



Fairfax County
Police Civilian Review Panel
Four-Year Review • 2020

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Four-Year Review 2020



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EXECUTIVE SUMMARY

On March 3, 2015, then Chairman of the Fairfax County Board of Supervisors, Sharon Bulova, created the Ad Hoc Police Practices Commission (“Ad Hoc Commission”) to review the policies and practices of the Fairfax County Police Department (“FCPD”). One of the recommendations of the Ad Hoc Commission was that the Board establish civilian oversight of the FCPD. Specifically, the Commission proposed a hybrid model where an Independent Police Auditor would review investigations relating to the use of force, and a Civilian Review Panel, drawn from the community, would review all other investigations relating to allegations of serious misconduct and abuse of authority by FCPD officers.

On December 6, 2016, the Board of Supervisors established the Fairfax Police Civilian Review Panel, a nine-member civilian oversight body. The mission of the Panel then, as now, is “to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity, and impartiality of the investigation.” *See* Appendix A (Action Item).

The Panel has two methods of review. First, individual Complainants may file Complaints directly with the Panel. This initiates an investigation by the Internal Affairs Bureau (IAB) of the FCPD. If the Complainant is unsatisfied with that investigation, the Complainant may request a further review by the Panel. Second, individual Complainants may file their Complaints directly with the FCPD. Again, this initiates an investigation by the IAB, and if the Complainant is unsatisfied with that investigation, the Complainant may request that the Panel review the investigation.

This Four-Year Review looks critically at the first four years of the Panel’s existence in order to analyze its successes, its failures, and where the Panel can go from here. When the Panel was created, it was the first of its kind in Fairfax County. It was up to the founding Panel Members to establish Bylaws and procedures for the Panel’s operations. The FCPD found itself for the first time subject to direct civilian oversight, and the Panel and the FCPD needed to work together to ensure that the Panel could operate efficaciously.

This Four-Year Review draws upon the Panel’s foundational documents, *see* Appendices A-C, the Panel’s meeting minutes, complaints before the Panel, the Panel’s Annual Reports, *see* Appendix D, the Panel’s Review Reports, *see* Appendix G, and other Panel records to compile a full history and analysis of the Panel. The “History” portion of this Four-Year Review walks step-by-step through the Panel’s activities, from its first meetings to drafting and ratifying its bylaws, to its meetings and deliberations on panel procedures, to its training sessions, and to its now-typical Review Meetings. This Four-Year Review endeavors to be as comprehensive as possible in order to inform the public, Panel Members, the FCPD, and the Board of Supervisors about how to best advance the work of the Panel and to enhance police legitimacy and community trust.

The authors of this Four-Year Review attempted to be fair, thorough, and realistic in their assessment of the Panel’s activities. Where the authors believe the Panel has been especially successful, they have tried to highlight and emphasize the reasons for such success. Where the authors identify certain potential changes that are needed, they say so. The authors praise the work of the FCPD where it is warranted, but they also point out areas where there may still be work to be done. The authors also attempt to put the Panel’s work in context, especially in 2020, where questions of police oversight and accountability became central topics in a national conversation on race and policing following George

Floyd's public slaying at the hands of Minneapolis police officers that sparked protests across the country and the DC Metropolitan Area.

This Four-Year Review includes specific proposals for how the Panel might evolve in the future. The authors are cognizant that not all of the proposals will be necessarily endorsed by the FCPD or the Board of Supervisors, but nevertheless identify potential, meaningful and positive improvements.

This Four-Year Review is broken into three parts. First, the longest portion of the review, is the comprehensive history of the Panel, with every meeting and action summarized and, where appropriate, discussed. Second, the review analyzes the Panel's first four years with an eye toward positive change. Third, the review offers specific recommendations for how to enact such positive change.

As the comprehensive history recounts, the first year of the Panel, 2017, was a year in which the Panel had to create a new entity from scratch. The Panel focused on drafting its Bylaws and figuring out how it would turn the parameters of the authorizing Action Item into a reality, but the Panel did not actually get to the process of reviewing Complaints.

In 2018, the Panel's focus shifted from broad questions to drilling down into its operational procedures as it started to take Complaints for the first time. The Panel also focused its efforts on community outreach that year and did its best to make it known to Fairfax residents that a new, independent oversight body was taking citizen Complaints.

In 2019, the Panel showed that it can learn on the job. The year was marked by a renewed focus on training for Panel Members, and a critical change to the Action Item and Panel Bylaws which would allow the Panel to better explain its findings. The Panel had seen that its reports were too short on detail to be as useful as they could be and responded accordingly.

Finally, 2020 was a year of collaborative success and yet also major challenges. The Panel worked with the FCPD and the Board of Supervisors on the creation of a Recommendations Matrix which would allow the Panel and the FCPD to confer publicly on Panel Recommendations. At the same time, the country faced the COVID-19 pandemic, and Panel business, like all business, had to change and adapt to emergency circumstances. And on top of the pandemic, the Panel also confronted a country, a Commonwealth, and a county engaged in a national conversation about race and policing, putting the Panel's work under even more scrutiny.

The Analysis points out the successes of the Panel's first four years while also recounting the challenges. It explains the ways in which the Panel has been a part of a broader effort by the FCPD to become one of the most transparent police departments in the country, and praises the work of the FCPD in collaborating with the Panel. The Analysis highlights the FCPD's decision to ensure, for instance, that Fairfax County residents have access to data about how policing operates in their community. The challenges identified include operational difficulties, such as the growing need for an Executive Director and more resources, but also the Panel's need to maintain its independence.

At its most basic level, the Four-Year Review Analysis comes to two general conclusions, which admittedly operate somewhat in tension.

First, the ever-improving working relationship between the FCPD and the Panel has been central and key to its success. The FCPD and the Panel are not, and should not be, in direct opposition to each other. The FCPD shares the very goals of the Panel: to ensure that FCPD officers behave appropriately and effectively all the while enjoying community support. The now-public dialogue

between the FCPD and the Panel has had a positive effect on police practices and procedures. Specifically, the creation of a public Recommendations Matrix, *see* Appendix E, has offered the Panel an opportunity to publicly advise the FCPD and an opportunity for the FCPD to publicly explain what it has or has not done to respond to such recommendations. Sunlight being the best disinfectant, this has allowed the community to better understand the FCPD and hopefully has improved community trust. Moreover, having reviewed numerous FCPD Internal Affairs Bureau (“IAB”) investigations, the Panel is confident that the FCPD has been responsive and diligent and that the overall quality of investigations is to be commended.

Second, however, the Panel appreciates that independence from the FCPD, in both practice and perception, is centrally important to whether the Panel will be able to achieve its mission. The Panel recognizes that not all community members feel that they will be afforded a “fair shake” with respect to their complaints regarding the FCPD. In light of recent legislative changes adopted by the Virginia General Assembly, the Board of Supervisors is now authorized to afford the Panel greater operational authority, and in light of public sentiment, the Panel anticipates that a debate and discussion regarding that authority is imminent. Therefore, the Panel here provides specific ideas for how the Panel can enhance its independence and, hopefully, its efficacy while still maintaining the positive working relationship with the FCPD which is critical to the missions of both the Panel and the FCPD.

Finally, the Four-Year Review ends with specific recommendations for how the Panel can evolve and move forward in a more efficacious manner based on the comprehensive history review and analysis set forth in this document. These include, but are not limited to, recommending that the Board of Supervisors allow the Panel to hire an Executive Director with monitoring capability; that the Board of Supervisors and FCPD work to ensure that the Panel has access to electronic records and the ability to review investigations on its own time; that the Panel create summary review procedures to dispense with wholly unfounded Complaints; that the Panel be given some limited investigative authority; that the Panel be given more options for how to make its findings; and that the Panel commit to public forums with both the community and the rank and file of the FCPD.

HISTORY

Panel Origins: 2009–2016

Determining the exact genesis of the current civilian oversight efforts within Fairfax County is a rather difficult task and will largely depend on who you ask in the County and or the greater Commonwealth. It took the hard work of various community stakeholders including, but not limited to: county residents, county advocacy groups, county office holders, employees, and volunteers to arrive at our current iteration of police civilian oversight. The hybrid model in place, which employs both a Civilian Review Panel and an Independent Police Auditor, is the culmination of the hard work of the named and unnamed community members who were all part of this movement. Under the hybrid model, the Civilian Review Panel reviews investigations relating to allegations of serious misconduct and abuse of authority by Fairfax County Police Department (“FCPD”) Officers while the Independent Police Auditor reviews investigations relating to the use of force.

2009

Significant efforts to create civilian oversight of the FCPD can be traced back over a decade to when the late Mr. Nicholas Beltrante, Jr. established the Citizens Coalition for Police Accountability (CCPA). Mr. Beltrante, Jr., a retired D.C. homicide detective, sparked the discussion of civilian oversight within the County after the Nov. 13, 2009 deadly shooting of Mr. David Masters, a Vietnam veteran, by an FCPD officer. According to local reporting the “incident and the secrecy surrounding the county investigation” was the impetus for this grass-roots movement. *See generally* Appendix N (“Three Years Later: No Police Oversight Board,” *The Connection Newspapers*, April 11, 2013). As a result, Mr. Beltrante, Jr. lobbied for the creation of a police citizen oversight board appointed by the Fairfax County Board of Supervisors. At the time, Mr. Beltrante, Jr. and the CCPA were unable to get the Board to establish such body.

2013

Four years after that incident, the FCPD and the County would revisit the issue of police accountability. Specifically, on August 29, 2013, the FCPD received significant media and public attention again when county resident, Mr. John Geer, was killed by an FCPD Officer. Mr. Geer had been unarmed at the time with his hands above his shoulders while a holstered gun was on the ground nearby. Issues of “transparency” by the FCPD were again cited by engaged community members seeking accountability of the FCPD. *See generally* Appendix O (“Fairfax County Appears Poised to Move from Opacity to Openness,” *The Washington Post*, July 25, 2016).

2015

This time, the unfortunate event resulted in a more concerted review by the Board of Supervisors and led to the March 3, 2015 creation of the Ad Hoc Police Practices Review Commission by then-Chairman Sharon Bulova. The stated purpose of this Commission was to address the issues being raised by community members by engaging:

the community in an open and transparent process to recommend changes that the Commission feels would help Fairfax County to Achieve its goal of maintaining a safe community, ensuring a culture of public trust and making sure county policies provide for the fair and timely resolution of police-involved incidents.

See Appendix M (Fairfax County Ad Hoc Police Practices Review Committee Final Report) at 1. Within this important mandate, the Commission was tasked with the specific items of:

- Reviewing existing policies, practices and programs regarding police-community relations;
- Reviewing existing policies, practices and laws regarding police-involved incidents, including:
 - History of recent use-of-force (lethal and non-lethal) incidents involving FCPD and subsequent public release of information;
 - FCPD use-of-force training policies;
 - FCPD threat assessment policies;
 - FCPD Internal Affairs Bureau policies.
- Reviewing the policies, practices and laws regarding the public release of information, including:
 - Relevant provisions of the Virginia Freedom of Information Act and statutory and case law;
 - The roles of Police Public Information Officers and the Office of Public Affairs;
 - The role and relationship between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth’s Attorney.

See generally *id.* at 8–10. The behemoth effort of the Commission yielded 202 recommended actions for the County and the FCPD to implement in order to help the County achieve the “goal of maintaining a safe community ensuring a culture of public trust and making sure county policies provide for the fair and timely resolution of police-involved incidents.” See *id.* at 8.”

2016

On December 6, 2016, pursuant to the specific recommendation by the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission, the Board of Supervisors approved the enabling action item which formally created independent police oversight in the County. Fairfax became one of a handful of localities within the Commonwealth to operate civilian oversight of the police department and the first in the Commonwealth to adopt a hybrid model including both a Civilian Review Panel and an Independent Police Auditor.

Regarding the historic vote, then-Chairman Bulova expressed her satisfaction for the moment as follows: “Establishing a police civilian review panel is a historic step in the right direction toward increasing trust and transparency between police and residents,” Bulova said. “I’m proud of how far we’ve come in implementing the recommendations made by the ad hoc commission, and establishing this panel represents a significant milestone.” See Appendix P (“Board of Supervisors Approves Police Review Panel,” *The Fairfax Times*, December 9, 2016).

Then-FCPD Chief Edwin C. Roessler Jr. also expressed his approval of the effort, explaining “I’m very proud of Fairfax County today. What we have is the community, political leaders and highly engaged police department...working together to accomplish a great effort to create more transparency and accountability to the community we serve. This was the right move.” See *id.*

Despite the widespread approval, the vote was not unanimous. Springfield District Supervisor Pat Herrity opposed the measure and expressed his concerns regarding the Panel, “I have a number of serious issues with the Police Civilian Review Panel proposal including the following: it has an unknown fiscal impact in a very difficult budget year, it adds to multiple levels of review that police complaints already go through, it makes us the only jurisdiction in Virginia with two independent

review boards for police complaints, it has a number of legal issues with the implementation, and it negatively impacts the morale in our police department.” *Id.*

Panel Activities: 2017

Two-Thousand Seventeen was the foundational year for the Panel in which the Panel was tasked with taking the general language of the Action Item and creating a specific operational framework for Panel business. The vast majority of the Panel’s work in 2017 focused on simply figuring out how the Panel would work in the future. At the end of the year with such plans in place, the Panel voted to take its first Complaint.

Importantly for understanding the history and current operating procedures of the Panel, the Panel’s 2017 Annual Report lays out in general the scope of the Panel’s authority as determined by the Action Item and the Panel’s bylaws, which were developed by the Panel over the course of 2017. *See* Appendix D.1 (2017 Annual Report); *see also* Appendix B (Panel Bylaws). Specifically:

The Panel serves as an independent avenue or “portal” for members of the public to submit Initial Complaints (i.e., a complaint not previously submitted to the FCPD) concerning allegations of abuse of authority or serious misconduct by an FCPD Officer. The Panel also has the authority to review completed FCPD internal administrative investigations regarding a complaint of the same nature filed with the Department against an officer. The Panel may conduct a Review of an investigation within its scope only upon a request from the complainant. All FCPD letters to complainants advising them of the results of the Department’s investigation of their complaints also inform them of their right to seek a review of the investigation by the Auditor or the Panel depending on the nature of their complaint.

As a part of its Review, the Panel may hold a public meeting at which an FCPD representative will review and answer questions about the investigation, including findings of fact, evidence collected and received, witness statements, and action taken or not. Only Complaints as to incidents occurring on or after December 6, 2016, may be considered by the Panel. Examples of Complaints that the Panel may receive and/or review include:

- The use of abusive, racial, ethnic or sexual language or gestures;
- Harassment or discrimination based on race, color, gender, sexual orientation, religion, national origin, marital status, age, familial status, immigration status, or disability
- Acting in a rude, crude, angry, retaliatory or threatening manner not necessary for self-defense;
- The reckless endangerment of a detainee or person in custody;
- Violations laws or ordinances; or
- Other serious violations of Fairfax County of FCPD policies or procedures.

The Civilian Review Panel does not address the potentially criminal use of force or police involved shootings. Cases of that magnitude would likely involve an investigation by the Commonwealth’s Attorney and would be monitored and reviewed by the Independent Police Auditor (“Auditor” or “IPA”), Richard G. Schott.

The Panel may hold public meetings on issues within the Panel’s jurisdiction and on law enforcement policies and practices at which the public is invited to comment to assist the Panel in making recommendations for policy and practices changes to the Chief of Police and Board of Supervisors. The Panel may also meet periodically with the Auditor concerning his

findings and conclusions as to use of force cases so that the Panel can provide its views to the Board of Supervisors and the Chief of Police as to changes in policies and practices that may be warranted.

See id. at 2–3.

January

In January of 2017, the search for inaugural panelists formally began with a public call for applicants. Per the authorizing Action Item, Panel Members were to be appointed by the Board of Supervisors for terms of three (3) years. Further, Panel Members may be appointed to no more than two (2) consecutive terms. The Panel Members would then elect one of their members to serve as Chair of the Panel, except for the first Chair, who was to be appointed by the Board of Supervisors.

As explained in the Action Item, the Panel is composed of nine (9) members each being a resident of Fairfax County with expertise and experience relevant to the Panel's responsibilities. In order to ensure impartiality and guard against the appearance of a conflict of interest, the Board of Supervisors required that no Panel Member shall be a current employee of Fairfax County, a current or former member of the Fairfax County Police Department or the Fairfax County Sheriff's Office, have a relative (i.e., an immediate or extended family member) who is a member of FCPD or FCSO, hold public office, or be a candidate for public office. Although no Panelists can be former members of the FCPD or the FCSO, at least one of the Panel Members shall have prior law enforcement experience to ensure that a former law enforcement practitioner contributes to the important deliberations of the Panel.

Additionally, under the Action Item, the Board must consider the following factors, among others, in appointing members of the Panel: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designed to ensure a balanced Panel representative of Fairfax County. In order to assist it in appointing a Panel representing the full diversity of Fairfax County, the Board must invite organizations and individuals to nominate candidates for the Panel to the Board. The Board may ask business, civic, civil rights, legal, and other organizations to nominate candidates. The Board must also under the Action Item accept into the pool of candidates self-nominated individuals.

County residents answered the call for service and the Board of Supervisors received hundreds of resumes from community members that were interested in serving in the newly formed panel.

February

In February of 2017, a diverse group of nine panelists were identified by the Board of Supervisors and nominated to three-year terms. Among the initial nine, the Panel consisted of three Ad Hoc Commission alumni: Douglas Kay, Randy Sayles, Adrian Steel. The other founding Panelists nominated were Hollye Doane, Rhonda VanLowe, Hansel Aguilar, Kathleen Davis-Siudut, Steve Descano, and Jean Senseman. *See* Appendix J (Panelist Biographies)

March

These initial nine Panelists took their Constitutional oaths and were sworn in on March 20, 2017. Adrian Steel was appointed as the first Chair of the Panel by the Board of Supervisors. The Honorable William H. Webster, former Director of the Federal Bureau of Investigation as well as the Central Intelligence Agency, gave remarks to commemorate the occasion. Judge Webster related how his experiences as a judge and as FBI and CIA Director led him to have a strong belief that transparency

is necessary in order to maintain public trust. He said that civilian oversight of police is key to having a country where people are safe, feel safe, and have trust in law enforcement

On March 27, 2017, at the inaugural meeting of the Panel, Chairman Steel opened the meeting by emphasizing that this was a newly formed body, thus the initial meetings would be focused on setting up “business procedures,” including operating procedures and processes. *See* March 27, 2017 Meeting Minutes.¹ As he explained, the Panel would need to propose bylaws to be approved by the Board before the Panel would be ready to hear citizen complaints. He discussed the possibility of having public forums and meeting with community groups to hear their input. Additionally, Chairman Steel reminded the Panel of the separation of duties of the Independent Police Auditor and the Panel, as approved by the Board.

Chairman Steel recognized Ms. Julia Judkins, legal counsel to the Panel, and explained that she did research, per the request of the Board, pertaining to Virginia Law and the functions of the Panel in Fairfax County. According to the legal research, the authorizing laws are different when comparing cities and counties and thus there were limitations to what the Panel could do including that the Panel lacked investigative authority.

April

In coordination with Major Gun Lee of the FCPD, who served as the Panel’s liaison, the Panel Members received training from the FCPD on April 8, 2017. In this meeting, Major Lee reviewed various General Orders (GOs) and Standing Operating Procedures (SOPs) that were of importance to the work of the Panel, including:

- GO 001-Ethics and Integrity
- Regulation 201 –General Responsibilities
- Regulation 202 –Prohibited Activities
- GO 301 –Internal investigations
- GO 310.2 –Disciplinary Actions and Appeals
- GO 501.2 –Investigative Responsibilities
- SOP 12-045 –Investigation of Deadly Force Deployment

Additionally, Major Lee outlined the following topics and how they would intersect with the work of the Panel:

- PD Internal Affairs Bureau –Overview and Administrative Investigation Process
- PD Criminal Investigations Bureau –Overview and Criminal Investigations Process Involving Employees
- PD Victim Services Section

This training and dialogue was important for a newly instituted oversight body and for members that did not have a law enforcement background.

The Panel met next on April 24, 2017. The primary purpose of this meeting was for Panel Members Rhonda VanLowe and Doug Kay to present drafted bylaws. Mr. Kay and Ms. VanLowe based their drafted bylaws directly on the Action Item.

¹ This Four-Year Review relies heavily on the Panel’s meeting minutes. The meeting minutes have been left out of the Appendices given their numerosity, but all meeting minutes of the Panel can be accessed at: <https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>.

Aside from grammatical and line edits to the first draft, the Panel discussed the following issues to be included in the next version of the bylaws:

- Whether the term “complainant” or “individual” should be used
- What would be a better word than “portal” for where to submit complaints as it may be seen as limiting because it implies a strictly web-based interaction.
- How to define the term “use of force.”
- Whether the timeline for Panel review of complaints specified in the Action Item should be reconsidered
- The relationship between the Action Item and the Panel bylaws
- How to clearly define and separate the process one would follow to file an initial complaint directly with the Panel as opposed to a “Review Request” where the Complainant would be asking the Panel to review an already completed investigation initiated independent of the Panel.
- Whether to include a specific reference to the Panel’s Code of Ethics.
- How to specify rules of procedure in terms of what constitutes a quorum.
- Whether to remove specific code citations.
- How to refer to unprofessional conduct.
- How to define and differentiate between complaints that are the purview of the Police Auditor and those of the Panel.

See April 24, 2017 Meeting Minutes. Unable to come to definitive conclusions, the Panel planned a meeting a week later to take up these issues.

May

On May 1, 2017, the Panel met to discuss the progress of the draft Bylaws. Panelists reviewed the draft jointly and commented on various aspects of the documents. Specifically, Panel Members discussed the following items to be clarified on the next draft of the Bylaws:

- What constituted officer actions considered to be an “abuse of authority” or “serious misconduct.”
- The definition of “brandishing” of weapons.
- Whether the initial jurisdictional review decision can be appealed.
- Whether the definition of “abuse of authority” and “serious misconduct” apply to an officer when off-duty.
- The process to be followed when the matter of a complaint is the subject of a criminal, civil, or administrative proceeding.
- Whether the Panel is permitted to hear testimony from witnesses not initially interviewed by the Police Department.

See May 1, 2017 Meeting Minutes.

An additional training session and meeting was held on May 13, 2017. The training session was again organized and coordinated by Major Gun Lee. The training session included representatives from various departments of the FCPD:

- Media Relations Bureau –Julie Parker, Bureau Director
- Crisis Intervention Team –PD Lieutenant Ryan Morgan
- Criminal Justice Academy –PD Major John Piper
- Operations Support Bureau –PD Major David Moyer

- Legal Considerations –Julia Judkins, Legal Counsel

See May 13, 2017 Meeting Minutes.

June

The panel met twice in June of 2017. On June 1, 2017, the Panel held its regular business meeting where some final amendments to the Bylaws were made to submit to the Board of Supervisors for review and approval. The initial Bylaws, and all Bylaws amendments, are attached to this review as Appendix A.

During a meeting on June 27, 2017, the Panel conducted a “mock review” of an alleged racial profiling incident. The exercise was instrumental in allowing the Panel and the various community stakeholders to observe what future Complaint deliberations may look like. This test case allowed the opportunity for the Panelists to go through the full range of motions of a complaint review process: From receiving the initial request for a review, to arranging visits with IAB to review the file, to hosting a review meeting, to deliberating on the case, and finally to holding the final vote on the Complaint. Based on the experience of conducting the exercise, the Panel had the following recommendations: (1) that the IAB enhance the quality of the audio recordings that are part of the investigative file; (2) that the IAB ensure that all Panel Members have access to the same materials; (3) that the Panel create general guidelines on how the Panel should interact with Complainants; and (4) that the Panel create a list of common and acceptable questions that Panel Members should ask complainants. *See* June 27, 2017 Meeting Minutes.

July

The Panel did not meet in July of 2017, but both drafts (Ethics and Bylaws) that were submitted to the Board of Supervisors, were approved on July 11, 2017. *See* Appendices B and C. This meant the panel became fully operational and ready to receive complaints.

August

At the August 3, 2017 meeting, Ms. VanLowe was elected Vice Chair of the Panel by unanimous vote. Under the Panel’s bylaws, she would become the first elected Chair of the Panel at the conclusion of Chair Steel’s term.

Continuing his work on training members of the Panel, Major Lee used the August meeting to provide dates to Panel Members to go on ride-alongs with FCPD officers and encouraged those Panel Members who want to take one to let him know. Vice Chair VanLowe commented on how valuable the experience of riding with an officer had been to her.

The meeting then turned to outreach strategies. Vice Chair VanLowe and Panel Member Hollye Doane then reported on the plans for the first public forum. Panel Member Steve Descano reported on the plans that he and Panel Member Kathleen Davis-Siudut were developing for meetings with community and officer organizations. *See* August 3, 2017 Meeting Minutes.

September

At the Panel’s September 17, 2017, meeting, the Panel invited Mr. Paul Ashton, Chair of the D.C. Police Complaints Board (PCB), to speak about the PCB’s structure, mission, jurisdiction and process for reviewing citizen complaints against the Metropolitan Police Department (MPD). Although

the PCB's oversight structure differs substantially from the review model adopted by Fairfax County,² the Panel was nevertheless interested in how the PCB processed complaints and made recommendations on policy changes to the D.C. Mayor, City Council and MPD. The presentation was informative to the Panel, and Panel Members agreed that it was important to learn from other civilian oversight boards and panels. Chair Steel informed the Panel that he, Mr. Aguilar, and Independent Police Auditor Richard Schott would be attending the annual meeting of the National Association of Civilian Oversight of Law Enforcement (NACOLE) in Spokane, Washington the following week. He said they would report back to the Panel what they learned about current developments in civilian oversight.

The Panel also addressed how to identify and process complaints that had been filed directly with the FCPD since the Panel's inception but were unknown to the Panel. These types of investigations might be reviewable by the Panel, but the Complainants may not have been notified that they could request reviews. Mr. Schott reported to the Panel that he and IAB Commander Major Gervais Reed had identified several complaints that they had determined would fall within the Panel's review authority. He informed the Panel that the Complainants would be sent a letter notifying them of the results of the FCPD investigations and their opportunity to request a review from the Panel. The Panel discussed whether the Panel Members should also have input on that identification process. The Panel voted to authorize the Chair and Vice Chair to confer with Mr. Schott and Major Reed regarding the complaints they had identified and to also identify any additional complaints received. The Panel agreed that the results of that review should be presented to the Panel at the next meeting. The Panel also agreed that it should proceed expeditiously to adopt procedures for processing all complaints, and that once that was completed, there would be written protocols and standard templates to use for communicating with Complainants in the future.

The Panel addressed a variety of administrative matters during the rest of the meeting, including an update that the Panel's Website was operational and that a press release had been issued by Chair Sharon Bulova announcing that the Panel and Independent Police Auditor were accepting complaints. In addition, Ms. Doane informed the Panel that a printed brochure about the Panel would be published in four languages and soon would be ready to distribute to public sites across the county. *See Appendix I (Panel Brochure).*

The importance of continued outreach to the community through meetings, the media and printed materials was discussed. Mr. Descano, who had agreed to spearhead community outreach efforts, reported to the Panel that he had contacted a number of community organizations, including the NAACP, CASA in Action, Unitarian-Universalist Church in Reston, various Route 1 groups, Police Citizen Advisory Committees, and the Chief's Diversity Council. He asked for other suggestions and Chair Steel noted that all the Panel Members should be involved in some type of outreach to introduce the Panel to the community. Ms. Davis-Suidut offered to prepare talking points and a PowerPoint presentation for outreach meetings. *See generally* September 17, 2017 Meeting Minutes.

² According to its enabling statute, the PCB is composed of five members, one of whom must be a member of the Metropolitan Police Department (MPD). The statute specifies that the other four must have no current affiliation with any law enforcement agency. In order to ensure community representation, the statute requires that all Board members must be residents of the District of Columbia, and they serve staggered three-year terms without compensation. The Mayor nominates members to the Board, who must then be confirmed by the Council. *See* <https://policecomplaints.dc.gov/page/opc-police-complaints-board>.

October

At its meeting on October 19, 2017, the Panel continued to plan for additional outreach in order to inform the community that the Panel was ready to start accepting Complaints and reviewing investigations. In particular, the Panel focused on the agenda and logistics for its upcoming public meetings for comment, referred to by Panel Members as “public forums.” The Panel determined that the first forum would be held on November 16 in Annandale and the second would be held on December 12 in Reston.

However, Panel Members differed on the purpose of the forums. Some believed that the Board of Supervisors had consented to the Panel holding forums only for the purpose of introducing the community to the members of the Panel and familiarizing them with the complaint process. However, they did think that the Board intended such meetings to be open-ended, where individuals could discuss specific problems with police. In fact, the Panel’s counsel advised that there could be serious legal issues if the Panel held unrestricted open meetings for comment. Others, including the Chair, felt that community members should be able to freely address the Panel on all issues of public safety at public forums. Such discourse, they argued, was essential to the Panel’s role in recommending policy changes concerning policing in the community. The issues concerning public forums would continue to challenge the Panel for the next few years. At this meeting, however, the Panel agreed that, for the purpose of the upcoming public forums, the Panel could receive comments on issues relating to the Panel’s jurisdiction, as well as matters relating to the complaint review process. *See* October 19, 2017 Meeting Minutes.

A draft brochure was circulated to the Panel Members for their review with the goal of publishing copies in time for the first forum. *See* Appendix I (Panel Brochure). Mr. Schott reported on his work with the County’s Channel 16 to create a 10-minute video that would describe the Panel and IPA. It was also reported that the Office of Public Affairs had posted messages on Facebook and Twitter regarding the Panel and IPA.

Chair Steel and Vice Chair VanLowe reported that they had conferred with Mr. Schott and Major Reed regarding the investigations that they had identified as being potentially reviewable by the Panel. They reported that after discussion and inquiries about certain complaints, they were satisfied with the determinations made by Mr. Schott and Major Reed. The identified Complainants would be sent letters informing them of their opportunity to request a Panel review of the investigations. The Panel agreed that going forward the Chair and Vice Chair would continue to work with Mr. Schott and Major Reed to identify those complainants that need to be informed about their ability to request a review. *See* October 19, 2017 Meeting Minutes.

November

On November 9, 2017, the Panel continued planning for its first public forum. Panel Members also spent considerable time discussing future public outreach for the purpose of letting the community know that the Panel was ready to accept complaints. Mr. Descano reported that five or six community groups were interested in receiving a Panel outreach presentation in 2018.

Major Lee updated the Panel on the police Crisis Intervention Team (CIT) training scheduled for November 15 and noted that two Panel Members were scheduled to attend. He said that there would be another session in early 2018 and encouraged more Panel Members to attend. Chair Steel and Mr. Sayles reported on the November 1 Forum held by the Ad Hoc Commission to update the community on its public safety recommendations. They noted that attendance was limited but that the issues raised included: (1) the timeline for release of the 2016 Use-of-Force statistics and analysis of the 2015

statistics; (2) disproportionality as reflected in the 2015 Use-of-Force statistics; (3) the recent arrest by FCPD of a person attending the Annandale parade; and (4) the need for an online docket to list the complaints received by the Panel, investigations being reviewed, and reports issued by the IPA and Panel. *See* November 9, 2017 Meeting Minutes.

Mr. Schott provided a brief report on the NACOLE annual conference that he attended, along with Mr. Aguilar. He noted that he was told by many attendees that it typically takes a number of years for new civilian oversight panels to become fully effective, since it takes a while for the public to learn about the review process and gain trust in oversight.

On November 16, 2017, consistent with the provisions of the Action Item and the Panel's Bylaws, the Panel held a Public Forum in Annandale.³ The forum was advertised through the County's website, social media (e.g., Facebook and Twitter), and through local media. Then-Chairman of the Board of Supervisors, Sharon Bulova, attended the forum and expressed her support for the work of the Panel and explained that she believed the at the Panel would promote transparency and openness in community policing.

Following remarks by Chairman Bulova, the eight members of the Panel in attendance (Vice Chair VanLowe was unable to attend) introduced themselves to the public and provided their backgrounds and how they ended up on the Panel.

After introductions, Chair Steel provided an overview of the Panel including a discussion of the Panel's formation, how Panel Members were selected, the terms of service, the Panel's purpose, and the work conducted to date. Most importantly, Chair Steel explained that the Panel would review completed investigations of public complaints of abuse of authority or serious misconduct by a FCPD officer when requested.

Following Chair Steel's presentation, Independent Police Auditor Richard Schott provided an overview of the purpose and scope of the Office of the Independent Police Auditor. He explained that in contrast to the Panel, the Auditor is responsible for monitoring and reviewing Internal Affairs investigations of police officer involved shootings; in-custody deaths; use of force cases that result in death or serious injury; and any other use of force cases in which a public complaint is received.

Panel Members Kathleen Davis-Siudut and Doug Kay discussed the complaint filing process, explaining that written complaints or requests for review can be submitted to the Panel via the Auditor's office in person, by mail, or online, at which point they are shared with the FCPD. Then the FCPD conducts the investigation and sends findings to the complainant and the Panel/Auditor. The Panel itself conducts public meetings to review investigations, during which it may hear from the complainant and an FCPD representative.

It was important to note some key limitations of the Panel and the Auditor. For instance, neither the Auditor nor the Panel has investigative authority but may only review completed investigations by the FCPD. Nor do they do not have jurisdiction over the Sheriff's Office or federal law enforcement (*i.e.*, ICE). And neither the Panel nor the Auditor can review complaints related to incidents that occurred before December 6, 2016, and, absent a finding of good cause, must abide by established time limits for the submission of an initial complaint or a request for review.

³ As explained in the 2017 Annual Report, the Action Item and the Bylaws dictate that "[t]he Panel may hold public meetings on issues within the Panel's jurisdiction and on law enforcement policies and practices as which the public is invited to comment to assist the Panel in making recommendations for policy and practices changes to the Chief of Police and the Board of Supervisors." *See* Appendix D.1 (2017 Annual Report) at 3.

The meeting was then opened up for audience questions about the Panel and Auditor processes and comments on related issues. The questions/comments included:

- To the majority of residents, the FCPD and the Sheriff's Department are considered law enforcement officials. Does the Panel or the Auditor have authority to take complaints about the Sheriff's Department?
- How much business/how many complaints do you expect to receive?
- Where will your meetings be held?
- If the Auditor reviews an investigation and disagrees with the FCPD's decision in regards to disciplining an officer, does he have the authority to change the discipline imposed or charge an officer with a crime?
- Is there anything this panel can do to respond to complaints about the Sheriff's Department or ICE? Is there a legal impediment if the Sheriff wants this Panel to review? Why not invite the Sheriff's Department and ICE to attend these forums?
- A speaker noted that many individuals who would want to submit a complaint would likely be minorities. Given the racial and ethnic makeup of the Panel, how can the community be assured that the Panel will be sensitive to the concerns of minority populations in the county and help them to navigate the complaint process (which may be seen as complex and lengthy)?

See November 16, 2017 Public Forum Meeting Minutes. In other words, the community members who attended the public forum seemed most interested in understanding the scope of Panel authority – and in some ways directly questioned the Panel's limited mandated – and called for assurances and explanations as to how the Panel would effectively function as an independent arbiter open to all members of the community.

December

At the Panel's business meeting on December 7, 2017, The Panel considered its first Request for Review of a police investigation, which involved an investigation initiated when a police officer failed to respond to a subpoena in a civil suit. *See generally* Appendix G.1 (CRP-17-01 Review Report). The Panel considered whether it had jurisdiction to review the investigation. Some Panel Members were concerned that the email requesting the review asked for a monetary remedy that is outside of the Panel's authority to grant. The email also was unclear as to whether the Complainant was asking the Panel to review the investigation or whether she was asking for something different. The Panel voted to send a response to the Complainant asking for clarification on whether she would like the Panel to proceed with a review of the investigation. *See generally* December 7, 2017 Meeting Minutes.

Vice Chair VanLowe also raised the need for the Panel to develop written procedures and practices to follow when receiving and reviewing complaints and requests for review. Panel Members agreed that the Panel should develop a procedural manual and a series of template letters to use for processing complaints. Vice Chair VanLowe also emphasized the need to determine what the Panel can discuss in meetings and report about the content in investigative files, the timing of responding to initial complaints and requests for review, how the Panel will correspond with Complainants, and when Panel Members can make appointments to review investigative files at police headquarters. These issues would be further considered by the Panel during Ms. VanLowe's chairmanship that she would assume in March of 2018.

Panel Members also addressed a number of additional topics during the remainder of the meeting, including preparations for its upcoming December 12 public forum and whether to schedule future forums. The Panel agreed to postpone scheduling additional forums until it had completed its

outreach efforts to specific groups. Mr. Descano said he was currently scheduling outreach meetings to take place from January-March and asked Panel Members to sign up to attend. Mr. Schott informed the Panel that he and Vice Chair VanLowe were featured on Channel 16's program, "Connecting with Supervisor Hudgins."

Chair Steel raised a concern that many FCPD officers had a misperception about the role and responsibilities of the Panel. Major Lee encouraged Panel Members to meet with officers and offered to set up opportunities for Panel Members to attend roll calls in district stations. Major Reed noted that more clarification would occur naturally as the Panel's work progressed. The Panel agreed that it should consider a strategy for outreach to the FCPD.

Chair Steel provided an update on the FCPD's Body Worn Camera pilot program, which was approved by the Board of Supervisors to start in March of 2018. He said that Panel Members may want to go on police "ride-alongs" in the Mason or Mt. Vernon districts during the pilot period.

On December 12, 2017, again consistent with the provisions of the Action Item and the Panel's Bylaws, the Panel held a second Public Forum in Reston. The forum was advertised through the County's website, social media (e.g., Facebook and Twitter), and through local media. Then-Hunter Mill District Supervisor Cathy Hudgins attended the forum and expressed her support for the work of the Panel and explained that she believed the at the Panel put in place a process that would allow the community to have greater oversight over the FCPD.

Presentations proceeded along the same lines as at the November 16, 2017 Public Forum. Unsurprisingly, there were then many similar questions to the previous forum as well. Again, the questions primarily concerned the scope and limitations of the Panel's mandate and questioned how the Panel would be able to provide meaningful oversight that the community could trust. Such questions included:

- Why does neither the Auditor nor the Panel have the authority to investigate complaints against the FCPD?
- Why are there two oversight bodies – the Auditor and the Panel – rather than one?
- Do you have to be involved in the incident to submit a complaint?
- How is the FCPD involved in the Auditor and Panel's review processes? How can citizens be assured that the FCPD is forthcoming with all evidence received and findings?
- Why can't the Auditor and Panel take complaints about ICE?
- Can you tell me more about Chairman Steel's background? How many attorneys sit on the Panel?
- How did the Board of Supervisors select individuals to serve on the Panel?
- Can the Panel make policy recommendations to the FCPD?
- What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?
- What are you doing to advertise the Auditor's and Panel's services to different groups within the community, particularly minorities?
- Do you only look at individual cases?
- Are all complaints received by the Auditor and Panel available to the public for viewing?

See December 12, 2017 Public Forum Meeting Minutes. Again, the Panel had to explain that neither the Panel nor the Auditor could have investigatory authority due to the lack of enabling legislation. The Panel further explained that it would be reviewing investigatory information provided by the police, but also explained that at public meetings the Panel could question an FCPD representative

about the contents of the Investigation Report and that the Panel could request additional investigation. Again, the Panel needed to explain that it could review complaints against the FCPD exclusively, not ICE or other law enforcement bodies. The Panel assured the public that it was working on additional outreach strategies, including to minority communities and non-English speaking communities (and was working on translations of its materials).

Recap

The 2017 annual report summarized the year as follows:

The Civilian Review Panel has had an active first year in beginning its task to provide effective civilian oversight. We successfully organized ourselves and drafted and adopted the Bylaws which govern our work. We are receiving and processing Initial Complaints and Requests for Review . . . We are reaching out to the public through forums and speaking before numerous community groups and organizations. We have more to do. We need to work to more broadly spread the word about what it is we do. We need to adopt clear procedures and standards to govern our work and to ensure that there is a clear record detailing the Panel’s rationale for our actions. We look forward to working with the public and the FCPD in the next year in achieving the goals set for us by the Board of Supervisors when it created the Panel.

See Appendix D.1 (2017 Annual Report) at 12.

It is hard to overstate the novelty of the Panel at its inception and the work that needed to be done to create a working Panel. The Panel and the Independent Police Auditor – and more specifically, the hybrid model of police oversight involving a bifurcation of use of force complaints and other complaints – was unique to Fairfax County and not seen anywhere else in the Commonwealth. Panel Members, all volunteers, worked with the Auditor and staff in the Office of the IPA to create bylaws and a code of ethics, but their work went even deeper. The Panel needed to create basic administrative items such as a complaint form, *see Appendix H*, a brochure for distribution across the county, *see Appendix I*, a website, complete with descriptions of purpose and mission and instructions on how to file a Complaint, and the Panel needed to have these materials translated into Korean, Spanish, and Vietnamese so that they could reach all parts of the County. The Panel further needed training, and it needed the help of the FCPD to even know what training it should have.

The Panel also needed an outreach strategy to make sure that the community knew that it even existed and was a place where community members could go to seek additional police oversight.

As a result, while the Panel was very busy in 2017, it did not actually complete the reviews of any Investigation Reports. In fact, the Panel received only one Initial Complaint in 2017, and following the FCPD investigation, there was no review request made (and therefore, the Panel did not review the Investigation Report). The Panel also received one Review Request related to a completed investigation, but the Panel did not complete its review until 2018, when the Panel started reviewing investigations in earnest. *See Appendix F (Panel Data Summary).*

Panel Activities: 2018

In 2018, the Panel began reviewing investigations for the first time. As the Panel engaged in these early reviews, it recognized gaps in the Action Item and Bylaws with respect to policies and procedures concerning issues such as, (1) whether a Complaint should be reviewed; (2) how investigative reports and IAB files could be discussed during public meetings; (3) how the Panel should correspond with Complainants; and (4) how detailed review reports could be. In March of 2018,

Rhonda VanLowe took over as Chair of the Panel. Under her leadership, many of the Panel's first policy and process documents were developed. *See generally* Appendix D.2 (2018 Annual Report).

In addition to beginning to review Complaints and adopt procedures, the Panel's 2018 meetings emphasized the need for the Panel to continue its outreach efforts and expand awareness about the Panel. Every meeting in 2018 included a discussion about outreach opportunities and actions.

January

At the Panel's January 4, 2018 meeting, the Panel discussed Complaint CRP-17-01. *See* Appendix G.1. The crux of the Complaint was that a police officer had failed to respond to a subpoena to appear in court in a civil case against the Complainant's landlord. While the IAB had investigated the incident and told the Complainant that the Officer's conduct had been addressed, the Complainant was not informed by the FCPD of its reasoning. At its previous meeting in December, the Panel considered whether the complaint involved an allegation of serious misconduct by the officer determining that the failure to respond to a subpoena could constitute serious misconduct and agreeing to review the complaint.

Both the Complainant and the Chief of Police Edwin Roessler appeared at the review meeting. Also attending the meeting were several police officers who came to observe the meeting and support the Chief. In her statement to the Panel, the Complainant expressed concern that the FCPD had not offered a remedy in her civil case and that the officer had not shown up to testify in her court hearing to substantiate her allegations. Chief Roessler told the Panel that it did not have jurisdiction to review the Complaint, because the Complaint constituted an attempt to relitigate the underlying civil case and neither the Panel nor Chief Roessler could offer the Complainant the remedy that she wanted. Instead, the Panel could merely affirm or not affirm the investigation itself, and Chief Roessler stood by the investigation. With regard to the thoroughness of the Investigation Report, the Panel questioned the Chief as to why the Investigation Report did not include interview transcripts of key witnesses, including the Complainant herself. Chief Roessler noted that at the time IAB interviews were not recorded.

February

The discussion of CRP-17-01 continued during the Panel's February 1, 2018 meeting. The Panel determined that it would concur with the findings of the IAB and discussed whether the Panel should provide policy recommendations regarding how the Police Department tracks subpoenas and trains officers on responses. However, the Panel ultimately determined that it would not provide policy recommendations at that time.

The review of CRP-17-01 highlighted several issues for the Panel going forward. First, it was evident that the Panel needed a better process to determine its jurisdiction. Second, it was clear that Complainants had very little information about the reasons for the FCPD investigation findings, and this lack of transparency impacted the quality of review meetings. Finally, the Panel was advised by its Independent Counsel that it could not report on information in the Investigation Report that was not otherwise publicly disclosed. This restraint severely limited transparency of FCPD investigations and the ability of the Panel to explain its findings in its review reports. The Panel would continue to struggle with these issues going forward.

The Panel was already thinking to the future, however, as soon-to-be-chair Rhonda VanLowe circulated a proposed intake process and proposed process for determining jurisdiction. Further, the Panel, recognizing its parallel relationship with the Independent Police Auditor, invited Richard Schott to present on several recent investigation reviews.

