
Police Civilian Review Panel

Meeting Agenda

Location: Conducted electronically due to COVID-19 Pandemic

Date: June 3, 2021

Time: 7:00 pm

Agenda details:

I. Call to Order

II. Agenda Items

- a. Motions to Conduct Electronic Meeting
- b. Approval of May 6 Meeting Summary
- c. Approval of Subcommittee Initial Review Report for CRP-21-05
- d. Approval of Review Report for CRP-20-24
- e. Discussion: Transition Back to In-person Meetings
- f. Panel Leadership Elections
- g. Outreach Update

III. New Business

IV. Adjournment

Panel Meeting Schedule:

- July 1, 2021 at 7:00 pm
- August 5, 2021 at 7:00 pm
- September 2, 2021 at 7:00 pm

Police Civilian Review Panel

May 6, 2021

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:¹

Cheri Belkowitz

Todd Cranford

Jimmy Bierman, Acting Chair

Frank Gallagher

Dirck Hargraves

Doug Kay

Shirley Norman-Taylor

William Ware

Others Present:

Capt. Todd Billeb

Lt. Matthew Dehler

Anita McFadden, Interim Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

Lt. Camille Stewart, FCPD

NOTE: The Panel's May 6 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 7:01 p.m. and all Panel Members were present except for Ms. Belkowitz, who joined at 7:05 p.m. Mr. Bierman welcomed everyone to the Panel's May 6, 2021 meeting and noted a few housekeeping rules.

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

Ms. Belkowitz was present and participated from Fairfax Station, Virginia.

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

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

Mr. Gallagher was present and participated from Burke, Virginia.

Mr. Hargraves was present and participated from Kingstown, Virginia.

¹ One Panel seat was vacant for this meeting.

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

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

Mr. Ware was present and participated from Alexandria, Virginia.

Mr. Bierman moved that each member's voice may be adequately heard by each other member of this Panel. Mr. Cranford seconded the motion and it carried with a vote of seven, with Ms. Belkowitz being absent.

Mr. Bierman 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. He 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 1-844-621-3956 and entering access code 129 868 3027 as noted in the Public Meeting Notice. The motion was seconded by Mr. Hargraves and it carried by unanimous vote.

Mr. Bierman moved 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. Cranford seconded the motion and it carried by unanimous vote.

New Police Chief: Mr. Bierman said that the new FCPD Chief Kevin Davis is unable to attend the Panel's meeting tonight. Instead, he is participating in a "community conversation" meeting with Chairman McKay and Supervisor Lusk. Mr. Bierman said that changes to the Bylaws allow the Panel to host or participate in up to six public comment meetings per year. He said the Panel can ask the Chief to join the Panel at its next regular business meeting, can host an additional meeting with public comment, or participate in a meeting hosted by Supervisor Lusk. Panel members expressed their preference that the Panel host its own meeting with public comment prior to the June 3rd meeting. Topics for the proposed Panel meeting were discussed and how it will differ from the community conversation. The Panel's meeting will include time to get to know Chief Davis and ask him questions and will focus on the relationship between civilian oversight and law enforcement.

Mr. Kay moved that Mr. Bierman initiate a conversation about coordinating a public meeting hosted by the Panel with Chief Davis and Supervisor Lusk in the coming weeks. Mr. Hargraves seconded the motion and it carried by unanimous vote.

Approval of April 1 Meeting Summary: Mr. Cranford moved approval of the Panel's April 1 meeting summary. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Review of CRP-20-24:

Ms. Belkowitz asked what the Panel was allowed to discuss in an open session given that Panel members sign a confidentiality agreement when reviewing the investigative file.

Mr. Bierman referenced recent changes to the Bylaws clarifying this fact. The Panel is not to discuss personnel information, tactical issues, officer discipline, statements made in interviews, and personal information. He said the Action Item allows the Panel to discuss the facts of what occurred and the investigation. The Panel also does not name officers. Mr. Gallagher said that IAB representatives can clarify during a meeting what information should or should not be discussed.

Ms. Belkowitz stated that she requested a copy of an FCPD training presentation and was told that the FCPD's FOIA person would determine if it contained tactical information. Mr. Bierman stated he did not believe the content of the presentation was tactical. Mr. Kay said that he has asked these types of questions during meetings and found the FCPD to be open. He said he does not talk about officer discipline or provide quotes from interviews.

Mr. Bierman provided an overview of the subject complaint. He stated that the case involved a Complainant who alleges being choked while being placed in a police car and having his seatbelt fastened. The Independent Police Auditor reviewed the excessive use of force allegation, while the Panel is reviewing the allegation of racial bias. The facts of the case include the Complainant and his girlfriend driving early in the morning when it was dark. The Complainant was behind an unmarked police car. The Complainant alleges that he flashed his headlights at the unmarked car because it was drifting in the lane. After that, the Complainant's car passed the police car on the right. The police officer clocked the Complainant's car on radar as going 73 mph. The police stopped the Complainant, approached his vehicle, and cited him for speeding, reckless driving, and aggressive driving. The officer stated that the Complainant signing the summons only acknowledged the court date but did not admit guilt. He was told he would be arrested if he did not sign. The Complainant refused to sign the summons and was arrested and brought before a Magistrate. The Complainant alleged that he was racially profiled.

Complainant Statement:

The Complainant stated that he was driving to work and saw an unmarked Chevy Impala driving in the middle lane but on the white line of the road. The Complainant flashed his lights to alert him to the fact that he was not fully in his lane. The Complainant passed the vehicle on the right lane and then saw the police car lights flashing. The officer told the Complainant that he was recklessly driving by going 73 MPH in a 35 MPH zone. The officer gave him a paper citation to sign, and the Complainant said he would not sign it. The Complainant said that the officer appeared to be angry. The Complainant began filming on his phone and handed it to his girlfriend. The officer told the Complainant to step out of the vehicle and he handcuffed him and escorted him to the police vehicle. The Complainant said he did not speak during this time.

