

CITY OF BERKELEY



POLICE REVIEW COMMISSION

2017 ANNUAL REPORT

CITY OF BERKELEY

POLICE REVIEW COMMISSION

Commissioners - 2017

George Lippman, **Chair**
Gwen Allamby, **Vice-Chair**
Clarence Ford
Sahana Matthews
George Perezvelez
Andrea Prichett
Terry Roberts
Michael Sherman
Ari Yampolsky

Alison Bernstein (through 6-2-17)
Bulmaro Vicente (through 6-27-17)
Kimberly DaSilva (through 8-7-17)
Cooper Price (6-27-17 through 8-17-17)

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

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To the City and Community of Berkeley:

The Berkeley Police Review Commission presents the Commission's 2017 Annual Report. This report includes statistical data concerning misconduct complaints filed during the year, an outline of the complaint process, as well as Commission work and achievements.

The City of Berkeley began the year as the shadow of the Trump Administration fell across our country. The challenge of coping with, and resisting, this polarizing political shift colored much of the work of the Commission in 2017.

The solidarity of community members and city leaders to the right-wing attacks on immigrants, Muslims, and members of other marginalized social groups was gratifying to Commissioners. Unfortunately, Berkeley became a national symbol and magnet for the far right to use as a battleground. On several occasions in 2017, hateful groups traveled to our city to incite conflict, which was particularly disturbing in the wake of the tragic killing at an anti-racist rally in Charlottesville, in August.

PRC members expressed gratitude to BPD Chief Andrew Greenwood for the department's nimble de-escalation during a confrontation in Martin Luther King Jr. Civic Center Park. Regarding this same episode, however, the Commission expressed its concerns about the passage by the City Council of an "Urgency Ordinance" giving the City Manager extraordinary powers to ban certain conduct in specified areas of town for a range of dates, carrying misdemeanor penalties. The Commission was also concerned about a Council action extending police power to use Oleoresin Capsicum (pepper spray) in crowd situations, and a new BPD rule against facial coverings, similar to a law previously declared unconstitutional by a state appeals court. A Commission letter to Council listed these concerns: "The Ordinance makes no provision for Council review. This is an abdication of elected legislative responsibility....These measures were presented to Council with only a few business days' notice....No consultation was undertaken with the Police Review Commission."

In other developments related to the national scene, PRC began its annual review of BPD's external relationships by recommending the City terminate participation in the Urban Shield exercise and further limit support for ICE enforcement activities in the City. As part of this process, several Commissioners attended the Urban Shield activity as observers, and the Commission held open subcommittee and Commission hearings to listen to many community and staff members.

PRC worked through the year to heal divisions and bring various parts of the community together. The Commission includes BPD and Berkeley Police Association representatives in its meetings, and we appreciate the opportunity to call out officers worthy of special recognition.

In a similar vein, PRC escalated its work to overcome racially disparate policing of diverse populations in Berkeley. In November, the Commission responded to a City Council referral with a 33-page report titled "Towards Fairness and Impartiality," proposing a specific action plan to understand and address such disparities. The Commission, after extensive consultation with the BPD, also proposed language for a BPD body-worn camera policy. Unfortunately, the year 2017 concluded without a deployment of cameras to field officers.

PRC recommended changes in the Right to Watch General Order, approved a Surveillance Technology & Community Safety Ordinance for City Council consideration, and created subcommittees to investigate treatment of homeless encampments and of the police action after the June 20, 2017 Council meeting.

PRC extends its thanks to the PRC staff, Katherine Lee, Byron Norris, and Maritza Martinez; former Chair Alison Bernstein and other former Commissioners; Chief Greenwood and all other BPD staff who have supported us over the past year; and the public, Council, and other staff, all of whom are essential to the maintenance and improvement of public safety in Berkeley.

Respectfully,

A handwritten signature in blue ink that reads "George Lippman". The signature is written in a cursive, flowing style.

George Lippman
Police Review Commission
Chair 2017



Police Review Commission (PRC)

October 29, 2018

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

Dear Ms. Williams-Ridley,

I am pleased to present to you the 2017 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 undertaken by the Police Review Commission in 2017 – reviewing Berkeley Police Department policies and making recommendations, and engaging in outreach activities. The policy issues examined include ongoing study of pedestrian and traffic stop data for evidence of disparate race-based treatment of civilians; a proposed ordinance for the City's use and acquisition of surveillance technology; and the BPD's handling of the numerous protests and counter-demonstrations that occurred in Berkeley in last year.

Respectfully submitted,

A handwritten signature in blue ink that reads "Katherine J. Lee" followed by a stylized flourish.

Katherine J. Lee
Police Review Commission Officer

2017 PRC ANNUAL REPORT

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I. EXECUTIVE SUMMARY 2017

Meetings

In 2017, the Commission held 65 regular, special, and subcommittee meetings, and Board of Inquiry hearings. This compares to the 82 such proceedings held in 2016.

Complaints

The Commission received 22 individual complaints and 3 policy complaints in 2017. In 2016, the Commission received 20 individual complaints and 1 policy complaint.

Complainants

The demographic distribution of individual complainants in 2017 was 11 males and 9 females; 10 Blacks, 8 Caucasians, 2 Hispanic, and 2 multi-ethnic persons. Complainants ranged from 28 to 73 years of age; with the largest group, about a third, in their thirties.

Board of Inquiry (BOI) Hearings

The Commission completed 7 BOI hearings – proceedings in which a panel of commissioners considers allegations against police officers – in 8 cases. Allegations of excessive force and discrimination were the most common of the 31 allegations considered. No findings of police misconduct were sustained.

Caloca Appeals

Subject officers may seek review of a BOI “sustained” finding through a *Caloca* appeal. One sustained finding in 2016 was appealed, and was upheld following a hearing in 2017. No *Caloca* appeals were filed in 2017.

Policy Review Highlights

Our police force was tested by a series of provocative speakers and rally organizers, and the resulting confrontations with counter-protesters. Several times the Berkeley Police Department had to call for mutual aid from other law enforcement agencies and in turn assisted the U.C. Berkeley police in campus incidents.

Fair and unbiased policing was another focus of the PRC in 2017. The PRC pushed for publication of the Center for Policing Equity’s draft report analyzing BPD pedestrian and traffic stop data. A PRC subcommittee produced an extensive report, “Toward Fairness and Impartiality,” with its own stop data analysis, and recommendations for how to reduce race-based disparate outcomes

Another subcommittee crafted a proposed ordinance regulating the City’s purchases and uses of surveillance technology, which the Commission sent to the Council, which is expected to consider the ordinance in 2018.