March

At the March 1, 2018 meeting, Rhonda VanLowe became Chair and Doug Kay took over as Vice Chair. As a first order of business, the Panel completed its work with respect to CRP-17-01. The Panel adopted a review report drafted by Doug Kay. Notably, this review report, which was not released until more than three weeks after the second panel review meeting, was short in all respects. It was only a page and a half long and offered scant details of the Complaint or the investigation.

After adopting the report as drafted, the Panel reflected further on the review process. The Panel discussed a number of procedural changes to apply to future reviews including:

being more sensitive to the use of the officer's name during Review Meetings, allowing more time for Panel discussion on the case before voting on the Panel's findings (including whether the review met the standards of thoroughness, completeness, accuracy, objectivity, and impartiality), and providing greater detail in the Panel's findings report, to include Panel Members' reasoning and rationale.

See March 1, 2018 Meeting Minutes. The Panel also engaged in a discussion as to whether dissents from panel reports were appropriate. The Panel decided that dissents were appropriate when reflective of the Panel's deliberations and that "in order to dissent, a Panel Member must have a vote on the record with respect to the Panel's finding in a review matter." *Id.*

At the March meeting, the Panel also considered its scope of authority to review CRP-18-02, where the Complainant alleged that he had been falsely arrested for being drunk in public during a landlord-tenant dispute at his residence. In the context of this Complaint, the Panel addressed its procedures going forward for determining its jurisdiction to review all future Complaints. The Panel also considered whether inviting the Complainant and a FCPD representative to a review meeting was necessary and required, and whether the Panel could develop a channel of communication with the FCPD to ask questions on police policies and procedures outside of a formal "Review Meeting" where the Complainant and the FCPD appeared. Finally, the Panel considered whether it should adopt a process to use subcommittees to decide jurisdiction and then review the Complaint, including the question of whether it was necessary to hold a formal Review Meeting. The Panel was considering its procedures in light of any future in which it was overwhelmed with review requests.

The Review Liaisons for CRP-18-02, Hollye Doane and Randy Sayles, were asked by Chair VanLowe to propose a process to determine jurisdiction that followed provisions in the Action Item and Bylaws. They developed a memorandum that they shared with the Panel at the March meeting. Specifically, their method "included consideration of the timeliness of the Complaint, whether there was use of force or pending criminal or civil proceedings, and the scope of authority. In determining jurisdiction, the liaisons looked at the allegation itself and did not review the underlying record or facts of the case." *Id.* But having determined jurisdiction, the Panel also voted that it was not necessary to hold a Review Meeting where the Complainant appeared on CRP-18-02 because Panel Members believed that the record was substantially complete and that it was not clearly necessary to question the Complainant or the FCPD at a Review Meeting. However, the ultimate determination regarding the Complaint and the investigation was held over because it was not clear if the Panel could ask *any* questions of the FCPD without a Review Meeting.

April

At the April 5, 2018 meeting, the Panel continued its efforts to develop clear and defined procedures for Panel business. The Panel adopted a new policy for Remote Participation. Also, Chair

VanLowe circulated—but the Panel did not adopt—a memo regarding procedures and timelines for setting Panel Meeting Agendas.

At the same meeting, the Panel decided that it would concur with the findings of the IAB in CRP-18-02. *See* Appendix G.2. Specifically, “Panel Members agreed that the FCPD investigation met the criteria of complete, thorough, accurate, impartial, and objective” consistent with provisions of the Panel’s bylaws. *See* April 5, 2018 Meeting Minutes. The Panel also “noted that the recorded interviews and in-car camera footage in the file were extremely helpful to their review,” and were part of the reason why no review meeting was needed. *Id.* At the same time, Chair VanLowe “expressed concerns that the interviews included in the investigative file were limited to the police officers and the neighbors who had complained” but not the Complainant. *Id.*

Additional topics discussed included two additional memos: “Duty of Panel Review Liaisons” and “Request for Review Preliminary Report.” One important topic of discussion was the relationship between the Panel and the FCPD itself and whether Review Liaisons should serve as a conduit for each specific review. Panel Members, including Review Liaisons, “felt they were not getting their questions answered regarding FCPD policy, procedures, and training, beyond a referral to the FCPD General Orders on the website” and “some members said that they had felt hostility or pressure from FCPD staff while they were reviewing the investigative file.” *Id.* One suggestion was to utilize the staff of the Independent Police Auditor for certain administrative questions in interacting with the IAB. Notably, Chair VanLowe offered to have a discussion with Chief Roessler regarding perceived friction.

The Panel also addressed an on-going concern regarding the lack of detail in FCPD disposition letters to the Complainant. Typically, disposition letters informed the Complainant only of the FCPD finding with regard to an investigation and did not provide any detailed explanation. As mentioned earlier, this lack of detail in the disposition letter also affected the Panel’s ability to provide more explanation in its Review Reports. This issue would continue to be discussed in subsequent meetings.

The April meeting also included a discussion of the relationship between the Panel and the Independent Auditor. While staff of the Independent Auditor play a dual role and also handle administrative functions for the Panel, there was some concern expressed by Panel Members that the Independent Auditor is seen as a professional arm of the FCPD whereas the Panel is supposed to be an independent, civilian institution. Nevertheless, the Panel ultimately decided that it was important to maintain a strong working relationship with the Independent Auditor and share techniques and outreach information. During the meeting the Independent Auditor shared information about his methods in determining whether a use of force complaint has been properly investigated.

Following the Auditor’s presentation, a discussion ensued (that continues to this day) regarding “the difficulties in considering the accuracy component of the investigation, how the Panel has previously been criticized for asking questions that were seen as investigatory in nature, and the level of information needed by Panel Members when conducting reviews.” *Id.* As would become apparent over numerous other Panel Reviews, these are recurring core questions for the Panel.

May

The Panel met on May 3, 2018, and discussed, among other things, the Review Report for CRP-18-02. *See* Appendix G.2. Notably, the panel held a lengthy discussion on “comments” and “policy recommendations” to add to the report in a notable departure from their previous Review Report. That being said, what actually made it into the report were two very brief comments:

- “Several Panel Members noted that the audio tapes of the interviews and the video of the police transport of the complainant after his arrest were helpful in their determinations.”

- “In addition, a body-worn camera recording might have been useful in the matter to give a better view of the complainant’s behavior during the arrest.”

See Appendix G.2 (CRP-18-02 Review Report). The Panel Report was otherwise in general as Spartan as that for CRP-17-01 before it.

Building on previous meetings and the discussion of the necessity of holding Review Meetings, whether or not subcommittees could be used regarding reviews, and whether or not there could be a “summary process,” the Panel heard from a special subcommittee of Vice Chair Doug Kay and Mr. Steel regarding several key procedural questions that they had researched and reviewed with respect to the bylaws. First, they addressed the question of “Is the Panel obligated to conduct a review of an FCPD investigation if it has the authority to do so?” The subcommittee split on this topic, with Mr. Kay determining that the Bylaws “gave the Panel discretion not to conduct a review if they so choose” and Mr. Steel concluding just the opposite. See May 7, 2018 Meeting Minutes. Both agreed that it may be worth it to seek clarification from the Board of Supervisors.

Second, the special subcommittee addressed the question of “Is the Panel required to hold a Panel Review Meeting where the Complainant and the FCPD are present?” Here Mr. Kay and Mr. Steel agreed that the panel was not required to hold a Review Meeting but was “required to provide notice to the Complainant if the Panel decides to conduct a Review Meeting” and that “if the Complainant comes to a meeting and wants to speak, the Panel has to hear from [the Complainant].” *Id.* This prompted a question from Ms. Doane as to whether there would be any instances in which the Panel would *not* want to hear from the Complainant. The Panel split on this issue with certain members, such as Steve Descano, emphasizing that a full review process was central to building community trust, but other members including Ms. Doane and Mr. Aguilar expressing concern that entertaining frivolous complaints could undermine the Panel’s legitimacy. The Panel did not come to any determination as to what “summary process” could be utilized to potentially weed out frivolous complaints.

August

The Panel did not meet again until August 2, 2018. That meeting opened with Chair VanLowe distributing a document summarizing all of the Complaints that year to date and noting an uptick in the number of Initial Complaints received by the Panel over the summer.

The Panel heard from the Independent Police Auditor regarding his latest report, “Review of the Disparity in FCPD Use of Force Incidents by Race in 2015.” Among other things, Mr. Schott found that “after reviewing individual incidents, the OIPA was unable to discern a disparity in the level of force used on African Americans and Whites when considering the level of resistance or flight exhibited in individual incidents.” See August 2, 2018 Meeting Minutes. Mr. Sayles noted that this was exactly the opposite of what other independent groups reviewing the data had found. Rachelle Ramirez of the Independent Police Auditor’s office “explained that the studies referenced in the report were quantitative empirical studies, where the researchers statistically controlled for different variables, such as arrest rates,” whereas this analysis only reviewed incidents where force had been used.

The bulk of the August meeting was devoted to proposed Bylaw changes. The first proposed bylaw amendment added language to Section VI.C.2(a) regarding Review Liaisons. Specifically, the Panel passed a motion to propose that Section VI.C.2(a) state in its entirety: “The Panel Shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. **The Chair may appoint, on a rotating basis, one or more Panel Members**

as review liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.” (The highlighted portion being the Amendment.)

The second amendment modified the language of Section VI.A.1(d) to clarify the Panel’s process for dealing with Complaints. Specifically, the Panel passed a motion to propose that Section VI.A.1(d) state in its entirety: “A Review Request filed more than sixty (60) days after **the date of the FCPD notice sent to the Complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint** [shall not be reviewed] (unless the Panel determines that there is good cause to extend the filing deadline).”

The third amendment modified the language of Section VI.E.1(f) to give the Panel discretion to have the Complainant appear before the Panel at a Review Meeting, similar to its discretion to request that the FCPD attend. Specifically, the Panel passed a motion to propose that Section VI.E.1(f) state in its entirety: “**At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting**, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.”

The fourth amendment added language to Section VI.E.1(a) regarding the Panel’s jurisdiction. Specifically, the Panel passed a motion to propose that Section VI.E.1(a) state in its entirety: “**If the Panel determines it has authority to review an investigation under article VI.A.1**, the Panel shall convene a Panel Meeting to review an investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.”

Having proposed substantial Bylaws changes, the Panel tabled further procedural questions until the September meeting. The Panel’s primary focus during this period was to develop consistent and clear policies and procedures for how the Panel would review Complaints.

September

When the Panel met on September 6, 2018, it focused on records retention and sharing issues and outreach. Records retention was a particularly pertinent topic because for the first time in its existence, the Panel Members were set to get County email addresses. A discussion led by County Archivist Brian Conley explained to the Panel Members their record retention obligations under Virginia’s FOIA laws, and the Panel discussed creating its own records retention policy.

Another change in the Panel ushered in with its new email addresses was that the Panel determined that all Complaints and FCPD Disposition Letters should be shared with the entire Panel and not just the Chair and Vice Chair.

As in many previous meetings, the Panel discussed its outreach efforts, including outreach at various police district stations, along with outreach to police organizations. The Panel voted that it would hold another Public Meeting in December of 2018.

Vice Chair Kay notified the Panel that he and Chair VanLowe had met with Supervisor John Cook regarding the proposed Bylaw Amendments and that they would be taken up by the Board of Supervisors as a whole at a later meeting.

At the conclusion of the meeting, Vice Chair Kay raised the subcommittee issue, noting that the Bylaws expressly provided for the possibility of conducting an “initial review” and suggesting that a subcommittee only may be best suited for such an “initial review.”

October

The Panel meeting on October 4, 2018, featured several determinations regarding procedural considerations that had been discussed by the Panel. First, the panel voted to implement section VI.C.2 (a) of the Panel's Bylaws "to establish subcommittees that will be comprised of the two Review Liaisons and either the Chair or Vice Chair, who shall alternate serving on the subcommittee." *See* October 4, 2018 Meeting Minutes. Cognizant of the potential for a 2-1 vote in the subcommittee and concerned that a legitimate Complaint could be overlooked by the process, the Panel also included in its motion a rule "that the decision made by the subcommittee be distributed to the entire Panel Membership in the form of a summary report." *Id.* Notably, the Panel did not explicitly define how the subcommittee was to perform its "initial review" or what criteria needed to be considered in the initial review.

The Panel also adopted a Records Management plan identical to that of the Independent Police Auditor. The Panel discussed, but did not adopt, a confidentiality policy that would govern what could be said during meetings and in Review Reports. The Panel was cognizant that it was under certain obligations to maintain confidentiality but also faced the need to balance confidentiality with transparency, which is a key component of the Panel's work.

The Panel decided to take up review of Complaint CRP-18-12, involving claims of police misconduct in writing up a traffic accident where the police officer had allegedly written up false statements. The IAB investigated the Complaint and notified the Complainant that "measures have been imposed to prevent a recurrence of this type of incident in the future" and, "[a]fter completion of the Investigation, the Officer amended the [police report] correcting some, but not all, of the information disputed by Complainant." *See* Appendix G.3 (CRP-18-12 Review Report). The Panel concurred with Mr. Steel, who served as a Review Liaison, that it could consider this review request. The Panel further decided that it would benefit from hearing from the Complainant and that it would invite both the Complainant and the FCPD to present at the November meeting. But the Panel made clear that it would not cancel or move the Review Meeting if the Complainant could not attend.

The Panel also devoted part of the October Meeting to preparation for the December Public Forum/Meeting. Despite consistent outreach efforts, Mr. Descano expressed his concern that the Panel's existence and business were unknown to wide swaths of the Fairfax County community. Panel Members decided that the Mount Vernon magisterial district would be the place where the Public Meeting might have the biggest impact. The Panel considered "potential topics of the public forum, such as mental health or reporting a comprehensive overview of Panel data to date, and conducting a question and answer dialogue between the Panel and the public during the public forum." *See* October 4, 2018 Meeting Minutes. The Panel also determined that buy-in from the Board of Supervisors for the Public Meeting would be beneficial. Chair VanLowe offered to speak with Chairman Bulova, Supervisor Cook, and Supervisor Dan Storck of the Mount Vernon District regarding the public forum and explained that she would "get input from Supervisor Storck related to potential dates and topics that would engage community members within his district." *Id.*

November

At the November 1, 2018 meeting, the Panel considered CRP-18-12. *See* Appendix G.3. Both the Complainant and the FCPD appeared at the meeting. The Complainant expressed his continued frustration that the Police report allegedly had the color wrong with respect to the vehicle involved in a traffic accident and had not accurately reported who had helped the Complainant out of the road. Further, the Complainant's wife explained that she was dismayed by the police officer's behavior in the aftermath of the incident and felt that he had not been attentive to the need for an accurate report.

Consistent with its mission, the Panel Members focused their questions on the IAB Investigation Report itself and whether the IAB had adequately looked into the alleged false statements in the police report. For instance, Mr. Descano asked if the Complainant believed that the IAB investigation had contacted all of the witnesses to the accident. The Complainant did not know, but said that the police had all of the proper contact information. The Complainant said that he had seen a revised report that corrected some of the inaccuracies but that the report still had the color of the other vehicle involved wrong.

Appearing on behalf of the FCPD, Major Gervais Reed “noted that the involved officer made errors, was held accountable, and corrective actions were taken to prevent future errors.” *See* November 1, 2018 Meeting Minutes. The Panel asked various questions concerning the investigation, such as if the FCPD was ultimately able to identify the driver of the other vehicle (it was not). Major Reed explained that the report had been changed but that the report regarding the color of the other vehicle had not been changed because it was consistent with the 9-1-1 call and the two witnesses who appeared at the scene.

The Panel ultimately voted to concur with the findings of the IAB by a vote of 6-1. Mr. Aguilar cast the dissenting vote and expressed his intention to file a dissent to the ultimate Review Report.

December

The Panel discussed the Review Report for CRP-18-12 at its meeting on December 6, 2018. Notably, this Review Report was about twice as long as the two Review Reports filed before it, in large part because the Panel provided a more fulsome procedural history, additional comments, and recommendations. The additional comments and recommendations were made notwithstanding the Panel’s decision to concur with the findings of the IAB. *See generally* Appendix G.3.

During deliberations, the Panel was concerned about how detailed it could be in Section III, the Procedural History, which notably provided more information than prior Review Reports. The Panel went into closed session to confer with Panel counsel to determine what was permissible. Notably, the Procedural History portion is the part of the report that actually discusses the findings of the IAB and the Investigation Report. It was evident that in order to write a report that accurately describes an investigation, the Panel needed to be able to provide clear procedural history of the Complaint.

The Panel agreed on two “Additional Comments.” First, the Panel expressed concern that it did not know what kind of training police officers received for the specific report at issue, nor did the Investigation Report fully explain how the department would teach officers to make corrections to reports if needed. Second, the Panel noted that the Investigation Report was light on information concerning the police officer’s demeanor in the interaction. Ultimately, the Panel was satisfied with Major Reed’s “assurance that the investigators took a holistic approach to the complaint, coupled with the fact that issues of the Officer’s demeanor are inextricably tied to the officer’s refusal to update the [police report]” and thus “the officer’s demeanor was reviewed as part of the Investigation and that a separate investigation into the officer’s demeanor was unwarranted.” *See* Appendix G.3 (CRP-18-12 Review Report).

The Panel agreed to three policy recommendations arising out of the Complaint. First, the Panel expressed concern that there was no supervisory review of the types of police reports at issue and suggested that a new system be implemented. Second, the Panel recommended that each allegation in the Complaint be separated out and investigated in isolation, addressing the concern that the Investigation Report was light as to the officer’s demeanor. Third, the Panel recommended the “FCPD

periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name.” *Id.*

Hansel Aguilar explained to the Panel that he would be filing a dissent because he did not agree that the IAB investigation was complete, given that the Investigation Report did not specifically address the question of the officer’s demeanor. As Mr. Aguilar explained, the fact that this allegation was never explicitly discussed meant that he would not agree to concur with the findings of the IAB or the Panel. The completed Review Report, including the dissent, was published on January 8, 2019.

The Panel also used its last Panel meeting of the year to adopt the Panel’s various Operating Procedures documents developed over the course of the year. Thus, the panel formally, through these various documents, “establish[ed] a process to ensure consistent treatment of all submitted complaints and requests for investigation reviews; provid[ed] future Panel Members with a roadmap for Panel operations; create[d] correspondence templates; and document[ed] the administrative tasks performed by the Independent Police Auditor Staff.” *See* Appendix D.2 (2018 Annual Report) at 1; *see also* Appendix D.2 (2018 Annual Report, Appendix D).

Finally, at the last Panel business meeting of the year, Mr. Aguilar brought up the difficulty of reviewing the IAB files under the protocols provided to the Panel. He asked whether the FCPD could make the Investigation Reports available electronically at district stations and/or over weekends to accommodate busy schedules. *See* December 6, 2018 Meeting Minutes.

On December 10, 2018, the Panel held its Public Forum/Meeting with public comment at the Mount Vernon Governmental Center. The Public Meeting was attended by Supervisor Storck and Chief Roessler as well. The Public Meeting was well attended by county residents who were active in questioning the Panel. Questions included, but were not limited to:

- What types of Complaints are reviewed?
- What’s the difference between a Complaint and a request for review?
- Is the legal status of a Complainant protected?
- Do you have the ability to review all citizen Complaints?
- Does the Sheriff have a similar oversight commission?
- What about anonymous Complaints?
- Can you identify trends from the Complaints? How can you if you only review a small number of complaints?
- Isn’t the FCPD still ultimately responsible for policing itself?
- Why is the panel not involved in use of force cases?
- Why no investigatory authority for the Auditor?
- Why are complaints routed through the Auditor’s office?

See December 10, 2018 Meeting Summary. In addition, the public offered a number of comments including, but not limited to:

- That the review request procedure seems too bureaucratic and requires people to share personal information at a time when they are most vulnerable;
- That there was too little information in Panel reports; and
- That the Panel meeting agendas were not good enough.

See id.

As the 2018 Annual Report explained, “Two themes surfaced [at the Public Meeting] that are also aligned with concerns Panel Members expressed during [their] meetings and deliberations: (i) FCPD accountability (the obligation of the FCPD to communicate to complainants and the public the results of its investigations), and (ii) transparency (the specific, detailed information shared with the public through FCPD communications to complainants and through Panel Reports).” *See* Appendix D.2 (2018 Annual Report) at 2. The Annual Report further asserted that “[a]ddressing these two concerns with some urgency is incumbent upon the Board of Supervisors, the FCPD, and the Panel, if the Panel is to succeed in its mission to build public trust and confidence in the FCPD through an investigation review process that bolsters FCPD accountability.” *See id.*

Recap

The year 2018 was both foundational and transitional for the Panel. On the one hand, the Panel devoted a tremendous amount of time and effort to putting into place the proper procedures and guardrails to make sure that the Panel was fulfilling its mission. The Panel further presented to 16 different community and civic groups during the year and continued to try to bolster its profile in the Fairfax County community. Moreover, the Panel started to review Complaints and write Review Reports. *See also* Appendix F (Panel Data Summary) (showing that in 2018, 24 initial Complaints were brought directly to the Panel, two of which were later requested to be reviewed by the Panel, and there were seven Review Requests of investigations not initiated through Panel Complaints). The Panel’s actual function of providing direct oversight over the IAB of the Fairfax County Police Department began to be realized.

The 2018 Annual Report⁴ outlined a number of issues for Board of Supervisors to consider. First, the Panel addressed accountability and transparency issues. The Panel explained that Complainants needed more information about the rationale behind the findings of investigations. As the Annual Report explains “Two areas noted for improvement are: (i) the FCPD letter sent to the complainant upon completion of an investigation (the “Disposition Letter”) and (ii) the Panel’s Review Report, which is issued (and made public) after completion of a Review Meeting.” *See* Appendix D.2 (2018 Annual Report) at 2.

The Panel noted that the disposition letters were often more or less pro forma, and did little to inform the Complainant what had actually occurred in the investigation. As a result, often the Complainant could not even identify in the disposition letter what complaint he or she had about the IAB investigation, which is what the Panel is supposed to review. Thus, the Panel recommended that “at a minimum” each disposition letter include:

- A description of the investigation undertaken;
- Key factual findings and supporting evidence;
- A summary of relevant evidence and witness statements;
- A statement of reasons for FCPD conclusions;
- Virginia Code and FCPD General Orders that were considered in the investigation and whether violations were found; and
- Whether disciplinary action was taken or not (without disclosing actual discipline imposed).

See id. at 3.

⁴ Note: The 2018 Annual Report was actually published in March of 2019, but most of its recommendations relate directly to discussions had during the 2018 calendar year.

The Panel further pointed out that it needed to be more forthright in its Review Reports if the Panel was going to be effective at increasing public trust. The Panel expressed some concern that the Action Item developing the Panel unduly limited what could appear in a Panel Report or what could be discussed at the Panel meetings. Thus, the Panel proposed at a minimum that “the following principles apply to the content” of Review Reports:

- Information cited in Disposition Letters, disclosed by the FCPD in Panel Review Meetings and information in the Investigation Report, other than Personnel Record Information, may be included in Panel Reports.
- “Personnel Record information” is defined as specific officer discipline (excluding the fact of a violation of a FCPD General Order or policy, law, or rule) and certain statements of police officers taken (as required under the provisions of *Garrity v. New Jersey*), unless officer consent is secured.
- Names, addresses, and other identifying information of complainants, officers, and witnesses will not be included in Panel Reports (a practice consistent with that of the Independent Police Auditor).

See id. at 4.

Second, the Panel addressed “Panel Comments and Recommendations.” The Panel noted that it had offered comments and recommendations in a number of its Review Reports, but “there is no process in place for Panel comments and recommendations to be reviewed, considered, and, where appropriate implemented.” *See id.* at 5.

Third, the Panel made a specific “Request for Action” by the Board of Supervisors. The Panel noted that it tried going directly to the FCPD with such issues but that the FCPD preferred that they be addressed by the Board. Thus, “as a result, through the submission of [the 2018 Annual R]eport, the Panel request[ed] that the Board of Supervisors establish a process to address and resolve the concerns outlined . . . and future recommendations offered by the Panel.” The Panel further explained that “[a]s a start, the Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same.” *Id.*

In sum, the Panel’s 2018 report demonstrated that the Panel had a significant amount of autonomy to create and define its procedures and jurisdiction, but ultimately it faced significant constraints in its ability to connect with the public. Notwithstanding its business meetings, which are public; its public reports; and its public meeting, the Panel still was not breaking through to the broader Fairfax County community. There was a clear need for the Panel to consider additional ways in which the Panel could provide more information to the public, and while the Panel worked to assert its independence, it became clear that it would be necessary to have more direct cooperation from and with the FCPD to enhance its effectiveness. In the end, the Panel laid the groundwork for a more collaborative relationship with the FCPD while still asserting the Panel’s need to speak clearly and independently.

Panel Activities: 2019

In 2019, the Panel hit its stride and, as the 2019 Annual Report explains, “settled into its principal role – reviewing completed Fairfax County Police Department (‘FCPD’) Investigations where a citizen complains of abuse of authority or serious misconduct by an FCPD officer.” *See* Appendix D.3 (2019 Annual Report) at 1; *see also* Appendix F (Panel Data Summary) (showing that in 2019, 20 initial Complaints were brought directly to the Panel, five of which were later requested to be reviewed by the Panel, and there were nine Review Requests of investigations not initiated through Panel Complaints). The Panel also started implementing its new policies and procedures and utilizing subcommittees to more efficiently assess Complaints. While the Panel continued to engage in outreach to the community, this was notably a smaller component of the Panel’s work and discussed less frequently at Panel meetings.

But perhaps more importantly, 2019 can probably best be characterized for ushering in more interaction, coordination, and collaboration between the Panel and the FCPD. The parties started having the regular Quarterly meetings requested by the Panel, and the Panel and FCPD worked together on the creation of and publication of a Panel Recommendations Matrix whereby Panel Recommendations and the subsequent FCPD responses were tracked and made public. Importantly for the efficacy of those recommendations themselves, the Panel, FCPD, County Attorney’s Office, and Board of Supervisors collaborated on an amendment to the Action Item that would allow the Panel to include more detail in its Review Reports, making such reports much more accessible to the public and transparent.

The Panel also focused on additional training for its members so that they were better equipped to respond to Complaints. This included a training with NACOLE, the National Association of Civilian Oversight of Law Enforcement, attended by both the Panel and members of the IAB, and a separate training in which the Panel heard from various departments of the FCPD.

Under the leadership of Doug Kay, who took over as Panel Chair in March of 2019, the Panel sought more coordination with the FCPD while remaining independent. The developing working relationship between the Panel and the FCPD gave the Panel more assurance that its recommendations were being heard and helped the Panel strengthen its oversight functions.

January

On January 3, 2019, the Panel held its first business meeting of the year. At that meeting, Hollye Doane was nominated for and moved as the upcoming Vice Chair of the Panel to take over in March.

Notably, immediately before the meeting, a subcommittee met to determine whether the Panel should take up CRP-18-27, a Complaint regarding an arrest that contained claims regarding use of force and racial profiling. The subcommittee, as opposed to the full Panel, reviewed the file in advance and determined that the Panel did have jurisdiction over the Complaint, and then the Panel as a whole voted to accept the subcommittee’s recommendation. In other words, the new process allowed the full Panel to wait until after the actions of the subcommittee to review the Investigation Report. Further, the new process allowed subcommittee members to provide other Panel Members with an estimate of how long it would take to review the entire file. *See* January 3, 2019 Meeting Minutes (“Mr. Kay told the Panel that it took himself and Col. Gadson roughly one and a half to two hours to review the completed Fairfax County Police Department (FCPD) Investigation Report and that Panel Members should plan accordingly.”).

Also, at the January meeting, Chair VanLowe announced that the Panel's website would be overhauled in an effort to make the Panel's business more transparent and clear to the public.

The bulk of the January meeting, however, was a Review Meeting regarding CRP-18-26, a Complaint that alleged racial profiling by an officer in stopping and citing a car for a window tint violation. This was the first time that the Panel had reviewed an investigation of alleged racial profiling. Further, the investigation was the first that the Panel had seen where the FCPD used police statistics in its effort to determine whether racial profiling occurred. It would not be the last Complaint concerning racial profiling that the Panel dealt with during 2019, nor would it be the last where the use of statistical analysis in the Investigation Report was discussed and scrutinized.

The Complainant did not appear at the Review Meeting, but Major Reed appeared on behalf of the FCPD. Chair VanLowe recounted the basic details of the Complaint. The Complainant alleged that "the Subject Officer racially profiled him when stopping his vehicle." He asserted that "the officer's observation that he 'could not be seen through the windows' related more to his dark complexion than the window tint." *See* Appendix G.4 (CRP-18-26 Review Report). The Complainant also asserted that "the Subject Officer's inquiry of 'Where are you headed?' was inappropriate and beyond the scope of the infraction at hand." *Id.* The IAB reviewed the Complaint and found the allegation of bias was unfounded. The Complainant asked for further review due to "dissatisfaction with the lack of details as to the results of the IAB's investigation" provided and his "belief and perception that the assigned investigator demonstrated a lack of impartiality." *Id.*

The questioning of Major Reed primarily concerned the IAB's use of arrest statistics in its Investigation Report to probe the question of whether the stop was motivated by bias. Panel Member Colonel Gregory Gadsen and Mr. Aguilar in particular wanted more information regarding how the statistics were compiled and whether the IAB had specialized training in the use of statistics to evaluate bias. Major Reed expressed his belief that the statistics used were probative but also admitted that investigators did not receive training in how to use or evaluate statistics. Typically such statistics are reviewed by crime analysts unaffiliated with the IAB. Chair VanLowe also noted that the Complaint had contained an allegation of bias against the IAB itself and asked if the IAB had investigated that assertion of bias. Major Reed replied that it had not because there was simply no evidence.

Ultimately though, as reflected in other questions and the discussion of the Investigation Report, the Panel unanimously concurred with the findings of the IAB. Colonel Gadsen and Ms. Doane referenced the in-car video and body cam footage provided as a part of the investigation and both agreed that it was very helpful in analyzing the Complaint. This was because the footage showed the Complainant's car passing by the officer's cruiser and in the footage, it was not possible to determine the race of the driver due to the tinted driver's side window, which tested as having significantly less transparency than required under the law. The tint itself, the very issue for which the Complainant was stopped, prevented the officer from determining the race of the driver, and thus the allegation that the stop was motivated by racial bias was unfounded.

Further, the body worn camera footage showed that the Subject Officer was courteous and "engaged in routine conversation as would be associated with any traffic stop with no profanity, harsh or derogatory language, and no racial slurs or other discriminatory remarks by either of them." *See* Appendix G.4 (CRP-18-26 Review Report). And in fact, "the Subject Officer also advised the Complainant that, if he were to bring evidence that he had remediated the excessive tint to the court hearing, there was a good possibility that the charge would be dismissed." *Id.*

February

On February 7, 2019, the Panel met and discussed, among other things, the Review Report for CRP-18-26. Though the Panel had concurred unanimously with the IAB Investigation Report, there were still important details to sort out.

Panel Member Bob Cluck questioned whether or not the Panel should be making certain recommendations without information from the FCPD confirming that such recommendations are practical. Nevertheless, the Panel, and with support from Mr. Cluck on several recommendations, decided to proceed.

Mr. Steel requested the opportunity to present a proposed insert to the Review Report concerning the Panel meeting that also contained facts and conclusions of the Panel. The Panel consulted with counsel as to whether this insert violated any confidentiality rules. Understanding that it did not, the Panel accepted the insert. Now the Review Report contained more factual details concerning the Panel's deliberations and conclusions than any report before it.

The Review Report made two key comments. First, the Panel commented that the body worn camera and in car video footage were very important in providing impartial documentation of what occurred, and the Panel hoped such footage would continue to be a part of Investigation Reports. Second, the Panel commented that some Panel Members were concerned about the use of statistics to study racial disparities. "Specifically, the FCPD used descriptive data and attempted to make correlations without taking into consideration the demographics of the District in comparison to the District's criminal statistics" wrote the Panel. "Major Reed confirmed that the FCPD employs crime analysts and that IAB investigators do not receive specialized training on statistics." *See* Appendix G.4 (CRP-18-26 Review Report).

The Panel made three recommendations regarding video footage. First, the Panel recommended that individual Complainants be allowed to review video footage of the incident in question. Second, the Panel recommended that it be allowed to review video and audio footage of all interviews conducted during IAB investigations. Third, the Panel asserted that body worn camera and in car video footage should be made available at Panel meetings at the request of the Panel.

Finally, the Panel adopted a fourth recommendation regarding the use of statistics that read: "During FCPD administrative investigations, where statistical evidence is used, we recommend the Crime Analyst Unit be consulted in the gathering, preparation and reporting of the statistical data." The Panel, cognizant of the fact that IAB investigators have no specialized statistical training, sought to further professionalize the use of statistics.

After adopting the Review Report for CRP-18-26, the Panel's February 7, 2019 meeting turned to a Review of CRP-18-27. *See* Appendix G.5. The Complainant was not the individual who interacted with the police, but rather was a concerned community member who had later seen a video of a police takedown of a subject incident to an arrest for marijuana possession in an Aldi parking lot in the Mount Vernon District. The Complainant appeared at the Review Meeting where she explained that she submitted the Complaint "because she was concerned that the individual was a target of police abuse of authority and racial profiling." *See* February 7, 2019 Meeting Minutes. Specifically, she expressed her "belief that the involved individual was surveilled by the FCPD due to the location of the incident being designated as a 'high-crime' area and because he was an African American male." *Id.*

In questioning the Complainant, Hollye Doane noted that the original Complaint had been about how the subject individual had been arrested but had not contained an allegation of racial profiling. The Complainant subsequently asserted that she wanted to amend her Complaint to also

explicitly contain an allegation of racial profiling because she was unaware that she needed to be so specific in writing out the Complaint. The Complainant answered questions regarding the subject individual to explain that while she did not know the individual personally, she had been in contact with the individual's family and that an organization she was a part of provided financial assistance for the subject individual's court fees. Questioning also revealed that the Complainant had not received a disposition letter regarding the Complaint. Chair VanLowe informed the Panel that "the FCPD self-initiated an investigation after the incident occurred and that a disposition letter was issued and sent to the individual involved in the incident." *Id.*

Major Reed presented on behalf of the FCPD. He described the investigative steps taken by the FCPD including "conducting interviews of the involved officers, the subject, and a witness located through social media; and reviewing all available videos, dispatch records, radio traffic, and the incident reports filed by the officers." *Id.* The Panel's questioning focused on two aspects of the Investigation Report that appeared lacking. First, Vice Chair Kay and Mr. Aguilar asked if there had been any investigation of racial profiling or racial bias, but Major Reed said there had not because there was no evidence of racial bias. Second, Ms. Doane and Mr. Steel questioned Major Reed regarding the legal conclusions concerning the legality and properness of the stop and whether the IAB had consulted any attorneys to seek a formal legal analysis of what occurred. Panel Member Anna Northcutt added a question about whether the IAB had investigated further whether the subject individual's behavior constituted a potential trespass, as the Subject Officer had noted.

Following the questioning, the Panel for the first time decided not to concur with the IAB Investigation Report. Rather, the Panel determined that the Complaint was in need of further investigation and that the Panel should request such an investigation pursuant to Section VI.E.(H) of the Bylaws. Specifically, following a discussion of the lack of an investigation into allegations of racial bias and the lack of any formal independent legal analysis of the incident in question, "Mr. Kay moved that the FCPD conduct further investigation and provide the Panel with a supplemental report that details the findings of additional investigation into racial bias and racial profiling and "that that the FCPD investigate the legality of the stop and, that as part of that investigation into the legality of the stop, they seek and obtain advice from an attorney." *Id.* The Panel accepted this motion by a vote of 7-1. Chair VanLowe explained that she was voting against the motion because rather than simply sending the investigation back to the IAB, she hoped that the Panel would report the request through the Board of Supervisors.

Given that this was the first time the Panel had ever sent something back to the IAB, Vice Chair Kay, on the eve of taking over as Chair, offered to write a letter to the Board of Supervisors explaining the action taken by the Panel. This decision by the Panel represented a break with earlier Review Requests and demonstrated the Panel's willingness to disagree with the IAB and request additional investigation.

March

The Panel next met on March 7, 2019. Mr. Kay had taken over as Chair but was out of town for the particular meeting so it was Chaired by Vice Chair Hollye Doane.

The Panel discussed what training topics would benefit the Panel in preparing it to conduct its business. Ideas included a tour of Police Headquarters, media training, and training on the history of civilian oversight. Rachele Ramirez in the Office of the Independent Police Auditor reported that she had set up a call with NACOLE, the National Association of Civilian Oversight of Law Enforcement, to discuss holding a training session with the Panel and the Independent Auditor similar to that provided to the Charlottesville Police Civilian Review Board that would address such topics.

Ms. VanLowe also briefed the Panel on meetings with the FCPD related to the content of disposition letters. Ms. VanLowe and Chair Kay met with FCPD representatives but were told that the issue was ultimately up to the Board of Supervisors. Therefore, a meeting was set up with Chairman Bulova and Supervisor Cook. Mr. Aguilar again brought up the issue of electronic access to police records and was told that the FCPD had not responded to requests for such access and that that too would be brought up at the meeting.

The Panel also considered its ability to take public comments and whether it would hold another public meeting. The Panel was concerned that it might need to get Board of Supervisors approval to be able to actually take public comments. Ms. VanLowe said this issue would be added to the meeting with Chairman Bulova and Supervisor Cook. Further, the Panel discussed the possibility of hosting more Public Forums similar to those held in 2017 and 2018, but the Panel consensus was that the Public Meetings would likely be more effective if they focused on specific issues that had come up in Complaints, *i.e.* “Harassment or Discrimination/Racial Profiling/Bias, Violation of Law or Ordinance, and Unprofessional Manner.” *See* March 7, 2019 Meeting Minutes. The previous Public Meetings, which had been more introductory in nature, had not been focused in such a manner, but the Panel hoped to build on its work.

At the March meeting, the Panel also discussed and voted on the 2018 Annual Report discussed at length earlier in this Review.

At the conclusion of the March meeting, Adrian Steel, a founding Panel Member, the Panel’s first Chair, and a member of the Ad Hoc Commission that recommended the establishment of the Panel, announced that he would be stepping down from the Panel. Mr. Steel reflected on the Panel’s opening years. He shared his belief “that the two biggest challenges facing the Panel are transparency and the ability to track trends in complaints.” *See* March 7, 2019 Meeting Minutes. Toward that end, “he encouraged the Panel to include basic facts of the investigation and reasons for Panel findings in the Review Reports and to ensure that FCPD disposition letters provide substantive facts and reasons related to the determination of the investigation.” *Id.* Mr. Steel further “reminded the Panel of the three necessary components as identified by NACOLE for a successful oversight body: budget, access to information, and support of the governing body.” *Id.* Panel Members expressed their gratitude for Mr. Steel’s considerable work and contributions to the panel.

April

At the April 4, 2019 meeting, Chair Kay debriefed the Panel as to his and Ms. VanLowe’s meeting with Chairman Bulova, Supervisor Cook, Deputy County Executive Rohrer, Chief Roessler, Major Reed, and the Independent Police Auditor, where he delivered the Panel’s 2018 Annual Report and set the precedent for Panel leadership to meet with members of the Board of Supervisors at the beginning of each new Panel term. At the meeting, the parties discussed in particular enhanced transparency for the Panel and the Panel’s recommendations with respect to FCPD disposition letters. Chair Kay reported that the FCPD was conducting its own internal audit of the letters. He further reported that there did not seem to be much appetite for additional public comment meetings and suggested that the Bylaws may not support public comment meetings. *See also* FN10 *infra*. However, there was support for more public outreach where one or two Panel Members address stakeholder groups.

Mr. Kay also briefed the Panel on expected topics for the first Quarterly Meeting planned consistent with the Panel’s recommendations in the 2018 Annual Review. Specifically, Chair Kay relayed that he intended to discuss topics including:

- determining a process to address Panel recommendations and comments made in Panel Reports with the FCPD;
- revising the Panel’s authorizing action item regarding the information that can be included in review reports;
- continuing the discussion regarding the enhancement of FCPD disposition letters;
- training from the National Association of Civilian Oversight for Law Enforcement (NACOLE) and the FCPD;
- accessibility of FCPD Investigation Reports for Panel Members’ review;
- public comment at Panel Meetings; and,
- Panel Member vacancies.

See April 4, 2019 Meeting Minutes. Chair Kay requested that Panel Members email him with any other topics they wanted to see discussed.

During New Business, Chair Kay brought up a unique situation where the Panel had received a Complaint that was about an incident that was more than a year in the past and thus out-of-time under the Panel’s bylaws. But the Panel’s bylaws also provide that the Panel can waive the timing of reviewing the Complaint where good cause is found. The Panel discussed what to do in such a situation and how it might determine whether there was good cause. While no formal motion was made, the Panel agreed that in the future, a Complainant whose Complaint was out of time would be afforded the opportunity by the Panel to explain whether good cause existed. The Panel did not, however, create a procedure for a complainant to make such a showing.

May

The Panel revisited CRP-18-27 at its next meeting on May 30, 2019. Following the Panel’s actions at the February meeting, the Complaint had gone back to the IAB for additional investigation consistent with the Panel’s requests concerning racial bias and independent legal opinions regarding the stops in question. In addition, the IAB conducted additional witness interviews and reviewed additional footage as a part of the Investigation Report.

The Complainant in CRP-18-27 appeared again in person at the Panel Meeting. She primarily addressed two topics. First, she noted that the FCPD disposition letter regarding the additional investigation completed in response to the additional investigation provided little information regarding what the IAB had actually done. Second, and more importantly, attached to the FCPD disposition letter – and by extension made public – were screenshots of her LinkedIn Profile and other social media pages and a GoFundMe page she had created related to the incident in question. She expressed deep concern about having her social media information shared by the FCPD in the context of an investigation, especially given the fact that she had submitted her Complaint as a concerned citizen and was not actually a witness in the investigation. She pointed out that “the appearance of the FCPD investigating complainants will deter other complainants from coming forward.” *See* May 30, 2019 Meeting Minutes.

Major Reed appeared on behalf of the FCPD. When asked why the FCPD had included social media information on the Complainant, Major Reed said that that was a question for the Chief. (Notably, there was no corresponding social media information on the officer who was the subject of the Complaint, despite the fact that such information could have been probative with respect to bias, while the Complainant’s social media was wholly irrelevant to the Complaint.)

Mr. Aguilar addressed the arrest statistics provided in the Investigation Report, and asked Major Reed why the subject officer's arrest statistics were compared county-wide rather than to other officers in his district and patrol zone. He further noted that there was actually a twenty-point difference between this officer and other officers for stopping or arresting African Americans. As the Meeting Minutes recount, "Major Reed defined the term disparity and noted that contacts officers make with the community are not always self-initiated due to calls for service." *See* May 30, 2019 Meeting Minutes. Chair Kay asked Major Reed whether the IAB had consulted with any other agencies in the FCPD with respect to the statistical analysis. Major Reed responded that the FCPD had not.

The Panel Members expressed concern and dismay about the inclusion of the Complainant's social media information. But ultimately the Panel voted to concur with the Investigation Report and found that it was complete, thorough, accurate, objective and impartial. *See* Appendix G.5 (CRP-18-27 Review Report).

Panel Members noted that the file containing additional investigative materials was significantly more thorough than the file provided previously. The Investigation Report directly addressed the Panel's concerns regarding the legal analysis of the stop and arrest involved in the Complaint. To address this concern, the investigation sought a legal analysis from the County Attorney of the relevant state and federal Constitutional law. The analysis of the Subject Officer's actions involved the "plain smell doctrine," which permits an officer under the Fourth Amendment to stop/detain a suspect when the "plain smell" of illegal contraband is present. The Subject Officer explained that when he approached the individual who he ultimately arrested he smelled marijuana on the suspect's person. In-car video footage that had not been provided in the original Investigation Report subsequently showed that the arrested individual had been carrying a large bag of marijuana with him, which substantiated the officer's statement that he had acted on the plain smell of the marijuana on the individual. (In the video, the suspect pulled a bag of marijuana from out of his pants and proceeded to eat the marijuana.) Some Panel Members expressed concern that a legal analysis by the County Attorney's Office could be viewed by the public as conflicted, because the County Attorney represents the FCPD in court proceedings and provides the police with legal advice. However, in this instance, the Panel determined that the legal analysis regarding the stop was sufficient.

While the Panel did have some concerns about the FCPD's use of only arrest statistics to demonstrate a lack of racial bias by the officer, the majority of the Panel concurred with the investigation finding that detecting the smell of marijuana was the primary reason that the officer had reasonable suspicion to stop the individual. The investigation provided no evidence that racial bias played a role in the stop. However, some Panel Members remained concerned that reliance only on arrest data to determine racial bias is problematic in future investigations. This would remain an issue for the Panel in subsequent reviews. (Mr. Aguilar and Ms. VanLowe would later file two dissents.)

