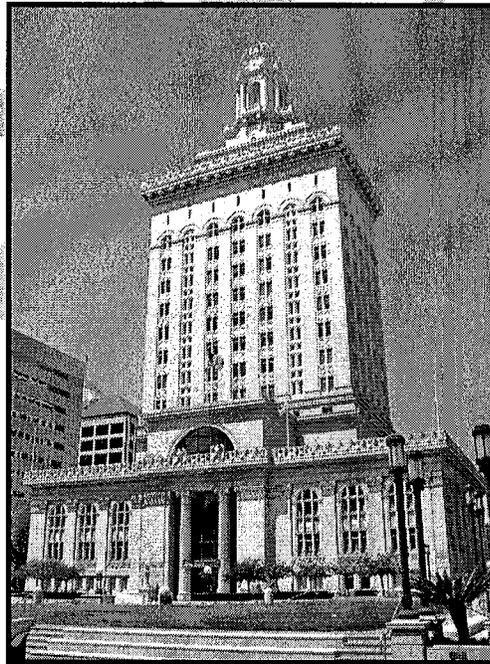


City of Oakland
**Citizens' Police
Review Board**

2017

Semi-Annual Report

JANUARY 1, 2017– JUNE 30, 2017



CITY ADMINISTRATOR'S OFFICE

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CPRB Mission Statement

The Citizens' Police Review Board strives to provide the community with a public forum to voice its concerns on police matters and individual cases alleging police misconduct, through a mechanism of independent, impartial, fair, and transparent civilian oversight.

CPRB SEMI-ANNUAL REPORT

January-June 2017

This report has been prepared in accordance with CPRB Enabling Ordinance No. 12102 C.M.S. (December 15, 1998) Section 6C 3 which specifies *"No less than twice each year the Board shall issue a detailed statistical report to the Public Safety Committee regarding complaints filed with the Board, the processing of these complaints and their dispositions."*

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Number of Complaints Filed with the CPRB

Complaints Filed by Intake Method
January-June 2017

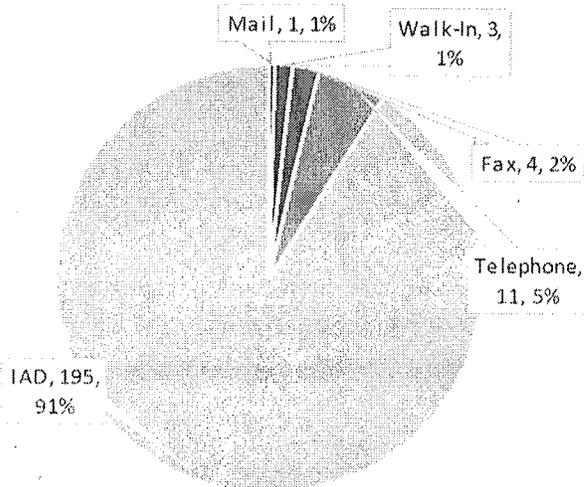


Figure 1

In the first half of 2017, the CPRB received 214 complaints. *Figure 1* shows a breakdown of the methods by which 2017 complaints were filed.

Figure 2 shows the number of complaints filed by month in 2017. In every month except January, the CPRB received fewer complaints in the first half of 2017 than during the comparable period in 2016.

Complaints Received by Month January-June 2017
(with 2016 comparison data)

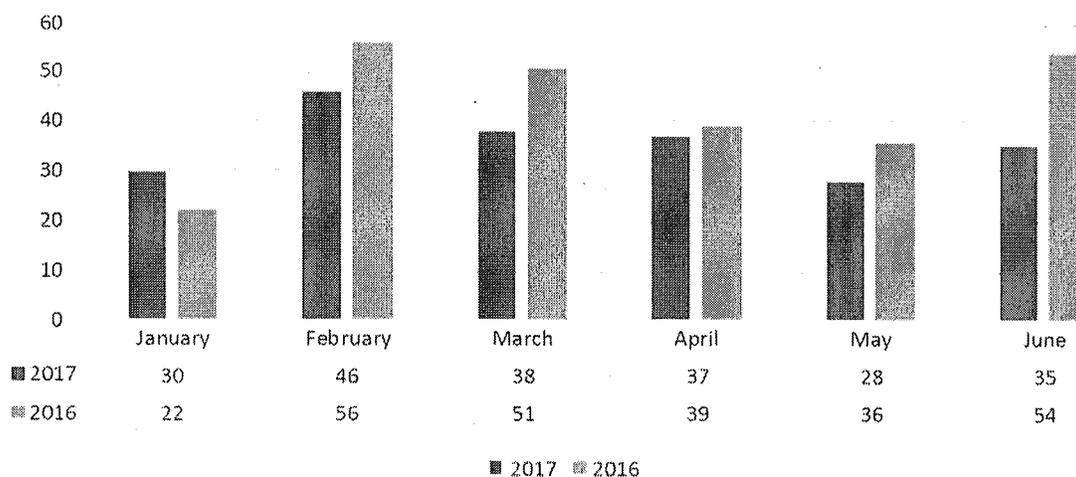


Figure 2

Complaint Incident Location

Complaints received by the CPRB include address information about the location of the incident that generated the complaint. *Figure 3* (below) is a map of this location information for complaints filed in the first 6 months of 2017.



