

# CITY OF BERKELEY



## POLICE REVIEW COMMISSION

2015 ANNUAL REPORT



# CITY OF BERKELEY

## POLICE REVIEW COMMISSION

### Commissioners - 2015

Alison Bernstein, **Chair**  
George Perezvelez, **Vice-Chair**  
Jerry Javier  
George Lippman  
Terry Roberts  
Michael Sherman  
Kad Smith  
Ayelet Waldman  
Ari Yampolsky

Oliver Zerrudo (through 1-15-15)  
Karen Kiyo Lowhurst (through 4-9-15)  
Barbara Allen (through 4-20-15)  
Bulmaro Vicente (through 9-8-15)  
Benjamin Bartlett (through 11-4-15)  
Ann Rogers (through 11-20-15)

### Mayor

Tom Bates

### Councilmembers

Linda Maio (District 1)  
Darryl Moore (District 2)  
Maxwell Anderson (District 3)  
Jesse Arreguin (District 4)  
Laurie Capitelli (District 5)  
Susan Wengraf (District 6)  
Kriss Worthington (District 7)  
Lori Droste (District 8)

### Interim City Manager

Dee Williams-Ridley

### Interim Deputy City Manager

Gil Dong

POLICE REVIEW COMMISSION OFFICE  
1947 Center Street, First Floor, Berkeley, CA 94704  
TEL: (510) 981-4950 | TDD: (510) 981-6903 | FAX: (510) 981-4955  
EMAIL: [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info) | WEB: [www.cityofberkeley.info/prc/](http://www.cityofberkeley.info/prc/)



To the City and Community of Berkeley:

On behalf of the Berkeley Police Review Commission, I present the Commission's 2015 Annual Report. This report includes statistical data concerning misconduct complaints filed during the year, an outline of the complaint process, as well as Commission achievements and work undertaken.

2015 was a busy year for the commission. Much of it was spent investigating the police response to the Black Lives Matter demonstrations and their aftermath in early December of 2014, and then grappling with the policy implications arising from our investigation. The Commission and the Police Department have worked productively to come up with policy recommendations that can help BPD develop better responses to large scale protests in the future. The Commission, working in partnership with the Department, has strived to develop policy recommendations that reflect best practices, and ensure that we are giving the men and women of our Department clear guidance on how to protect not only life and property, but also the principles that the residents of Berkeley hold dear: the right of peaceful demonstrators to share their message; the right of all residents to be respected; and that the Police Department's interactions with the people of Berkeley reflect the importance of eviscerating the legacy of racial bias that permeates our society.

I would like to give a huge shout out to the staff, Ms. Katherine J. Lee, Mr. Byron Norris, Ms. Maritza Martinez, and Ms. Beneba Thomas, for all their hard work. The work of the staff is integral in assuring that the Commission is able to meet the goals of its agenda, and function as a deliberative body. This year in particular the staff put in endless hours organizing and assisting us in our investigation, and for that we are truly grateful.

I would also like to thank the citizens of Berkeley and numerous community-based organizations – most notably the Northern California Chapter of the ACLU, the NAACP, COPWATCH, the Coalition for a Safe Berkeley – for their vital participation in and contributions to our process.

I would like to thank the men and women of the Berkeley Police Department for their tireless efforts to keep our community and City safe, for their input and interaction with our Commission, and for their willingness and commitment to continually examine how we could do better. We appreciate that it is not always easy or pleasant to appear before the PRC, and we appreciate the honesty and integrity with which members strive to comport themselves before the PRC.

I would also like to commend Chief Meehan on his leadership. He and his leadership team have shown a real willingness to engage the community in a frank exchange of ideas. Although we may not always agree, he has encouraged us all to listen and be respectful, and this in turn has helped guide our community through difficult times.

Finally, and most importantly, on behalf of the commission I wish best health and safety to all the members of BPD as they perform their daily duties. Thank you for your service.

Respectfully



Alison Bernstein  
Police Review Commission  
Chair 2015





Police Review Commission (PRC)

August 18, 2016

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

Dear Ms. Williams-Ridley,

I am pleased to present to you the 2015 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, the report reviews the important policy issues that the Police Review Commission tackled in 2015, most notably, an investigation into the Police Department's response to the massive demonstrations on December 6, 2014.

Respectfully submitted,

A handwritten signature in blue ink that reads "Katherine J. Lee". The signature is written in a cursive, flowing style.

Katherine J. Lee  
Police Review Commission Officer





# 2015 PRC ANNUAL REPORT

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# I. EXECUTIVE SUMMARY 2015

## Meetings

The Commission conducted a total of 50 regular, special, and subcommittee meetings, and Board of Inquiry hearings in 2015. This compares to the 53 such proceedings held in 2014.

## Complaints

The Commission received 23 individual complaints and 4 policy complaints in 2015. Individual complaint allegations ranged from discourtesy to improper use of force. In 2014, the Commission received 16 individual complaints and 2 policy complaints.

## Complainants

The demographic distribution of individual complainants in 2015 was: 13 males and 10 females; 9 African-Americans, 7 Caucasians, 5 Hispanic and 2 multi-ethnic or decline to specify. Complainants ranged from 25 to 66 years of age with more than half of the complainants (10) in the 50- to 59-year-old age range.

## Board of Inquiry (BOI) Hearings

The Commission completed 8 BOI hearings – proceedings in which a panel of commissioners considers allegations against police officers. Of the 51 allegations heard, one was sustained, for discourtesy.

## Caloca Appeals

Subject officers may seek review of a BOI “sustained” finding through a *Caloca* appeal. One sustained finding in 2014 was appealed; after a hearing in 2015 it was reversed. The sole sustained finding in 2015 was appealed and will be heard in 2016.