At the May meeting, the Panel confronted another new challenge. A complaint had been filed with the Panel by an anonymous community member who referred to himself as "John Doe" and provided only an email address. Chair Kay noted that the Bylaws required a Complainant to provide "identifying information" for the person filing the Complaint. Panel Member James Bierman argued that the email address itself constituted identifying information because the clear intent in the Bylaws was to allow the police to locate and correspond with the Complainant. The Panel decided that the Panel could take the Complaint where the Complainant, though acting anonymously, had provided an email address.

Also at the May meeting, Chair Kay asked the Panel to consider whether to fully empower subcommittees to decide jurisdiction of the Panel, as opposed to the practice followed by the Panel where the subcommittee could make a recommendation but would not formally decide jurisdiction. Some Panel Members noted that this might be inconsistent with the Panel Bylaws. After receiving advice from Independent Counsel in closed session, the Panel decided to table the issue.

At the conclusion of the May meeting, Chair Kay introduced Major Matt Owens who would be taking over for Major Reed as Commander of the IAB. Chair Kay also suggested that the Panel receive training from the FCPD sometime during the Fall and expressed a desire to work with Major Owens in the future on such training.

June

At the Panel meeting on June 20, 2019, the Panel undertook a review of CRP-19-05. *See* Appendix G.6. Notably, this Complaint, submitted in November of 2018, concerned incidents occurring in April and May of 2017, outside of the one-year limitation as to when Complaints could be submitted. But the Panel had determined that good cause existed to extend the limitation period in a manner consistent with the Bylaws. Specifically, the allegations of the Complaint involved claims of entrapment and that the FCPD had engaged in misconduct in its treatment of the Complainant while the Complainant was acting as a confidential informant (“CI”). The Complainant had been subjected to criminal charges and reached a plea agreement in August of 2018. As explained in the eventual review report, “[t]he Panel concluded good cause existed since it was reasonable for the Complainant to wait until after conclusion of his (1) efforts as a CI and (2) criminal prosecution since Complainant probably believed filing a complaint against the FCPD would cause the FCPD to be prejudiced against him during the pendency of either of the two circumstances.” *See* Appendix G.6 (CRP-19-05 Review Report).

The Complainant did not appear at the June meeting, but representatives from the FCPD, namely Second Lieutenant Ryan Low and Chief Roessler, appeared and presented the Investigation Report to the Panel. As an initial matter, Chief Roessler asked why the Complaint had been taken in the first place given that it was out of time and had been criminally litigated. Chief Roessler further asserted that the Panel should have consulted with the FCPD as to whether it was appropriate to take the case. The Panel reminded the Chief that the Panel determines its own jurisdiction under the Action Item and Bylaws, and that the Panel is separate from and independent of the FCPD.

Second Lieutenant Low addressed the Complaint and described the Investigation Report. The Complaint was based on an undercover operation in which FCPD officers posed on Craigslist as individuals looking for sexual encounters, waited for the Complainant to engage with their ad, and then suggested a rendezvous in which the Complainant was to bring illicit drugs. Following the sting operation, the FCPD enlisted the Complainant as a CI as a part of a deal for lighter sentence. The Complaint contained three principal claims: (1) that the officers had used improper methods and engaged in entrapment; (2) that the Complainant’s vehicle had been improperly seized and then returned to the lienholder without the Complainant’s knowledge; and (3) that the officer using the Complainant as a CI had used unacceptable language in interactions with the Complainant.

Second Lieutenant Low recounted how the IAB investigation had sought out opinions from the Commonwealth’s Attorney and the County Attorney as to the law of entrapment and determined that the officers’ behavior had been above board and that the facts easily would have allowed the government to prove that the Complainant was predisposed to commit the illegal acts before being

approached by government agents. The Complainant had willingly approached the undercover officers and the evidence showed that the Complainant freely agreed to provide illicit drugs. Second Lieutenant Low further explained that the FCPD had found that the officer in question had acted improperly and in violation of General Orders when he referred to the Complainant as a “retard.” Finally, Second Lieutenant Low explained how the police had followed asset forfeiture procedure with respect to the vehicle but acknowledged that the FCPD had subsequently adopted a revised policy with respect to liens.

Panel Members’ questions focused primarily on the facts surrounding the asset forfeiture and Chief Roessler assured the Panel that it would receive the newly created SOP with respect to assets with liens. Panel Members also probed the question of entrapment, and specifically whether the record revealed that the officers’ methods did not push the Complainant into behavior involving illegal drugs as opposed to sex, as the original Craigslist ads solicited sexual encounters. Chief Roessler asserted that such questions were off limits because (1) they went to police tactics, and (2) the matter had already been adjudicated when the Complainant pleaded guilty. The Panel reminded Chief Roessler that he does not control what questions Panel Members are allowed to ask.

The Panel voted unanimously to concur with the findings of the IAB. While the IAB Investigation Report did not contain an explanation of the consequences for the officer violating General Orders, Ms. Doane expressed her strong belief that the word used was appalling and a serious violation of community trust. Specifically, Ms. Doane explained that “the word used to describe the Complainant debases one’s human dignity and worth and is often used as a playful jab.” *See* June 2019 Meeting Minutes. However, she said the word hurts people with disabilities and their loved ones. “The FCPD should be role models in the community and the word should never be spoken by an officer.” *Id.*

The June 20, 2019 meeting next discussed the draft Review Report for CRP-18-27. In particular, the Panel focused on what it should do in light of the FCPD’s decision to include information from the Complainant’s social media accounts. The Panel concluded that at the very least its recommendations section would contain the following explanation: “The Panel expressed concern that the inclusion of the social media information about the complainant was inappropriate, unnecessary, and may have a chilling effect on future complainants.” *See* June 20, 2019 Meeting Minutes. The Panel did not, however, take a final vote on CRP-18-27 in light of Mr. Aguilar and Ms. VanLowe’s dissents, which had not yet been completed.

In considering another Complaint at the June 20, 2019 meeting, specifically CRP-19-07, where the Panel agreed that CRP-19-07 was reviewable under the Panel’s standards, the Panel again addressed the question of whether there could be a summary procedure from which to dispose of Complaints that were without merit. Mr. Aguilar, who had sat on the subcommittee, expressed his concern that without a Summary Review procedure, the Panel could be inundated with meritless review requests. Mr. Bierman and Mr. Cluck volunteered to review the Bylaws and present to the Panel their recommendations as to whether a Summary Review procedure was an option and whether a subcommittee could decide on its own and without consultation with the full Panel whether it should review a Complaint.

The Panel was next presented with a problem similar to that which it had discussed in April – a Complaint that was out of time but where the Panel could not necessarily determine if good cause existed. Mr. Aguilar proposed a procedure whereby in every case where timeliness is an issue, the

Chair would send a letter to the Complainant regarding the timeliness issue and ask the Complainant to explain whether good cause exists. The Panel agreed on this general procedure going forward.

Chair Kay then debriefed the Panel on the Second Quarterly Meeting. Specifically, he explained that one of the Panel's recommendations that the FCPD was considering at the moment was to circulate "officer discipline department wide so that officers are aware of offenses and the consequences." *See* June 20, 2019 Meeting Minutes. Also discussed was the Panel's request to show video at certain Panel meetings, with the FCPD agreeing to allow video to be shown on a case-by-case basis. Chair Kay also reported that he had submitted language to the Board of Supervisors requesting a change to the Action Item to allow the Panel to provide more detailed reports.

Finally, the June 20, 2019 meeting closed with Mr. Bierman asking, as Mr. Aguilar had done before him, whether the Investigation Reports could be provided to Panel Members online so that they could review the files outside of normal working hours. Chair Kay explained that the FCPD continued to refuse to allow such access but had stated that it would be possible with sufficient notice to review the Investigation Reports at the Public Safety Headquarters outside normal business hours.

On June 22, 2019, the Panel met for an all-day training session with Brian Corr and Camme McElhiney, President and Director of Training and Education, respectively, for NACOLE, the National Association for Civilian Oversight of Law Enforcement. The day featured a mix of presentations, discussions, and questions and was attended by the Panel, members of the Independent Police Auditor's Office, Lindsay Smith, Chief of Staff to Supervisor John Cook, and Dana Ferreira of the IAB.

The first session of the morning provided the history of civilian oversight and a discussion of the country's first civilian oversight boards. It also concerned the different types of civilian oversight employed across the country, including the auditor model and a review-focused model.

The second session of the morning addressed effective practices in conducting and reviewing investigations. It aimed to provide Panel Members with information on how police investigations are conducted and best practices from around the country in reviewing such investigations. NACOLE representatives offered, for instance, to provide an investigation checklist to the Panel, and Panel Members suggested that such a checklist should be shared with the FCPD itself for comment so that Panel Members know what to look for in investigations.

The third session addressed effective community outreach and engagement. The Panel entertained discussions of how to increase its footprint in the Fairfax County community in a way that would enhance trust between the community and the FCPD. The Panel discussed outreach opportunities and strategies, which has been a consistent theme of inquiry for the Panel. Ms. McElhiney of NACOLE made the important point that in addition to hosting its own events, often the best way to reach into important communities is to meet them where they are, attending the already existent meetings of community stakeholders to raise awareness.

The fourth session concerned recommended reporting practices for civilian oversight agencies. Again, this discussion was not unique to the Panel's training session as the Panel had spent many meetings discussing and trying to determine how to make its reports more clear and more transparent while also respecting the Panel's confidentiality obligations.

The fifth and final session provided an overview of minimal training standards for civilian oversight panels and suggested what other training opportunities might be needed to ensure that the Panel had all the right tools to conduct its business.

Throughout the day, one recurring theme was how to measure the relative success of the Panel. Specifically, how does the Panel determine whether it is improving police legitimacy and community trust of police? There was no easy answer. Rather, the participants discussed the need to continue engaging the community with the dual function of both introducing the community to the work of the Panel and trying to determine the effectiveness of the Panel based on community responses.

July

On July 11, 2019, the Panel meeting focused primarily on finalizing the CRP-18-27 Review Report, commenting on the CRP-19-07 Review Report, and various other administrative and procedural matters. By a vote of 5 to 2 (with two Panel Members being absent), the Panel agreed to accept the final version of CRP-18-27. *See* Appendix G.6.

Notably, Mr. Aguilar and Ms. VanLowe filed separate dissents. Mr. Aguilar asserted that “[i]n failing to provide a proper statistical analysis concerning the reported racial disparities in the enforcement activities of the subject officer, it is not clear that the Department accurately, completely and thoroughly, reviewed and considered the allegation of racial bias.” *See* Appendix G.6 (CRP-18-27 Review Report (Aguilar dissent)).

Ms. VanLowe dissented along the same lines. Specifically, Ms. VanLowe argued that the statistical analysis simply could not prove either way whether the officer had acted with racial bias, and the Investigation Report did not provide a coherent roadmap for how it probed the issue of racial bias. In the most pertinent part of her dissent, Ms. VanLowe explained:

What we have on the issue as an initial input is the Officer’s arrest statistics. These statistics indicate that the officer has an unfavorable margin of at least 20% in the number of arrests of African Americans compared to his District level peers’ arrests of African Americans. The FCPD concluded that the officer’s arrest statistics reflect his patrol assignment to an area heavily populated by African Americans. While this conclusion may be plausible, no other evidenced-based information is provided to support the conclusion. For example, the investigation file does not contain any information about the existence of other community complaints or compliments about the officer that might be related to the question of bias. Nor does the investigation reflect any social media scrutiny similar to that provided on the complainant (which, as indicated to the Panel, was offered to show the complainant’s bias). Mr. Aguilar notes the need for a more comprehensive statistical analysis (the Panel has recommended the same in the past). Further, and regrettably, we do not have any body worn camera footage or corroboration from another officer at the scene of the initial encounter to see and understand how the police stop began and developed.

See Appendix G.6 (CRP-18-27 Review Report (VanLowe dissent)). Ms. VanLowe further commented that given that a number of Complaints received by the Panel concerned racial bias, she believed it would be useful and appropriate for the FCPD to provide the Panel with more information concerning the steps it had taken to eradicate racial bias.

The Panel made few changes to the drafted Review Report for CRP-19-05 and decided to vote on a final report at the August meeting.

Chair Kay recounted several administrative and procedural developments. First, he informed the Panel that Deputy County Executive David Rohrer was working with the County Attorney to prepare an Action Item revision that would allow the Panel to provide more details about the Investigation Report in its Review Reports and better inform Complainants of the rationale for the panel's findings. Second, Chair Kay explained that he was working with the FCPD on a special matrix where the Panel could track its recommendations and the FCPD's responses to each recommendation. Mr. Aguilar suggested that the matrix also include a column in which the Panel could decide whether or not it was satisfied with the FCPD's response.

The Panel also used the July 11 meeting to engage in a lengthy discussion of potential action items from NACOLE Training. These included, among other things:

- Creating a more comprehensive outreach strategy.
- Devising a "Know your rights training" for Fairfax youth.
- Conducting a Community Survey.
- Setting up meetings with Supervisors after the Board turned over in January 2020
- Defining appropriate interactions with Complainants.
- Asking the FCPD to address certain topics at various panel meetings.
- Adding the status of recommendations to the website.

See July 11, 2019 Meeting Minutes.

The Panel also used part of the July 11 meeting to continue its discussion of the possibility for the taking of public comments under the Panel's Bylaws, but did not arrive at a resolution.

August

The Panel reviewed CRP-19-07 at its August 1, 2019 meeting. Notably, this was the Complaint that had generated a discussion of the potential need for summary judgment procedures at the June 20, 2019 meeting.

In CRP-19-07, the Complainant asserted that an FCPD officer had failed to properly investigate his charge against individuals in the Office of the Clerk to the Fairfax County Circuit Court. Specifically, the Complainant alleged that an original affidavit necessary to his court case had been removed from his file. When the police officer was able to locate the affidavit in the file, the Complainant alleged that the affidavit found was not the original affidavit. The Complaint alleged malfeasance on the part of the officer for clearing the Office of the Clerk of wrongdoing, and further alleged that because he was Black and the officer was not that the officer had engaged in bias-based policing. *See Appendix G.7 (CRP-19-07 Review Report).*

The Complainant appeared at the August meeting and answered questions from the Panel and Major Owens appeared on behalf of the FCPD. It was evident that the officer had been able to locate the allegedly missing file. The claim that it was not the "original," if even founded, was irrelevant as the "new" affidavit was identical to the "original" and the Complainant was in no way prejudiced by the alleged "destruction" (and there was no evidence of such destruction). There was no probable cause to make any arrest or investigate further, and there was no evidence of racial bias. The Panel voted 8-0 to concur with the findings of the IAB Investigation Report.

The Panel then reviewed and ultimately approved the Review Report for CRP-19-05. *See Appendix G.6.* Mr. Cluck expressed some reservation about the amount of detail in the Review Report

and whether it ran counter to the “Intake and Processing of Review Requests” procedural document. Chair Kay reminded the Panel that the Board of Supervisors was still considering an amended Action Item and that after such amendment, the procedural document would be revisited. The Panel approved the Review Report as written.

Chair Kay next explained to the Panel that it had received a Complaint alleging that the Chief of Police was engaging in “sonic warfare” and that rather than investigate the Complaint the FCPD had referred the Complainant to the appropriate mental health services. This was the first instance where a Complaint simply was not investigated, but the Panel agreed that the FCPD response seemed appropriate under the circumstances.

Chair Kay also informed the Panel of the agenda for the upcoming August 9, 2019 Quarterly Meeting. Specifically, he intended to discuss “the FCPD’s response to Panel comments and recommendations, the issue of the use of statistics including Mr. Aguilar’s memo, public comment, and the revisions to the Panel’s authorizing Action Item.” *See* August 1, 2019 Meeting Minutes. Mr. Aguilar’s memo, which Chair Kay planned to circulate to the Panel, argued that the FCPD needed to exercise more care in using arrest statistics to try to explore allegations of bias and explained the pitfalls of such statistical analyses. Vice Chair Doane also informed the Panel that she had been a part of a working group to try to develop a more effective template for FCPD disposition letters, another topic for discussion at the Quarterly meeting.

The August 1, 2019 meeting continued with a discussion of applicable training standards for the Panel. In planning for a fall training session with the FCPD, “Panel Members specifically requested training on . . . topics such as: FCPD recruiting and criminal justice academy, implicit bias and racial profile training, and Diversion First.” *See* August 1, 2019 Meeting Minutes.

Following the August Panel meeting, the Panel did not have any Review Meetings until December of 2019. This was not necessarily due to a drop off in Complaints, but rather because several pending investigations were taking longer to complete. However, between August and December of 2019, the Panel continued to meet regularly, refine its policies and procedures, and prepare for and help develop a November training with the FCPD.

During July and August of 2019, Chair Kay and Vice-Chair Doane discussed the drafting of a revised Action Item with the County Attorney’s Office, the Deputy County Executive, the Panel’s Independent Legal Counsel and Supervisor John Cook. The purpose of the Action Item was to provide the Panel with authority to report on information in Investigation Reports to provide more accountability and transparency to the public. There were many on-going conversations and drafts that were circulated during this time to reach consensus on what parts of the Investigation Reports could remain privileged. Supervisor Cook’s involvement in the process was crucial in reaching agreement between the parties. The Action Item provided that most information in the Investigation Report may be reported publicly except for an officer’s personnel record and those portions of the investigative file concerning officer discipline, other officers, confidential informants, victims and witnesses. The Panel also shall not disclose names and other specific identifiable information. Also, portions of records that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law enforcement personnel or the general public, could not be disclosed by the Panel.

September

On September 16, 2019, the Panel met and Chair Kay and Vice Chair Doane presented a debrief from the August Quarterly Meeting.

First, Chair Kay had provided the FCPD with Mr. Aguilar's memo on statistical analysis requesting that the IAB change the way in which it conducts its statistical analyses. The FCPD agreed to create a policy on the use of crime statistics in IAB reports and provide it to the Panel in advance of implementation.

Second, Chair Kay explained that he was working with Major Owens on the proper way to publish FCPD's responses to Panel recommendations on the Panel's website. The Panel discussed how often the responses should be updated and agreed that quarterly would be appropriate.

Third, Vice Chair Doane explained that she had expressed the Panel's disagreement with the FCPD's decision to include a complainant's social media profile in a disposition letter. She said she told those at the meeting that such disclosure of personal information was a deterrent to community members filing complaints. However, the Chief had stood by his decision and had said the information was public information included on her social media profile. The Panel decided that its recommendation that such information should not be included in future reports would be included in the Recommendations Matrix.

Chair Kay also explained the proposed revised Action Item pending before the Board of Supervisors. There was discussion as to how the Panel would determine what details constituted "information related to tactical plans or investigative procedures." See September 16, 2019 Panel Meeting Minutes. The Panel agreed that such a decision was ultimately up to the Panel but discussed using good judgment, consulting counsel whenever necessary, maintaining a dialogue with the FCPD, and flagging during investigation reviews any potentially sensitive information for the Chair to consider.

Next, Chair Kay asked the Panel to consider the proper procedure for Complaints with pending litigation present. Under the Panel Bylaws, the Panel cannot review a Complaint concurrent with pending litigation. Since that determination can be easily made without a full review, the Panel decided that rather than convening subcommittees for review requests with potential pending litigation, the Chair would review and make a determination to be voted on by the full panel.

October

At the October 7, 2019 Panel meeting, Chair Kay informed the Panel that the Board of Supervisors had adopted revisions to the Panel Action Item at the September 24, 2019 meeting.

First, the Board of Supervisors amended the Action Item to make it less restrictive with respect to what information could be disclosed publicly with respect to the Panel's review. Specifically, the Board removed restrictive language that with respect to Investigation Reports the "case record is deemed a personnel record and shall not be disclosed," which could be read to prevent the Panel from referring publicly to *anything* in the Investigation. The Amendment changed that section of the Action Item, Part c regarding "Timing and Meetings (Recommendation 20) to read in full:

Each Panel Member who is provided the opportunity to review an officer's personnel record or an investigative case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record shall not be disclosed nor shall copies be provided to the public or disseminated, 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.

In addition, portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such 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.

See September 24, 2019 Board of Supervisors Meeting – Agenda/Package – Fairfax County, VA at 460–61.

Second, the Board of Supervisors approved an Amendment to the portion of the Action Item, Part b regarding “Jurisdiction and Process (recommendation 19)” to make clear that the Panel could not review Complaints made by County personnel where the Complaint would otherwise be handled under the County’s personnel regulations and through the County’s personnel grievance system.

Given the changes to the Action Item, counsel to the Panel, Julia Judkins, presented two proposed Amendments to the Bylaws. First, Article IV.A.1.e regarding the scope of the Panel’s authority and jurisdiction was amended to include language from the Action Item that the Panel was not able to respond to “any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.” Second, Article IV.E.2.d was revised to include the exact language from the Action Item quoted above regarding disclosure and split into Parts d and e. The Panel approved the proposed Bylaw Amendments unanimously.

Also in light of the Action Item change and the discussion of requests concerning pending litigation, two changes were approved unanimously to the Panel’s procedures. First, the Chair of the Panel was empowered “to analyze Review Requests with pending litigation to ensure that the pending litigation is associated with the allegations made within the complaint and to make a recommendation to the full Panel, rather than forming a Subcommittee.” *See* October 7, 2019 Meeting Minutes. Second, the procedures were changed to reflect the amendments to the Action Item and Bylaws.

Chair Kay reported that he would use the October Quarterly Meeting to discuss “Panel recommendations and the FCPD’s response, FCPD disposition letters, and public comment.”

The October meeting closed with a report from Gentry Anderson and Rachelle Ramirez of the Office of the Independent Police Auditor and Richard Schott, the Independent Police Auditor, regarding NACOLE’s 25th Anniversary Conference which they all had attended. They discussed outreach strategies used around the country for various civilian oversight boards and emphasized the conference’s focus on how oversight boards can connect with communities. Further, Ms. Ramirez explained that at the conference “she found that there was an emphasis on collecting and analyzing data related to racial disparity and how some data driven policies can result in disparate treatment across different groups, particularly those in targeted enforcement areas,” echoing some of the concerns expressed by Panel Members previously. *See* October 7, 2019 Meeting Minutes.

November

On November 16, 2019, the Panel participated in a half-day training with various groups and speakers from the FCPD to learn more about the workings of, goals, and objectives of the FCPD.

The first session concerned FCPD recruiting tactics and what happens at the basic training academy. Among other things, the Panel heard from FCPD personnel who handle the FCPD's efforts to recruit a diverse police force which is reflective of the community. Basic training academy instructors explained how the training academy functions somewhat as a "gate-keeping process" where officers must meet certain standards before moving on. While the FCPD invests significant resources in training any potential recruit, the FCPD tries to weed out ineffective/problematic recruits in part through the academy.

The second session concerned Intrinsic Bias training and juvenile procedures. FCPD representatives explained that every FCPD officer is put through intrinsic/implicit bias training in an effort to reduce such biases. Further, FCPD representatives discussed their "Diversion First" emphasis for juvenile offenders.

Several members of the Panel, especially in light of previous discussions, asked questions regarding the monitoring of recruits and officers' social media accounts for the purpose of assessing bias. Major Owens explained that to the degree that social media accounts are public, they may be used in such a manner but that the ability of the FCPD to review social media accounts of even its own officers is somewhat limited.

The third session concerned Use of Force and Crisis Intervention training and walked the Panel through the kind of training that FCPD officers receive. Use of Force training includes weapons training but also training with respect to any kind of force, including training regarding police cruisers. Crisis Intervention training is designed to help police officers to respond during mental health incidents. The Panel heard from a member of the FCPD crisis intervention team about her experiences and training.

The final session walked the Panel through an Administrative Investigation and the IAB Review process. Vice Chair Doane reminded Major Owens of the 60-day limit for IAB investigations and asked that future extension requests include the reasoning behind such a request.

In total, the training was designed to share with the Panel important background into how the FCPD conducts its business and how it attempts to produce an effective and accountable police force. Panel Members asked numerous questions about the programs discussed and the kinds of training received. The FCPD in no way argued that such training *always* is effective and acknowledged that the IAB exists for a reason, but the point of the session was not necessarily to scrutinize FCPD procedures but rather to increase the Panel's familiarity with the FCPD. The impetus for the training was a desire of the Panel to be better prepared to understand and analyze the Investigation Reports put before them in Complaints/Review Requests.

The next Panel meeting was on November 19, 2019. The Panel discussed and provided updates on several administrative changes designed to increase Panel transparency and FCPD accountability.

First, Chair Kay presented a near-final version of the Recommendation Matrix. The matrix contained four columns: "Report," "Panel Recommendation," "FCPD Action," and "Status (as determined by the Panel)." Vice Chair Doane "explained that the two audiences for this document are the public and the Board of Supervisors" and that "the purpose is to promote transparency and progress made as a result of the Panel's work." *See* November 19, 2019 Meeting Minutes. Vice Chair Doane further explained that the "Panel Recommendation" column will generally include the exact language from Review Reports. And she suggested that the Panel frequently discuss/vote on language for the "Status" column. The Panel Matrix was to be published on the website in December, so Chair Kay

solicited any suggested changes from Panel Members before the December meeting. *See also* Appendix E (Panel Recommendations Matrix).

Second, Chair Kay reported that the Panel had seen more requests for investigation extensions in 2019 than in prior years and discussed the 60-day investigation limit provided in the Panel Bylaws and Action Item. Chair Kay explained that requests for extensions must contain explanations of good cause, and then the Panel informs both the Complainant and the Board of Supervisors of the extension requests. The Panel discussed how best to notify Complainants of such extension requests and made plans to circulate the Panel's typical letter to Complainants regarding such requests.

Third, the Panel engaged in a discussion of whether meeting materials should be provided to the public via the website in advance of and after Panel meetings. At the time, the public could access the Panel materials in person by visiting the Office of the Independent Police Auditor, but such materials were not widely disseminated. Some discussion ensued regarding concern about drafts of Review Reports that were not yet final being shared with the public. Nevertheless, by a vote of 7-1 the Panel agreed to provide meeting materials online in advance of every meeting.

Finally, Chair Kay informed the Panel that the primary discussion at the October Quarterly meeting centered on the Recommendation Matrix and disposition letters, the same topics discussed during the Panel meeting.

December

On December 16, 2019, the Panel held its last meeting of 2019. Consistent with the vote at the prior meeting, the Meeting Materials for this meeting were published online.

The primary focus of the meeting was a review of CRP-19-11. *See* Appendix G.8. Mr. Gallagher, a newer member of the Panel, asked whether the Complaint, which discussed an incident that had taken place on December 27, 2017, was timely. Chair Kay explained how the Panel could be reviewing a Complaint regarding something that had taken place so long ago. Chair Kay pointed to the limitations in the Panel Bylaws "that the Panel cannot undertake a review of *Initial* Complaints submitted to the Panel more than one year after the incident." *See* December 16, 2019 Meeting Minutes. But here, "the complaint was [actually] filed with the FCPD exactly one year after the incident rather than to the Panel." *Id.* The Complainant then filed a Review Request Complaint with the Panel within 60 days of the FCPD disposition letter. Thus, Panel review was in fact timely under the Panel Bylaws.

The Complaint concerned a stop and arrest that had occurred in an extended-stay hotel parking lot. The Complainant, who did not have a drivers' license, was stopped by an officer when he illegally parked in a handicap spot and then exited his vehicle, leaving behind two passengers: a friend in the passenger seat and the Complainant's wife in the backseat. The Complainant told the Subject Officer that he believed that the person who had rented the car, a family friend upstairs at the hotel, did have a handicapped sticker and called her to bring it down. When the family friend arrived, she informed the Subject Officer that she did not have the requisite handicapped sticker but also that she had left the stove on in the room along with the Complainant's seven months and three-year-old children. The Subject Officer claimed that he smelled marijuana and would be calling for backup. (According to the Subject Officer, the Complainant admitted to smoking marijuana earlier that day.) While the Subject Officer did not immediately detain the Complainant, the two passengers in the car, and the family friend who had arrived and entered the car, he did prevent the Complainant from opening his door and exiting the car before backup arrived. When backup did arrive, the Subject Officer initiated a search, and found both a small bag of marijuana and a gun with a filed off serial number in the glove compartment. The Complainant was charged with simple possession of marijuana, which was

eventually *nolle prosequi* (which is why it took so long for the Complainant to file his Complaint—he waited until the case was over), and the Complainant was never charged with illegal possession of the firearm. *See* Appendix G.8 (CRP-19-07 Review Report) at 1–3.

According to the Complaint, backup took something like 45 minutes to arrive with his minor children being left alone in a room the entire time, which the Complainant asserted was entirely improper. The Complainant further asserted as his list of complaints (1) that the Subject Officer claimed to find marijuana in the vehicle (when he did not), (2) that he was charged with possession of marijuana, (3) that he had been subjected to racial profiling (the Complainant is Black), (4) that he had been assaulted by the Subject Officer, and (5) that records stated that he had a weapon in his possession but he was never charged with respect to the gun. The Complaint also contained statements from the Complainant’s wife, who was a passenger in the back seat, and from the family friend. Both complained that they had been subjected to pat-downs by male officers rather than by a female officer. *Id.*

The Complainant appeared at the December 17 Review Meeting. The Complainant explained that he had filed the Review Request Complaint because he did not understand the outcome of the IAB investigation and believed that the police had not listened to his complaints. Questioning from the Panel established several other things with respect to the Complaint. The Complainant explained that his claim to having been assaulted resulted from the Subject Officer closing the Complainant’s door as he tried to exit the vehicle, striking the Complainant’s knee. The Complainant admitted that the “strike” had been incidental and that he was uninjured. The Complainant further maintained that there had been neither marijuana nor a firearm found in the vehicle. The Complainant admitted that he had parked in the handicap spot and exited the vehicle when he saw the police officer because he did not have a license and was concerned about getting another ticket. The Panel asked the Complainant why he had directed the family friend to come downstairs and leave the children unattended and he responded that the children were asleep at the time. *See* December 17, 2019 Meeting Minutes.

Major Owens appeared on behalf of the IAB to explain and recount the IAB’s Investigation Report and take questions from the Panel. The procedural history of the case was also of note. Part of the reason that the investigation took so long is that the IAB had actually reopened it. The Complaint was first investigated by the Springfield District Station. But the IAB did not sign off on the investigation, believing that there was additional investigation needed, particularly where a Complainant made a claim of racial bias. *See id.*

Major Owens pointed out that the amount of time between the investigation and the incident created certain challenges for the IAB. For instance, there was no in car video evidence because the FCPD is only required to retain such evidence for one year and purges the video after a year. But the investigation did involve interviewing the Complainant and his wife; the family friend; the Subject Officer; and two other officers on the scene. The IAB also reviewed available records from the patrol cars in question, evidence logs, and contemporaneous police reports. *See id.*

Major Owens recounted certain findings of the Investigation Report. For instance, the Investigation Report included a review of the patrol cars involved and specifically their CAD (“Computer Aided Dispatch”) systems. When a police officer exits his or her vehicle, he or she will activate the CAD system, keeping track of time spent outside of the vehicle. The CAD records showed that 7.5 minutes passed between the Subject Officer exiting his vehicle and backup arriving. The Complainant’s alleged 45-minute timeline was not backed by evidence. The IAB found that waiting for back up in such a situation, even knowing that the children were unattended, was neither against policy nor inherently unreasonable. *See id.*

Interviews called into question some of the other alleged claims. For example, while the Complainant denied telling the Subject Officer that he had smoked marijuana earlier that day, the Complainant's wife asserted that he had. Also while the Complainant claimed that the Subject Officer had locked onto him and made contact before any illegal activity, the wife's interview and written complaint submission confirmed that the Police Officer only made contact *after* the Complainant illegally pulled into the handicapped spot. *See id.*

Moreover, the claim that neither marijuana nor a gun had been found in the car was contradicted by the contemporary evidence logs that showed that these items had been found because they were immediately logged after the incident. *See id.*

Major Owens also explained that the issue of racial bias had been considered specifically in the IAB investigation including in interviews and with consideration of the Subject Officer's arrest record. The Complainant could offer no reason for his belief that he had been racially targeted, nor could he explain why he, the driver of the car, had been the only person arrested and not his passenger, who also is Black. And, again, the Complainant's claim that he was targeted before engaging in illegal activity was directly contrary to the claims of the Complainant's wife and the Subject Officer. *See id.*

Major Owens addressed the cross-gender search issue by saying that it simply was not against protocol. *See id.*

The Panel's questioning of Major Owens had certain focus areas. First, Mr. Bierman and Mr. Aguilar were particularly interested in understanding the patrol car information used in the Investigation Report. Mr. Bierman asked about how the CAD system worked and its reliability. Major Owens admitted that the CAD system is not automatic but explained that officers are trained to hit the CAD button when leaving their vehicles, and there was no reason to think that did not occur here. Mr. Aguilar probed the question of why there was no video evidence, and Major Owens replied that it simply did not exist because videos are all purged after a year. In other words, the CAD system data was the only non-testimonial evidence related to the timing of backup arriving, and the CAD system clearly pointed in favor of the Subject Officer and his colleagues' recollection of the event. *See id.*

Second, Vice Chair Doane asked a number of questions concerning the children having been left unattended. Major Owens explained that there was no specific policy for such a situation and that the IAB found it to be reasonable to wait for backup when smelling illegal drugs from a car of four people. Major Owens also said that when backup did arrive, officers immediately went upstairs to retrieve the children. *See id.*

Third, Mr. Aguilar wanted to know why there had been no investigation into the use of force. Major Owens explained that the striking of the subject with the car door had been inadvertent and not a use of force under department guidelines, and the Independent Police Auditor charged with investigating use of force incidents came to the same conclusion. *See id.*

Fourth, Mr. Bierman wanted to know why certain witnesses were not interviewed. Specifically, the front seat passenger and a civilian ride-along in the car of one of the backup officers had not been interviewed. Major Owens blamed the passage of time and admitted that the IAB could not determine who the ride-along individual was. *See id.*

Fifth, Mr. Aguilar expressed concern that the District Station investigation was significantly less thorough than the IAB investigation and asked how the FCPD handled such situations. Major Owens explained that any investigation into racial bias is supposed to be handled by the IAB and not the District Station. *See id.*

Sixth, Mr. Aguilar wanted to know more about the cross-gender pat downs and why the IAB had not investigated further. Major Owens replied that they are simply not against policy. *See id.*

By a vote of 6-1, the Panel voted to concur with the findings of the IAB. The Panel also decided that the Review Report should include several recommendations/admonitions: (1) that the identity of all ride-alongs should be tracked, (2) that the IAB explain whenever it fails to interview an obvious suspect why the failure occurred, and (3) that the FCPD should consider policies that would apply when children are involved. Mr. Aguilar, the dissenting vote, also asked that he be able to draft a recommendation for consideration regarding cross-gender pat downs, and the Panel agreed.

Following the Review vote, the Panel discussed the Panel Recommendations Matrix and voted unanimously to adopt the version discussed in prior meetings.

Chair Kay then debriefed the Panel regarding the December 13 Quarterly Meeting where the participants discussed extension requests, training, and the Panel Recommendations Matrix. Of note with respect to extension requests from the IAB was the realization that the Action Item did not in fact empower the Panel to reject extension requests, but Chair Kay reaffirmed that the Panel would keep the Board of Supervisors in the loop as to such requests.

Also of particular interest regarding the Panel Recommendations Matrix was “that the FCPD asked for clarity on the Panel recommendation from the review report CRP-18-12, which states: ‘The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name.’” *See* December 16, 2019 Meeting Minutes. Specifically, the FCPD wanted to know if this document would be an external document for public consumption or an internal document to be shared across the FCPD. Chair Kay had explained that the Panel was referring to an internal document to be shared across the FCPD to remind officers of their obligations. Chair Kay reported that such a document was under consideration by the FCPD in consultation with the County Attorney.

Lastly, the Panel considered a change to the Complaint form and the website language. The amendments would make clear to potential Complainants that any Complaint *must* be forwarded to the IAB for investigation. The Panel unanimously agreed to these changes.

Recap

As the 2019 Annual Report explained:

In year one, the Panel focused on establishing Bylaws and receiving necessary training to carry out its mission. In year two, the Panel carried out its mission, and in the process, identified several critical impediments to its success and reported them to the Board of Supervisors in the 2018 Annual Report. The Panel is pleased to report that in 2019 the Panel addressed each of the obstacles identified in last year’s annual report with the cooperation of key stakeholders including the Board of Supervisors and the FCPD.

See Appendix D.3 (2019 Annual Report). In addition to reviewing more Complaints – the Panel’s core function – in 2019 than in years before, the Panel’s 2019 can best be described as a time when the Panel focused intently on cooperation and collaboration with the FCPD in order to improve its oversight, accountability, and transparency functions. Part of the collaboration included an effort to add to the Panel’s training so that it could better understand the Investigation Reports before it.

Toward that end, the Panel Chair and Vice-Chair held five “Quarterly Meetings” with the chiefs of staff for the Chairman of the Board of Supervisors and the Chair of the Board of Supervisors’ Public Safety Committee, FCPD representatives, including Chief Roessler, Deputy County Executive

Dave Rohrer, and representatives from the Office of the County Attorney. During these meetings, Panel representatives were able to resolve or move forward on a number of outstanding issues related to transparency and accountability including, (1) improving FCPD disposition letters so that Complainants could better understand the IAB’s decisions; (2) amending the Action Item to give the Panel authority to disclose more information concerning its reviews, which ushered in a sea change in how the Panel interacts with the public and provides transparency; (3) the creation of a public Panel Recommendations Matrix to track Panel activities and FCPD responses; and, as discussed in that very matrix, (4) the IAB’s use of crime statistics in its Investigation Reports and the need for the FCPD to ensure that analysts with proficiency and training in the use of such statistics work with the IAB.

It should be noted that despite the spirit of collaboration and cooperation, the Panel also guarded its independence and its role in transparency and accountability. Indeed, the Panel Recommendations Matrix, which the FCPD agreed to, is designed to disclose recommendations from the Panel and the FCPD responses to them. Further, the matrix shows which Panel recommendations have been accepted and implemented by the FCPD and which ones have not *as determined by the Panel itself*, making clear that the Panel is wholly independent of the FCPD.

Consistent with its independence, as a part of the 2019 Annual Report, the Panel offered two specific issues for consideration by the Board of Supervisors. First, the Panel noted that of the 20 Initial Complaints made to the Panel, the IAB averaged 32 days past the 60-day timeframe for investigations, and the Panel extended the time period more often than not. While the Panel did not explicitly ask for Board of Supervisors action, the Panel did suggest that possibly changing the Action Item to ensure a 90-day timeline might be prudent.

The Panel also addressed racial bias-related investigations in particular. The Panel noted that while some investigations are clear cut—such as where, for instance, in car video showed that the Subject Officer could not have known the race of the Complainant in advance of the stop—other cases contained plausible but not definitive race-neutral explanations that were much harder to determine. As such, The Panel specifically recommended that in racial bias investigations, the IAB should seek “some explanation for the officers conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-based explanation such as examining the officer’s social media accounts and/or interviewing witnesses.” *See Appendix D.3 (2019 Annual Report) at 7.*

During 2019, the Panel was able to make great strides in its ability to work with the IAB and improve public oversight. Development of the matrix provided the public with an opportunity to see that the FCPD had implemented many of the recommendations of the Panel. Additionally, as the Panel reviewed more complaints with racial bias allegations, it began to notice that these types of investigations should include more thorough data analysis and inquiry into the accused officer’s social media history.

Panel Activities: 2020

In 2020, the Panel faced unprecedented challenges due to the COVID-19 pandemic. Simultaneously the Panel’s work took on more significance – and became more voluminous – in light of the national conversation about racial bias in policing following the murder of George Floyd by police officers in Minneapolis. The new year also ushered in a new Board of Supervisors, with Supervisor Jeffrey McKay assuming the Chair following the retirement of Chair Sharon Bulova, and newly-elected Supervisor Rodney Lusk becoming the Chair of the Public Safety Committee after the retirement of Supervisor Cook. Furthermore, the economic downturn triggered by the pandemic has forced the county to revise its budget and reorder its priorities.

At the same time, a change in leadership Virginia State Assembly resulted in the passage of a number of criminal justice reforms, including enabling legislation to grant local governments, including Fairfax County, the authority to expand the role of civilian oversight of police.

These 2020 developments forced the Panel to grapple with certain institutional concerns. Perhaps more than in years before, where the Panel's aim was to achieve and implement procedures and practices necessary for *functionality*, i.e. the ability to review Complaints and make recommendations, in 2020 the Panel leaned more toward concerns about *efficacy*, i.e. the ability to impact meaningfully the relationship between the Fairfax County community and the FCPD.

As part of that process, this Four-Year Review was undertaken to better understand the successes, failures, and continuing challenges of the Panel. While Panel Members have different views of how the Panel should change, they agree that the Panel must remain fiercely independent and evolve in order to fulfill its core mission of ensuring transparency and accountability in the FCPD and building trust between community members and police officers.

January

At its January 9, 2020, meeting, the Panel considered the draft report on CRP-19-11. *See* Appendix G.8. This was the first Review Report drafted by the Panel since the revised Action allowed the Panel to include details of the investigation from the Investigation Report. The more detailed report allowed the Panel to explain the facts and findings more fully, thereby increasing transparency of police investigations of complaints.

During its discussion of the report, the Panel also addressed a procedural issue of how to treat a Complaint where there are multiple complainants. In CRP-19-11, the initial Complaint was filed at the district police station along with two other Complaints by witnesses to the incident. The IAB consolidated these complaints for the purpose of the investigation and wrote one disposition letter at the conclusion of the investigation. Only one of the Complainants sought review by the Panel, even though the incident involved three complaints. At the Review Meeting, the Panel had heard from only the Complainant who requested the review.

Panel Member Sris Sriskandarajah, who had been absent from the Review Meeting but had reviewed the audio tape, asked why one of the other potential Complainants, who had come to the review meeting but had not requested a review, had not been allowed to speak. Chair Kay noted that the Bylaws make clear that the Panel can only hear from the person who submitted the Complaint and requested the review. Vice Chair Doane further noted that the Panel is "unable to take testimony, hear from witnesses, or conduct its own investigation," and that the only individual allowed to address the Panel are Complainants who request review and representatives from the FCPD. *See* January 9, 2020 Meeting Minutes. The Complainant may explain the reasons for filing the Complaint and FCPD representatives explain the findings of the Investigation Report. Panel Member Frank Gallagher expressed concern that this could be a problem in future where a Complainant submitted something on behalf of others. Chair Kay asked that Vice Chair Doane and Mr. Sriskandarajah draft a procedural document for the Panel's consideration whereby the Panel in such a situation would notify the Complainant and the other affected individuals that only the Complainant would be allowed to participate in the Review Meeting and ask whether the other affected individuals wished to file their own separate Complaints.

After the Panel made several line edits and voted to accept the body of the Review Report, the Panel voted individually on the recommendations proposed in the drafted Review Report.⁵

The Panel discussed and accepted by votes of 8-0 (with Ms. VanLowe abstaining) three recommendations to be added to the Review Report consistent with the discussion at the Review Meeting. First, the Panel recommended that “[w]ith respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.” *See* Appendix G.8 (CRP-19-11 Review Report) at 8. Second, the Panel recommended that “FCPD civilian ride-along individuals should be tracked and recorded in all instances. A police ride-along individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.” *Id.* Third, the panel recommended that the FCPD “implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.” *Id.*

The Panel declined to approve a fourth proposed recommendation that would have reinforced the already existent FCPD policy that cross-gender pat downs should be avoided when practicable (but are not prohibited) as unnecessary and duplicative.

Mr. Aguilar approved the recommendations in the Review Report but chose to file a separate dissent. Mr. Aguilar had four primary disagreements with the Investigation Report. First, he disagreed with the interpretation of the Independent Police Auditor that the incident had not involved a use of force and believed that the use of force should have been investigated. Second, he believed that a thorough and complete investigation required more investigation of issues with the potential car video. He felt that the investigation simply ruled out the existence of in car video without making clear that the IAB had tried to track down such video. Third, Mr. Aguilar refused to concur with the findings of the IAB based on the fact that not every pertinent witness had been interviewed. Fourth, Mr. Aguilar did not believe that the IAB had adequately investigated whether it was not practicable to have a same-gender patdown performed. *See* Appendix G.8 (CRP-19-11 Review Report (Aguilar Dissent)).

After considering the report, the Panel turned to its leadership election. Vice Chair Doane, pursuant to the Bylaws, was set to take over as Panel Chair in March of 2020. Sris Sriskandarajah was nominated for and unanimously approved to take over as Vice Chair concurrently.