The officer placed the Complainant inside of the police vehicle and then placed his elbow against him, choking him for a second or two, while he secured the seat belt. The Complainant said he was handcuffed and felt helpless. He said he did not fight even though he felt angry. He said another officer told him he should have just signed the citation. When at the Central Processing Unit, the magistrate told the officer “you know he had every right not to sign the citation” and the officer said he knew that. The officer told the Magistrate that he was working overtime. The Complainant stated that he believes that the officer was tired, and this was why he was driving on the white line.

Mr. Bierman clarified that the Panel can only review the allegations of racial profiling, and not the claim of use of force, which would be addressed by the Independent Police Auditor.

The Complainant said he was driving alongside four or five other cars and believed the officer singled him out because he was angry that the Complainant flashed his lights.

Complainant Questioning:

Mr. Hargraves asked whether the Panel could look into the role of race in level of force used? Mr. Bierman stated that it was not within the purview of the Panel.

Mr. Hargraves asked the Complainant do you believe the officer was aware of your race when he pulled you over? The Complainant answered affirmatively.

Ms. Norman-Taylor asked was it not dark when the officer pulled you over? The Complainant stated that it was dark at 6:15 a.m. and that his windows were halfway down.

Mr. Gallagher asked do you think it is possible the police pulled you over for doing 75 MPH in a 35 MPH zone? The Complainant said he passed the officer, so he was not doing the same speed as the Complainant. He also said he would not recklessly drive when he knew it was a police officer.

Mr. Gallagher said the in-car video (ICV) showed the officer being courteous and professional, yet you accused him of hierarchical bias. He asked how does hierarchical bias manifest itself in this incident? The Complainant said just because someone is African American does not mean they cannot be biased against another African American. African Americans gets stopped for minor offenses. He said he took his vehicle for calibration and the officer’s readings were wrong. Mr. Gallagher said the officer pulled over the Complainant based on radar. The Complainant said the officer cannot be sure that the speed on the radar was his vehicle and not one of the other cars around him.

Mr. Hargraves asked do you believe that the officer picked out your car among the other cars because of your race? The Complainant said it led from one thing to another. Mr. Hargraves asked do you believe that if you were a white driver, he would not have pulled you over? The Complainant said he believed communication would have been different.

Mr. Bierman asked if it is correct that during the investigation you admitted that you knew that if you did not sign the summons, you would be arrested? The Complainant answered affirmatively. Mr. Bierman asked do you believe if a white person had chosen not to sign the summons, would that white person have been arrested? The Complainant answered yes.

Mr. Bierman thanked the Complainant for his participation in the Panel's process.

FCPD Statement:

Major Lay from the FCPD introduced Second Lieutenant Aaron Spooner who conducted the initial investigation and the additional investigative steps. Lt. Spooner provided a summary of the facts of the case and the investigation. On October 25, 2019, an FCPD officer from the traffic enforcement team at the Fair Oaks station was traveling on Rt. 50 Eastbound and observed a vehicle traveling at a high rate of speed. The radar equipped in his unmarked cruiser read 73 MPH in a posted 45 MPH zone. The vehicle flashed his high beams at the cruiser. Before the vehicle was able to pass the cruiser on the passenger side, the officer turned on his emergency equipment to initiate a traffic stop. The officer approached on the passenger side and told the community member why he pulled him over. The Complainant expressed disagreement but was cooperative. The officer issued three summonses. When he went back to the vehicle, the community member refused to answer any questions and refused to sign the summonses. The Complainant complied when he was asked to step out of the vehicle, and he was arrested. The Independent Police Auditor is reviewing the allegations made by the Complainant in how he was seat belted into the cruiser. A complaint of use of force was submitted to the Fair Oaks station and investigated. The officer was found to be in compliance. At the time of the incident, cruisers assigned to traffic enforcement did not have ICV in the rear but have since been equipped. The Complainant contacted the Panel stating that the stop may have been racially motivated. Second Lt. Spooner conducted a follow-up investigation. In an interview, the Complainant stated that he was born in Africa and the officer was born in the U.S. and so there was a hierarchy. The Complainant stated that the officer never used derogatory terms or swore at him. The passenger was interviewed, and she said she did not feel like the stop was racially motivated.

FCPD Questioning:

Mr. Hargraves asked if the Complainant was found guilty or not guilty of the charges? Lt. Spooner responded that he was found guilty of reckless driving and failure to dim his headlights, but he was found not guilty of aggressive driving. Mr. Hargraves asked if a community member observes an officer going over a line what would be the appropriate course of action? Lt. Spooner replied that it depended on the circumstances but if they were approaching at a high rate of speed, they may slow down as a defensive tactic. Mr. Hargraves asked if all cars traveling behind him were traveling at the same rate of speed, is the officer able to pinpoint the one car with radar? Lt. Spooner replied that the officer testified that he singled out the car traveling at high rate of speed towards him in his rearview mirror. Mr. Hargraves

asked is it true that the Complainant's car was ahead of the pack of cars and that is how the officer was able to identify it? Lt. Spooner replied affirmatively.

Mr. Kay asked whether the requirement – that motorists sign a summons and the consequences for failing to sign – is state law or county policy? Lt. Spooner referenced Virginia Code 46.2-940 and stated it is also outlined in FCPD General Order 601.1.

