
Police Civilian Review Panel

Meeting Agenda

Location: Conducted electronically due to COVID-19 Pandemic

Date: July 23, 2020

Time: 7:00 pm

Agenda details:

I. Call to Order

II. Agenda Items

- a. Motions to Conduct Electronic Meeting
- b. Introduction of Interim Independent Legal Counsel
- c. Approval of June 23 Meeting Summary
- d. Approval of subcommittee Initial Review Report for CRP-20-15
- e. Approval of Amended Panel Procedure: Intake and Processing of Review Requests
- f. Approval of One Fairfax Statement for Panel Website
- g. July 21 Board of Supervisors Public Safety Committee Debrief
- h. Panel Discussion on Recommendations and Comments Submitted to Supervisor Lusk
- i. Panel Discussion on Memorandum Submitted by Mr. Cluck
- j. Panel Discussion on complaint CRP-20-10
- k. Supervisor Lusk and Panel Listening Session

III. New Business

IV. Adjournment

Police Civilian Review Panel Meeting

Electronic Meeting Housekeeping Rules

- Attendees have entered the meeting in listen only mode.
- Panelists must remain in “Mute” when not speaking. Please unmute yourself when you have been recognized to speak by the Chair, when you are making a motion, seconding a motion, or casting your vote.
- For Panelists to be recognized to speak, please use the raise hand function by clicking on the hand icon which is found in the bottom right corner of the “Participant Pane.” When you are finished speaking, please mute yourself and lower your hand by clicking the on the hand icon again.
 - To access the “Participant Pane,” please click on the icon depicting a person which is found on the icon menu at the bottom of your screen.
- The Meeting Materials Packet will be uploaded to WebEx. To scroll through the packet, please use the sidebar menu to page up or down. Meeting materials are also available on the Panel’s website at www.fairfaxcounty.gov/policecivilianreviewpanel
- If the Panel recesses into closed session, Panel Members must mute themselves and disable their webcams on WebEx. Panel Members will use a dedicated conference line and security code for closed session. When closed session concludes, please enable your webcam on WebEx to return to open session.
- This meeting is being recorded and the audio recording will be posted to the Panel’s website.

Biography of Anita Van McFadden

I am a native of Los Angeles, California and a graduate of Georgetown University Law Center. I have been a practicing attorney for approximately 25 years and I started my career as an Assistant Commonwealth's Attorney in Richmond, Virginia, where I worked for approximately 4.5 years. As an Assistant Commonwealth's Attorney I litigated misdemeanor and felony criminal cases ranging from traffic violations to violent crimes, and I interacted with police officers and general members of the public on a daily basis. Once I returned to the Northern Virginia area I practiced general civil litigation, family law, personal injury law and criminal defense. I have been managing my own practice since 2005 and although the majority of my cases are family law and some general civil litigation matters, I continue to practice criminal law as a defense attorney in misdemeanor criminal and traffic cases. I have also represented clients involved in mental health commitment hearings. I am an active executive board member of the Northern Virginia Black Attorney's Association (NOVABAA), an active member of COLD (Committee on Lawyer Discipline) and the Disciplinary District Committee (5th District, Section II) of the Virginia State Bar, and I am a volunteer conciliator with the Fairfax Bar Conciliation program.

Police Civilian Review Panel

June 25, 2020

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:

Hansel Aguilar
Jimmy Bierman
Bob Cluck
Hollye Doane, Panel Chair
Doug Kay
Frank Gallagher
Shirley Norman-Taylor
Sris Sriskandarajah, Panel Vice-Chair
Rhonda VanLowe

Others Present:

Chairman McKay, Board of Supervisors
Gentry Anderson, OIPA
Julia Judkins, Counsel
Major Owens, FCPD
Rachelle Ramirez, OIPA
Richard Schott, Independent Police Auditor

NOTE: The Panel's June business meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Panel's business meeting was called to order at 7:04 p.m. and all Panel Members were present.

Ms. Doane welcomed everyone to the Panel's June meeting and noted a few housekeeping rules as it was the Panel's first electronic public meeting.

Motions to Conduct Electronic Meeting: Ms. Doane took roll call to verify a quorum of the Panel was present and to ensure each Panel Member's voice could be heard clearly. She asked each Panel Member to state their name and the location from which they were participating.

Mr. Aguilar was present and participated from behind the Government Center.

Mr. Bierman was present and participated from McLean, Virginia.

Mr. Cluck was present and participated from Reston, Virginia.

Ms. Doane was present and participated from Oakton, Virginia.

Mr. Gallagher was present and participated from Bethany Beach, Delaware.

Mr. Kay was present and participated from Fairfax, Virginia.

Ms. Norman-Taylor was present and participated from Lorton, Virginia.

Mr. Sriskandarajah was present and participated from Fairfax, Virginia.

Ms. VanLowe was present and participated from Reston, Virginia.

Ms. Doane moved that each member's voice may be adequately heard by each other member of this Panel. The motion was seconded by Mr. Bierman and it carried by unanimous vote.

Ms. Doane moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. She further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 408-418-9388 and entering access code 129 468 7556 as noted in the Public Meeting Notice. Mr. Gallagher seconded the motion and it carried by unanimous vote.

Ms. Doane moved that that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Sriskandarajah seconded the motion and it carried by unanimous vote.

Remarks by Chairman McKay: Ms. Doane introduced Chairman Jeff McKay of the Board of Supervisors to make remarks on the Panel's role in promoting the One Fairfax policy and the recent formation of a task force on equity and opportunity. Chairman McKay thanked Ms. Doane and the Panel for the opportunity to address them and the community. Chairman McKay explained that the country and county are facing multiple challenges and are navigating unprecedented times due to the COVID-19 pandemic and disparities and trust building within law enforcement. He is proud that the county had many reforms in place but knows that more work needs to be done. The Chairman noted that the use of force incident, which occurred in the Gum Springs area of the County on June 5, was close to the area he grew up and that he has worked hard as a member of the Board of Supervisors to secure resources for that area of the county. He explained that the incident is evidence that even if reforms are in place, some officers may still operate outside of the expectations of the Board of Supervisors and the community. He added that for nearly twenty years he has been a sworn deputy sheriff and brings a unique perspective when advocating for equity. The Chairman said that the incident that occurred on June 5 was not only an assault on the individual involved, but also an assault on the profession of law enforcement. He is glad that institutional elements were in place to

allow for quick action against the officer and that body-worn cameras were involved to capture footage of the incident.

The Chairman stated that the Panel has a direct tie to the One Fairfax policy at a high level. County leaders acknowledge that depending on an individual's zip code, race, and income, the system can intentionally work against some people. The county is working to break down those systems by looking at all county decisions from a social and equity lens so that everyone can be successful. The Chairman said that the Panel's work fits in the One Fairfax narrative as it serves people who have been disproportionately treated by police and communities have been left behind. The Panel's ability to rebuild trust in the police within those communities in an equitable way directly correlates to the purpose of the One Fairfax policy. The Chairman noted that he has been supportive of the work of the Panel and the Auditor since their inception. He would like to continue a dialogue with the Panel and shared his support for the Panel to conduct outreach in the community. The Chairman added that there is not a single policy, person, or Panel that will solve the systemic issues that we are facing but we can do better and encourage the community to come together around reforms.

Chairman McKay provided historical background on the One Fairfax policy, which was spearheaded by himself and former Supervisor Hudgins as they addressed funding for Title I schools. The One Fairfax movement began with addressing disproportionality in public education, but it expanded as it was realized that more areas needed to be addressed at a high level. As a result, the One Fairfax resolution was endorsed by the Board of Supervisors and the School Board and later jointly adopted as policy. The Chairman closed his remarks by adding that dialogue is one of the best cures to get through times like these and added that he would be happy to answer questions from the Panel.

