



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

REBECCA KAPLAN
Vice Mayor
atlarge@oaklandnet.com

(510) 238-7008
FAX: (510) 238-6910
TDD: (510) 839-6451

Date: May 6, 2021
To: Members of City Council and Members of the Public
From: Vice Mayor Rebecca Kaplan
Re: **Report On Independent Investigation On Bey Cases**

I. BACKGROUND

Yusuf Bey was a Black Muslim activist and leader who was a member of the Lost-Found Nation of Islam. He founded the Your Black Muslim Bakery in the early 1970s, which became well-known in the African-American community in Oakland for their signature fish sandwiches and tofu burgers. Mr. Bey provided employment for the formerly incarcerated, at-risk youth, and the poor. After his death in 2003, there were multiple family divisions regarding control of the Bey empire.

In 2004, Yusuf Bey's Chief Business Adviser and handpicked successor, Waajid Aljawwad Bey's body was found in the Oakland hills. In early March of 2004, Saleem Bey's family filed a missing person's report with the Oakland Police Department (OPD) after Mr. Bey had been missing for several days. At the time of his disappearance, Waajid Bey was acting CEO of the Bakery.

OPD assigned Sgt. Bruce Bock to investigate the murder and the family continued to provide leads to OPD in connection with the investigation. OPD officers Andre Rachal and Todd Crutchfield and an FBI agent interviewed John Bey regarding Waajid Bey's disappearance. John Bey met with OPD, FBI agents, and ATF agents regarding the investigation. The case remains unsolved.

One year later, on June 17, 2005, John Bey, an adopted son of Yusuf Bey and the head of one of the organization's security companies, was ambushed by "three to four" gunmen and shot outside of his home in Montclair. OPD opened an attempted murder investigation into the incident. John Bey did not know that OPD closed the case until 2011, after he filed a request for records under the Freedom of Information Act.

Beginning in 2007, John and Saleem Bey have filed multiple complaints into OPD's lack of progress with the investigations, as well as OPD's inability to conduct a thorough, unbiased investigation into the murder and attempted murder of members of the Bey family.

II. COMPLAINTS AND SUBSEQUENT INVESTIGATIONS

A. *2007 Citizens' Police Review Board Complaint and Internal Affairs Case (Case #07-0538)*

In July 2007, the Saleem Bey filed complaints with the Oakland District Attorney and the Citizens' Police Review Board ("CPRB") over the handling of the investigations into Waajid Bey's murder and John Bey's attempted murder. They took this action on the recommendation of then Mayor Ron Dellums' Chief of Staff. The CPRB complaint named Sgt. Brock and Officer Crutchfield as subject officers, and stated that they were concerned that no progress had been made after 37 months of investigation for Waajid's murder and 24 months of investigation into John's attempted murder.

Although the District Attorney did not respond to Mr. Bey's letter, the CPRB issued a "Notice to Complainant" letter stating that his complaint could not "be accepted for investigation because it did not allege misconduct by any specific Oakland officer." Even with the complaint naming two OPD officers, the CPRB wrote that the complaint did not include any allegations of misconduct by the officers. They cite Saleem Bey indicating during his interview with Complaint Investigator Audrey Schonborn that he was concerned with the general investigation being slow, not of a specific police officer. They classified the complaint as a service complaint, citing that the Bey complaint does not include a specific Manual of Rules violation by a specific officer. They forwarded the complaint to Oakland Police Chief Wayne Tucker.

When CPRB complaints are filed, the Internal Affairs Department (IAD) of OPD conducts a separate investigation. The Bey family complaint was forwarded to IAD on July 26, 2007, and became IAD case number 07-0538. Officer C. Bolton handled the initial intake of the complaint and spoke with Saleem Bey on August 6, 2007. Officer Bolton said he was unable to resolve the complaint and recommended "Admin Closure." He then forwarded the complaint to Sgt P. Freeman for review, who then also recommended Admin Closure. Sgt Freeman then forwarded the complaint to Lt. David Downing who agreed with the recommendation but wanted to confirm that the CPRB had the same conclusion before officially closing the complaint. On August 20, 2007, confirmed that the CPRB did not accept the case for investigation, and Capt. Fairrow approved the Admin closure, which was followed by a closeout letter being mailed to Saleem Bey on September 1, 2007.