Mr. Ware asked if the Internal Affairs Bureau (IAB) has different divisions or officers specializing in different areas? Lt. Spooner said that there are nine investigators who are assigned as cases come in. Mr. Ware asked if you were investigating a hate crime what kinds of information would you look for in those types of cases? Lt. Spooner stated that hate crimes are criminal acts, which are handled by criminal investigators, and are not under the purview of IAB.

Mr. Gallagher stated that this case is a good example of why it is beneficial to have video available. He said that the officer was very measured and professional and the ICV backed up what the officer said. Major Lay expressed his agreement and stated that body-worn cameras are now fully implemented, in addition to the ICV.

Mr. Bierman stated that there was a moment during incident when the officer asked if he was being filmed and said that there was a policy that he would have to call or notify a supervisor. He asked what is the FCPD policy on filming, how was it developed, and is it in the General Orders? Major Lay stated that they do not prohibit anyone from filming the police and that it is only a problem if a person is filming on a phone when getting handcuffed. It is in policy and training that the officers do not interfere with filming as long as it is not interfering with an investigation. Lt. Spooner said that officers are supposed to notify a supervisor that filming is going on, so it can be collected as evidence if a complaint is filed.

Ms. Belkowitz said the report referred to an interview with the arresting police officer on December 18, 2019 but she only saw an interview from November 18, 2019. She asked if that was a typo? Lt. Spooner replied that it was a typo, and the interview was from November 18, 2019. Ms. Belkowitz asked whether all protocols were followed for a cruiser that does not have a cage? Lt. Spooner said protocols for prisoner transport were followed. He said that traffic enforcement officers are assigned cruisers without cages. He said the Complainant was placed in the rear and seat belted in, and the ICV was on during transport.

Ms. Belkowitz referenced an academy training slide that states in vehicles without a cage, arrestees are placed in a different location than in a vehicle with a cage. Lt. Spooner stated that the Complainant was placed in the backseat and on the passenger side. She asked would you ever place a person in the front seat? Major Lay said he will answer her individually but not in a public setting. He said in this case the officer was following policy in that he placed the Complainant in the backseat on the passenger side. She asked was the training provided to Fairfax County officers? Lt. Spooner answered that it was. Ms. Belkowitz stated that there may be an inconsistency. Lt. Spooner said he would check and get back to the Panel on that.

Ms. Belkowitz asked is it normal for the FCPD to provide the Panel with the training received by the arresting officer and are all officers in the FCPD required to have the same training? Lt. Spooner answered affirmatively to both questions. He stated that there are mandated trainings required for all officers and there is additional training that officers can elect to take.

Ms. Belkowitz asked whether radar measurements are recorded? Lt. Spooner stated that they are not.

Mr. Ware asked when you investigate complaints do you review the personnel record or other complaints made against the officer? Lt. Spooner said they will look at the officer's IA history, which includes complaints against the officer, and if there is something in relation to the current complaint, they will pull the record to review it.

Mr. Hargraves said that the file contained a stop and arrest history by race as it relates to the station to which the officer was assigned. He asked how would you categorize his arrest or stop patterns? Lt. Spooner said that there was a higher percentage when looking at the arrest statistics but noted that since the officer was a traffic officer a lot of his arrests came from traffic stops, such as class 1 misdemeanors from driving without a license or a suspended license. He said the officer had close to 1500 traffic stops which correlate with the station level statistics. Mr. Hargraves noted that the transparency of data could help community members see the patterns and trends.

Mr. Bierman thanked the FCPD representatives for their participation.

Panel Deliberations:

Mr. Bierman commended IAB for their investigation. He said they took seriously the question of racial profiling and provided a useful comparison of arrests and traffic citations. He said the traffic citations in this case were consistent with that of others in the District Station. He noted that they looked at issues surrounding arrests when there was no option not to make an arrest, like in this case.

The Panel openly deliberated whether the FCPD investigation was accurate, complete, thorough, objective, and impartial.

Mr. Bierman stated that it is within the Panel's purview to comment on policies and practices of FCPD. He stated that there was language used in the FCPD's training materials that concerned him regarding how to handle detainees, such as a reference to sudden custody death syndrome, the use of the word victims in quotations, and a reference to death from positional asphyxia. He said he would like to believe that FCPD officers take it seriously when they take someone in custody and do their best to do no harm and ensure the safety of detainee and officer. He would like a comment included in the report addressing this concern. Ms. Belkowitz said she also has questions about training that is not relevant to this case. Major Lay stated that Lt. Spooner will reach out to the Academy regarding the language used in training materials.

Panel Findings:

Mr. Gallagher moved that the Panel accept the report as written as being thorough, complete, etc. and Mr. Bierman rephrased the motion that the Panel concurs with the investigation and finds that it was complete, thorough, accurate, impartial, and objective. Ms. Norman-Taylor seconded the motion and it carried unanimously.

Approval of Subcommittee Initial Review Report for CRP-21-02: Mr. Bierman described the incident subject of the complaint. He stated that it appeared the Complainant was involved in a swatting incident. An individual called 911 and told the dispatcher that someone had been shot in the shoulder and the shooter was still wielding a gun. As captured on body-worn camera (BWC) footage, FCPD officers were dispatched to the address and assessed the scene to determine how to safely approach the house. The BWC captured the officers knocking on a window and announcing that they were FCPD officers. The individual exited the house following the officers' instructions. It became clear the incident reported to 911 was not occurring. The Complainant was surprised by the interaction and noted that the officers had accepted his version of the events and did not conduct a sweep of the house. The police said that it became clear they were at the wrong address.

