

Annual Report of the Police Review Board of The University of California, Berkeley May 25, 2016

This report describes the principal activities of the Police Review Board (“PRB” or “Board”) for the period from January 1, 2014 through December 31, 2015, as well as the complaints lodged during that period with the University of California, Berkeley, Police Department (“UCPD” or “Department”) and their dispositions. The Board distributed a draft version of this report in April 2016. This final report follows a public meeting held by the Board on May 6, 2016.

The Police Review Board’s Responsibilities and this Report

The PRB has two standing responsibilities, which are (1) to consider the merits of appeals from the disposition by UCPD of civilian complaints about the conduct of sworn UCPD officers; and (2) to monitor and review departmental policies and procedures, particularly with respect to how UCPD processes civilian complaints and the quality of UCPD interactions with the campus community. As part of the latter monitoring function, the Board is tasked with preparing an annual report, addressing the cases decided on appeal and the information forwarded by UCPD to the Board outside of the appeals process. The Board should hold a public meeting at least once each academic year to receive community input and discuss a draft of its annual report. The Police Review Board Procedures for Handling Civilian Complaints Against Sworn Members of the Police Department (“PRB Procedures”) may be found [here](#). In addition to its two standing responsibilities, the Board is occasionally given special assignments by the Chancellor.

This report covers two calendar years. During this period, the Board decided four appeals from the Department’s decisions on civilian complaints; the Board is current in handling its appellate docket. However, the Board is late in its reporting function. The PRB’s last annual report described its activities for the two-and-a-half year period from July 2011 through December 2013. That report was submitted on June 25, 2014, and followed a public meeting held on May 8, 2014. As described in this report, the Board has met during the last two calendar years, but did not convene a public meeting or submit an annual report for 2015.

Membership of the Police Review Board and Contact Information

Under policies adopted in 2001 by the University of California, Berkeley, the Board has eight deliberating and voting members: a chair, two faculty representatives, two student representatives (one undergraduate and one graduate student), a representative of the Berkeley community bordering the campus, a representative of campus staff, and a person who formerly had professional experience in law enforcement. The UCPD designates a liaison officer to provide information to the Board and to coordinate

UCPD's efforts to respond to the PRB's questions or requests. The Board reports to the Vice Chancellor for Administration and Finance. Vice Chancellor John Wilton served that role through February 2016. Since March 1, 2016, the Board has reported to Vice Chancellor Scott Biddy.

Five members have served on the Board during the entire reporting period of January 1, 2014 through December 30, 2015: Charles Weisselberg (chair); faculty members Michael Harris and Laura Kray; GA Representative Andrew Brighten; and Community Representative John Cummins. Retired City of Berkeley Police Chief Doug Hambleton was appointed in April 2014 to replace Ronald Nelson, who passed away the previous month. Rishi Ahuja served as the ASUC's representative from January 2014 until summer 2015; he has been replaced by Marium Navid. Three staff representatives have served during this period: Rochelle Niccolls (through June 2014), Donna Seaward (July 2014-June 2015) and Camille Fernandez (since July 2015).

Current PRB members are:

Andrew Brighten, Graduate Assembly Representative
John Cummins, Community Representative
Camille Fernandez, Staff Representative
Douglas Hambleton, Law Enforcement Representative
Michael G. Harris, Professor Emeritus, School of Optometry
Laura Kray, Professor, Haas School of Business
Marium Navid, ASUC Representative
Charles D. Weisselberg, Professor, Berkeley Law (Chair)

Three officers have served in the UCPD liaison role: Lieutenant Eric Tejada, Lieutenant (now Captain) Lee Harris, and Lieutenant Joey Williams. Lt. Williams is the current liaison with the Board, taking over from Captain Harris in Fall 2015.

In April 2014, Kathleen Moore replaced Pam Sutherland as the staff assistant to the Board.

The Chair of the PRB may be contacted at: cweisselberg@law.berkeley.edu. Ms. Moore may be contacted at: krmoore@berkeley.edu. Information about the Police Review Board, its mission, the rules under which it operates, and its annual activities is available on the [Board's website](#). The PRB reports to the Vice Chancellor for Administration and Finance, whose office is described [here](#).

