concluded that no City staff member released the records. I requested that the Commission take a public action affirming its members' commitment to all aspects of the civilian oversight process, including maintaining the confidentiality of police personnel records as required by law. The Commission did so, and also undertook a review of its Regulations to determine how to strengthen them in response to this incident.

On May 28, 2014, by way of a memorandum to the Commission, I invited the Chair and Vice Chair to participate in a dialogue with the Berkeley Police Association (BPA) and City staff about how to strengthen the process to prevent future breaches of confidentiality. I also informed the Commission that in response to the BPA's request for a stay of all interviews and Boards of Inquiry while this issue was undergoing review, I had agreed to a stay of 45 days based on BPA's agreement that all timelines associated with pending complaints and any complaints submitted during that period would be tolled.

On June 11, 2014, the PRC Regulations Subcommittee reviewed and recommended changes to Section IV and V of the PRC Regulations to substantially enhance the provisions regarding confidentiality. On June 17, 2014, I met with the PRC Chair, PRC Vice Chair, representatives of the BPA, the PRC Officer and the Deputy City Manager

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to discuss the situation and the changes to the Regulations. I requested that the BPA provide any suggested revisions to the Regulations prior to the PRC's next meeting. The BPA provided its proposed revisions to the Regulations the following week and they were reviewed by the City Attorney's Office. The City Attorney concluded that the proposed changes conflicted with the provisions of the original citizen's initiative (BMC Chapter 3.32), other provisions of the BMC, and Section 38 of the Charter, and accordingly that the proposed revisions could not be adopted. That analysis was provided to both the BPA and the Commission.

On June 25, 2014, the full Commission approved the changes recommended by its Regulations Subcommittee. On July 9, 2014, the Commission confirmed that the specific changes related to confidentiality are now in full force and effect, and implementation will not await the consideration of other, unrelated changes to the PRC Regulations. Please see Attachment 1 for a copy of the changes.

Should a violation of the confidentiality provisions occur, the Regulations now include provisions for disqualification of a commissioner from participation in a pending Board of Inquiry, as well as a possible prohibition from participating in future Boards of Inquiry. The regulations also now provide for notification of a violation to the appointing Councilmember or the City Council as a whole. These changes to the Regulations respect both the requirements of the citizen initiative that established the PRC (codified at BMC Chapter 3.32), as well as the City Council's authority to appoint and replace commissioners (see BMC Chapters 2.04 and 3.02).

In addition to the changes to the Regulations, at its June 11, 2014 meeting, the Commission adopted a resolution urging each commissioner to sign a declaration **under penalty of perjury** stating that she or he did not provide the Daily Californian, or any of its agents or representatives, with any confidential information relating to a Police Review Commission Board of Inquiry (see Attachment 2). All members of the PRC signed the declarations, with the exception of two commissioners who were temporarily assigned to the June 11<sup>th</sup> meeting and one commissioner who is on leave of absence and out of the country (see Attachment 3). The declarations reflect each commissioner's appreciation of the gravity of the situation, its impact on the integrity of the civilian oversight process and the necessity of "ensur[ing] that the citizens of Berkeley are afforded a meaningful and operative civilian oversight system, in keeping with the initiative enacted 41 years ago...."

The agreed upon period to stay BPA member involvement in PRC interviews and Boards of Inquiry concludes on July 12, 2014. Based on the actions taken to date by the Police Review Commission regarding the issue of confidentiality, I expect that BPA members will resume their participation in the PRC process upon the expiration of the

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stay. I also expect that all parties will move forward with a shared understanding and appreciation of the vital role of civilian oversight of law enforcement in the Berkeley community.

Lastly, independently of the PRC's actions to strengthen its regulations, I requested an opinion from the Alameda County District Attorney on the issue of whether the breach of confidential police personnel records was a crime, as the BPA asserted in its correspondence of May 1, 2014, regarding the breach. On July 9, 2014, the District Attorney informed us of her conclusion that the breach was not a crime.

