

Police Civilian Review Panel

August 12, 2021

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:¹

Cheri Belkowitz

Todd Cranford (by phone)

Jimmy Bierman, Chair

Frank Gallagher

Dirck Hargraves, Vice-Chair

Shirley Norman-Taylor

Panel Members Absent

William Ware

Others Present:

Anita McFadden, Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

Lt. Derek Gray, Internal Affairs Bureau

Capt. Camille Stewart, FCPD

The Panel's business meeting was called to order at 7:03 p.m. Mr. Bierman welcomed everyone to the Panel's August 12, 2021. Mr. Bierman took roll call to verify a quorum of the Panel was present. Mr. Cranford stated that he was participating remotely from Fairfax, Virginia. Mr. Bierman told Panel Members that they will meet in person now that there is no state of emergency but will let them know if and when the Panel will meet again virtually.

Approval of Meeting Agenda: Mr. Gallagher moved approval of the meeting agenda. Ms. Norman-Taylor seconded the motion and it carried with a vote of six, with Mr. Ware being absent.

Approval of July 1 Meeting Summary: Ms. Norman-Taylor moved approval of the Panel's July 1 meeting summary. Mr. Hargraves seconded the motion and it carried with a vote of five, with Mr. Gallagher abstaining, and Mr. Ware being absent.

Approval of Subcommittee Initial Review Report for CRP-21-13: Ms. Norman-Taylor Shirley provided a summary of the complaint. She said the Complainant bought a phone at Target and was concerned that there were apps installed on the phone being used by the government to spy on her. The Complainant had filed cases with various law enforcement agencies regarding multiple phones and with her mobile phone carrier. She went to the police station to report the crimes and alleged that she was not taken seriously by an FCPD officer and, because she was a Black woman, the officer was being dismissive and not investigating the crimes. She complained

¹ Two Panel seats were vacant for this meeting.

that an officer asked her to take an oath regarding her having mental health issues. The officer did in fact asked questions about her mental health.

Ms. Norman-Taylor said that the Panel subcommittee met and went through the criteria checklist. She said that they answered no to all criteria except for the second criterion related to discrimination based on race. She said that the subcommittee looked at the totality of the case and as a committee voted that the full Panel does not review the complaint because it had nothing to do with her being a Black woman. Ms. Norman-Taylor said that the officers were compassionate and professional and took the complaint seriously. She said the subcommittee thought the officers did a great job.

Mr. Bierman said they do not recommend the full Panel take the case. He said there was no substantiation to the record of the complaint and nothing to suggest that the police investigation was not complete, thorough, accurate, impartial, or objective.

Mr. Hargraves asked whether the police making derogatory comments was included in the checklist. Mr. Bierman said that it might fit under the second criterion regarding harassment. Mr. Hargraves asked how the record reflected that the officers went over and above and were compassionate. Mr. Bierman said the officers were calm, used active listening, and took the complaint seriously. He said the wellness check was conducted compassionately and that the officer explained to the Complainant that he had to ask the questions based on the law. Ms. Norman-Taylor said that included in the file was the Complainant telling the investigating officer that she did not think she was being blown off but that she felt overwhelmed.

Mr. Gallagher moved that the Panel accept the recommendation of the subcommittee regarding CRP-21-13. The motion was seconded by Ms. Belkowitz, and it carried unanimously, with Mr. Ware being absent.

Proposal for Codifying the Subcommittee Process: Mr. Bierman said that Mr. Hargraves and Mr. Cranford were working to develop draft language for the Bylaws on the subcommittee process. He referred to the draft document in the meeting materials, which included comments and suggested edits from Ms. Ramirez. Mr. Bierman said that to change the Bylaws, the Panel must make the request of the Board of Supervisors. He said he would like the Panel to have a discussion tonight and then consider the language again at its September meeting.

Mr. Hargraves said Article VI in the Panel's Bylaws spells out that a subcommittee can be formed to review complaints. He referred to the draft document before the Panel. He said that they recommend there should be a minimum of three members on the subcommittee but not more than one-third of the members. He said they think the decision to review should be unanimous and want to give the Complainant as much review time as possible. He said the full Panel can override the decision of the subcommittee.

Mr. Cranford said that the proposal mirrors what the Panel has already been doing in practice but codifies it. He said they welcome comments and suggestions from the Panel.

Mr. Hargraves said they reviewed the meeting notes contained in the Four-Year Review regarding discussions on how to weed out complaints that do not need the full Panel's attention.

Discussion ensued on the proposal. Mr. Gallagher and Ms. Norman-Taylor stated that they agreed that the decision should be unanimous.

