

Berkeley, California
May 26, 2021

To: Police Review Commission
Cc: Katherine Lee, Executive Officer
Subject: Policy 804 – Records Maintenance and Release

Suggestion. This Commission should revise Policy 804 (Records Maintenance and Release),¹ specifically 804.4.1 Requests for Records, to emphasize that the Berkeley Police Department (BPD) will handle all public records requests through the City of Berkeley NextRequest portal.²

804.4.1 REQUESTS FOR RECORDS

Any member of the public, including the media and elected officials, may access public records of this department, during regular business hours or online through the City of Berkeley NextRequest page, by submitting a written request that reasonably describes each record sought and paying any associated fees (Government Code § 6253).

Background. My May 12 letter and associated memorandum (“Memo”)³ documented that the City’s policy is generally to not publish booking photos (“mugshots”). (Memo, pp. 1-2)

The California Public Records Act (CPRA) requires the City (including BPD) to fulfill requests for booking photos, resulting in a media outlet’s oversampling of Black and Hispanic arrestees’ mugshots for publication. (Memo, pp. 4-5) The City possesses no authority to *prevent* this biased portrayal of crime in Berkeley. (Memo, pp. 7-8)

What the City *can* do is publicize such requests, which accords with the goal the City has set for NextRequest, so as to introduce a measure of accountability to the decision by a media outlet to publish mugshots.

Update. On May 19 Emilie Raguso, Berkeleyside’s crime reporter, revealed that “BPD often repackages what I ask about for their own Nixles. You may see the Nixles and assume I’m writing about something BPD has put out, when actually the converse is true.”⁴ (The Nixle notification system is used by BPD to publicize its activities.⁵) This revelation lends unfortunate weight to the “connivance” of the Department with a

¹ BPD Policy 804, in Police Review Commission packet, May 13, 2021, pp. 59-85, https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2021/2021-05-13-prc-pkt.pdf. 804.4.1 at p. 60.

² City of Berkeley Open Public Records, <https://cityofberkeleyca.nextrequest.com>

³ Charles Clarke, “Racial Disparities in Berkeley Arrests & Arrest Publicity,” letter to the PRC, May 12, 2021, https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2021/Clarke%20ltr%20BPD%20Arrest%20Disparities%2005.12.2021.pdf

⁴ Emilie Raguso e-mail to author, “Re: question / your analysis,” May 19, 2021.

⁵ Berkeley Police Department: Nixle, <https://local.nixle.com/berkeley-police-department>

media organization that I counted as a public detriment when the outcome is a distorted picture of crime in Berkeley. (Memo, p. 7, #8)

Further confirmation of the lasting pernicious effect of mugshots can be gained from an exchange between Ms. Raguso and a commenter on a July 2020 crime story that, interestingly, did not include mugshots.⁶

Commenter Big_Brothers_Big_Brother:

"...If Berkeleyside (or any paper) did a proper follow-up to crime stories, the booking photos would not be necessary....Unless the "story" is extremely notorious, the follow-up barely gets written about...."

Moderator emraguso (Emilie Raguso):

"You might be interested to know that most of the stories we actually write about sentencing get only a fraction of the interest that the initial incident drew. So, in addition to the impossible temporal *[sic]* demands it would take to follow all cases thru to the end, there's also just minimal public interest in those outcomes, unfortunately."

Berkeleyside's asymmetric business interest against publishing acquittals or non-prosecutions – costly to ascertain, unremunerative to publish – leads to a public detriment I have already identified. (Memo, p. 6, #4) This "bad news bias" is especially harmful when combined with a discernible "confirmation bias" that some readers may harbor about different races. Berkeleyside's interest in clicks and controversy does not align with the City's – *my City's* – interest in justice or fully truthful information about crime in Berkeley.

Admitting the sunlight of NextRequest to BPD public records requests may disinfect this process.

Sincerely,



Charles Clarke
Resident, District 6

⁶ Disqus comments to Emilie Raguso, "Berkeley police arrest 3 people after armed robbery at Dollar Tree," Berkeleyside, July 21, 2020, <https://www.berkeleyside.org/2020/07/21/berkeley-police-arrest-3-people-after-armed-robbery-at-dollar-tree>