**Attachments**

1. Revised PRC Regulations
2. PRC resolution re: confidentiality
3. Signed declarations by PRC

cc: Police Review Commission  
William Rogers, Deputy City Manager  
Michael K. Meehan, Chief of Police  
Katherine J. Lee, PRC Officer  
Ann-Marie Hogan, City Auditor  
Mark Numainville, City Clerk  
Matthai Chakko, Public Information Officer

**Police Review Commission**

***Amendments to Regulations for Handling Complaints Against Members of the Police Department***

All votes to approve taken June 25, 2014, except Section V.D.2, approved July 9, 2014

Vote to have these change take effect immediately taken July 9, 2014

**PREAMBLE**

The following procedures for handling complaints against members of the Berkeley Police Department (BPD) have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, was intended to provide prompt, impartial, and fair investigation of complaints brought by individuals against the BPD and these regulations are adopted by the Commission to carry out that purpose.

That Ordinance, by setting up this Commission made up of community residents, is intended to establish a process for reviewing Police Department policies, practices and procedures and for handling individual complaints against members of the BPD that is available to any individual, free of charge and without the need for attorneys or other professional advisors. The Ordinance gives the Commission the power to adopt rules and regulations and develop procedures for its own activities and investigations.

Accordingly, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley, as long as they are consistent with the powers granted to it by the enabling Ordinance, current California case law, the Public Safety Officers Procedural Bill of Rights Act (Gov't Code sections 3300-3319), and Penal Code sections 832.5 and 832.7, governing the confidentiality of peace officer personnel records.

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, it shall not be disclosed to any unauthorized person or organization, and It is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure. It is vitally important to the integrity of the Berkeley Police Review Commission process that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law.

**(NEW) SECTION IV: CONFIDENTIALITY OF PERSONNEL MATTERS**

A. Responsibilities of PRC Commissioners

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, no Commissioner shall disclose it to any unauthorized person or organization.

B. Conduct

1. It is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure.
2. At any proceeding in which confidential information was distributed to the Commissioners, each Commissioner shall return all confidential material to the PRC staff at the close of the proceeding or as soon thereafter as practicable.

**SECTION V. BOARDS OF INQUIRY**

D. Responsibilities of BOI Commissioners

1. Confidentiality
  - a. Each Commissioner shall maintain the confidentiality of personnel matters as required under Section IV of these Regulations and by state law.
  - b. Consistent with Section IV.B.2., each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff at the close of the BOI.

2. Conduct

In accordance with the PRC enabling ordinance, which requires that complaint investigations be conducted in a fair and impartial manner, no member of a BOI shall: publicly state an opinion regarding policies that are directly related to the subject matter of a pending BOI complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.

3. Violation

**Police Review Commission**

**Amendments to *Regulations for Handling Complaints Against Members of the Police Department***

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- a. A violation of Sections VI.D.1.a., VI.D.2.a., or VI.D.2.b. above, before or during a BOI shall automatically disqualify a Commissioner from a BOI.

In addition, a Commissioner or PRC staff may agendaize an alleged violation of Sections VI.D.1.a., VI.D.2.a., or VI.D.2. for discussion and action at a regularly scheduled meeting. Any action adverse to a Commissioner requires a two-thirds vote of the Commissioners present. Such action may include: notice of the violation to the Commissioner's appointing City Councilmember; a communication to the City Council; or a prohibition from sitting on future BOIs for the remainder of the Commissioner's term.

***Clean version of amended regulation sections:***

**PREAMBLE**

The following procedures for handling complaints against members of the Berkeley Police Department (BPD) have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, was intended to provide prompt, impartial, and fair investigation of complaints brought by individuals against the BPD and these regulations are adopted by the Commission to carry out that purpose.

That Ordinance, by setting up this Commission made up of community residents, is intended to establish a process for reviewing Police Department policies, practices and procedures and for handling individual complaints against members of the BPD that is available to any individual, free of charge and without the need for attorneys or other professional advisors. The Ordinance gives the Commission the power to adopt rules and regulations and develop procedures for its own activities and investigations.