At the conclusion of the January meeting, Vice Chair Doane proposed a change to the Subcommittee timeline designed to speed up the reviewing of Complaints.⁶ Specifically, she suggested that rather than setting consideration of the Initial Review Report for the next month’s Panel meeting, the Subcommittee should meet immediately prior to Panel Meetings and the Panel should vote on the Subcommittee’s recommendation that same night. The Panel agreed to this change in procedure.

⁵ Ms. VanLowe, who had been absent from the Review Meeting, took no part in the decision-making process concerning this Complaint.

⁶ In addition, also notable at this meeting was that Chair Kay prefaced a discussion of an initial subcommittee review by “remind[ing] the Panel that the purpose of the Subcommittee meeting is to conduct the initial review of the review request and make a recommendation to the full Panel on whether to undertake or reject the review request.” *See* January 9, 2020 Meeting Minutes. This articulation of the Subcommittee process reflected in the meeting minutes represents a subtle shift: rather than simply reviewing for jurisdictional purposes, the Subcommittee’s review could include a substantive component. In truth, this appears to have been an aspect of Subcommittee review from the start given the fact that the Subcommittee reviewed the entire file as opposed to simply the Complaint during meetings. Still, the approved meeting minutes from the January meeting cemented this practice.

February

The primary purpose of the February 10, 2020 meeting was to discuss the 2019 Annual Report discussed above. The Panel largely accepted the drafted report and affirmed the recommendations already discussed.

The Panel also considered a proposed amendment to the Intake Procedures to address the situation discussed at the prior meeting concerning multiple Complainants. The proposed procedure stated that in situations where a Review Request is made by a one of several Complainants the Panel shall inform the Complainant and the other potential Complainants that only the Complainant making the Review Request can be heard in the Review Meeting.

Ms. VanLowe and Mr. Aguilar expressed concern that the process was still not clear enough, and that IAB should have sent disposition letters to all individuals. Major Owens confirmed at the meeting that the practice going forward would be to send a disposition letter to all individuals whose complaints are investigated. Given the concerns of Ms. VanLowe that the change needed to be clearer and concrete, and given the point made by Chair Kay that the situation being remedied was unique and might not occur again with the change in police procedure, the Panel decided to table the issue. *See* February 10, 2020 Meeting Minutes.

March

At the March 3, 2020 meeting, the Panel reviewed Complaint CRP-19-29. *See* Appendix G.10. The Complaint concerned an interaction between a White FCPD officer and a Black Fairfax resident. As the Review Report explained regarding the incident in question:

The incident began when the officer, while driving his patrol car, observed the Complainant as the officer drove past him. The officer [made a u-turn and then] followed the Complainant into the parking lot of the Complainant's apartment building and questioned the Complainant. The officer's questions focused on whether the Complainant lived in the apartment complex. The complaint alleges that racial profiling was the impetus for this conversation, and that the Complainant had done nothing wrong. The Complainant maintained that he should have never been approached by the officer.

See Appendix G.10 (CRP-19-29 Review Report) at 1.⁷

According to the Complainant, he was minding his own business before he made eye-contact with a police officer and the result was a u-turn, being followed, and a stop, which did not seem fair or warranted. After the stop, the following conversation, caught on videotape, took place between the Complainant and the Subject Officer in the parking lot of the Complainant's apartment complex:

Complainant: Hey

Officer: Hey sir, how you doing?

Complainant: Doing well, how are you?

Officer: Hey good. Hey, do you live here?

Complainant: I do, yes.

Officer: Okay, where do you live at?

⁷ Notably, the final CRP-19-29 Review Report, published October 22, 2020, was 20 pages long and the most detailed Review Report yet for the Panel. *See* Appendix G.10. It included long discussions regarding the incident, the procedural posture, the Panel meetings, the questioning of the Complainant and the FCPD representatives, and the Panel's deliberations. Indeed, the Review Report addresses the subject in much the way that this "Four-year Review" document has done, and as such, we will quote heavily from the CRP-19-29 Review Report where appropriate.

Complainant: In this apartment, right here.
Officer: Oh, okay. You got ID on you?
Complainant: No, I don't.
Officer: You don't have an ID?
Complainant: Well, I do have an ID, but do I have to show it to you?
Officer: You don't have an ID on you?
Complainant: I do have an ID.
Officer: Okay.
Complainant: Do I have to show it to you?
Officer: You don't have to. Is this your car?
Complainant: Yes, it is.
Officer: Okay.
Complainant: Is there a problem?
Officer: What building do you live in?
Complainant: This building right here.
Officer: What's the address?
Complainant: I don't have to tell. I don't have to tell, I don't have to tell you the address.
Officer: What's that?
Complainant: Do I need to tell you the address?
Officer: Yeah, what's the address?
Complainant: Why do I need to tell you my address?
Officer: I'm asking you what the address is.
Complainant: But why do I need to tell you that?
Officer: 'Cause I'm asking you.
Complainant: But is there a reason why you're asking me?
Officer: Because I want to know if you live here. Because if you don't live here...
Complainant: But I just told you, I do live here.
Officer: Right, but if you don't know the address, it doesn't look like, to me, like you live here, okay?
Complainant: But I do, and why is that?
Officer: To be honest with you...
Complainant: Why is that?
Officer: Whose vehicle is this?
Complainant: This is my vehicle.
Officer: Is it in your name?
Complainant: It's in my Mom's name, and it's in my name also.
Officer: Okay. How long have you lived in this area?
Complainant: Do I have to tell you that?
Officer: I'm just asking you the question.
Complainant: Okay, but why are you asking me these questions?
Officer: Do you live here or not, sir?
Complainant: I already told you. I live here.
Officer: Okay, 'cause if you don't live here, you're trespassing.
Complainant: I know that, and I told you. I live here.
Officer: Okay, what's the address that you live at?
Complainant: Why do I have to tell you that?
Officer: 'Cause I don't believe you live here, sir.
Complainant: And why don't you believe me? Why don't you believe I live here?
Officer: 'Cause you don't know the address.

Complainant: I already told you, I do know the address.
Officer: Okay, what's the address that you live?
Complainant: I don't have to tell you that. I live here. Why are you harassing me?
Officer: Okay, I'm not harassing you.
Complainant: You're in my neighborhood, coming up to me asking me what my address is, 'cause you say I don't live here. Why don't you believe I live here?
Officer: Sir, I'm not harassing you.
Complainant: Can I have your name and badge number?
Officer: You can. Ah [redacted] and my badge number is [redacted]
Complainant: Okay, thank you.
Officer: So do you have an ID on you or not?
Complainant: I do. I already told you. I do have an ID.
Officer: Okay, what's your name?
Complainant: I don't have to tell you that. Am I being detained or am I free to go?
Officer: You're free to go, sir.
Complainant: Thank you, you have a good day.
Officer: You, too.
Complainant: Thank you.

See id. at 3–5.⁸

As Chair Doane explained to the Panel, following the investigation, the Complainant requested additional review by the panel because:

- (1) the investigation did not determine why he was followed;
- (2) it is not clear whether the investigation checked the Officer's previous encounters and arrests;
- (3) it is not clear why the officer stayed at the scene for an extra 15 minutes instead of leaving after the encounter;
- (4) the conclusion that there was no bias based policing does not address the original allegation of racial profiling; and
- (5) the IAB investigator was not objective and had an unconscious bias for law enforcement.

See March 3, 2020 Panel Meeting Audiotape 5:00–5:44.

The Complainant appeared at the March meeting. In his opening presentation, he reiterated that he still wanted to know why he was followed by the officer in the first place. He also felt that the investigation of racial profiling was inadequate. And he specifically questioned the impartiality and objectiveness of the investigation given that it had been performed entirely by a police investigator.

The Review Report recaps the Complainant's appearance at the March meeting as follows:

Responding to questions from Panel Members, the Complainant explained why he was fearful and nervous when he was followed and questioned. He said that he didn't want to tell the officer where he lived, because he was aware of an incident in Texas where an officer went into an apartment and fatally shot an individual. He said he also did not go to his apartment after the encounter because he didn't want the officer to follow him. He further explained that he had two other encounters with Fairfax County police that were not positive. He recalled one incident where he was pulled for a broken taillight. He said that the officer introduced himself

⁸ Because it has been discussed repeatedly in prior portions of this Four-Year Review, it is worth noting that when Chair Doane wrote up the Review Report she had to transcribe this entire conversation from a paper copy at Police Headquarters. With no access to electronic records, she had to manually rewrite the entire conversation.

and told him why he was being stopped. The Complainant was given a warning. The second incident occurred at a bar in Reston, where he was approached by a FCPD officer because the officer said he smelled marijuana in the area. The officer asked him for his ID, and he felt harassed. The Complainant said his friends have also had negative encounters with the FCPD.

One Panel Member asked the Complainant if he had previous training on his rights. The Complainant responded that in his first encounter with the FCPD he had not known his rights, so he educated himself and learned the importance of recording encounters with police.

When asked whether this incident would have been different if the officer had explained why he had wanted to talk to him, the Complainant answered that it would have been different, because he would have known why the officer followed him. However, he still might not have answered any questions, because he had not done anything wrong. He emphasized that he had not committed a crime and did not think he would have been followed if he were not Black.

When asked what remedy he was seeking from the Panel, the Complainant responded that he would like the Panel to recommend that FCPD officers receive additional education and training on implicit bias. He said that he knew that officer discipline could not be disclosed publicly, but he would also like to know which FCPD regulations were violated.

See Appendix G.10 (CRP-19-29 Review Report) at 12.

Chief Roessler appeared on behalf of the FCPD. Above all else, he made clear to the Panel and the Complainant that the Subject Officer had no reason to initiate the stop and that the Subject Officer's actions were unacceptable. However, Chief Roessler also expressed his belief that the incident was not racially motivated. The Review Report recaps the Chief's appearance at the March meeting as follows:

In his presentation to the Panel, the Chief stated that the officer had made a series of poor, cascading assumptions and judgments that were wrongly based on his training. However, in his view, there was no evidence that race was a factor in the incident. He recognized that issues concerning racial bias are a concern in the community. He said that he has formed a human relations committee to address the racial and procedural justice policing issues in the county, and he is also reviewing officer training. Admitting that the FCPD has work to do, he said, "This is something we have to train-away. We can't just keep going to proactive patrol training." He concluded his presentation by telling the Complainant, "I pray that you understand that as your Chief I don't want this to happen to anyone else."

During questioning of the Chief, one Panel Member asked why there was minimal information and analysis in the investigative file on the allegation of racial bias. The Chief replied that he thoroughly reviewed the investigation, reviewed the officer's training history, and spoke at length with the officer. He said that the officer had not indicated to him that any of his actions were based on race. Rather, he reiterated that the officer's actions were based on several assumptions and poor decisions that started with a glance and ended with "badgering" the Complainant with questions. The Chief added that there was no reason to believe that the officer was not telling the truth when he denied that race was a factor in his decisions.

The Chief was asked whether he had explored how implicit bias may have played a role in the officer's decision to follow the Complainant. He was asked whether the incident would have happened had the Complainant been a white older man. The Chief said that "everyone has implicit bias," but added that he did not want to engage in hypotheticals. "This case is a problem without regard to race," he said. He concluded by saying, "This young man

was treated wrong.” He said that the complaint was “going to create a lot of change, I assure you.”

See id. at 12–13.

A main theme of Panel deliberations was that the IAB had not investigated the complaint of racial bias systematically and that the IAB still did not have a clear system in place for investigating such complaints. On the other hand, some members of the Panel expressed their belief that the Investigation Report had been thorough and accurate and had resulted in remedial actions, and that the Panel was not best positioned to dictate to the IAB how it should do its job. Additionally, the Complainant himself had expressed his wish that the officer receive additional implicit bias training, and it appeared that the officer was already set to get such training. The Review Report recaps the Panel’s deliberations as follows:

Several members of the Panel were concerned that IAB does not have a standard for investigating allegations of racial bias and racial profiling in complaints, which can differ in unique ways from other types of investigations. Panel Members appreciated the work the Chief had done on the complaint, and they agreed with the finding that the officer had not performed in a professional manner and violated Regulation 201.13. However, they were concerned that the issue of racial profiling was not adequately analyzed using objective criteria. One Panel Member acknowledged that racial profiling is difficult to prove, but investigators should do more than just ask the officer whether he was racially motivated. It was pointed out that the only evidence in the investigative record that related to the racial profiling allegation was the officer’s denial and his arrest statistics.

Further, the Panel had recommended in its 2019 Annual Report that “where the evidence gathered during an investigation into a complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer’s conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer’s social media accounts and/or interviewing witnesses.” While the FCPD did sustain a violation for unprofessional conduct which was race-neutral, this violation focused primarily on the officer’s conduct after his first glance at the Complainant. The investigative record was virtually silent as to why the officer decided to follow the Complainant in the first place, and Panel Members questioned whether a similarly situated white driver would ever have been followed in such a manner. One Panel Member asserted that the officer’s decision to follow the Complainant based on a mere “glance” hardly constituted a justification so clearly race-neutral as to vitiate the need for additional investigation. Moreover, investigation into whether the officer had demonstrated any bias in conversations with co-workers or on social media would have helped to corroborate the race-neutral explanation in the FCPD’s findings.

Moreover, the Complainant had expressly asked the Panel to review whether the investigation was thorough, complete, accurate, and objective specifically with regard to his racial profiling allegation. Panel Members concluded that based on their reviews of the file, the investigation as it related to the racial profiling allegation was not complete. In accordance with Article VI(E)(1)(h) of the Panel’s Bylaws, the Panel voted by 6-3 to request further investigation by the FCPD and provide a supplemental report that details the findings of the additional investigation.

See id. at 13–14.

The Panel made four requests with respect to additional investigation into the allegation of racial profiling. First, the Panel requested that the IAB conduct a search of the officer's publicly available social media profiles to ensure an absence of racial bias. Second, the Panel requested that the IAB interview the officer's coworkers for evidence of racial bias. Third, the Panel requested that the IAB review data related to the officer's community contacts and stops in the same manner the FCPD reviewed arrest statistics. Fourth, the Panel requested that the IAB compare the circumstances and claims of the current complaint to any prior complaints against the officer. *See* March 3, 2020 Meeting Minutes.

Following the review portion of the meeting, Mr. Kay informed the Panel that he would be presenting the Panel's 2019 Annual Report at the March 17, 2020 Public Safety Committee meeting.

The Panel was unaware that it would not meet again until June.

March – June

In March of 2020, the global COVID-19 pandemic, which has taken the lives of hundreds of thousands of Americans, reached the Washington Metropolitan Area. Most businesses and governments shut down and moved to remote work starting Friday, March 13, 2020. Many industries remain exclusively in work-from-home mode to this day. Americans were encouraged to engage in "social distancing" and avoid congregating in public. The Panel, authorized only to meet in person and in public, was unable to meet until the state and county could adopt emergency procedures under FOIA for public meetings. The Panel did not meet again until June.

On May 25, 2020, George Floyd, a forty-six-year-old Black man, was murdered by police officers in Minneapolis, Minnesota during an arrest for the use of an allegedly counterfeit twenty-dollar bill. The entire incident was caught on videotape, and the nation watched in horror as an officer knelt on Mr. Floyd's neck for nearly nine and a half minutes while Mr. Floyd said that he could not breathe. Mr. Floyd received no medical attention from the officers on the scene.

Public outcry was swift and vociferous. Protests popped up across the country in favor of racial justice and police accountability, with some of the largest and most sustained protests occurring in the District of Columbia and throughout the Metro region. On June 1, 2020, peaceful protests in Lafayette Square across from the White House were broken up without warning well before a DC-imposed curfew by federal agents deploying tear gas, rubber bullets, and batons, making national and international news, and furthering the cause of such protests.

Two days later on June 3, 2020, roughly 3,000 people showed up at the Fairfax County Governmental Center parking lot for a "Car Rally for Justice" organized by the Fairfax County NAACP in response to the George Floyd homicide. Chief Roessler appeared at the protest and addressed the crowd. He condemned the actions of the officers in Minneapolis and told the crowd that the FCPD values the sanctity of human life and has policies that attempt to de-escalate situations like the one in Minneapolis. He pointed out that Fairfax County had set up an Independent Police Auditor and Police Civilian Review Panel to review investigations of officer misconduct and that he and others in the FCPD work to develop ways to address public safety concerns by meeting with and listening to a variety of stakeholder groups in the community. In other words, directly in response to protests over George Floyd, Chief Roessler reassured the community that things are and would be different in Fairfax in part due to our oversight entities, including the Panel. Sean Perryman, then President of the Fairfax County NAACP, thanked Chief Roessler for his participation in the event and urged the crowd to peacefully advocate for positive change.

The Car Rally for Justice was the first of many marches and meetings across Fairfax County over the summer. Just three days later, on June 5, 2020, the FCPD had to deal with its own use-of-force incident with allegations of racial bias. In the Gum Springs neighborhood of the Mount Vernon District, one of the oldest predominantly African American neighborhoods in Fairfax County, paramedics and FCPD officers responded to an incident involving an unarmed Black man who was apparently experiencing a mental health crisis. While paramedics and FCPD officers encouraged the man to get into the ambulance, an officer arrived on the scene and tased him repeatedly as he put him under arrest. The incident was videotaped. The officer was charged with three counts of assault and battery by the Commonwealth's Attorney, and the officer was placed on administrative leave pending administrative due process. The Independent Police Auditor is monitoring the police investigation and will conduct a review.

The incident resulted in public outcry throughout Fairfax County and was condemned by Chief of Police Roessler and several members of the Board of Supervisors. Chief Roessler viewed the tape and held a press conference that Saturday, June 6, 2020 in which he explained that the use of force at issue simply was unacceptable.

This incident and the broader national debate on racial bias in police departments impacted the work of the Panel significantly. Although Panel Members could not meet in person with members of the community because of COVID restrictions, they reached out to community groups virtually to listen to their concerns. Numerous meetings with community groups were held during the spring and summer to listen to the concerns of community members and explain the work of the Panel. In addition, the Independent Police Auditor participated in many of these meetings and held meetings of his own. Moreover, Chief Roessler and individual members of the Board of Supervisors held listening sessions in the community to hear concerns and began to take steps to further increase transparency in the FCPD.⁹

Again, the very existence of the Panel was explicitly referred to by Chief Roessler and members of the Board of Supervisors as being critical to police oversight. In other words, when the community asked what was being done to ensure accountability from the FCPD, the FCPD and the Board of Supervisors invoked the Panel, which increased the spotlight on the Panel's work.

Finally, the events of the summer directly impacted the Panel in another way when Governor Northam called a special session of the General Assembly to address racial justice and police reform. That special session would yield, among other things, SB5035 and HB5055, a bill to take effect on July 1, 2021, that empowers local jurisdictions like Fairfax County to create civilian review boards with investigatory power, the ability to subpoena witnesses, and the ability to impose discipline. Debate over that bill put civilian oversight front and center across the Commonwealth.

June

By the time the Panel met again on June 25, 2020, virtually over a WebEx platform per emergency rules, Fairfax County was facing the profound health and economic effects of the pandemic and an outcry of support for more accountability in the police department. Community stakeholder groups renewed their requests for more racial and ethnic data on county arrests and stops. They also

⁹ While many community groups praised Chief Roessler's swift action, notably the Fairfax Fraternal Order of Police, Lodge 77 did not. In a public statement sent to the Board of Supervisors, President of the Fraternal Order, Brad Carruthers, accused Chief Roessler of a dereliction of his duty and violating the due process rights of the subject officer. Mr. Carruthers further claimed that 98.42% of survey respondents within the Fraternal Order supported calling for Chief Roessler's immediate resignation.

asked for changes in state laws to authorize and improve civilian oversight and adopt criminal justice reforms.

The FCPD moved swiftly to take steps to build more trust in the community. On June 23, 2020, the IAB released a 2019 Use of Force Report that documented use of force incidents across the FCPD's 15 divisions and district stations. The document was an impressive and comprehensive display of data concerning the FCPD that far too few police departments across the country do not share with their communities.

The Panel continued its outreach to the community and invited Chairman Jeff McKay of the Fairfax Board of Supervisors to address the Panel at June 25, 2020 meeting to discuss policing, community trust, the Panel's role in promoting the County's One Fairfax policy, and the recent formation of a task force on equity and opportunity. As the meeting minutes recount, "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." *See* June 23, 2020 Meeting Minutes. Chairman McKay spoke specifically about the Gum Springs incident, which he called "not only an assault on the individual involved, but also an assault on the profession of law enforcement." *Id.*

Chairman McKay discussed the "One Fairfax" policy, which acknowledges that there are too many inequities within Fairfax and seeks to reduce, ameliorate, and eradicate such inequities. Chairman McKay discussed the Panel's role in One Fairfax in that "it serves people who have been disproportionately treated by police and communities that have been left behind" and aims "to rebuild trust in the police within those communities." *Id.* He expressed his support for the Panel and his hope that the Panel could conduct further outreach in the community.

Chairman McKay took questions from the Panel. Recounting the disparities in arrest statistics provided by the FCPD, 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 noted that the FCPD, having released such statistics, is one of the most transparent police departments in the country. Chairman McKay expressed that he was open to expanding the powers of the Panel but that certain limitations could only be approved by the General Assembly, and that he expected to see change soon.

Ms. VanLowe asked Chairman McKay if he would support the Panel holding a public forum over the summer, and Chairman McKay expressed his support for such an idea, especially because "[h]e is under the impression that many people in the county are unaware of the Panel." *See id.*

Mr. Aguilar expressed his belief that the Panel needed more resources, especially because it is composed entirely of volunteers. Chairman McKay "asked for the Panel to indicate their needs and said he would be happy to address any deficiencies," adding that "it is most important for the Panel to maintain its independence as that is an important component to building trust with the community." *See id.*

Chair Doane explained to Chairman McKay that the Panel had hosted three public forums in the past but that the former Chairman and Chair of the Board of Supervisors' Public Safety Committee had indicated that they did not support additional public forums. Furthermore, "the Panel also received [prior] legal advice that hosting future public forums would be problematic." *See id.* Chairman McKay responded that he was "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." *See id.* Chair Doane also brought up the question of the Panel having

the ability to hire a consultant with investigative experience to help the Panel review investigations, as recommended by the Ad Hoc Police Practices Review Commission. Chairman McKay said that if the Panel was able to document such a need, he would be potentially supportive but that any such budgetary change would have to go through the entire Board of Supervisors. *See id.*

Following the Q & A with Chairman McKay, the Panel turned to a memo written by Gentry Anderson of the Independent Police Auditor's Office regarding One Fairfax and how the Panel fits into the policy. *See Appendix K.* 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. Ms. Anderson noted that 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. The Panel thanked Ms. Anderson for her work on the memo and requested that she work with Vice Chair Sriskandarajah on a version for the Panel's website.

Next, Chair Doane requested that the Panel approve a plan for the writing of a "Four-Year Review" – the very Four-Year Review that is this document – to review the Panel's progress since its inception. Chair Doane explained that the purpose of the review is to examine the Panel's work, identify trends in the cases it has reviewed, point out issues that remain unresolved and make recommendations for the future. The Panel assented and Mr. Bierman and Mr. Aguilar were asked to conduct the Four-Year Review and write a draft report.

The Panel then turned to the Independent Police Auditor for an update on his work. Mr. Schott reported that the OIPA, with support of the Board of Supervisors, commissioned a study for publication in early 2021 by researchers from the University of Texas San Antonio to review use of force disparities in Fairfax and consider what could be done to reduce disparities. Mr. Schott also "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." *See June 25, 2020 Meeting Minutes.*

Chair Doane asked Mr. Schott questions concerning the Gum Springs incident. Although Chief Roessler had requested that Mr. Schott review the incident, Chair Doane and others wanted to know if he could automatically review such incidents. Mr. Schott said that in general he only reviews investigations that involve serious injury or death, unless a formal complaint is made. However, he said that because of the seriousness of the Gum Springs incident, he was confident that had the Chief not requested him to monitor and review the police investigation, the Board of Supervisors would have. Therefore, he felt that no change to his mandate was necessary.

Panel Member Shirley Norman-Taylor asked Mr. Schott about an officer's duty to intervene in such a situation, wondering whether other officers involved in the Gum Springs incident should have stopped the subject officer. Mr. Schott explained that while he could not specifically comment on the on-going Gum Springs incident investigation, the FCPD's use of force policy demands 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." *See June 25, 2020 Meeting Minutes.* Mr. Schott further explained to the Panel that under FCPD General Orders "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.” *See id.* He added that the conversations occurring nationally related to the duty to intervene reflect what the FCPD already has implemented.

At the conclusion of the presentation by the Independent Police Auditor, the Panel turned to Complaint CRP-19-29. Chair Doane updated the Panel on the IAB’s progress on the additional investigation requested by the Panel. Importantly, Chair Doane informed the Panel that the IAB would not be conducting two of the investigative requests of the Panel. First, the IAB would not interview coworkers of the Subject Officer, with Chief Roessler contending that it would violate the accused officer’s procedural rights and would be overly burdensome. Second, the IAB would not compare the circumstances and claims of the complaint to prior complaints because the IAB already had done so when the department was determining the proper discipline and found no evidence of prior infractions requiring progressive discipline.

The Panel discussed Chief Roessler’s refusal to undertake the additional investigation requested. Mr. Kay complemented Chief Roessler for his presentation at the March meeting, but he took issue with the IAB’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.” *See* June 25, 2020 Meeting Minutes. Mr. Kay expressed surprise that there would be any legal impediment to such interviews and emphasized that the Panel’s request only extended to relevant coworkers. Mr. Aguilar added that he was troubled by the inconsistency of additional investigation into the background of certain Complainants but the refusal to engage in additional investigation here. Mr. Aguilar added “that there is reasonable suspicion that the subject officer potentially violated the complainant’s constitutional rights due to racial bias and that it would appropriate to contact the officer’s coworkers through the investigation process.” *Id.*

Major Owens attended the meeting on behalf of the FCPD. He informed the Panel that part of the problem was that it can be difficult to define “coworker” in law enforcement and expressed concern that 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.” *Id.* Major Owens also explained that FCPD officers do not have assigned partners for patrol shifts.

Ms. VanLowe stated that she was bothered by the fact that “the report does not lay out a process to determine whether bias existed in the incident” and “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.” *Id.* Major Owens responded by going over the typical investigative steps taken in an IAB investigation, but Ms. VanLowe reiterated that she wanted to know specifically about bias investigations.

Chair Doane brought up the fact that the Chief’s letter expressed “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.’” *See* June 25, 2020 Meeting Minutes. The Panel revoted as to that recommendation to make clear that it did request such investigation. Major Owens explained that the IAB in its commitment to transparency already had taken the request at face value as a part of the additional investigation.

Following administrative updates, the Panel addressed the replacement of its independent legal counsel, who was set to retire at the end of the year. Chair Doane noted that the Panel has had on-going concerns regarding the institutional separation between the Panel and the County Attorney’s office, who hires and retains authority over the Panel’s counsel. She said the independence of the panel’s legal counsel from the Office of the County Attorney (OCA) had been called into question several times over the past few years and that the Board of Supervisors Action Item establishing the Panel “did not

provide guidance as to the duties, responsibilities, and supervision of the independent legal counsel for the Panel.” *See* June 25, 2020 Meeting Minutes.

It was pointed out that the budget for the Panel’s legal counsel comes directly from the OCA, which may be problematic because it appears to involve an appearance of a conflict of interest where the County Attorney often defends the FCPD. Chair Doane reported that she and Mr. Kay had met with Chairman McKay and his staff earlier in the year to request that the money budgeted for the Panel’s independent legal counsel be transferred to the budget of the OIPA, but that had not occurred. Rather, “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....” *Id.*

Panel Members discussed their concern that not having truly independent counsel could create a perception in the community that the Panel was not independent, thereby undermining trust in its ability to promote transparency and accountability. The Panel further discussed the best process for choosing the next counsel for the Panel and decided that it would be best to go thorough and transparent RFI Process. Ms. VanLowe and Mr. Aguilar further requested that Chair Doane obtain a full explanation of the County Attorney’s reasoning that only she could pick the legal counsel for the Panel.

July

Before the Panel’s July meeting, Chair Doane and Mr. Bierman met with Supervisor Lusk, Chair of the Public Safety Committee of the Board of Supervisors, to discuss recent concerns in the community. Supervisor Lusk expressed his desire to hold “Listening Sessions” with the Panel and members of the community so that the Panel could better understand community sentiment and community members learn more about how the Panel functions. Supervisor Lusk set a preliminary date of July 29, 2020 for the first listening session.

Supervisor Lusk also asked the Panel to add its comments and recommendations to a Police Policy Recommendations Matrix that he and his team were compiling in the wake of the summer’s incidents. The Matrix included recommendations from various community stakeholders, including but not limited to, members of the Ad Hoc Commission, the Fairfax NAACP, ACLU People Power Fairfax, School Board Member Abrar Omeish, the South County Taskforce, and various other community groups.

Because the Panel was not set to meet until the end of the month, after Supervisor Lusk wished to publish his Matrix, Chair Doane spoke to Panel Members individually asking for recommendations to send Supervisor Lusk in a preliminary document. On July 10, 2020, Chair Doane submitted a recommendations document, and in the body of her email made clear that the recommendations had not been voted on by the entire Panel. Rather, it reflected recommendations made by individual Panel Members. Further, Chair Doane let Supervisor Lusk know that the Panel would be reconsidering potential recommendations as a part of its Four-Year Review.

The preliminary document contained seven areas of potential change for the Panel. *See* Appendix L (Preliminary Recommendations Memo).

First, the preliminary document recommended full support from the Board of Supervisors for the body-worn camera program. It requested that all officers be fitted with body worn cameras and that the County Attorney’s office or some other independent body be tasked with periodic review of all body worn camera footage.

Second, it recommended ways to improve civilian oversight. These included (1) supporting state legislation to allow jurisdictions in Virginia to choose the model of civilian oversight that would best meet the needs of their communities with the options of authorizing panels to investigate, interview witnesses, hear and receive sworn testimony and evidence, and issue subpoenas; (2) supporting state legislation to allow independent auditors or review panels to hire their own counsel; (3) authorizing the Police Civilian Review Panel to hire an experienced criminal investigative staff person to assist with the fulfillment of the panel's responsibilities; (4) expressly authorizing the Police Civilian Review Panel to review anonymous complaints; (5) allowing Panel Members to access investigatory records electronically; (6) expressly authorizing the Police Civilian Review Panel to hold regular public forums; and (7) expressly authorizing the Independent Police Auditor to review all use of force incidents.

Third, the preliminary document recommended better training and recruitment reform, including requiring implicit bias training and additional bias-related investigation into new recruits such as monitoring social media.

Fourth, the preliminary document recommended that the Chief be given explicit authority to suspend officer pay during investigations.

Fifth, the preliminary document "recommended 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." *See* Appendix L.

Sixth, the preliminary document offered a number of recommendations relating to police transparency, including publishing data related to all police-resident interactions rather than just arrest statistics. Further, the preliminary document suggested that the FCPD implement specific guidelines and processes to help it address complaints related to bias.

Seventh, the preliminary document recommended that oral reprimands be made part of an officer's personnel record and that they be considered with respect to promotions.

The Panel reconvened for its July meeting on July 23, 2020. This was the first meeting for new interim Panel counsel Anita McFadden, who had been retained following the resignation of the Panel's previous counsel. Also present was IAB's new Commander, Major Tonny Kim. The Panel thanked Major Owens, the outgoing IAB Commander, for his work to improve cooperation between the Panel and the IAB.

The Panel discussed the subcommittee meeting for CRP-20-15 and accepted the recommendation of the subcommittee that the Panel review the Complaint. Chair Doane informed the Panel that the Complainant had also filed an ethics complaint against the Panel, alleging that the subcommittee's review was unethical. Chair Doane noted that the Panel had no procedure for handling ethics complaints and suggested that the Panel work with counsel to create a process.

The Panel then turned to the Lusk Recommendations Document. Chair Doane again made clear that these preliminary recommendations had been submitted to Supervisor Lusk prefaced with the fact that not every recommendation represented the full assent of the Panel. Mr. Kay asked that the consideration of such recommendations be tabled in general until the Four-Year Review. Mr. Gallagher and Mr. Bierman agreed. Chair Doane requested that Mr. Bierman and Mr. Aguilar address the recommendations as a part of the Four-Year Review.

The Panel then formally learned of its invitation to participate in Supervisor Lusk's listening session that was to occur on July 29, 2020. All members of the Panel were invited to participate, as was Mr. Schott, the Independent Police Auditor.

During the Panel's new business, Mr. Bierman asked whether the requirement that Panel Members review investigative files at police headquarters could be changed due to health safety concerns during the pandemic. Mr. Aguilar specifically asked whether Panel Members could review investigative files electronically. Major Kim and Major Owens both explained that Panel Members would still have to appear in person to review the files but that extra precautions were being made to ensure safety, including wiping down all surfaces prior to each review.

The issue of electronic access to investigative files has been raised several times by Panel Members since the Panel's creation. Various Panel Members have noted the time it takes to review paper files at the office of the IAB, and how much more efficient it would be for them to review the files electronically. Additionally, most members of the Panel work during the day, and it is difficult for them to schedule time off from work to travel to the offices of the IAB and spend several hours there. The pandemic raised additional issues of safety, with some Panel Members expressing concern that spending hours in a public building could expose them and their families unnecessarily to the Covid-19 virus.

The IAB has resisted electronic access to files, arguing that the Chief is the custodian of records, and that allowing electronic access could compromise confidential personnel records and other information that must not be publicly disclosed. Even though Panel Members sign a confidentiality agreement prohibiting them from disclosing confidential information included in investigative files, the FCPD remains opposed to allowing Panel Members to review files off site through electronic means. This remains an issue for the Panel in the future.

After the conclusion of the July 23, 2020 meeting, Panel Members expected to next see each other at Supervisor Lusk's July 29, 2020 virtual listening session. However, on the eve of the listening session, the County Attorney's Office informed Panel Counsel, Supervisor Lusk and the Chair Doane that the full Panel was not permitted, in the opinion of the County Attorney, under its Action Item and Bylaws to hold meetings for the purpose of public comment. The Panel was advised that under FOIA regulations two members of the Panel could participate in the Listening Session, but the entire Panel could not. With insufficient time to settle the issue, the Panel relented and Chair Doane, Mr. Bierman and Mr. Schott, the Independent Police Auditor, joined Supervisor Lusk in the well-attended virtual Listening Session.

Many questions from the audience were similar to questions posed at prior public comment meetings. These questions included:

- Do you support legislation to give CRP and IPA investigatory authority, the ability to recommend discipline an officer, independent legal counsel, subpoena power, and/or needed staff and funding?
- What are the qualifications for the Independent Police Auditor?
- Are you at all concerned by retaliation or workplace harassment by the police department in the event that your reviews to the Board of Supervisors reflect poorly on the police? How independent can you really be if reviewing the work of people who have the monopoly of use of force in your neighborhood and workplace?
- Why was the only body camera footage shown to the public from the Gum Springs incident from an officer other than the one who deployed force?

- Do you think the Civilian Review Panel should include the Sheriff department? Does VA law allow for a civilian review panel of the Sheriff's department?
- In looking at the official Annual Reports for the FCPD and the Auditor, we can see the racial demographics of the department as a whole, but not by position occupied. Why not?
- How can the police review themselves as Internal Affairs does now?
- Why is it that the Independent Police Auditor has never found a use of force excessive?
- What type of background makes a member of the Panel effective? Do you think being a former law enforcement officer or lawyer is important to be an effective civilian review Panel Member or can someone without that background be a successful Panel Member?
- What changes do the Panel recommend to improve their ability to oversee police action? Should you have subpoena power along with more investigative authority? Should complaints be filed with the Panel as well as the police?
- Do officers have the opportunity to quit rather than be fired like in the federal government? Are there ways to prohibit those people from taking jobs in other divisions/other states/federal law enforcement?
- Acknowledging that the power of the Panel is limited, how can you have always found the investigations of racial profiling etc. to be "accurate, complete, objective and thorough"?
- If you're having at least one person with a law enforcement background on the Panel, would it make sense to also have one person with negative run-ins with law enforcement?
- How can you ensure that Fairfax County Police will not re-victimize an individual for reporting a domestic violence crime and hold perpetrators accountable?
- Do you have staff? How many and what are their general qualifications working for the Auditor?
- Is Fairfax County able to implement the legislature's new Community Policing Act's data collection requirements on police interactions that took effect July 1?

See Supervisor Lusk's Public Listening Session with Ms. Doane, Mr. Bierman, and Mr. Schott, Event Summary, July 29, 2020. Mr. Bierman having made light of the County Attorney's eleventh-hour interpretation preventing all Panel Members from appearing at the listening session, several questions also asked for a formal explanation of why the Panel could not be there in full.

Careful to answer only for themselves, Chair Doane and Mr. Bierman agreed that expanding the powers of the Police Civilian Review Panel, if accompanied by adequate staffing, could greatly increase transparency and accountability. For instance, both offered that they would like the Panel to have some level of investigatory power and the ability to hire the staff needed to conduct such investigations independent of the FCPD IAB. (Supervisor Lusk also expressed some support for such legislation.) Both Chair Doane and Mr. Bierman also discussed the importance of having a diverse array of voices on the Panel representing all geographic areas of the county and racial and ethnic groups. Mr. Bierman discussed several investigative reviews that have come before the Panel and how the Panel reached its decisions, especially in cases alleging racial bias. He noted that CRP-19-29 was still open.

As can be seen by the questions, several of the attendees of the listening session drew attention to the fact that the FCPD conducts investigations of complaints, and the Panel can only review the FCPD findings. There were concerns that the Panel could not be completely independent from the FCPD if it could not question witnesses or subpoena documents. Others were unclear about the distinctions between the Panel and the Independent Auditor, and why the county had created two separate oversight bodies. As in previous public comment meetings, some attendees were confused about why the Panel and IPA could not find for the Complainant and against the officer. It was

explained that the Panel and the IPA can only determine whether an investigation of a complaint or incident was thorough, complete, accurate, objective and impartial. When one attendee asked the IPA why he had always “cleared” use of force complaints. Mr. Schott emphasized that all he was in fact clearing was *the investigation of* use of force complaints.

One topic of the Listening Session was the how the Virginia General Assembly would address oversight and other police and criminal justice reform issues during the Special Session scheduled in August. There were questions about what specific legislation would be helpful to the Panel and the Independent Auditor. Chair Doane, Mr. Bierman and Independent Police Auditor Schott agreed that legislation should provide localities the flexibility to structure oversight of their police departments in the manner that best suits their communities, and that the most important aspect of civilian oversight is its independence.

August

On August 1, 2020, Chair Doane, Mr. Bierman, Ms. McFadden, counsel to the Panel, and Supervisor Lusk held a virtual meeting with the County Attorney to discuss the issue of whether the full Panel could hold meetings for public comment. Chair Doane and Mr. Bierman argued that it was important for the full Panel to hear the concerns of the community so that it could consider those concerns in its recommendations on law enforcement policies, procedures and practices. The County Attorney shared her interpretation of the Action Item and Bylaws, which she said prohibited such meetings for comment. However, she said that she would have no quarrel with amending the Action Item and Bylaws to allow the Panel to hold meetings for public comment. She offered to draft proposed amendments.¹⁰

^{10 10} It should be noted that several members of the Panel thought that the Bylaws *explicitly permitted* the full Panel to hold meetings for the purpose of receiving public comment. Article VII.A.2 of the Bylaws explains that “[t]he Panel may conduct Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Board of Supervisors.” See Appendix B.1 (Pre-revision Bylaws). This mirrors the language in the Action Item under Recommendation 22 that “The Panel shall have the authority to conduct public meetings on issues within its jurisdiction and on law enforcement policies and practices to assist it in making recommendations for policy and practice changes to the Chief of Police and the Board of Supervisors.” See Appendix A. Exhibit A to the Bylaws define “Public Meetings” as a “Panel Meeting open to the public conducted on issues within the Panel’s jurisdiction and on law enforcement policies and practices *where the public is invited to comment on such issues and policies and practices.*” See Appendix B.1 (Pre-revision Bylaws). Notably, the “Public Meeting” as defined by the Bylaws is quite clearly distinct from and different than a “Panel Review Meeting,” where the Panel reviews an investigation and “[t]he Panel shall not take testimony or receive evidence.” See *id.* Article IV.E.1.e. Thus, the “Public Meeting” quite clearly allowed the Panel to “invite public comment.”

On the other hand, the County Attorney pointed to Virginia FOIA law distinguishing “public meetings” and meetings where “public comment” could be taken. Specifically, the County Attorney argued that under FOIA rules, while “a ‘public meeting’ is defined as ‘a meeting at which the public may be present,’” this definition explicitly does not include “public comment.” And the County Attorney pointed to legal precedent that “[w]hen the General Assembly uses different terms, such as ‘public meeting’ and ‘public comment,’ in the same act, ‘those terms are presumed to have distinct and different meanings’” (citing *Indus. Dev. Auth. of City of Roanoke v. Bd. of Sup’rs, Montgomery Cty.*, 559 S.E.2d 621, 623 (2002)). Moreover, the County Attorney pointed out that in advance of the adoption of the Bylaws by the Board of Supervisors, the Board had struck from a previous draft “comment” from “public comment meetings” in both places where “public meeting” appeared in the Bylaws. (The Bylaws explicitly defined “public meeting” as a meeting “*where the public is invited to comment.*”) Later the County Attorney revised her opinion to suggest that Panel appearance at a listening session like the one convened by Supervisor Lusk was improper because of a different change to the Bylaws. Specifically, the County Attorney pointed to Article II.C defining a purpose of the Panel, with a late Amendment, to “[m]ake recommendations on law enforcement policies and practices *as they pertain to case reviews* to assist the FCPD Chief of Police (‘Chief’) and Board of Supervisors in policy reviews.” The

The Panel held its next regular monthly meeting on August 27, 2020. Because of the backlog of cases due in part to the COVID-19 shutdown and also due in part to an increase in Complaints, starting August 20, 2020, the panel would hold five business meetings, four of which were review meetings, and four subcommittee meetings over ten weeks, and would write and approve two Review Reports. Each review of an Investigation Report required every Panel Member to schedule time to review the investigative file at IAB. Each draft report was written by a Panel Member, and the drafting could take several hours or days, depending on the complexity of the investigation. With the workload of the Panel and the Chair increasing, Chair Doane recommended that the Panel consider asking the Board of Supervisors to create a new full-time employee position of Executive Director to help the Panel with reviews of Investigation Reports and to draft Review Reports. She raised the issue at the August meeting, and Panel Members agreed that an Executive Director was needed to meet the increasing demands on the Panel. Chair Doane discussed this with Supervisor Lusk and agreed to write a job description for the position. Supervisor Lusk later raised the issue at the Board's Public Safety Committee Meeting, and the matter is under consideration pending budget review.

The main order of business during the August meeting was a review of CRP-20-15, a Complaint concerning an interaction with the FCPD at the I-66 Transfer Station. The Review Report explains the incident in question as follows:

County Attorney argued that this language also prevented a public meeting inviting comment like the Supervisor Lusk's listening session.

There are a number of reasons why Panel members still believed the County Attorney's analysis was incorrect. First, from a purely textualist standpoint, the text of the plain language of the Bylaws provides for public meetings inviting comment from the public like Supervisor Lusk's listening session; to read this ability out of the Bylaws violates the fundamental canon of construction that language should not be read out of a statute so as to render it meaningless. And the interpretation that such a listening session is permissible *does not* read out of the statute that the Panel make recommendations "as they pertain to case reviews." As the listening session would demonstrate, the work of the Panel and specifically its work engaging in case reviews is a subject of any meeting about the Panel's business. Finally, the County Attorney's position is not supported by the definition of "Public Meetings" being "conducted on issues within the Panel's jurisdiction" because the Panel's jurisdiction quite clearly provides for its ability to engage in case reviews/review Investigation Reports *and* make recommendations "to the Chief and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed." *See* Appendix B.1 (Pre-revision Bylaws) Article VII.A.1.

Second, the legislative history did not support the County Attorney's position. While the County Attorney pointed to certain language that had been subtracted or added at the time of the adoption of the Bylaws in July of 2017, these additions and subtractions do not suggest that the Panel may not engage in a public meeting like Supervisor Lusk's listening session. As an initial matter, the fact that "comment" was removed from "public comment meeting" does not show that such meetings with public comments were impermissible, rather it reflects the deletion of surplusage. While the Board struck "comment" from "Public Meeting" as a definition, it then went on to define Public Meeting explicitly as an occasion to invite public comment. Furthermore, the decision to add to the purposes that the Panel make recommendations based on case reviews does not vitiate the ability to have a public meeting on Panel business, which constitutes the review of cases. In addition, the Board approved amendments to the Bylaws in October of 2018 and November of 2019 without any change to the plain language.