B. *2011 Citizens' Police Review Board Complaint and Internal Affairs Case (Case #07-0538)*

In September 2011, the Bey Brothers filed another CPRB complaint focused on Sgt Longmire, who was involved in the murder investigation of Chauncey Bailey and the Bey cases. Sgt. Longmire was the subject of an independent IAD investigation (#07-0553) initiated in August 2007 that was also investigated by the California Department of Justice. The investigation involved allegations of misconduct by Sgt. Longmire in connection with OPD's investigation into the murder of journalist Chauncey Bailey, who was conducting an investigative report on the Bakery at the time of his death. Sgt. Longmire was the lead investigator on the Bailey case and was alleged to have had a connection with lead suspect Yusuf Bey IV that obstructed the murder investigation. The investigation expanded to an evaluation of the actions of all members involved in the investigation into the conduct of investigators during the Chauncey Bailey murder

To: Members of City Council and Members of the Public
Subject: Report On Independent Investigation On Bey Cases
Date: May 6, 2021

Page 3

investigation, to include a Deputy Chief. The only sustained allegation was for conduct in which a supervisor had an inappropriate conversation with a subordinate.

The complaint was forwarded to IAD, and on October 4, 2011, Officer Robert Messier drafted an IAD "Chronicle Log" entry regarding the new Bey complaint that stated there were no new allegations mentioned or discovered. Capt. Figueroa also confirmed that personnel mentioned in the complaint had been investigated and closed the complaint. They placed the complaint form and documents into the existing case folder #07-0538.

The CPRB initiated opening the case but administratively closed it in October 2012 due to lack of jurisdiction. However, the Board voted to draft a letter to the United States Department of Justice recommending that it conduct an investigation into Post 9/11 Anti Muslim Discrimination. The CPRB sent the letter to the United States Department of Justice (DOJ) on November 7, 2012. The letter refers and recommends an investigation into the complaints made by the Bey family to the DOJ's Civil Rights Division, Initiative to Combat Post 9/11 Discrimination Backlash. The DOJ responded to the CPRB's letter on April 17, 2013, but did not launch an investigation.

C. 2013 Internal Affairs Case (Case #13-1062)

In March 2013, the Bey family contacted the office of Thomas Frazier, who had been appointed as Independent Monitor and Compliance Director to oversee OPD as a result of a 2003 Negotiated Settlement Agreement. The Bey Brothers requested that Mr. Frazier investigate OPD's conduct regarding the investigations listed in the 2007 complaint (#07-0538), which he did in July 2013. The Compliance Director's Office then forwarded the information to Capt. Figueroa, who opened a new Internal Affairs Department investigation, case #13-1062. The Bey Brothers spoke with the IAD intake officer about the case before it was passed to the IAD investigator.

In August 2013, the Bey Brothers contacted the Compliance Director's office again to follow up on their complaint. IAD Capt. Oliver Cunningham then contacted the Bey Brothers by phone, and they then met in September 2013, which was recorded in Capt. Cunningham's office. After their meeting, the case was assigned to IAD Sgt. William Griffin who was told to focus his investigation on: OPD's investigations of the 2004 murder of Waajid Bey, the 2005 attempted murder of John Bey, and OPD's closure of the Bey Brothers' previous IAD complaints, case #07-0538 and case #07-0553.

After reviewing the case, Sgt. Griffin confirmed that the Bey Brothers' statements and allegations of wrongdoing by OPD credible. It also stated that OPD failed to properly investigate both Waajid Bey's murder and John Bey's attempted murder. More specifically, Sgt. Griffin found that "[OPD] did not have proper policies and procedures in place to ensure that these investigations were completed thoroughly and that proper documentation was retained to ensure follow up investigations could be completed." Furthermore, the report confirmed that there was a systemic failure on the part of the OPD as it relates to the follow up criminal investigation.

City Council
May 18, 2021
File # 20-0692

To: Members of City Council and Members of the Public
Subject: Report On Independent Investigation On Bey Cases
Date: May 6, 2021

Page 4

Sgt. Griffin was unable to review the case file in the 2004 Waajid Bey murder investigation because the file was missing. Sgt. B. Brock was in possession of the case file; he was the OPD homicide investigator assigned to the 2004 Waajid case. He retired and was hired at the Alameda County DA's office as an Inspector. He maintained possession of the criminal file when he left OPD. The discovery of the file came after the case had been closed by the Internal Affairs Division. Ultimately, it was determined that the Department had failed to properly maintain control of one of the case files. By not having Waajid Bey case files during the open IAD investigation, Sgt. Griffin stated that he was unable to properly investigate whether OPD violated policy and/or criminal law in handling Waajid Bey's case. Also given that the file was found after the complaint investigation closed, the family believes it satisfies the 3304 law requirements to reopen the case. The Bey Family informed Sgt. Griffin via email that Sgt. Brock was in those files.