Accordingly, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley, as long as they are consistent with the powers granted to it by the enabling Ordinance, current California case law, the Public Safety Officers Procedural Bill of Rights Act (Gov't Code sections 3300-3319), and Penal Code sections 832.5 and 832.7, governing the confidentiality of peace officer personnel records.

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, it shall not be disclosed to any unauthorized person or organization, and it is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure. It is vitally important to the integrity of the Berkeley Police Review Commission process that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law;

**(NEW) SECTION IV: CONFIDENTIALITY OF PERSONNEL MATTERS**

**C. Responsibilities of PRC Commissioners**

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, no Commissioner shall disclose it to any unauthorized person or organization.

**D. Conduct**

1. It is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure.
2. At any proceeding in which confidential information was distributed to the Commissioners, each Commissioner shall return all confidential material to the PRC staff at the close of the proceeding or as soon thereafter as practicable.

**SECTION V. BOARDS OF INQUIRY (will be renumbered SECTION VI.)**

**D. Responsibilities of BOI Commissioners**

**1. Confidentiality**

- a. Each Commissioner shall maintain the confidentiality of personnel matters as required under Section IV of these Regulations and by state law.
- b. Consistent with Section IV.B.2., each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff at the close of the BOI.

**2. Conduct**

In accordance with the PRC enabling ordinance, which requires that complaint investigations be conducted in a fair and impartial manner, no member of a BOI shall: publicly state an opinion regarding policies that are directly related to the subject matter of a pending BOI complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.

**3. Violation**

- a. A violation of Sections VI.D.1.a., VI.D.2.a., or VI.D.2.b. above, before or during a BOI shall automatically disqualify a Commissioner from a BOI.
- b. In addition, a Commissioner or PRC staff may agendize an alleged violation of Sections VI.D.1.a., VI.D.2.a., or VI.D.2. for discussion and action at a regularly scheduled meeting. Any action adverse to a Commissioner requires a two-thirds vote of the Commissioners present. Such action may include: notice of the violation to the Commissioner's appointing City Councilmember; a communication to the City Council; or a prohibition from sitting on future BOIs for the remainder of the Commissioner's term.



RESOLUTION OF THE POLICE REVIEW COMMISSION

Whereas it is vitally important to the integrity of the Berkeley Police Review Commission process that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees and members of the public as required by law; and

Whereas the disclosure of a confidential Board of Inquiry (BOI) report from a PRC BOI to the Daily Californian violated the principles of trust and confidentiality necessary to our system; and

Whereas this violation of trust and confidentiality has raised concerns in the Berkeley Police Association (BPA) and the public about the integrity of the PRC process; and

Whereas the BPA has expressed concern that all steps taken thus far by the PRC and the City to address the improper disclosure have been insufficient; and

Whereas Berkeley Police Officers at this time are not participating in PRC investigations of complaints against police officers; and

Whereas our primary mission as Commissioners of the PRC is to maintain the process, and ensure that the citizens of Berkeley are afforded a meaningful and operative civilian oversight system, in keeping with the initiative enacted 41 years ago; and

Whereas the existing law fails to clearly articulate a penalty for violation of the confidentiality of peace officer personnel records; and

Whereas a person who signs a document under penalty of perjury can be prosecuted for the crime of perjury, if the document is published or disseminated with the intent that the statements in the document be accepted as truthful.

Be it therefore resolved that the PRC urges every Commissioner, upon passage of this resolution, to sign a declaration under penalty of perjury stating that s/he did not knowingly disclose confidential BOI reports to the Daily Californian, or to any of its representatives or agents;

Be it further resolved that the PRC publish these signed documents by letter to the Berkeley City Manager, and include the signed declarations as attachments to the agenda packet for the next regular PRC meeting after they are signed.

The foregoing resolution was adopted by the Police Review Commission on June 11, 2014, by the following vote:

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, Rogers, Shenoy, and Halpern.