## Policy Review

The bulk of the Commission’s time in 2015 was spent reviewing the Police Department’s response to the December 6, 2014 protest that originated as part of the Black Lives Matter movement. The largely peaceful demonstration was marred by violent individuals and incidents and a law enforcement response that fell short of community expectations. The days and weeks that followed were marked by public outcry over perceived excessive use of force and infringement on First Amendment rights at the hands of police.

Both on its own initiative and at the request of the City Council, the PRC undertook a review of what occurred on the night of December 6, 2014, assessing what unfolded and recommending improvements to policies and procedures.

The PRC expects to devote much of its time in 2016 to working with the BPD revising departmental policies related to crowd management and crowd control, use of force (including tear gas and other less-than-lethal weapons) in crowd control, and mutual aid response.

### Berkeley Police Department

At the end of 2015, BPD had 166 sworn police officers and received 78,332 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. The PRC is one of the oldest civilian oversight agencies in the nation and has been 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.

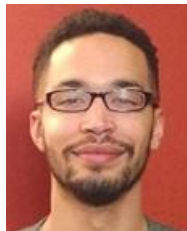
In 2015, a temporary investigator, Beneba Thomas, was hired to assist the Commission in its investigation of the BPD's response to the December 2014 demonstrations.



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

## 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 time and effort toward fulfilling their duties. In 2015, the Commission experienced a fair amount of turnover, as work, family, or school obligations often must take precedence over this volunteer obligation.



Top and middle rows show current Commissioners as of the end of 2015:

**Top Row** -- Chair Alison Bernstein, Vice-Chair George Perezvelez, Michael Sherman, George Lippman

**Middle Row** -- Terry Roberts, Kad Smith, Jerry Javier, Ayelet Waldman, Ari Yampolsky

Other Commissioners who served in 2015:

**Bottom Row** -- Barbara Allen, Karen Kiyo Lowhurst, Ann Rogers, Bulmaro Vicente, Benjamin Bartlett.



## 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-filed<sup>1</sup> 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 witnesses, collects other evidence, and prepares a 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 discharged 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 16.)

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<sup>1</sup> 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.



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. **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.

### **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. Once a mediation is completed, the complaint is permanently removed from the investigative process.

Mediations are conducted by SEEDS (Services that Encourage Effective Dialogue and Solutions), a local, nonprofit community-based organization that specializes in mediation services. A mediation through SEEDS 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, SEEDS notifies the PRC staff and the complaint is forwarded to the Commission for closure.

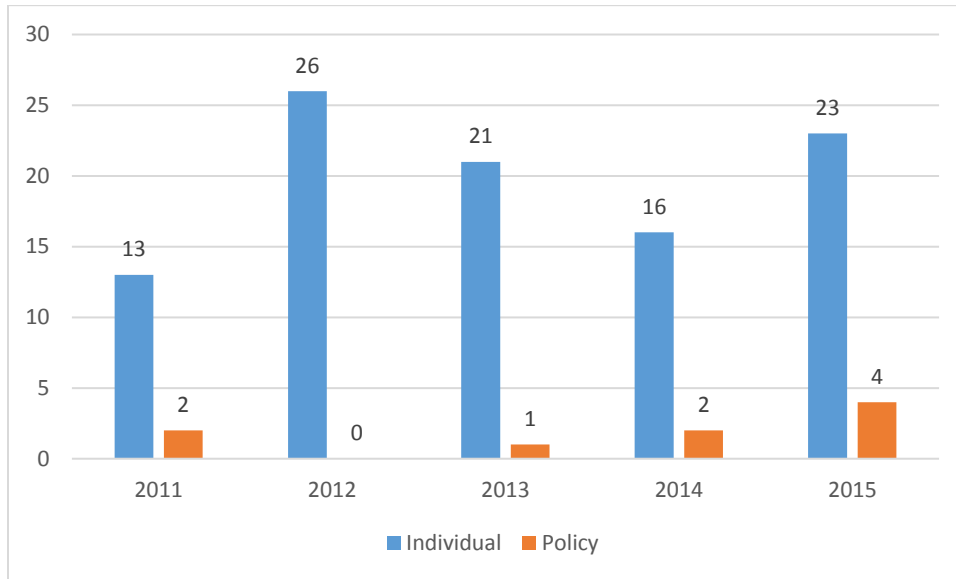
## **2. POLICY COMPLAINTS**

A policy complaint is a request from a member of the public to the Commission to review a particular BPD policy because the complainant believes that the policy could be improved or should be revised. Complaints or concerns about BPD policies, practices or procedures 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, practice or procedure; 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 2011 - 2015

## 1. COMPLAINTS RECEIVED



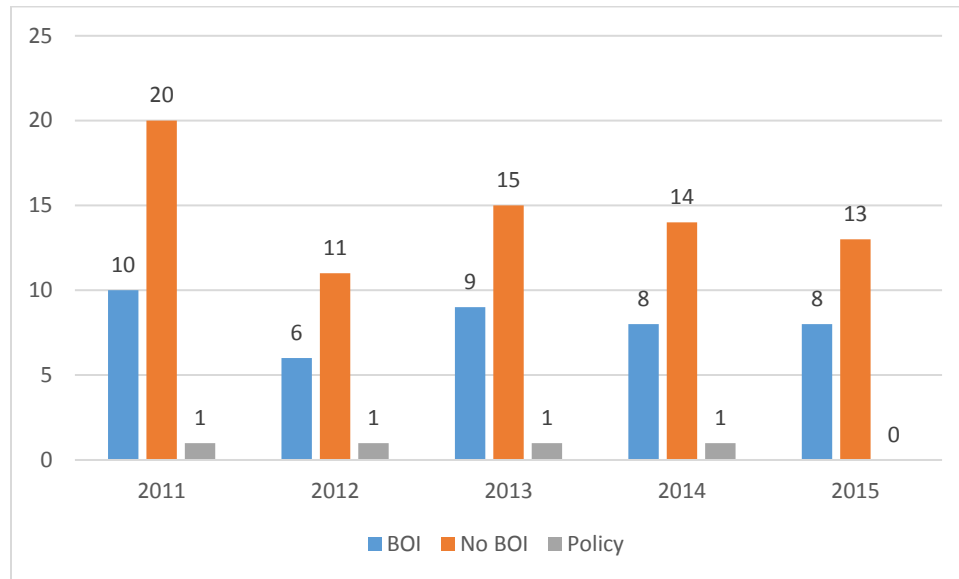
<b>COMPLAINTS RECEIVED</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Individual	13	26	21	16	23
Policy	2	0	1	2	4
<b>Total</b>	<b>15</b>	<b>26</b>	<b>22</b>	<b>18</b>	<b>27</b>