Mr. Bierman noted that he was extremely troubled by the use of force report that was published by the FCPD and noted the racial disparity in use of force statistics against African Americans within the FCPD's McLean district station patrol area. Mr. Bierman asked Chairman McKay if he is supportive of increasing the Panel's jurisdiction and if he is willing to advocate in the General Assembly for such changes that would provide the Panel with additional oversight powers. Chairman McKay replied that Fairfax County is one of the only jurisdictions to publish a use of force report and that the county believes in sharing data to be transparent with the community and to get feedback for improvement. Chairman McKay recognized the disproportionality of use of force incidents county wide and noted that it was an issue of concern. The Chairman said that he is open to expanding the authority of the Panel but recognized the statutory limitations that can only be updated by the General Assembly. He added that he has had conversations with members of the General Assembly and expects that there will be changes to the structure of the Panel in the future. Chairman McKay noted that while the FCPD's disproportional use of force in the county was disappointing, he pointed out that there have been improvements to the School Resource Officer (SRO) program. He explained that the community must have robust conversations and that elected officials need

to listen to the community so that issues can be resolved. He added that after the June 5 use of force incident in the county, the Board of Supervisors immediately expedited the implementation of body worn cameras.

Ms. VanLowe expressed her desire for the Panel to hold a public forum to gather community input and hear their concerns. Ms. VanLowe asked for Chairman McKay's support for the Panel to hold a public forum over the summer. She also asked whether the study into the racial disparity in use of force incidents in the county conducted by the research team at UTSA could be expanded to review other data, such as stops, to understand whether there is bias in those encounters. Chairman McKay said that he supports the Panel hosting a dialogue with the community. He is under the impression that many people in the county are unaware of the Panel and fully supports more community outreach and hopes that the Panel covers all areas of the county. The Chairman added that he sent a memo to the chief demanding information and data be released related to traffic stops.

Mr. Aguilar explained the importance of funding for oversight and reminded the Chairman that the Panel is composed of volunteers. He expressed his interest in the Panel forming a public outreach team. The Chairman asked for the Panel to indicate their needs and said he would be happy to address any deficiencies. He added that it is most important for the Panel to maintain its independence as that is an important component to building trust with the community.

Ms. Doane informed the Chairman that the Panel has hosted three public forums in the past but that the former Chairman and Chair of the Board of Supervisors' Public Safety Committee did not want the Panel to continue to hold public forums. The Panel also received legal advice that hosting future public forums would be problematic. She asked for the Chairman's feedback on the Panel holding public forums in the future. The Chairman said he is fully supportive of the Panel hosting public forums and that there should not be a legal issue that cannot be overcome to allow for the Panel to meet with the community that it represents.

Ms. Doane brought Chairman McKay's attention to a recommendation submitted by the Ad Hoc Police Practices Review Commission that the Panel have the ability to hire a consultant with investigative experience to review FCPD investigation files and to advise Panel Members about the subject investigation and the review process. She asked Chairman McKay if he is supportive of that recommendation made by the Ad Hoc Police Practices Review Commission. Chairman McKay said that this would be something the Panel could document as a resource it needs to effectively provide oversight, among any other needs or additional resources to overcome shortcomings. The Chairman added that he would be supportive of this but that it would need to be approved by the Board of Supervisors during the budget process.

Ms. Doane thanked Chairman McKay for his time, leadership, and addressing the Panel and the community. The Chairman thanked the Panel for the opportunity and for their volunteer work.

One Fairfax Statement: Ms. Doane introduced Ms. Anderson to present her memorandum to the Panel titled "The One Fairfax Policy and How the Police Civilian Review Panel Promotes It."

Ms. Anderson explained that the Panel promotes One Fairfax by providing public access to the Panel's business and review process, promoting accountability, and engaging with stakeholders and the community. Specifically, the Panel's mission is directly related to Focus Area 6 of the policy which calls for responsive public safety services to be delivered to all residents of Fairfax County. The memo contained three recommendations for Panel consideration: bolstering community outreach efforts, advocating for the Board of Supervisors to appoint diverse candidates to the Panel, and continuing to participate in training opportunities.

Ms. Doane thanked Ms. Anderson for presenting the memo. She informed the Panel that the recommendations will be considered as a part of the Panel's four year review, which will be discussed as the next item on the agenda, and asked if there was Panel consensus for the memo to be reframed as a statement to be included on the Panel's website.

Mr. Bierman moved to use the "The One Fairfax Policy and How the Police Civilian Review Panel Promotes It" memo to craft a statement for the Panel's website and vote on it at the next meeting. Mr. Sriskandarajah seconded the motion and it carried unanimously. *Ms. Doane asked Mr. Sriskandarajah to work with Ms. Anderson on this task.*

Four Year Review: Ms. Doane expressed her interest in the Panel forming a two-person subcommittee of two Panel Members to draft a report summarizing the work of the Panel over the past four years. Upon the submission of the draft report, the Panel will discuss its content and recommendations. Ms. Doane named Mr. Bierman and Mr. Aguilar to the subcommittee.

Mr. Kay reminded the Panel that he and Ms. VanLowe formed a subcommittee shortly after the Panel was established to create a first draft of the Panel's Bylaws and said he is happy to share his views with them individually. Ms. VanLowe expressed her support of conducting a four-year review of the Panel's work and hoped that one or two public forums could be scheduled to obtain community input. Ms. Doane and Mr. Bierman agreed. Ms. Norman-Taylor also agreed but was concerned that September may not be a realistic goal due to the COVID-19 pandemic. Ms. Doane suggested that the forums could be conducted electronically and that the Chairman's task force on equity and opportunity should have their final report to the Board of Supervisors in September. Panel discussion ensued regarding the timeline for completion of the report from the four-year review.

Ms. VanLowe moved that the Panel commence a four-year review and establish a subcommittee consisting of Mr. Aguilar and Mr. Bierman to submit a draft report during the fall. Mr. Bierman seconded the motion and it carried by unanimous vote.

Ms. Doane suggested that the subcommittee designate one member as the point of contact for the subcommittee so that Panel Members can reach out individually to provide comments. Ms. Doane asked that the subcommittee communicate to her their recommendations for outreach opportunities to gather public input during the process.

Update from the Independent Police Auditor: Ms. Doane recognized Mr. Schott, the Independent Police Auditor, to present on the Fairfax County Police Department's (FCPD) Use of Force policy. Mr. Schott reported that the FCPD's use of force policy was updated on March 31, 2017, as a part of recommendations from the Ad Hoc Police Practices Review Commission. The sanctity of all human life is the forefront of the policy and includes the provision of medical care to anyone who is injured. The FCPD's use of force policy includes provisions on the duty to intervene, explicitly prohibits carotid artery restraints, and calls for de-escalation whenever possible. The policy requires that all uses of force be documented by the officer in a use of force report, which is then reviewed by a supervisor. Mr. Schott reminded the Panel that the Office of the Independent Police Auditor (OIPA) commissioned researchers from the University of Texas San Antonio (UTSA) to review FCPD data to determine potential causes of disparity in use of force incidents involving African-Americans relative to their population in the county and that the results of the study are expected to be delivered to the Board of Supervisors in January 2021. Mr. Schott informed the Panel that the Virginia General Assembly passed legislation requiring all law enforcement agencies in the state to provide data on investigative and motor vehicle stops on an annual basis to the Governor and noted that he is confident that this report and any recommendations will be made public.

Ms. VanLowe asked if there is a possibility that the study will be expanded to review data beyond use of force. Mr. Schott replied that the study was mandated by the Board of Supervisors specifically to determine potential causes for the disparity in use of force statistics. He added that the researchers have asked for additional data to be used in their analysis to help determine potential causes for the disparity in use of force statistics.

Mr. Aguilar asked if the OIPA has been contacted by groups or organizations. Mr. Schott replied that phone calls and email traffic the office receives has picked up after the incident in Minneapolis, Minnesota, and due to the incident that occurred on June 5 in the Gum Springs area of the county. He added that he presented at a Faith Communities in Action event along with Ms. Doane and Chief Roessler. Additionally, the OIPA and Panel have received three requests from representatives of various community organizations for the Independent Police Auditor and Panel to address their organizations.