The subcommittee reviewed the allegations in the complaint to determine if serious misconduct or abuse of authority occurred and, specifically in this case, whether there was reckless endangerment or careless action on the part of the police. The subcommittee asked whether there was a scintilla of evidence that the investigation was not complete, thorough, accurate, impartial, or objective. The subcommittee found that the officers responded appropriately and there was no evidence in the record to suggest that the investigation was not complete, thorough, accurate, impartial, or objective.

Mr. Bierman said that this is the second swatting case before the Panel. In the first, the Panel was told that there would be no follow up with respect to the 911 call made by an anonymous caller. The subcommittee unanimously voted to recommend that the Panel not hear this complaint but also wanted the Panel to consider creating a comment or recommendation regarding swatting. Mr. Kay said that such a recommendation may be included in the review report to be considered later tonight. Mr. Bierman said that he agreed that the Panel can hold on that question until after the review report is drafted but wanted to flag it for the Panel. Mr. Hargraves suggested bringing up swatting concerns when the Panel meets with the Police Chief.

Mr. Cranford moved that the Panel accept the subcommittee report on CRP-21-02. Ms. Norman-Taylor seconded the motion and it carried unanimously.

Consideration of Good Cause in CRP-21-04: Mr. Bierman said the Panel received a complaint about an incident that occurred in May of 2019. The Initial Complaint was submitted to the Panel on August 11, 2020, which was over a year from the incident. Under the Bylaws, the Panel can only review Initial Complaints submitted to the Panel within a year from the incident, unless there is good cause. He said the FCPD takes seriously all complaints and asked the Panel

to forward all complaints to the IAB, regardless of whether they were timely filed according to the Panel Bylaws. The FCPD issued a disposition letter to the Complainant on February 6, 2021 and then the Complainant submitted a Review Request to the Panel on February 17, 2021, which was within 60 days of the FCPD notice. The Panel can waive the one-year statute of limitations when there is good cause to extend the filing deadline. The practice is to ask the Complainant for information to consider when making its decision. The IAB did not find in favor of the Complainant. When asked for information for the Panel to consider in determining if there was good cause for the delay in making the initial complaint, the Complainant responded by saying "On three separate occasions an extension was granted for more time during the investigation. Please take this into consideration and I would like to move forward with the Review Panel Council Request." Mr. Bierman said there were no other reasons provided.

Mr. Cranford asked whether it was accurate that the Complainant did not explain why she did not file an Initial Complaint within a year but addressed what happened during the FCPD investigation. Mr. Bierman replied affirmatively. Mr. Bierman stated that no justification was provided for why the Complainant was unable to file within one year.

Mr. Ware asked whether the Complainant or the Panel must find good cause. Mr. Bierman said it is up to the Panel to find good cause, but it is the practice to ask the Complainant to provide information. Mr. Ware stated that he thinks if a person submits a complaint to the Panel and the FCPD investigates it, the Panel should review it. Further discussion ensued on the Panel's authority to hear complaints that are not timely filed and whether Complainants should be required to provide good cause.

Mr. Gallagher moved that no good cause was provided to the Panel and therefore the Panel does not accept this complaint to go forward.

Ms. Belkowitz stated that discussion should be allowed after the motion, and before the vote, according to Robert's Rules of Order.

Mr. Ware stated that he agreed with only part of the motion: that the Complainant did not provide good cause. He said he does not agree that the Panel should not accept the complaint.

Mr. Bierman amended the motion that the Panel does not review CRP-21-04 and Mr. Gallagher accepted the amendment. Upon a question from Ms. Belkowitz, Mr. Bierman clarified that the complaint was submitted 15 months after the incident. Mr. Cranford asked how people know they have the ability to submit a complaint to the Panel and that they have a year to file. Mr. Bierman reviewed the two ways a complaint can get to the Panel – by filing a complaint with the FCPD, which results in an FCPD disposition letter to the Complainant, or by filing an Initial Complaint directly to the Panel. He said that all complaints submitted to the Panel are forwarded to the FCPD for investigation. He said in this incident the FCPD requested an extension to complete their investigation. Mr. Hargraves seconded the motion and it carried with a vote of six, with Ms. Belkowitz and Mr. Ware voting Nay.

Consideration of Pending Litigation in CRP-21-05:

Mr. Bierman reviewed the Panel's authority in reviewing a complaint that has pending litigation and stated that the Panel must defer their review until litigation is concluded. He said that to handle past requests for review involving potential litigation, the Panel Chair reviewed the issues in the complaint and the pending litigation to determine whether the matter was subject to litigation and to make a recommendation to the Panel. The Panel then determines whether there is pending litigation in the matter and whether to defer the review.

Mr. Bierman stated that he received notice from the County Attorney's office that there may be pending litigation in CRP-21-05 and the Panel may want to defer consideration of the matter. He said the complaint includes a third party, Person A, referencing an interaction between Person B and the FCPD that he witnessed on YouTube. He said the complaint is specific to a single incident between Person B and Officer Z, where Person B was submitting a complaint at the Mason District Station. The Complainant alleges that Officer Z is derelict in knowledge of G.O.s or training, or willfully ignored FCPD G.O. policies concerning failing to provide a complaint intake form and ending the discussion with Person B while trying to file the complaint. Mr. Bierman said that Person B has filed a lawsuit about a separate incident involving Officers X and Y. The complaint in CRP-21-05 has already been investigated by the FCPD.

Mr. Bierman said that since the actual complaint (21-05) concerns something separate from the litigation and not the same officers or the same incident, he does not think the complaint is a matter subject to litigation and he does not think the Panel has to defer its review.