Ms. Belkowitz stated that items iii. and iv. under section II. Subcommittee Review Criteria should be in their own section, B. She also said that one-third of the current Panel is three Panel members. Mr. Cranford said the proposed language accounts for the possibility that the number of members on the Panel could increase in the future.

Ms. Belkowitz said she agrees with the comment on page 8 of Bylaws. She also said that section VI. C. 2. (b) regarding sending out the Initial Disposition Notice within 30 days should be consolidated into the subcommittee provision and that there should be something in the language about the duties of the subcommittee. Mr. Bierman expressed his agreement with her suggestion.

Mr. Bierman said that he wants to be sure the subcommittee is efficient, but that the outcome of whether the full Panel reviews, does not depend on who sits on subcommittee. He said he wants section II. A. ii. in the proposed language to say: "If so, is there any evidence contained in the investigative file to support the allegations?" He said he wants it to be a low bar. Mr. Cranford stated that the subcommittee is making the determination whether there is sufficient evidence to support the allegation. Mr. Bierman said he thinks the question is not whether there is *sufficient* evidence to support the allegation, but whether there is *any* evidence to support it. He said there have been disagreements and dissents in the past about whether there was sufficient evidence to review. He said the legal term is whether there is a "scintilla" of evidence. Mr. Cranford said that if the bar is that low, then more cases would meet the standard and it could negate the need for the subcommittee. Mr. Bierman said he does not think the bar is too low as the Panel has rejected many review requests using the standard, including the request considered by the Panel today. Mr. Hargraves said there could be a Panel Member that believes any complaint can have a scintilla of evidence. Mr. Gallagher said he agreed with how it is currently written, and that the subcommittee can choose to apply the standard and make the determination. Mr. Bierman expressed his agreement in not making a change to the language.

Mr. Bierman referred to section II. A. iv. in the proposal and suggested that language be added that the full Panel ultimately makes the determination of whether it accepts a review. He said if there is a belief of any members that the standard is not being applied properly, they can always override it. Mr. Cranford said that language should be added that the full Panel "can override the opinion of the subcommittee" and Mr. Bierman agreed.

Mr. Bierman asked Mr. Hargraves and Mr. Cranford to work with Ms. Ramirez to integrate draft language into the Bylaws for the Panel to review and circulate. He said the Panel can consider a

motion at its September 2 meeting for a proposed Bylaw changes to submit to the Board of Supervisors.

Ms. Belkowitz suggested that they make clear the procedures concerning the subcommittee process. She asked what happens if three subcommittee members do not show up to the subcommittee meeting. Mr. Bierman said the subcommittee quorum is two Panel members. He agrees that more information needs to be integrated into the procedures. She asked if the Panel has 30 days to get back to the Complainant. Mr. Bierman said the Panel has thirty days from the receipt of the Investigation Report. Mr. Bierman said the Panel may want to consider whether to extend the 30-day timeline. He asked Ms. Belkowitz to send any ideas on how to deal with the issue to Mr. Hargraves.

Mr. Gallagher referenced section II. A. iv. and asked if the Panel subcommittee provides a written summary. Mr. Bierman answered affirmatively. He said the subcommittee's decision was once provided to the Panel in an oral report, but then the subcommittee meetings were scheduled to occur a few days before the Panel meeting to provide a written report. Mr. Gallagher suggested removing the word "written" from the proposal. Discussion ensued on whether to require written reports. Mr. Bierman said that the Panel could strive to provide written reports whenever possible but may need to provide an oral report in some cases. Ms. Norman-Taylor said that the recorded summary can provide a backup to the report.

Ms. Belkowitz asked if the subcommittee can complete a form. Mr. Bierman said that there is a form used by the subcommittee. Mr. Hargraves asked whether the Bylaws should mention that the subcommittee uses a checklist. Mr. Bierman said he did not think it was needed because the checklist follows the criteria outlined in the Bylaws. He said the evolution of the subcommittee process was that there were more considerations than just the criteria for abuse of authority and serious misconduct as outlined in the Bylaws.

Mr. Bierman said the Panel will try to vote on a Bylaws recommendation at the next meeting.

Recap of Quarterly Meeting: Mr. Bierman provided the Panel with an update on the Quarterly Meeting held with Chiefs of Staff to Chairman McKay and Supervisor Lusk, Chief Davis, and other FCPD command staff.