Ms. Doane asked whether Mr. Schott would have been able to review the use of force incident that occurred in the Gum Springs area of the county on June 5 if the Chief of Police had not requested his review. Mr. Schott replied that if the Chief did not request his review of the incident, he would not have been able to automatically review that specific investigation unless a complaint was made. Ms. Doane asked a clarifying question regarding the Independent Police Auditor's ability to review use of force incidents that do not involve a serious bodily injury or death. Mr. Schott replied that he can review use of force incidents that do not involve serious injury or death if a public complaint is made. Ms. Doane asked if this needed to be changed. Mr. Schott replied that in the past, members of the Board of Supervisors requested that he conduct a review and he felt confident that if the Chief had not requested his review of the

Gum Springs investigation, the Board of Supervisors would have. He said a change would not be needed under the current administration as the Board of Supervisors and the Chief are very engaged.

Ms. Norman-Taylor asked Mr. Schott to further explain the provision in the FCPD's use of force policy related to the duty to intervene. Mr. Schott read from the FCPD's use of force policy that "Any officer present and observing another officer using force that is clearly beyond what is objectively reasonable under the circumstances shall, when in a position to do so safely intercede to end and prevent the further use of such excessive force." The policy further establishes that "officers have the duty to intervene in all other situations where an officer is acting in violation of laws, orders, policies, or ethical conduct, and immediately notify an on-duty supervisor or commander." He added that the conversations occurring nationally related to the duty to intervene reflect what the FCPD already has implemented.

Update on Complaint CRP-19-29: Ms. Doane provided an update to the Panel on complaint CRP-19-29, which was the subject of the Panel's review meeting on March 9. She referenced a letter from Chief Roessler updating the Panel on the status of the additional investigation requested by the Panel. She noted that the investigation is currently in the review process. The FCPD informed the Panel that it will not be conducting two components of the Panel's request. The first is related to interviewing the coworkers of the subject officer. In his letter, Chief informed the Panel that the Internal Affairs Bureau (IAB) would not comply with the request and that it would violate the procedural rights of the officer and be burdensome on the department. The second is related to comparing the circumstances and claims of the complaint to prior complaints against the officer. The Chief informed the Panel that this was done when the department was determining disciplinary measures and that the investigation did not reveal a nexus to apply any progressive discipline. Ms. Doane reminded Panel Members to not discuss officer discipline in open session.

Mr. Kay noted that Chief Roessler is listening to the Panel's meeting as an attendee and that he was impressed by his presence and dialogue at the Panel's March meeting. He said that he takes issue with the FCPD's decision to not interview the officer's coworkers as it is a reasonable request to speak with people in his squad to determine if evidence of explicit bias exists. He added that the employees would not be randomly selected, and that the Panel's request is unique to this specific investigation. Mr. Kay was surprised that a legal impediment exists related to this request. He expressed his disappointment in the FCPD's refusal to take this step and hoped the Chief would reconsider.

Mr. Aguilar raised his concern with the lack of consistency and referred to a previous investigation the Panel reviewed where there was more scrutiny on the complainant rather than the subject officer. He said that there is reasonable suspicion that the subject officer potentially violated the complainant's constitutional rights due to racial bias and that it would be appropriate to contact the officer's coworkers through the investigation process. Mr. Aguilar pointed out that officers have the duty and responsibility to hold their colleagues accountable.

Major Owens informed the Panel that in the profession of law enforcement, it is challenging to define who would be considered a “coworker.” Given the nature of police staffing, they would have to interview a random selection of employees because it is impossible to interview every officer that worked with the subject officer of every complaint. He referred to the county’s personnel regulations which require the department to treat employees in a fair and equitable manner and added that the random selection of employees to be interviewed would not be fair or equitable to the selected employee and the accused officer. Further, he explained that the Law Enforcement Procedural Guarantees Act could potentially be implicated.

Mr. Bierman expressed his concern regarding the FCPD’s response to the Panel’s request and is unsure why the interview process could not be limited so that random employees would not need to be interviewed. Major Owens replied that FCPD officers do not have assigned partners for patrol shifts except for some specialized units. Major Owens then recognized the challenge of determining reasonable suspicion to conduct interviews of the officer’s colleagues and noted the legal issues. Discussion ensued regarding the incident subject of the complaint.

Ms. VanLowe noted her concern that the report does not lay out a process to determine whether bias existed in the incident. She asked Major Owens what the current process is for investigating complaints that contain allegations of bias and how they will be handled in the future. She added that the Panel should not be prescriptive in telling the FCPD how to investigate but the FCPD should offer a process that meets the Panel’s expectation.

Mr. Aguilar asked for clarification from Major Owens specific to this decision. He also referenced the letter which included that there were 563 total administrative investigations and asked whether those all included allegations of bias. Major Owens replied that the number in the letter is the total number of administrative investigations conducted and that not all of them included allegations of racial bias. Major Owens addressed Ms. VanLowe’s question about the investigation process and listed the investigative steps taken by FCPD.

Ms. VanLowe thanked Major Owens for the information but that she is interested in how the FCPD plans to investigate complaints specific to allegations of bias and that the FCPD should review best practices related to investigating bias complaints. Major Owens noted that the implementation of body worn cameras will be helpful when investigating these types of complaints.

Ms. Doane referenced the letter which informed the Panel that there was concern that the Panel did not properly vote to request additional investigation related to “comparing the circumstances and claims of the current complaint to any prior complaints against this officer.” To make the Panel’s intent clear, Ms. Doane asked for a motion. Mr. Bierman moved that the FCPD compare the circumstances and claims of the current complaint to any prior complaints against the subject officer. Ms. VanLowe seconded the motion and it carried unanimously.

Major Owens told the Panel that while there was concern regarding the validity of that particular request, the FCPD is committed to transparency and already took the Panel’s request

into consideration during the additional investigation. He acknowledged that discussion related to officer discipline is prohibited in open session. Ms. Doane said she hoped to see that information in the file and assured Major Owens that officer discipline would not be discussed in open session. Major Owens thanked the Panel for their diligence and noted the FCPD's commitment to enhance policy and procedure related to investigations into bias based policing.

Update on Panel Outreach: Ms. Doane informed the Panel of various outreach events that Panel representatives have attended such as a virtual meeting of the Faith Communities in Action, an interview with WUSA-9, meeting with the Floris United Methodist Church, and meeting with the NAACP. She added that Mr. Aguilar conducted outreach to the Community Reformation of Homelessness Network and the Panel has reached out to the ACLU People Power of Fairfax to schedule a meeting. Ms. Doane encouraged Panel Members to touch base with their respective communities to inform them about the Panel and its services.

Update on Panel Presentation of the 2019 Annual Report: Ms. Doane informed the Panel that the Panel's 2019 Annual Report will be presented to the Board of Supervisors' Public Safety Committee on July 21 at 1:30 p.m. The presentation was originally scheduled for March, but it was postponed due to the COVID-19 pandemic. Mr. Kay will present the report and Ms. Doane will also be present to answer any questions.

Approval of March 9 Meeting Summary: Mr. Bierman moved approval of the summary of the Panel's March 9 meeting. Ms. VanLowe seconded the motion and it carried by unanimous vote.

July Panel Meeting: Ms. Doane informed the Panel that its July meeting was originally scheduled for Thursday, July 9 and wanted to consider whether to keep that date or reschedule. She said that the July meeting will likely be virtual, but that staff will continue to monitor the situation. Panel discussion ensued regarding the date of the July meeting and whether to hold an August meeting. The Panel ultimately agreed that it will meet at 7:00 p.m. on Thursday, July 23 and at 7:00 p.m. on Thursday, August 27.