Mr. Gallagher asked if one of the police officers who responded to the Complainant at the Mason District Station was party to the lawsuit. Mr. Bierman stated that he did not find evidence of that.

Mr. Kay moved that the Panel does not delay further review by this Panel of CRP-21-05 and to send the case to a subcommittee. Ms. Norman-Taylor seconded the motion and it carried unanimously.

Approval of Review Report for CRP-20-20 and 20-21:

Mr. Bierman reviewed the Panel's process in drafting Review Reports and finalizing them. He asked the Panel to first consider the body of the report and then to consider and vote on comments or recommendations individually.

Mr. Gallagher moved that the Panel accept the body of the report as written. Ms. Norman-Taylor seconded the motion and it carried with a vote of seven, with Ms. Belkowitz abstaining.

The Panel considered the comment in Part V. of the draft report. Mr. Kay moved that the Panel accept the comment. Upon question by Mr. Gallagher, Mr. Kay described the inadequate finding options as referenced in the comment. He said that in the Panel's *Four-Year Review*, the

Panel requested a fourth finding option where the Panel may disagree with the FCPD's conclusions but does not want to request additional investigation. Ms. Norman-Taylor seconded the motion and it carried with a vote of seven, with Ms. Belkowitz abstaining.

The Panel considered recommendation 1 regarding how officers identify and announce themselves. Discussion ensued on making language changes to the recommendation. Mr. Bierman suggested that recommendation 1 be changed to read "...and ensure that officers are properly trained on implementing a revised general order." Mr. Kay moved that the Panel adopt recommendation 1 as was revised by Mr. Bierman. Mr. Gallagher stated that he thought recommendation 2 should be moved before recommendation 1. Mr. Bierman recommended that the order of recommendations be tabled and called the question. Mr. Gallagher seconded the motion and it carried with a vote of seven, with Ms. Belkowitz abstaining.

Mr. Gallagher moved that recommendation 2 be renumbered to recommendation 1 since it deals with swatting, which is a very important issue. Mr. Hargraves seconded the motion and it carried with a vote of seven, with Ms. Belkowitz abstaining.

Mr. Gallagher moved the Panel accept recommendation 3 as written. Mr. Cranford seconded the motion. Upon question by Mr. Hargraves, Mr. Bierman provided background on the recommendation. He stated that the Complainants in this case said that better communication from the FCPD would have made them feel better about the incident. Mr. Kay said this issue has come up a number of times and the Panel should continue to work with the FCPD to address it. Mr. Bierman provided a review of how the Panel has worked with the FCPD on improving the template used for disposition letters. Mr. Bierman called the question and the motion carried unanimously.

New Business: Mr. Bierman described the purpose of the Panel's Quarterly Meetings and who attends. He provided an update on what was discussed at the last Quarterly meeting, such as the Panel's request for an Executive Director, electronic access to FCPD investigative files, and a meeting with the FCPD rank and file.

Mr. Bierman stated that he has been asked to address new recruits at the Academy. Discussion ensued on Panel's past outreach efforts with the FCPD and with the community. Mr. Hargraves requested that Panel Members receive individual business cards. Mr. Bierman said he will follow up with staff to have business cards printed. Ms. Belkowitz and Richard Schott, Independent Police Auditor, offered to accompany Mr. Bierman in addressing the FCPD recruits.

Mr. Hargraves said he did not see where in the training slides, referenced during tonight's review meeting, guidance was provided on how to put a seatbelt on an arrestee. Discussion ensued on whether Panel members remembered seeing the guidance in the slides. Ms. Norman-Taylor volunteered to draft the review report on CRP-20-24.

Mr. Bierman stated that he would like the Panel to hold elections at the next meeting and that he would like to be considered for Chair. He instructed Panel Members to contact him if they are interested in running for Chair or Vice-Chair.

Adjournment: Mr. Cranford moved to adjourn the meeting. Ms. Norman-Taylor seconded the motion and it carried unanimously.

The meeting adjourned at 9:52 p.m.

Next Meeting: The Panel's next business meeting will be held on Thursday, June 3 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.

DRAFT

Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

Request for Review – Basic Information

CRP Complaint Number: CRP-21-05

Subcommittee Meeting Date: May 27, 2021

Subcommittee Members:

- Doug Kay, Subcommittee Chair
- Frank Gallagher, Subcommittee Member
- William Ware, Subcommittee Member

Complaint Submission Date: Review Request received on 3/3/2021.

Other Key Dates: Incident Date: 9/6/2020; Initial Complaint to FCPD and Panel (CRP-20-26): 9/28/2020; FCPD Disposition letter: 3/2/2021

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

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.”

The subject matter of this investigation concerns allegations by the Complainant (who witnessed the incident on video) that a lieutenant and officer of the Fairfax County Police Department (FCPD) failed to provide the individual in the video with a complaint form and refused to identify a third officer by name or employee identification number; and that the lieutenant was unprofessional by ending the contact when she alleged that the individual in the video smelled like he had consumed alcohol.

The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, **does not meet** the threshold requirement for “abuse of authority” and “serious misconduct.”

Recommendation

The Subcommittee recommends that the Panel **not undertake** a review of CRP-21-05 because the complaint **does not meet** 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.	
No	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	
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

May 27, 2021

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-21-05

Members Present:

Frank Gallagher, Review Liaison

Doug Kay, Subcommittee Chair

William Ware, Review Liaison

Others Present:

Rachelle Ramirez, 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 5:31 p.m.

Motions to Conduct Electronic Meeting: Mr. Kay 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. Gallagher was present and participated from Bethany Beach, Delaware.

Mr. Ware was present and participated from Alexandria, Virginia.