Figure 3

Complaints Not Assigned for Investigation

Of the 214 complaints received in the first half of 2017, 29 were assigned to CPRB investigators for further investigation, and 42 remained unassigned at the end of June. Therefore, fourteen percent (14%) of all complaints were assigned for complete investigation. The other 143 complaints received were declined for a number of reasons. These included complaints in which clear evidence existed that the complaint was unfounded because the incident did not occur, complaints that did not constitute violations of the OPD Manual of Rules (MOR), officers who were exonerated because the incident generating the complaint was found to have occurred but the officer’s actions were lawful and necessary, lack of cooperation by complainants, instances in which specific officers were not identified, and issues of jurisdiction. *Figure 4* shows the breakdown of all declined complaints by the reason that they were declined. Cases listed as Other were most likely to have been resolved through informal complaint resolution between officer and complainant prior to investigation, and include instances of officer conduct which did not rise to the level of a MOR violation.

**Complaints Received but not Assigned for Investigation
by Reason for Declination
January-June 2017**

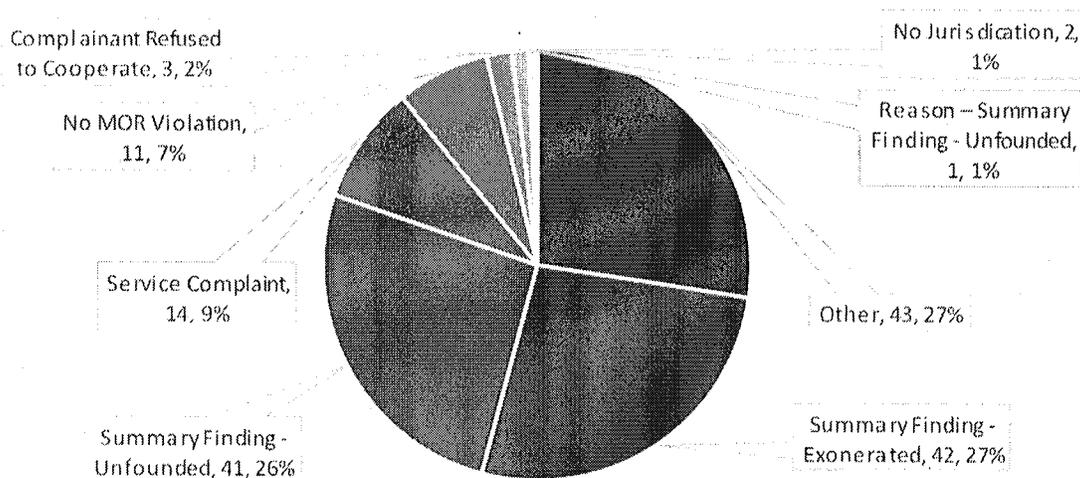


Figure 4

Cases Assigned for Investigation

Complaints that involve use of force, profiling, in which the CPRB legitimately believes that there is a basis for a positive finding of a MOR violation, or that the Director deems appropriate for further investigation are assigned to the professional investigative staff of the CPRB. Individual investigations include a review of all police documents and reports, camera footage (where available), and interviews with complainants, witnesses and officers named. Each complaint may generate numerous allegations of misconduct involving one or many officers, and each allegation is thoroughly investigated to determine whether the incident took place and whether it complied with existing OPD policy and training. Individual complaints therefore vary in their complexity depending on the number of allegations and available evidence, from relatively simple complaints involving single complainants and officers and a limited number of allegations to major incidents which may involve dozens of witnesses and officers and hundreds of hours of video evidence. Complaints are categorized based on their complexity at intake and assigned to investigators according to their availability.

Twenty-nine (29) complaints were assigned for further investigation in the first half of 2017.

Cases Assigned for Investigation January-June 2017	
1 - Involving use of force/bodily injury; Sexual Misconduct; Discrimination; Minors; Racial Profiling	14
2 Average complexity	6
3 Most complex	8
2 - Improper detention (profiling); Improper Search; Untruthfulness; Theft	7
2 Average complexity	7
3 - Service/Response/Reporting; Other	8
1 Minimal effort to complete	3
2 Average complexity	5
Grand Total	29

Resolved Complaints

The CPRB resolved 40 separate complaints in the first half of 2017; thirty-three (33) by Administrative Closure, five (5) by Evidentiary Hearing, and two (2) by Staff Recommendation brought directly to the City Administrator. Staff Recommendation is another method to bring findings to the City Administrator when a hearing cannot be held, for example, because of pending litigation or unavailability of parties or when the board is unable to hear an Administrative Closure due to schedule conflicts.

Both complaints received and closures are slightly lower in the first half of 2017 than the comparable period of 2016, however more closures went to full Board Hearing (5) than in the entirety of the previous year.

The number of resolved complaints in a given year is related to both the number of complaints filed that year and the number of complaints filed in the previous year. *Figure 5* (below) shows the number of resolved complaints in each year since 2005.