New Business

Panel Discussion Regarding Independent Legal Counsel: Ms. Doane noted that the independence of the Panel's legal counsel had been called into question several times over the past few years and that the Board of Supervisors Action Item establishing the Panel does not provide much guidance as to the duties, responsibilities, and supervision of the independent legal counsel for the Panel. The budget for the Panel's legal counsel comes from the Office of the County Attorney (OCA), which Panel Members are concerned this creates a conflict of interest because the OCA represents the FCPD and the Panel's mission is to provide oversight and accountability to the FCPD. Ms. Doane informed the Panel that she and Mr. Kay met with Chairman McKay and his staff to request that the money budgeted for the Panel's independent legal counsel be transferred to the budget of the OIPA but that it unfortunately did not work out. The County Attorney has taken the position that she is responsible for all legal advice and

that retainers ultimately rest with her, but she is willing to allow for the Panel and Independent Police Auditor to provide input on the selection of the next independent legal counsel for the oversight entities. She noted that Ms. Judkins is set to retire by 2021. Ms. Doane informed the Panel that it could proceed with an RFI process, which she has been told could take at least a year, where the Panel and Independent Police Auditor can provide some input during the selection process. She referenced documents in the meeting materials packet including an email from the County Attorney, state and county laws that she relies on, and the Virginia Rules of Professional Conduct for Attorneys. The Panel could choose to retain a specific candidate that has expressed interest in the position and recess into closed session for further discussion. Ms. Doane opened the floor for general discussion on the role of independent counsel and how the Panel would like to proceed in the selection process.

Mr. Aguilar highlighted the importance of maintaining independence and noted how conflicts of interest with independent counsel could have a negative impact on the Panel. He feared the public would lose trust in the Panel if the Panel and its counsel is not independent.

Ms. VanLowe agreed with the comments made by Mr. Aguilar and felt strongly about having an opportunity to gather a pool of interested and diverse candidates for the position. She was concerned about the timeline given for proceeding with the RFI.

Mr. Sriskandarajah explained he did not believe there to be a conflict per se but agreed with Mr. Aguilar's comments related to the perception of a conflict of interest and noted the importance of appearance. He also listed concerns with the lengthy timeline for the RFI process.

Ms. Norman-Taylor asked whether the Panel would have authority to choose the candidate itself or only the ability to provide input during the process. Ms. Doane replied that the Panel would only have the ability to provide input during the process.

Ms. Doane said that she is interested in speaking with a candidate who expressed interest in the position and that the Panel could discuss the specifics during closed session. It is her understanding that the individual does not have any conflicts of interest, and has not represented police departments, nor police unions in the past. If the Panel retained this individual as independent legal counsel and later find that it is not a good fit, the Panel could revisit the RFI process.

Mr. Gallagher asked whether, in the event the Panel interviewed the candidate and then later chose to proceed with the RFI, and the interested candidate ended up being selected, would the Panel be showing favoritism? Ms. Doane clarified that the Panel could either interview and hire the interested individual or proceed with the RFI process. Panel discussion ensued on whether to proceed with the RFI process or interview an interested candidate.

Ms. VanLowe asked about the timeline for the RFI process and why it would take a year and a half to select a candidate. Mr. Schott recalled that the RFI process could take up to a year but

did not know why this process would be any different than the county's hiring process for full time employees.

Mr. Aguilar asked for clarification from the OCA to provide the relevant statute and their interpretation of the statute which require legal services to flow from their office in a memo to the Panel for transparency purposes and to inform the public.

Ms. Doane noted that the Panel was in consensus that an RFI process should be initiated to determine the next independent legal counsel for the Panel and that closed session would be unnecessary.

Mr. Kay moved that the Panel pursue and consider the next attorney for the Panel in an RFI process as it was explained during the meeting. Ms. Norman-Taylor seconded the motion and it carried unanimously.

Ms. VanLowe agreed with Mr. Aguilar that it would be useful to receive documentation from the OCA on the statute to which the County Attorney refers and a further explanation of the RFI process, so the Panel understands its involvement in the process. Ms. Doane agreed to reach out to the County Attorney to communicate the Panel's request and Ms. Anderson would notify the Panel to that effect. Ms. Doane added that this item could be revisited in July if necessary.

Mr. Bierman moved to adjourn the meeting. Mr. Sriskandarajah seconded the motion and it carried unanimously. The meeting adjourned at 9:34 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, July 23 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.

Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

Request for Review – Basic Information
CRP Complaint Number: CRP-20-15
Subcommittee Meeting Date: July 20, 2020
Subcommittee Members: <ul style="list-style-type: none">• Sris Sriskandarajah, Subcommittee Chair (Panel Vice-Chair)• Bob Cluck, Subcommittee Member• Shirley Norman-Taylor, Subcommittee Member
Complaint Submission Date: June 12, 2020 (Initial Complaint: submitted to FCPD on March 23, 2020)

This report is subject to Federal and Virginia Freedom of Information Acts. Panel members will maintain to the greatest extent possible under the law and in accordance with the Bylaws all sensitive and confidential information not intended for a public release.

Purpose
The Subcommittee Initial Review Report sets forth the Subcommittee’s recommendation on whether the Complainant’s allegation(s) meet the standard for review provided in the Panel’s Bylaws. The Panel may accept or not accept the Subcommittee’s recommendation on whether to review a complaint.

Findings
<p>The Panel’s review authority states in Article VI (A)(1) of its Bylaws: “The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity and impartiality where (1) the subject matter of an Investigation is an allegation of ‘abuse of authority’ or ‘serious misconduct’ by a FCPD officer, and (2) a Review Request is filed.”</p> <p>The subject matter of this investigation concerns an allegation by the Complainant that the subject officer acted in a rude, careless, angry, retaliatory, or threatening manner not necessary for self-defense. The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, meets the threshold requirement for “abuse of authority” and “serious misconduct.”</p>

Recommendation
The Subcommittee recommends that the Panel undertake a review of CRP-20-15 because the complaint meets the scope of review criteria set forth in its Bylaws.

Panel Bylaws Abuse of Authority and Serious Misconduct Checklist		
Criteria Met?	Abuse of Authority and/or Serious Misconduct	Complainant Details*
No	Use of abusive racial, ethnic or sexual language or gestures.	
No	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	
Yes	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	Complainant alleged officer acted in a rude and threatening manner.
No	Reckless endangerment of detainee or person in custody.	
No	Violation of laws or ordinances.	
No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Cannon of Ethics, that occur both on or off duty.	

***Confidential and sensitive information shall not be disclosed in this document. Contact the Chair or Panel Legal Counsel for questions and/or additional information.**

Police Civilian Review Panel

July 20, 2020

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-20-15

Members Present:

Bob Cluck, Review Liaison

Shirley Norman-Taylor, Review Liaison

Sris Sriskandarajah, Subcommittee Chair

Others Present:

Gentry Anderson, OIPA

Rachelle Ramirez, OIPA

Richard Schott, OIPA

NOTE: The Panel’s subcommittee meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Initial Disposition Subcommittee was called to order at 6:08 p.m.

Motions to Conduct Electronic Meeting: Mr. Sriskandarajah took roll call to verify a quorum of the Panel’s subcommittee was present and to ensure each subcommittee member’s voice could be heard clearly. He asked each subcommittee member to state their name and the location from which they were participating.

Mr. Cluck was present and participated from Reston, Virginia.

Ms. Norman-Taylor was present and participated from Lorton, Virginia.

Mr. Sriskandarajah was present and participated from Fairfax, Virginia.

Mr. Sriskandarajah moved that each member’s voice may be adequately heard by each other member of this Panel. The motion was jointly seconded by Ms. Norman-Taylor and Mr. Cluck and it carried by unanimous vote.

Mr. Sriskandarajah moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the subcommittee to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA’s usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. He further moved that the subcommittee may conduct this meeting electronically through a dedicated WebEx plat form and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 408-418-9388 and entering access code 129 136 6587 as noted in the Public Meeting Notice.

Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Mr. Sriskandarajah moved that that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Cluck seconded the motion and it carried by unanimous vote.

Completion of Initial Review Report for CRP-20-15:

All members of the subcommittee confirmed that they reviewed the Fairfax County Police Department's (FCPD) investigation file. Mr. Sriskandarajah asked Ms. Anderson for the next step in the process for the subcommittee's initial review of the complaint. Ms. Anderson said that subcommittee members typically review the Panel's Bylaws to see if there are any limitations that would prohibit the Panel from reviewing the complaint and then review the abuse of authority and serious misconduct check list prior to voting on recommendation to submit to the full Panel.