Overview of the Board's Activities from January 2014 through December 2015

During this two-year period, the Board adjudicated four appeals from the UCPD's disposition of civilian complaints. As part of its oversight function, the Board reviewed all sixteen (16) civilian complaints filed with the Department in these years along with the Department's response letters, including informal resolutions of civilian complaints. The Department sometimes prepares "work file memos" to document civilian complaints or inquiries that are resolved without full investigations.

During the 2014 and 2015 calendar years, the PRB met on five occasions, in addition to its May 8, 2014 public meeting: January 30, 2014, April 3, 2014, July 24, 2014, December 9, 2014, and November 30, 2015.

The next sections of this report address appeals from the Department's dispositions of civilian complaints, and our review of all civilian complaints filed with the UCPD.

Appeals

The Board's primary function is to decide appeals from the Department's dispositions of civilian complaints. When an appeal is lodged, a three-member panel of the Board is appointed and reviews the civilian's complaint and the investigative findings of the UCPD. Under the Board's procedures, the panel has three options. It may summarily affirm the investigation, remand to UCPD with a request for further investigation or clarification, or refer the appeal to the full Board for an external investigation with an outside investigator. Summary affirmance is appropriate "when it is readily apparent that the Department's investigation was complete and its findings correct on the evidence presented, so that further investigation or hearing by the Board would be highly unlikely to lead to a different conclusion than that reached by the Department." (PRB Procedures, §III.4.)

In two appeals, the Board remanded to the Department for further investigation and/or clarification. In both of these cases, the Department conducted further investigation or clarified its earlier findings. The Board then reviewed the matters again and affirmed the Department's findings.

One appeal was initially decided on January 10, 2014 (and is also described on page 4 of the Board's June 25, 2014 report). A three-member panel was appointed and conducted an initial review of the investigation report and supplemental materials provided by the Complainant's counsel. The panel summarily affirmed three of the findings, but remanded the fourth (which related to an allegation of excessive use of force) to the UCPD for further investigation and clarification. Following that remand, the Department submitted a supplement to its investigation report. On March 28, 2014, after reviewing the additional information, the PRB affirmed the Department's finding of "not sustained."

The second case was initially decided by a three-member panel of the Board on January 8, 2015. The incident arose following a traffic stop. The Complainant made a number of allegations, including unprofessional conduct, discrimination, unreasonable use of force, and dishonesty. The unreasonable use of force allegation related to the officer's decision to draw his service weapon during the traffic stop. The Board remanded for reinvestigation of four specific points. Following the remand, the Department assigned a new investigator, who conducted a thorough reinvestigation of the entire incident. He re-interviewed witnesses and located others who were not contacted during the original investigation. The Department determined that the allegation of excessive use of force was "not sustained" and the other allegations were "unfounded." On September 14, 2015, after reviewing the Complainant's allegations and the new investigative report, the Board affirmed the Department's findings.

In two other appeals, both of which were brought by the same Complainant, the Board summarily affirmed the Department's determinations. The first of these appeals, which the Board decided on July 1, 2014, stemmed from two incidents relating to the Complainant's exclusion from certain University facilities. The Board affirmed the Department's findings, including UCPD's decisions to address the complaints through work-file memoranda, as opposed to conducting full investigations. The Board and the Department subsequently had a productive discussion regarding investigations and the use of work file memoranda. In the second appeal by the Complainant, the Board decided on December 11, 2014 to affirm the Department's disposition of the complaint; the Board determined that the Complainant alleged no plausible facts or violations to investigate.

Civilian complaints

Pursuant to the PRB's procedures, in all cases in which the Department resolves a civilian complaint and no appeal is taken to the Board, the Department is to supply the Board with a copy of the complaint and the Department's "Sufficiency Review Board report" for the case. The "Sufficiency Review Board report" is essentially a short letter to the complainant, which provides the Department's conclusions as to each of the allegations. The PRB Chair is entitled to ask the Department for a copy of the Department's entire investigative record in these cases, and the Chair may share the record with other Board members upon permission from the Vice Chancellor. (See PRB Procedures, §VIII.1.a.) The Department is also tasked with providing the Board with an annual report on complaints and inquiries that are resolved without a full investigation. The Board may pose questions to the Department based on the information it receives. (See PRB Procedures, §VIII.1.b.)