In 2015, the PRC received 23 individual complaints and four policy complaints. The number of individual complaints filed is roughly on par with the number filed the three years prior. Nonetheless, fluctuations in the number of complaints received from year to year cannot be predicted or readily attributed to specific factors or causes.





## 2. COMPLAINTS CLOSED



<b>COMPLAINTS CLOSED</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Board of Inquiry Hearings Completed</b>	<b>10</b>	<b>6</b>	<b>9</b>	<b>8</b>	<b>8</b>
<b>Closed without BOI</b>	<b>20</b>	<b>11</b>	<b>15</b>	<b>14</b>	<b>14</b>
Admin Closure (includes withdrawn)	19	7	8	11	6
Mediation	0	2	3	0	1
Dismissal	0	2	0	1	4
Reject*	1	0	4	2	3
<b>Policy</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b> (reject)	<b>0</b>
<b>Total Cases Closed</b>	<b>31</b>	<b>18</b>	<b>25</b>	<b>23</b>	<b>22</b>

The number of cases closed annually following a Board of Inquiry Hearing has been relatively stable. Variances between the numbers of other closures for 2011 through 2015 appear unremarkable.

\* For 2013 through 2015, Rejected complaints are those that 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. Previously, some rejected complaints were not included in the number of complaints reported, so the 2013 - 2015 figures may not be comparable to the Rejected complaints reported for 2011 and 2012.



### 3. DECISIONS FOR ALLEGATIONS HEARD AT A BOARD OF INQUIRY

In 2015, a Board of Inquiry Hearing was held in eight cases, in which 51 allegations were heard. 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 one type of allegation is made against three officers, the statistics will reflect three separate allegations for that case.

In 2015, of the 51 allegations heard, one was sustained, 24 were not sustained, two were exonerated, and 22 were unfounded. No majority vote was reached in two allegations. The table below shows how the decisions made on allegations in 2015 compare to those of the four preceding years.

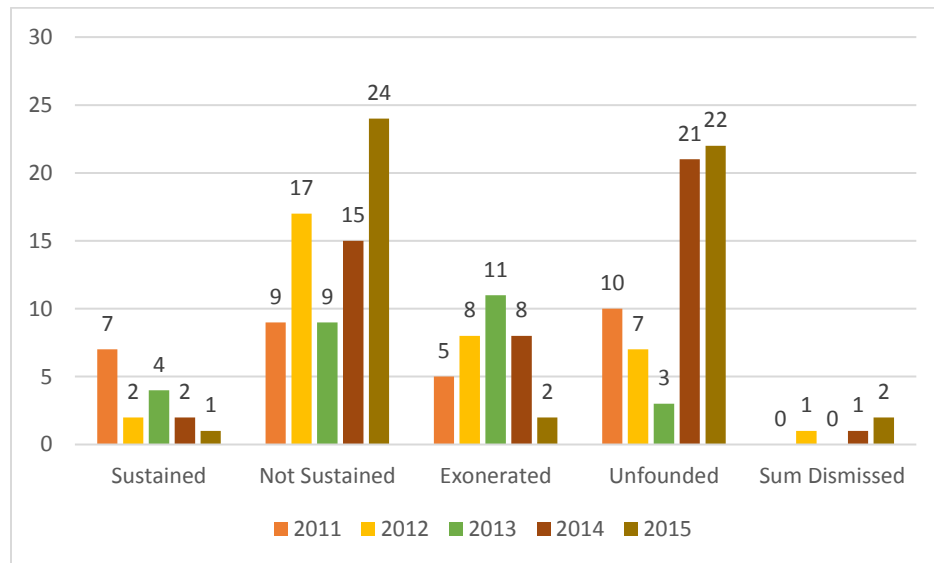
Finding Categories	2011	2012	2013	2014	2015
Sustained	7	2	4	2	1
Not Sustained	9	17	9	15	24
Exonerated	5	8	11	8	2
Unfounded	10	7	3	21	22
No Majority Vote	0	1	0	1	2
<b>Total</b>	<b>31</b>	<b>35</b>	<b>27</b>	<b>47</b>	<b>51</b>

For an allegation against an officer to be sustained, not sustained, exonerated, or unfounded, a majority (at least two of the three commissioners on the Board of Inquiry) must agree on the same finding. “No Majority Vote” in 2012 and 2015 occurred when each of the three commissioners voted differently; that is, one voted sustained, one voted not sustained and one voted exonerated. In 2014, “No Majority Vote” occurred in a death 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.



**DECISIONS FOR ALLEGATIONS HEARD AT A BOARD OF INQUIRY  
(By number of allegations)**

This bar chart shows the same information as on the previous page, but in a format that allows for easier comparison within and between years.



The following table shows the percentage of allegations sustained out of the total number of allegations heard at a Board of Inquiry Hearing for the years 2011-2015.