Ms. Norman-Taylor provided a summary of the incident subject of the complaint. The complainant wanted to dump his trash for free at the solid waste transfer station during the state of emergency. The complainant was told he could not dump his trash for free, but he could pay a reduced price. The complainant declined paying the reduced price. After being asked to leave the premises multiple times and the complainant did not leave, a staff person at the complex called 911 and FCPD officers responded. The complainant claimed the officer acted in a rude and threatening manner during the interaction.

The subcommittee went through the check list on the Initial Review Report template to determine whether the allegation in the complaint meets the Panel's criteria for an abuse of authority or serious misconduct. The subcommittee members discussed the third category on the checklist which is "acting in a rude, careless, angry, retaliatory, or threatening manner not necessary for self-defense." Ms. Norman-Taylor noted that while the complainant alleged the officer acted in an inappropriate manner, she did not find the officer to act in a rude or unprofessional manner after reviewing the file. Mr. Sriskandarajah added that the complainant did say that the officer acted in an angry or threatening manner that made him feel intimidated. Ms. Norman-Taylor replied that the subcommittee should consider the complainant's allegation and what the subcommittee members learned about the incident through their review of the file. Mr. Sriskandarajah agreed and reminded the subcommittee that is the Panel's mission to ensure that the investigations are complete, thorough, accurate, objective, and impartial. The subcommittee members further discussed the complainant's allegation and the criteria in question.

After discussion amongst the subcommittee members, it was determined that the complainant's allegation that the officer acted in a rude and threatening manner during their interaction met the criteria for "acting in a rude, careless, angry, retaliatory, or threatening manner not necessary for self-defense." Mr. Sriskandarajah then asked if the subcommittee members thought if the investigation into the complaint was complete, accurate, thorough, objective, and impartial. Mr. Cluck replied that the full Panel must determine this if the

subcommittee recommends the Panel undertake a review of the complaint. He further stated that the subcommittee's role is to determine whether the allegations in the complaint meet the Panel's criteria for an abuse of authority or serious misconduct. Mr. Sriskandarajah asked Ms. Anderson for clarification. Ms. Anderson replied that in the past, subcommittee members would review the allegations made in the complaint against the criteria listed in the checklist. She further stated that once the subcommittee completed the checklist, the subcommittee must form a recommendation to submit to the Panel whether to undertake a review of the complaint. The subcommittee did not find any other allegations that met the criteria for an abuse of authority or serious misconduct as listed on the Initial Review Report checklist.

Mr. Sriskandarajah asked Ms. Anderson how the subcommittee should proceed after completing the checklist. Ms. Anderson replied that the subcommittee must complete the findings and recommendation section of the report.

Ms. Norman-Taylor expressed her belief that she does not believe the allegation meets the Panel's threshold for serious misconduct or abuse of authority. Ms. Norman-Taylor moved that the subcommittee make a recommendation to the Panel to not undertake a review of this complaint because it does not meet the Panel's criteria for an abuse of authority or serious misconduct. The motion failed to receive a second.

Mr. Cluck said that the subcommittee can make the assessment that the allegation is not serious misconduct, however, the complainant viewed the incident as a serious issue to be considered by the Panel. Mr. Norman-Taylor replied that only the three subcommittee members have reviewed the file and that the rest of the Panel relies on the subcommittee to decide whether the allegation rises to serious misconduct. Mr. Sriskandarajah cited the Panel's Bylaws which state "The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of an 'abuse of authority' or a serious misconduct by a FCPD officer, and (2) a Review Request is filed." Mr. Cluck replied that the subcommittee is tasked with reviewing the allegations in the complaint to determine whether they meet the Panel's standard of an abuse of authority or serious misconduct and it is the role of the full Panel to determine whether the investigation was complete, accurate, thorough, objective and impartial if the allegation is deemed to be serious misconduct or abuse of authority. Ms. Norman-Taylor reviewed the purpose statement as written on the Initial Review Report document.

Mr. Sriskandarajah moved that criteria has been met for the allegation in the complaint to be considered an abuse of authority or serious misconduct. Ms. Norman Taylor seconded the motion and the vote carried by a vote of two with Mr. Cluck abstaining. The subcommittee discussed the next steps and whether the subcommittee had authority to determine whether the investigation was complete, thorough, accurate, impartial, and objective.

The subcommittee agreed that a review request was received by the Panel. Mr. Sriskandarajah asked if the subcommittee believed whether the FCPD's investigation was complete. Mr. Cluck

replied that it is not the role of the subcommittee to decide this and that the full Panel would decide whether the FCPD's investigation into this complaint is complete, accurate, thorough, and impartial if the subcommittee recommends to the Panel to undertake a review of the complaint.

Mr. Sriskandarajah asked Ms. Anderson for clarification. Ms. Anderson replied that the subcommittee's role is to review the allegations made in the complaint to determine whether the allegations meet the Panel's threshold of an abuse of authority or serious misconduct. The subcommittee also must make a recommendation on whether the Panel should undertake a review of the complaint. If the subcommittee submits a recommendation in favor of undertaking a review of the complaint and the Panel approves the subcommittee's recommendation, all nine Panel Members will review the file and a review meeting will be convened to determine whether the investigation was complete, accurate, thorough, impartial, and objective. She added that the Panel will consider the subcommittee's initial review report at the Panel Meeting on July 23.

Mr. Cluck moved that the subcommittee recommend that the Panel undertake a review of CRP-20-15 because the complaint includes an allegation of serious misconduct. Ms. Norman-Taylor seconded the motion and it carried unanimously.

Ms. Anderson explained the process of submitting the initial review report to the Panel for consideration. Mr. Sriskandarajah when does the Panel write the Review Report. Ms. Anderson replied that if the Panel approves the subcommittee's initial review report and the Panel undertakes a review of the complaint, a review meeting will be convened. At the conclusion of the review meeting, a subcommittee member would be tasked with completing the Panel review report.

Mr. Sriskandarajah thanked the subcommittee members and staff for their time.

The meeting adjourned at 6:52 p.m.

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: O-2	Subject: Intake and Processing of Review Requests
Approval Date: October 7, 2019 <u>July 23, 2020</u>	Review Date: December 2020
Signed by Douglas Kay <u>Hollye Doane</u> , Chair	<u>Signature here.</u>

Purpose: To provide procedures for filing and processing Review Requests submitted to the Fairfax County Police Civilian Review Panel (the “Panel”) in a timely, responsive, and consistent manner.

Filing a Review Request

- A complainant can file a Review Request with the Panel the same way they can file an Initial Complaint (see page one of Panel Procedure: Intake and Processing of Initial Complaints).
- A complainant must include in the Review Request a statement describing the reason(s) for the Review Request.
- Upon receipt of a Review Request:
 - Staff, in consultation with the Chair, will determine whether the Review Request is timely filed (within 60 days of the date of the FCPD Disposition Letter), unless the Panel determines that there is good cause to extend the filing deadline.
 - Staff, in consultation with the Chair, will determine whether the matter described in the Review Request is the subject of pending civil, criminal, or administrative litigation.
 - The Chair will forward the Review Request to the FCPD (for informational purposes only) and request a copy of the FCPD Disposition Letter if not attached to the Review Request.
 - Staff, in consultation with the Chair, will draft and send a letter to the complainant acknowledging receipt of the Review Request and delineating next steps, using the attached template:
 - Confirmation of Receipt – Request for Review (No Pending Litigation) (Attachment 1)

- Confirmation of Receipt – Request for Review (Pending Litigation) (Attachment 2)