Finally, the County Attorney's interpretation on the eve of the listening session ran contrary to the history and past practice of the Panel, again suggesting that such an interpretation, at odds with the plain language of the Bylaws, was incorrect. In 2017, *before* the Panel had engaged in any case reviews, the Panel participated in two such public meetings in November and December of 2017 with Chairman Bulova and Supervisor Catherine Hudgins, respectively. And the Panel engaged in a third public meeting in December 2018 with Supervisor Storck. It is difficult to reconcile the County Attorney's interpretation of the Bylaws with the Panel's actual actions and activities that have never been challenged

On March 23, 2020, the Complainant drove a truck loaded with trash to Fairfax County's I-66 Transfer Station. At the entrance, he told employees that he wanted to be allowed to dump the trash without paying the standard fee of \$13.00. He requested a waiver of the fee because of the state of emergency declared by Fairfax County and the Commonwealth of Virginia in response to the Covid-19 epidemic.

The Complainant was informed by site employees that free dumping had not been authorized. When he continued to refuse to pay the fee, an assistant manager offered him the options of receiving a bill, using a payment plan, or paying a reduced fee. The Complainant declined these offers. During the conversation, he was told several times by the assistant manager that if he did not want to pay, he would have to leave the property.

A call was made to the FCPD after the Complainant refused to comply with the requests to leave. Two uniformed officers arrived at the scene. They talked initially with the facility employees, who described the failed negotiations with the Complainant. The officers initiated a discussion with the Complainant, who remained in his truck during the conversation that followed. Both officers told him several times that he would have to pay or leave. He asked the officers for their names, which they provided. According to the officers, on multiple occasions he rolled up his truck window when one of the officers attempted to talk with him.

While the officers continued their effort to persuade him to comply with their request, the Complainant talked by cell phone to an official at the Department of Public Works and Environmental Services. He described the situation to the official and repeated his demand for a waiver of the dumping fee. The official advised him to leave the property and offered to meet with him at a nearby gasoline station. The discussions with the police officers ended when the Complainant drove his truck to the meeting place. He met with the official and agreed to pay a reduced fee.

See Appendix G.11 (CRP-20-15 Review Report) at 1–2.¹¹

In his Complaint requesting additional review by the Panel, the Complainant alleged the following:

(1) The officers issued an unlawful order by demanding that the Complainant immediately leave the Transfer Station because of a civil dispute; (2) The Complainant's First Amendment right to peacefully assemble and petition the government for a redress of grievances was violated; (3) The number of officers on the scene was excessive because it was not proportionate to the nature of the incident; (4) The names of the officers printed on their badges were not visible to the Complainant and had been covered up; (5) The officers yelled at the Complainant and were "talking over him;" and (6) The police record of the incident was not sufficient, because inaccurate and incomplete comments were recorded on the CAD system by one of the officers, and a written report of the incident should have been submitted.

See id. at 2.

¹¹ The final CRP-20-15 Review Report, *see* Appendix G.11, published October 8, 2020, included discussions regarding the incident, the procedural posture, the Panel meetings, the questioning of the Complainant and the FCPD representatives, and the Panel's deliberations. As such, we will quote heavily from the CRP-20-15 Review Report where appropriate.

The IAB investigated the allegations and found that they were unfounded and that the two officers involved had behaved properly. The IAB Investigation Report included interviews with the subject police officers, the Complainant, and the manager at the Transfer Station.

At the August 27, 2020 meeting, the Complainant appeared. As the Review Report recounts:

In his statement to the Panel, the Complainant said that his civil rights were violated and that the officers violated FCPD General Order 301, which governs internal investigations. Also, the Complainant stated that he never refused to pay the fee. Rather, he wanted a waiver and was questioning the policy when the police arrived. He also expressed his view that the FCPD cannot demand that he leave public property when he is not breaking the law. He reiterated that he felt intimidated and threatened during the interaction with the FCPD, and that he believed the investigation was inaccurate and incomplete.

See id. at 3.

Chief Edwin Roessler and Major Tonny Kim represented the FCPD at the Review Meeting. During questioning of the FCPD, several Panel Members noted that although the manager was interviewed, there were other employees of the transfer station who were not interviewed. Moreover, the Panel had itself previously “made a recommendation to the FCPD, published on January 9, 2019, stating, ‘The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report’” and had later made a recommendation to the FCPD published on January, 15, 2020 that “[w]ith respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.” *See id.* at 4. (Notably, Major Kim subsequently informed the Panel that the IAB had interviewed the additional witness discussed, and that he confirmed the findings of the investigation.)

Panel Members also questioned the FCPD regarding the disposition letter provided to the Complainant, noting the Panel’s previous recommendation that disposition letters “must contain sufficient, specific detail to provide Complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.” *Id.*

Panel Members also probed the FCPD with respect to whether or not investigators followed a “standardized investigative plan” and expressed concern that the quality of Investigation Reports was not the same at the district level and IAB level. Chief Roessler and Major Kim responded that all of their officers get investigative training from the beginning. *See id.*

Finally, Panel Members probed the FCPD regarding training for dealing with potential trespass cases. He indicated that FCPD officers receive extensive training on trespass situations and de-escalation training. Major Kim further responded that “in this incident, the officers asked the Complainant a number of times to move along before demanding that he leave the site” using “due diligence to resolve the matter and ultimately there was a positive outcome.” *Id.*

The Panel deliberated, and while most Panel Members agreed that the FCPD should have interviewed more witnesses, there was simply no evidence to suggest malfeasance on the part of the officers. Furthermore, the Complainant’s assertions about what the officers were allowed to do in the first place were simply wrong as a matter of law (including his alleged First Amendment claims). There had been nothing improper – and certainly no Constitutional violation – in asking the Complainant to leave the transfer station after he had spent a long time holding up traffic. The Panel voted 8-1 that the weight of the evidence and the substantial completeness of the investigation allowed the Panel to concur with the findings of the FCPD. *Id.*

Mr. Aguilar was the lone dissenter. He explained that he could not find that the IAB investigation had been complete or thorough. Specifically, he took issue with the IAB failing to interview a known witness. In addition, Mr. Aguilar viewed the IAB investigation as insufficient with respect to probing the legality of the “move along order” and the appropriateness of such an order here where the Complainant alleged that he was engaging in a constitutionally protected activity. *See* Appendix G.11 (CRP-20-15 Review Report (Aguilar Dissent)).

Following the discussion of CRP-20-15, Chair Doane shared with the Panel the results of the subcommittee meeting on CRP-19-19, which presented a unique situation for the Panel. The Complaint alleged a history of harassment and abuse by the FCPD. Some of the incidents referenced in the Complaint, however, were untimely because they had occurred prior to the date allowed in the Bylaws for the filing of complaints. Further, many of the issues in the complaint already had been litigated in Court where they were dismissed with prejudice. The subcommittee had recommended that the Panel only review the aspects of the Complaint where the allegations were timely. This recommendation passed by a vote of 6-2 with Ms. VanLowe and Mr. Gallagher both voting against taking the Complaint because of its litigation history.¹²

The August 27, 2020 meeting also included a debrief of Supervisor Lusk’s listening session, which has been discussed at length above. Chair Doane informed the Panel that the County Attorney would provide to the panel draft language to change the Action Item and Bylaws to allow for meetings for public comment. Ms. VanLowe asked if there was a sense of the scope of the revised language and if there would be any restrictions to the public meetings. Ms. Doane explained that it was her understanding that there would be no restrictions to the Panel’s ability to hold these types of meetings, and that she would share the proposed language with the Panel when it is received.” *See* August 27, 2020 Meeting Minutes.

Chair Doane also recommended that the Panel begin a comprehensive review of its procedures and definitions. Specifically, she said that the Panel needed to resolve the procedural issues associated with determining jurisdiction by subcommittees. She nominated and the Panel unanimously accepted Vice Chair Sriskandarajah and Ms. VanLowe to serve on a subcommittee to review and make recommendations regarding the Panel’s procedures. The Panel also discussed the usefulness of hearing from the Independent Police Auditor regularly and Mr. Gallagher suggested that a quarterly update may be useful.

¹² At the Subcommittee Meeting on August 20, 2020, the subcommittee, comprised of Chair Doane, Ms. VanLowe and Mr. Aguilar, did not reach consensus on whether to recommend that the Panel review the Investigation Report. At issue was whether the complaint met the threshold requirements for review by the Panel. Article VI, Section A(1) of the Bylaws state that the Panel shall review investigations where the subject matter of the investigation is an allegation of abuse of authority or serious misconduct by an FCPD officer. Although the subcommittee agreed that the Complainant alleged serious misconduct, Ms. VanLowe said that she did not see anything within the investigation file that substantiated the allegations. Additionally, she argued that some of the allegations involved matters that had been previously adjudicated by a magistrate and judge, and that the Panel should not second guess a court’s decision. Chair Doane and Mr. Aguilar disagreed, arguing that legal determinations by a court of criminal misconduct are different from the Panel’s review standards for abuse of authority and serious misconduct. The subcommittee voted 2-1 to recommend that the full Panel review the allegations that were timely filed. *See* August 20, 2020 Subcommittee Meeting Minutes. The subcommittee discussion revealed the differences of opinion among Panel members on how to determine jurisdictional issues. Issues concerning prior litigation and whether evidence in the investigation supported the allegation have yet to be completely resolved.

The Panel considered what to do about the ethics complaint filed by the Complainant in CRP-20-15. Ultimately the Panel decided to appoint Mr. Kay and Mr. Gallagher to a subcommittee to recommend procedures for dealing with ethics complaints.

Mr. Aguilar also brought up the recurring issue of an electronic review of records. Chair Doane explained that Chief Roessler had asserted that he had received legal advice that he needed to keep the records on site and that he would provide the legal justification. However, Chair Doane reported that there had been some conversation surrounding whether Investigation Reports could be viewed at district stations or the Office of the Independent Auditor, but no decision had yet been made.

The Panel finally planned to meet just two weeks later, on September 10, 2020, in part to consider CRP-19-19 and in part to consider the additional investigation in CRP-19-29. The Panel recognized a substantial influx of complaints after the summer.

September

The Panel's September 10, 2020 meeting was primarily a discussion of the IAB's additional investigation into CRP-19-29. At its meeting on March 3, 2020, the Panel had requested further investigation into the complaint alleging racial profiling by a FCPD officer. The IAB completed its additional investigation, and now the Panel met to consider its additional findings.

As already discussed, the IAB did not agree to conduct all the additional investigation requested by the Panel. For example, the FCPD did not interview coworkers of the subject officer. "The mere curiosity seeking, through interviews of random employees, absent any reasonable suspicion and/or probable cause, would violate the procedural rights of employees as established by prevailing laws and personnel regulations," wrote Chief Roessler in a letter to the Panel. "Any officer who is aware of racial bias exhibited by a coworker not only has a duty to report such bias, but is required by policy to report it." *See* Appendix G.10 (CRP-19-29 Review Report) at 14.

However, the IAB did attempt to do a data analysis of the officer's community contacts for two years in the Reston District. The Review Report describes exactly what the Investigation Report provided (and notes the shortcomings of the attempt to use community contact data to investigate bias).

A manual search and analysis of the officer's field contacts and stops was conducted, but it was unsuccessful. Investigators conducted a narrow search of consensual encounters that matched the exact circumstances of the complaint – i.e., a consensual encounter not based on reasonable suspicion or probable cause, where no reasonable suspicion or probable cause was ever developed and where the community member was never detained. Based on that criteria, the officer had no other similar contacts.

The investigation noted that there were three instances with four individuals (including the Complainant) where it was unclear if the officer made a consensual contact without reasonable suspicion or probable cause and where none was ever generated. "Due to lack of clear information," the investigation concluded, "these stops were not included in this analysis."

The investigation did not analyze the officer's traffic stops by breaking them down by race and ethnicity. Investigators also did not analyze by race and ethnicity the officer's non-consensual contacts that began as voluntary contacts, but eventually led to a detention based upon reasonable suspicion or probable cause. Investigators attempted to compare the officer's consensual contacts with those of all officers in the Reston District. However, the data for consensual contacts in the Reston District was incomplete and inconsistent. The investigation

revealed that documentation of community contacts is insufficient to identify the true nature of the contact. The FCPD is taking steps to address this.

See Appendix G.10 (CRP-19-29 Review Report) at 15–16.

At the start of the Panel’s Review meeting, several Panel Members expressed their disappointment that the IAB had not interviewed the Subject Officer’s coworkers. Mr. Bierman expressed dismay with the assertion that there was no probable cause related to the allegation of racial bias, especially taking issue with the claim that there was “not a nexus” between the Subject Officer’s actions and racial bias. He further took issue with the claim that such an investigation was unnecessary due to obligation to report bias. Mr. Bierman noted “that coworkers have an affirmative duty to report biases based on sex [under FCPD General Orders], but that any investigation into alleged sexual harassment in the workplace would certainly involve interviewing other coworkers.” *See id.* at 16.

Mr. Kay asked whether criminal investigative detectives, which was the full-time job of the Subject Officer who just happened to be on patrol that day, were organized into squads and was told that it is likely the investigative section of the Reston District Station had at least five officers.

Mr. Aguilar and Ms. Norman-Taylor expressed concern about the lack of actual statistical analysis in the additional investigation. Major Kim acknowledged that the FCPD’s tracking systems did not necessarily contain the information needed. Mr. Aguilar asked why the additional investigation did not include traffic stops broken down by the race and ethnicity of the person stopped. He further wanted to know “whether the FCPD had established a threshold that would prompt additional review if the data indicated an officer’s arrests, stops or community contacts were excessive for a particular racial or ethnic group.” *See id.* Chief Roessler responded that the FCPD did not have such a threshold but was working on creating one.

Chair Doane and Ms. VanLowe questioned the narrowness of the analysis of community contacts, including the effort to only analyze the exact same situation: a consensual encounter in which no probable cause was ever found.

The Panel deliberated, and it became clear that a majority of the Panel was not satisfied with the FCPD’s response to the request for additional investigation. As the Review Report explains:

They did not think that the Panel’s request for investigators to interview the officer’s squad was unreasonable, since a squad is comprised of at most five officers. Passive reliance on officers to come forward with evidence of an officer’s racial bias in response to a complaint does not meet best practice standards for investigations. Interviewing possible witnesses is standard procedure for any investigation, regardless of the reporting obligations of potential witnesses. Additionally, the statement that there was no “probable cause” to engage in such further investigation was met with skepticism by some members of the Panel, who pointed out that the “probable cause” included a witness alleging racial bias – the Complainant himself – and there was evidence that encounter was based on a “glance” that had not been adequately demonstrated by investigators to be wholly unbiased.

See Appendix G.10 (CRP-19-29 Review Report) at 17.

It was also clear that a majority of the Panel did not believe that the data analysis had been adequate. The Review Report explains:

While the Panel understood that the current records management system needs updating, the data analysis that was carried out was incomplete. All traffic stop data should have been

analyzed, as well as consensual contacts and stops (where there was reasonable suspicion and probable cause before, during or after the encounter). Even if, for instance, the statistics had shown that a high percentage of the officer's consensual contacts had turned into non-consensual stops due to reasonable suspicion or probable cause, a high disparity in the race of the subjects could have been indicative of treating potential suspects of one race differently from potential suspects of another. Although the Panel did not ask for it, the FCPD should have broadened the data analysis to include the officer's contacts and stops for the past five years. The data analysis also should have been broken down by race and ethnicity. The FCPD should not wait for the results of the commissioned study to analyze use-of-force incidents, which may not be available until mid-2021. The FCPD must expedite its update of the data management system and change how it analyzes data so that it can improve early warning systems and investigations of complaints.

See Appendix G.10 (CRP-19-29 Review Report) at 17-18.

Panel deliberations also focused on the question of *how* to investigate bias. Several Panel Members suggested that the FCPD is in a better position to evaluate its investigative procedures and noted that Panel Members are not experts on police practices and procedures. But other Panel Members pushed back, noting that this was not the first Complaint related to racial bias and that the Panel had requested repeatedly that the FCPD devise certain standard plans for such investigations and it hadn't done so.

But the Panel deliberations did not simply involve questions about investigative methods. As explained in the Review Report:

Several members also stated that they did not want the Panel to focus merely on the specifics of how the investigation was conducted. They thought it was important not to lose sight of the broader issue of implicit bias and how it impacts policing. The Report on 21st Century Policing states that the unconscious nature of implicit bias demands that police departments look for new evidence-based strategies to mitigate the impact of implicit bias in policing. The FCPD should consider implementing new, objective, evidence-based procedural justice practices that could prevent an officer from making decisions based upon his implicit bias. For example, what if, before making community contacts, officers were required to ask themselves whether they had prior information that tied a particular person to a specific crime? Would that have prevented the questioning of the Complainant in this case? After the first glance, would the officer have checked himself before making assumptions based on how the Complainant looked? Would he have completed the license plate check, noted that there was no posted trespassing sign, and checked to see if the Complainant had a parking sticker on his car? Other police departments have required officers to go through a short checklist before making community contacts, and this practice has been demonstrated to significantly reduce unnecessary questioning of community members by police. The FCPD should consider doing the same.

See Appendix G.10 (CRP-19-29 Review Report) at 18.

At the end of deliberations, the Panel voted by a count of 7-2 to that the investigation was not complete with respect to the question of racial profiling. Thus, for the first time in the history of the Panel, the Panel invoked Article VI(F)(2)(iii) of its Bylaws to inform the Board of Supervisors that, "in the Panel's judgment, the investigation is incomplete and recommends additional investigation into the allegation of racial profiling by interviewing the officer's coworkers at the Reston criminal investigation section for evidence of racial bias and reviewing data related to the officer's community

contacts and stops in the same manner the FCPD reviewed arrest statistics.” *See* Appendix G.10 (CRP 19-29 Review Report) and 18–19.

The Panel’s finding in CRP-19-29 is significant, not only because it was the first time the Panel had informed the Board of Supervisors that an investigation it had reviewed was not complete, even after sending it back to the FCPD for additional investigation, but also because the Panel had identified what it believed is a systemic failing within the IAB to fully review investigations involving allegations of racial bias and profiling. Further, the Panel’s discussion of this investigation revealed that the FCPD could do more to prevent the kind of consensual encounters like the one that occurred in CRP-19-29.

The Panel’s questions and deliberations at the September 10, 2020 meeting took the better part of two hours, so the Panel decided to table its scheduled review of CRP-19-19. The Panel postponed that review until its October meeting.

Before the September 10, 2020 meeting came to a close, Chair Doane shared with the Panel drafted changes to the Action Item and the Bylaws from the County Attorney’s office. While the County Attorney had previously given no indication that the proposed amendments would be limiting, the proposed amendments limited the Panel to six public meetings throughout the course of the year. Three of the six meetings were restricted to listening sessions held by others and three could be held by the Panel. Chair Doane asked for comments and thoughts before the next Panel meeting.

The Panel reconvened on September 24, 2020. This was a Review Meeting for CRP-20-20 and CRP-20-21, two Complaints submitted by sisters regarding the same incident involving police officers appearing at their home very early in the morning. The Meeting Minutes provide a summary of the incident:

A community member called 911 indicating that there were loud fighting noises coming from a neighbor’s home. Officers were dispatched to the complainants’ address around 4:00 a.m. and knocked several times at the door and did not receive a response. The two complainants were awakened by the knocking and were frightened. The complainants called 911 to report the knocking at the door and the operator informed the complainants that police officers were knocking at the door responding to a call reporting domestic violence. The police officers left after receiving no response but then returned as a result of the complainants call to 911 and due to a second call from the community member to 911 reporting further domestic violence. The officers returned to the complainants’ door and began to knock. The complainants were unable to clearly identify the officers and asked the officers for identification upon opening the door.

See September 24, 2020 Meeting Minutes.

Both Complainants attended the meeting and addressed the Panel. In their opening statements, the Complainants explained that they had asked for additional review because the disposition letter provided by the FCPD was inaccurate, suggesting that the officers at their door had immediately identified themselves, and because they wanted to know what protocols the FCPD has in place for situations involving approaching houses in the middle of the night based on suspicion. Both Complainants further expressed their belief that understanding what occurred would increase trust between the Fairfax community and the police especially insofar as it reinforced that police officers should announce themselves clearly.

Panel questioning of the Complainants focused on additional details relating to the incident. First, the Panel wished to know what about the incident had scared the Complainants and whether the subject officers had acted rudely. The Complainants both affirmed that the subject officers had not acted in a rude or threatening manner but suggested that in some ways what had happened was worse:

because the officers did not announce themselves and were coy with their self-identifications, the sisters were left more confused by the incident and worried that the excessive banging on the door was threatening.

Second, Panel Members, including Mr. Aguilar in particular, wished to know why the Complainants believed that the incident had violated police standards of conduct. Mr. Aguilar noted that the FCPD is one of very few police departments in the entire country to publish its general orders online. He asked whether the Complainants had reviewed the general orders and could point to improper action by the officers. The Complainants expressed surprise that the general orders were available.

Third, Panel Members, including Chair Doane in particular, asked questions about the setting and neighborhood where the incident had occurred. For instance, she asked about the lighting in the neighborhood, whether it was a quiet neighborhood, and whether the Complainants had seen or heard any commotion on the night of the incident. The Complainants explained that it was a very quiet neighborhood and that it had been so on the night of the incident. The Complainants further explained that they weren't able to see the subject officers banging on their door which was part of why they called 9-11.

Captain Hanson introduced Second Lieutenant Dehler to present a summary of the facts of the case. He explained "that the results of the investigation found that the officers made a reasonable attempt to make contact with the individuals in the residence, that they were identified by dispatchers of the Department of Public Safety Communications (DPSC) and by the officers themselves, and that both officers were in uniform with badges of authority." *See* September 24, 2020 Meeting Minutes.

Panel questioning of the FCPD began with Panel Members asking if the subject officers had immediately identified themselves when they knocked on the door, and if they hadn't, how that complied with General Order 601.4. Specifically, General Order 601.4 Section VI.C explains that in responding to a potential domestic incident: "The responding officers shall identify themselves as police officers, explain the reason for their presence, and request entry into the home." *See* FCPD General Orders 601.4. While Second Lieutenant Dehler admitted that the subject officers had not immediately identified themselves, he also said that the subject officers had later identified themselves.

In addition, Panel Members wanted to know about the training that officers receive related to General Order 601.4, especially given that the subject officers justified their decision not to immediately identify themselves because a domestic incident can be a volatile situation and they did not wish to immediately say that they were police. Captain Hanson and Second Lieutenant Dehler further noted that the Complaint had been analyzed as regarding a basic service call but that the investigation had not specifically focused on General Order 601.4.

Also, Panel Members wanted to know why the IAB had failed to interview any neighbors or potential witnesses. The IAB also did not investigate the scene and consider such factors as the lighting at the location of the incident and the absence of any activity at the house or the surrounding area that could suggest that the address was incorrect or that the report of violence may have been inaccurate. Second Lieutenant Dehler said that he had not thought that such additional interviews and analysis were necessary.

Finally, Panel Members asked about what additional steps are taken by officers responding to domestic violence related calls and whether or not the subject officers should have done more to assess the situation, such as looking up any history of domestic violence at the location.

During deliberations, a majority of Panel Members concluded that the Investigation Report was not complete. Mr. Bierman moved that the Panel send the Complaint back and request that the FCPD, “analyze the gulf between the plain language of the General Order and the actions taken,” “interview the relevant witness named in the complaint,” and “analyze the scene” of the incident in the Complaint. *See* September 24, 2020 Meeting Minutes. Chair Doane offered a “friendly amendment” that the FCPD should also conduct other such investigation as warranted. Chair Doane also explained that this was a request for additional investigation per Article VI.E.1.h of the Bylaws. The motion, with the amendment, passed by a vote of six to three.

Following the deliberations on CRP-20-20 and CRP 20-21, Chair Doane informed the Panel of her meeting with Supervisor Lusk regarding the proposed amended language to the Action Item and Bylaws. She noted that, after receiving feedback from other Panel Members, she had expressed her concern about the limitations on public meetings. She also informed the Panel that the next quarterly meeting would be on September 25, 2020.

October

At the October 8, 2020 meeting, the Panel reviewed CRP-19-19. This Complaint alleged police harassment consisting of incidents spanning back several years. Many of these allegations were untimely. For instance, four concerned incidents that occurred before December 6, 2016, and under the Panel’s Bylaws, the Panel cannot review investigations of such incidents.¹³ Six other allegations fell outside the one-year statute of limitations for review.¹⁴ What remained timely – and what the Panel reviewed – were two allegations relating to an incident in June of 2018 involving police responses to a fight outside the Complainant’s residence. The incident included the Complainant’s daughter and resulted in the Complainant being charged with malicious wounding and delinquency of a minor. The Complainant alleged that the subject officer had improperly arrested and charged her and that the subject officer had harassed the Complainant.

The background facts relating to the allegations are as follows: On June 27, 2018, a community member called the Mount Vernon District Station and reported a physical fight that had occurred in the neighborhood earlier that day. A Mount Vernon police officer was assigned to investigate. The altercation outside the Complainant’s residence involved the Complainant’s daughter. The Complainant admitted that she had witnessed the physical fight and that she had ensured that only her minor daughter and her daughter’s minor opponent were involved in the fight. She did not let anyone else step in. She further admitted that she had a small thin pole with her, but she asserted that she never brandished that pole against anyone. She further asserted that no one was injured. *See* Appendix G.9 (CRP-19-19 Review Report) at 2.

The subject officer received a complaint from a witness at the scene. He interviewed other witnesses and viewed a cellphone video that showed some of the altercation. These witnesses alleged that the Complainant had appeared with a metal rod over her head at the scene that she used to threaten

¹³ These allegations were that: “(1) FCPD officers falsely accused the Complainant of robbery at gunpoint; (2) FCPD officers improperly searched the Complainant’s car; (3) FCPD officers issued a defective search warrant pertaining to the Complainant; and (4) FCPD officers falsely accused the Complainant of distributing cocaine and marijuana.” *See* Appendix G.9 (CRP-19-19 Review Report) at 3.

¹⁴ These allegations were that: “(1) a FCPD officer intimidated the Complainant in a text message; (2) a FCPD officer extorted the Complainant by charging her with felony distribution of marijuana; (3) a FCPD officer lied to the housing authority that the Complainant was selling drugs from her home; (4) FCPD officers unlawfully searched the Complainant’s car; (5) a FCPD officer lied under oath during the Complainant’s trial; and (6) The Complainant was falsely incarcerated and harassed while in jail.” *See* Appendix G.9 (CRP-19-19 Review Report) at 4.

and keep others out of the fight. The witness who complained to the subject officer reported that the Complainant struck him on the head with the metal rod and that he had suffered headaches as a result. The subject officer reported that while the video did not show the Complainant hitting anyone, it did show her wielding the rod as a weapon to keep others out of the fight. Based on the video and the witness interviews, the officer presented probable cause testimony to a magistrate and obtained warrants for the arrest of the Complainant for malicious wounding and contributing to the delinquency of a minor. *Id.*

As discussed earlier, *see* FN12 *supra*, at the subcommittee meeting prior to the Review Meeting, Ms. VanLowe expressed her opposition to taking the Complaint in the first place on two grounds. First, she had reviewed the Investigation Report and found no evidence that the subject officer had acted improperly. Second, she expressed her belief that the Panel should not be second guessing the acts of a magistrate or a judge. She further noted that the Complainant had brought a federal civil case against the FCPD which had been dismissed with prejudice. She did not believe that it was within the purview of the Panel to review the Complaint in such a scenario. The two other members of the subcommittee, Chair Doane and Mr. Aguilar, disagreed. They took the position that the Panel's Bylaws specifically allowed for the Panel to review an investigation *after* litigation. Ms. VanLowe ultimately abstained from voting in the Review Meeting given her prior position.

The Complainant appeared at the Review Meeting on October 8, 2020. As the Review Report recounts:

In her statement to the Panel, the Complainant stressed that no one was hurt, and that everyone had willingly participated. "I could not stop it," she said. "It was out of my control, but I was there to protect my daughter who was in the fight, and I told her that it wasn't a good idea, but that's what they chose to do." She said parents of children who participated in the fight lied when they said she struck others with the pole. She said that the charge of malicious wounding was excessive, reckless and false, and that it was later dropped. She added that she lost her job and her housing as a result of the charges, and she had experienced financial pain, loss and distress. She said that she felt like she was a "target" of the police.

See Appendix G.9 (CRP-19-19 Review Report) at 5. During questioning, Panel Members asked the Complainant whether she thought that all of the pertinent witnesses had been interviewed and whether she believed the IAB had seen the video. She responded that she believed that the right people had been interviewed and that she didn't doubt that the IAB had viewed the cell phone video.

Chief Roessler, Captain Hanson, and Second Lieutenant Bowman appeared on behalf of the FCPD. Second Lieutenant Bowman presented the conclusions of the Investigation Report. The IAB had found that the officer, responding to witness statements and the video, had simply engaged in evidence-based policing before approaching the magistrate. The FCPD also pointed out that independent of the investigation one witness had sought and obtained a protective order against the Complainant.

Mr. Bierman questioned Second Lieutenant Bowman regarding the fact that the cellphone video was not in the file. Second Lieutenant Bowman did not know why it wasn't in the file. Captain Hanson requested that in the future, when there appears to be something missing from the file, that the Panel inform him, and he will make sure it is properly in the file.

The Panel deliberated and decided by a vote of 7-1, with Ms. VanLowe abstaining, to concur with the findings of the IAB. Although the video was not in the file, Panel Members noted that the officer's own notes on the video did not say that it showed the Complainant hitting anyone but did

show her threatening others (and she had admitted to making sure that no one else stepped in), so he had not acted only on the video but also on the basis of witness statements. In addition, as explained in the Review Report:

Members of the Panel pointed out that the officer was thorough in his interviews of witnesses and that he considered all the evidence provided to him from community members. Also, he could not have harassed the Complainant because he did not know her previously. Finally, a magistrate also considered the evidence, concurred with the testimony of the officer, and issued the warrants.

See Appendix G.9 (CRP-19-19 Review Report) at 6.

Following the Panel's completion of the review of CRP-19-19, the Panel turned to the drafted review report for CRP-20-15. The Panel had no changes to the report and decided that it did not have any recommendations to add to the report.

During New Business at the October 8, 2020 meeting, Mr. Aguilar asked that the Panel discuss its role and consider what criteria it should use to assess whether "an investigation is accurate, complete, thorough, objective and impartial." Chair Doane reminded the Panel that Ms. VanLowe and Mr. Sriskandarajah were in the process of reviewing Panel procedures, including the subcommittee process. Ms. VanLowe agreed that further review is needed and explained her belief that the Panel must be as objective as possible while acknowledging there is some subjectivity in the way Panel Members make decisions as to whether investigations are accurate, complete, thorough, objective, and impartial. Ms. VanLowe also expressed "her belief that it is problematic that the Panel is confined to three choices for Panel findings as outlined in the Panel's Action Item and Bylaws and wondered if it would be appropriate for the Panel to have more flexibility in this area." *See* October 8, 2020 Meeting Minutes. Chair Doane stated that although the Panel only has three formal responses, the Panel can respond in a number of other ways, including making recommendations, advocating at quarterly meetings, and writing detailed reports. Mr. Bierman suggested the Panel consider whether complete means "finalized" or "total" to further standardize the Panel's review processes.

The Panel's second October meeting occurred on October 22, 2020. This meeting primarily focused on the adoption of the Review Report for CRP-19-29 and a discussion of the Recommendations that would go along with the report. As Chair Doane explained, the Panel already had voted to send the approved Review Report to the Board of Supervisors with a finding that the investigation is incomplete. Although the Action Item and Bylaws do not address the process after that, she said that it would be up to the Board to decide whether to ask for further investigation. *See* October 22, 2020 Meeting Minutes. Chair Doane further explained that in addition to the Panel's finding, a majority of the Panel had agreed that the FCPD should consider new ways to investigate racial bias and profiling allegations and also adopt mitigation strategies to prevent implicit bias in future policing. *See id.*

While one Panel Member expressed some concern that the Review Report had not done enough to credit the FCPD for the additional investigatory steps that the IAB had taken in response to the Panel's requests, ultimately the Panel appeared convinced that the parts of the Review Report detailing additional investigation were sufficient.

The Panel voted on each recommendation individually. The Panel decided to adopt seven recommendations and table two proposed recommendations. The seven recommendations adopted were as follows:

- 1) The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer's public social media profiles; (2) interviewing coworkers in the officer's unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints. Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer's actions under each of the criteria listed above.
- 2) All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer's community contacts, stops, searches and arrests should be broken down by the race and ethnicity of community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention.
- 3) Data analysis of an officer's community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district station where the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.
- 4) For the purposes of investigations into allegations of bias or profiling, data analysis of the officer's community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has worked in different districts within the county, the review and analysis of the officer's community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period.
- 5) Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer's community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group.
- 6) The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing.
- 7) Officers should receive implicit bias training on an annual basis.

See Appendix G.10 (CRP-19-29 Review Report) at 19–20.

Two other potential recommendations were tabled for later consideration. First, the Panel considered a recommendation that “[t]he FCPD should consider developing a checklist for officers to use before making a community contact.” *See* October 22, 2020 Meeting Materials. Ms. Norman-Taylor expressed concern that the recommendation did not go far enough and that merely considering the development of a checklist was not enough. On the other hand, Vice Chair Sriskandarajah felt that

if the Panel told the FCPD exactly what it “should” do, that went too far. Chair Doane explained that she felt strongly about the recommendation because other police departments around the country have developed standardized checklists for officers to use in community contacts, and they have seen improvements in unnecessary encounters. Mr. Kay suggested that because the Panel could not agree on exactly what to say in the recommendation and how strong it should be, the Panel table it for future consideration, which passed unanimously. Second, the Panel considered a recommendation that “The FCPD should undertake a review of officer training, policies and practices relating to pro-active policing to make sure that officers do not engage in hypervigilant practices that undermine other professional training.” *See* October 22, 2020 Meeting Materials. Again, the Panel could not agree on the proper language for the recommendation, and there was some concern about the use of the term “hyper-vigilant.” The Panel also decided to table this recommendation.

Ultimately the Panel voted to adopt the CRP-19-29 Review Report and its seven recommendations by a vote of 8 to 1.

The Panel then turned to a discussion of the proposed ethics review procedure in light of the ethics complaint brought against the Panel by the Complainant in CRP-20-15. Mr. Kay and Mr. Gallagher discussed options considered for handling such complaints. For instance, Mr. Kay and Mr. Gallagher considered sending all ethics complaints to the Independent Police Auditor, but the Action Item establishing the OIPA did not provide for the Auditor to handle such complaints. Mr. Gallagher further reported that he had consulted with NACOLE, but that the organization was unaware of another civilian review panel that had encountered an ethics complaint. Instead, Mr. Kay and Mr. Gallagher decided on a procedure, whereby a subcommittee of the Panel would handle ethics complaints through an internal review, and then the Panel would make a finding and recommendation to the Board of Supervisors. Ms. VanLowe moved that the Panel adopt the procedure for the next two years but revisit after that time, if necessary. The motion passed unanimously.

During new business, Chair Doane asked Rachelle Ramirez from the Office of the Independent Police Auditor to present the newly released FCPD data Dashboard. *See* <https://policedata-fcpdgis.hub.arcgis.com/>. Ms. Ramirez described how the public data dashboard “includes data related to arrests, traffic warnings, and traffic citations that individuals can filter by year, police district, magisterial district, gender, race, residency status, and location.” *See* October 22, 2020 Meeting Minutes. Ms. Ramirez further informed the Panel that the FCPD created a working group including the Independent Police Auditor and representatives from ACLU People Power, the Anti-Defamation League, Justice Forward Virginia, and the Fairfax NAACP to help design the dashboard, which remains a work in progress. Chair Doane “recognized that the data dashboard as a great step forward and encouraged members of the public to utilize it.” *See id.*

November

The Panel met next on November 12, 2020. The Panel first considered the Subcommittee recommendation on whether to review CRP-20-29. The subcommittee recommendation would raise, yet again, the need to re-examine and further standardize the Subcommittee process for determining jurisdiction.

The Complaint alleged malicious prosecution by an FCPD officer, and specifically that the officer provided false testimony to a magistrate, failed to document properly the investigation, and failed to fully investigate a felonious assault with a knife in a conspiracy between the FCPD officer and the Complainant’s ex-girlfriend. The Complainant further charged that a warrant for his arrest had been executed improperly. The Subcommittee considered these allegations and determined that they constituted allegations of serious misconduct and abuse of authority. However, the Subcommittee also

determined that upon a review of the Investigation Report, there was no evidence to substantiate any of the allegations. The interviews and documentation supported the actions of the subject officer. Moreover, the Complainant alleged specious claims that the officer had engaged a conspiracy with the Complainant's ex-girlfriend and that the officer had been derelict in her duty because she had not sufficiently questioned why the ex-girlfriend had waited several days before reporting the Complainant's threatening actions.

Following the Subcommittee meeting, the Complainant had sent a letter to Chair Doane alleging that the Subcommittee had acted improperly in dismissing serious allegations. As Mr. Bierman explained at the November Panel meeting, however, the Complainant's letter mischaracterized what had in fact been said and decided. The Subcommittee had expressly determined that the Complaint *did* include allegations that rose to the level of serious misconduct, but that there was simply no substantiation at all for such allegations in the Investigation Report. Thus, the Subcommittee recommended against taking the Complaint.

Mr. Sriskandarajah noted that this was exactly the type of situation that the Panel should address in its upcoming procedures review. The Panel voted unanimously to adopt the recommendation of the Subcommittee and declined to review the investigation.

The remainder of the meeting was devoted to hearing a presentation from the Independent Police Auditor. He reviewed his work over the last four years, highlighting his findings and recommendations in several prominent use of force incidents that he had reviewed.

He also addressed the standards that he uses in assessing investigations of use of force incidents and how he conducts his reviews. Mr. Schott also provided data and charts and took questions from the Panel, which are discussed in the Meeting Minutes:

- Mr. Aguilar asked Mr. Schott what areas of training he recommends the Panel Members receive. Mr. Schott recommended training on the 4th Amendment, particularly for new Panel Members without law enforcement experience, and training on the 14th Amendment because of its relevance to racial profiling and bias investigations.
- Mr. Kay asked about the recommendation to the Board of Supervisors on the FCPD's social media usage policy. Mr. Schott stated that the FCPD has not yet adopted an individualized social media policy for its employees but should adopt one unique to their mission.
- Mr. Bierman noted that three incidents reviewed by the Police Auditor involved choking and asked if the new legislation in Virginia that bans chokeholds would change the consideration of objective reasonableness of officers' actions in the future. Mr. Schott clarified that two of the three incidents he reviewed included allegations of choking, but there was no contact made with the individual's neck. He stated that under current FCPD policy, the use of a chokehold would be a violation, however, it could still be considered reasonable under *Graham v. Connor*.
- Ms. Norman-Taylor commented that the general public may not know that there is no requirement that officers use the "least intrusive alternative" and referred to the common question of why officers do not aim to shoot a suspect in the leg, rather they aim for the heart. Mr. Schott expressed his agreement and stated that officers can use a less intrusive force alternative but are not required to.
- Ms. Doane referred to the Auditor's recommendation that the Chief should have the authority to immediately suspend officers, with or without pay, pending an internal investigation. She asked about the rationale for that recommendation and where it stood in the process. Mr. Schott replied that it is included in Supervisor Lusk's matrix and may be considered in a future Public

Safety Committee meeting or by the Personnel 5 Committee. He said that it can be troubling to see an officer suspended with pay when later that officer is terminated.

- Ms. Doane stated that she remains concerned about the use of force on individuals with disabilities, specifically when officers place a person face down with hands hand-cuffed behind the back. People with Down Syndrome may be at risk for asphyxiation and death when this maneuver is used, she said. Mr. Schott said that he was not aware of a policy specifically addressing this population, but he has recommended that with use of the Ripp Hobble technique, officers should place the person in an upright and seated position as soon as possible. Ms. Doane stated that she wants to ensure that officers are trained on how to safely interact with individuals with Down Syndrome.

See November 12, 2020 Meeting Minutes.

Following Mr. Schott's presentation, Chair Doane informed the Panel that the Board of Supervisors would be considering a change to the Action Item at its next meeting to allow the Panel to conduct or participate in six Public Meetings per year, including with public comment. She said the amendment had been changed to allow the Panel to conduct six public meetings for comment a year, with no restrictions as to who sponsors the meetings. Chair Doane also recognized Major Dean Lay as the new commander of the IAB. And Ms. Doane acknowledged and thanked Gentry Anderson, who provided impeccable support to the Panel, for her service before Ms. Anderson moved on to a job in the private sector.

December

Before discussing the Panel's December Meeting, it is worth reviewing the standards set forth in the December 2, 2020 Subcommittee meeting. This is because in that meeting Chair Doane clearly enunciated a standard for Subcommittee reviews going beyond just reviewing the allegations of the Complaint. Specifically, Chair Doane outlined a two-step process: (1) Does the Complainant allege serious misconduct or abuse of authority? (2) If the answer is yes, are the allegations supported by the evidence in the investigative file? *See December 2, 2020 Subcommittee Meeting.* In that instance, Chair Doane found that while the Complainant did allege serious misconduct, there was simply no substantiation in the record. While this two-step process was consistent with how the Panel has operated in practice, it is worth noting that it still represented a departure from the process whereby the Subcommittee would only consider the allegations of the Complaint.

On December 10, 2020, the Panel held its last business meeting of 2020. This meeting was primarily a Review Meeting for CRP-20-19 and CRP-20-27, two Complaints filed by an individual Complainant regarding his treatment by the FCPD in two marijuana arrests. The lengthy discussion and the FCPD's extensive investigation leading to real policy changes represented the best of the Panel, and the Panel was very satisfied that the experience highlighted how the Panel has been making change in the community. The Complainant and representatives appeared at the meeting.

The first Complaint, CRP-20-19, alleged that the Complainant had been assaulted while in custody in the interview room at the Franconia District Station and that the Subject Officer had also engaged in further abusive behavior throughout the Complainant's time in custody. The use of force allegations will be addressed by the Independent Police Auditor, but the Panel reviewed the additional allegations of "abusive language, threats, illegal detention, unethical behavior and violations of police procedures, regulations, and laws," including, at one point, brandishing a knife. *See December 10, 2020 Meeting Minutes.* The investigation in fact found numerous violations with respect to the interaction with the Complainant, including that the Subject Officer "did not ensure his body and cruiser microphones were working properly, [did] not secur[e] the complainant in the cruiser properly,

misplac[ed] evidence, fail[ed] to update and amend the incident report, fail[ed] to provide the Commonwealth Attorney information about his communication with the complainant prior to the encounter, [did] not informing his supervisor about using an app which violated stakeout and surveillance procedures, fail[ed] to document actions in an incident report, [and] fail[ed] to cooperate and coordinate with the Street Crimes Unit.” *See id.*

The second Complaint, CRP-20-27, involved a separate an unrelated arrest of the complainant by the Street Crimes Unit (SCU) for the distribution of narcotics to an undercover officer. “The complainant alleged that the detective did not provide sufficient discovery, he was not arrested in a proper manner, his vehicle was seized improperly, and the detective was unprofessional in the interview.” *Id.* The IAB found no violations with respect to this second Complaint.

Chief Edwin Roessler, Colonel Gun Lee, Major Dean Lay, Captain Alan Hanson, and Second Lieutenant Dana Ferreira, and Second Lieutenant David Giaccio appeared on behalf of the FCPD. Second Lieutenant Ferreira, who had written up the lengthy investigative report for CRP-20-19, explained that the IAB had found over 30 policy violations by the Subject Officer, who’s employment with the FCPD had been terminated.

What was notable about this investigation was that it revealed misconduct *that the Complainant was not even aware of* and led to specific policy changes by the FCPD. Indeed, the investigation went beyond the IAB and also included the Major Crimes Bureau (MCB) and Street Crimes Unit. While the officer identified the stop of the Complainant as consensual, “the investigation revealed that the officer communicated with the complainant using a [cell phone] app [on his personal cell phone] in an undercover capacity to arrange the purchase of narcotics.” *Id.* The IAB learned that the Subject Officer had been using this undercover method while out on patrol and never disclosing that he had set up the mini-stings. Rather, typically, he would set up the potential buy, approach the prospective seller while in uniform, and then use the plain smell doctrine as a pretext for a search to find narcotics and an arrest. These facts would then never be disclosed to the arrestee or the Commonwealth’s Attorney, and indeed this investigation led to a dismissal of charges and overturned convictions in several cases. In addition, the investigation of the Complaint led to a new General Order 501.2 making clear that no patrol officer is to engage in such undercover tactics without the approval of a superior (and the subsequent steps taken by undercover officers, such as disclosing such tactics during discovery).

Second Lieutenant Giaccio presented a summary of the findings in the investigation into CRP-20-27. In doing so, he “reviewed the routine tactics used by the Street Crimes Unit [involved in the arrest] and said they are approved by the Commonwealth’s Attorney to maintain a high level of control and reduce confrontation.” *Id.* He also walked through how the vehicle seizure had complied with state code and General Orders 520.4 and 520.10. He also explained how the arrest had complied with protocol.