Berkeley Police Department

At the end of 2017, BPD had 159 sworn police officers and received 81,713 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 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:

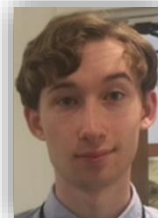
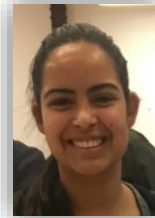
- **The PRC Officer** administers the daily operations of the PRC office, supervises staff, oversees complaint investigations, and serves as Secretary to the Commission. As Secretary, the PRC Officer staffs commission meetings and provides managerial support in the execution of PRC policies and procedures.
- **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.



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 time and effort toward fulfilling their duties.



The first two rows show Commissioners as of the end of 2017:

Top Row -- **Chair George Lippman, Vice-Chair Gwen Allamby, Clarence Ford, Sahana Matthews, George Perezvelez.**

Middle Row -- **Andrea Prichett, Terry Roberts, Michael Sherman, Ari Yampolsky.**

Other Commissioners who served in 2017:

Bottom Row -- **Alison Bernstein, Bulmaro Vicente, Kimberly DaSilva, Cooper Price.**



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 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 helped several complainants prepare for their cases, and it is anticipated that they will represent complainants at BOI hearings in 2018. 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. 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.

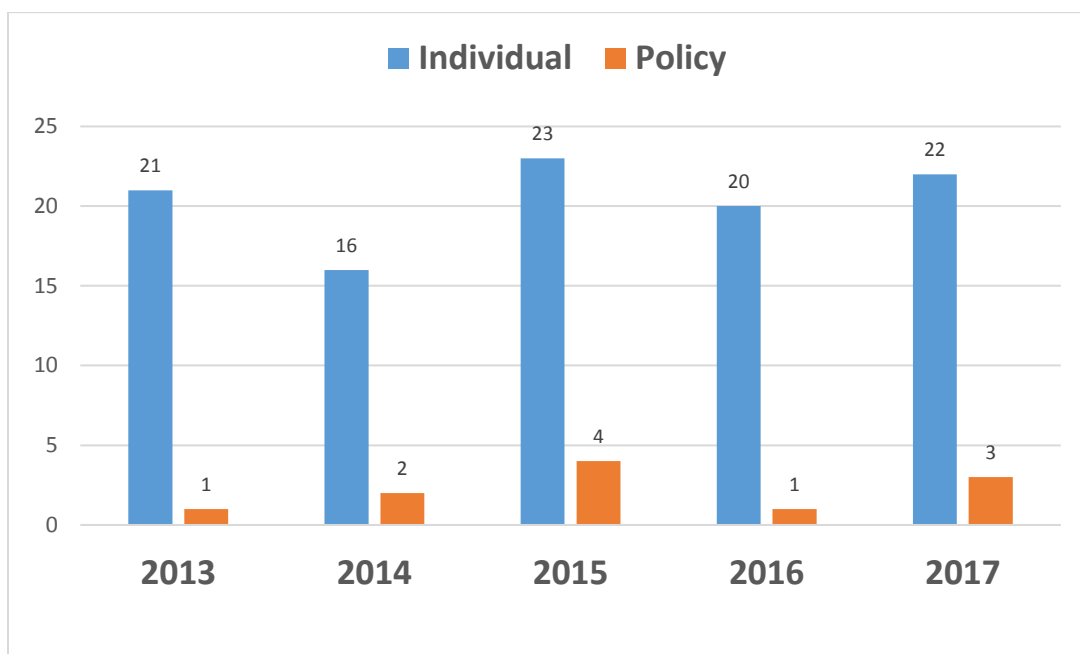
2. POLICY COMPLAINTS

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 2013 - 2017

1. COMPLAINTS RECEIVED



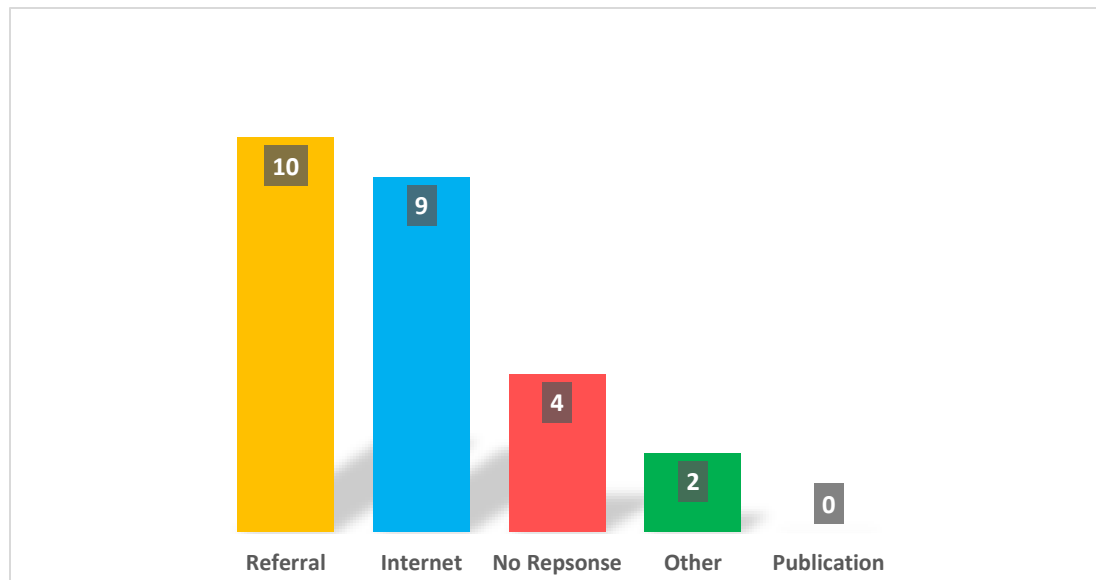
COMPLAINTS RECEIVED	2013	2014	2015	2016	2017
Individual	21	16	23	20	22
Policy	1	2	4	1	3
Total	22	18	27	21	25

In 2017, the PRC received 22 individual complaints and three policy complaints. The average number of complaints filed over the past five years is 22.6.