Rates of “Sustained” Findings 2011-2015		
2015	1 of 51 allegations sustained	2.0%*
2014	2 of 47 allegations sustained	4.25%
2013	4 of 27 allegations sustained	14.75%
2012	2 of 35 allegations sustained	5.75%
2011	7 of 31 allegations sustained	22.50%

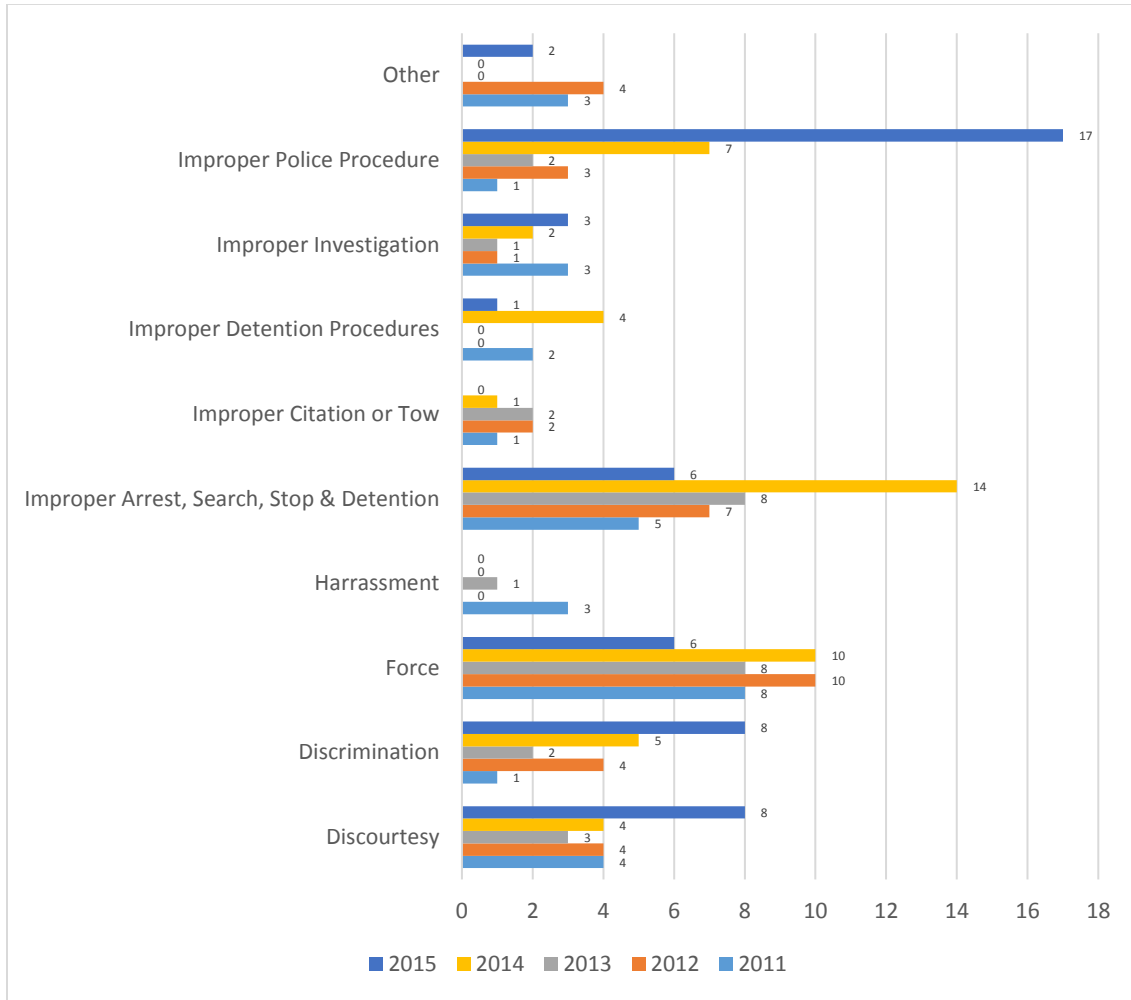
\* The percentages in the last column are rounded to the nearest ¼ of 1 percent.

**DECISIONS ISSUED WITHIN 120 DAYS OF THE COMPLAINT**

Of the eight cases brought to a BOI in 2015, findings were issued within 120 days of the complaint date in seven of those cases.



### 3. CATEGORIES OF ALLEGATIONS HEARD AT A BOARD OF INQUIRY



In 2015, twice as many allegations of Improper Police Procedure were heard at Boards of Inquiry than the next two most common allegations, Discourtesy and Discrimination. This is a change from the three years prior, where the two types of allegations most frequently heard were in the Improper Arrest, Search, Stop or Detention category, and Excessive Force.



## 5. FINDINGS ON ALLEGATIONS HEARD AT A BOARD OF INQUIRY (By category)

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
<i>No Majority Vote</i>	0	0	0	1	0	0	0	0	1	0	2
<b>Totals</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>0</b>	<b>17</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>51</b>

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
<i>No Majority Vote</i>	0	0	0	0	0	0	1	0	0	0	1
<b>Totals</b>	<b>10</b>	<b>4</b>	<b>14</b>	<b>4</b>	<b>5</b>	<b>0</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>47</b>

Board of Inquiry Hearings 2013											9 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	2	1	1	0	0	0	0	0	0	0	4
Not Sustained	5	1	0	0	0	0	2	1	0	0	9
Exonerated	1	0	7	0	1	0	0	1	0	1	11
Unfounded	0	1	0	0	1	1	0	0	0	0	3
<b>Totals</b>	<b>8</b>	<b>3</b>	<b>8</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>27</b>

### Allegation Legend

**EXF**=Excessive Force

**DIS**=Discourtesy

**ASD**=Improper Arrest, Search, Seizure, Stop or 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)




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**INV=Improper Investigation**