Following the presentations by the FCPD, the Complainant appeared. He explained that he was satisfied with the investigation and that he had learned a lot from the presentations. His only further wish was that he had been provided more information in the disposition letters. Indeed, the Complainant admitted that had he known the outcome of the investigation in question, he would not have made a review request, showing that there are still opportunities to improve disposition letters, which has been a goal of the Panel.

The Panel questioned the FCPD representatives at some length. These questions concerned primarily two aspects of the investigation: (1) the officer’s improper use of the cell phone app and who knew about it, and (2) the fact that the officer’s interview of the Complainant had not been videotaped.

First, as Mr. Kay, Mr. Sriskandajarah, Mr. Aguilar, Ms. Norman-Taylor, and Mr. Bierman pointed out, it appeared that the investigation uncovered a number of other officers with knowledge of the Subject Officer's use of the cell phone app. (Indeed, it was even revealed during the investigation that at one point the subject officer appears to have used the cell phone app to set up a buy with an undercover officer of the Street Crimes Unit.) Mr. Kay, Mr. Sriskandajarah, and Mr. Bierman in particular focused on the fundamental misunderstanding of discovery rules exhibited by the Subject Officer and the potential Constitutional violations that the subject officer may have engaged in given the obligation of the police and Commonwealth's Attorney to provide potentially exculpatory evidence to defendants (such as if there is a potential for an entrapment defense due to an undercover operation). In fact, the failure to inform the Commonwealth's Attorney of these tactics resulted in overturning convictions and dismissing charges in certain cases. Questioning also focused in on the reporting obligations of the officers who knew that the Subject Officer was engaging in such improper acts.

The IAB representatives explained that officers are trained on their discovery obligations and that officers in the Street Crimes Unit using such tactics very much know that they must disclose their actions and always do so. The IAB representatives further explained that officers do have a reporting obligation when they see or know of other officers engaging in improper behavior. In this instance, there was no IAB General Order explicitly prohibiting the use of cell phone apps by patrol officers. When questioned as to whether the other officers should have reported the Subject Officer for Constitutional violations, the IAB officers explained that while the investigation revealed that some of the Subject Officer's colleagues had an inkling that the Subject Officer was using the app, they did not have direct knowledge that he had used the app on his personal cell phone and then failed to disclose that fact to the Commonwealth's Attorney's office. While that act had been improper, there was no blanket prohibition on using a cell phone act as an investigative tactic, so the IAB did not feel that the other officers violated their reporting obligations in not reporting the Subject Officer. But, cognizant of the obvious problems with his behavior, the FCPD had written a new General Order specifically prohibiting such behavior so that any officer put in the same situation at a later date *would* be obligated to report. This order had also been communicated by the superiors at the Franconia District Station where the Subject Officer worked.

Second, Panel Members were concerned about the fact that the Complainant's interview had not been videotaped, which could have helped clear up allegations surrounding the interview. The IAB representatives explained that there is not a rule that all interviews must be videotaped, but there is a rule that all interviews must be observed by at least one other officer. Panel Members explained that they would be recommending that all interviews be taped in the future.

The Panel deliberated and expressed its satisfaction with the depth and breadth of the IAB's investigation and the FCPD's commitment to positive change, noting that the IAB had gone well beyond the four corners of the Complaint. The Panel voted 9-0 to concur with the findings of CRP-20-19. The Panel voted 8-1 to concur with the finding so CRP-20-27, with Mr. Aguilar in dissent due to his belief that the IAB could have further investigated comments made by a police officer during the arrest.

The general tenor of the Panel discussion was to note that on this one the system had worked. A Complainant had brought attention to a potentially bad officer. The investigation had revealed additional misconduct. The IAB had not only dismissed the officer but taken further corrective action and changed its policies. The Panel had had the opportunity to review the investigation, make policy recommendations, and consider whether the IAB's actions had been appropriate (*i.e.* considering whether the IAB should have found reporting violations). The Panel was quite satisfied with the outcome.

The December meeting moved on to consider the Ethics Complaint lodged in CRP-20-15 against members of that subcommittee. Mr. Gallagher, who had reviewed the Ethics charge as a part of an Ethics Subcommittee as agreed upon at the prior meeting, explained that he had listened to the subcommittee meeting and could not find any violation of the Panel's Code of Ethics. *See* Appendix C. Mr. Kay explained that the Complainant had lodged a second Ethics Complaint against the entire Panel, but that no member of the Panel could be unbiased in reviewing that Ethics Complaint, therefore the Ethics Subcommittee recommended informing the Board of Supervisors as to that Ethics Complaint. The Panel voted 6-0 to agree with the recommendations of the Ethics Subcommittee, with the members of the CRP-20-15 subcommittee abstaining. *See* December 10, 2020 Meeting Minutes.

The Panel moved on to a discussion on the retention of outside counsel for the Panel. Chair Doane explained that the Panel would have to decide whether it wished to retain Ms. McFadden, who had stepped into the role some months prior, or choose to open up the competitive bidding process. The County Attorney, Beth Teare, explained that a competitive bidding process was not required for the position. The Panel had earlier voted, however, that it would like to see a competitive bidding process before the installation of Ms. McFadden as interim counsel. Very satisfied with Ms. McFadden's experience, credentials, and abilities, it was moved that the Panel would rescind its earlier commitment to a competitive process and retain Ms. McFadden as permanent outside counsel. That motion passed 6-2 with Ms. VanLowe abstaining. Ms. VanLowe also expressed her satisfaction with Ms. McFadden (as did Mr. Bierman who cast a dissenting vote) but explained that she thought that the Panel's commitment to openness and transparency required the Panel to consider other candidates.

The December meeting, and the Panel's busy 2020,¹⁵ closed with Chair Doane and other members of the Panel expressing their deep gratitude to Chief Roessler, who had announced his retirement, for his support of the Panel over the years. The Panel would be lucky to have a future police chief who responds to oversight as Chief Roessler has.

¹⁵ *See also* Appendix F (Panel Data Summary) (showing that in 2020, 21 initial Complaints were brought directly to the Panel, eight of which were later requested to be reviewed by the Panel, and there were fourteen Review Requests of investigations not initiated through Panel Complaints).

ANALYSIS

The Panel's mission is "to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigation." Over the years the Panel has endeavored to increase transparency and accountability through its review of investigations. The Panel has been very encouraged by the incremental advances in quality of the Investigation Reports that it sees on a regular basis. Also, the amendment to the Action Item by the Board of Supervisors to allow the Panel to include in its reports a full explanation of the facts and findings in Investigation Reports has substantially increased transparency.

However, the Panel continues to experience some of the same challenges that it faced from the beginning. For example, the Panel continues to struggle with the process by which it determines authority to review investigations, and Panel Members sometimes differ on when to send an investigation back to the FCPD for additional investigation. One Panel Member's view on thoroughness (*i.e.* were all potential witnesses interviewed) may differ from another member's view that the investigation was substantially complete, even though some potential witnesses were not interviewed. Additionally, the Panel encountered the difficulties of ensuring balance while being diligent in the reviews. Some panelists expressed that the body must ensure that it does not indirectly cause any given officer to "take the fall" for the symptoms of the deep-seated systemic issues within the larger "policing culture."

Moreover, the Panel's very mission statement may need to be revised, because it is not clear that community members believe that the Panel's review of a FCPD investigation is truly independent. Some community members assert that, because the FCPD performs the investigation, and the Panel can only send an investigation back to the FCPD for additional investigation or inform the Board of Supervisors that the investigation is not complete, the Panel lacks independence from the FCPD. Hence, the review-only model is ineffective in enhancing police legitimacy and building and maintaining trust between the community and the FCPD.

When the Board of Supervisors established the Panel, it had the clear goal of increasing transparency in the FCPD. Authorizing the Panel to conduct investigations of complaints against police officers was not an option at that time, because state law did not allow for investigatory oversight. In fact, there was substantial opposition even to adopting a review model for oversight. No other local jurisdiction in the Commonwealth had successfully established an independent civilian review panel like the one adopted by the Fairfax County Board of Supervisors. As such, the initial Panel had little guidance on how to structure its review process other than the broad parameters prescribed in the Action Item. The Panel wrote its own Bylaws establishing its process and procedures. As the Panel gained experience, it necessarily found it essential to modify some of its procedures and to request amendments to the Action Item in order to better fulfill its mission and maintain its critical independence.

One thing has not changed, however. The Panel has never been empowered to reverse a finding of a FCPD Investigation Report or to direct the FCPD to implement a policy recommendation. Additionally, the Panel lacks authority to comment on or make any recommendation regarding the discipline of officers.

Panel Successes

Although the Panel's authority is restricted in essential ways, the Panel has managed to positively impact FCPD policies. The Panel has watched approvingly as the FCPD has cemented itself as one of the most transparent police departments in the country. But this was not preordained, and several changes have contributed to FCPD's progress.

First, the Panel recognized that FCPD disposition letters provided insufficient information to Complainants to allow them to assess how the FCPD had responded to their Complaints. Complainants were informed of the findings of the investigation but not the rationale behind them. This made it virtually impossible for Complainants to determine whether they wanted to request a review of the investigation by the Panel. The Panel, along with other stakeholder groups in the community, worked with the FCPD to design a template for disposition letters that provided more information to the Complainant, but also continued to respect police officers' procedural rights in reviews of their employment performance. The Panel must continue to monitor the disposition letters for consistent adherence to the new template; however, most of the disposition letters issued by the FCPD today are far better than those earlier in the Panel's existence and before the Panel's existence. The Panel very much commends the FCPD on this improvement.¹⁶

Second, the Panel recognized that it needed to be able to write detailed reports that explained the facts uncovered and the conclusions reached by the investigation. The Panel concluded its reports were inadequate if they merely (as mandated by the original Bylaws) reported the limited information disclosed in disposition letters to the Complainant or revealed by the FCPD at review meetings. Because the Panel speaks mainly through its reports, it was imperative that those reports be complete, clear and factual. The Panel had to push for changes so that it could meaningfully balance the needs of public disclosure with the need to protect certain confidential information. After the passage of the revised Action Item in September of 2019, Panel reports went from being short summaries to meaningful and detailed descriptions of the investigation, the findings of the FCPD, and the Panel's deliberations and findings. This was important for the Panel, the public, and the FCPD. The Panel can now elucidate its reasons for concurring or not concurring with FCPD findings by referencing evidence in the investigative file. The Complainant and the community benefit from understanding the reasons for the FCPD and Panel findings. The FCPD benefitted from increased transparency and trust in the community – especially where the Panel (as it frequently does) concurs with the findings of the FCPD.

Indeed, the Panel believes that its more detailed reviews and reports have had a positive impact on the quality of IAB investigations. Panel Members have witnessed the improved quality of Investigation Reports since the Panel's inception. Witness interviews and interviews with officers and Complainants are recorded, in-car and body-worn camera video is made available, and more detailed and improved arrest data analysis is provided. IAB Investigation Reports generally are well documented and organized, providing Panel Members with a comprehensive understanding of the investigation. While the Panel has pointed out what it contends are short-comings in the investigative processes relating to allegations of racial bias and profiling, generally the Panel has seen complete and extensive investigations in other types of complaints.

Third, the Panel recognized that to be effective, it needed a more constructive dialogue with the FCPD, the Board of Supervisors and other important county officials. The establishment of

¹⁶ Because there are still times when Complainants come before the Panel without much understanding of the investigation that they have requested be reviewed, *see* CRP-20-19 and CRP-2027, the Panel will continue to monitor disposition letters and make recommendations where necessary for ways to improve such letters.

Quarterly Meetings between the Chair and Vice-Chair of the Panel, staff representatives of the Board Chairman and Chair of the Public Safety Committee, members of the FCPD, and representatives of the County Attorney's Office and the County Executive's Office, has proved to be beneficial to all stakeholders. The Quarterly Meetings raise and often resolve important issues. Through this process, the Panel keeps the Chairman of the Public Safety Committee apprised of the activities of the Panel and issues that need to be addressed. This dialogue has helped the Board of Supervisors better understand the complaint process and issues that confront the Panel.

Fourth, the Panel recognized that the public needed a way to track and understand the Panel's recommendations to the FCPD, and it needed a way to react to FCPD actions (or the lack thereof). Simply making recommendations at the end of Review Reports was not a recipe for effective oversight. Moreover, just as importantly in terms of increasing community trust in the police, the FCPD needed an opportunity to describe the changes it made in response to the Panel. The Quarterly Meetings served as a forum for Panel leaders to collaborate with the FCPD to devise a recommendations matrix that could be shared publicly. The matrix enables the Panel to comment on FCPD implementation of Panel recommendations and allows the FCPD to explain its reasoning when it disagrees with recommendations or believes that a recommendation is duplicative of a policy that the FCPD already has in place. *See* Appendix E (Recommendations Matrix).

The FCPD has responded favorably to many of the Panel's recommendations. In the last four years, the Panel has made 22 recommendations, and the FCPD has concurred with or adopted 12 recommendations and has adopted one recommendation with modifications. The FCPD has rejected only one of the Panel's recommendations, and eight recommendations were still under review by the FCPD as of this printing, seven of which were made in late October of 2020.¹⁷ *See* Appendix E (Recommendations Matrix).

Fifth, the Panel fought to make sure that meetings for public comment will be a part of the Panel's future. In the first two years of the Panel's existence, the Panel held three meetings for public comment to introduce the community to the Panel, to explain its work and to receive public input into the Panel's work. The Panel was subsequently advised of concerns that the Panel lacked the authority to conduct more public meetings for comment. Moreover, the public meetings were lightly attended, and the Panel pursued other priorities. Thus, no more such meetings were held, but several Panel Members continued to point out the need for public input regarding policy recommendations. Community outreach by the Panel became increasingly important following the homicide of George Floyd and local demonstrations supporting criminal justice reform. These circumstances spurred changes in the Action Item and Bylaws to permit public meetings for comment by the Panel up to six times annually.

Concurrent with these changes, the FCPD also has taken unprecedented and highly commendable steps to increase transparency. These steps are the result of the long-standing dialogue between the FCPD and important community stakeholders in accordance with the FCPD's co-production model of policing that emphasizes the importance of community engagement in bringing about change. The Panel is also a part of that co-production model. One of the most impactful changes that has resulted from the FCPD's efforts at community engagement has been its release in October of 2020 of GIS-based data dashboards. This provided the public with a wealth of information related to

¹⁷ The goal of this Four-Year Review was to cover the first four years of the Panel's existence. In mid-January 2021, the FCPD provided responses to certain Panel Recommendations that had been under review. Because the Panel has not had an opportunity to speak with one voice in response to these recommendations, this document makes no comment on the FCPD's responses. But, notably, as explained, ultimately it will be up to the Panel to determine whether the FCPD's responses are sufficient and on point.

arrests, citations, and traffic stops, broken out by race, gender, district station, location, and other criteria. The FCPD now provides the community with many of the tools it needs to evaluate the performance of the FCPD. Indeed, the FCPD is one of the most transparent police departments in the nation.

Finally, as 2020 came to a close, the Review Meeting for CRP-20-19 and CRP-20-27 reinforced the Panel's belief that a strong IAB within the FCPD and competent civilian review and oversight can work together to achieve positive and effective results for the community. The investigation of CRP-20-19 and CRP-20-27 went well beyond the four corners of the Complaint and rooted out improper police behavior that was not known to the Complainant or within the FCPD generally. In its findings, the FCPD not only sustained violations by the officer and disciplined him, it also adopted department-wide policy improvements designed to prevent officers from engaging in the same behavior in the future. Furthermore, the FCPD made clear that a failure to report such behavior observed by officers would result in a violation of FCPD regulations. Indeed, the Complainant praised the FCPD for its candid explanation at the Review Meeting and expressed satisfaction with the exhaustive investigation. Panel Members pointed out at the conclusion of its Review Meeting that the investigation was an excellent example of how investigations should be conducted and reviewed. The Panel concurred with the findings of the investigation, but also offered several more policy recommendations for the FCPD to consider. With respect to CRP-20-19 and CRP-20-27, the system worked, and the Panel is encouraged by that success.

Panel Opportunities

Before describing the challenges the Panel faced during its first four years, it is worth noting that there were major changes in Virginia state law during the Panel's fourth year, and with them opportunities. Specifically, during a Special Session of the Virginia legislature called largely in response to the George Floyd homicide, the General Assembly passed, and the Governor later signed, SB5035 and HB5055. This bill takes effect on July 1, 2021 and empowers local jurisdictions like Fairfax County to create civilian review boards with investigatory power, the ability to subpoena witnesses, and the ability to impose discipline.

The Board of Supervisors has not indicated one way or another which, if any, of these potential changes it wishes to implement, but certain members of the Board of Supervisors have expressed interest in examining whether to broaden the Panel's authority. Thus, the Four-Year Review is operating at a time when the Panel has potential to be reformed or changed.

It is also worth noting that Chief Roessler will be retiring at the beginning of February. Chief Roessler has been the Chief of Police throughout the tenure of the Panel. The Panel has come to understand Chief Roessler as an important partner in its work. A new Police Chief will require the Panel to cultivate a new relationship and the Panel stands ready to continue its strong working relationship with the FCPD and with Chief Roessler's replacement.

Panel Challenges

The Panel faced major challenges in its first Four Years. These challenges, as outlined below, are divided into the following two categories: (1) internal/administrative challenges; and (2) external/substantive challenges. A common theme runs through all these challenges though: the Panel as currently structured and constituted struggles to maintain its independence from the FCPD (and is, indeed, in some ways rather dependent on the FCPD), and thus struggles to make a bigger impact on

community trust. The challenges facing the Panel call for actions that increase the Panel's independence in fact and in perception.

Internal/Administrative Challenges

As the Panel began its primary task of reviewing investigations, certain procedural and administrative hurdles to conducting Panel Business became readily apparent.

First, the Panel's job has been made more difficult by the Panel Members inability to remotely review Investigation Reports. The Panel is cognizant of the importance of maintaining the confidentiality of these files and ensuring that they are properly handled. The Panel is also aware that these files include personnel records, names of confidential informants, names of victims and witnesses, and other confidential information that must be protected under state FOIA regulations, and that the Chief of Police, in his discretion, has justified not providing the records electronically due to these concerns.

However, Panel Members are all volunteers, and many have full-time jobs. For every file review, Panel Members must make appointments and travel to the IAB office at Police Headquarters to read the investigative file. The normal working hours for the IAB office are from 9:00am to 5:30pm. While the IAB has expressed some willingness to allow appointments outside of regular hours, it has treated these as special requests (and indeed it requires the IAB to devote more resources to cover evening or weekend appointments). Panel Members typically take time off from work to go to the Fairfax location and to spend many hours reviewing files. Panel Members must get everything done while they are there. Handwritten (or sometimes typed) notes are all that Panel Members can leave with, but they cannot refer back to the file itself on their own time when preparing for Panel Meetings or writing review reports. These circumstances are a great hardship to the Panel Members and are not conducive to the sort of thorough review and analysis of investigations expected of the Panel. At times Panel Members have disagreed to certain facts stated in an Investigation Report, but they are sometimes unable to resolve the issue in real time during meetings because Panel Members cannot access the file without making another appointment.

This problem was made even more acute by the global pandemic. While most offices and workplaces shut down and moved to a work-from-home policy, Panel Members still needed to go into the IAB office to review Investigation Reports. Again, these logistical obstacles seem unnecessary and unreasonable under the circumstances.

As reflected in the meeting minutes of the past four years, the Panel has repeated raised this issue, before and after the start of the pandemic. Panel Members work hard and are happy to do so (this Four-Year Review alone is the product of hundreds of volunteer hours), but having to review files in person, during business hours, is a significant burden to place on volunteers, especially those who are not retired. In an interview with one member of the Panel for this Four-Year Review, he questioned whether the Panel could continue on its trajectory without limiting Panel Membership to retired individuals.

Second, as the Panel started to receive more Complaints and its workload grew, it became clear that the Panel needs to find a fair and expeditious way of disposing of clearly wholly unfounded complaints. There is broad consensus on the Panel that it should not review Complaints where there is no evidence to support the allegations. Reviewing such cases also adds to the substantial backlog of Complaints that the Panel must review.

While the Panel has created a subcommittee process to streamline jurisdictional decisions, there is still some uncertainty about when the Panel should undertake a review of an investigation. The

Panel initially defined its jurisdiction broadly and reviewed all investigations if the Complainant alleged serious misconduct or abuse of authority by an officer. As the Panel gained more experience, it began to define its jurisdiction more narrowly by looking beyond the allegations to determine if there was any evidence in the Investigation Report to support the allegation. However, subcommittee members sometimes had difficulty separating jurisdictional determinations (scope of review) from its standard of review (*i.e.*, whether the investigation was complete, thorough, accurate, objective and impartial). Worse still, the Panel Bylaws as written only explicitly provide for a subcommittee to consider the former and do not permit a subcommittee to consider the latter.

In the last subcommittee meeting of the year, Chair Doane outlined a process for subcommittees to follow in its jurisdictional determinations. First, the subcommittee must consider the allegations contained in the Complaint. Does the Complaint allege serious misconduct or abuse of authority by an officer? If it does, then the subcommittee must consider whether there was any evidence in the Investigation Report to support the allegations. If there was any “scintilla” of evidence, the Panel must review the investigation. If there was no evidence, the subcommittee may recommend to the full Panel that it not review the investigation. This prophylactic interpretation of the Bylaws should be codified to ensure that all Complaints are considered in the same manner. To further ensure fairness, the Panel may want to consider requiring that if a subcommittee votes to not recommend a review of an investigation, the vote should be unanimous.

Third, the Panel needs an Executive Director (ED), who would be a full-time employee of the county, to assist the Panel with processing Complaints, reviewing investigative files, drafting reports, supervising administrative staff, and managing all of the Panel’s activities. The Panel has been blessed with great administrative support from the Office of the Independent Police Auditor, but the Panel needs additional help and the Office of the Independent Police Auditor is itself very busy as well. The Executive Director should have the same status as the Independent Police Auditor and report directly to the Board of Supervisors. The ED should supervise one administrative staff person, who would assist in processing complaints and other administrative matters. As the responsibilities of the Panel have increased over time, the need for an ED is imperative. The Chair and Vice Chair can no longer invest the time it takes to run the Panel on a day-to-day basis. This task has become a full-time job requiring a professional with experience in oversight or in conducting investigations. It would be helpful to have an ED who can help Panel Members, especially new Panel Members, learn how to review investigative files and better understand what to look for in complex Investigation Reports. An ED would also be helpful in interfacing with the FCPD and with conducting outreach to the community. Of course, if the Panel takes on an investigative role, it would be necessary to rely on an ED and other professional staff to undertake those additional responsibilities.

Fourth, the Panel has recognized the importance of having independent legal counsel. Not only does the Panel need to ensure that it is receiving advice from an independent counselor; but also, as the Panel has asserted its independence and endeavored to demonstrate to the public that it is detached from the FCPD, it operated for years with counsel chosen by the very party (the County Attorney) that represents the FCPD in most instances. Recently, this process changed and the Panel chose its attorney. The Panel must be independent in all possible respects – including in the hiring, retention and payment of its attorney – in order to succeed in its mission.

External/Substantive Challenges

The Panel has contended with a number of external/substantive challenges during its four years. Specifically, as evidenced largely from the few public meetings for comment it has held, the community is neither generally aware of the work of the Panel nor does it appear to consider the Panel

a force for change in the FCPD. Indeed, for those who are familiar with the Panel, many unfortunately consider its limited authority as a hindrance to providing accountability in the FCPD.

Individual Complainants are often confused as to what the Panel can do and what it cannot do. As often becomes clear at review meetings, Complainants have little knowledge of and frankly do not care exactly how their Complaints are investigated. A finding by the Panel that an Investigation Report is thorough, complete, accurate, objective, and impartial means very little to the average Complainant. What they seek is a fair shake when they have problems with the FCPD. That requires more than simply an investigation of the investigators. Some Complainants have been clear that they think that the fact that their Complaint is being investigated by coworkers of the officer complained about renders the investigation *incapable* of being “objective and impartial.” *See, e.g.*, March 3, 2020 Meeting Minutes (Complainant’s Presentation).

This issue goes well beyond the satisfaction of individual complainants. During public meetings and outreach events, members of the community have questioned how the Panel can be truly independent if it is reliant on the FCPD for all of its information regarding every incident. The Panel cannot be seen as simply an arm of the FCPD and still provide the oversight necessary to increase community trust in and the legitimacy of the police department.

Second, the Panel is limited in what it can do and say in its findings. The Panel is able to concur with the FCPD investigation, advise the Board of Supervisors that the FCPD findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief, or advise the Board that, in the Panel’s judgment, the investigation is incomplete and recommend additional investigation. The Panel can also request further investigation by the FCPD without notifying the Board. Often these particular findings are confusing to community members. Many have asked why the Panel cannot just reject an investigation finding.

Panel Members also differ among themselves as to whether an investigation is complete and thorough. The Panel does not have specific definitions for “complete,” “thorough,” “accurate,” “objective,” and “impartial. Does “complete” mean that every avenue should be investigated, (*i.e.*, every *possible* witness should be interviewed), or does it mean that the investigation was “substantially complete?” How thorough is “thorough?” Further, how can one be sure that the investigation is “impartial” or “objective?” Isn’t that determination somewhat subjective? And with respect to “accurate,” is that simply a determination of whether the IAB was right or wrong—and what if the IAB’s investigation *is* defensible but the Panel Member simply disagrees with the conclusion? Does that mean that the investigation was inaccurate?

Moreover, using these standards when reviewing an Investigation Report is made even more difficult when the only information in front of the Panel has been provided by the FCPD. If the Panel only sees what the IAB has done, can it say that the Investigation was “complete” or “incomplete?” Again, concluding that the investigation was “thorough” is also difficult when you have no opportunity to probe potential investigative approaches that were not undertaken.

As a result of these definitional issues, the Panel has often been forced to engage in a form of triage, trying to figure out what is “complete enough” or “accurate enough”. The Panel has been open in deliberations on the question of whether it is worth it to ask for more investigation without any assurance of a changed outcome. As one Panel Member asked during an interview: What can the Panel do where it does not believe that sending the investigation back for further investigation would add any value?

While the Panel does not have specific definitions for the words of its concurrence, one thing seems clear about them either combined or in isolation: they may appear to some in the community that the Panel is rubberstamping IAB actions. If the Panel had additional leeway to respond to investigations in its own voice, it would be much better equipped to demonstrate that it has taken Complaints seriously and done *more* than the IAB. The Panel's more detailed Review Reports have been a positive development. However, leeway for the Panel to offer a greater variety of conclusions would be a positive development as well.

Third, an obvious implication of the first two challenges is that in order for the Panel to fulfill its mission, it needs some limited investigatory authority. Being wholly reliant on the FCPD leaves the Panel unable to directly separate itself from the work of the FCPD and thus provide the oversight necessary to fulfill its mission. Several options exist and have been tested by other police oversight bodies around the country for many years. For instance, either the Panel or a Panel Executive Director could interview key witnesses, which would require the Panel to have some limited subpoena power. The Panel could hire its own independent investigator to operate outside of the IAB structure. Or the Panel could even be empowered to conduct the entire investigation on its own (this is the broadest and most radical option, and the Panel *does not* make this recommendation, *see* Four-Year Review Panel Recommendations, *supra*).

Another option short of granting the Panel investigatory authority, is to allow the Panel to monitor certain investigations. This would be similar to the authority given to the IPA in use of force investigations. For example, the Panel's Executive Director could observe interviews and have access to data and other investigative material as it is being analyzed. During the investigation, the ED could suggest additional areas of investigation. For instance, the Panel has requested additional investigation in several Complaints of racial bias; providing the ED with monitoring ability could ensure that the investigation is more systematic before it even reaches the Panel.

Yet another option is that the Panel could create procedures – in consultation with the FCPD or on its own – to standardize investigations and Investigation Reports. The Panel could exercise some limited “investigatory” power by creating requirements for IAB Investigation Reports in advance. These could be developed given what the Panel has seen in prior investigations. And, indeed, this is what the Panel already does through its recommendations. Again, the Panel has repeatedly made recommendations for how the IAB should investigate Complaints concerning racial bias. Perhaps it is time for the Panel to make clear in advance what steps are necessary for an Investigation Report to meet its standards of completeness and thoroughness.

Fourth, whether or not the Panel is given investigatory power and no matter how large or how small that investigatory power is, the Panel must do a better job of outreach to the FCPD itself. The Panel is not and should be seen as an enemy by FCPD officers. Independent does not mean antagonistic. Absolutely crucial to the success of the Panel is that it can work with the FCPD. And in truth, the Panel's goals and the FCPD's goals directly align. Indeed, a purpose of the Panel is to enhance police legitimacy through transparency. We are confident that FCPD officers recognize that their jobs are easier with improved community trust.

The Panel has worked hard to improve its relationship with FCPD leadership, but it needs to go farther. Just as the Panel conducts outreach to the broader community, it needs to conduct outreach to the rank and file. The Panel needs to know and understand how the FCPD rank and file perceives its business and the rank and file need to know the members of the Panel.

Fifth, little evidence exists that many Fairfax residents are even aware of the Panel's existence. This is not for lack of trying. Members of the Panel have met with numerous community groups. But

this simply has not gone far enough. The Panel needs to find ways to be more creative in its outreach efforts in the future. It has appeared on local access television, for instance, but perhaps the Panel needs to be thinking bigger.

Sixth, and related to what was discussed above, as the volume of Complaints grows and the Panel becomes more experienced, the Panel needs to find ways to better systematize its review. It needs to create the “objective” and “impartial” criteria so that the IAB understands what is necessary for an Investigation Report to be sufficient to pass muster.

Finally, the Panel still struggles with the question of training. The Panel needs to develop standardized training procedures for all new members and a standard training schedule with requirements for training to be completed each year by every Panel Member. These standards should be made public.

SPECIFIC RECOMMENDATIONS

- 1) **The Panel should be empowered to hire a full-time Executive Director (ED) with some investigatory experience.** The Panel needs a full-time, dedicated staff member to handle administrative aspects of the Panel and assist the Panel in its reviews, Review Reports, and Annual Reports. The ED ideally should be an individual with some investigatory experience. The ED should also have access to the Investigation Reports and be authorized to draft Review Reports and other reports. The ED should also help organize and assist the Panel in its public outreach opportunities. Like the Independent Police Auditor, the ED should report directly to the Board of Supervisors and supervise administrative staff that assists the Panel.
- 2) **The Panel's Executive Director should be authorized to monitor FCPD investigations of racial bias or profiling from the onset of the investigation, whether or not an initial complaint has been filed with the Panel.** During such monitoring, the ED may observe interviews and have access to evidence. The ED may suggest that the FCPD conduct additional interviews or further inquiries and data analysis during the investigation. Such monitoring would be consistent with that afforded by the Board of Supervisors to the IPA.
- 3) **The Panel should be given electronic access to redacted Investigation Reports.** A new policy should be adopted by the Board of Supervisors, in consultation with the County Attorney and the FCPD, that allows Panel Members to have electronic access to redacted Investigation Reports. The Panel is cognizant that the Chief of Police is the custodian of FCPD records, and that he has rejected similar Panel requests in the past. However, there is no legal impediment barring the Chief from heeding the Panel's reasonable request. Panel Members simply must be able to conveniently review investigative files outside of normal business hours and outside of a police station. A compromise proposal would be to allow the FCPD to redact all personnel information on records provided electronically and require Panel Members to appear in person at police headquarters to review unredacted versions. Panel Members would still be under the obligation not to disclose privileged information. Providing electronic access ensures: (1) greater accessibility and participation of community members who may not have the resources to volunteer on a Board and travel regularly to the FCPD headquarters and (2) ensures the safety of all parties involved by reducing in person encounters during a pandemic and post-pandemic environment.
- 4) **The Panel should codify in its bylaws a "summary judgment"-like process for disposing of wholly unfounded complaints at the Subcommittee level.** At a minimum, the Bylaws should reflect that the Subcommittee must find the Complaint to be objectively qualified for review. Toward that end, the Panel should formally adopt a four-step process for initial reviews of complaints, and this process must be explicitly stated in amendments to the Bylaws. First, the Subcommittee should determine whether the allegations of the complaint constitute allegations of a serious misconduct or an abuse of authority. Second, if yes, the Subcommittee should determine whether the Investigation Report reveals *any* observable substantiation of the allegations of serious misconduct or an abuse of authority in the complaint. This should be an exacting standard and a sufficiently high bar to avoid the early disposition of not wholly unfounded complaints. Further, this should apply only to the allegations that meet the threshold of serious misconduct or an abuse of authority. If there is *any* observable substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should recommend that the full Panel take up review. Third, if the Subcommittee finds no substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should consider whether there is *any* reason to believe that the

Investigation Report is not complete, thorough, accurate, objective, and impartial. Finally, the Subcommittee should present its findings to the entire Panel for a vote as to whether the Panel should review the Complaint. Thus, there is always a failsafe in that the Panel must make the ultimate determination whether or not to undertake a review.¹⁸

- 5) **The Panel should be authorized, at its discretion, to conduct a review of a completed FCPD investigation of an initial complaint concerning racial bias or profiling without first receiving a Request for Review from the Complainant.** Complaints concerning racial bias seemingly are of particular importance to county residents and thus should all be treated as ripe for independent oversight.
- 6) **The Panel should be given limited investigatory power including the ability to interview and subpoena the Complainant and up to three key witnesses upon the request of six Panel members.** Without full professionalization of the Panel, it cannot be a fully investigatory body. But the Panel would be well-served by having some investigatory powers that allow it to take investigative action wholly independently from the IAB. One idea is to grant the Panel through the Executive Director the ability to conduct witness interviews (and by extension to grant the Panel some subpoena power) but limit the number of interviews that the Panel undertakes. Moreover, such interviews would be discretionary – if the Panel is confident that the Investigation Report as compiled meets its standards, it need not go forward with additional investigation. If the Panel is allowed to choose to conduct its own interview of the Complainant and up to three key witnesses free of IAB involvement, the Panel can demonstrate its independence to the community and to the Complainants themselves, many of whom are skeptical that a wholly police-driven investigation can truly be impartial and objective
- 7) **The Panel’s Options for its Review Findings should be expanded and modified.** The Panel should be given five options:
 - a. The Panel can concur with the findings of the FCPD and confirm that the conclusions of the Investigation Report are correct, and that the Investigation was sufficiently thorough, impartial, and objective so as to allow for the conclusion made.
 - b. The Panel can request additional investigation from the FCPD and the FCPD shall within a reasonable time conduct further investigation and provide the Panel with a supplemental report that details the findings of the additional investigation.
 - c. The Panel can exercise the opportunity to conduct its own additional investigation, including interviewing the Complainant and up to three key witnesses using its limited subpoena power.
 - d. The Panel can inform the Board of Supervisors that in the opinion of the Panel, the conclusions of the Investigation Report are incorrect and/or that the investigation is insufficiently thorough, impartial, and objective. so as to allow for an alternative conclusion.
 - e. The Panel can inform the Board of Supervisors about how it would have resolved the investigation.

¹⁸ Alternatively, the Board of Supervisors could revisit the Action Item and provide the authority to individual Panelists on a rotating basis to make summary determinations (based on an established criteria). This would allow the Panel as a whole to ensure timeliness in its disposition of complaints.

- 8) **The Panel should consider specific definitions for the terms “correct,” “thorough,” “impartial,” and “objective” that are well defined and understood in the same manner by all members of the Panel.** The specific definitions could be added to the Panel’s Bylaws upon approval by the Board of Supervisors.
- 9) **The Panel should invite rank-and-file FCPD officers to a forum (or to multiple forums) where FCPD officers can ask Panel Members questions and make comments.** The Panel should commit to increasing its interactions with the FCPD rank-and-file and should make itself available for meetings with officers present to ask questions and make comments at least once a year.
- 10) **The Panel should commit to twice-a-year public forums (or more) where members of the public can ask Panel Members questions and make comments.** The Panel should commit to increasing its community outreach opportunities and conducting at least two public forums each year. The Panel should make an effort to have at least one of these public forums covered by the press.
- 11) **The Panel should have an annual training session conducted by the FCPD in which the Panel learns about FCPD policies and procedures.** The content of the training should be developed in consultation with the FCPD.

ACKNOWLEDGEMENTS

The Panel wishes to thank the many individuals who have helped to make the Panel successful over the last four years. First, the work of the Panel Members who have served since the Panel's inception deserve recognition for their substantial time commitment to the work. *See* Appendix J (Panelist Biographies). A special thanks goes to the inaugural Panel, who wrote the Panel's Bylaws and implemented the vision for the Panel that was set forth in the Action Item adopted by the Board of Supervisors. The Inaugural Panel Members were: Hansel Aguilar, Kathleen Davis-Siudut, Steve Descano, Hollye Doane, Douglas Kay, Randy Sayles, Jean Senseman, Adrian Steel, and Rhonda VanLowe.

Of those inaugural Panel Members, a special recognition goes to Adrian Steel and Randy Sayles. Mr. Steel's passion for the Panel pre-dated its creation. As a member of the Ad-hoc Commission that recommended the establishment of the Panel, he helped form the Panel's structure and mission. Then he steered the Panel through its first year as chairman. Even though he has left the Panel, he remains ever the visionary, regularly prodding Panel Members to always be transparent and listen to the concerns of the community.

Mr. Sayles also served on the Ad-hoc Commission and was in many ways the conscience of the early Panel. He brought a unique perspective as a former Marine, law enforcement officer, and a person of color who had personally experienced the pain of racial bias in an encounter with a police officer. Sadly, Mr. Sayles passed away in 2019, but his time on the Panel left a lasting legacy.

As the years passed, new members of the Panel contributed their unique talents: Colonel Gregory Gadson, Anna Northcutt, Robert Cluck, Shirley Norman-Taylor, James Bierman, Frank Gallagher and Sris Sriskandarajah. A special thank you to Mr. Bierman, who undertook the effort to research and draft much of this Four-Year-Review, and to Mr. Aguilar who assisted in the drafting and the interviews with Panel Members. The history compiled for this review will serve the Panel and others interested in its work for years to come.

Special thanks also go to the four chairpersons who have led the Panel over the last four years: Chairs Steel, VanLowe, Kay and Doane. Each of these Chairs faced challenges that were unique to their tenures. Chair VanLowe successfully crafted the necessary procedures that the Panel depends upon to conduct its daily business. Chair Kay successfully advocated for changes to the Action Item that allows the Panel more freedom to discuss and report on the details of police investigations. Chair Doane confronted the dual challenges of reviewing investigations and conducting public outreach during a pandemic, and at a time when police oversight and accountability were central topics in a nationwide conversation on race and policing.

The Panel could not have conducted any of its business if it hadn't had the administrative support of the Office of the Independent Police Auditor. Independent Police Auditor Richard Schott has been both a friend and supervisor to the administrative staff that handles the day-to-day work of the Panel. Gentry Anderson performed admirably, not only handling the processing of complaints, subcommittee meetings, panel review meetings, and freedom of information requests, but also going "beyond the call" to help Panel Members with computer problems and to serve as a reservoir of knowledge regarding the procedures of the Panel. And truthfully, this Four-Year Review was largely dependent on Ms. Anderson's detailed meeting minutes. Rachele Ramirez has capably stepped in to provide support to the Panel in the wake of Ms. Anderson's departure, juggling both her responsibilities

to the Independent Police Auditor and now to the Panel. She has performed both duties while working from home during the pandemic.

The Panel could also not do its job without the cooperation of the FCPD, and particularly the Internal Affairs Bureau. A special thank you goes to Lt. Col. Gun Lee, who was head of the IAB during the Panel's first year. His support during this formative time was critical to the Panel's success. Chief Roessler's support of civilian oversight has also been extremely important to the Panel's success, and the Panel owes him a debt of gratitude. Special thank yous are also appropriate for Major Gervais Reed, Major Matt Owens, Major Tonny Kim, Captain Alan Hanson and Major Dean Lay, all of whom have led the IAB admirably throughout the history of the Panel.

The on-going support of the Board of Supervisors has also been critical. Chairman Sharon Bulova and Supervisor John Cook deserve special recognition for their strong commitment to the Panel, even when there were voices in the county and state that advised against the establishment of civilian oversight of police. Their leadership and confidence in the Panel's ability to learn from its mistakes saw the Panel through some difficult challenges. The current Board of Supervisors also deserves recognition for their support and willingness to listen to the Panel's needs and make needed changes. The support of Chairman McKay and Supervisor Lusk has been unwavering.

Lastly, the Panel thanks the community for supporting the Panel's work. Without the support of the various stakeholder groups and community members, the Panel could not be effective. During the last year when racial tensions in the community were high, the Panel's interaction with leaders in the Fairfax NAACP, ACLU People Power Fairfax, and many other groups helped provide the Panel with the insights it needed to better review investigations and make policy recommendations. Listening to the community is one of the most important functions of the Panel.

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APPENDIX A

(Authorizing Action Item and Revisions)

APPENDIX A.1

ACTION – 17

Establishment of a Police Civilian Review Panel, as Recommended by the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission

ISSUE:

Board of Supervisors approval of the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish a Police Civilian Review Panel (“the Panel”), reporting to the Board of Supervisors (“Board”), for the purpose of building and maintaining public trust between the Police Department, the Board of the Supervisors and the public, and police legitimacy. The Civilian Review Panel will request and review completed Police Department internal administrative investigations of civilian complaints concerning allegations of abuse of authority and serious misconduct.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors establish a Civilian Review Panel based on recommendations of the Ad Hoc Police Practices Review Commission, as modified.

TIMING:

Board action is requested on December 6, 2016, so the Board can move forward with establishment and implementation.

BACKGROUND:

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Board on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes to help the Board and the Police Department achieve the goals of maintaining a safe community, ensuring a culture of public trust, providing for the fair and timely resolution of police-involved incidents and information release, and reviewing Crisis Intervention Training (CIT) and police responses for cases involving mental health.

On October 20, 2015, the Ad Hoc Police Practices Review Commission submitted its final report and recommendations to the Board of Supervisors. On November 17, 2015, the Board of Supervisors approved a process for assigning, prioritizing, reviewing, tracking, and considering the 202 Commission recommendations.

On November 17, 2015, the Board also directed an annual report and a final summary report on the status and implementation of all of the Commission's recommendations. The first annual report shall be presented to the Board by December 13, 2016.

This Action Item is specifically related to the implementation and furtherance of the recommendations of the Independent Oversight and Investigations Subcommittee for the establishment and scope of a police Civilian Review Panel, consistent with the presentations and discussion at the October 25, 2016, Public Safety Committee meeting and other meetings and presentations.

Fundamental to the recommendations of the Independent Oversight and Investigations Subcommittee is that the Board adopt recommended changes, consistent with the Code of the Commonwealth of Virginia and County policies, that will help the County achieve its goals of maintaining a safe community, enhancing a culture of public trust, and ensuring that policies provide for the fair and timely resolution of police-involved incidents. These recommendations are aimed at building and maintaining public trust in the Police Department and its officers by the establishment of a Police Civilian Review Panel, a function in line with the recommendations of the Final Report of the President's Task Force on 21st Century Policing, May 2015. Recommendation 2.8 of that report states, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

Commission Recommendation

In its final report, the Commission's Independent Oversight and Investigations Subcommittee made 24 overall recommendations. Seven of those recommendations, numbers 18 – 24 as in the Commission report, were specific to the establishment of the Police Civilian Review Panel and its scope and are listed below as presented in the report:

- 18) Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct.
 - a) Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
 - b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
 - c) Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or

criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).

d) The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.

19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

a) "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.

b) The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.

c) Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.

a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.

b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

- 21) The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review.
 - a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.

- 22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.

- 23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.

- 24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.

- 25) The Board has the right to review the workload of the Citizen Review Panel and make any necessary adjustments.

These recommendations are also listed on the Ad Hoc Police Practices Review commission Report Recommendations Assignment and Tracking Spreadsheet (Attachment 1) as IOV&I (Independent Oversight & Investigations) 18 through 24, inclusive.

Recommended Action by the Board of Supervisors

Based on a review of the Commission recommendations, Board discussion, staff review, and legal review, it is recommended that the Board establish a Civilian Review Panel, based on the recommendations of the Ad Hoc Commission, with modifications as outlined in this Action Item.

a. Composition of the Panel (Recommendation 18)

Panel members shall be appointed by the Board of Supervisors for terms of three (3) years. Panel members will serve at the pleasure of the Board. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel, with the exception of the first Chair, who shall be appointed by the Board of Supervisors.

The Panel shall be composed of nine (9) members, and each should be a resident residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.

The Board of Supervisors shall seek to create an independent and fair body for the Panel. The Board of Supervisors shall consider the following factors, among others it may choose, in appointing members of the Panel: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current employee of Fairfax County, a current or former member of the Fairfax County Police Department or the Fairfax County Sheriff's Office, have a relative (i.e., an immediate or extended family member) who is a member of FCPD or FCSO, hold public office, or be a candidate for public office. At least one (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD or FSO).