In addition to examining the complaints that resulted in the four appeals to the PRB, the Board has reviewed all civilian complaints filed with the department from January 2014 through December 2015, as well as the Department's conclusions with respect to these complaints. In one instance the PRB Chair requested and reviewed the UCPD's entire investigative record.

The Appendix to this report summarizes all of the complaints and dispositions. They contain allegations ranging from unprofessional conduct to unreasonable use of force. The Appendix lists the complaints in chronological order, except for those brought by a single individual, which are broken out separately. We are describing that individual's complaints separately because several of the complaints relate to each other, and it would be difficult to summarize them if not listed separately. We do not intend to suggest any inferences about the merits of the complaints through this structure.

Based upon its review of the complaints, appeals, and available materials, the Board concludes that—on the whole—the Department has responsibly investigated the allegations in the complaints. The Board has had some concerns about the Department's informal resolution of several complaints, particularly two complaints filed in 2014. The PRB expressed its concerns to the UCPD, and notes that all three complaints filed in November 2015 were assigned for investigation.

The 2014 Annual Public Meeting

In 2014, the Board held its annual public meeting on Thursday, May 8, 2014. The meeting is described in the Board's June 25, 2014 annual report. As noted in the June report, a significant portion of the meeting involved issues raised by survivors of campus sexual assaults. Among the other comments were several that related to policing and race; a question was raised whether the Department would maintain and provide statistics on the race of all individuals ticketed, detained, or arrested. After the May meeting, the PRB helped facilitate a meeting with UCPD Chief Bennett and survivors of sexual assault during the week after the annual meeting. The Board also reviewed summary data regarding UCPD traffic stops and race for calendar year 2014 and the first half of 2015, and has sought to facilitate the Department's effort to analyze the data further.

The 2016 Annual Public Meeting

The Board held a public meeting on May 6, 2016 at noon at the Haas Business School. The meeting was advertised in advance in three issues of the Daily Cal. The attendance was sparse; in addition to Board members, UCPD Chief Margo Bennett, and UCPD Captain Lee Harris, only one member of the public and one reporter from the Daily Cal attended the meeting.

The meeting began with introductions and a short discussion of the Board's role, responsibilities, and activities. The Board, members of the Department, and attendees then engaged in an open-ended conversation. The Board learned that the police departments at different campuses within the UC system are seeking to devise a systemwide policy with respect to civilian complaints. The Department agreed to share a draft of a policy with the Board so that members may comment. There was also a discussion of traffic stop data. The Department indicated it would follow up with an expert on campus to explore a detailed analysis of the data. (Following the meeting, the Board Chair also reached out to the expert, who is looking forward to a discussion with UCPD.) At the annual meeting, the Board and attendees discussed a few additional

topics, such as the current policies for protest responses and whether it would be feasible for the Department to follow up with complainants some period after their complaints have been resolved.

UC Berkeley Police Review Board

Andrew Brighten

John Cummins

Camille Fernandez

Douglas Hambleton

Michael G. Harris

Laura Kray

Marium Navid

Charles D. Weisselberg (Chair)

Appendix

Summary of Civilian Complaints Filed With the UCPD and the Department's Findings

Complaints (except those filed by a single individual)

2014

1. Complaint filed March 29, 2014.

Complainant ("C") alleged unprofessional conduct, discrimination, dishonesty, and unreasonable use of force following a traffic stop on March 28, 2014. A UCPD vehicle with three officers stopped "C" after he passed another vehicle, and made a left turn. During the course of the stop, an officer drew his weapon, "C" was removed from his vehicle, and was briefly handcuffed. He was cited for traffic violations and released. In addition to the allegation involving force, "C" alleged that the officers treated him disrespectfully at the scene and later that night when he came to UCPD in Sproul Hall to file a complaint, and were discriminatory. The Department conducted an investigation. With respect to the allegation of unreasonable use of force, the officer stated that he drew his weapon only after "C's" vehicle moved and the officer feared for his safety. On October 2, 2014, following an investigation, the Department notified "C" that his allegations of unprofessional conduct, discrimination, dishonesty, and unreasonable use of force were "not sustained."

