



Police Review Commission

POLICE REVIEW COMMISSION REGULAR MEETING REVISED MINUTES

**Wednesday, July 28, 2010
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

NOTE: The revisions were made on September 15, 2010 and provided to the Commission.

1. CALL TO ORDER BY CHAIRPERSON GEORGE PEREZVELEZ AT 7:05 P.M. ROLL CALL AND ATTENDANCE:

Present: Chairperson George Perezvelez
Vice Chair Russell Bloom
Commissioner Kamau Edwards
Commissioner Kiran Shenoy
Commissioner Sherry Smith
Commissioner William White

Absent: Commissioners Gurgin, Sherman and Huang

PRC Staff: Victoria Urbi, PRC Officer
Byron Norris, PRC Investigator

BPD Staff: Chief Meehan, Captain Harris, Lt. Files, Sgt. Kusmiss, Sgt. Murphy and Officer Bartalini.

City Staff: Sarah Reynoso, Assistant City Attorney

2. ORDER OF AGENDA

Remove agenda items #10 and #11, because Complainant Clifford Fred, case #2244, has withdrawn his Petition for a Rehearing.

3. PUBLIC COMMENT

None.

4. APPROVAL OF MINUTES

A. Regular Meeting: June 23, 2010

Motion to approve minutes. M/S/C Smith/White. Motion carried.

Ayes: Bloom, Edwards, Perezvelez, Shenoy, Smith, and White.

Noes: None. **Abstain:** None. **Absent:** Gurgin, Huang and Sherman

B. Regular Meeting: July 14, 2010

Motion to approve minutes. M/S/C Smith/White. Motion carried.

Ayes: Bloom, Edwards, Perezvelez, Shenoy, Smith, and White.

Noes: None. **Abstain:** None. **Absent:** Gurgin, Huang and Sherman

5. BERKELEY POLICE DEPARTMENT'S REPORT

A. Chief Meehan provided an update on the Officer-Involved Shooting Incident that occurred on June 28, 2010.

Chief Meehan's presentation consisted of two-parts: a review of the process and the most recent incident. Since BPD is a public agency, they are required to provide basic facts of the incident. The media releases certain information, which is not always accurate. Not everyone was comfortable with BPD making this presentation so early in the investigation. He would not offer any opinions or conclusions. BPD came to the meeting as a show of respect.

BPD will follow the established procedures and the law. He would not answer any additional questions, unless it is a point of clarification of something that was already said.

The process involves the following: BPD investigates all officer-involved shootings thoroughly, fairly and completely. Investigations are in compliance with established procedures and are conducted concurrently by 3 separate entities: Homicide, Internal Affairs and District Attorney.

The Homicide Detail handles the criminal investigation. They determine if a crime occurred, if so, by whom, to what degree, possible offenses and mitigating circumstances and the like. Internal Affairs Bureau handles the administrative investigation, such as a determination of training deficiencies and violations in the department policy or procedures. Those two investigations are concurrent, but separate.

Finally, the Alameda County District Attorney's Office also has a separate independent investigation. They will confirm publicly that the investigation is under way, but they will provide no other information, unlike the police department. The U.S. Attorney's Office also has access to the investigative files from the D.A.'s office.

The department's immediate procedure at the scene is the following: the police respond, secure the scene, and provide immediate medical attention, as warranted and if necessary. BPD will broadcast the crime and suspect information to all the units. They notify the homicide detail chain of command, Public Information Officer, Internal Affairs and the Alameda County District Attorney's Office and the like.

Involved personnel are segregated and ordered not to discuss the incident. The involved officers' gun, gun belt and assembly are taken as evidence.

The civilian crime scene unit will process the crime scene. Witnesses are located and statements are taken. Once the officers are segregated, the onsite unit will take formal oral statements from each officer. The Alameda County District Attorney's Office and the Internal Affairs Bureau observes the interviews. Then, each officer is videotaped and taken to the scene independently to state what they saw from their perspective.

The District Attorney's Office will provide a written report when their investigation is complete. This report provides a narrative of the investigative findings, the factual circumstances of the incident, and a statement of relevant law. Finally, they will conclude whether charges will be filed or not. Their established guidelines state that the report will be completed "No less than 30 days," which means it could be a lot more.

The Chief and the Police Shooting Review Board reviews all officer-involved shootings. The Review Board is established at the conclusion of the concurrent investigations. The Review Board gathers all evidence. They determine whether the shooting was within policy, in violation of policy, or an accidental shooting. The officers present are requested to attend and they may have representation. All Board of Review proceedings are administered in accordance with established personnel record management procedures and are therefore confidential.

Capt. Harris discussed a summary of the incident. On Monday, June 28th, at about 10:45 p.m., the Albany Police Department requested BPD's assistance after an officer tried to stop a Honda sedan at the 500 block of San Pablo Avenue. The driver failed to stop as the officers tried to pursue the vehicle into Northwest Berkeley. The vehicle was found abandoned at 8th and Jones Street in Berkeley.

As Officers began setting up a block cover in searching for the suspect, a Berkeley officer spotted the suspect on Page Street, where he ran Northbound. As the suspect was being chased, three other officers joined in a foot pursuit. As the officers were chasing the suspect, the suspect turned and pointed a handgun at the officers. The three officers fired their weapons at the suspect. BPD has statements that the suspect shot at the officers and they are still investigating and waiting for the results.

The paramedics pronounced the suspect dead at the scene. Investigators recovered a handgun on the sidewalk next to the suspect's body. They found a 9 millimeter casing at the scene, which is the same caliber as the suspect's gun. The suspect has been identified as Choung Nguyen, 25 years old from Oakland.

Comm. Smith asked if the department has received any complaints from the public or the family of the deceased to which the Chief replied that they have not.