In order to assist it in appointing a Panel representing the full diversity of Fairfax County, the Board of Supervisors shall invite organizations and individuals to nominate candidates for the Panel to the Board. The Board may ask business, civic, civil rights, legal, and other organizations to nominate candidates. The Board shall also accept into the pool of candidates self-nominated individuals.

The Board of Supervisors shall select Panel members from those nominated by considering those factors set forth in this Action Item, and any other factors that the Board deems appropriate.

The Office of the Police Auditor shall provide staff support to the Panel. Panel members shall complete recommended trainings to be determined.

b. Jurisdiction and Process (Recommendation 19)

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

- 1) "Abuse of authority" and "serious misconduct" shall be defined by the Panel in its bylaws and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
- 2) The Panel shall refer any Complaint within its scope that it receives to the FCPD for review and handling, including any necessary investigation.
- 3) Absent good cause, the Panel shall not consider any Complaint filed more than one (1) year after the date of the incident that is the subject of the Complaint, nor regarding any incident that occurred prior to the passage of this Action Item establishing the Panel. The Panel shall not consider any Request for Review of any investigation of any incident that occurred prior to the passage of this Action Item.
- 4) Any Request for Review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

All Complaints to and Requests for Review by the Panel of a completed FCPD investigation shall be in writing. Requests for Review shall state the specific reason(s) for the request. Upon receiving a Complaint or Request for Review, the Panel shall determine if the Complaint or Request concerns matters which are the subject of pending criminal proceedings or pending or anticipated civil proceedings. If it does, then the Panel shall defer the matter pending resolution of the criminal or civil proceedings. The Panel shall notify the Complainant and the Board of Supervisors, in writing, of any such deferrals. The Panel may request the assistance of Counsel, the Auditor, or the Chief of Police, or the County Attorney in making its determination. The Panel shall track any deferred matter and notify the complainant and the Board once the criminal or civil proceedings are closed and the request for review may proceed.

For any Complaint filed with the Panel and sent to the FCPD for investigation, the FCPD shall provide a report back to the Panel within sixty (60) days with respect to its review and handling of the complaint. The Panel shall provide an extension if requested by the Chief of Police in order to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice also provided to the complainant and the Board of Supervisors. Absent good cause provided by the Police Department for production of the report within a reasonable time period, the Panel may report any delay in the handling of the matter to the Board of Supervisors. The Board may direct the Chief of Police to ensure completion of the investigation, or to report on the reasons for delay and an expected completion date.

If the complainant is not satisfied with the Police Department's investigation or findings for any allegation made within the scope of the Panel, the complainant may then request a Panel review of the completed Police Department internal administrative investigation.

c. Timing and Meetings (Recommendation 20)

Absent good cause, for any request for review, within forty-five (45) days of receipt of the completed police department internal administrative investigation, the Panel may, at its discretion, schedule a public meeting to review the FCPD investigation. The Panel shall send notification of the date and time of the meeting to Panel members, Police Department Internal Affairs Office, the County Attorney's Office, and the complainant. The meeting shall be noticed on the County's Public Meetings Calendar and otherwise advertised as appropriate.

At any meeting held to review an investigation, the Panel shall not take testimony or receive factual evidence of the underlying matter that is the subject of the investigation. However, the complainant shall have the opportunity to state his or her reason(s) for the request for review, and the Panel may ask questions of the complainant as to those reasons. Upon completion of the complainant's statement, the Police Department representative(s) knowledgeable of the investigation shall review and answer questions from the Panel about its investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not, subject to the following limitations:

1. The statement of any police officer required by the Department to give a statement under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967) shall not be disclosed in public. The Panel shall have confidential access to the entire statement for the purpose of its review. The Police Department representative(s) presenting information to the Panel may publicly state only that the officer admitted or denied the allegation, unless the officer consents to the public release of the entire statement.
2. The Panel may convene in private to deliberate; however, any deliberations by the Panel which do not address the alleged improper conduct or performance of duties of an officer shall be conducted in an open public meeting. Neither the police department representative, nor any Panel member shall reveal the identity of any victim of sexual assault, unless authorized to do so by the victim, or of any juvenile.

The County Executive or his/her designee shall require the attendance of any County employee, other than the involved officer(s), whose appearance is requested by the Panel unless such required attendance violates any statutory or constitutional right of the employee. The County Executive shall also require the submission of any relevant documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived. At the Panel's discretion, further investigation by the Police Department may be requested and the Police Department shall conduct such further investigation and provide a supplemental public report to the Panel with respect to the further investigation.

During the Panel's review of a completed FDPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigative case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia § 16.1-301, or any successor provision.

Panel review meetings shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition schedule.

The Panel shall draft Bylaws to govern more specifically its functions. Such bylaws, and any amendments thereto, must be approved by the Board of Supervisors before taking effect.

d. Panel findings (Recommendation 21)

The Panel review of the investigation shall be completed and a public written report issued within 60 days of the filing of a request for review unless good cause exists for an extension, such as a delay due to a pending criminal or internal administrative investigation or the unavailability of a key witness. A delay and the cause shall be reported to the Board of Supervisors.

Upon completion of its review, the Panel, in its findings, may:

1. Concur with the findings and determination of the Police Department investigation.
2. Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the Police Department and recommend further review and consideration by the Chief of Police.
3. Advise the Board of Supervisors that in its judgment the investigation is incomplete and recommend additional investigation.
4. Conclude that the complaint is not appropriate for review by the Panel.

Upon a finding by the Panel under provisions 2 and 3, the Board may direct the Chief of Police to take further action as it deems appropriate.

e. Panel reports (Recommendation 22)

The Panel shall issue an annual written report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors, Auditor, and the Chief of Police, including any recommendations for revisions to FCPD policies, training, and practices that the Panel concludes are needed. These annual reports shall be delivered to the Board through the Auditor and the Chair of the Board's Public Safety Committee, and then released to the public.

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The Panel shall have the authority to conduct public meetings on issues within its jurisdiction and on law enforcement policies and practices to assist it in making recommendations for policy and practice changes to the Chief of Police and the Board of Supervisors. The Panel may meet periodically with the Independent Police Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide its view to the Board of Supervisors and the Chief of Police as to policy and practice changes that may be warranted.

The Board may conduct a review of the Civilian Review Panel at any time in the future, but to ensure a timely assessment of this important measure and to make any desired or needed procedural or other changes one shall be conducted within six months of receipt of the Panel's first annual report. This would allow sufficient time to select and train members, draft and approve bylaws, conduct some reviews, and present the first annual report.

FISCAL IMPACT:

The Civilian Review Panel will be supported primarily by staff of the Office of Independent Police Auditor. Other associated costs will primarily include as of yet undetermined Police Department and County Attorney's Office, independent counsel, staff time and any required materials and supplies for the Panel.

ENCLOSED:

Attachment 1: Ad Hoc Police Practices Review Commission Report Recommendations Assignment and Tracking Spreadsheet

STAFF:

David M. Rohrer, Deputy County Executive
Colonel Edwin C. Roessler Jr., Chief of Police

APPENDIX A.2

Board Agenda Item
September 24, 2019

ACTION - 17

Approval of Amendments and Revisions to Action Item 17, Establishment of a Police Civilian Review Panel, Approved by the Fairfax County Board of Supervisors on December 6, 2016

ISSUE:

To approve amendments and revisions to the December 6, 2016 Action Item 17, which established the Police Civilian Review Panel (Panel), to allow for greater transparency when the Panel issues public Review Reports; and, to approve a revision to clarify that the Panel cannot review an employee grievance or complaint made by a Fairfax County employee arising out of an incident or conduct occurring during the course and scope of that employee's employment.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve these amendments and revisions to the December 6, 2016, Action Item which established the Panel.

TIMING:

Board action is requested on September 24, 2019, so that, effective immediately, future public Review Reports issued by the Panel can contain more factual details and, therefore, provide more transparency to the public; and, so that no employee grievance or complaint will be reviewed by the Panel. The Panel will also amend and submit its Bylaws for approval by the Board as required.

BACKGROUND:

The Board approved the establishment of the Panel on December 6, 2016. The Board established the Panel for the purposes of building and maintaining public trust between the Fairfax County Police Department (FCPD), the Board, and the public, and to enhance police legitimacy. To help achieve these purposes, the Panel is required to complete a public written report of each review it conducts. However, the Action Item (c. Timing and Meetings (Recommendation 20)) establishing the Panel contains the following provision:

During the Panel's review of a completed FCPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting

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September 24, 2019

discipline or a Police Department internal administrative investigation case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and

case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia §16.1-301, or any successor provision.

The Panel has discovered that the limitation on disclosing any information in the administrative investigation case file severely limits its ability to provide relevant information in its public written reports. To increase transparency, thereby building and maintaining trust and enhancing police legitimacy, a revision should be made so that the aforementioned provision reads as follows:

~~During the Panel's review of a completed FCPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigation case file,~~
Each Panel member who is provided the opportunity to review that an officer's personnel record or an investigative case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's---- license number, agency-issued identification number, student identification number, criminal or employment record shall not be disclosed nor shall copies be provided to the public or disseminated, 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.

In addition, portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such 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.

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If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia §16.1-301, or any successor provision.

A second change to the December 6, 2016, Action Item creating the Panel is needed to clarify that the Panel cannot review an employee grievance or complaint made by a Fairfax County employee arising out of the course and scope of employment. Currently,

the Action Item (b. Jurisdiction and Process (Recommendation 19)) describing the Panel's authority to receive a complaint or conduct a review of a completed investigation reads as follows:

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

In addition, the Action Item also requires the Panel to defer their review of a matter if the matter is the subject of any pending criminal proceeding or any pending or anticipated civil proceeding. However, there is no similar explicit restriction on the Panel reviewing a matter that constitutes an employee complaint or grievance. When the Panel received a Complaint from an FCPD employee (an Animal Protection Police Officer) alleging an "abuse of authority" or "serious misconduct" by his supervisor, also a Fairfax County employee (an Animal Protection Police Officer), the FCPD advised that it considered the matter to be a personnel matter.

General Order 301, Internal Investigations, and Fairfax County Personnel Regulation Chapter 17, Grievance Procedure, state in part:

The purpose of the grievance procedure is to provide a fair, detailed process whereby employees may voice complaints concerning issues related to their personal employment experience and/or circumstance within the County. The

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objective is to improve employee-management relations through a prompt and fair method of resolving problems.

Based on these provisions and the grievance process already in place, language prohibiting the Panel from reviewing employment grievances should be added to the December 6, 2016, Action Item 17 (b. Jurisdiction and Process (Recommendation 19)), creating the Panel, so that it reads:

The Panel shall have jurisdiction to review complaints of “abuse of authority” or “serious misconduct” by a Fairfax County Police Officer. The Panel shall define “abuse of authority” and “serious misconduct” in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor. The Panel does not have the authority to hear any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1: December 6, 2016, Board item - Action 17

STAFF:
David M. Rohrer, Deputy County Executive
Richard Schott, Independent Police Auditor, Office of the Independent Police Auditor

ASSIGNED COUNSEL:
Julia Judkins, Panel Counsel

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ACTION – 17

Establishment of a Police Civilian Review Panel, as Recommended by the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission

ISSUE:

Board of Supervisors approval of the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish a Police Civilian Review Panel (“the Panel”), reporting to the Board of Supervisors (“Board”), for the purpose of building and maintaining public trust between the Police Department, the Board of the Supervisors and the public, and police legitimacy. The Civilian Review Panel will request and review completed Police Department internal administrative investigations of civilian complaints concerning allegations of abuse of authority and serious misconduct.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors establish a Civilian Review Panel based on recommendations of the Ad Hoc Police Practices Review Commission, as modified.

TIMING:

Board action is requested on December 6, 2016, so the Board can move forward with establishment and implementation.

BACKGROUND:

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Board on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes to help the Board and the Police Department achieve the goals of maintaining a safe community, ensuring a culture of public trust, providing for the fair and timely resolution of police-involved incidents and information release, and reviewing Crisis Intervention Training (CIT) and police responses for cases involving mental health.

On October 20, 2015, the Ad Hoc Police Practices Review Commission submitted its final report and recommendations to the Board of Supervisors. On November 17, 2015, the Board of Supervisors approved a process for assigning, prioritizing, reviewing, tracking, and considering the 202 Commission recommendations.

On November 17, 2015, the Board also directed an annual report and a final summary report on the status and implementation of all of the Commission's recommendations. The first annual report shall be presented to the Board by December 13, 2016.

This Action Item is specifically related to the implementation and furtherance of the recommendations of the Independent Oversight and Investigations Subcommittee for the establishment and scope of a police Civilian Review Panel, consistent with the presentations and discussion at the October 25, 2016, Public Safety Committee meeting and other meetings and presentations.

Fundamental to the recommendations of the Independent Oversight and Investigations Subcommittee is that the Board adopt recommended changes, consistent with the Code of the Commonwealth of Virginia and County policies, that will help the County achieve its goals of maintaining a safe community, enhancing a culture of public trust, and ensuring that policies provide for the fair and timely resolution of police-involved incidents. These recommendations are aimed at building and maintaining public trust in the Police Department and its officers by the establishment of a Police Civilian Review Panel, a function in line with the recommendations of the Final Report of the President's Task Force on 21st Century Policing, May 2015. Recommendation 2.8 of that report states, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

Commission Recommendation

In its final report, the Commission's Independent Oversight and Investigations Subcommittee made 24 overall recommendations. Seven of those recommendations, numbers 18 – 24 as in the Commission report, were specific to the establishment of the Police Civilian Review Panel and its scope and are listed below as presented in the report:

- 18) Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct.
 - a) Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
 - b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
 - c) Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or

criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).

d) The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.

19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

a) "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.

b) The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.

c) Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.

a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.

b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

- 21) The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review.
 - a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
- 22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.
- 23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.
- 24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.
- 25) The Board has the right to review the workload of the Citizen Review Panel and make any necessary adjustments.

These recommendations are also listed on the Ad Hoc Police Practices Review commission Report Recommendations Assignment and Tracking Spreadsheet (Attachment 1) as IOV&I (Independent Oversight & Investigations) 18 through 24, inclusive.

Recommended Action by the Board of Supervisors

Based on a review of the Commission recommendations, Board discussion, staff review, and legal review, it is recommended that the Board establish a Civilian Review Panel, based on the recommendations of the Ad Hoc Commission, with modifications as outlined in this Action Item.

a. Composition of the Panel (Recommendation 18)

Panel members shall be appointed by the Board of Supervisors for terms of three (3) years. Panel members will serve at the pleasure of the Board. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel, with the exception of the first Chair, who shall be appointed by the Board of Supervisors.

The Panel shall be composed of nine (9) members, and each should be a resident residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.

The Board of Supervisors shall seek to create an independent and fair body for the Panel. The Board of Supervisors shall consider the following factors, among others it may choose, in appointing members of the Panel: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current employee of Fairfax County, a current or former member of the Fairfax County Police Department or the Fairfax County Sheriff's Office, have a relative (i.e., an immediate or extended family member) who is a member of FCPD or FCSO, hold public office, or be a candidate for public office. At least one (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD or FSO).

In order to assist it in appointing a Panel representing the full diversity of Fairfax County, the Board of Supervisors shall invite organizations and individuals to nominate candidates for the Panel to the Board. The Board may ask business, civic, civil rights, legal, and other organizations to nominate candidates. The Board shall also accept into the pool of candidates self-nominated individuals.

The Board of Supervisors shall select Panel members from those nominated by considering those factors set forth in this Action Item, and any other factors that the Board deems appropriate.

The Office of the Police Auditor shall provide staff support to the Panel. Panel members shall complete recommended trainings to be determined.

b. Jurisdiction and Process (Recommendation 19)

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

- 1) "Abuse of authority" and "serious misconduct" shall be defined by the Panel in its bylaws and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
- 2) The Panel shall refer any Complaint within its scope that it receives to the FCPD for review and handling, including any necessary investigation.
- 3) Absent good cause, the Panel shall not consider any Complaint filed more than one (1) year after the date of the incident that is the subject of the Complaint, nor regarding any incident that occurred prior to the passage of this Action Item establishing the Panel. The Panel shall not consider any Request for Review of any investigation of any incident that occurred prior to the passage of this Action Item.
- 4) Any Request for Review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

All Complaints to and Requests for Review by the Panel of a completed FCPD investigation shall be in writing. Requests for Review shall state the specific reason(s) for the request. Upon receiving a Complaint or Request for Review, the Panel shall determine if the Complaint or Request concerns matters which are the subject of pending criminal proceedings or pending or anticipated civil proceedings. If it does, then the Panel shall defer the matter pending resolution of the criminal or civil proceedings. The Panel shall notify the Complainant and the Board of Supervisors, in writing, of any such deferrals. The Panel may request the assistance of Counsel, the Auditor, or the Chief of Police, or the County Attorney in making its determination. The Panel shall track any deferred matter and notify the complainant and the Board once the criminal or civil proceedings are closed and the request for review may proceed.

For any Complaint filed with the Panel and sent to the FCPD for investigation, the FCPD shall provide a report back to the Panel within sixty (60) days with respect to its review and handling of the complaint. The Panel shall provide an extension if requested by the Chief of Police in order to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice also provided to the complainant and the Board of Supervisors. Absent good cause provided by the Police Department for production of the report within a reasonable time period, the Panel may report any delay in the handling of the matter to the Board of Supervisors. The Board may direct the Chief of Police to ensure completion of the investigation, or to report on the reasons for delay and an expected completion date.

If the complainant is not satisfied with the Police Department's investigation or findings for any allegation made within the scope of the Panel, the complainant may then request a Panel review of the completed Police Department internal administrative investigation.

c. Timing and Meetings (Recommendation 20)

Absent good cause, for any request for review, within forty-five (45) days of receipt of the completed police department internal administrative investigation, the Panel may, at its discretion, schedule a public meeting to review the FCPD investigation. The Panel shall send notification of the date and time of the meeting to Panel members, Police Department Internal Affairs Office, the County Attorney's Office, and the complainant. The meeting shall be noticed on the County's Public Meetings Calendar and otherwise advertised as appropriate.

At any meeting held to review an investigation, the Panel shall not take testimony or receive factual evidence of the underlying matter that is the subject of the investigation. However, the complainant shall have the opportunity to state his or her reason(s) for the request for review, and the Panel may ask questions of the complainant as to those reasons. Upon completion of the complainant's statement, the Police Department representative(s) knowledgeable of the investigation shall review and answer questions from the Panel about its investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not, subject to the following limitations:

1. The statement of any police officer required by the Department to give a statement under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967) shall not be disclosed in public. The Panel shall have confidential access to the entire statement for the purpose of its review. The Police Department representative(s) presenting information to the Panel may publicly state only that the officer admitted or denied the allegation, unless the officer consents to the public release of the entire statement.
2. The Panel may convene in private to deliberate; however, any deliberations by the Panel which do not address the alleged improper conduct or performance of duties of an officer shall be conducted in an open public meeting. Neither the police department representative, nor any Panel member shall reveal the identity of any victim of sexual assault, unless authorized to do so by the victim, or of any juvenile.

The County Executive or his/her designee shall require the attendance of any County employee, other than the involved officer(s), whose appearance is requested by the Panel unless such required attendance violates any statutory or constitutional right of the employee. The County Executive shall also require the submission of any relevant documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived. At the Panel's discretion, further investigation by the Police Department may be requested and the Police Department shall conduct such further investigation and provide a supplemental public report to the Panel with respect to the further investigation.

During the Panel's review of a completed FDPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigative case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia § 16.1-301, or any successor provision.

Panel review meetings shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition schedule.

The Panel shall draft Bylaws to govern more specifically its functions. Such bylaws, and any amendments thereto, must be approved by the Board of Supervisors before taking effect.

d. Panel findings (Recommendation 21)

The Panel review of the investigation shall be completed and a public written report issued within 60 days of the filing of a request for review unless good cause exists for an extension, such as a delay due to a pending criminal or internal administrative investigation or the unavailability of a key witness. A delay and the cause shall be reported to the Board of Supervisors.

Upon completion of its review, the Panel, in its findings, may:

1. Concur with the findings and determination of the Police Department investigation.
2. Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the Police Department and recommend further review and consideration by the Chief of Police.
3. Advise the Board of Supervisors that in its judgment the investigation is incomplete and recommend additional investigation.
4. Conclude that the complaint is not appropriate for review by the Panel.

Upon a finding by the Panel under provisions 2 and 3, the Board may direct the Chief of Police to take further action as it deems appropriate.

e. Panel reports (Recommendation 22)

The Panel shall issue an annual written report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors, Auditor, and the Chief of Police, including any recommendations for revisions to FCPD policies, training, and practices that the Panel concludes are needed. These annual reports shall be delivered to the Board through the Auditor and the Chair of the Board's Public Safety Committee, and then released to the public.

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The Panel shall have the authority to conduct public meetings on issues within its jurisdiction and on law enforcement policies and practices to assist it in making recommendations for policy and practice changes to the Chief of Police and the Board of Supervisors. The Panel may meet periodically with the Independent Police Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide its view to the Board of Supervisors and the Chief of Police as to policy and practice changes that may be warranted.

The Board may conduct a review of the Civilian Review Panel at any time in the future, but to ensure a timely assessment of this important measure and to make any desired or needed procedural or other changes one shall be conducted within six months of receipt of the Panel's first annual report. This would allow sufficient time to select and train members, draft and approve bylaws, conduct some reviews, and present the first annual report.

FISCAL IMPACT:

The Civilian Review Panel will be supported primarily by staff of the Office of Independent Police Auditor. Other associated costs will primarily include as of yet undetermined Police Department and County Attorney's Office, independent counsel, staff time and any required materials and supplies for the Panel.

ENCLOSED:

Attachment 1: Ad Hoc Police Practices Review Commission Report Recommendations Assignment and Tracking Spreadsheet

STAFF:

David M. Rohrer, Deputy County Executive
Colonel Edwin C. Roessler Jr., Chief of Police

| AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET | | | | | | | | |
|--|------------------------|-------------|--|----------------------|---|--------------------------|--|--|
| NUMBER (original or assigned) | TOPIC | REPORT PAGE | RECOMMENDATION NARRATIVE | LEAD AGENCY / ENTITY | OTHER AGENCIES / STAKEHOLDERS | LINK PERF REPORT / CALEA | POTENTIAL LEGAL REVIEW / LEGISLATIVE CHANGE REQUIRED | APPROVING AUTHORITY (i.e., BOS, PD, CSB, etc.) |
| COMMUNICATIONS SUBCOMMITTEE | | | | | | | | |
| COMM - 1 | Timely Info Disclosure | 46 | Provide accurate, timely and actionable information (good or bad) using redundant forms of communication. | Police Dept. (PD) | Office of Public Affairs (OPA) | PERF #70 | | Police Dept. (PD) |
| COMM - 2 | Timely Info Disclosure | 46 | Adopt a "predisposition to disclose" approach with public records presumed to be public and exceptions strictly and narrowly construed. | PD | Co. Atty's Office, OPA | PERF #70 | | Board of Supervisors (BOS) |
| COMM - 3 | Timely Info Disclosure | 46 | Share and regularly update details of all officer-involved shootings in multiple ways; disclose not only facts, but also procedures and timing. | PD | Co. Atty's Office, OPA | PERF #70 | | BOS |
| COMM - 3a | Timely Info Disclosure | 46 | Provide the name of the officer(s) as soon as possible but preferably within a week. If a decision is made not to release the name within a week, publicly share specific information that illustrates the reason the name is being withheld. | PD | Co. Atty's Office, Commonwealth's Attorney's Office (CWA) | | | PD |
| COMM - 3b | Timely Info Disclosure | 47 | In cases where a suspect is deceased as a result of an officer-involved shooting, make available immediately upon FOIA request all body-camera, in-dash camera or audio recordings of responding officers to an incident. | PD | Co. Atty's Office, CWA, OPA, Dept. of Information Technology (DIT) | | Yes | BOS |
| COMM - 3c | Timely Info Disclosure | 47 | In officer-involved shootings where a suspect is shot but not deceased, provide a citizens' committee (a communications advisory committee appointed by either the Board of Supervisors or the Chief of Police to carry out this function) access to the recordings for a recommendation on release which should balance public and private interest. This committee's recommendation would be submitted to the Chief of Police who would factor it into a final decision. | PD | Co. Atty's Office, CWA, OPA | | Yes | BOS |
| COMM - 3d | Timely Info Disclosure | 47 | All digital recordings in officer-involved shooting investigations should be carefully preserved, and investigations should end with the public release of all digital recordings within 6 months of the incident. | PD | Co. Atty's Office, CWA, OPA | | Yes | BOS |
| COMM - 4 | Timely Info Disclosure | 47 | Annually report on the demographics of the subjects in all use-of-force incidents including race, gender, age, whether mental health status was a factor, previous involvement with FCPD and any other data. | PD | OPA, CSB | PERF #70 | Yes | PD |
| COMM - 5 | Timely Info Disclosure | 47 | Devote more effort to sharing day-to-day information of police activity with the public. Facilitate unfettered access to blotter-type information, to include a list of every incident and call with the basic who/what/when/where/how information. | PD | OPA, DIT | PERF #70 | | PD |
| COMM - 6 | Timely Info Disclosure | 47 | Include incident based reporting (IBR) categories of statistical crime information broken down by district stations and provided quarterly in accessible, comprehensive online reports. Provide quarterly information by district for all use-of-force and officer involved shootings, CIT calls for service, traffic and pedestrian accidents. | PD | OPA, DIT | | Yes | PD |
| COMM - 7 | Community Engagement | 47 | Embrace and practice increased, proactive community engagement. | PD | OPA | | | PD |
| COMM - 7a | Community Engagement | 47 | Communicate with key community leaders as soon as bad news breaks. | PD | OPA | | | PD |
| COMM - 7b | Community Engagement | 47 | Hold community meetings early and often. | PD | OPA | | | PD |
| COMM - 7c | Community Engagement | 48 | Continue cross-district command meetings to increase situational awareness, spot trends and provide a centralized forum to identify and coordinate responses to emerging community issues. | PD | | | | PD |
| COMM - 7d | Community Engagement | 48 | Create a "Community Engagement Team" within FCPD to respond to community concerns and manage programs that create community trust and engagement. The team members should be fluent in the language and knowledgeable of the customs of the particular community they serve, and the team should reflect the diversity of Fairfax County in order to best serve as liaisons between the community and FCPD. | PD | DMB | | | BOS |
| COMM - 8 | Community Engagement | 48 | Continue supporting Citizen Advisory Committees (CAC); Chief's Citizens Advisory Council; and Citizen's Police Academy (CPA) classes. | PD | Citizen Advisory Committees (CAC), Citizens Police Academy (CPA), OPA | | | PD |
| COMM - 8a | Community Engagement | 48 | Expand promotion of these valuable public forums. | PD | CACs, OPA | | | PD |
| COMM - 8b | Community Engagement | 48 | Improve and expand CAC and Chief's Citizens Advisory Council succession planning and online information. | PD | CACs, OPA | | | PD |
| COMM - 8c | Community Engagement | 48 | Increase the meeting frequency of the Chief's Citizens Advisory Council from four meetings per year to 10 monthly meetings to be in line with the 10 monthly CAC meetings. | PD | CACs | | | PD |

| AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET | | | | | | | | |
|--|----------------------------------|-------------|---|----------------------|-------------------------------------|--------------------------|--|--|
| NUMBER (original or assigned) | TOPIC | REPORT PAGE | RECOMMENDATION NARRATIVE | LEAD AGENCY / ENTITY | OTHER AGENCIES / STAKEHOLDERS | LINK PERF REPORT / CALEA | POTENTIAL LEGAL REVIEW / LEGISLATIVE CHANGE REQUIRED | APPROVING AUTHORITY (i.e., BOS, PD, CSB, etc.) |
| COMM - 8d | Community Engagement | 48 | The structure of the eight CACs and the Chief's Citizens Advisory Council should facilitate a two-way flow of information about police services. | PD | CACs | | | PD |
| COMM - 8e | Community Engagement | 48 | Expand the CPA program by offering a compact, three-hour version in addition to the current 10-session program and include in the CPA training the best practices and reports discussed at meetings of the Ad Hoc Police Practices Review Commission and subcommittee meetings. | PD | CPA | | | PD |
| COMM - 8f | Community Engagement | 48 | The CPA should be designed and structured to be understood by all in the diverse communities of Fairfax County. | PD | OPA | | | PD |
| COMM - 9 | Policies, Procedures & Personnel | 48 | Hire a civilian public information officer (a professional communicator knowledgeable of best communication practices and experienced in the practice and ethics of media and journalism) to lead the FCPD public information office, and have that position and function report directly to the Police Chief. | PD | Dept. of Human Resources (DHR), OPA | PERF #70 | | PD |
| COMM - 10 | Policies, Procedures & Personnel | 48 | Fund and employ 24/7 PIO staff in the central Public Information Office with additional PIO staff assigned to each district station. | PD | DMB | PERF #70 | | BOS |
| COMM - 11 | Policies, Procedures & Personnel | 48 | The Chief of Police should be the official spokesperson for officer-involved shootings. | PD | Co. Atty's Office | | Yes | PD |
| COMM - 12 | Policies, Procedures & Personnel | 48 | Develop a policy statement regarding FCPD PIO release of information for critical events to include the relationship with the Office of Public Affairs (OPA) and the process for a hand-off to OPA in certain situations. | PD | OPA, Co. Atty's Office | PERF #70 | | PD |
| COMM - 13 | Policies, Procedures & Personnel | 49 | FCPD should prioritize realignment of resources to ensure more transparency, and become the trusted and valued source of information for Fairfax County. | PD | | | | PD |
| COMM-14 | Policies, Procedures & Personnel | 49 | FCPD should develop a continuous process of information declassification, to ensure proactive information release for cases that are no longer active. | PD | Co. Atty's Office | | Yes | PD |
| COMM - 15 | Policies, Procedures & Personnel | 49 | Current FCPD policies overemphasize the media, FCPD should use its own platforms and tools to share information directly with the public. Policies should reflect the communications paradigm by promoting more community engagement and direct information dissemination to the community. | PD | OPA | | | PD |
| COMM - 16 | Policies, Procedures & Personnel | 49 | Shorten the current 6-20 month timeframe to internally investigate and close officer-involved shooting cases; throughout the investigation be responsive to questions and concerns from the public, news media, and elected officials. <u>It is recommended the Board of Supervisors take an active approach throughout the investigative stage by periodically requesting and receiving updates on such incidents in a public forum.</u> | PD | Co. Atty's Office, CWA | PERF #70 | Yes | BOS |
| COMM - 17 | Policies, Procedures & Personnel | 49 | Update policies (with the assistance of FCPD Community Engagement Team members) and mandate usage of plain language that is culturally appropriate for the diverse communities in Fairfax County to eradicate any perceived biases. | PD | OPA | | | PD |
| COMM - 18 | F.O.I.A. | 49 | The Board of Supervisors should publicly adopt a resolution (and forward it to the County's delegation in the General Assembly) to revisit FOIA laws with an eye toward expanding instead of limiting the public release of information related to police-involved shootings and other police practices and procedures. | BOS | PD, Co. Atty's Office, CWA, OPA | | Yes | BOS |
| COMM - 19 | F.O.I.A. | 49 | The County Executive should establish a countywide FOIA policy and procedure through issuance of a new procedural memorandum that would replace former County Executive Griffin's memo regarding FOIA compliance, which currently guides county staff. The new policy should encourage transparency and accountability by establishing a culture of disclosure. It should give guidance to all county staff custodians of public records to lean automatically toward releasing all public records upon request, changing the current practice of automatically withholding all exempt records. | Co. Atty's Office | County Executive's Office, OPA | | Yes | Co. Exec. |
| COMM - 20 | F.O.I.A. | 49 | Where possible, release police reports with redactions rather than creating a summary document. | PD | Co. Atty's Office, CWA, OPA | | Yes | PD |

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| COMM - 21 | F.O.I.A. | 50 | Develop FCPD administrative guidelines for FOIA, even in the absence of FOIA reform at the state level. | PD | Co. Atty's Office, OPA | | Yes | PD |
| COMM - 22 | F.O.I.A. | 50 | Move function and staff for responding to FOIA requests out of Internal Affairs and into the FCPD Public Information Office. | PD | Co. Atty's Office | | | PD |
| COMM - 23 | F.O.I.A. | 50 | Cease the blanket approach to FOIA requests; when records are withheld, an explanation should be provided without merely claiming exemption. | PD | Co. Atty's Office | | Yes | PD |
| COMM - 24 | Transparency | 50 | With goal of becoming a transparent and highly accountable police department, the Department should make proactive statements to the community it serves, communicating with the public on all aspects of police procedure, policy, and actions, particularly in an officer-involved shooting or other high-profile incident involving use of force. The use of numerous communications channels should be utilized to explain what happened, what is known at the time, what is revealed over time, and lessons learned and perspective after the fact. | PD | Co. Atty's Office, OPA, | | | PD |
| COMM - 25 | Transparency | 50 | Fairfax County should adopt the type of progressive release of information practices and policies that govern most states as FCPD's current practices on releasing information is not aligned with agencies located <u>outside</u> the Commonwealth of Virginia. | PD | Co. Atty's Office, all County agencies | | Yes | BOS |
| COMM - 26 | Transparency | 50 | Create and utilize written standards and criteria for the day-to-day release of information from FCPD PIO to standardize information flow/release, and to enhance professional communications, transparency, and accountability. | PD | Co. Atty's Office, OPA | | | PD |
| COMM - 27 | Transparency | 50 | Get "buy-in" and cooperation from all levels of the FCPD to improve communications and expand information release. | PD | | | | PD |
| COMM - 28 | Transparency | 50-51 | Basic requests for information should be addressed in a timely manner by openly providing routine information about incidents, activities, calls, investigations (internal and external) with unfettered public access. | PD | | PERF #70 | | PD |
| COMM - 29 | Transparency | 51 | Endorse and implement the recommendations of the final report of The President's Task Force on 21st Century Policing, dated May 2015, that are related to communications, which call for such actions as making all Department policies available for public review, clearly stating what types of information will be released, when and in what situation after serious incidents; communicating swiftly, openly and neutrally while complying with legal requirements related to confidentiality. | PD | OPA | | | PD |
| COMM - 30 | Transparency | 51 | Create a change management process to change the FCPD culture and facilitate the successful implementation of the improved policies. | PD | DHR | PERF #71 | | PD |
| COMM - 31 | Transparency | 51 | Endorse and implement communications-related recommendations contained in the report of the U.S. Conference of Mayors' Working Group of Mayors and Police Chiefs, "Strengthening Police-Community Relations in America's Cities." | PD | OPA | | | PD |
| COMM - 32 | Transparency | 51 | Endorse and implement communications-related recommendations from PERF's use-of-force policy and practice review of FCPD. | PD | OPA | PERF #70 | | PD |
| COMM - 33 | Open Data | 51 | Develop an open data policy to improve transparency; this will reduce the cost of responding to FOIA requests, since data and reports will be published online making FCPD more efficient and serving community needs more effectively. | PD | Co. Atty's Office, OPA, DIT | | Yes | PD |
| COMM - 34 | Open Data | 51 | Provide more specificity and detail in crime stats and information released by the district stations. | PD | Co. Atty's Office, DIT | PERF #70 | | PD |
| COMM - 35 | Open Data | 51 | Make all department policies and procedures available for public review online, updating them as needed. | PD | Co. Atty's Office | PERF #70 | Yes | PD |
| COMM - 36 | Moving Forward | 52 | The Board of Supervisors should publicly set dates for community forums to revisit the recommendations of the Ad Hoc Police Practices Review Commission and the progress made toward their implementation. These reviews should take place in April 2016, October 2016, April 2017 and annually thereafter. Other methods should also be used to update the public, possibly an online 'report card' that is continually updated. | Dep. Co. Exec. for Public Safety | PD, CSB, Sheriff's Office (SO), CWA, OPA | | | BOS |

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| COMM - 37 | Moving Forward | 52 | Recommends that this subcommittee continue its service beyond presentation of its final report, in order to meet with the PERF contractors conducting an independent review of the county's communications practices and review and comment on the PERF report and recommendations when they are finally submitted. | Dep. Co. Exec. for Public Safety | | | | Dep. Co. Exec. for Public Safety |
| COMM - 38 | Moving Forward | 52 | Anticipating a proposal for an independent citizen oversight group emerging from the Investigations and Oversight Subcommittee, it is recommended that any group established be mandated to provide robust communications in a transparent process that keeps the community informed and ensures a culture of public trust. | Dep. Co. Exec. for Public Safety | PD, OPA | | Yes | BOS |
| RECRUITMENT, DIVERSITY AND VETTING SUBCOMMITTEE | | | | | | | | |
| RD&V - 1 | Recruitment | 58 | Provide a referral incentive for employees who are successful in recruiting personnel into the Department. | PD | DHR, Co. Atty's Office, DMB | | | BOS |
| RD&V - 2 | Recruitment | 58 | Develop and implement a marketing plan for all programs and vacancies to include e-mail blasts to interfaith organizations and School Career Centers. | PD | OPA, NCS/Community Interfaith Coordination, Faith Communities in Action (FCIA), Fairfax County Public Schools (FCPS) | | | PD |
| RD&V - 3 | Recruitment | 58 | Expand the Explorer and Cadet programs to include a diverse pool of participants. | PD | DHR, FCPS | | | PD |
| RD&V - 4 | Recruitment | 58 | Enter into a Recruitment Agreement with all Cadets to include reimbursement of educational expenses for breach of contract. | PD | Co. Atty's Office, DHR, DMB | | Yes | BOS |
| RD&V - 5 | Recruitment | 58 | Collaborate and build recruitment-oriented partnerships with key segments of the Fairfax County community to further diversify both the applicant pool and workforce to more closely reflect the community. | PD | DHR, FCPS, Faith Communities in Action (FCIA) | | | PD |
| RD&V - 6 | Recruitment | 58 | Identify ways to reduce the time from application to hiring (includes staffing resources). | PD | DHR, DMB | | | BOS |
| RD&V - 7 | Recruitment | 58 | Formalize the selection process by putting certain standards and processes into writing. | PD | DHR, Co. Atty's Office | PERF #1 | Yes | PD |
| RD&V - 8 | Recruitment | 58 | Ensure written directives are kept up to date. | PD | | PERF #2 | | PD |
| RD&V - 9 | Recruitment | 58 | Create a diverse Selection Review Committee that includes community leaders. | PD | DHR, Co. Atty's Office | PERF #3 | Yes | PD |
| RD&V - 10 | Diversity | 59 | Establish a diversity goal for each commander, making them responsible for enhancing the diversity within the department. The progress toward achieving that goal should be reflected in the performance management system. | PD | DHR | | | PD |
| RD&V - 11 | Diversity | 59 | Educate and train recruiting and selecting officers about implicit bias, which the current neuroscience research shows can occur even in people with no-prejudiced attitudes, and the impact on both individual and organizational selection decision. | PD | DHR | | | PD |
| RD&V - 12 | Vetting | 61 | Increase resources in order to reduce length of time it takes to conduct background investigations and polygraphs. | PD | DMB | | | BOS |

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| RD&V - 13 | Vetting | 61 | Formalize the officer selection process. | PD | DHR | PERF #1 | | PD |
| RD&V - 14 | Retention | 62 | The Board of Supervisors should continue to work with the Department's Pay and Benefits Committee to ensure competitive salaries and benefits to secure and maintain a diverse workforce. | PD | DHR, DMB | | | BOS |
| MENTAL HEALTH AND CIT SUBCOMMITTEE | | | | | | | | |
| MH-CIT - 1 | FCPD | 81 | Establish Memphis Model/Virginia CIT Essential Elements. FCPD should immediately establish the Memphis Model for Crisis Intervention Team training as adopted by the Virginia Essential Elements of CIT, ensuring each squad has a CIT trained officer and creating a specialty squad of selected CIT officers to work closely with CSB and Mobile Crisis units. | PD | CSB | PERF #58, 67, 68 | Yes | PD & BOS |
| MH-CIT - 2 | FCPD | 82 | Attract the right officers for CIT, FCPD should create incentives, such as flexible shift hours, to make serving on a Crisis Intervention Team attractive to potential volunteers | PD | DMB, CSB | | | PD |
| MH-CIT - 3 | FCPD | 82 | The subcommittee recommends that the FCPD create a uniform pin to identify Crisis Intervention Team Trained officers to the public. | PD | | | | PD |
| MH-CIT - 4 | FCPD | 82 | Make CIT a requirement for selected command assignments. The subcommittee recommends that FCPD leadership consider CIT training and experience in selections to certain command positions, for instance in the patrol division. | PD | DHR | PERF #57 | | PD |
| MH-CIT - 5 | FCPD | 82 | Form teams. The subcommittee recommends that officers detailed to Crisis Intervention Teams maintain their regular patrol duties, but also form partnerships with mental health workers and community partners trained and experienced in dealing with residents living with mental illness. These teams would be available to be dispatched to identified mental health calls. | PD | CSB | PERF #67 | | PD & Community Services Board (CSB) |
| MH-CIT - 6 | FCPD | 82 | Be proactive. The subcommittee recommends that Crisis Intervention Teams be empowered to work proactively to help mentally ill persons obtain treatment and take other steps to manage their illness, diverting them from the criminal justice system and the courts. | PD | CSB, Courts, CWA | | | PD |
| MH-CIT - 7 | FCPD | 83 | Integrate dispatch personnel. The subcommittee recommends 100% of all dispatchers continue to receive at least eight hours of CIT training. | Dept. of Public Safety Communications (DPSC) | PD, CSB | PERF #69 | | Dept. of Public Safety Communications (DPSC) |
| MH-CIT - 8 | FCSO & CSB | 84 | Implement "Stepping Up." The Board of Supervisors, the CSB, the Judiciary, State legislators, and the Sheriff's Office should collaborate to implement a community-wide system of care overhaul using the BOS-endorsed, national initiative known as "Stepping Up." | CSB | Multiple | | | BOS |
| MH-CIT - 9 | FCSO & CSB | 84 | Fully implement Diversion First. The subcommittee recommends Fairfax County develop a mechanism for oversight of systems of mental health/substance use/justice services — a diversion-oriented system of care collaborative stakeholder group now known as "Diversion First." | CSB | PD, SO | | Yes | BOS |
| MH-CIT - 10 | FCSO & CSB | 84 | Identify and collect pertinent data to establish metrics for success. The subcommittee strongly emphasizes the importance of data collection and its intimate linkage to measuring the progress and impact of CIT programs. | CSB | PD, SO, DIT | | | CSB |
| MH-CIT - 11 | FCSO & CSB | 85 | Increase language and cultural competency. The subcommittee recommends that Fairfax County increase services to special populations to include cultural competency to better serve non-English-speaking justice-involved individuals, as de-escalation and diversion require the ability to effectively communicate with persons. | CSB | PD, SO | | | BOS |