Board of Inquiry Hearings 2012											6 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	1	0	0	0	0	0	1	0	0	2
Not Sustained	3	3	3	0	4	0	0	1	3	0	17
Exonerated	3	0	3	0	0	0	2	0	0	0	8
Unfounded	4	0	1	0	0	0	1	0	0	1	7
<i>No Majority Vote</i>	0	0	0	0	0	0	0	0	1	0	1
<b>Totals</b>	<b>10</b>	<b>4</b>	<b>7</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>35</b>

Board of Inquiry Hearings 2011											10 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	2	1	1	2	0	0	0	0	0	1	7
Not Sustained	3	1	1	0	1	2	0	0	0	1	9
Exonerated	1	0	2	0	0	0	0	0	2	0	5
Unfounded	2	2	1	0	0	1	1	1	1	1	10
<b>Totals</b>	<b>8</b>	<b>4</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>31</b>

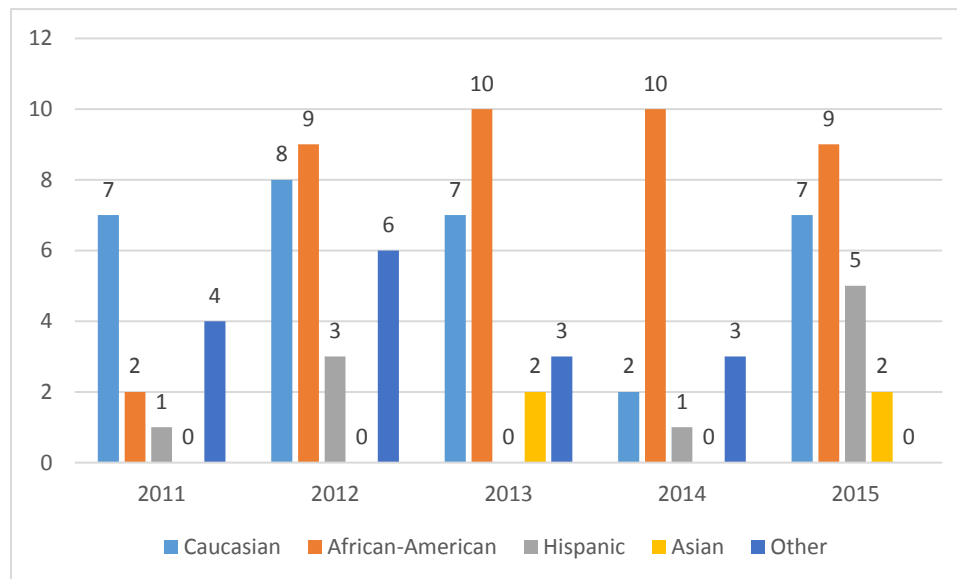
**Allegation Legend****EXF**=Excessive Force**DIS**=Discourtesy**ASD**=Improper Arrest, Search, Seizure, Stop or Detention**DET**=Improper Detention Procedures**PRJ**=Discrimination**HAR**=Harassment**PRO**=Improper Police Procedures**CIT**=Improper Citation or Tow**OTH**=Other (includes Abuse of Discretion, 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 2015, the ethnicity, gender and age statistics are reported for individual complaint filers. There were no co-complainants (two or more people filing an individual complaint about the same incident) in 2015, so the number of persons reflected in the categories below for 2015 is identical to the number of complaints received. In the other years, the numbers reflected in these categories sometimes varied from the number of complaints received for a given year if co-complainants or complainants in policy cases were included.

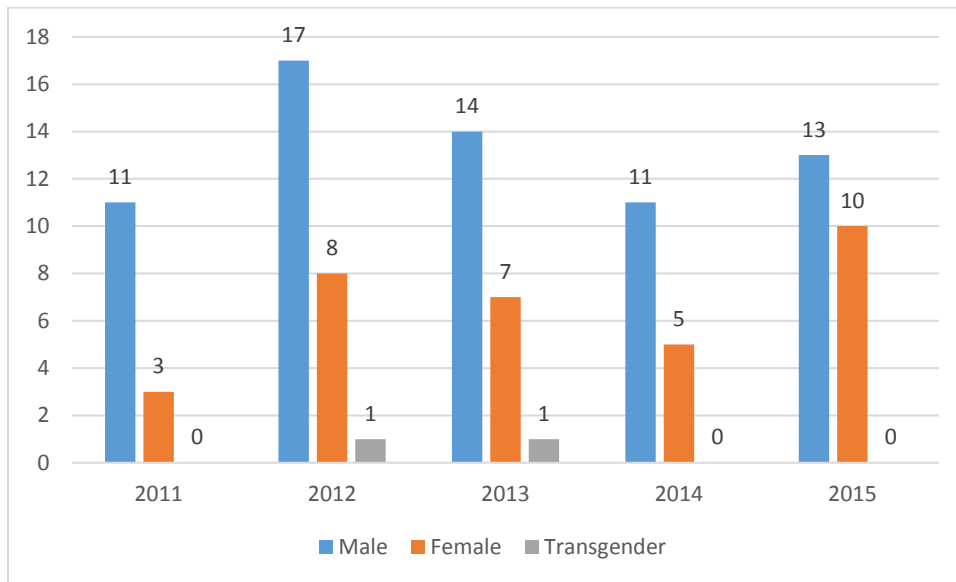
### COMPLAINANTS' ETHNICITY



In 2015, the majority of complainants were African American and Caucasian, consistent with most prior years. The “Other” category, showing 2 complainants in 2015, includes multi-ethnic persons and those who did not specify.