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

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

Mr. Kay 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 platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 173 957 7491 as noted in the Public Meeting Notice. Mr. Gallagher seconded the motion and it carried by unanimous vote.

Mr. Kay 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. Gallagher seconded the motion and it carried by unanimous vote.

Completion of Initial Review Report for CRP-21-05:

Mr. Kay described the role of the subcommittee in the review process. He said the subcommittee will examine the allegations in the complaint and compare it to the authority given to the Panel to review serious misconduct and abuse of authority.

Mr. Gallagher said that Complainant (hereinafter "Complainant to the Panel) is in Texas but is complaining about something that happened to an individual who was filing a complaint with the FCPD (hereinafter "complainant to the FCPD") on behalf of another individual. The complainant to the FCPD went to the district station to lodge the complaint and brought the alleged victim, who did not make any comments or statements to the FCPD.

Mr. Kay summarized the allegations made in the complaint. He said the first allegation is that the officers present (a Lieutenant and a PFC) were asked, but failed to provide, a complaint form and the name or Employee Identification Number (EIN) of a third officer to the complainant to the FCPD. Mr. Ware said he understood that the Complainant to the Panel alleged that the officer terminated the complaint when she perceived that the complainant to the FCPD smelled of alcohol. Mr. Kay referenced the complaint email received by the Panel and said that he considered this the second allegation, where there was unprofessional termination of citizen police contact. Mr. Ware noted that there were numerous complaints in the investigative file. Mr. Ware quoted from Panel correspondence to the Complainant that he alleged the officers violated FCPD policies when taking the complaint.

Discussion ensued whether the allegations met the threshold for abuse of authority or serious misconduct. The subcommittee reviewed each of the criteria in the Initial Review Report checklist in regard to the allegation that the lieutenant failed to provide a complaint form. Mr. Gallagher referenced the G.O. 301 and said that she fulfilled her obligation to take the complaint. Mr. Ware said that the Lieutenant was a supervisor and, therefore, was not required to provide a complaint form, according to G.O. 301. The subcommittee found that the Complainant's first allegations did not meet the criteria for abuse of authority or serious misconduct.

The subcommittee reviewed the criteria in regard to the allegation that the Lieutenant was unprofessional in the way she took the complaint, specifically that she alleged the complainant to the FCPD smelled of alcohol. Discussion ensued on the interaction and whether the Lieutenant's actions were rude or unprofessional. Subcommittee members all agreed that the Lieutenants behavior was professional and that there was no serious misconduct of abuse of authority.

The subcommittee discussed the allegation that the Lieutenant and the other officer refused to identify a third officer by name or EIN. Mr. Ware said that the investigative file referenced policy that officers must identify themselves when requested, but this case included a third-party officer who was not present at the location. He said the requirement does not exist and that there could have been misidentification. Subcommittee members agreed that the officers not providing this information was not a violation of FCPD policy, nor did it meet the other criteria in the abuse of authority or serious misconduct checklist.

Mr. Kay moved this subcommittee recommend to the Panel that it not undertake review of CRP-21-05 because the Complaint does not meet the scope of review criteria set forth in Bylaws. Mr. Ware seconded the motion and it carried by unanimous vote.

Mr. Ware stated that while the General Order does not require a FCPD supervisor to provide a complaint form, it may be a good practice to allow the Complainant to write down the complaint in their own words. He said it is in the best interest of all that a form be provided.

Mr. Ware stated that he read in the General Order a list of criteria that should be referred for investigation by the Internal Affairs Bureau, instead of at the station level. He said that FCPD supervisors should be aware of these criteria so they can explain them to members of the public or complainants, when asked.

Mr. Ware said he will make the subcommittee's report to the Panel and may share these comments with the Panel.

Mr. Kay moved to adjourn the meeting. Mr. Gallagher seconded the motion and it carried by unanimous vote.

The meeting adjourned at 6:18 p.m.



County of Fairfax, Virginia

MEMORANDUM

DATE: 6/3/2021

TO: Fairfax County Board of Supervisors
Chief Kevin Davis, Fairfax County Police Department
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of Complaint No. CRP-20-24

I. Introduction

The Panel held a Review Meeting on May 6, 2021, to review the Investigation resulting from a complaint of Racial Profiling and excessive Use of Force submitted concurrently to the Panel and the Independent Police Auditor on May 7, 2020. The Community Member (hereinafter referred to as the “Complainant”) had just received the results from a completed FCPD investigation in an April 28, 2020, Disposition Letter into his allegations of excessive Use of Force.¹ The FCPD conducted an investigation into the Racial Bias allegation and issued a second letter to the Complainant on August 19, 2020, and he requested a review by the Panel on August 24, 2020. The Panel reviewed the investigation into the Racial Profiling allegation.²

After reviewing the Investigation file, speaking with members of FCPD along with the Investigating Officers, and speaking with the Complainant, the Panel members (PCRCP) voted unanimously that the Investigation was complete, thorough, accurate, objective, and impartial, and concurred with the findings of the FCPD.

II. Background Facts

¹ The Police Civilian Review Panel (PCRCP) does not have jurisdiction to review the Use of Force allegation. This allegation falls within the purview of the Fairfax County Independent Police Auditor, Richard Schott, who did review and provide a report on the results of his finding on this allegation.

² After the Panel conducted its initial review of the request (during a subcommittee meeting on September 14, 2020, and a Panel meeting on September 24, 2020), the FCPD notified the Panel that it was reopening the investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021. The FCPD notified the Complainant of the additional findings in third Disposition Letter dated April 1, 2021.