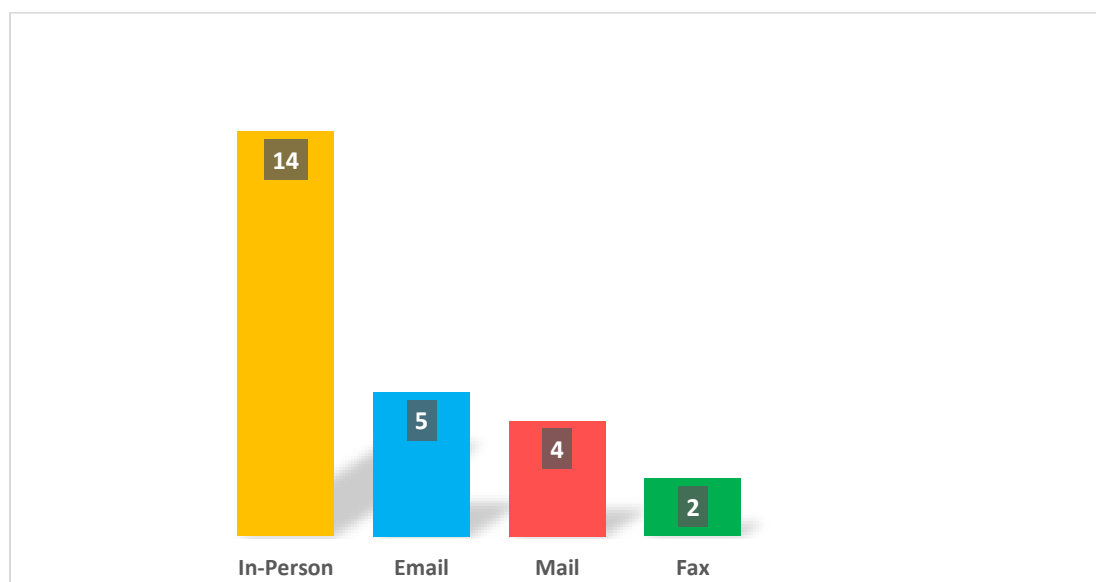
How Complainants In 2017 Heard About The PRC

On the individual and policy complaint forms, complainants are asked to check a box stating how they learned about the Police Review Commission. Here are the responses in 2017.



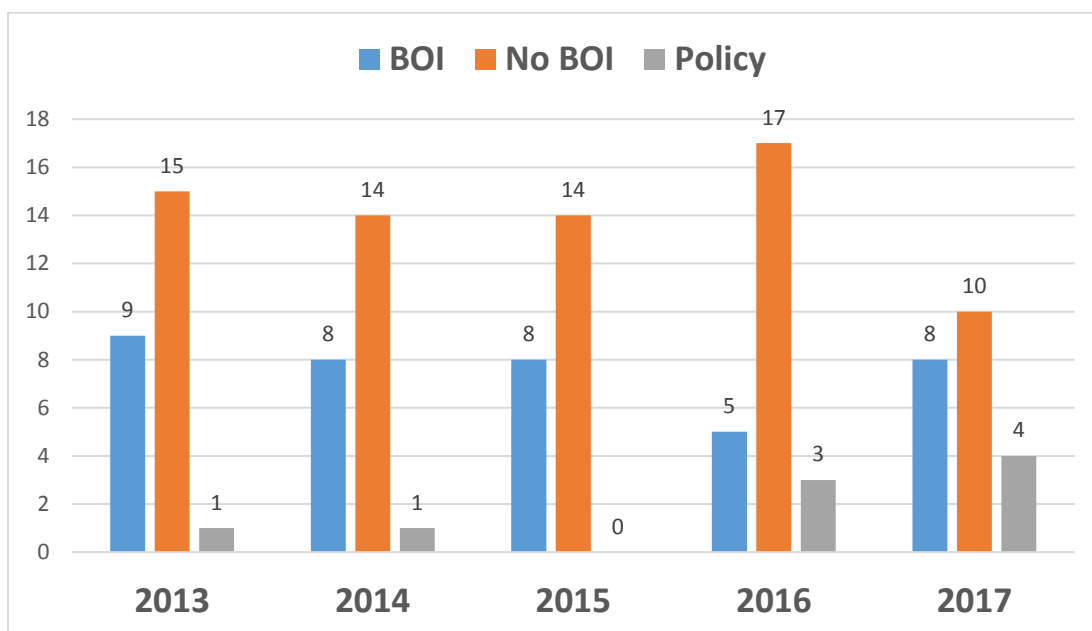
How Complainants Filed With The PRC In 2017

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	2013	2014	2015	2016	2017
Board of Inquiry Hearings Completed	9	8	8	5	8
Closed without BOI	15	14	14	17	10
Admin. Closure (includes withdrawn)	8	11	6	5	5
Mediation	3	0	1	5	1
Dismissal	0	1	4	2	0
Reject**	4	2	3	5	4
Policy	1	1 (reject)	0	2 1 (reject)	2 2 (reject)
Total Cases Closed	25	23	22	25	22

In 2017, the number of individual complaints that proceeded to a Board of Inquiry Hearing compared to the number closed without a hearing was roughly consistent with the ratios from 2013 to 2105. In 2016, the proportion of individual complaints that closed without going to a hearing was lower due mostly to the number that went to mediation that year.