"C" appealed to the Board by letter dated October 30, 2015. On January 8, 2015, the PRB remanded his case to the Department. The Board specifically requested that witnesses be re-interviewed regarding when and why the officer drew his weapon, whether the vehicle moved, and other facts. The Board also sought clarification or further investigation regarding claims that the officer was dishonest or behaved unprofessionally (including related to "C's" visit to UCPD), and whether there was any basis for the allegation of discrimination. Following that remand, a new investigator re-interviewed C and contacted or interviewed 13 witnesses. On June 15, 2015, the Department concluded that the allegation of use of unreasonable force was "not sustained." The other allegations were determined to be "unfounded." Following additional review, the Board affirmed the Department's findings on September 14, 2015.

2. Complaint filed April 21, 2014.

"C" alleged unprofessional conduct, unreasonable use of force, false detention or arrest, and careless, inattentive driving following a traffic stop. "C" stated that on April 14, 2014, an officer pulled over her car without cause, accusing her of not stopping at a stop sign, driving too fast, and causing a near miss with a police vehicle. "C" alleged that she was detained for more than half an hour and was forced to sign a form. She asked that the traffic citation be rescinded, and for disciplinary action and an apology. On April 28, 2014, the Department responded that it would resolve the complaint with a "Work File Memo." The Department's letter stated that a challenge to the traffic citation should be made in court, that records showed that the traffic stop lasted 19 minutes, and that a person served with a traffic citation is required to acknowledge receipt of the citation and

promise to appear in court. The Department's letter further provided that if "C" disagreed, she should contact the writer, who would arrange a meeting with an investigator.

3. Complaint filed June 27, 2014.

"C" alleged unprofessional conduct with respect to the Department's handling of a sexual harassment case, and its aftermath. "C" reported that a stranger had followed her across campus on April 11, 2014. An officer met with "C," showed her a photo array that included a possible suspect, and took her report. "C" and the officer had extensive subsequent email exchanges and several interactions. The officer and a number of other UCPD officers also responded to a report about individuals painting a sidewalk on May 2, 2014; "C" was finishing with an event and had used water-soluble paint. The Department conducted an investigation of the complaint. On October 3, 2014, following an investigation, the Department determined that the allegation of unprofessional conduct regarding the contact on May 12 to be "unfounded." With respect to the allegation of unprofessional conduct, primarily related to follow up emails, the Department found the allegation to be "exonerated." No appeal was filed to the Board from these findings, but the PRB chair reviewed the Department's investigative file.

4. Complaint filed July 17, 2015.

"C" alleged harassment and unprofessional conduct stemming from a contact in People's Park on July 13, 2015. "C" stated that an officer saw him with an open container of beer, and wrote him a citation. "C" alleged that the officer was unprofessional in the way the officer had "C" sign the citation, and in telling him not to smoke. On July 23, 2015, the Department responded to "C" by letter, advising him that based on his statement there were no violations of UCPD policy. The Department stated that it would address the concerns with the officer and document the complaint on an administrative work file memo.

5. Complaint filed September 2, 2014.

"C" alleged unprofessional conduct, unreasonable use of force, and aggressive interrogation tactics. The complaint concerned UCPD's actions in interviewing a person who had made an accusation of sexual battery against "C." "C" sent his complaint to the PRB. However, because it had not yet been investigated by UCPD, the Board referred the complaint to UCPD on September 8, 2014, and notified "C." The Department responded on September 18, 2014, stating that it would not be proper for UCPD to accept a complaint from a suspect in a sexual battery case on behalf of an alleged victim without corroborating documentation from the victim.