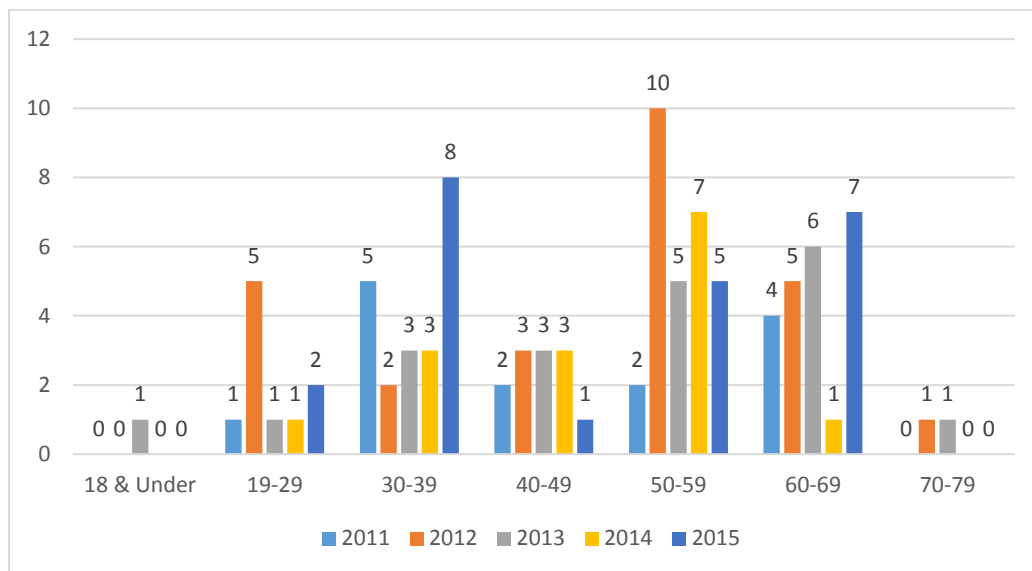


### COMPLAINANTS' GENDER



In 2015, males, comprising 57 percent of complainants, outnumbered females, at 43 percent of complainants. This was a significant change from the prior four years, in which the number of male complainants was two to three times the number of female complainants.

### COMPLAINANTS BY AGE GROUP

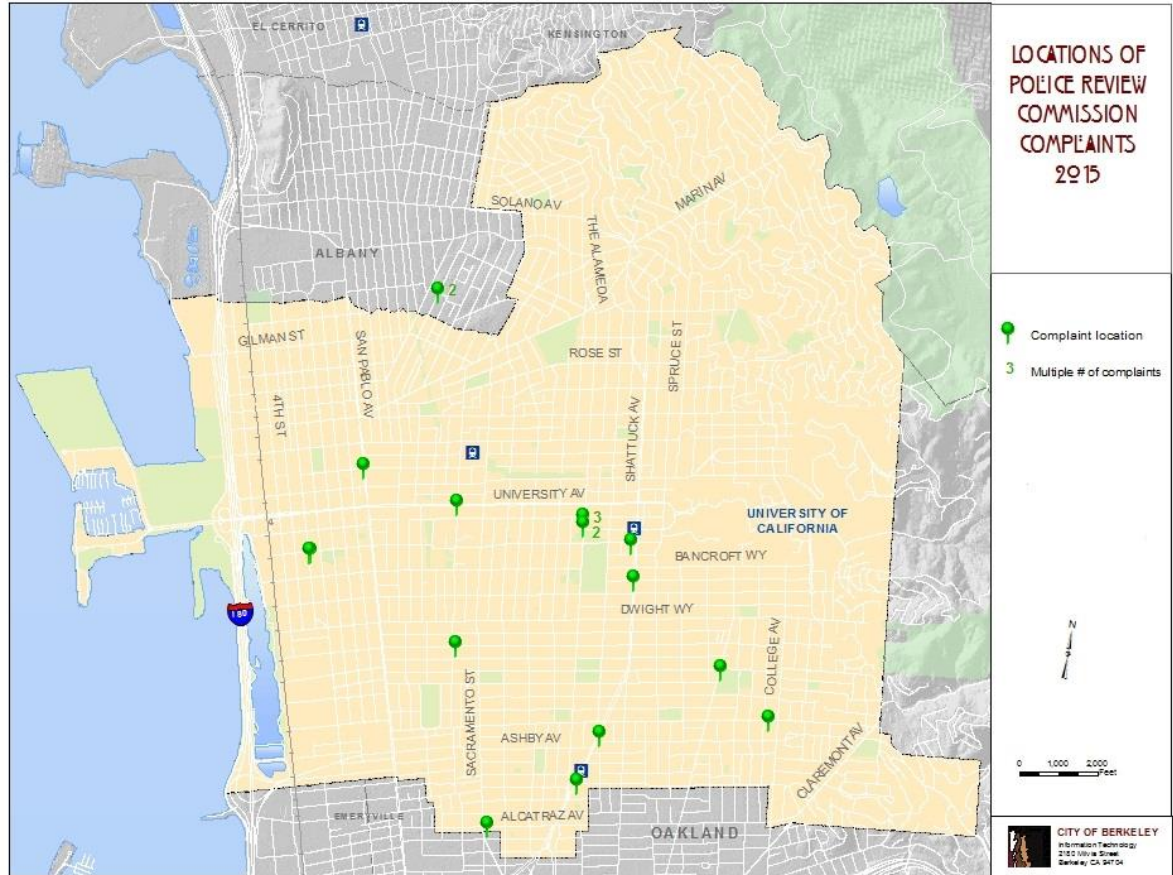


In 2015, 30 to 39 year-olds and 60 to 69 year-olds each comprised roughly a third of complainants. The increase in the number of 30 to 39-year olds compared to the prior three years is notable.