The following facts are central to the Complainant's allegation that he was the subject of racial profiling:

On October 25, 2019, the Complainant, an immigrant of African descent, with his girlfriend in the vehicle, was driving behind an unmarked vehicle driven by a Black FCPD Officer (hereinafter "the Subject Officer") eastbound on Lee Hwy near the Fair Oaks Mall. It was approximately 6:15 a.m., and it is undisputed that the Complainant flashed his headlights at the vehicle because the Complainant said the vehicle was drifting in the lane. After overtaking the unmarked vehicle by passing on right, the Subject Officer clocked the Complainant on radar traveling at a speed of 73 mile per hour in a 45 mile per hour speed zone.

The Subject Officer initiated a traffic stop, approached the vehicle, identified himself as a FCPD Officer and informed the Complainant of the reason for the stop. The Subject Officer asked and was provided Complainant's driver's license and vehicle registration. The Complainant was ultimately issued three traffic citations via Summonses for Reckless Driving, Aggressive Driving, and Failure to Dim Headlights. The Subject Officer requested the Complainant sign the Summonses, which were not admissions of guilt, rather an acknowledgment of notice of the future court date.

The Complainant refused to sign the Summonses and was told by the Subject Officer that his failure to sign would result in his arrest pursuant to Virginia law. The Complainant acknowledged knowing he would be arrested for refusing to sign the Summonses after which he informed the Subject Officer that he would not answer any questions and took out his phone to record the interaction.

The Subject Officer asked the Complainant three times to sign to avoid an arrest, but he was ultimately arrested and taken to the Magistrate for his failure to sign.

III. Procedural Background and Investigative Findings

The Complainant, upon his release by the Magistrate, later that morning, contacted the FCPD to make a complaint about the Subject Officer and his treatment while being placed in the back of the police cruiser for transport to the Fairfax County Adult Detention Center. In his initial complaint, the Complainant alleged excessive Use of Force, which was investigated by the FCPD, and a disposition letter was sent to the Complainant on April 28, 2020. The Panel was not involved as the matter was solely within the purview of the Fairfax County Independent Police Auditor, and therefore, the content of that Disposition Letter will not be addressed.

The Complainant upon receiving the Disposition Letter from the FCPD, requested a review by both the Independent Police Auditor and the Police Civilian Review Panel. In his request for the review, the Complainant in addition to the allegation of excessive Use of Force included for the first time the allegation of Racial Profiling.

The FCPD did not initially investigate the racial profiling claim because it was not included in the original complaint. Thereafter, the FCPD notified the PCRCP that it was reopening the investigation to investigate the claim of Racial Profiling.

On August 19, 2020, the FCPD informed “the Complainant” that it had “completed its investigation into the allegations of your complaint, dated October 25, 2019.” The Disposition Letter indicated that the IAB had conducted a “comprehensive examination of the facts and circumstances surrounding the incident and the actions taken by [the Subject Officer] which occurred on October 25, 2019.”

The letter outlines the following:

Your initial complaint alleged that [the Subject Officer] ‘choked’ you when he fastened your seatbelt while in the police vehicle before the prisoner transport to the Fairfax County Adult Detention Center. . . . Upon receiving a letter from the Chief of Police, you later alleged that [the Subject Officer] was racially bias toward you. . . . The Internal Affairs Bureau completed an additional examination of the facts and circumstances surrounding the incident to include the bias allegation.” During the investigation, we interviewed you, the officers, who responded to the incident in question and identifiable witnesses to the incident.” We examined all the relevant evidence, including In-Car Video recordings, statements, and documents.

The investigation revealed the following facts: [The Subject Officer] stopped you for speeding and aggressive driving. Due to the traffic stop being during the hours of darkness, [the Subject Officer] was not able to determine your race, gender, place of birth, or actual identity prior to the stop. After your refusal to sign the traffic summonses, you were arrested, searched, and asked to take a seat in the police cruiser.

The letters contain additional information related to the Use of Force allegation, and therefore, not relevant to the racial profiling portion. However, the Chief of Police ultimately, informed the Complainant, “based on my review of the facts discovered during the investigation and a recommendation from the Commander of the Patrol Bureau, I have concluded that evidence does not support your allegations. . . . [The Subject Officer’s] actions were lawful and in compliance with FCPD Regulations.”

The Complainant was further advised that he could seek a review of the investigation from the Police Civilian Review Panel. The Complainant did make a formal request for review by the Panel on August 24, 2020.

It should be noted that the Complainant videoed his encounter and during the investigation was asked by the IAB Investigator, on at least two occasions, to provide a copy of the video to assist in the investigation. The Complainant initially said he would provide a copy. Upon being asked again for a copy he said he could not find the video and was therefore, not able to provide a copy to the Investigator.

A subcommittee of the Panel met on September 14, 2020, to discuss the request for a review of CRP 20-24. On the date of the meeting, each Panel members had reviewed the Investigation File. After discussions, each agreed that the allegations entailed abuse of authority and serious misconduct. In particular, the allegation of Racial Profiling would be in violation of FCPD General Order 201.13.³ Also, the request was timely filed, and therefore, the Panel had jurisdiction to review the investigation. The full nine-member Panel met on September 24, 2020, and the subcommittee recommended the Panel review the Investigation.

IV. Panel Meeting and Finding

The Complainant was present for the Panel Review on May 6, 2021.⁴ Also, both IAB Investigators were present along with other members of the FCPD. Major Lay was the primary spokesperson for the IAB who introduced 2nd Lt. Spooner to present the Investigation.