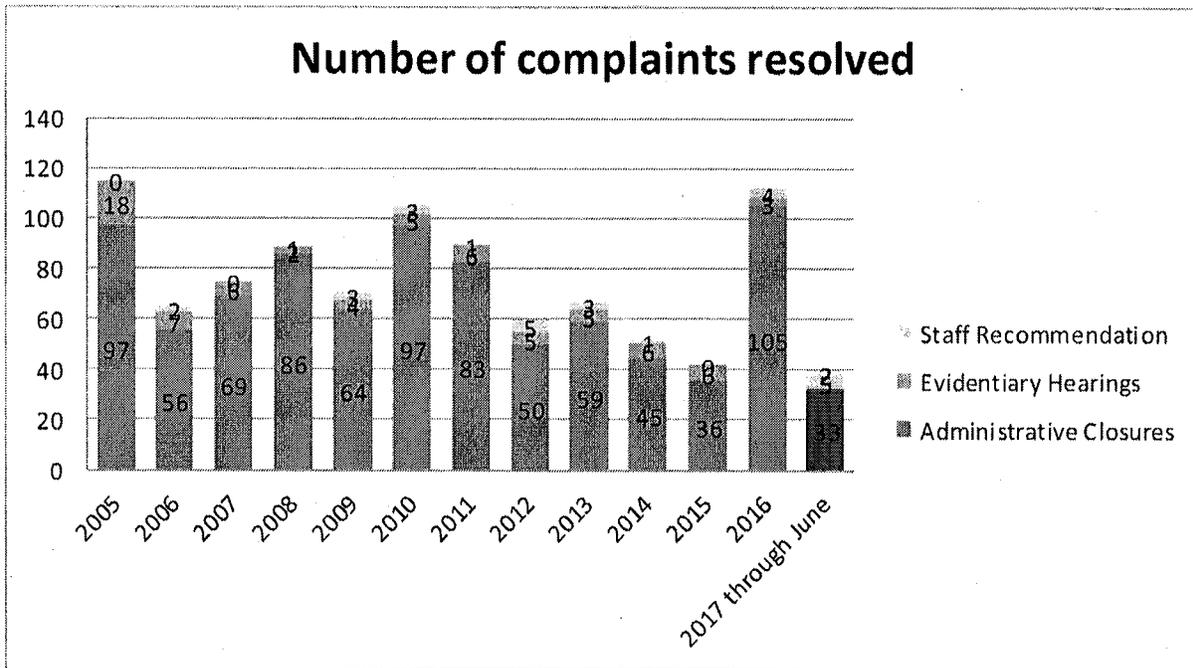


Figure 5

Board Findings for Resolved Allegations

In the first half of 2017, the CPRB was able to determine findings in 161 of the allegations underlying complaints that were investigated. In ten percent (10%) of those allegations, CPRB investigators were unable to reveal sufficient evidence to affirm whether an officer's actions were either appropriate or inappropriate resulting in a finding of Not Sustained. Seventeen (17) allegations (11%) resulted in no finding because complainants and/or witnesses did not provide sufficient information for the CPRB to complete its investigation. In the remaining 79% of these allegations, CPRB investigations revealed sufficient evidence for positive findings regarding incidents that were subject to citizen complaint. Twenty (20) allegations (12%) were sustained and generated disciplinary recommendations (Recommendations shown on page 13).

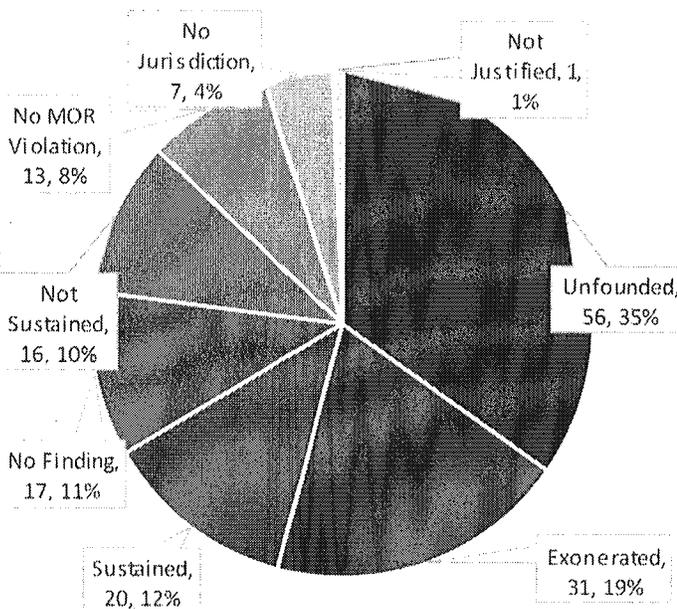


Figure 6

Explanation of Board Findings

For a given allegation, the Board may vote for one of the following four findings:

- **Sustained:** The act(s) alleged by the complainant occurred and constituted misconduct.
- **Exonerated:** The act(s) alleged by the complainant occurred. However, the act(s) were justified, lawful, or proper.
- **Unfounded:** The act(s) alleged by the complainant did not occur.
- **Not Sustained:** The available evidence can neither prove nor disprove the act(s) alleged by the complainant.

A finding of Sustained affirms that the officer acted inappropriately, and findings of Exonerated or Unfounded affirm that the officer acted appropriately. These findings require the vote of five Board members. A Not Sustained finding makes no judgment about the behavior of the officer; a majority of Board members present may reach a finding of Not Sustained.

Allegation Categories and MOR Violations

Each complaint consists of allegations of misconduct against specific officers. Misconduct is defined as a violation of the Oakland Police Department Manual of Rules (MOR), and is characterized by both the category of violation and the specific rule that the officer is alleged to have violated. The nature and number of allegations in a complaint sometimes change over the course of investigating a case. Each complaint may name multiple officers and each officer may be the subject of multiple allegations. In the first half of 2017, complaints ranged from 1-24 allegations and the average complaint consisted of 4.025 allegations.