The report recommended a finding of "Sustained" for the investigation into John Bey's attempted murder, and says further steps were not documented in Sgt. Sethna's case notes but should have been prior to closing the case, including: (1) a "[p]hoto lineup of four 'young male blacks' arrested in weeks following the shooting" who possessed shotguns at the time of arrest; (2) "[f]ollow up results from [the Integrated Ballistic Identification System] regarding expended shell casings collected at the scene."

The Report did affirm IAD's previous characterization of case #07-0538 as a "service complaint" and finds that the facts of the complaint supported its administrative closure. Specifically, the complaint did not allege facts that "if substantiated would constitute a [Manual of Rules] violation" by an individual officer but instead, "stated a concern that there was no progress with the [underlying] investigations." Griffin testified that he could not sustain findings against individual officers because he did not have evidence of individual wrongdoing regarding the underlying investigations. However, Capt. Cunningham told Sgt. Griffin not to investigate #07-0538 because "it had already been investigated, " although it hadn't. Sgt. Griffin was also unable to speak directly with the OPD officers responsible for the 2004 Waajid Bey murder investigation (Sgt. Brock) and the 2005 attempted murder of John Bey (Sgt. Ray Sethna) because those officers were no longer employed by OPD and they did not respond to Sgt. Griffin's requests for an interview. In addition to opening the investigation, it was determined that the subject of the complaint would be the actions of the Department as a whole.

In March 2014, Capt. Cunningham and Lt. Outlaw met with the Bey family to give them the IAD complaint closeout letter, which included the finding of "sustained". The letter also stated that the finding was applied to the Oakland Police Department as the individual Subject Officers and their immediate supervisor are no longer employed by the OPD.

The Bey Brothers then contacted Compliance Director Robert Warshaw because they were unsatisfied with the closeout letter and quality of the investigation. Director Warshaw assigned Capt. Figueroa "to address the shortcomings in the investigation." The Bey Brothers had two one-hour meetings with Capt. Figueroa at OPD headquarters to discuss case #13-1062 closeout letter. The Bey Brothers felt that the investigation was not complete because it did not name

City Council
May 18, 2021
File # 20-0692

current OPD employees. OPD did not issue a new closeout letter and there is no evidence that anyone at OPD followed up with Director Warshaw.

D. 2013 CPRB Complaint

On November 6, 2013, Saleem Bey filed a complaint with the CPRB naming Capt. Cunningham and Chief Sean Whent as subject officers. The Bey Brothers named Capt. Cunningham "because of his failure to investigate the 2011 complaint #13-1062 up to that point," and named Chief Whent because he was involved in the independent IAD investigation involving Sgt. Longmire but failed to include complaint #07-0538 in that investigation.

The CPRB complaint lists the following grievances: (1) "failure to investigate IAD 13-1062"; (2) "conflict of interest: an appointee of Interim Chief Whent who is named in the complaint is in charge of the investigation"; (3) "failure by IAD to accept material evidence related to complaint"; (4) "chain of command racism [and] discrimination against black Muslims resulting in failure to report known [Manual of Rules] violations"; and (5) "conflict of interest: IAD 13-1062 is an investigation of IAD 07-0538 resulting in IAD investigating IAD." Bey Brothers' CPRB complaint requested an independent investigation into those grievances. The CPRB "opened a parallel investigation" regarding 13-1062 and assigned Joan M. Saupe as investigator.

The CPRB report details Ms. Saupe's April 2014 interview with Bey Brothers in connection with their CPRB complaint, including Bey Brothers' specific allegations of wrongdoing by OPD and the Bey Brothers' responses to Ms. Saupe's questions. The report further notes the evidence Ms. Saupe reviewed in connection with the Bey Brothers' complaint, and the applicable law and OPD Manual of Rules provisions. The CPRB report sustained no findings as to any of the Bey Brothers' grievances and submitted the case for administrative closure. The CPRB issued an Administrative Closure Report on July 10, 2014.

E. Additional Complaints

In December 2020, the Bey family once again expressed concerns regarding the handling of the case files as investigated in IAD case 13-1062. The complaint focused on investigative deficiencies into the Waalid Bey murder and John Bey's attempted murder. The case, #16-0146, was administratively closed as this had been investigated in IAD cases #07-0553 and #13-1062. On 28 December 2020, the Bey family once again expressed concerns regarding the handling of the case files as investigated in IAD case #13-1062.

In another complaint, #20-0218, the Bey family alleged Former Chief Kirkpatrick was responsible for systemic racism because she did not address the concerns related to IAD case #13-1062 and the missing case files. Since the Chief left the Department and the concerns of that case were completely addressed, the case was Administratively Closed.