Initial Review

- The Initial Review Committee will conduct the Initial Review.
- The Review Liaisons for the Complaint, together with the Chair or Vice Chair (as determined by the Chair), will form the subcommittee to conduct the Initial Review (the “Initial Review Subcommittee”).
- The Chair will coordinate with the FCPD Liaison dates and times for the Initial Review Subcommittee to review the Investigation File.
- The Chair will schedule the meeting date for the Initial Review Meeting and set the agenda.
- If pending litigation associated with the complaint exists, the Chair will compare the pending litigation to the allegations made within the complaint. If the Chair finds that pending litigation is associated with the allegations made within the complaint, the Chair will so inform the Panel so that it can defer action on the Review Request until the litigation is concluded in conformance with the Bylaws. If the Chair finds that the pending litigation is not associated with the allegations made within the complaint, the review process will continue as detailed below.
- After the review of the Investigation File, the Subcommittee will meet to (i) determine whether the Panel has the authority to review the Investigation, and (ii) complete the Initial Review Report Template (Attachment 3). If the Initial Review Subcommittee determines that the Panel does not have authority to review the Investigation, the Initial Review Report will note the Subcommittee’s reasoning.
- After the Initial Review meeting, Staff, in consultation with the Chair, will draft and send the Initial Disposition Notice to the complainant notifying the complainant of the Panel’s determination of authority to undertake a review of the subject Investigation. If the Initial Review Subcommittee concludes that the Panel has authority to review, the letter will also notify the complainant of the date and time of the Panel Review Meeting, a description of the review process, the deadline for completing the review, and the complainant’s right to attend the Panel Review Meeting and options to address the Panel, using the attached templates:

- Determination of Panel Authority and Review Meeting Notification (Attachment 4)
 - Determination of Panel Authority – Review Meeting Notification – Optional Attendance (Attachment 5)
 - Determination of Panel Authority – No Authority to Review (Attachment 6)
- Staff, in consultation with the Chair, will draft and send the Initial Disposition Notice to the complainant within 30 days of receipt of the Investigation Report.
 - If the Initial Review Subcommittee concludes that the Panel has review authority the Initial Review Subcommittee will also (i) set the date for the Panel Review Meeting and (ii) determine whether the FCPD should be asked to appear at the Panel Review Meeting.
 - The Chair will (i) notify Panel Members of the results of the Initial Review Meeting and request that all Panel Members review the Investigation file, (ii) coordinate with the FCPD Liaisons to (a) determine times when the Investigation file will be made available to the remaining Panel Members for review and (b) request the FCPD, through the FCPD Liaisons, to appear at the Panel Review Meeting, if necessary.

Panel Review Meetings

- The Staff, in consultation with the Chair, will prepare and post the Panel Review Meeting Notice in accordance with Article VI.E.1 of the Bylaws.
- Staff will send an official email notification of the date of the Review Meeting to the Panel, the Panel's Counsel, the County Attorney, the FCPD Liaisons, and the major in command at the FCPD Internal Affairs Bureau at least fourteen days in advance of the Review Meeting, as required by Article IV.E.1.c of the Panel's Bylaws.
- The Chair will preside over Panel Review Meetings in accordance with Article VI.E.1 of the Bylaws.
- When opening a Panel Review Meeting, the Chair will ask Panel Members, the FCPD representative, and the complainant to introduce themselves for the record and the Chair will outline the process for conducting the Panel Review Meeting, reminding those in attendance that:

- the purpose of the Panel’s review of the Investigation is to determine whether the Investigation is thorough, complete, accurate, objective and impartial.
- the complainant will have 15 minutes to address the Panel to state his or her reasons for filing the Review Request and that Panel Members may ask questions regarding those reasons. On motion from a Panel Member, the Panel may consider an extension of the 15-minute time period.
- Panel Members may ask the FCPD representative questions regarding the process of the Investigation and the conclusions reached in the Investigation.
- questions regarding officer discipline are personnel matters that must be discussed in closed session.
- Panel Members may also request consultation with legal counsel during the Panel Review Meeting, which must also be discussed in closed session.
- If the complainant does not attend the Panel Review Meeting, or attends but chooses not to address the Panel, the Panel may complete the Investigation review process.
- If other witnesses attend the Panel Review Meeting, their contact information will be obtained and given to the FCPD for follow-up.

Panel Findings

- At the discretion of the Chair, Panel Members may continue the Panel Review Meeting with a discussion of their findings from the review. If not, discussion of Panel review findings can be deferred to the next Panel Meeting.
- Opening the deliberations, the Chair will restate the Panel Findings options for Panel Members, as outlined in Article VI.F.2.a of the Panel’s Bylaws. The Panel may:
 - Concur with the findings detailed in the Investigation Report.
 - Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief of the FCPD.

- Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- A majority of the appointed Panel Members must vote to concur with the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- Panel Members who do not agree with the majority may offer a written dissent that explains his or her rationale for dissenting. The dissent will be included in the Panel's review report.
- Panel Members may offer policy recommendations or other comments that the Panel will consider for inclusion in the Panel's Review Report.
- After the Panel votes on the Panel Findings, Staff, in consultation with the Chair, will draft and send correspondence informing the complainant of the Panel's Findings and the next steps in the process, using the attached template:
 - Notification of Panel Vote (Attachment 7).

The Panel Review Report

- The assigned Review Liaisons for a Review Request will draft the Panel Review Report using the Panel Review Report Template (Attachment 8).
- The Panel Review Report will not contain identifying information for either the police officer(s), the complainant, or witnesses, confidential informants, victims, personal information including names, social security numbers, date of birth, driver's license numbers, agency issued identification numbers, student identification numbers, criminal or employment records, or residential addresses unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.
- The Review Report will not contain an officer's personnel record or specific officer discipline, other than what is specifically disclosed by the FCPD in a disposition letter or at a Panel meeting.

- The Review Report will not reveal information that jeopardizes the safety of an individual.
- In writing the Review Report, respect will be given to the language that the complainant or others involved use to identify or describe themselves. In other words, Review Reports will refer to complainants and others as they refer to themselves (Black, African American, White, Caucasian, Hispanic, Latinx, Native American and so on). Where the race or ~~and~~ ethnicity of the ~~a~~ complainant or others is used in the Review Report, the identifying term will be designated as a proper noun and capitalized. References to a complainant's -(or other's) race or ethnicity will be written in a consistent manner throughout the Review Report. (The source for this policy is the Publication Manual of American Psychological Association, 7th Edition).
- If the complainant does not indicate their race and ethnicity on their complaint form, the Panel will contact the complainant to determine their preference.
- If the FCPD notifies the Panel that certain information in the investigative file may reveal specific sensitive investigative techniques or contain information that is likely to jeopardize ongoing or future investigations, and such information is not contained in the complaint itself, the Panel will address FCPD concerns with the Panel's counsel in a closed meeting to resolve the issues.
- The Chair will circulate the draft report for comment with the Agenda for the meeting during which the Panel Review Report will be discussed.
- The Review Liaisons will present the draft Panel Review Report at the Panel Meeting.
- The Panel will discuss the draft Panel Review Report. A separate vote will be taken on each proposed recommendation or comment to determine its inclusion in the final Panel Review Report.
- Based on the discussion and vote, the Review Liaisons will finalize the Panel Review Report.
- Staff, in consultation with the Chair, will send the final Panel Review Report to the Board of Supervisors, the Chief of the FCPD, and the Auditor, and will post the Panel Review Report on the Panel's website.

- Staff, in consultation with the Chair, will draft and send correspondence, along with the final Panel Review Report, to the complainant, using the attached template:
 - Notification of Panel Report (Attachment 9).

DRAFT

One Fairfax and the Police Civilian Review Panel

In November 2017, the Fairfax County Board of Supervisors and the Fairfax County School Board jointly adopted the One Fairfax Policy, which is a social and racial equity policy that provides a framework based on equity for all decision-making in the county, ranging from transportation and land use, to recreation and public safety. The goal of the policy is to ensure equitable access to opportunities and success regardless of an individual's race, gender, ability, or income. The Police Civilian Review Panel is committed to upholding the values of the One Fairfax Policy and is actively finding ways to further promote One Fairfax through its work.

How the Panel Promotes One Fairfax

The Panel's mission as stated in its Bylaws is to enhance police legitimacy and to build and maintain trust between the community, the Board of Supervisors, and the Fairfax County Police Department (FCPD) by reviewing FCPD investigations brought to its attention to ensure they are accurate, complete, thorough, objective, and impartial. The Panel's mission and work supports One Fairfax specifically related to Focus Area 6 of the One Fairfax policy and embodies the themes of access, accountability, and engagement.

