

Berkeley can't hold public police misconduct hearings, judge rules

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2007-02-12 17:37:03 PST -- The **Berkeley Police Review Commission** cannot hold open police-misconduct proceedings, an Alameda County judge said in a ruling made public Monday.

Citing a state **Supreme Court** ruling last year that effectively halted such public hearings, Judge **Winifred Smith** said the commission's officer misconduct fall under the same confidentiality provisions mandated by state law and the Police Officers Bill of Rights.

The city had argued that the commission was exempt in part because it did not decide on discipline, which is determined by the Berkeley city manager and police chief. But Smith wrote in her ruling Friday that the commission is a "sub-agency" of the city and not a "completely separate entity."

The judge cited a Supreme Court ruling in August that sided with a fired San Diego County sheriff's deputy who sought to keep details of his termination appeal confidential. The high court said state law requires police personnel records to be kept private by an officer's "employing agency."

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"This is excellent news," said **Alison Berry Wilkinson**, an attorney representing the Berkeley Police Officers Association, which filed a lawsuit against the city in 2002, before the Supreme Court ruling.

"When we first filed this case in 2002, people said it couldn't be done, that this was always done in public," Wilkinson said. "They thought we were pushing the statute to the extreme. On the other hand, we said, 'No, the statute means what the statute says.' "

But Berkeley City Attorney **Manuela Albuquerque** said Monday that the city may appeal the ruling. "This is a sad day for public accountability," she said. "The decision therefore shields police conduct from public scrutiny even though police officers wield awesome and intrusive powers and even though other public officials have no such protection."

The fight may now continue in the state Legislature. Los Angeles Police Chief **William Bratton** and civil libertarians are now calling for a new state law that would reopen police disciplinary hearings, but police unions have promised to oppose any such proposals.

Mark Schlosberg, police practices policy director with the **American Civil Liberties Union** in San Francisco, said the Alameda County ruling is "effectively ending 30 years of open, civilian oversight in the city of Berkeley" and results in a "secret police force."

Schlosberg said, "It's very difficult to create a good, trustful cooperative relationship with a community when you can't have open access and you can't have transparency."

Many cities across the state, including Oakland and San Francisco, had already halted public police-misconduct proceedings after last year's Supreme Court ruling.

Oakland's **Citizens' Police Review Board** has only held one closed hearing since then. The city can no longer release the names of officers who are the subject of complaints, and all participants must sign confidentiality agreements, said **Joyce Hicks**, the board's executive director.

"It's unfortunate that we have been forced to go from an open process to one that is behind closed doors," Hicks said. "However, we still provide the complainant with the opportunity to be heard and to confront the officers against whom they are complaining."

But **Rashidah Grinage**, an Oakland activist whose son and husband were killed by gunfire in a 1993 shootout that also left a police officer dead, said there was no longer any point in "showing up for five minutes" for the open-session portion of review-board hearings.

"It's another nail in the coffin," Grinage said of the judge's ruling. "We're going to make every effort to get this matter rectified. It's very unfortunate, and it stems from bad legislation that was passed a long time ago."

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