### 7. INCIDENT LOCATION MAP FOR 2015



This map shows the locations where misconduct is alleged to have occurred in 2015. It does not show one location in Richmond and another in Oakland. Three instances of alleged misconduct are shown as occurring at 2100 Martin Luther King, Jr. Way, the Public Safety Building (which houses the Berkeley Police Department). That address is used for allegations that an officer failed to investigate or conducted an inadequate investigation of a matter. Of complaints occurring in Berkeley, all but one were south of University Avenue and the University of California campus.



## 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.<sup>2</sup>

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.

The one *Caloca* hearing held in 2015 concerned an appeal that was filed in 2014; the ALJ overturned the BOI finding. One new *Caloca* appeal was filed in 2015, and that case is scheduled for hearing in 2016.

This table shows the outcome of appeals decided in each year from 2011 to 2015.

Year	PRC Sustained Findings Appealed	<i>Caloca</i> Ruling
2015	(1 case) 1 allegation	1 allegation <i>Not Sustained</i>
2014	(1 case) 1 allegation	1 allegation <i>Unfounded</i>
2013	(1 case) 1 allegation (1 case) 1 allegation (1 case) 1 allegation (1 case) 3 allegations	1 allegation <i>Unfounded</i> 1 allegation <i>Sustained</i> 1 allegation <i>Sustained</i> 3 allegations <i>Exonerated</i>
2012	(1 case) 2 allegations (1 case) 1 allegation	2 allegations <i>Not Sustained</i> 1 allegation <i>Unfounded</i>
2011	(1 case) 2 allegations	1 allegation <i>Sustained</i> ; 1 allegation <i>Not Sustained</i>

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



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# VIII. POLICY WORK, TRAINING, AND OUTREACH

## 1. 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.

### **INVESTIGATION: BPD RESPONSE TO DECEMBER 2014 PROTESTS**

Beginning on December 6, 2014, the City of Berkeley experienced several days of protests sparked mainly by the deaths of Black men at the hands of police officers in Ferguson, MO and Staten Island, NY. The first night of protests drew the largest crowds. The peaceful resolve of the vast majority of demonstrators was undermined by violent individuals and by tactics employed by the Berkeley Police Department. The response of the BPD, even by its own assessment, fell short of community expectations. The days and weeks that followed were marked by public outcry over perceived excessive use of force and infringement on First Amendment rights at the hands of police. The City Council and the Police Review Commission heard from scores of members of the public who witnessed or were victims of police action on December 6.

In January 2015, the Police Review Commission voted to open an investigation into the BPD's handling of the mass protests that occurred on December 6, 7, and 8, 2014. In February 2015, the City Council asked the PRC to investigate the police response on December 6. The PRC decided to focus its inquiry on the events of December 6, and to do so as a full Commission, not by subcommittee. It did create an **Investigation Steering Subcommittee** to help establish a process for conducting the investigation.

To complete the investigation, the Commission held ten special meetings, in addition to its 13 regular meetings, from late February to late October. The Commission heard from scores of people who participated in the protests, and held a special meeting on the U.C. Berkeley campus to make it convenient for students, who constituted a large portion of the protesters, to address the Commission and watch the body's deliberations. The



Commission reviewed documents from BPD as well as videotape from the BPD and other sources.

The BPD presented its post-incident review of the department's response in December 2014, at a June Commission meeting. Thereafter, representatives from the BPD's post-incident review team attended PRC meetings to answer questions as the Commission continued its investigation. The PRC's work culminated in its December 1, 2015 report to the City Council, "Investigation into the Police Department Response to Protests on December 6, 2014."

In its report, the PRC offers its own analysis of the events of December 6, disagreeing with the BPD about who organized the protest and its primary focus. The PRC assessed each of the 32 recommendations in the BPD's report, agreeing with many, offering alternatives to others, and suggesting recommendations of its own. Major recommendations from the Commission to BPD included:

- Develop better strategies for de-escalation and retain a focus on crowd management instead of crowd control;
- Create more accountability in the use of less-than-lethal munitions, and establish clearer guidelines for use of less-than-lethal force in crowd control (e.g., tear gas, baton strikes, projectiles).
- Increase accountability to better ensure that the conduct of mutual aid responders is in keeping with BPD's values and rules of engagement.
- Establish better policies to avoid limitations on media access and better ensure the safety of members of the media, especially in crowd control situations.

The Council is expected to consider the PRC's report and recommendations in early 2016. The full report is available at the PRC website: [www.cityofberkeley.info/prc/](http://www.cityofberkeley.info/prc/).

### **POLICY COMPLAINT: MCKINLEY AVENUE STAGING**

In January 2015, the Commission voted to accept two policy complaints regarding the staging of law enforcement personnel and equipment on McKinley Avenue in December 2014. The complainants reside on the street behind the Public Safety Building, and said that their block was barricaded without notice, that they were treated hostility while coming and going, and that the personnel gathered there, most from other jurisdictions, were extremely disruptive, yelling, littering, and even urinating in public. The BPD made a preliminary report to the Commission that acknowledged the inadequate communication with the neighbors and the signification disruption to residents. The department pledged



to review their staging policies, including the consideration of alternative sites. That review was expected to be completed and presented to the PRC in 2016.

## **SUBCOMMITTEES**

Because the December 6 investigation was time-consuming, the Commission had fewer active subcommittees than usual in 2015. 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 three or four commissioners. Representatives from the Berkeley Police Department and the Berkeley Police Association frequently attend PRC subcommittee meetings.

### **SUSPICIOUS ACTIVITY REPORTING SUBCOMMITTEE**

#### **Commissioners Vicente (Chair), Bernstein, Lippman, Rogers**

This subcommittee was formed in late 2014 in response to the Council's direction to City staff and the PRC to review BPD General Order N-17 on Suspicious Activity Reporting. Council took this step after the Commission conveyed its concern over the mutual aid agreement with the Northern California Regional Intelligence Center (NCRIC), to whom the BPD submits information related to potential terrorism and other violent criminal threats, in the form of Suspicious Activity Reports (SARs). The NCRIC accord was singled out due to concerns that inappropriate and unnecessary information was being shared, possibly violating individuals' rights to privacy and First Amendment rights.