FOCUS AREA 6

The Panel's mission and work specifically promotes the One Fairfax policy as encompassed by Focus Area 6. Focus Area 6 of the One Fairfax Policy is defined as:

"Community and public safety that includes services such as fire, emergency medical services, police, health, emergency management and code enforcement that are responsive to all residents so everyone feels safe to live, work learn and play in any neighborhood of Fairfax County."

The Panel builds trust between the community and the FCPD through its review process. When the Panel receives a request to conduct a review of a completed FCPD investigation, the Panel provides an independent assessment of the investigation to determine whether the investigation was accurate, complete, thorough, objective, and impartial. Through this process, the Panel can assure the complainant and the public that the FCPD's investigation into the complaint was conducted properly and without bias, or the Panel can request the FCPD conduct additional

investigation. As an oversight body for the FCPD, the Panel helps to build the community's trust and confidence in the FCPD.

ACCESS

The Panel's work is conducted in public meetings, which assures access by all members of the community to the complaint process and transparency of the review process. The Panel is an intake venue for complaints independent of the FCPD and Panel Members follow the complaint's progress through the investigation process to ensure timely completion of the investigation. In order to provide further access, the Panel distributes brochures to the community which provide information about the Panel, the complaint process, and include a complaint form. Brochures are currently available in English, Spanish, Korean, and Vietnamese allowing a majority of the members of the community, , the ability to understand the Panel's role in oversight of the FCPD. Through the Panel's public meetings and public reports, the community can observe the Panel's work and see the results of reviews of investigations and inquiries to the FCPD.

ACCOUNTABILITY

The Panel holds the FCPD accountable by assessing whether investigations into complaints are accurate, complete, thorough, objective, and impartial. If the Panel finds that an FCPD investigation does not meet these standards, the Panel can recommend additional investigation into the matter. Upon completing a review of an FCPD investigation, the Panel can make recommendations for the FCPD's consideration. The Panel tracks the FCPD's response to recommendations and status of their implementation on the Panel's Recommendation Matrix to hold the FCPD accountable and keep the community informed of the Panel's progress. In addition, the Panel tracks the timeliness of completion of FCPD investigations into complaints and notifies the Board of Supervisors and complainant if there is a delay.

ENGAGEMENT

The Panel regularly interacts with complainants and the community. The Panel engages with complainants throughout the complaint process so that they understand each step and informs them of the status of their complaint. The Panel also engages with the Fairfax community to inform

them of the Panel's mission and service. The Panel conducts outreach events to community groups, faith-based organizations, civic associations, and other stakeholder groups.

Resources

One Fairfax Policy

One Fairfax Website

Staff Memo to the Panel Titled "One Fairfax and How the Panel Promotes It"

*Four Year Review Report

Commented [AG1]: These documents can be listed on the One Fairfax and the Police Civilian Review Panel page to link readers to the One Fairfax Policy, One Fairfax Website, One Fairfax Memo, and eventually, the report of the 4 year review.

Recommendations of Individual Members of the Fairfax County Police Civilian Review Panel

Support Body Worn Cameras

Fully fund and implement body-worn cameras throughout the entire police department, including SWAT teams.

Provide the means to review all body-worn camera video on a regular basis by the Commonwealth Attorney's Office or other county office that is independent of the FCPD. Add technology, as required, to facilitate review of video, like tagging footage by incident number. This would allow reviewers to associate each stop in the databases with the relevant BWC footage from that stop.

Provide and fund automatic turn-on technology for all body-worn cameras.

Use body-worn camera footage to train officers and evaluate policies.

Improve Civilian Police Oversight

Support state legislation to allow local jurisdictions in Virginia to choose the model of civilian oversight that best meets the needs of their communities. Local jurisdictions should be allowed to implement civilian oversight that authorizes panels and/or independent auditors to investigate, interview witnesses, hear and receive sworn testimony and evidence, and issue subpoenas.

Support state legislation that would eliminate legal impediments to the direct hiring of independent legal counsel by a civilian review panel and/or independent auditor. The County Attorney, who represents police departments, should not hire or supervise the independent legal counsel of a civilian review panel or independent auditor.

Authorize the Police Civilian Review Panel to hire an experienced criminal investigative staff person to assist with the fulfillment of the panel's responsibilities, including reviewing the police investigative file, questioning the complainant and the representative of the police department at review meetings, and drafting review reports. (See Recommendation 18(d) of the Ad Hoc Police Practices Commission).

Expressly authorize the Police Civilian Review Panel to review anonymous complaints.

Allow members of the Police Civilian Review Panel, the Independent Police Auditor and the investigative staff person electronic access to police investigatory records in a

properly monitored setting, such as the Office of the Independent Police Auditor or a district police station.

Expressly authorize the Police Civilian Review Panel to hold regular public forums to obtain information on community views regarding law enforcement policies and practices.

Authorize the Independent Police Auditor to monitor and review all use of force incidents, regardless of whether they involve serious bodily injury or death.

Authorize the Police Civilian Review Panel and the Independent Police Auditor to hire consultants to administer community surveys biennially to obtain feedback from community members on police practices and the effectiveness of civilian oversight.

Authorize the Police Civilian Review Panel and the Independent Police Auditor to publish a detailed analysis of complaints filed with the Panel, the Independent Police Auditor or police department (whether or not the Panel or Auditor reviewed a complaint) that identifies what people are complaining about, when they are complaining, who is complaining, and how the complaint was resolved. This analysis would help identify patterns across complaints and help the department understand what types of interactions lead people to feel aggrieved.

Better Police Training and Recruitment Reform

Hire an outside expert on implicit racial bias to conduct an analysis of all training for new recruits and police officers to determine whether training in some areas undermines implicit racial bias training in other areas.

Require that implicit bias training be conducted in person by experienced professionals and not on-line. Make such training more frequent and shorter (i.e. once every six months for 2-3 hours).

Measure the effects of all training by evaluating outcomes for officers who have already undergone training compared to those who have not received it.

Screen the public social media accounts of new recruits to detect whether there is evidence of explicit bias.

Suspend Officer Pay During Investigations

The Police Chief should have the authority to immediately suspend officers, with pay or without pay, pending an internal investigation.

Implement Social Media Policy and Inspections

The Police Civilian Review Panel supports the recommendation of the Independent Police Auditor that the FCPD develop a social media usage policy and mandate that all public social media accounts and postings by members of the police department are subject to inspection by the department, whether or not it is done in relation to any specific allegation or investigation.

Better Transparency

The FCPD should publish quarterly statistics covering all FCPD field stops, all stops where the officer has a reasonable suspicion or knowledge of a violation of law (including traffic violations), all arrests, searches and consents to search (including waivers of consent), and all use of force incidents by magisterial district. The race, gender and ethnicity of each individual questioned, stopped or arrested should be reported.

The FCPD should implement the Police Civilian Review Panel's recommendation of January 9, 2019, that the FCPD periodically summarize and publish all FCPD disciplinary actions across the entire FCPD without specifically identifying the disciplined officer by name.

In all police investigations concerning allegations of racial bias or racial profiling, the FCPD should implement specific guidelines and processes to follow in order to address the unique issues in such cases. For example, the FCPD should do a thorough analysis by race, gender and ethnicity of the officer's stops (including field stops) in the past year, as well as the officer's arrests and involvement in use of force incidents. Such investigations should also include an investigation of the officer's public social media posts and interviews of witnesses. The FCPD should also confidentially disclose to panel members all previous complaints against the officer and the discipline rendered, if any, in response to each of the complaints.

The FCPD should consider conducting customer-service audits after routine stops. This would be a valuable tool in tracking police-community interactions and identifying both positive and negative experiences with police. Findings should be published annually.

The Board of Supervisors should consider hiring an outside expert on implicit racial bias to conduct a thorough review of all police department training, practices and investigation techniques to identify areas for improvement. A report with recommendations should be published following such review.

Discipline of Officers

The FCPD should make oral reprimands a part of the permanent personnel record of police officers who received such discipline, and oral reprimands should be taken into account when considering promotions. (See General Orders 310.1 and 310.2).