Allegations by MOR Violation	Count	Sustained	
234.00-2 Commanding Officers - Authority and Responsibilities	5	1	20.0%
285.00-1 Supervisors - Authority and Responsibilities - Gross dereliction of duty	1		
285.00-2 Supervisors - Authority and Responsibilities	6	2	33.3%
314.03-2 General Conduct	3		
314.04-1 Conduct Toward Others - Harassment and Discrimination	8		
314.07-2 Conduct Toward Others - Demeanor	18	4	22.2%
314.08-2 Conduct Toward Others - Relationships	1		
314.39-1 Performance of Duty - Miranda Violation	1	1	100.0%
314.39-2 Performance of Duty - Care of Property	4		
314.39-2 Performance of Duty - General	24	7	29.2%
314.39-2 Performance of Duty - Personal Digital Recording Device (PDRD)	3	2	66.7%
314.39-2 Performance of Duty - Unintentional/Improper Search, Seizure, or Arrest	16	2	12.5%
314.42-1 Obedience to Laws - Felony/Serious Misdemeanor	2		
314.42-2 Obedience to Laws - Misdemeanor/Infraction	1		
314.48-1 Reporting Violations - Failure to Report Misconduct When Required	1		
314.69-1 Gifts, Gratuities - Soliciting or Accepting	2		
370.27-1 Use of Physical Force - Level 1-4	41		
370.81-1 Assisting Criminals	1		
398.76-1 Refusal to Accept or Refer a Complaint (Intentional)	2		
398.76-2 Failure to Accept or Refer a Complaint (Unintentional)	3	1	33.3%
398.77-1 Refusal to Provide Name or Serial Number	1		
398.80-1 Truthfulness	3		
No Duty/No MOR Violation	14		
Grand Total	161	20	12.4%

Allegations by Category	Count	Sustained	
Bias/Discrimination	2		
Excessive Force - Bodily Injury	3		
Excessive Force - Choking	1		
Excessive Force - Grab/push/shove/trip	7		
Excessive Force - Handcuffs too tight	3		
Excessive Force - Kicked or kneed	7		
Excessive Force - Other	8		
Excessive Force - Pointing of firearm	3		
Excessive Force - Strike w hand or unknown object	6		
Excessive Force - Strike w weapon	1		
Excessive Force - Taser	2		
Excessive Force - Use of patrol vehicle	2		
Failure to Act - Failure to accept or refer a complaint	4		
Failure to Act - Failure to activate PDRD	3	2	66.7%
Failure to Act - Failure to identify self	1		
Failure to Act - Failure to investigate	3	1	33.3%
Failure to Act - Failure to properly supervise	5	2	40.0%
Failure to Act - Failure to report misconduct	2		
Failure to Act - Failure to write a report	6	2	33.3%
Failure to Act - Other	15	4	26.7%
Harassment	2		
Improper Supervision	6	1	16.7%
Improper/Unlawful Arrest	2		
Improper/Unlawful Detention/Stop	10	1	10.0%
Improper/Unlawful Search - Person	3		
Improper/Unlawful Search - Vehicle	2	1	50.0%
Minors	1		
Other	15	1	6.7%
Property - Damaged/missing/seized	3		
Property Stolen	2		
Racial/Identity Profiling - Race	3		
Service/Response/Reporting	4	1	25.0%
Sexual Misconduct	1		
Untruthfulness - Reports or booking	2		
Untruthfulness - Verbal statements	1		
Verbal Misconduct - Other	4		
Verbal Misconduct - Profanity	2	2	100.0%
Verbal Misconduct - Rudeness	12	2	16.7%
Verbal Misconduct - Threats	2		
Grand Total	161	20	12.4%

Administrative Closures

After an investigation is complete, a complaint is administratively closed and documented by a written Administrative Closure Report that is considered by the Board if a hearing on the complaint would not facilitate the fact-finding process. The Board votes on each allegation included in an Administrative Closure Report, and on proposed discipline in the case of sustained allegations of officer misconduct. **In the first half of 2017, the Board administratively closed 33 complaints.** Figure 7 (below) shows the reasons for all Administrative Closures in the first half of 2017. The following page defines the reasons complaints are administratively closed. The largest number of complaints are administratively closed because a hearing would not facilitate the fact finding process based on the evidence collected by staff.

§3304 Violation(s)

There were two (2) cases which the CPRB closed through a Staff Recommendation directly to the City Administrator because holiday breaks in the regular Board meeting schedule would otherwise have led to a violation of the §3304 statute of limitations during the first half of 2017. There were no §3304 violations during this period.