2015

1. Complaint filed November 9, 2015.

"C" alleged unprofessional conduct and harassment. On October 31, 2015, an officer cited "C" for tampering with a vehicle. "C" alleged that he was cited after a soft "bean bag" hit a parked vehicle while "C" and others were playing a game during a tailgate event prior to a football game. "C" also alleges that the officer then called his employer

(a government agency) on November 2, 2015, and made false and dishonest statements against “C.” The Department informed the Board that it is conducting an investigation of this complaint. As of May 25, 2016, the Department’s investigation was not yet completed. The Board will review the Department’s findings when they become available.

2. Complaint filed November 18, 2015.

“C” alleged that she was at a protest at a University facility on November 18, 2015 when she was grabbed and tackled by a UCPD officer, causing injury. She has alleged unprofessional conduct and unreasonable use of force. “C” has stated that she was seeking to pass along flyers and a poster, and there was no provocation for the incident. The Department informed the Board that it is conducting an investigation of this complaint. As of May 25, 2016, the Department’s investigation was not yet completed. The Board will review the Department’s findings when they become available.

3. Complaint filed November 30, 2015.

“C” alleged that an officer engaged in unprofessional conduct when “C” was ejected from an event on October 22, 2015, following a dispute regarding whether others had taken his seat. “C” was attending and working at that event. The Department conducted an investigation of this complaint. On May 3, 2016, UCPD responded to “C” by letter. The Department concluded that an allegation of unprofessional conduct in speaking to witnesses at the scene was “unfounded.” According to the Department’s letter, the officer at the scene followed standard practices in interviewing third-party witnesses. An additional allegation of unprofessional conduct in using “poor judgment” was “not sustained.”

Complaints brought by a single individual

During the reporting period, a single individual submitted a number of complaints. They are listed separately because many of the claims in the complaints are related to each other.

1 & 2. Complaints filed on April 2 and April 4, 2014.

In November 2013, “C” (a former student) was sent a letter revoking any privileges he had with respect to a particular program, and denying him access to certain University facilities. On March 4, 2014, “C” was at one of these facilities. A UCPD officer asked him to wait, and then issued a notice of immediate exclusion from campus. In the first complaint, “C” alleged that he was falsely detained or arrested by the officer on March 4. On March 15, “C” was at another university facility. An officer saw him there, and another notice was served on him, excluding him from campus. The second complaint, filed on April 4, relates to the March 15 incident. “C” alleged checked boxes on the form for unprofessional conduct, unreasonable use of force (or attempted unreasonable use of force), discrimination, dishonesty, false detention or arrest, and “other.” “C’s” main issue with respect to both complaints was the legitimacy of the November 2013 decision, revoking certain privileges and barring access to certain University facilities. On April

24, 2014, UCPD determined that there was no violation of policy or law, and the two complaints would be documented with a “work file memo.”

On June 5, 2014, “C” appealed to the PRB. On July 1, 2014, the Board affirmed the Department’s disposition of the two complaints. If an individual is barred from certain programs or facilities, officers must assume that those bans are valid unless or until the University instructs otherwise. The Board confirmed that the locations where “C” was contacted by officers were within the November 2013 ban. The Board also affirmed the disposition by way of a “work file memo,” but noted that it would have been a better for the Department to have documented its reasons for not conducting a full investigation and for issuing a summary disposition.

On July 14, 2014, “C” wrote to the Board, and asked for a new decision. The Board responded on July 17, 2014, stating that the earlier decision was final.

3. Complaint filed June 9, 2014.

On April 7, 2014, “C” was at a facility on campus (from which he had been barred), and observed an individual place a telephone call, possibly to UCPD. Through a series of contacts with a UCPD officer (including by email), and in the complaint, “C” sought to effect a citizen’s arrest of the individual making the telephone call. The complaint did not appear to be directed at actions taken by UCPD, and the emails to “C” addressed the fact that “C” was barred from certain University facilities, which was the topic of the complaints filed on April 2 and 4.