** Individual complaints that are rejected 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

HAR=Harassment

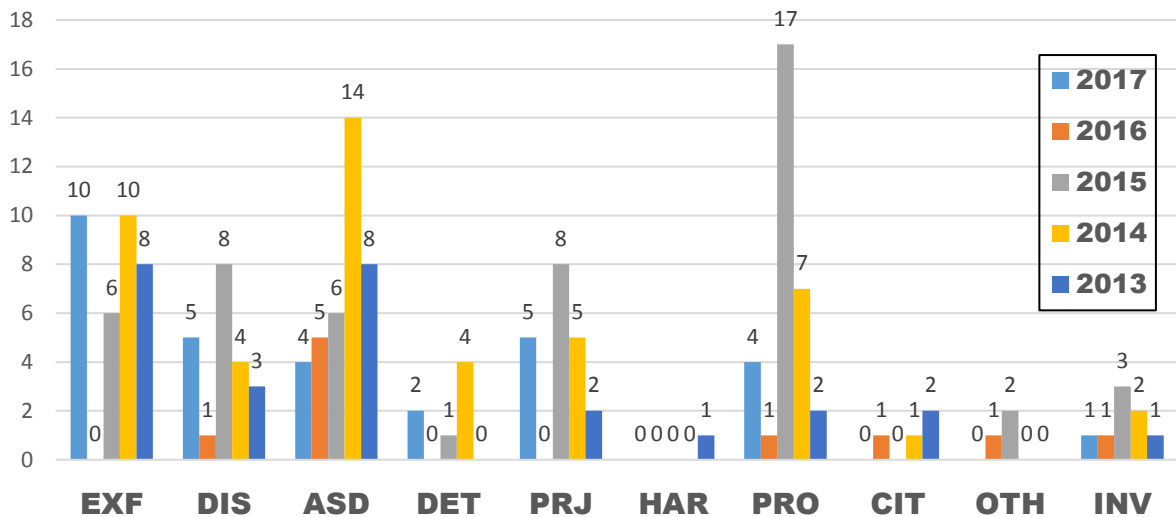
PRO=Improper Police Procedures

CIT=Improper Citation or Tow

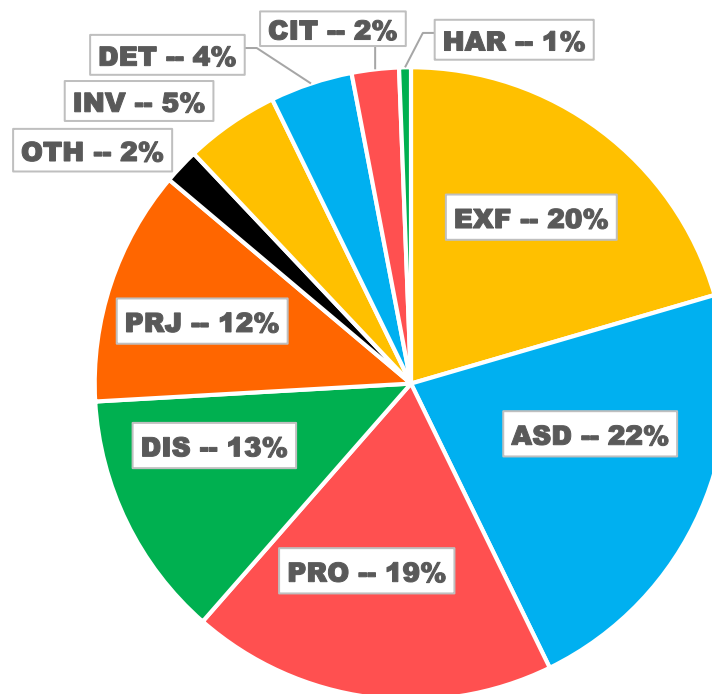
OTH=Other (see p. 13 for examples)

INV=Improper Investigation

BY CATEGORY AND YEAR



BY PERCENTAGE, for the years 2013-2017 combined





4. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY

In 2017, a Board of Inquiry hearing was convened in eight cases to make findings on allegations. Two of the cases involved the same incident, and were heard together. In another case, both allegations were summarily dismissed. Summary dismissal occurs when the BOI determines an allegation is wholly without merit.

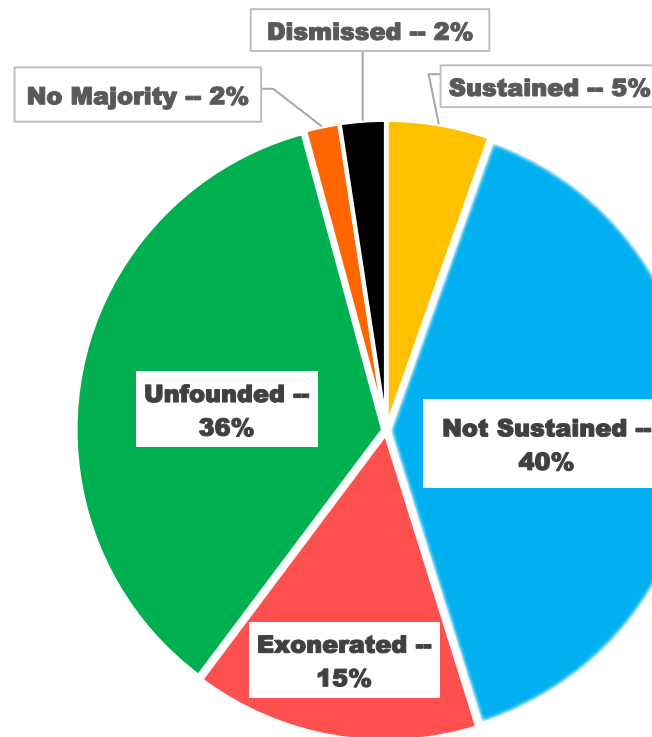
Thirty-one allegations were decided in those eight cases. Whether separate types of allegations are lodged against one officer in the same case, or one type of allegation is made against multiple officers, each allegation against each officer is counted individually. For example: if an allegation of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

In 2017, of the 31 allegations considered, none were sustained, 15 were not sustained, 3 were exonerated, 11 were unfounded, and 2 were summarily dismissed. The table below shows how the decisions made on allegations in 2017 compare to those of the four preceding years.

Finding Categories	2013	2014	2015	2016	2017
Sustained	4	2	1	2	0
Not Sustained	9	15	24	3	15
Exonerated	11	8	2	1	3
Unfounded	3	21	22	2	11
Summary Dismissal	(Not reported 2013 – 2015)			2	2
No Majority Vote	0	1	2	0	0
Total	27	47	51	10	31

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.

BOARD OF INQUIRY FINDINGS
(Percentage by category, for the years 2013 – 2017 combined)



RATES OF “SUSTAINED” FINDINGS 2013 – 2017

The percentage of allegations sustained of the total number of allegations heard at a Board of Inquiry Hearing for 2013-2017 are shown on this table. * No allegations were sustained in 2017.

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%
2013	4 of 27 allegations sustained	14.75%

* 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 in which a BOI hearing was held in 2017, findings were issued within 120 days of the complaint date in five of them.



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

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

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

(See next page for explanation of allegation categories.)



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

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
Totals	8	3	8	0	2	1	2	2	0	1	27

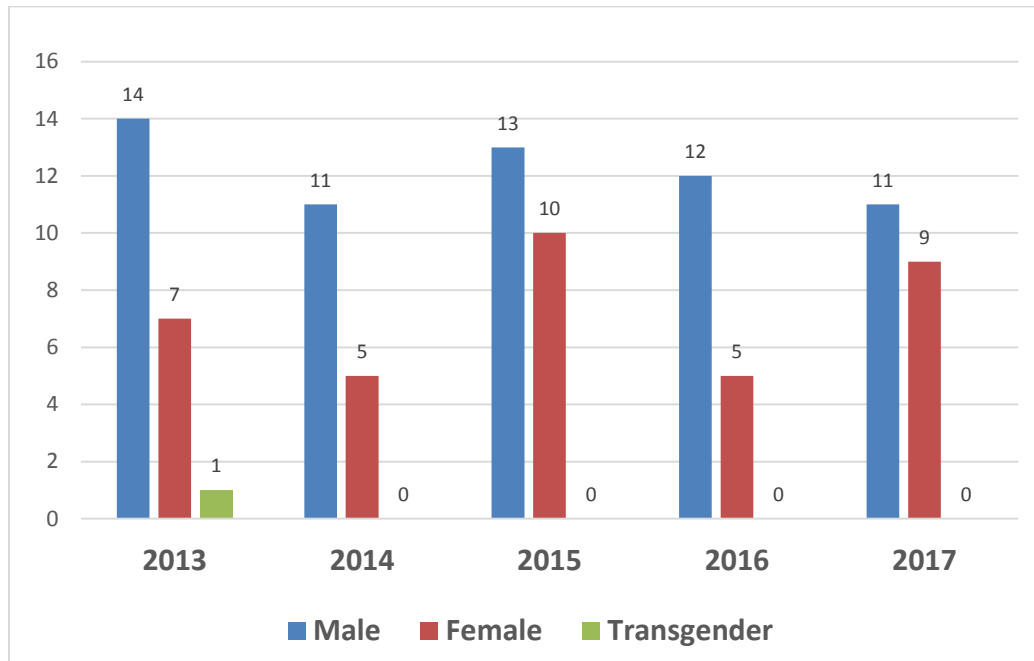
Allegation Categories**EXF**=Excessive Force**DIS**=Discourtesy**ASD**=Improper Arrest, Search, Seizure, or Stop/Detention**DET**=Improper Detention Procedures**PRJ**=Discrimination**HAR**=Harassment**PRO**=Improper Police Procedures**CIT**=Improper Citation or Tow**OTH**=Other (includes Abuse of Discretion,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