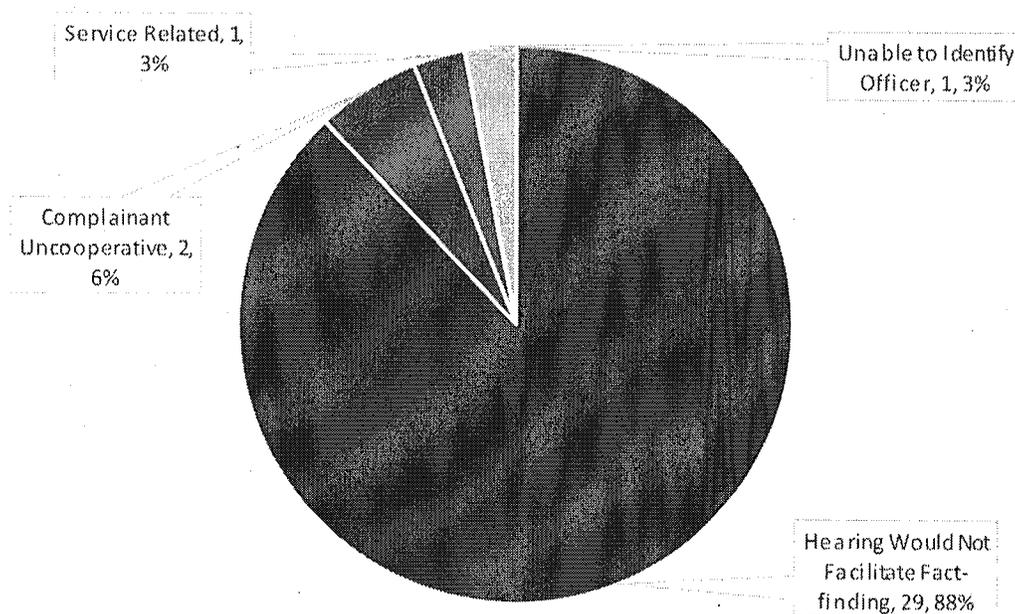


Figure 7

Reasons for Administrative Closures

Hearing would not facilitate the fact-finding process

The complaints that fall under this category include either those in which the investigator finds conclusive evidence to sustain an allegation, or those in which they are unable to find corroborating evidence of the allegations. If the investigator finds conflicting evidence, or if questions remain that would benefit from the gathering of additional sworn evidence, the case proceeds to the full Board Hearing procedure.

No MOR Violation

These complaints do not constitute a violation of OPD's Manual of Rules. Such complaints include actions lawful for officers to do in particular incidents which a complainant may be unaware of as being legal.

Lack of jurisdiction

If the subject of an investigation is found not to be a sworn Oakland Police Officer, the CPRB does not have jurisdiction to impose discipline, and the case is closed without a finding.

Service related

A few complaints are filed with the CPRB which complain about the quality of service received, for example, the time it takes OPD to respond to a call for service. Such complaints are not individual acts of officer misconduct.

3304 Statute of Limitations

A one-year statute of limitations applies to bringing disciplinary action against a public safety officer (CA Government Code §3304). Therefore, investigations in which a full Board Hearing process would cause the case to exceed the statutory 3304 deadline are sometimes forwarded as Administrative Closures with an investigator recommendation in order to assure that the Board's findings and recommended discipline comport with state law.

Complaint withdrawn

If a complainant voluntarily withdraws his or her complaint, it is closed without a finding.

Complainant uncooperative

If a complainant repeatedly fails to respond to the investigator's request for an interview, the complaint is closed without a finding.

Unable to identify officer(s)

If an investigation cannot determine the identity of the officer involved in a complaint, it is closed without a finding.

Evidentiary Hearings Conducted January-June 2017

Complainant(s) Hearing Date	Allegation	Allegation Category	Board Finding	Board Disciplinary Recommendation
Zerena Diaz 1/26/2017	16-0115(1)	Excessive Force - Use of patrol vehicle	Not Sustained	
	16-0115(2)	Failure to Act - Failure to write a report	Sustained	Suspension
	16-0115(3)	Other	Sustained	Suspension
	16-0115(4)	Failure to Act - Failure to properly supervise	Sustained	Suspension
	16-0115(5)	Service/Response/Reporting	Sustained	Suspension
	16-0115(6)	Untruthfulness - Reports or booking	No Finding	
Christopher Britt 2/23/2017	16-0199(1)	Improper/Unlawful Detention/Stop	Exonerated	
	16-0199(2)	Improper/Unlawful Detention/Stop	Exonerated	
	16-0199(3)	Verbal Misconduct - Profanity	Sustained	Counseling
	16-0199(4)	Verbal Misconduct - Other	Unfounded	
	16-0199(5)	Racial/Identity Profiling - Race	Unfounded	
Trudi Bryant-Williams 5/11/2017	16-0487(1)	Verbal Misconduct - Rudeness	Sustained	Written Reprimand
	16-0487(2)	Failure to Act - Failure to investigate	Sustained	Suspension
Charrika Harris 5/25/2017	16-0545(2)	Verbal Misconduct - Rudeness	Sustained	Counseling
	16-0545(5)	Verbal Misconduct - Threats	Unfounded	
	16-0545(6)	Failure to Act - Failure to activate PDRD	Unfounded	
Faheema Kayaba, et al. 3-member Hearing 6/17/2017 Full Board Review 6/22/2017	16-0669(H1)	Improper/Unlawful Detention/Stop	Sustained	Counseling
	16-0669(H2)	Improper Supervision	Unfounded	
	16-0669(H3)	Failure to Act - Failure to properly supervise	Sustained	Written Reprimand
	16-0669(H4)	Improper/Unlawful Detention/Stop	Unfounded	
	16-0669(H5)	Improper Supervision	Unfounded	
	16-0669(H6)	Improper Supervision	Not Sustained	
	16-0669(H7)	Improper/Unlawful Detention/Stop	Not Sustained	
	16-0669(H8)	Improper Supervision	Unfounded	
	16-0669(H9)	Improper Supervision	Unfounded	
	16-0669(H10)	Improper/Unlawful Search - Vehicle	Sustained	Written Reprimand
	16-0669(H11)	Failure to Act - Failure to properly supervise	Exonerated	
	16-0669(H12)	Improper Supervision	Sustained	Counseling
	16-0669(H13)	Failure to Act - Failure to properly supervise	Not Sustained	
	16-0669(H14)	Failure to Act - Other	Exonerated	
	16-0669(H15)	Failure to Act - Failure to properly supervise	Unfounded	

Evidentiary Hearings

The Board uses several methods to review a complaint to determine the findings and appropriate discipline for the subject officers. In certain cases, complaints reviewed by CPRB investigators contain conflicting evidence, turn up issues that were not sufficiently addressed by the investigative documentation provided by the OPD Internal Affairs Division and investigator interviews, or for some other reason are determined to require the collection of sworn testimony during a formal evidentiary hearing process before the full board.