Note: This document has not been voted on by the Fairfax County Police Civilian Review Panel and does not represent official positions of the Panel. This list is a composite of views shared by a majority of the panel's members. The Panel is in the process of undergoing a four-year review and will vote on a comprehensive list of recommendations at the conclusion of that review later this year.

July 21, 2020

MEMORANDUM

TO: Fairfax County Police Civilian Review Panel

FROM: Robert Cluck, Panel Member

SUBJECT: Interpretation of Statistics and Police Practices

The Panel has been rightly concerned about allegations of biased actions by FPCD against persons of color. One of the tools available to find patterns of bias is of course statistics. The Panel has used data provided by FCPD to try to establish whether certain officers have a disproportionate share of encounters with persons of color, a possible indicator of bias.

At several meetings I have raised concerns about the limitations of statistics and how far they can go in establishing a causal link, i.e., that police with greater encounters are likely to be improperly motivated in part by bias (I realize this might be somewhat of a simplification, but I think captures the essence of what I've been hearing).

My fundamental concern with using statistics with effectively one variable (police officers with number of encounters with persons of color) is that there are many other variables at play that must be considered before attempting to draw conclusions (e.g., a multivariate analysis). Small sample size is an issue as well. (As you have heard me opine, looking at the social media of active police officers is an undue invasion of privacy, is of questionable effectiveness and should not be part of this analysis.)

I recall Major Reed listing a number of variables affecting officer outcomes, and Major Owens alluding to them as well. I think those variables must be taken seriously as we evaluate bias claims.

It occurred to me that a statistic that I've become aware of is an excellent example of the limitations of too simple a search for cause and effect. Attached are two pages that show all (I hope I didn't miss any) the individuals whose photos were posted on the FCPD Recap from May 18 through the end of last week. As you will see, it appears that 89% of the photos were of persons of color, and 11% seemingly "white" (Euro-American?), which hugely deviates from the demographic profile of Fairfax County. (See attachment with pie chart of demographics.)

[A personal note and editorial: I am chagrined to admit that I was unaware of the origins and history of the idea of race until fairly recently. A friend of mine was having some medical problems, and as he talked about them, he noted that because of his ethnicity, he was at higher risk. That was the stimulus for my looking further into "race," and the reason the idea was created several hundred years ago. I've learned that it's an idea created to defend slavery, purporting that human beings could be put into "boxes"/categories based on physical characteristics, and that each category (race) had certain biologically based attributes, and that those races could be "ranked" (and of course, one "race" was found to be superior). "Racists" and "racism" are useful terms that should remain in our discourse to describe persons who believe that about human beings, although we know there is no scientific basis for race, actually a social construct. I'd like to see "race" itself put in the dustbin of bad ideas, along with eugenics, etc. Unfortunately, it's like a virus embedded in the DNA of American society and will be hard to remove.]

Regarding the statistics mentioned above, they're rather dramatic, if not surprising, "statistical" proof of reporting bias by FCPD, correct? If certain races/ethnicities are "overrepresented", it's not likely to be a statistical accident, right? I don't think so. It is, in my opinion, an example of where many multiple and sometimes confounding variables are at play and demonstrates how essential it is to dig down into the data and the context rather than looking at simple correlation.

Obviously, what these statistics about the arrestees seem to mean to various people will be through their personal frames of reference. At risk of oversimplification again, I see the variables underlying these outcomes in the deep, dark history of racism in our country. There are, as we know, others who might see this as evidence supporting an attribute of criminality in a certain race. I also see this as a strong example of the dangers of statistics uncritically looked at.

Getting back to the starting point, I think we need to make sure we keep in mind the cautions of the FCPD representatives during previous Panel meetings. No doubt there's implicit bias in every officer—and in every one of us, as Brian Corr of NACOLE so effectively described at our training. It's almost certain that there are officers who hold explicit bias, which they might, or might not, allow to affect their community contacts. I assure you that I take this possibility very seriously and that I believe our Panel has a role in assuring these cases are handled properly.

As a final comment, I find very troubling the fact that the FCPD posts these photos of arrestees in the Recaps or in other news releases. I am highly confident no malice is intended, and that it's standard police practice in many locations. It's my understanding, based on limited research, that posting such pictures in part goes way back to a time when it was believed people could be shamed into avoiding bad behaviors. It also allowed citizens to know who the bad actors were in their community.

It is my experience, backed by statistics, that many of the persons arrested, and almost assuredly at least several of the individuals in the attachment, live with serious mental illness and that their "anti-social" actions are a symptom of those conditions. Addiction, a medical condition (although not widely acknowledged yet as such), is likely a factor for some of these individuals as well. Statistically, individuals with mental illness are 20-40% of prison populations. Knowing that, it seems to me unconscionable that we would post pictures of those individuals.

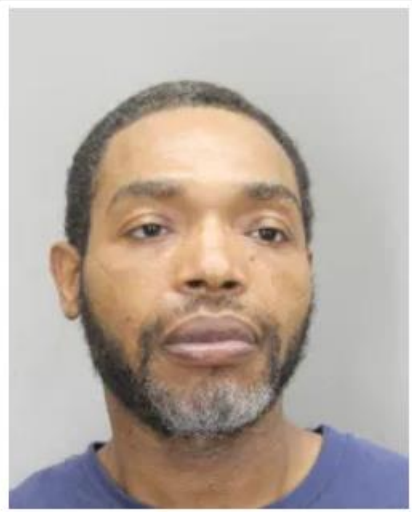
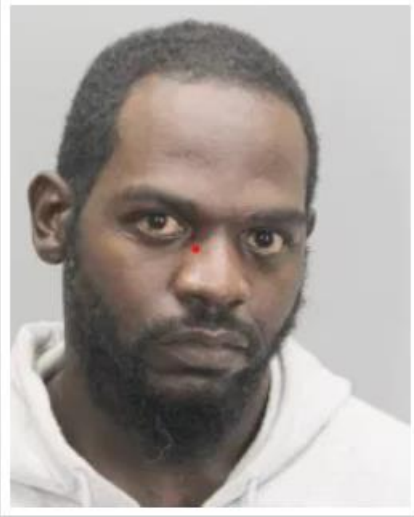
It is also my impression that these individuals are arrestees and have not been convicted. Under the principal of innocent until proven guilty, should we be posting these pictures?

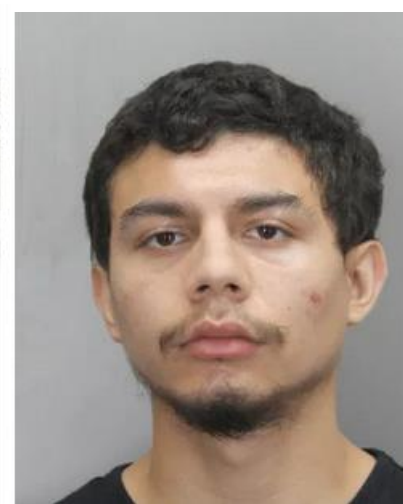
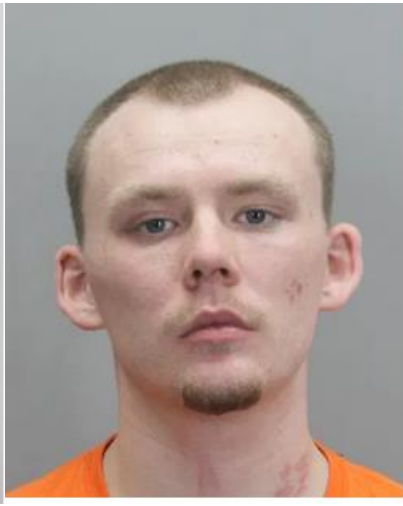
And very importantly in my mind, these photos act to reinforce the ideas of those who hold that certain "races"/ethnicities have a greater inclination toward criminality and feeds their bias.

I think we should recommend to the FCPD that this practice/policy should be eliminated to improve perceptions.

I appreciate your patience in reading through this and I hope its helpful in furthering our discussions of bias allegations. I'm certainly open to other viewpoints and information.

Attachments





Persons by Race/Ethnicity