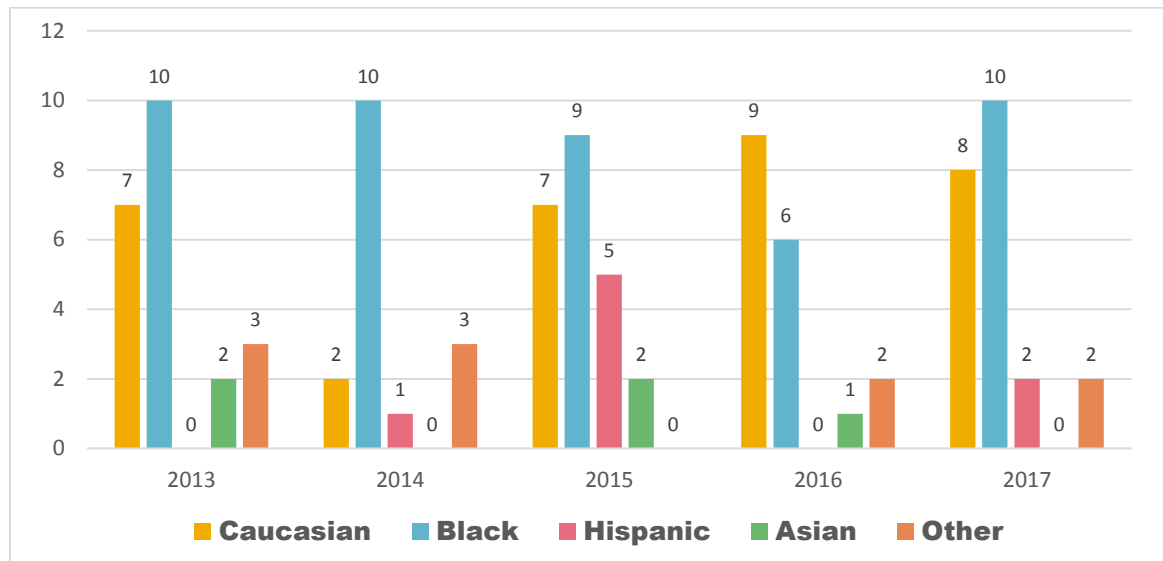
6. COMPLAINANT DEMOGRAPHICS

Complainants are asked to report their ethnicity, gender, and age, so that the PRC can track this information for statistical purposes. For 2017, the gender, ethnicity, and age statistics are reported for the 22 people who filed individual complaints.