III. BEY V. CITY OF OAKLAND

Saleem Bey and John Bey brought multiple actions against the City of Oakland for alleged civil rights violations by the Oakland Police Department (OPD) and that OPD failed to adequately investigate their internal affairs division complaints due to racial and religious discrimination

To: Members of City Council and Members of the Public
Subject: Report On Independent Investigation On Bey Cases
Date: May 6, 2021

Page 6

against the Black Muslim community. The cases were heard in the US District Court of Northern District of California. Although the Judge ultimately ruled in favor of the City, new evidence was uncovered during Discovery which was related to the Bey family complaints.

IV. POLICE COMMISSION

Due to the potential new evidence related to the OPD, IAD, and City Administration's CPRB complaints #07-0538, #13- 1062, and #16-0147, uncovered through the court case, the Oakland Police Commission voted to retain the services of a business licensed to conduct an independent investigation of the above cases for said violations related to complaints of racial and religious profiling. Below is the timeline of Police Commission activity around the Bey Investigation.

- On September 13, 2018, the Commission approved a motion to direct counsel to research whether the Commission had jurisdiction to reopen CPRB case #13- 1062.
- On October 11, 2018, the Commission approved a motion to ask the Policies and Procedures Ad Hoc Committee to examine options for an appellate process to re-examine issues on complaints which come before the Commission.
- On March 14, 2019, the Commission approved a motion to send a letter to Robert Warshaw to provide notice of the Bey's complaint and request that the Independent Monitor investigate the substance of the complaint.
- On April 11, 2019, the Commission approved a motion to request the advice of outside counsel on the appellate process.
- On June 13, 2019, the Commission approved a motion to accept bids for investigative services on the Bey case at its next meeting.
- On June 27, 2019, the Commission approved a motion to hire an independent investigator to review CPRA cases 07-0538, 13-1062, and 16-0147 for violations related to complaints of racial and religious profiling.
- On July 16, 2019, the Oakland City Council granted the Commission contracting authority through adoption of Ordinance No. 13547 C.M.S.
- On July 25, 2019, the bids for services from Henry Gage, III and the Law Offices of Amy Oppenheimer were withdrawn.
- On October 24th, 2019, Commission approved Resolution 1901 to engage the services of Knox and Ross law Group to investigate if there is enough evidence to report to reopen the CPRA cases #070538, #131062 and #160147.

To: Members of City Council and Members of the Public
Subject: Report On Independent Investigation On Bey Cases
Date: May 6, 2021

Page 7

V. CITY COUNCIL ACTION

Vice-Mayor Rebecca Kaplan introduced a resolution requesting that the City Council “receive an Informational Report on the independent investigation into the Bey Cases, and discuss recommendations for action to bring about reconciliation and restoration”. It was first discussed at the January 12, 2021, City Council meeting, but the report was not ready and the item was rescheduled for a later date. The item was on the agenda at the April 20, 2021 City Council meeting, and the Police Commission Vice Chair, Jose Dorado, read a statement regarding the requested report from Knox & Ross, the independent investigative service. The statement said that the City Council’s “request for information about Knox & Ross’s work falls under a strict state law, codified in California Penal Code 832.7 and 832.8. That law treats all “information” about investigations or complaints against peace officers as confidential.” The Police Commission did offer to provide confidential written updates to the Council, instead of during open session. While the letter from the Police Commission to Council about this matter stated that the Council can discuss it in closed session, the City Attorney has stated that the Council cannot discuss the matter in closed session - thus giving no clear method for follow up. This needs to be cleared up. Following is the link to the April 15, 2021, letter from Commissioner José Dorado, Vice Chair of the Police Commission, to City Council regarding the report on the Independent Investigation on the Bey Cases, that was submitted for the April 20, 2021, City Council meeting:

<https://oakland.legistar.com/View.ashx?M=F&ID=9320549&GUID=A383E51B-73CA-49B3-983E-3A5C9EBE8C94>

It is unclear why the Council and the public cannot receive general information on the independent investigation. The update report could exclude names of officers or other personnel involved in the matter. The Oakland Mayor and Administrator previously claimed they were permitted to share information about an alleged ongoing investigation into officer conduct. Here is the link to a letter from the Oakland Black Officers Association (OBOA) regarding the disclosure of information about the investigation:

<https://www.documentcloud.org/documents/2892899-Final-OBOA-Open-Letter-to-Mayor-Schaff-Doc.html>

As we move forward, let us continue to seek truth, pursue and explore what methods are available for the Council to receive further information, and also to continue to work toward remedies and restoration.

Respectfully submitted,



Vice Mayor Rebecca Kaplan
Oakland City Councilmember At Large