4. Complaint filed July 9, 2014 (and follow up on August 11, 2014).

“C” alleged that he was outside a campus building on July 8, 2014, when an officer came to approximately five feet of “C.” (“C” recognized the officer as an individual with whom he had contact in 2001.) “C” and the officer had a verbal exchange. “C” alleged that he told the officer that the officer had to stay away from “C,” and that the officer said that “C” had to leave the campus by midnight. On July 11, 2014, the Department responded by letter, stating that the officer is authorized to contact individuals on campus and inform them of rules and regulations. The letter also stated that under the California Code of Regulations, non-affiliates must be off University property by midnight, and UCPD would not further process the complaint. On August 11, 2014, “C” filed a complaint form disputing the July 11 disposition, and stating that the officer who sent the letter was wrong and should be disqualified. The Department has not been able to locate the documents showing the disposition of the August 11 complaint. However, a later document submitted to the University by “C” refers to a communication that “C” received from a UCPD Captain, indicating that the August 11 complaint did not show a violation of policy.

5. Complaint filed September 29, 2014.

“C” alleged unprofessional conduct, discrimination, unreasonable use of force, dishonesty, property damage or loss, false detention or arrest and “other” violations stemming from his observations on September 25, 2014. “C” wrote that he was in People’s Park that day when the same officer about whom “C” previously complained

rode by on a bicycle. “C” also said that the officer put on latex gloves and approached a young woman in the Park, whom someone else said was engaging in lewd conduct. The Department responded on September 30, finding no policy violations, and stating that “C” had only alleged that the officer had come into proximity with “C” while conducting official business.

On November 3, 2014, “C” appealed to the Board, alleging—among other things—that he should have been interviewed as part of an investigation and that the officer who resolved the complaint lacked qualifications and was not impartial. On December 11, 2014, the Board summarily affirmed the Department’s decision.

6. Complaint filed April 3, 2015.

“C” alleged false detention after an officer contacted him at a facility where he was previously banned. The officer approached him and asked several questions. She allegedly said he had a history of “stay away” orders. The officer then left. The complaint made other allegations, referring to incidents dating back to 2001. The Department responded on April 8, 2015, finding no violations.

7. Complaint filed April 20, 2015.

“C” filed a two-part complaint. One part related to an alleged incident when “C” was contacted by an officer in a classroom wing of a University building at approximately 10:00 p.m. on March 22, 2015. During this interaction, “C” was given an exclusionary order. The complaint alleged unprofessional conduct, dishonesty, false detention, and “other.” The “other” part of the complaint contained allegations relating to “C’s” November 2013 ban from certain University facilities. The Department responded on April 23, 2015, finding no violations.

8. Complaint filed June 9, 2015.

“C” filed a complaint alleging that he was attacked by an individual at People’s Park on May 6, 2015. He reported that to UCPD. UCPD dispatched officers to People’s Park to investigate but, the complaint alleges, there was miscommunication and “C” went back and forth between the park and UCPD at Sproul Hall. Eventually, “C” spoke with officers at People’s Park. The complaint alleges that the officers said that they investigated whether “C” was a victim of a crime, but that they had found no crimes. The Department responded on June 23, 2015, stating that the officers at the park confirmed that they spoke with individuals throughout the park, and no one could substantiate that a crime had occurred.

9. Complaint filed June 12, 2015, supplemented June 13, 2015.

“C” filed a complaint alleging that he tried to pay fees to access certain UC facilities (from which he was banned in 2013), and then he came to the Department to report that employees of that facility had committed criminal acts by banning him. He further alleged that the UCPD Sergeant who received his report about the facility employees was nice, he failed to be impartial as he did not investigate criminal actions by the employees of the facility. The Department responded on June 23, 2015, finding no violations, and

noting that UC employees (including campus counsel) were aware of and supported the ban.

10. Complaint filed June 29, 2015.

“C” filed a complaint about the same officer named in the July 9 and September 29, 2014 complaints. “C” alleged that on May 29, 2015, the officer rode past “C” on a bicycle, passing within three feet of him. The other parts of the complaint recite incidents that allegedly occurred in 2001 and later. The complaint accused the officer of crimes and sought to disqualify him from law enforcement employment. The Department responded on July 22, 2015, finding no violations.