COMPLAINANTS' GENDER

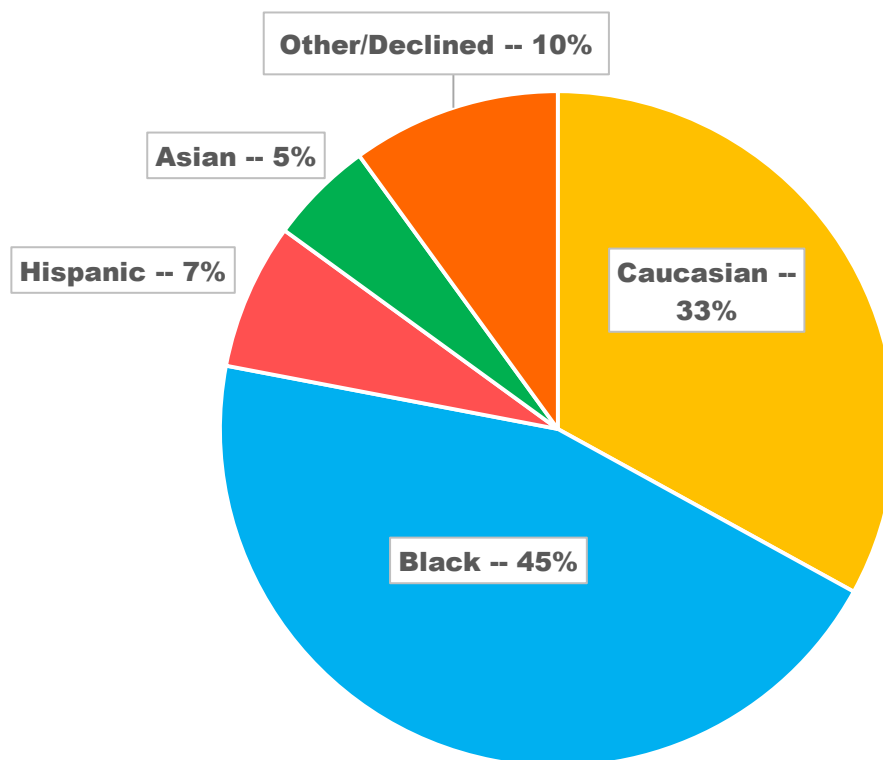


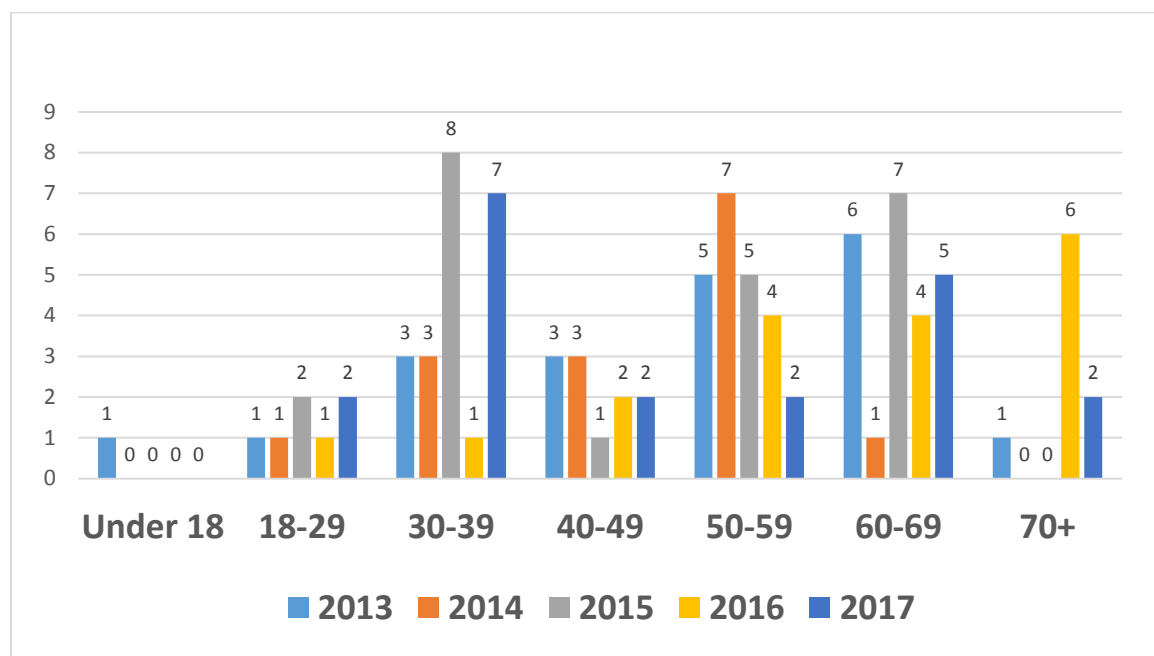
In 2017, males comprised just over half of the 20 complainants who reported their gender. (Two persons declined to state their gender.) Male complainants have consistently outnumbered female complainants over the past five years, although to varying degrees.

**COMPLAINANTS' ETHNICITY**

In 2017, the great majority (18) of the 22 individual complainants who reported their ethnicity were Caucasian or Black, consistent with most prior years. There were 2 Hispanic complainants and no Asian complainants. The two complainants in the “Other” category in 2017 were multi-ethnic.

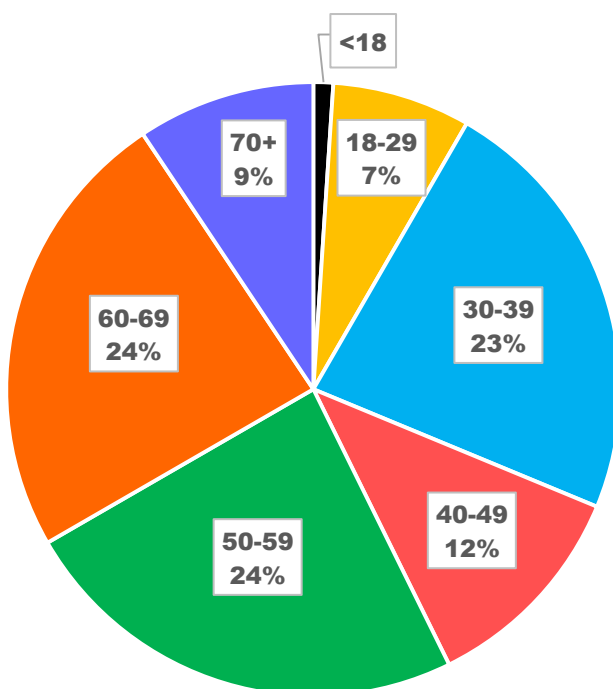
Percentage of complainants by reported ethnicity, for the years 2013 to 2017 combined.



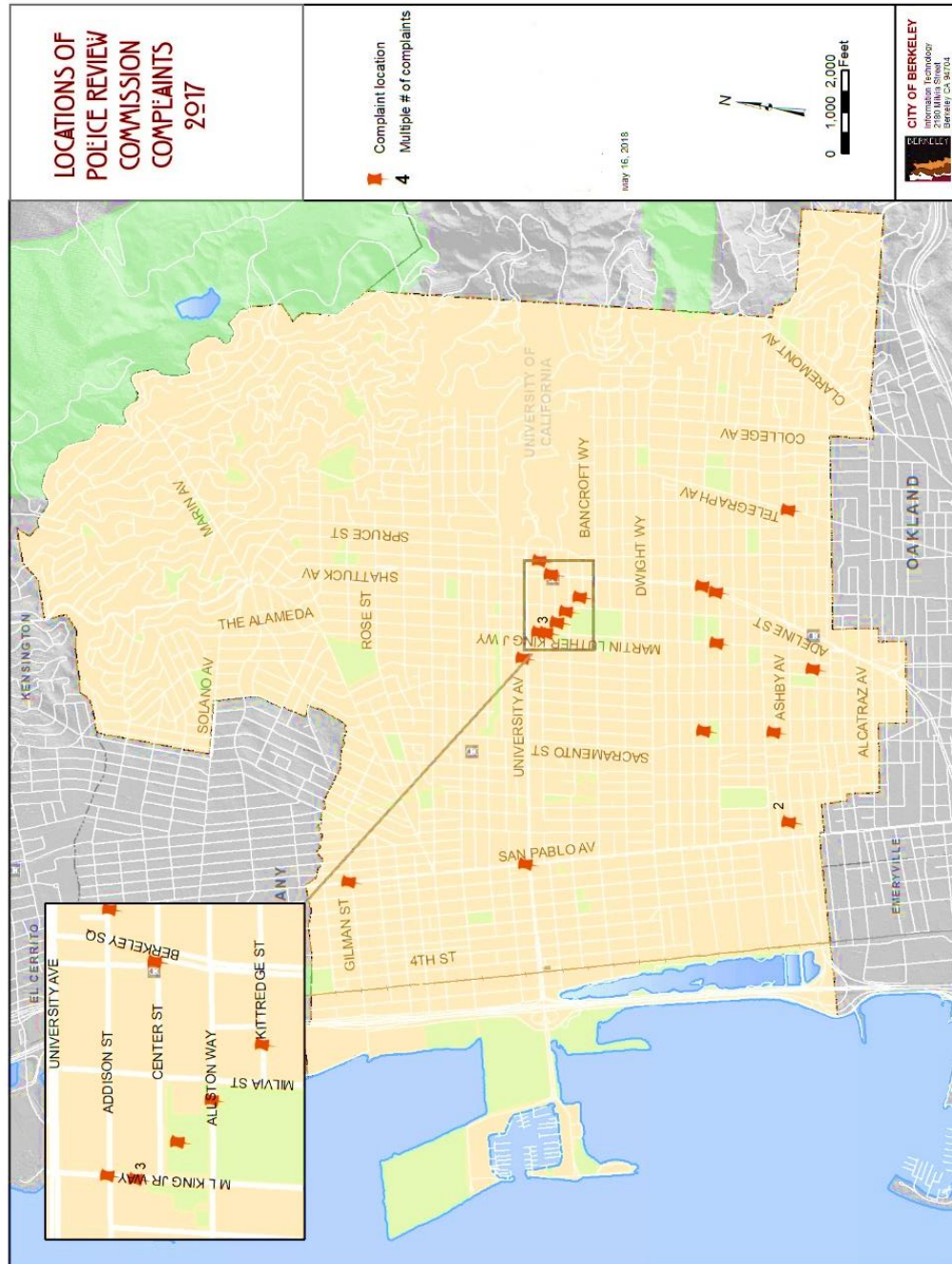
**COMPLAINANTS BY AGE GROUP**

Of the 20 complainants who reported their age in 2017, the largest group, just over one-third, were in their thirties, followed by those in their sixties.