Comm. White asked what the duration is of the officer's leave of absence and what factors are used to calculate their leave. Chief Meehan stated that the department wants to ensure that the mental state of the officers is adequate. The department policy is that they are put on leave for approximately 5 days. This time can be adjusted at the discretion of the Chief pending a psychological evaluation, which all officers involved is required to go through. Also, the officers must re-qualify for their firearm.

Currently, the officers are back on duty.

B. PRC staff will review Commission's options and process for officer-involved shootings.

Ms. Urbi stated that under the new regulations that were amended on July 14, 2010, "If there is no complainant able to initiate a complaint and in any case where a sworn officer or other BPD employee is involved in a death, five Commissioners may vote to authorize an investigation or take such other action they consider appropriate."

Also, "If the complainant or the subject officer is the subject of criminal proceedings related to the matter of the complaint, the PRC shall not start an investigation until the criminal matter has been adjudicated or dismissed. If the Commission votes to open an investigation into the officer-involved shooting, the PRC staff will not take any action until the District Attorney's Office investigation is completed."

The Commission has a number of options: one is to do nothing or open an investigation. If the PRC opens an investigation, staff will send a notice of allegations to the officers and will be in contact with the Chief regarding the availability of the homicide report.

After the District Attorney's investigation and the homicide investigation are completed, the staff will convene a board of inquiry made up of the entire Commission. The closed board of inquiry will make factual findings and recommendations to the Police Chief and to the City Manager.

Ms. Reynoso stated that another option could be that the Commission opens a preliminary review of the case, without deciding whether or not to actually open an investigation. The Commission could make a request for the homicide investigation, but they would have to review that in closed session. The Commission could go into closed session without an open investigation. The dilemma is that the Commission has to open something, but they could also determine whether and what allegations to make at a later time.

Ms. Reynoso advised that the Commission could not discuss the homicide investigative report in open session, because they would reveal the identity of the officer. In order to discuss the report in closed session, the Commission needs to

have a complaint initiated. The Commission could determine the scope of the investigation after they receive the homicide report.

Ms. Allison Berry-Wilkinson, counsel to the Berkeley Police Association, stated that the PRC has discretion to notify the officer that an investigation has been initiated, but she did not believe that the Regulations permit a preliminary investigation. After the commission reviews the homicide investigative report, the Commission would have the options to summarily dispose of that investigation should the facts of the review warrant it. It did not necessarily mean that the Commission needs to proceed to a full-fledged investigation or a commission hearing.

Ms. Urbi stated that the Regulations allow the Commission to "...authorize an investigation or take such other action they deem appropriate," which includes a preliminary review of the investigation. She also stated that another option is that the commission can review the investigation and recommend policy changes on officer-involved shootings rather than proceed with a board of inquiry.

Chair Perezvelez asked for clarification between a regular complaint based on allegations, versus a policy complaint, related to procedures.

Ms. Reynoso explained that a policy investigation deals with investigation of the policy and not the officers' actions.

C. Commission discussion and/or action

Commissioner Smith stated that the last time the Commission was involved in an officer-involved shooting case, the Commission had to ask the District Attorney to affirmatively state that there were no criminal charges that were going to be brought.

Ms. Urbi stated that, according to the regulations, if the Commission decides to open an investigation, staff could not investigate at this time, but would send a letter to the District Attorney requesting information on when their investigation would be completed.

Comm. Smith stated that she could not imagine a scenario in which they would not elect to open an investigation, because it seems to be the only process by which the Commission could figure out whether they want to proceed with one. She stated that almost automatically, the responsibility of the PRC is to open an investigation, so that they can see the report, then based upon their review, they could determine if they want to make any allegations about the incident. If they decide not to open a full blown investigation, then they could recommend policy changes.

Ms. Reynoso stated that there was some difficulty last time, because the D.A. did not take action. When the determination is not to file charges, they do not normally tell people. The reality with the notification from the D.A. is that they do not typically notify the PRC when their investigation is complete. Last time, they notified the Chief and that was how the PRC learned about it.

Motion that the Commission authorize an investigation of the Officer-Involved Shooting that occurred on June 28, 2010. M/S/C Smith/Bloom. Motion carried.

Ayes: Bloom, Edwards, Perezvelez, Shenoy, Smith, and White.

Noes: None. **Abstain:** None. **Absent:** Gurgin, Huang and Sherman

6. NEW BUSINESS

- A. TRAINING: How to review Communication Dispatch Reports conducted by Captain Harris and BPD Communications Center staff.

Rayna Johnson, Acting Supervisor of the Public Safety Dispatch unit, explained the dispatch reports and stated that they have gotten a lot more detailed compared with previous ones.

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

- A. Hearing update: There's a hearing scheduled on August 2, 2010.
B. Status of complaints: 16 open cases. No new complaints since our previous meeting.
C. National Night Out is Tuesday, August 3, 2010. Ms. Urbi encouraged the Commissioners to attend. Commissioner Bloom is scheduled to attend the Racial Profiling Training.

8. COMMITTEE REPORTS (For Discussion or Action)

- A. Ordinance Subcommittee update
Commissioners Perezvelez and Bloom met today. Commissioner Gurgin who is also a member was excused. Commissioner Perezvelez stated that because the PRC has other priorities at this time, the Subcommittee is considering dissolving, but would like Commissioner Gurgin to be present in order to vote as part of the full Commission on this.

9. COMMUNICATIONS

- A. Attached

10. PUBLIC COMMENT

None.

11. PETITION FOR A REHEARING

- A. Case No. 2244 - Complainant Clifford Fred withdrew his Petition for Rehearing.

12. ADJOURNMENT

Meeting was adjourned at 8:30 p.m.

VU:mgm