

**Ad Hoc Police Practices Review Commission
Communication Subcommittee**

July 13, 2015, 7:30PM

Room 152, Fairfax County Government Center

Meeting Minutes

I. Call To Order

Ms. Merni Fitzgerald, Chairwoman, called the meeting to order at 7:30PM on July 13, 2015.

II. Members/Others Present

a) The following members were present:

Merni Fitzgerald; Lucy Caldwell; Daniela Cockayne; Darryl Dennis; Darryl Drevna; Doug Kay; Mary Kimm; Jose Santos; Patrick Smaldore; Dave Statter; Tim Thompson

b) The following members were absent:

Tony Castrilli; Eric Clingan; Tom Ryan; John Wallace;

c) Others Present:

Peter D. Andreoli, Jr., Office of the Fairfax County Attorney; Tom Jackman, Washington Post; Sean Corcoran, Local 5000; Robert Sarvis; Michael Liberman; Claudia Arko, County Legislative Liaison; Lindsey Doane, Chairman's Office; George Becerra; John Lovaas; Gordon Dean.

III. Approval Of Minutes From Last Meeting

The minutes from the June 8, 2015 meeting were approved.

IV. Open Issues

a) Discussion on the Virginia Freedom of Information Act (VFOIA) :

1. Ms. Merni Fitzgerald had previously submitted seven questions regarding VFOIA and its applications by the Fairfax County Police Department (FCPD) to Peter D. Andreoli, Jr., Office of the County Attorney. She received a written reply (available on the County's website at: <http://www.fairfaxcounty.gov/policecommission/subcommittees/communications.htm>)

2. Mr. Andreoli joined the subcommittee members and members of the public, to provide further elucidations in the form of a Questions & Answers forum.
3. Subcommittee members were asked to briefly introduce themselves to Mr. Andreoli.
4. The lively exchange provided the group with considerable information. The major points:
 - a. Mr. Andreoli: We want to be in compliance with the Law.
 - b. Mr. Andreoli: As a matter of Law, ALL records MUST be released, unless one of two things is present:
 - i. Disclosure of requested information or documents is specifically PROHIBITED by the VFOIA or by Law.
 - ii. The information/documents requested fall under one of 86 VFOIA EXEMPTIONS.
 - c. However, Mr. Andreoli added, while the disclosure of *Prohibited* information or documents is a crime punishable under the law, the disclosure of *Exempted* information or documents is possible and even encouraged.
 - d. Mr. Andreoli explained that the decision to make publicly available, ALL or PART of any information considered *exempted*, is made by the Custodian of such record.
 - e. Mr. Andreoli explained that in the FCPD, the Custodian resides in the Internal Affairs (IA) Department.
 - i. Ms. Fitzgerald suggested this could be addressed by FCPD under “Policy”. In other words, the FCPD may institute policies and related practices on how to address *exemptions* falling within that Department.
 - ii. Mr. Andreoli concurred, adding that when any doubt exists, the Custodian should consult with the County Attorney’s Office.

- iii. Ms. Lucy Caldwell, Public Information Officer (PIO) in the FCPD, stated that decisions on disclosure of information are made every day, several times a day in the Department. She provided the example of the very recent robbery and shooting of a Fairfax County woman returning home from a Maryland Casino. Media had requested to know the name of the establishment. The decision made was to NOT provide the name.
- f. Questions by Mr. Santos, Mr. Kay, Ms. Kimm, and Mr. Statter dealt with FCPD not providing answers or providing only limited information -- without explaining reasons, on both open and closed cases.
- i. Mr. Andreoli replied that VFOIA does not distinguish between open and closed police cases. He restated that unless the information or documents have to do with a Prohibited disclosure, the reasons are not of a legal nature; it is a Policy issue.
 - ii. However, Mr. Andreoli and Ms. Claudia Arko noted that it is important to remember that there is information which needs to remain outside of the public domain. Examples given: Reports provided by neighbors regarding a person's alleged unfaithfulness or drinking habits. A particular type of information which would clearly identify an informer, even without providing a name. Divulging such information, while not prohibited by law, may place informants in danger, or cause other negative repercussions to people, or the FCPD.
- g. Ms. Fitzgerald noted that the subcommittee had discussed the need for a change in "*departmental culture*". In line with that, she suggested that it may help to move the Records Custodian from Internal Affairs to Public Information. Additionally, since the current Custodian is a retired Police Officer, Ms. Fitzgerald offered that the he may be part of the *old culture*.
- i. Mr. Andreoli suggested the Custodian should remain in IA, as the same individual handles requests for subpoena