He announced that the Board of Supervisors approved an Executive Director position for the Panel, which was a major request of the Panel in its 2020 Annual Report and Four-Year Review. He outlined three main duties for the position including: helping with investigation reviews, drafting Panel reports, and conducting outreach for the Panel. He said the Executive Director will report directly to the Board of Supervisors and there will not be an administrative staff position to support the Executive Director, at least initially. He said there is no specific timeframe for the hiring of the position, but the authority and funding are in place, and the salary range is reflective of this being a competitive position.

Mr. Bierman said that the Panel will give its presentation to Board of Supervisors at its September 28th Public Safety Committee meeting.

He said that he learned at the meeting that the Board of Supervisors is working to fill the vacancies on the Panel and are conducting interviews. Mr. Bierman announced that Panel Member Doug Kay had to leave the Panel due to a conflict of interest.

Mr. Bierman said the Panel would like to receive training in the fall of 2021 from the FCPD. The Panel was last trained by the FCPD and by NACOLE in 2019.

Mr. Bierman said there was a discussion at the meeting on the Panel gaining electronic access to investigative files. He said Chief Davis is considering this request and said he may be able to give Panel Members access at district stations. Mr. Bierman said he reiterated that Panel Members take confidentiality and their responsibilities seriously.

Mr. Bierman said there was discussion about the Panel meeting with the next class of recruits and the rank and file at the FCPD, and whether Chief Davis may join with the Panel in presenting.

Mr. Bierman said that they discussed at the Quarterly Meeting the Panel's Recommendation Matrix, and he noted that there were some recommendations that needed an FCPD response or action, and in some recommendations, the FCPD's response was not accepted by the Panel.

Mr. Bierman said the FCPD has established a process for officers to make anonymous complaints regarding other officers. He said Internal Affairs publishes a summary of sustained complaints against officers. Mr. Hargraves added that sustained complaints are summarized by employee level such as the officer, supervisor, and commander levels.

Mr. Bierman said that Dr. Fritz will be the FCPD's first director of data for the department and the Chief will set up an introduction of Dr. Fritz to the Panel.

Mr. Bierman discussed his experience presenting to the admin staff of the FCPD. Mr. Gallagher asked what kind of questions they had about the Panel. Mr. Bierman said there were some questions related to whether the Panel was increasing trust or not. He said he made the argument that accountability is beneficial for the FCPD and will increase trust. He said some questions were like ones asked when the Panel addressed FCPD recruits, such as what the Panel does and what is its training. He told them that the Panel focuses on the how and the what of the investigation and not on the why of the complaint.

Second Public Forum with Chief Davis: Mr. Bierman said that Chief Davis agreed to join the Panel in conducting another public forum to talk about what he has accomplished in his first 100 days. Mr. Gallagher suggested that the Panel check in with Chief Davis to identify dates when he might be available.

Updated Panel Remote Participation Policy: Mr. Bierman said there has been a change in the FOIA law allowing a certain number of unexplained or personal reasons for participating

remotely in public meetings, which he believes is at least two per year or 25% of the meetings, whichever is greater. Mr. Bierman read from the Panel's current remote participation procedure. He said the Panel has to update its procedure to reflect the changes in the law. He said that the question before the Panel is how to operate with the COVID cases rising. Ms. McFadden said that the County is still in a state of emergency and, if there is a local or state emergency, the Panel can meet virtually. She said the Panel can meet remotely, meet in-person, or have members participate remotely in an in-person meeting using the procedure. Mr. Bierman said he will work with Panel counsel to draft revisions to the procedure before the next meeting.

New Business: Mr. Hargraves and Mr. Bierman updated the Panel that they have been meeting with individual Supervisors and their staff to discuss the Panel's recommendations and, specifically, the Executive Director position.

Mr. Hargraves said that he participated in Kingstown's National Night Out and encourages the other Panel members to do the same.

Ms. Norman-Taylor said she will be absent from the Panel's December 2, 2021, meeting.

Ms. Ramirez said that the consultant who is providing training to the FCPD on implicit bias is scheduled to provide a presentation to the Panel at its next meeting. Mr. Cranford said that he would like the Panel to receive training on implicit bias as well.

Ms. Belkowitz said that she serves on the Special Education Parent Teacher Association, which is going to hold an event with the FCPD. She would like the Panel to also be represented.

Adjournment: Mr. Hargraves moved to adjourn the meeting. Mr. Gallagher seconded the motion and it carried unanimously.

The meeting adjourned at 8:28 p.m.

Next Meeting: The Panel's next business meeting will be held on Thursday, September 2 at 7:00 p.m. in the Fairfax County Government Center Conference Room 232.