Percentage of complainants by reported age, for the years 2013 to 2017 combined.



7. INCIDENT LOCATION MAP FOR 2017



This map shows where misconduct is alleged to have occurred in 2017. Twenty-one locations are shown for 22 individual complaints; the complaint alleging misconduct in Emeryville is not shown. Three instances of alleged misconduct show as occurring at 2100 Martin Luther King, Jr. Way, which houses the Berkeley Police Department. That address was used for allegations that an officer's investigation was inadequate and stemming a civilian's interaction with an officer there.



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.

A *Caloca* appeal that was filed in 2016 was heard in 2017. In that case, the ALJ upheld the PRC's sustained finding. No *Caloca* appeals were filed in 2017.

This table shows the outcome of appeals decided each year from 2012 to 2016.

Year	PRC Sustained Findings Appealed	<i>Caloca</i> Ruling
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>)
2013	(1 case) 1 allegation (1 case) 1 allegation (1 case) 1 allegation (1 case) 3 allegations	1 allegation overturned (<i>Unfounded</i>) 1 allegation upheld (<i>Sustained</i>) 1 allegation upheld (<i>Sustained</i>) 3 allegations overturned (<i>Exonerated</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. 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

A longstanding concern of this community and of the PRC has been race-based disparate treatment of civilians by Berkeley police officers. In late 2015, the police department agreed to have the Center for Policing Equity (CPE) conduct an analysis of the BPD's pedestrian and vehicle stop data; an analysis of use of force statistics and a climate survey were later added to the scope of work. In May 2017, the CPE sent a draft report to the BPD, who did not initially plan to release it publicly. The PRC successfully lobbied the City Manager and the City Council for release of the stop data portion of the draft analysis.

At the same time, the PRC's Fair & Impartial Policing Subcommittee, established in 2016, continued its work in 2017, culminating with the publication of its report, "Towards Fairness & Impartiality – Report and Recommendations from the Berkeley Police Review Commission." The report includes the Subcommittee's own examination of stop data, as well as its review of analyses by the CPE and others, finding significant disparities in stop, search, and yield rates, between Whites and African Americans and Latinos. The Subcommittee made numerous recommendations for measures to address the disparities shown in the data, practices to ensure more respectful interaction with civilians, and steps to strengthen community relations.

In November, the Commission approved the Subcommittee's report for submittal to the City Council, in hopes that the Council will provide policy guidance on the recommendations. The PRC and the CPE reports can be accessed through the PRC's website:

https://www.cityofberkeley.info/Police_Review_Commission/Home/Special_Reports.asp



RESPONSE TO RALLIES AND COUNTER-PROTESTS

Police response to the political clashes in the City throughout 2017 was observed with great interest by the PRC. Crowd management policies that the BPD revised with Commission input (following review of how the BPD handled the December 2014 demonstrations) were put to the test. On several occasions, the Berkeley Police Department called for mutual aid from neighboring law enforcement agencies, while our department assisted U.C. Berkeley police in responding to campus incidents. BPD's management of the various events was generally found appropriate.

In advance of "Free Speech Week" events in September, the City Council took two actions without consulting the Police Review Commission. The Council passed an urgency ordinance authorizing the City Manager to issue rules for street events without permits, and modified the ban on use of pepper spray for crowd control. The PRC formally voiced its concerns to the Council, reminding it of its advisory role in police policies, and pointing out the critical role that the enabling Ordinance gives the PRC in providing for community participation and input into shaping these policies.

BODY-WORN CAMERA POLICY

In 2016, the PRC approved a recommended policy for the use of body-worn cameras and at the City Council's direction, representatives from the PRC and BPD met to resolve differences between their proposed policies. In 2017, the PRC approved some compromises, but was still awaiting final language from the BPD. In the meantime, the Department purchased the body-camera equipment and software, and the BPD demonstrated how the cameras work at the Commission's December meeting. The PRC expects to receive final policy language for approval in 2018, so that deployment of the cameras will occur very soon thereafter.

RIGHT-TO-WATCH GENERAL ORDER

The Commission reviewed the BPD's General Order W-1, the Right to Watch, governing the public's ability to observe and record police activity. They drew on the Department's prior versions of the order and the San Francisco Police Department's policy. The PRC approved a proposed alternative general order to the department in late 2017.

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. Some committee memberships listed below will show more than four commissioners, due to turnover. The PRC Ordinance allows for members of the general public to serve on subcommittees, and two subcommittees established in 2016 with public members concluded their work in 2017. Representatives from the Berkeley Police Department often attend PRC subcommittee meetings.

SURVEILLANCE & COMMUNITY SAFETY ORDINANCE SUBCOMMITTEE

Commissioners Yampolsky (Chair), DaSilva, Roberts, Vicente, Allamby, Halpern (temporary commissioner)
Public members Brian Hofer, Julie Leftwich, Tracy Rosenberg

This Subcommittee was formed in late 2017 following a City Council referral to propose an ordinance governing the acquisition and use of all surveillance technologies by all City departments. It worked diligently on a comprehensive ordinance to require a public discussion of potential intrusions into civil liberties and privacy rights implicated by using a particular surveillance technology, and to ensure that any such intrusions are outweighed by the benefits of that technology. The Commission approved a draft ordinance in July 2017 to recommend to the Council; Council's consideration was delayed from late 2017 into early 2018.

HOMELESS ENCAMPMENTS SUBCOMMITTEE

Commissioners Prichett (Chair), Bernstein, Yampolsky, Da Silva, Sherman

This Subcommittee was formed in February 2017 to look into the BPD's involvement in dismantling homeless encampments, addressing questions such as who is issuing directives to conduct enforcement, the legality and appropriateness of seizing personal property, compliance with the Americans with Disabilities Act, and the right of bystanders to watch and record enforcement actions.