- ii. Detective Corcoran noted he knows the Custodian very well. He characterized him as one of the very best (now retired) detectives he has ever known. Further assured the group that he has always known him as a person very open to disclosure of information, when at all possible; thus, not part of the *old culture*.

- h. Mr. Thompson asked if County/State Attorneys from across the Commonwealth meet on a recurrent basis to discuss or share VFOIA Best Practices, policies, or differences/similarities in their respective police departments.
 - i. Mr. Andreoli replied that while they do meet periodically, VFOIA is only one of the many topics discussed. There has not been a concerted effort made to seek out VFOIA Best Practices, or similar information.

- i. Mr. Thompson also asked if Mr. Andreoli had ever discovered issues with the FCPD's interpretation of VFOIA – via means such as media reports. And if so, did he bring it to the attention of the FCPD to make appropriate changes. Mr. Andreoli replied that he had done that.

- j. Additional questions: Are Custodians trained before becoming a Custodian, and is periodic training provided – Mr. Andreoli replied that he has provided a number of VFOIA training sessions; but was not sure when training was provided to Custodians. However, Ms. Caldwell stated she would provide the answer with regards to the training received by the FCPD Custodian.

- k. Does the Chief of Police provide directions to the Custodian – The reply was affirmative.

- l. Does the Chief of Police receive guidance from the County Executive – The reply was negative; he receives guidance from the Board of Supervisors.

- m. Is there an Administrative Appeal process for VFOIA denials – The reply was negative.

- n. Can changes be made to the VFOIA – The reply was positive. It would be conducted via the Fairfax County Legal Liaison Officer, Ms. Arko. She is the person who would work with the General Assembly.

 - o. How has the County evolved with respect to the VFOIA – Ms. Fitzgerald offered the reply – Currently, there is a single document (the same she prepared a number of years ago) and is located on the County website. It provides information on how and where to request information, and costs associated.
5. Following Mr. Andreoli’s departure, Ms. Fitzgerald continued to address VFOIA:
- a. She noted there are very visible changes taking place in the FCPD. *Transparency* is being used with great results. She remarked about a video just released on Monday 13 July. It shows the Chief of Police providing very clear information on the widely publicized “McKenna’s Case”. KUDOS to the FCPD.
 - b. Responding to the discussions and recommendations of the subcommittee, FCPD is moving forward with a proposal for a civilian director for the Public Information Office.
 - c. The Police Executive Research Forum (PERF) has just been contracted to research Best Practices and conduct public outreach addressing public release of information in connection with Use of Force and Critical Incident Responses. However, the subcommittee will not be able to review the report; it will not be finished by 20 July, the last meeting of the Communications subcommittee.
 - i. Mr. Statter also remarked on the changes being already implemented. He highlighted the power of the VFOIA, and suggested the FCPD can use it in the establishment of a consistent, clear, transparent policy.

V. New Business

- a) Ms. Fitzgerald presented a *Draft* Report and Recommendations for the members to review. The draft document is going to undergo several changes during the week. Ms. Fitzgerald asked that changes, additions, or new items be provided for consideration during this week.
- b) **NEXT MEETING**: Monday 20 July, 2015. Meeting to begin at **7:00PM**
(NOTE: 30 minutes earlier than previous meetings.)

VI. Adjournment

Ms. Merni Fitzgerald, Chairwoman, adjourned the meeting at 9:35PM.

Minutes submitted by: Daniela D. Cockayne