Prior to an Evidentiary Hearing, the board generally assigns two (2) members as Examiners. These board members meet prior to the full board hearing to review all existing available evidence and design questions meant to address specific board concerns. During the Evidentiary Hearing itself, Board Counsel describes the process for witnesses and their legal counsel (if applicable); swears in all witnesses and subject officers who are to provide testimony; and serves as court officer, after which the assigned board examiners engage directly with called witnesses. After the hearing, the Board convenes in Closed Session to discuss the evidence in the case and any testimony provided during the hearing, and to make a determination as to their finding for each allegation contained in the complaint based on these discussions.

In case #16-0669, Faheema Kayaba, et al., the board turned to an alternate method in which a Three-Member Panel selected from the Board was designated to conduct the Board Hearing, after which the entire board heard and voted on the disposition of the case based on the recommendations generated by the Panel.

The table at left lists the complaints and allegations decided by the Board after an Evidentiary Hearing in the first half of 2017.

Board Disciplinary Recommendations for Sustained Findings

Board Disciplinary Recommendations for Sustained Findings January-June 2017

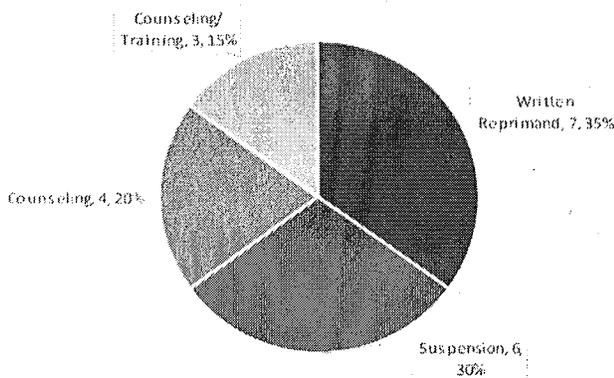


Figure 8

The Board recommended discipline in response to 20 individual allegations closed through Board Hearings and Administrative Closure Reports in 2017. Disciplinary recommendations ranged from counseling to suspension. *Figure 8* shows all recommendations made by the Board in the first half of 2017.

Administrative Closures by Board Meeting

Board Meeting	Case Number	Complainant
1/12/2017	16-0065	Leonard Ambrose
	16-0073	Dane Smith
	16-0146	Saleem Bey
	16-0161	Andrew King
	16-0176	Victor Xavier Pamiroyan
1/26/2017	16-0184	Kira Janai Secrease
	16-0329	Dunta Jackson
	16-0141	Sarrita Adams
2/9/2017	16-0606	Ben McBride
	16-0662	Ben McBride
	16-0663	Ben McBride
	16-0309	Delvon D. Wash
	16-0158	Lavert Maxie
	16-0147	Virginia Sorgi
2/23/2017	15-0883	Mary King
	16-0477	Kim Eschenmann
3/9/2017	16-0220	Alphonso Corro Rojas
	16-0337	Erica Cloird
	16-0365	Ebony Van Pelt
	16-0778	Steven Lamont Day, Jr.
3/23/2017	16-0667	Gabriel Ortiz
4/13/2017	16-0389	Jaton Horatio Hurt
4/27/2017	16-0386	Arnold Glaubitt
	16-0387	Jimmy Walker
	16-0475(1)	Alton Long, Leon Williams, Jimmy Watkins
	16-0870	Ashanti Renee Payne
5/11/2017	16-0534	Tamala Denise Tisdale/Meya Dean
5/25/2017	16-0724	Yolanda Davis-Rodgers
	16-0475(2)	Alton Long, Leon Williams, Jimmy Watkins
	16-0669(AC)	Faheemah Kayaba, et al
6/8/2017	16-0545(AC)	Charrika Harris
	16-0870	Ashanti Renee Payne
	16-0757	Jolie Brown
6/22/2017	16-0589	Latrelle Parker
	16-0634	Sarai Smith-Mazariegos, Nola Brantley
	16-0776	Bernell Williams
	16-0876	Robert Campbell, Amy Carozza

Closures by Staff Recommendation by Board Meeting

Board Meeting	Case Number	Complainant
1/12/2017	16-0015	Alicia Hurtado
2/9/2017	16-0142	Caitlin Miller

DRAFT

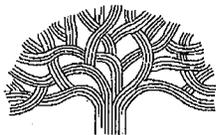
NON-CONFIDENTIAL SUMMARY REPORTS OF INVESTIGATIONS

In order to increase the public transparency of CPRB findings and work product, staff has developed a new format for public disclosure of closed investigations in conjunction with the Oakland City Attorney's Office. Though all confidential and legally protected materials have been redacted, these summary reports represent a vast expansion in the public record of CPRB investigations, analysis and findings.