In June, the PRC authorized this subcommittee to hold meetings in conjunction with the Homeless Commission's homeless encampments subcommittee. The two bodies met together several times, focusing on the City's development of a policy for taking and storing personal property. This work is anticipated to continue in 2018.



MUTUAL AID PACTS SUBCOMMITTEE**2016 – 2017: Commissioners Bernstein, DaSilva, Sherman****2017 – 2018: 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"). As there are dozens of agreements to consider, the PRC generally focuses on the new or revised ones, and selects others of particular interest.

The recommendations of the Subcommittee formed in October 2016 were adopted by the PRC and communicated to the City Council in early 2017. Among the recommendations were to support the BPD's continued participation in Urban Area Security Initiative (UASI) – funded programs, including the Urban Shield exercise, with a more robust reporting requirement; and approve the MOU with the Northern California Regional Intelligence Center (NCRIC), with provisos for auditing access to the license plate reader database.

A new Mutual Aid Pacts Subcommittee was formed in December 2017, and its recommendations will be made in early 2018.

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

The City Council called a special meeting on June 20, 2017, to consider the BPD's MOU Compendium. The BPD's continued participation in the annual Urban Shield exercise again generated considerable community interest. At the end of the meeting, BPD arrested two protesters who rushed the dais, and the commotion spilled onto the street, where a person in the crowd was struck on the head, allegedly by a police officer wielding a baton. The PRC formed the June 20, 2017 Subcommittee to investigate whether the police response that night was appropriate. The Subcommittee is expected to present a draft report to the Commission in January 2018.

FAIR & IMPARTIAL POLICING SUBCOMMITTEE**Commissioners Lippman (Chair), Javier, Roberts, Smith, Allamby, Ford****Public members Christina Murphy, Paul Kealoha-Blake, Elliot Halpern**

(See discussion of "Fair & Impartial Policing" on p. 19 above.)



2. TRAINING AND OUTREACH

- The PRC Officer and PRC Investigator attended the **23rd Annual NACOLE Conference** in Spokane, Washington in September. 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 the opportunity to attend training sessions and educational workshops. It also provides a chance for PRC staff to meet and compare notes with other oversight practitioners from around the country and the Bay Area about common and unique challenges of police oversight in their communities.
- At the Berkeley Police Chief's invitation, PRC Chairperson Lippman 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 Philadelphia, offered dozens of educational and training opportunities.
- This year's outreach efforts to publicize the work of the Police Review Commission included Commissioners staffing a table at the **Summer of Love 50th Anniversary** event in April and 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.
- Three Commissioners joined Councilmembers and City staff in attending the annual **Urban Shield exercises** over two days in September. They observed the BPD Special Response Team as it engaged in several tactical training scenarios, and attended the vendor show. The Commissioners reported on their impressions to help the PRC formulate a recommendation to the City Council on continued participation in 2018.

POLICE CHIEF EVALUATION AND BPD COMMENDATIONS

- In 2017, City Manager Dee Williams-Ridley began a series of one-on-one meetings with members of the Police Review Commission for their input into the job performance of Police Chief Andrew Greenwood as part of her appraisal of the Chief. These meetings resulted from the Commission's request to the City Manager for a role in the City Manager's process for evaluating the chief.
- In recognition of outstanding service to the community, the Commission extended commendations to 91 BPD police officers and civilian staff of the BPD in 2017.



IX. MEETINGS AND HEARINGS

2017

Type of Meeting or Hearing	Number
Regular PRC Meetings	20
Special PRC Meetings	2
Boards of Inquiry (BOI) (including 2 continued hearings)	9
BOI Special Meetings	1
Mutual Aid Pacts	2
Surveillance and Community Safety Ordinance	8
Fair & Impartial Policing	9
Outreach	1
Homeless Encampments	5
June 20, 2017 (Review of BPD Response at City Council Meeting)	7
General Orders on Crowd Control, etc.	1
TOTAL	65



2017 MEETINGS AND HEARINGS

January

4	Mutual Aid Pacts
11	Surveillance and Community Safety Ordinance
11	Regular Meeting
13	BOI, Complaint #2409
23	Fair & Impartial Policing
25	Regular Meeting

February

1	Special PRC Meeting
8	Regular Meeting
22	Regular Meeting
27	Fair & Impartial Policing

March

1	Outreach
1	Homeless Encampments
8	Regular Meeting
14	BOI Special Meeting
16	BOI, Complaint #2411
22	Homeless Encampments
22	Regular Meeting

April

12	Surveillance and Community Safety Ordinance
12	Regular Meeting
17	BOI, Complaint #2391
21	BOI, Complaint #2412 and Complaint #2413
26	Regular Meeting
27	Surveillance and Community Safety Ordinance

May

3	Surveillance and Community Safety Ordinance
10	Regular Meeting
16	Surveillance and Community Safety Ordinance
24	Special PRC Meeting
24	Regular Meeting

June

14	Regular Meeting
21	Surveillance and Community Safety Ordinance
23	BOI, Complaint #2413 (cont.)
28	Regular Meeting

**July**

- 6 Fair & Impartial Policing
- 10 Surveillance and Community Safety Ordinance
- 11 Homeless Encampments
- 12 Regular Meeting
- 17 Surveillance and Community Safety Ordinance
- 26 Regular Meeting

August

- 3 Fair & Impartial Policing
- 8 Homeless Encampments
- 9 June 20, 2017 (Review of BPD Response at City Council Meeting)
- 10 General Orders C-64, etc.
- 15 Fair & Impartial Policing
- 17 BOI, Complaint #2418
- 30 June 20, 2017 (Review of BPD Response at City Council Meeting)

September

- 6 Fair & Impartial Policing
- 6 Regular Meeting
- 12 June 20, 2017 (Review of BPD Response at City Council Meeting)
- 20 BOI, Complaint #2420
- 27 Regular Meeting
- 28 Fair & Impartial Policing

October

- 4 June 20, 2017 (Review of BPD Response at City Council Meeting)
- 11 Regular Meeting
- 12 Fair & Impartial Policing
- 24 BOI, Complaint #2422
- 25 Regular Meeting

November

- 2 Fair & Impartial Policing
- 7 June 20, 2017 (Review of BPD Response at City Council Meeting)
- 15 Regular Meeting
- 17 BOI, Complaint #2418 (cont.)
- 30 June 20, 2017 (Review of BPD Response at City Council Meeting)

December

- 6 Mutual Aid Pacts
- 12 Homeless Encampments
- 13 Regular Meeting

The Police Review Commission joined the
Berkeley Police Department in mourning
the passing of Officer Alan Roberds,
badge #53, on July 15, 2017.

