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May 1, 2025

VIA ELECTRONIC MAIL [Email]

Honorable Mayor and Members of the Berkeley City Council
Council@berkeleyca.gov
2180 Milvia Street
Berkeley, CA 94704

Re: Impediments to PAB's Mandated Review of the 2024 Controlled Equipment Report

Dear Mayor and Councilmembers,

We write to inform you that the Police Accountability Board (PAB) has been prevented from fulfilling a core oversight function prescribed by Berkeley Municipal Code (BMC) Section 2.100.050: the meaningful review of Berkeley Police Department's (BPD) 2024 Controlled Equipment Report (the Report).¹

Under the Police Equipment and Community Safety Ordinance (the Ordinance), the PAB is required to determine whether BPD's use of controlled equipment complies with the standards outlined in Section 2.100.040.² These standards ensure that the use of militaristic equipment is not excessive or gratuitous, respects the community's civil liberties, and does not discriminate on the basis of a protected class. The Ordinance requires BPD to submit the Report only after the PAB has conducted its review and directs BPD to indicate the PAB's "approval or [BPD's] lack of compliance for each piece of Controlled Equipment."³ If the PAB identifies BPD's use of controlled equipment does not comply with the Ordinance, the PAB must submit a recommendation to Council to modify or revoke that particular equipment's use policy "in a manner that will resolve the lack of compliance."⁴

¹ BMC 2.100.050, "Reports on the Use of Controlled Equipment," <https://berkeley.municipal.codes/BMC/2.100.050>.

² See BMC 2.100.050(B)(1) (requiring the PAB to "determine, based on the report, whether each piece of Controlled Equipment reported on has complied with the standards for approval set forth in Section 2.100.040"), <https://berkeley.municipal.codes/BMC/2.100.050>; BMC 2.100.040(C) (describing the criteria that the PAB must consider), <https://berkeley.municipal.codes/BMC/2.100.040>.

³ BMC 2.100.050(B)(3), <https://berkeley.municipal.codes/BMC/2.100.050>.

⁴ BMC 2.100.050(B)(2), <https://berkeley.municipal.codes/BMC/2.100.050>.

Despite a timely request for relevant records and documentation to support the PAB’s review,⁵ BPD declined to provide the requested records, preventing the PAB from conducting the ordinance-mandated review. The requested records included body-worn camera footage and radio transmissions that were directly relevant and essential to analyze compliance with the standards set forth in Section 2.100.040. For example, body worn camera footage would allow the PAB to make an independent determination that, for a particular use, “there [was] no practicably available alternative equipment which is not Controlled Equipment that [was] sufficient for the purposes.”⁶ As a result, the PAB is unable to certify that BPD’s use of controlled equipment complied with the law.

When it refused the PAB’s records request, BPD expressed concerns about resource constraints, privacy considerations, and the perceived limitations of the Ordinance’s scope. We address each in turn. *First*, the PAB is very aware of the administrative burden that various reporting requirements place on BPD. To minimize the administrative burden, the PAB only requested records relevant to a small sample of the fifty (50) instances identified in the Report.⁷ In any event, administrative burdens are not a valid excuse to evade meaningful review, mandated by City ordinance. *Second*, members of the PAB are (1) privy to confidential records and (2) sworn to “maintain the confidentiality of the personnel files of sworn employees of the Police Department and all other matters that are confidential under state and federal law.”⁸ The PAB is able to submit a report to Council outlining its findings without breaking its oath of confidentiality. Indeed, access to records like body worn camera footage are the only way for the PAB to certify compliance with the standards set forth in Section 2.100.040. *Third*, the Ordinance plainly states the PAB’s authority to review uses of controlled equipment.⁹ If BPD disagrees with the plain meaning of the Berkeley Municipal Code, it should request guidance from the City Attorney, not unilaterally refuse a valid request.

We wish to underscore that this is not merely an administrative or procedural matter. The Ordinance was adopted in direct response to widespread public demand for greater transparency, accountability, and independent oversight in law enforcement operations.¹⁰ It reflects the City’s commitment to ensure that controlled equipment is used only in ways that respect civil rights, safeguard public safety, and avoid disproportionate impacts on marginalized communities. We acknowledge BPD’s willingness to engage in dialogue and its offer of generalized briefings. However, the PAB cannot independently evaluate compliance or make informed determinations without access to the underlying materials that substantiate BPD’s descriptions—a point emphasized by the Director of Police Accountability on the PAB’s behalf during the Police

⁵ BPD submitted the Report to ODPa on February 27, 2025. The PAB agendaed and discussed the Report at its March 5, 2025 meeting. ODPa requested the records from BPD on March 7, 2025.

⁶ BMC 2.100.040(C)(1)(a), <https://berkeley.municipal.codes/BMC/2.100.040>.

⁷ The PAB requested records related to 5 incidents, all pertaining to the use of Light-Sound Diversionary Devices (LSDDs) and the Long Range Acoustic Device (LRAD). March 5, 2025 PAB Agenda (p. 61), https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-03-05%20PAB%20Regular%20Meeting%20Packet%20-%20Amended_Final.pdf.

⁸ Oath of Office, April 23, 2025 PAB Agenda (p. 2), <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-04-17%20PAB%20Regular%20Meeting%20Packet.pdf>.

⁹ BMC 2.100.050(B)(2), <https://berkeley.municipal.codes/BMC/2.100.050>.

¹⁰ Aman, L. (May 28, 2021). Berkeley leaders demand more data about ‘militaristic’ police equipment. *Berkeleyside*. <https://www.berkeleyside.org/2021/05/28/berkeley-leaders-demand-more-data-about-militaristic-police-equipment>

Department's 2022 report presentation to Council,¹¹ which he echoed in a 2024 memo to the PAB regarding the 2023 report,¹² and was reiterated by former Chair Moore's 2024 letter to City Council on the matter.¹³ Despite these repeated efforts to elevate the issue of a need for access to records, the Board continues to face barriers that obstruct its Charter-mandated oversight responsibilities.

We respectfully urge the Council to support measures that ensure timely and complete cooperation with lawful requests made by the Police Accountability Board in the course of its independent oversight duties. We respectfully caution the Council on accepting this year's (and any future) Controlled Equipment Report from BPD until it has complied with the PAB-mandated review codified in the Police Equipment and Community Safety Ordinance. We remain committed to constructive engagement and welcome the opportunity to work collaboratively with all City departments, including the Berkeley Police Department, to uphold the principles of transparency, accountability, and community safety.

Respectfully,

Joshua Cayetano

Joshua Cayetano, Chair
Police Accountability Board

Cc: Paul Buddenhagen, City Manager
Farimah Brown, City Attorney
David White, Deputy City Manager
Jennifer Louis, Chief of Police
Jen Tate, Deputy Chief of Police
Hansel Aguilar, Director of Police Accountability

¹¹ City of Berkeley. (June 6, 2023). June 6, 2023 Regular City Council Meeting [Video]. Berkeley City Council. https://berkeley.granicus.com/player/clip/5062?publish_id=18eb84a2-0554-11ee-95dd-0050569183fa&redirect=true (Segment: 1:16:34–1:18:08)

¹² Gecan, A. N. (March 29, 2024). Flash-bangs, launchers: BPD brought out specialized gear less often in 2023, but used it more. Berkeleyside. <https://www.berkeleyside.org/2024/03/29/berkeley-police-department-equipment-report>

¹³ City of Berkeley. (June 4, 2024). City Council Regular Meeting: Agenda and Reports (Consent Calendar, Item 31, pp. 245–246). <https://berkeleyca.gov/sites/default/files/city-council-meetings/2024-06-04%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>