Appendix C includes the new non-confidential summary reports for every case closed by the CPRB during the first half of 2017. In the future, such reporting will be available to the public for all CPRB investigations once these investigations have been closed.

(A sample non-confidential summary report has been included for the purposes of this draft. The final report submitted to Public Safety will contain the full set of summaries as described above)

NON-CONFIDENTIAL SUMMARY REPORT



**CITY OF OAKLAND
CITY ADMINISTRATOR'S OFFICE
CITIZENS' POLICE REVIEW BOARD**

CLOSURE REPORT: DECEMBER 20, 2016

250 FRANK H. OGAWA PLAZA * SUITE 6302 * OAKLAND, CA 94612 * 510-238-3159 * FAX 510-238-6834 * TTY 510-238-2007

Complainant's Name: Alicia Hurtado
CPRB Case Number: 16-0015
Subject Officer(s): S.O. #1
Witness Officer(s): W.O. #1
Civilian Witness(es): None Identified
Date of Incident: 01/03/2016
Location of Incident: Public Street, Oakland, CA
Date Complaint Filed: 01/08/2016 (IAD)
01/11/2016 (CPRB)
Investigator: Nikki Greer
3304 Date: 01/06/2017

This is a brief summary designed only to enumerate salient points regarding allegations of misconduct by sworn members of the Oakland Police Department (OPD) and does not reflect the entirety of the extensive investigation by the Complaint Investigators of the Citizens' Police Review Board (CPRB) or the deliberations by the CPRB Commissioners. In evaluating this matter, the CPRB considered the information contained, in part, on the following pages, including: statements from complainants, witnesses, subject officers and witness officers; police reports and other related OPD documentation; and any related third-party evidence obtained during the course of the CPRB investigation.

In accordance with state law, divulging the identity of police officers in public reports is prohibited, so the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male, female, or non-binary.

DESCRIPTION OF COMPLAINT:

(Note: "They" and "them" will replace "she" and "her" when referring to the Complainant in this report in accordance with the Complainant's preferred pronoun)

This complaint originated via a telephone call to the Oakland Police Department (OPD) Internal Affairs Division (IAD). The Complainant alleged the officer intimidated them with his tone of voice and harassed them by calling them derogatory names.

ALLEGATIONS:

- 1) **MOR 314.04 - Conduct toward Others – Harassment and Discrimination** – It is alleged by the Complainant that S.O. #1 harassed them and used female pronouns in a derogatory way saying “she looks like a girl so she must be a girl.”

314.04 CONDUCT TOWARD OTHERS – HARASSMENT AND DISCRIMINATION

Members and employees shall treat all persons with courtesy and respect. The Department has a zero tolerance policy for harassment and discrimination against members, employees and persons on the basis of race, religion, national origin, marital status, age, sex, sexual orientation, ancestry, physical or mental disability, or medical condition. The Department prohibits conduct that violates the specified City Administrative Instruction.

Any member or employee who harasses or discriminates against another member, employee, or any person, or engages in any inappropriate workplace conduct that violates City Administrative Instruction 71 shall be subject to severe disciplinary action, including discharge from the City service.

Any member or employee who has knowledge that another member or employee has engaged in harassment or discrimination or inappropriate conduct that violates the specific City Administrative Instruction is strictly charged with the responsibility for reporting that conduct in accordance with the provisions of Manual of Rules Section 314.48 (Reporting Violations of Laws, Ordinances, Rules or Orders).

RECOMMENDED FINDING: Unfounded - The investigation has determined that the act or acts complained of did not occur.

- 2) **MOR 314.07 - Conduct Toward Others – Demeanor** – It is alleged by the Complainant that S.O. #1 laughed and made fun of the request not to refer to the Complainant as “she.”

314.07 CONDUCT TOWARD OTHERS – DEMEANOR – Members and employees shall perform their duties attentively and courteously, avoiding rude, threatening, harsh, insulting, insolent or demeaning language, and they shall maintain a professional bearing regardless of provocation to do otherwise.

APPENDIX C — NON-CONFIDENTIAL SUMMARY REPORTS OF INVESTIGATIONS

Members and employees shall treat superior officers, subordinates, and peers with respect. They shall be courteous and civil at all times in their relationships with one another and shall avoid any inappropriate conduct.

All persons, except the very youthful and those known personally by the member or employee, shall at all times be addressed by their appropriate title followed by their last name. When on duty and in the presence of others, superior officers shall be referred to by rank title.

Members and employees shall attend to requests from the public quickly and accurately, avoiding unnecessary referral to other parts of the Department.

Orders from superior to subordinate members and employees shall be given in a civil manner, without the use of profane or derogatory language.

RECOMMENDED FINDING: Unfounded - The investigation has determined that the act or acts complained of did not occur.

- 3) **No MOR Violation** – It is alleged by the Complainant that S.O. #1 was aggressive in his words and intimidating when he spoke loudly, stood close to their car and opened the car door without permission.

DGO K-3 USE OF FORCE (Effective 16 Oct 14)

The purpose of this order is to set forth Departmental policy and procedures for the use of force by members.

I. POLICY STATEMENT

A. The Oakland Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police mission with respect and minimal reliance on the use of physical force.

B. This policy provides guidelines and procedures for using force in order to protect the safety of both themselves and the public in accomplishing the police mission

C. Members are allowed to use a reasonable amount of force based on a totality of the circumstances. Members are required to de-escalate the force when the member reasonably believes a lesser level or no further force is appropriate. Members shall intervene and prevent or stop the use of unreasonable force by other members.