Noes: None.

Abstain: Huynh.

Absent: Sherman, Zerrudo.

Attest:



Katherine J. Lee, PRC Officer

DECLARATION

Attachment 3

I, Barbara Allen, declare the following:

I am a sitting commissioner on the Berkeley Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of June, 2014, at Alameda County, California.

Barbara Allen  
signature

I have no knowledge of the circumstances <sup>confidential</sup> by which the Daily Cal obtained the information.

Barbara Allen

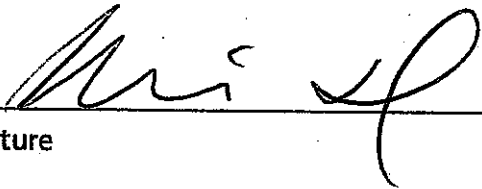
DECLARATION

I, ALAN ZEPPEIN, declare the following:

I am a sitting commissioner on the Berkeley Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry. I have no knowledge of the circumstances by which the Daily Californian obtained the confidential information. I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 11 day of June, 2014, at Alameda County, California.

  
signature

DECLARATION

I, JOHN L. CARDOZA, declare the following:

I am a sitting commissioner on the Berkeley Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of June, 2014, at Alameda County, California.

John L. Cardoza  
signature

I have no knowledge of the  
circumstances by which the  
Daily Cal obtained such  
confidential information.

DECLARATION

I, Karen Louhmust, declare the following:

I am a sitting commissioner on the Berkeley Police Review Commission.

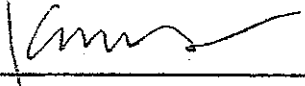
I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry.

6.11.14

I have no knowledge of the circumstances by which the Daily Cal obtained the confidential information. I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

see  
the  
confidential  
information.

Executed this 7th day of June, 2014, at Alameda County, California.



signature

DECLARATION

I, GEORGE PEREZVENEZ, declare the following:

I am a sitting commissioner on the Berkeley Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 11 day of June, 2014, at Alameda County, California.

signature

I have no knowledge of the  
circumstances by which  
The Daily Cal obtained  
the confidential information

DECLARATION

I, Ann Rogers, declare the following:

I am a sitting commissioner on the Berkeley Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry. *I have no knowledge of the circumstances by which the Daily Californian obtained confidential information.*

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of June, 2014, at Alameda County, California.



signature Ann Rogers



**DECLARATION**

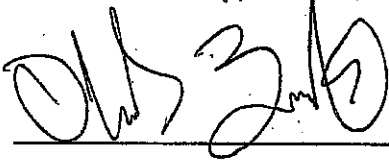
I, Oliver Zerrudo, declare the following:

I am a sitting commissioner on the Berkeley Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of June, 2014, at Alameda County, California.



signature

**DECLARATION**

I, Oliver Zerrudo, declare the following:

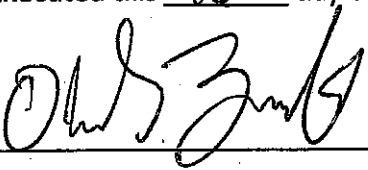
I am a sitting commissioner on the Berkeley Police Review Commission.

I did not provide the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to a Police Review Commission Board of Inquiry.

I have no knowledge of the circumstances by which the Daily Californian obtained the confidential information.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 16 day of June, 2014, at Alameda County, California.

  
signature

**DECLARATION OF KIRAN SHENOY**

I, Kiran Shenoy, declare:

1. I am currently a Commissioner on the Berkeley Police Review Commission.
2. As a Commissioner, I have had access to confidential data or information related to Berkeley Police Department personnel. This confidential information was provided to me via witness testimony and through the electronic or hard-copy transmission of documents.
3. I have never provided the Daily Californian, or any agent or representative of the Daily Californian, with any confidential information relating to Berkeley Police Department personnel. Additionally, I have never disclosed confidential information relating to Berkeley Police Department personnel to any unauthorized person or organization.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on June 11, 2014



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Kiran Shenoy