The Complainant was given an opportunity to share with the Panel his version of the events and why he filed the complaint. In his recitation to the Panel, the Complainant said he was driving to work and saw an unmarked Chevy Impala driving in the middle lane, but on the white line. He said he shared with his girlfriend that was a cop car. He said he flashed his lights to alert the driver, passed the vehicle and after passing he saw the police car lights flashing. The Complainant said he didn't know why he was being stopped but thought perhaps he has a break light out. He said he asked why he was being stopped and the Subject Officer told him he was going 73 miles per hour in a 45 mile per hour zone, and was therefore, driving reckless. He said he was given a citation to sign, but he refused. He said the Subject Officer appeared angry by his facial expression, so he began filming the encounter and handed the phone to his girlfriend. He said the Subject Officer asked him to step out of the vehicle, but while doing so the Subject Officer asked his girlfriend her name. The Complainant told the girlfriend she didn't have to give any information because she was a passenger.

The Complainant began to discuss the Use of Force allegations and was reminded by Acting Chair Bierman that the Panel could only review the allegations of racial profiling. The Complainant said he was driving alongside four or five other cars and believed he was singled out because he flashed his lights.

The Complainant was responsive to the questions asked by the various Panel members. Most Panel questions centered around race and the belief on the part of the Complainant that race played a role in his stop. He answered in the affirmative on most questions relating to his belief that he was stopped because of his race. However, he did acknowledge that if a white driver had flashed his lights and passed on the right, at the same rate of speed, that person would have been stopped as well.

The Complainant was asked by one Panel member if his driving speed could have been the reason for the stop. His response was that he passed the officer, so they were not going the same speed. Also, he said he would not drive recklessly when he knew it was a police officer.

³ FCPD 201.13 Human Relations subsection (A) Community Contacts.

⁴ The review by the Panel was delayed due to the FCPD reopening its investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021.

He was also asked about the Subject Officer ability to know his race based on it being dark when the stop occurred.

The Complainant was asked to explain how hierarchical bias manifested itself in this incident since he accused the Subject Officer of that offense. "The Complainant" said that just because someone is African American does not mean they cannot be biased against another African American, and he asserted that such biases were often present with immigrants of African descent, like the Complainant. He further asserted that African Americans often get stopped for minor offenses.

Acting Chair Bierman thanked the Complainant for bringing the matter to the Panel.

Acting Chair Bierman then introduced FCPD's Major Lay who introduced 2nd LT. Spooner who conducted both the initial Use of Force and later the Racial Profiling investigation.

2nd LT. Spooner provided a summary of the facts of the case, the investigation and the finding. Each Panel member reviewed the investigation and so his summary will not be detailed here. However, one update given by 2nd LT. Spooner to the Panel was the fact that police cruisers assigned to the Fair Oaks Station Traffic Enforcement Team did not have ICV in the rear of the cruisers. However, this situation necessitated that that team be equipped and since this incident the police cruisers for the Traffic Enforcement Team now have ICV in the rear.

The Panel had the opportunity to ask questions of 2nd LT. Spooner. One question dealt with the appropriate action to take when a community member observes a police cruiser allegedly drifting over the line. 2nd LT. Spooner said that would depend on the circumstances, but if approaching at a high rate of speed the community member would need to slow down as a defensive tactic. Another question dealt with cars traveling behind a police cruiser at the same rate of speed whether officers can pinpoint one car with radar. 2nd LT. Spooner said that in this case, the Subject Officer was able to single out the vehicle because of the high rate of speed it was traveling when he looked in his rearview mirror.

A Panel member asked about the requirement that motorists sign summonses and whether it was State law or a county policy. 2nd LT. Spooner pointed to Virginia Code 46.2-940.

Another Panel member commented on this case being a good example of why it is beneficial to video. Major Lay agreed and said that body-worn cameras are now fully implemented in the FCPD, so that is in addition to having ICV.

A Panel member had questions about the training procedures for officers and whether there was an inconsistency in what the training says should occur and what happened in this case. In particular, the Panel member referred to an academy training slide, included with the investigation, that talks about differences in the placement of an arrestee in a vehicle with a cage as opposed to the placement without a cage. 2nd LT. Spooner said he would check and get back with the Panel.

A Panel member asked about the stop and arrest history of the Subject Officer that was included in the file by race. He wanted to know how the FDPC categorized the Subject Officer's

arrest patterns. 2nd LT. Spooner said that there was a higher percentage when looking at the arrest patterns, but he noted that the Subject Officer was a traffic officer, so many of his arrests came with traffic stops, such as refusing to sign summonses, driving on suspended licenses and driving without licenses, in a manner where the Subject Officer lacked discretion to avoid an arrest. In fact, the officer's citation statistics were consistent with the Department, though the arrest statistics showed a disparity.

Act Chair Bierman thanked the FCPD representatives for their participation.

The Panel heard from the "Complainant" and from FCPD. Based on each Panel members review of the file, statements and responses from both Complainant and FCPD, the Panel made the following finding:

The Panel voted unanimously that the Investigation was accurate, complete, thorough, objective, and impartial after open deliberation. Specifically, the Panel found no evidence suggesting that racial profiling occurred where the Complainant's undisputed and documented actions – flashing his lights and passing a police officer while speeding in the early morning hours in the dark – would have resulted in the Complainant being pulled over regardless of his race. Further, the Panel found that the IAB had followed all available lines of inquiry, including interviewing all pertinent witnesses (including the Complainant's girlfriend), viewing all available video evidence, and conducting a thorough analysis of the Subject Officer's arrest and citation statistics to determine whether there was any evidence of a history of bias.

An audio recording of the May 6, 2021, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-may-6-2021>

On June 3, 2021, the Panel discussed this Finding Summary; an audio recording of that meeting may be reviewed here: [will insert link before sending memo]

CC: Complainant