The Suspicious Activity Reporting Subcommittee recommended that G.O. N-17 be revised to add language from the federal regulations governing the policies of criminal intelligence systems operations. While the department is already held to those federal guidelines, it was felt that restating them in the General Order would help the BPD ensure that all SARs it submits are appropriate. The full Commission agreed with the SAR Subcommittee recommendation, which it then sent to the City Council. The BPD did not object, and the Council accepted the recommendation.

### **MUTUAL AID PACTS SUBCOMMITTEE**

#### **Commissioners Bernstein (Chair), Lippman, Sherman**

The Commission forms a subcommittee each year to review BPD's mutual aid agreements with other law enforcement agencies and organizations. In 2015, the



Commission, acting on the subcommittee's proposal, recommended to the Council that all mutual aid pacts be approved. Two of the agreements were singled out for extra scrutiny in 2015, however.

Concerns were raised about the BPD's participation in the annual Urban Shield exercise, funded by the Department of Homeland Security's Urban Area Security Initiative (UASI) program. After hearing from the BPD and from opponents of UASI and Urban Shield, the Commission voted to continue to support BPD's involvement in the exercise (and the mutual aid pact with the DHS), but asked the BPD to work with the PRC to decrease militarization and do community outreach about the benefits of Urban Shield.

Regarding the pact with NCRIC, the Commission recommended not approving it until it and the Council had an opportunity to review SARs for the preceding 12 months. Then, after receiving and reviewing two SAR summaries, and finding that neither involved profiling, racial, ethnic religious, or political abuses, or infringement on First Amendment activity, the Commission recommended approving the NCRIC accord.

## 2. TRAINING AND OUTREACH

- The National Association for Civilian Oversight of Law Enforcement is a non-profit organization comprised of individuals and agencies working to establish or improve oversight of law enforcement in the U.S. PRC staff and staff of the BART Independent Auditor's Office co-hosted a **regional NACOLE forum** in March, which was attended by staff and commission members from law enforcement oversight agencies in San Francisco, Oakland, BART, and others. The forum provided participants the chance to discuss and exchange ideas about topics such as body-worn cameras, crowd control, and fair and impartial policing.
- In October, the PRC Officer and PRC Investigator attended the **21st Annual NACOLE Conference** in Riverside, California in October. The increased national attention on police misconduct and accountability contributed to record attendance of 487 individuals from 30 states and six countries. The conference is an opportunity for PRC staff to gain training in subjects such as assessing witness credibility and searches and seizures of persons, and to exchange information about community engagement and building bridges between law enforcement and the communities they serve.



- In August, several Commissioners participated in **National Night Out**, using the evening of neighborhood strengthening, crime prevention awareness, and police-community partnership building to publicize the work of the Police Review Commission.

## IX. MEETINGS AND HEARINGS

2015

Type of Meeting or Hearing	Number
Regular PRC Meeting	16
Special PRC Meeting	13
Suspicious Activity Reporting (SAR) Subcommittee	4
Investigation Steering Subcommittee	2
Transgender General Order Subcommittee	1
Mutual Aid Pacts Subcommittee	4
Boards of Inquiry (BOI)	8
BOI Special Meetings	2
<b>TOTAL</b>	<b>50</b>



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## 2015 MEETINGS AND HEARINGS

**January**

14 Regular Meeting

**February**4 Special Meeting  
25 Special Meeting  
25 Regular Meeting**March**4 Suspicious Activity Reporting  
6 BOI, Complaint #2360  
11 Regular Meeting  
19 Suspicious Activity Reporting  
19 Special Meeting  
23 Transgender General Order  
25 Regular Meeting**April**8 Regular Meeting  
21 Suspicious Activity Reporting  
22 Investigation Steering  
22 Regular Meeting  
29 BOI, Complaint #2365**May**4 BOI, Complaint #2364 (*\*Dismissal*)  
5 Suspicious Activity Reporting  
6 Investigation Steering  
6 Special Meeting  
13 Regular Meeting  
15 BOI, Complaint #2366  
20 Special Meeting  
27 Regular Meeting**June**10 Special Meeting  
10 Regular Meeting  
11 BOI Complaint #2369 (*\*Dismissal*)  
17 Special Meeting  
24 Regular Meeting





## 2015 MEETINGS AND HEARINGS (continued)

### July

8	Regular Meeting
15	Special Meeting
20	BOI, Complaint #2373 (1 of 2)
22	Regular Meeting
29	Mutual Aid Pacts
29	Special Meeting
29	BOI Special Meeting, Complaints #2374 & #2375

### August

11	BOI, Complaints #2374 (and #2375 - *Dismissal)
12	Special Meeting

### September

3	BOI, Complaint #2373 (2 of 2)
9	Mutual Aid Pacts
9	Regular Meeting
16	Special Meeting
24	Mutual Aid Pacts

### October

8	Mutual Aid Pacts
8	Special Meeting
14	Regular Meeting
21	Special Meeting
21	BOI Special Meeting, Complaint #2361
28	BOI, Complaint #2361 (1 of 2)
30	BOI, Complaint #2361 (2 of 2)

### November

9	BOI, Complaint #2380
18	Regular Meeting
20	BOI, Complaint #2379

### December

2	BOI, Complaint #2381 (*Dismissal)
9	Regular Meeting

\* Dismissal: In these cases, a Board of Inquiry was convened, but the complainant did not appear within 30 minutes of the noticed hearing time. In such cases, under the PRC's Regulations, the complaint must be dismissed.