III. FORCE OPTIONS THAT DO NOT INCLUDE FIREARMS

APPENDIX C — NON-CONFIDENTIAL SUMMARY REPORTS OF INVESTIGATIONS

- A. Verbal Persuasion Verbal commands are the minimum means of halting an offense, gaining compliance or overcoming resistance. A member, announcing his or her identity as a peace officer, presence and intentions, may result in the peaceful resolution of the situation. Verbal commands shall be courteous and clearly relay the police objective.

To the extent possible and without ever compromising safety, members are required to use verbal commands to accomplish the police objective before resorting to physical force. Members shall consider the possibility of any language barriers, noise, other distractions, or disabilities which may impair or frustrate the member's effort to courteously and clearly communicate with the person.

RECOMMEDED FINDING: No MOR Violation

BACKGROUND:

On January 3, 2016, police made contact with the Complainant because they were double-parked. Officers issued a warning and allowed the Complainant to leave. Five days later the Complainant contacted IAD to make a complaint regarding the incident.

ANALYSIS:

- 1) **Did S.O. #1 harass the complainant and use female pronouns in a derogatory saying "she looks like a girl so she must be a girl?"**

MOR 314.04 - Conduct toward Others – Harassment and Discrimination

The investigation revealed that S.O. #1 did not use female pronouns in a derogatory way or make the comment the Complainant alleges. S.O. #1 made a similar statement which was appropriate considering the context and circumstances.

The Complainant and witnesses confirmed during interviews with IAD that the Complainant was double parked when officers made contact with the Complainant. The PDRD revealed that S.O. #1 waited fifteen minutes before conducting an enforcement stop on the Complainant's vehicle and shows the Complainant acknowledged the vehicle was double parked for at least fifteen minutes before officers made contact with them. The PDRD also shows that S.O. #1 exited a marked patrol car dressed in full uniform and informed the Complainant within seconds that he was conducting a traffic stop because the vehicle was double parked. The PDRD also shows that the Complainant refused to provide their driver's license, registration, and insurance, and did not provide the documents until four minutes into the stop, after several requests from S.O. #1. The Complainant and PDRD also confirm that the Complainant moved their vehicle into a parking space and attempted to exit the vehicle while S.O. #1 was conducting the traffic stop.

In this instance S.O. #1 gave the Complainant ample opportunity to move their vehicle before he took enforcement action. DGO K-3, Use of Force specifies that officers use "verbal persuasion"

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and that “verbal commands” are the minimum means of halting an offense, gaining compliance or overcoming resistance. The interaction between S.O. #1 and the Complainant was prolonged because the Complainant was noncompliant during the stop, first failing to move their vehicle as directed, then refusing to provide their identification, license and registration. This required S.O. #1 to speak to the Complainant longer than usual, utilize a stern voice, assert his presence and repeat directives in an attempt to gain compliance and accomplish his objective. S.O. #1 was conducting a lawful traffic enforcement stop, not harassing the Complainant.

Regarding the derogatory use female pronouns; PDRD footage shows that S.O. #1 used “she” twice before the witness (not the Complainant) asked him to stop using “she.” S.O. #1 responded “Well, it looks like a girl to me” then asks the witness several times for the correct pronoun, which is not provided.

S.O. #1 used female pronouns while communicating with his partner and the witness. He asked but was not provided the correct pronoun, he acknowledged that he was using the incorrect pronoun and did not know the correct pronoun to use. At this point S.O. #1 still has not been provided with the proper pronoun and did not know the Complainant’s name because the Complainant had not provided their documents to the officer. Considering the circumstances S.O. #1’s use of female pronouns was not derogatory and his statement that the Complainant looked like a girl was appropriate considering the context.

The recommended finding for this allegation is **Unfounded**. The investigation has determined that the act or acts complained of did not occur.

2) Did S.O. #1 laugh and make fun of the request not to refer to the Complainant as “she?”

MOR 314.07 - Conduct Toward Others – Demeanor

The investigation revealed that S.O. #1 did not laugh and make fun of the witness’ request to not refer to the Complainant as “she.” The PDRD shows that S.O. #1 laughed when the witness told him he did not want to know the correct pronoun to use, not when she requested that he not refer to the Complainant as “she.”

The recommended finding for this allegation is **Unfounded**. The investigation has determined that the act or acts complained of did not occur.

3) No MOR Violation

The Complainant alleges that S.O. #1 was aggressive in his words and intimidating when he spoke loudly, stood close to her car and opened the car door without permission; however, these actions, if true, do not constitute an MOR violation.

The recommended finding for this allegation is **No MOR Violation**.

REASON CASE IS PROPOSED FOR CLOSURE:

Oakland City Council Ordinance No. 12454 C.M.S, section (6)(G)(9) provides “After appropriate investigation and upon the recommendation of staff, the Board may dismiss a

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complaint without a hearing if it concludes: (1) that a hearing would not facilitate the fact-finding process, and (2) that no good cause is shown for further action.”

EFFORTS MADE TO CONTACT THE COMPLAINANT AND THE SUBJECT OFFICERS ABOUT THIS PROPOSED CASE CLOSURE:

An administrative closure letter was sent to the Complainants by regular and certified mail and to the subject officer(s) via inter-office mail on **December 14, 2016.**

DRAFT