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| MH-CIT - 12 | FCSO & CSB | 85 | Provide CIT Training to jail and custodial personnel. The subcommittee recommends that the Sheriff's Office provide the forty-hour Crisis Intervention Team training course to deputies detailed to courtroom security and deputies working inside the Adult Detention Center. | SO | CSB, PD | | | SO |
| MH-CIT - 13 | FCSO & CSB | 85 | Establish strategically located CIT assessment sites. The subcommittee recommends that Fairfax County establish strategically located 24-hour assessment sites staffed and operated by CSB, FCPD, and the Sheriff's Office collaboratively. | CSB | PD, SO, DMB | | | BOS |
| MH-CIT - 14 | FCSO & CSB | 86 | Redeploy CSB to provide services when they are needed most. The subcommittee recommends that the CSB should redeploy both forensic and community-based teams to expand capacity to provide mental health services at each point in the criminal/community mental health continuum rather than incarcerate individuals. | CSB | PD, SO | | | CSB |
| MH-CIT - 15 | FCSO & CSB | 86 | Expand Mobile Crisis Unit (MCU) program to strategic locations in Fairfax County. MCU is an emergency mental health program of the Fairfax-Falls Church Community Services Board that provides on-scene evaluation, treatment, and crisis intervention in the community. The recommendation is to have MCUs by Jan. 1, 2017. | CSB | | | | BOS |
| MH-CIT - 16 | FCSO & CSB | 87 | CSB and Sheriff's Office to consider increasing behavioral health clinician staff hour availability inside the Adult Detention Center (ADC), to include not only on-site, but through technology. | CSB | SO, DIT | | | CSB & Sheriff's Office (SO) |
| MH-CIT - 17 | FCSO & CSB | 87 | Increase release planning to support successful reentry. The subcommittee recommends that more CSB staff resources be devoted to release planning inside the ADC. It is also recommended that Dept. of Family Services (DFS) make available resources to initiate benefit eligibility determination. | CSB | SO, Dept. of Family Services (DFS) | | | CSB |
| MH-CIT - 18 | FCSO & CSB | 87 | Review pharmacy policies inside the ADC. The subcommittee recommends that the CSB and ADC medical staff review policies, especially for psychotropic medications, to ensure that inmates receive the most effective treatment relative to their conditions and medical histories by January 1, 2016. | SO | CSB | | Yes | CSB & SO |
| MH-CIT - 19 | Judiciary & Mental Health Dockets | 88 | Implement Mental Health dockets. The subcommittee recommends that Fairfax County work with judges and the Clerk of the Court to establish a Mental Health Docket for both adults and juveniles by January 1, 2016. | Dep. Co. Exec. for Public Safety (preliminary) | Courts, Clerk of the Court, CWA, CSB, PD, SO | | Yes | BOS & Courts |
| MH-CIT - 20 | Judiciary & Mental Health Dockets | 88 | Encourage Mental Health Awareness training for the judiciary. The subcommittee recommends that appropriate mental health awareness training be developed and deployed for judges, magistrates, probation and parole officers, and other officials who may come into contact with people who are living with mental illness by January 1, 2016. | CSB | Courts, Magistrates, Probation & Parole, Others | | | CSB |
| MH-CIT - 21 | VA CIT Elements | 89 | Establish standing law enforcement Mental Health Units staffed by full-time police officers and deputies tasked with responding to individuals experiencing a mental health crisis. | PD & SO | CSB, DMB, Co. Atty's Office | | | BOS |
| MH-CIT - 22 | VA CIT Elements | 89 | Institute plainclothes Mental Health Unit officers. Mental Health Unit officers in Bexar County wear civilian clothing and use unmarked vehicles during the course of their duties to avoid unintentionally escalating a mental health crisis. | PD & SO | PD, CSB | | | PD & SO |
| MH-CIT - 23 | VA CIT Elements | 89 | Re-focus and develop a full range of mental health and disability awareness training at the Criminal Justice Academy. CIT is important, but other trainings are also vital. | PD | PD, CSB | | | PD & SO |
| MH-CIT - 24 | VA CIT Elements | 90 | Clarify mental health response protocols for first responders. The Fairfax County Fire and Rescue responds to more than 50,000 calls annually, and must transport some individuals without a medical condition to emergency rooms rather than a mental health facility as this is required by the Code of Virginia. Subcommittee recommends the Board of Supervisors consider supporting a bill that would allow first responders to transport individuals whose primary condition is a mental health issue directly to a mental health facility once medically cleared by an EMT. | Fire and Rescue Dept. (FRD) | Govt. Relations, CSB, Co. Atty's Office | | Yes | BOS |

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| MH-CIT - 25 | VA CIT Elements | 90 | Involve peers whenever and wherever possible. According to Virginia's Essential Elements program guide for CIT, dynamic community involvement should reflect the composition of the local community, with particular emphasis on the inclusion of persons with mental illness. | CSB | PD, SO | PERF #67 | | CSB |
| MH-CIT - 26 | Public Outreach | 91 | Develop a public outreach program. The subcommittee recommends that the FCPD work with the CSB to develop materials for delivery to the public, to increase awareness of steps that may be taken prior to the instance of a potential interaction. | CSB | PD, SO, OPA | | | CSB |
| USE OF FORCE SUBCOMMITTEE | | | | | | | | |
| UOF - 1 | Guiding Philosophy | 107 | Ensure that FCPD's philosophy, policies and orders promote treating persons respectfully and are protective of their dignity; maintain an appropriate balance between an officer's role as a guardian/warrior or peacemaker/fighter; reinforce a reverence for the sanctity of human life. | PD | | PERF #4, 5 | | PD |
| UOF - 2a | Guiding Philosophy | 107 | Adopt policies, programs and practices that require officers to identify themselves by their full name, rank, and command (as applicable) and provide that information, when practicable, on a business card to individuals they have stopped. | PD | | | | PD |
| UOF - 2b | Guiding Philosophy | 107 | Adopt policies, programs and practices that, for policing mass demonstrations, continue to employ a continuum of managed tactical resources designed to be protective of officer safety and promote de-escalation of tensions; minimize the appearance of a military operation; and avoid provocative tactics, equipment, and language that might heighten tensions. | PD | | | | PD |
| UOF - 2c | Guiding Philosophy | 108 | Adopt policies, programs and practices that continue and strengthen opportunities for patrol officers to regularly interact with neighborhood residents, faith leaders, and business leaders. | PD | | | | PD |
| UOF - 2d | Guiding Philosophy | 108 | Adopt policies, programs and practices that reward officers for their efforts to engage members of the community and the partnerships they build and make this part of the performance evaluation process, placing an increased value on developing such partnerships. | PD | DHR | | | PD |
| UOF - 2e | Guiding Philosophy | 108 | Adopt policies, programs and practices that ensure deployment schedules provide sufficient time for patrol officers to participate in problem solving and community engagement activities. | PD | | | | PD |
| UOF - 2f | Guiding Philosophy | 108 | Adopt policies, programs and practices that infuse a renewed commitment to community policing throughout the FCPD culture and organizational structure. | PD | | | | PD |
| UOF - 3 | Guiding Philosophy | 108 | Commit and assure in G.O. 201.6 - PRESERVATION OF PEACE AND PROTECTION OF LIFE AND PROPERTY, that medical assistance will be provided to anyone who is injured, alleges an injury, or requests medical assistance, stating, as follows: <i>It shall be the duty of each sworn officer of the Department to: preserve the public peace; protect life and property; assure medical assistance; and enforce and uphold the laws of the Commonwealth of Virginia and the Ordinances of the County of Fairfax.</i> | PD | Co. Atty's Office | | Yes | PD |
| UOF - 4 | Guiding Philosophy | 108 | Review policies on use of physical control equipment and techniques to assure that they address any unique requirements of vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others deemed appropriate by the on-scene officer(s). | PD | Co. Atty's Office | PERF #7 | Yes | PD |
| UOF - 5 | PERF Recommended | 109 | Implement all PERF Use of Force report recommendations except #54, "termination of the use of PIT." FCPD should complete an analysis for approval by the Board of Supervisors on whether or not to maintain or restrict PIT use. Complete a publicly available and periodically updated action plan that assigns responsibility by name or position and target date for completion of all of the other recommendations. | PD | Co. Atty's Office | PERF #1 - 71 (except #54) | Yes | PD (BOS for PERF Recommendation #54) |
| UOF - 6 | Use of Force Policies | 110 | Establish a comprehensive and integrated policy on use of force to include training, investigations, prosecutions, data collection and information sharing. This policy must be clear, concise, and openly available for public inspection. | PD | Co. Atty's Office | PERF #13,14,16 | Yes | PD |
| UOF - 7 | Use of Force Policies | 110 | Consistent with the PERF Use of Force report, replace the current Department definition of use of force with a more comprehensive definition. Proposed new language: "Force means the following actions by a member of the department; any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. Force includes the use of firearms, Electronic Control Weapons (ECWs), chemical spray, bean bag shotgun, PepperBall gun and hard empty hands; the taking of a person to the ground; the use of vehicles; or the deployment of a canine; and excludes escorting or handcuffing a person who is exhibiting minimal or no resistance." | PD | Co. Atty's Office | PERF #12, 13, 30, 45, 46, 47 | Yes | PD |

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| UOF - 8a | Use of Force Policies | 110 | Amend General Order 540.1, USE OF FORCE, to Establish "sanctity of life" clearly and unambiguously as a philosophy and value system that remains paramount in the mind of every officer. | PD | Co. Atty's Office | PERF #4 | Yes | PD |
| UOF - 8b | Use of Force Policies | 110 | Amend General Order 540.1, USE OF FORCE, to maintain "objectively reasonable" as the standard to be followed by an officer when determining whether to use force and all references to "reasonable" must therefore be understood to mean "objectively reasonable." | PD | Co. Atty's Office | PERF#8 | Yes | PD |
| UOF - 8c | Use of Force Policies | 110 | Amend General Order 540.1, USE OF FORCE, to include as the definition of "reasonable: "...use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against his or her responsibility to protect public safety, as well as the suspect's civil liberties." | PD | Co. Atty's Office | PERF #8, 13 | Yes | PD |
| UOF - 8d | Use of Force Policies | 110 | Amend General Order 540.1, USE OF FORCE, to reword, II. POLICY as follows: "A police officer shall employ only such force in discharge of his or her duty as is objectively reasonable in all circumstances. The use of force is to be generally considered by an officer as a last resort after discussion, negotiation or persuasion has been found to be ineffective or inappropriate in light of the situation. While the use of force is occasionally unavoidable, every police officer will refrain from unwarranted infliction of pain or suffering and will never engage in cruel, degrading or inhumane physical or verbal treatment of any person." | PD | Co. Atty's Office | | Yes | PD |
| UOF - 8e | Use of Force Policies | 111 | In revising the General Order, and while first and foremost meeting the criteria specified by the Supreme Court, consider the Customs and Border Patrol's definition with regard to "Objectively Reasonable and the Totality of Circumstances," which is as follows: i. The reasonableness inquiry for an application of force is an objective one: the question is whether the officer's actions are objectively reasonable in light of the totality of facts and circumstances confronting him or her, without regard to underlying intent or motivation. ii. In determining whether a use of force is "objectively reasonable" an officer must give careful attention to the totality of facts and circumstances of each particular case, including: 1. Whether the suspect poses an imminent threat to the safety of the officer/agent or others; 2. The severity of the crime at issue; 3. Whether the suspect is actively resisting seizure or attempting to evade arrest by flight; 4. Whether the circumstances are tense, uncertain and rapidly evolving; and 5. The foreseeable risk of injury to involved suspects and others. iii. Totality of circumstances refers to all factors existing in each individual case. In addition to those listed in subsection e.ii., these factors may include (but are not limited to) the: 1. training, mental attitude, age, size and strength of the officer; 2. training, mental attitude, age, size and perceived strength of the suspect; 3. weapon(s) involved; 4. presence of other officers, suspects or bystanders; and 5. environmental conditions. | PD | Co. Atty's Office | | Yes | PD |
| UOF - 8f | Use of Force Policies | 111 | Institute the following use of firearms requirements, by establishing or clarifying that: i. the act of a police officer placing his or her weapon "in a ready gun position" at a suspect will be a reportable action [NOTE: Un-holstering his or her weapon, pointing downward toward the ground next to an officer's leg, with finger on frame of weapon, is not to be a reportable action in the context of this policy as officers may do so when they reasonably believe or know suspects are nearby, i.e., entering a dark building, alley, other location of concern]; ii. the "ready gun" position is defined as pointing the weapon, with finger on the frame of the weapon, so the officer can see the suspect's hands and waist; iii. the officer must announce "Police!" after and not before attaining the "ready gun" position and if feasible followed by simple, specific and clear direction to the suspect; iv. the "ready gun" position will be utilized in the specific circumstance where it is necessary to establish control and gain compliance through the pointing of a firearm; v. the pointing of the firearm will be considered non-deadly use of force in this circumstance if the weapon is not aimed at center of mass, which is normally the chest; and vi. an officer's finger should be moved from the frame to the trigger of a weapon only if the use of deadly force is authorized under the objectively reasonable standard, which would exclude pointing a weapon at center of mass simply for control and compliance under the "ready gun" position addressed in iv. above. | PD | Co. Atty's Office | | Yes | PD |
| UOF - 8g | Use of Force Policies | 112 | Requirements for assuring medical assistance should be instituted consistent with the following: i. State in Section II that "[i]n all situations, medical assistance shall be provided promptly to any person who is obviously injured, alleges an injury, or requests medical assistance." ii. Incorporate a separate implementation section, including a requirement that an operational and implementation plan be created and incorporated in the General Order. iii. Assure that any such plan includes ECW (Taser) non-lethal incidents and specifies the officer's medical action requirements in the event that an ECW deployment is taken against a suspect. | PD | Co. Atty's Office | | Yes | PD |

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| UOF - 8h | Use of Force Policies | 112 | A requirement should be established with regard to the state of the officer at the time of an officer involved death or serious injury per the following: Drug and steroid testing will be conducted on police officers involved in incidents that result in death or serious injury as soon as possible after the incident but not longer than an amount of time as determined by medical experts to detect whether drugs or steroids were present in the officers at the time of the incident. | PD | DHR, Co. Atty's Office | | Yes | BOS |
| UOF - 9 | Use of Force Policies | 112 | Benchmark FCPD Use of Force policies and practices with those of five urban jurisdictions that are comparable in their economic base, population density, and population demographics to Fairfax County. | PD | | | | PD |
| UOF - 10 | Use of Force Policies | 112 | Restrict vehicle pursuit to only those situations where there is a reasonable suspicion that a violent felony has been committed and that there is a potential for imminent risk to public safety and/or injury to individuals if pursuit is not initiated. | PD | DPSC | PERF #52, 53, 54, 55 | Yes | PD |
| UOF - 11 | Use of Force Reporting | 113 | Engage in robust public reporting on the demographics of the suspects in all use of force incidents and in-custody deaths, including for each incident: race, gender, age; any indicators of homelessness and of mental illness and CIT response; any previous involvement with FCPD; the type of weapon, if any, in the suspect's possession; police use of force; and resulting death/injury. | PD | PD, Co. Atty's Office | PERF # 65, 70 | Yes | PD |
| UOF - 12 | Use of Force Reporting | 113 | Collect and publicly report online all uses of force that result in death or serious injury; specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior instances of use of force by the officer(s) involved and determination of appropriateness; and (c) opportunities for officer, supervisor, and commander training. (Note: Release of use of force data does not necessarily have to include names of officers or victims until cases are concluded.) | PD | Co. Atty's Office, CWA | PERF # 65, 70 | Yes | PD |
| UOF - 13 | Use of Force Reporting | 114 | Annually report to the U.S. Department of Justice through the FBI's Uniform Crime Reporting System, all use of force and in-custody deaths, and disseminate such data to the public. | PD | OPA | PERF # 65, 70 | | PD |
| UOF - 14a | Use of Force Reporting | 114 | Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include a narrative of the incidents and aftermath, updated in real time, including all UOF events that result in death or serious injury, not just shootings. | PD | OPA | PERF # 65, 70 | Yes | PD |
| UOF - 14b | Use of Force Reporting | 114 | Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include the details available in all press releases, updates and other public information should be integrated into the summaries, including names suspects and officers and links to press releases and their updates provided. | PD | Co. Atty's Office | PERF # 65, 70 | Yes | PD |
| UOF - 14c | Use of Force Reporting | 114 | Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include demographic information: race, age, gender, whether the call included concerns about a mental health crisis, whether the suspect was homeless. | PD | Co. Atty's Office | PERF # 65, 70 | Yes | PD |
| UOF - 14d | Use of Force Reporting | 114 | Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include information on what special teams were involved, if any. | PD | | PERF # 65, 70 | Yes | PD |
| UOF - 14e | Use of Force Reporting | 114 | Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include appropriate information about whether/what discipline was administered in cases with policy violations. | PD | Co. Atty's Office, DHR | PERF # 65, 70 | Yes | BOS |
| UOF - 14f | Use of Force Reporting | 114 | Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include any changes of policy or training that result from review and lessons learned from the use of force incidents. | PD | Co. Atty's Office | PERF #65, 70 | Yes | PD |
| UOF - 15a | Body Cameras | 116 | Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the enactment of laws, policies, and procedures that protect individual privacy. | PD | Co. Atty's Office, DIT, CWA, Govt. Relations | | Yes | BOS |
| UOF - 15b | Body Cameras | 116 | Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the provision that police officers are consulted, with feedback provided as to how their concerns and recommendations were considered. | PD | Co. Atty's Office, DIT, CWA | | Yes | BOS |

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| UOF - 15c | Body Cameras | 116 | Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the implementation of a training program not only for police officers, but the wide-ranging personnel who will oversee, process and manage the digital data, as well as for prosecutors who will use the data for criminal prosecutions. | PD | Co. Atty's Office, DIT, CWA | | Yes | BOS |
| UOF - 16 | Tasers / ECW | 117 | Reclassify Electronic Control Weapons as "less-lethal weapons" rather than "non-deadly weapons" per the recommendation by the 2011 Electronic Control Weapons Guidelines and the PERF Report. | PD | Co. Atty's Office | PERF #30 | Yes | PD |
| UOF - 17 | Tasers / ECW | 117 | Mandate that all uniformed officers in enforcement units carry an ECW on their duty belt (or elsewhere on their person if necessary) when on patrol. The recommendation is contingent on police officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered. | PD | DMB | PERF #32 | | BOS |
| UOF - 18 | Tasers / ECW | 118 | Mandate that all detectives and plainclothes officers, regardless of rank, carry an ECW in their vehicles when on duty; contingent on officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered. | PD | DMB | | | BOS |
| UOF - 19 | Tasers / ECW | 118 | General Order 540.1, USE OF FORCE - replace all use of the term "excited delirium" with a more medically and physiologically descriptive term. | PD | Co. Atty's Office, CWA | PERF #18 | Yes | PD |
| UOF - 20 | Tasers / ECW | 118 | Prohibit use of an ECW on a handcuffed, or otherwise restrained individual, who is actively resisting, unless an objectively reasonable officer concludes that the resistance could result in serious injury to him or herself or others and less severe force alternatives have been ineffective or are deemed unacceptable for the situation. | PD | Co. Atty's Office | PERF #27 | Yes | PD |
| UOF - 21 | Tasers / ECW | 118 | Prohibit use of an ECW on a frail or elderly person, child or a pregnant woman unless deadly force would otherwise be justified, since they face an elevated risk. | PD | Co. Atty's Office | PERF #28 | Yes | PD |
| UOF - 22 | Tasers / ECW | 118 | Absent exigent circumstances, require supervisory approval for ECW use on a suspect in excess of three cycles. | PD | Co. Atty's Office | | Yes | PD |
| UOF - 23 | Tasers / ECW | 118 | Treat each ECW cycle as an independent application of the device, thus requiring its own justification, since multiple or prolonged ECW shocks may increase the risk of adverse effects on the heart or respiratory system. | PD | Co. Atty's Office | PERF #33 | Yes | PD |
| UOF - 24 | SWAT | 119 | Employ SWAT and the use of other advanced tactics only in situations where there is a high risk of violence, resistance, or harm to the officers involved, the public or the suspect as defined by set of "high risk" factors that are captured in the recent modifications to the Risk Assessment Matrix. | PD | Co. Atty's Office | PERF #62, 63, 64 | | PD |
| UOF - 25 | SWAT | 119 | Consolidate FCPD policies and protocols, including threat assessment, supervisory approval, training and post-use review and lessons learned, for the use and documentation of SWAT and other advanced tactics. | PD | | PERF #66 | Yes | PD |
| UOF - 26 | SWAT | 119 | Require that all police divisions, most notably the Narcotics Division, employ the same risk assessment procedures as SWAT for planning any high-risk operation. | PD | | | | PD |
| UOF - 27 | SWAT | 119 | Ensure broad community understanding of FCPD SWAT capabilities and how and when SWAT can be deployed. | PD | | PERF #60 | | PD |
| UOF - 28 | SWAT | 119 | Ensure that SWAT SOPs and the recently updated threat assessment process are clear in their requirement for approval by a single designated command officer who will bear overall responsibility for each use of SWAT. | PD | | PERF #60, 62, 63, 64, 65, 66 | | PD |
| UOF - 29a | SWAT | 119 | Establish policies and practices that ensure SWAT is deployed proportional to the unique needs of each individual incident. | PD | | PERF #60 | | PD |

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| UOF - 29b | SWAT | 119 | Include a trained crisis negotiator with every SWAT deployment. | PD | | | | PD |
| UOF - 29c | SWAT | 119 | Require SWAT officers to wear body cams during every deployment. | PD | Co. Atty's Office | | Yes | BOS |
| UOF - 29d | SWAT | 119 | Require that every SWAT deployment results in a post-deployment report that documents the following, in a manner that allows for the data to be readily compiled and analyzed for lessons learned: i. the purpose of the deployment; ii. the specific reason for believing that the situation for which the SWAT team was being deployed presented an imminent threat to the lives or safety of civilians and/or police personnel; iii. whether forcible entry or a breach was conducted and, if so, the equipment used and for what purpose; iv. whether a distraction device was used and, if so, what type and for what purpose; v. whether an armored personnel carrier was used and, if so, for what purpose; vi. the race, sex, ethnicity and age of each individual encountered during the deployment, whether as a suspect or bystander; vii. whether any civilians, officers, or domestic animals sustained any injury or death; viii. a list of any controlled substances, weapons, contraband, or evidence of crime that is found on the premises or any individuals; and ix. a brief narrative statement describing any unusual circumstances or important data elements not captured in the list above. | PD | | PERF #66 | | PD |
| UOF - 30 | Mobile Crisis | 120 | Establish as a budget priority the 24-hour staffing of three additional Mobile Crisis Units, by directing the immediate funding of a second Mobile Crisis Unit, in support of the Mental Health Subcommittee recommendation 15; and over the appropriate budget cycles, but no later than January 1, 2017, fund of two additional Mobile Crisis Units, for a total of four units, one for each human services district. | CSB | PD, DMB | | | BOS |
| UOF - 31 | Oversight | 122 | Implement independent investigative oversight and civilian review of Use of Force incidents. Consistent with the findings of the White House Task Force and the recommendations of NACOLE, independent oversight and civilian review will provide public accountability, trust and confidence, education of both the public and the police, and a positive, ongoing feedback loop that would result in the reduction of both UOF incidents and complaints. | Dep. Co. Exec. for Public Safety | PD, Co. Atty's Office, CWA | | Yes | BOS |
| UOF - 32 | Oversight | 122 | Establish a police legal advisor position within FCPD who would not only advise the department on legal issues but also ensure implementation of recommendations and timely implementation of policy changes. | PD | Co. Atty's Office, DMB | | Yes | BOS |
| UOF - 33 | Oversight | 122 | Collect data, and publish an annual statistical report, covering all stops, frisks, citations, arrests, and use-of force by district station and magisterial district - include the race, gender, and ethnicity of the individual involved and note whether the suspect is homeless and/or if a mental health crisis is a factor. The data should also include the race, gender and ethnicity of the FCPD officer involved and whether the interaction was initiated by FCPD or by the suspect. Document the outcome of each incident and regularly report the collected data to the BOS and the public and post the data online. | PD | Co. Atty's Office | PERF #70 | Yes | PD |
| UOF - 34 | Oversight | 122 | Reconstitute the FCPD Use of Force Committee to review selective use of force events, to include the decision to employ UOF, use of de-escalation and alternatives, compliance with law and regulations, as well as administrative, training, supervisory and tactical issues. | PD | Co. Atty's Office | | | PD |
| UOF - 34a | Oversight | 122 | The Use of Force Committee should receive and consider after action reports (AARs) on each selected use of force event, identify lessons learned, and make recommendations as to any needed changes in policy or practice. The Committee should meet on a regular basis (no less than semi-annually) with the Independent Auditor and the Civilian Review Panel to identify and address issues of concern arising out of use of force incidents and FCPD policies and practices. | PD | Co. Atty's Office | | Yes | BOS |
| UOF - 34b | Oversight | 122 | At least two members of the public should be appointed to the Use of Force Committee to ensure that the police and public can mutually benefit from their respective views about a use of force situation and contribute to any lessons that might be learned in the process. The policies and procedures guiding the appointment and role of the civilian appointees should be developed with public review and input and should protect against real or perceived conflicts of interest and assure that they are bound by the level of confidentiality that will protect candid and honest assessments, which is at the core of an effective continuous improvement process, as well as related criminal investigations. | PD | Co. Atty's Office | | Yes | BOS |
| UOF - 34c | Oversight | 123 | Experts and representatives from other law enforcement agencies should be invited to attend Use of Force Committee meetings to provide critical external perspective, insight and expertise on a permanent or ad hoc basis. | PD | | | | PD |

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| UOF - 35 | Oversight | 123 | The Board of Supervisors should review the Police Chief's determination in all lethal UOF cases and go on record with approval or disapproval of the action. | Co. Atty's Office | PD | | Yes | BOS |
| UOF - 36a | Workforce Practices | 124 | Give emphasis in police officer basic and in-service training to the distinction in the use of "ready gun" and muzzle pointing in the conduct of a building search and room clearing. | PD | | PERF #58 | | PD |
| UOF - 36b | Workforce Practices | 124 | Give emphasis in police officer basic and in-service training to skill development in the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force. | PD | | PERF #41, 57, 58 | | PD |
| UOF - 36c | Workforce Practices | 124 | Give emphasis in police officer basic and in-service training to the expected and effective use of Crisis Intervention Training. | PD | | PERF #67 | | PD |
| UOF - 36d | Workforce Practices | 124 | Give emphasis in police officer basic and in-service training to tactical and operational training on lethal and nonlethal use of force, with emphasis on de-escalation and tactical retreat skills. | PD | | PERF #56, 57, 58 | | PD |
| UOF - 37 | Workforce Practices | 124 | Establish a "hire-to-retain" focus on officer fitness to serve, particularly in relation to any propensity for being overly aggressive in the conduct of duty. This focus should be a key component in: vetting and selection; ensuring that the Early Identification System is monitoring officer-involved shootings, excessive use of force incidents, and complaints of abuse of power; monitoring each officer's known and understood risk factors to ensure that they maintain the right personality and temperament for policing; reinforcing the "duty-to-intervene"; providing services to assist officers who may need attention or treatment. | PD | Co. Atty's Office, DHR | PERF #1 | Yes | PD |
| UOF - 38 | Workforce Practices | 125 | Conduct a study of the relationship of the supervisor to the patrol officers, including the current ratio as a potential factor in strengthening the leadership direction provided to patrol officers in non-routine situations, particularly as it relates to the potential for use of force. | PD | DHR, DMB | | | BOS |
| UOF - 39 | Workforce Practices | 125 | Conduct a workforce climate survey and publish summary results on a biennial basis to monitor FCPD's operating culture, including officer attitudes about their work, leadership and equipment; or any perceived barriers to their ability to perform their duties consistent with FCPD's values, philosophy and policies. Use the detailed survey results broken down by organizational unit as a basis for dialogue between and among police officers, supervisors and the command structure. | PD | DHR | | | PD |
| UOF - 40 | UOF Sub-Committee | 126 | The charter for the UOF subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to meet its charge to "...review the roles of and relationships between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses; follow up on open issues, such as the internal FCPD UOF Committee charter; and support implementation of any of the UOF recommendations for which UOF Subcommittee participation would be beneficial. | Dep. Co. Exec. for Public Safety | PD, Co. Atty's Office, CWA | | Yes | BOS |

INDEPENDENT OVERSIGHT AND INVESTIGATIONS COMMITTEE

| | | | | | | | | |
|------------|----------------|-----|---|----------------------------------|---------------------------------------|--|-----|----------|
| IOV&I - 1 | Investigations | 180 | Criminal investigations of FCPD officers involved in incidents in which an individual is killed or seriously injured as defined in General Order 540.1 ("Death or Serious Injury Cases") should continue to be conducted by the FCPD Major Crimes Division. Exceptions could occur when the Chief of Police, in consultation with the Commonwealth's Attorney, determines that the criminal investigation should be conducted by investigators from another Northern Virginia jurisdiction police department or by the Virginia State Police. | PD & CWA | Co. Atty's Office | | Yes | PD & CWA |
| IOV&I - 2 | Investigations | 180 | Funds should be appropriated to the Commonwealth's Attorney's Office to allow for the fulltime employment of two independent criminal investigators who will report to and be used at the discretion of the Commonwealth's Attorney in connection with criminal investigations within the scope of the Independent Police Auditor. | CWA | Dep. Co. Exec. for Public Safety, DMB | | | BOS |
| IOV&I - 2a | Investigations | 181 | Such investigators shall participate in MCD criminal investigations of cases as the Commonwealth's Attorney may direct and may be used in connection with other criminal investigations, time permitting. | PD & CWA | Co. Atty's Office | | Yes | PD & CWA |
| IOV&I - 2b | Investigations | 181 | The Independent Police Auditor shall monitor MCD criminal investigations of cases and other criminal investigations within the scope of the responsibilities of the Independent Police Auditor. | Dep. Co. Exec. for Public Safety | CWA, Co. Atty's Office, PD | | Yes | BOS |

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| IOV&I - 3 | Investigations | 181 | FCPD Internal Affairs investigations should be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected. | Dep. Co. Exec. for Public Safety | CWA, Co. Atty's Office | | Yes | BOS & CWA |
| IOV&I - 4 | Investigations | 181 | The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of Police. | Dep. Co. Exec. for Public Safety | CWA, Co. Atty's Office | | Yes | BOS & CWA |
| IOV&I - 5 | Investigations | 181 | All FCPD officers shall be required to abstain from speaking to other officers involved or having witnessed any conduct subject to a MCD or IAB investigation within the scope of the responsibilities of the Independent Police Auditor, or to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | PD |
| IOV&I - 6 | Prosecution | 181 | The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a death or serious injury case, or other case within the scope of the responsibilities of the Independent Police Auditor, should continue to be handled by the Commonwealth's Attorney for Fairfax County unless the Commonwealth's Attorney determines that the prosecution, including the decision to charge, should be handled by another Virginia Commonwealth's Attorney. | CWA | Dep. Co. Exec. for Public Safety, PD, Co. Atty's Office | | Yes | CWA |
| IOV&I - 7 | Prosecution | 181 | The Commonwealth's Attorney should be requested to issue timely and comprehensive public reports in any case involving death or serious injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney. | CWA | Dep. Co. Exec. for Public Safety, Co. Atty's Office, PD, OPA | | Yes | CWA |
| IOV&I - 8 | Independent Auditor | 183 | The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor ("Auditor"). | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 8a | Independent Auditor | 183 | The Auditor shall be appointed by and report directly to the Board of Supervisors. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 8b | Independent Auditor | 183 | The Auditor shall have experience in public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Independent Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 8c | Independent Auditor | 183 | The Auditor shall review (i) all investigations of death or serious injury cases conducted by the IAB; and (ii) all use of force investigations by IAB which are the subject of a public complaint made to the FCPD or the Auditor. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD, CWA | | Yes | BOS |
| IOV&I - 8d | Independent Auditor | 183 | The Auditor shall have full access to the MCD criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD, CWA, | | Yes | BOS |
| IOV&I - 8e | Independent Auditor | 183 | The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 8f | Independent Auditor | 183 | The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 9 | Independent Auditor | 183 | The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 9a | Independent Auditor | 184 | The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD, DHR | | Yes | BOS |
| IOV&I - 10 | Independent Auditor | 184 | If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 11 | Independent Auditor | 184 | Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD, OPA | | Yes | BOS |

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| IOV&I - 12 | Independent Auditor | 184 | The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 13 | Independent Auditor | 184 | An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a death or serious injury case, the use of force, or the death of an individual with the FCPD for investigation or the citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, which will report on the disposition of the complaint within 30 days.. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 14 | Independent Auditor | 184 | If the Auditor disagrees with the results or conclusions of an IAB investigation in a death or serious injury case, the Auditor shall advise the Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 15 | Independent Auditor | 184 | The Auditor shall make public recommendations to the Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD, OPA | | Yes | BOS |
| IOV&I - 16 | Independent Auditor | 184 | The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 17 | Independent Auditor | 184 | Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 18 | Civilian Review | 186 | Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 18a | Civilian Review | 186 | Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 18b | Civilian Review | 186 | The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 18c | Civilian Review | 186 | Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD). | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 18d | Civilian Review | 186 | The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 19 | Civilian Review | 186 | An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 19a | Civilian Review | 186 | "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 19b | Civilian Review | 186 | The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 19c | Civilian Review | 186 | Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |

| AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET | | | | | | | | |
|--|-----------------|-------------|---|----------------------------------|-------------------------------|--------------------------|--|--|
| NUMBER (original or assigned) | TOPIC | REPORT PAGE | RECOMMENDATION NARRATIVE | LEAD AGENCY / ENTITY | OTHER AGENCIES / STAKEHOLDERS | LINK PERF REPORT / CALEA | POTENTIAL LEGAL REVIEW / LEGISLATIVE CHANGE REQUIRED | APPROVING AUTHORITY (i.e., BOS, PD, CSB, etc.) |
| IOV&I - 20 | Civilian Review | 186 | Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 20a | Civilian Review | 186 | The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 20b | Civilian Review | 186 | Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 21 | Civilian Review | 187 | The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review. If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD | | Yes | BOS |
| IOV&I - 22 | Civilian Review | 187 | The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD, OPA | | Yes | BOS |
| IOV&I - 23 | Civilian Review | 187 | The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work. | Dep. Co. Exec. for Public Safety | Co. Atty's Office, PD, OPA | | Yes | BOS |
| IOV&I - 24 | Follow-Up | 187 | Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel. | Dep. Co. Exec. for Public Safety | PD | | Yes | BOS |
| | | | | | | | | |
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APPENDIX A.3

Board Agenda Item
December 1, 2020

ACTION - 9

Approval of an Addition to Action Item No. 17, Establishment of a Police Civilian Review Panel, Approved by the Fairfax County Board of Supervisors on December 6, 2016, and Related Bylaws Amendment

ISSUE:

Whether an addition to Action Item No. 17 on the Board of Supervisors' December 6, 2016 agenda, whereby the Board established the Police Civilian Review Panel (Panel), and a related amendment to the Panel's Bylaws should be approved. Such approval would authorize the Panel, up to six times annually, to solicit and receive public comment and respond to questions in public meetings, sponsored by the Panel or others, where the public is invited to comment on law enforcement policies, practices, and procedures.

RECOMMENDATION:

If the Board of Supervisors wishes to grant the Panel the authority to receive public comment about any and all law enforcement related policies, practices, and procedures, then the Board should authorize the Panel to do so by approving this Action Item and the proposed revisions to the Panel's bylaws.

TIMING:

Board action is requested on December 1, 2020, so that the Panel will be authorized to participate in public meetings where public comment is received about law enforcement policies, practices, and procedures.

BACKGROUND:

The Board of Supervisors approved the establishment of the Panel on December 6, 2016, as part of Action Item No. 17 on the Board's agenda that day. The Board established the Panel for the purposes of building and maintaining public trust between the Fairfax County Police Department, the Board, and the public, and to enhance police legitimacy. To help achieve its mission, the Panel wishes to receive public input about law enforcement policies, practices, and procedures so that the Panel may make recommendations to the Board of Supervisors about such matters.

Board Agenda Item
December 1, 2020

If the Board of Supervisors wishes to give the Panel the authority to receive public comment about any law enforcement related policy, practice, or procedure, the following paragraph should be added to Action Item No. 17:

The Panel is authorized to solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures. As long as all Virginia Freedom of Information Act (VFOIA) requirements are followed, Panel members may solicit, receive, and respond to such public comment up to six times annually in public meetings, sponsored by the Panel or by others, where the public is invited to comment on law enforcement policies, practices, and procedures. The Panel may present recommendations to the Board of Supervisors about any law enforcement policy, practice, or procedure based upon knowledge obtained through its work, without regard to whether such recommendations are associated with a review of an investigation of a Complaint.

If the Board of Supervisors wishes to approve this addition to the 2016 Action Item, then the Panel's Bylaws also must be amended. Such amendments are necessary to give the Panel the authority to receive public comment about any law enforcement related policy, practice, or procedure. A redlined version of the necessary amendments to the Bylaws is attached as Attachment 1.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Amendment to the Panel's Bylaws

ASSIGNED COUNSEL:

Anita V. McFadden, Panel Counsel
Elizabeth D. Teare, County Attorney

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018, ~~and~~

November 19, 2019, and _____, 2020

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, ~~and~~ practices, and procedures as they pertain to case reviews to assist the FCPD Chief of Police ("Chief") and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

A. Composition and Qualifications.

- 1. The Board of Supervisors shall appoint each Panel Member.
- 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel's responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
- 3. The Board of Supervisors shall endeavor to create an independent and fair body giving

¹Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

due consideration to the following factors, among others it may choose: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three- year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and
 - (f) Delegate any of these duties to other Panel Members.

2. The Vice-Chair shall:

- (a) Preside over Panel meetings in the absence of the Chair; and
- (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.

3. Panel Committees.

- (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. 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 Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

2. Initial Disposition Notice.

- (a) The Panel shall conduct an initial review of each Review Request and may conduct

the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.

- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

- 1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
- 2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject

of pending proceedings.

3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
- (e) The Panel shall not take testimony or receive evidence.
- (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
- (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
- (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to

the Panel a supplemental report that details the findings of the additional investigation.

- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

2. Closed Sessions, and Confidential Matters During Panel Review Meetings.

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated 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.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such 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.
- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
 - (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) 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; or
 - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

- 1. ~~Based on the Panel's review of Investigations, t~~The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, ~~and~~ practices, and procedures that the Panel concludes are needed.

2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements. ~~Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Chief and the Board of Supervisors.~~

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.

2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act,

Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND THE AUDITOR; BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.

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ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

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Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.

APPENDIX B

(Panel Bylaws and Amended Bylaws)

APPENDIX B.1

(Pre-2020 Revision Bylaws)

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

**Amendments Approved by the Board of Supervisors on October 16, 2018, and
November 19, 2019**

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies and practices as they pertain to case reviews to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
 - 1. The Board of Supervisors shall appoint each Panel Member.
 - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
 - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving

¹ Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

due consideration to the following factors, among others it may choose: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three- year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and
 - (f) Delegate any of these duties to other Panel Members.

2. The Vice-Chair shall:
 - (a) Preside over Panel meetings in the absence of the Chair; and
 - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
3. Panel Committees.
 - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

1. The Panel shall meet as often as necessary to conduct Panel business.
2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. 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 Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

2. Initial Disposition Notice.

- (a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at

least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.

- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.

3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
- (e) The Panel shall not take testimony or receive evidence.
- (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
- (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
- (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional

investigation.

- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

2. Closed Sessions, and Confidential Matters During Panel Review Meetings.

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated 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.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such 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.
- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
 - (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) 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; or
 - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

- 1. Based on the Panel's review of Investigations, the Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed.

2. The Panel may conduct Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Chief and the Board of Supervisors.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if

any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND THE AUDITOR; BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.

APPENDIX B.2

(2020 Revised Bylaws)

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, and December 1, 2020

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
 - 1. The Board of Supervisors shall appoint each Panel Member.
 - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
 - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

¹ Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three-year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and
 - (f) Delegate any of these duties to other Panel Members.

2. The Vice-Chair shall:
 - (a) Preside over Panel meetings in the absence of the Chair; and
 - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
3. Panel Committees.
 - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

1. The Panel shall meet as often as necessary to conduct Panel business.
2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. 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 Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

2. Initial Disposition Notice.

- (a) The Panel shall conduct an initial review of each Review Request and may conduct

the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.

- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

- 1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
- 2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject

of pending proceedings.

3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
- (e) The Panel shall not take testimony or receive evidence.
- (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
- (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
- (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to

the Panel a supplemental report that details the findings of the additional investigation.

- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

2. Closed Sessions, and Confidential Matters During Panel Review Meetings.

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated 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.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such 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.
- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
 - (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) 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; or
 - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

- 1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.

2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not

limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND THE AUDITOR; BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.

APPENDIX C

(Code of Ethics)

FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL CODE OF ETHICS

Panel Approved: 15 May 2017

PREAMBLE¹

Civilian Police Review Panel members have a unique and critical role as public servants in reviewing law enforcement agency actions. Accordingly, the public, government, and law enforcement agencies have entrusted these individuals to conduct their oversight in a professional, informed, fair, and impartial manner. They earn this trust through a firm commitment to the public good, to the mission of their review panel, and to the ethical and professional standards described herein. The spirit of these ethical and professional standards shall guide panel members' conduct when conflicts of interest or ethical uncertainties arise as well as provide standards to which the public shall hold panel members accountable for their actions. The Code shall be a constant reminder that panel members are beholden to the interest of and fidelity to the public, which requires regularly promoting public trust, integrity, and transparency.

I. DIGNITY AND RESPECT²

Treat all persons with dignity, respect, equality, equity, and fairness and without preference, prejudice, or discrimination based on, but not limited to: age, ethnicity, culture, race, color, disability, sex, gender, religion, sexual orientation, gender identity or expression, socioeconomic status, housing status, marital status, parental status, citizenship, nationality, immigration status, language, political beliefs, and all other protected classes.

II. PERSONAL INTEGRITY³

Demonstrate the highest standards of personal and professional conduct to inspire and maintain public and stakeholder confidence and trust. Act honestly and responsibly and promote the ethical practices at all times.

III. COMMITMENT⁴

Represent the public's interest, uphold the constitutions and laws, and adhere to the mission and objectives of this panel, while seeking to improve policies and procedures to promote the public good in accordance with the Fairfax County Police Civilian Review Panel Bylaws. Place service to the public above personal and organizational self-interest.

¹ National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics ([Link](#))

² NACOLE Code of Ethics; included equality, equity, and fairness as they are not necessarily covered under respect and dignity. Language focuses on ability to communicate in native languages or for hearing impaired that may not necessarily be covered under ethnicity, culture, or disability.

³ American Society of Public Administration Code of Ethics (ASPA) ([Link](#)); NACOLE Code of Ethics; National Association of Social Workers (NASW) Code of Ethics ([Link](#))

⁴ NACOLE Code of Ethics; ASPA Code of Ethic

IV. COMMUNITY ENGAGEMENT⁵

Engage in open, candid, and culturally sensitive outreach with community stakeholders in order to share information and to learn about community policing issues and concerns impacting communities throughout the county.

V. IMPARTIAL OVERSIGHT

Conduct reviews with diligence, objectivity, fairness, inquisitiveness, comprehensiveness, and in a timely matter. Present facts and findings without regard to personal beliefs or concerns for personal, professional, or political consequences.

VI. TRANSPARENCY⁶

Be open, transparent, responsive, and explanative to the public about the panel's role and processes, while in accordance with the Fairfax County Police Civilian Review Panel Bylaws, to include, but not limited to, maintaining meeting minutes and releasing regular annual reports on oversight activities.

VII. CONFIDENTIALITY⁷

Recognize that individual lives are impacted regardless of who they are and what the panel determines. Accordingly, maintain confidentiality of information, and in accordance with the Fairfax County Police Civilian Review Panel Bylaws, that cannot or should not be disclosed and protect the security of confidential records and identities of crime victims and police officers. Any disclosure of confidential information shall require written consent from the complainant and/or victim.

VIII. PROFESSIONAL EXCELLENCE⁸

Acquire the necessary knowledge and understanding of law enforcement, community dynamics, and current social, cultural, legal, and professional issues that impact the community, law enforcement agencies, and county government. Seek and encourage other members to seek professional development opportunities to enhance the ability to act competently, culturally sensitively, appropriately, and ethically in the capacity of a panel member.

IX. ACCOUNTABILITY AND SELF-EXAMINATION⁹

Seek continuous improvement in the effectiveness, efficiency, and advocacy of the panel, the law enforcement agencies it works with, and their relations with the communities they serve. Gauge this through community and cross-organizational feedback and evaluation as well as through internal panel policy and procedural reviews to advance performance, organizational reforms, and accountability. Sustain a respectful relationship with the Fairfax County Board of Supervisors, to whom the panel reports.

⁵ NASW Code of Ethics, NACOLE Code of Ethics

⁶ ASPA Code of Ethics; NACOLE Code of Ethics

⁷ NACOLE Code of Ethics; ASPA Code of Ethics

⁸ NACOLE Code of Ethics; ASPA Code of Ethics

⁹ NACOLE Code of Ethics

X. COURAGE¹⁰

Have the mental, moral, and physical fortitude to see through challenges, make tough decisions under stress and pressure, and to do what is right in the face of adversity.

XI. CONFLICTS OF INTEREST

Panel members shall avoid conflicts of interest, as set forth in the Fairfax County Police Civilian Review Panel Bylaws, that compromise or have the perception of interfering with their fair, impartial, and independent judgment and execution of their roles and responsibilities.

¹⁰ United States Marine Corps Core Values ([Link](#))

APPENDIX D

(Annual Reports 2017, 2018, 2019)

(Note: Duplicative report appendices have been omitted.)

APPENDIX D.1

(2017 Annual Report)



Fairfax County
Police Civilian Review Panel
Annual Report 2017

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2017



A Fairfax County, VA Publication

Publication Date: February 28, 2018

PANEL MEMBERS

Hansel Aguilar, Fairfax

Kathleen Davis-Siudut, Springfield

Steve Descano, Burke

Hollye Doane, Oakton

Douglas Kay, Fairfax

Randy Sayles, Oak Hill

Jean Senseman, Lorton

Adrian L. Steel, Jr., McLean (Chair)

Rhonda VanLowe, Reston (Vice-Chair)

Fairfax County Police Civilian Review Panel
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To request this information in an alternate format, call 703-324-3459, TTY 711.

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SECTION I: OVERVIEW AND BACKGROUND

Establishment and Mission of the Civilian Review Panel

The Fairfax County Police Civilian Review Panel (“Panel”) was established by the Board of Supervisors on December 6, 2016, in response to recommendations from the Ad Hoc Police Practices Review Commission.¹ The nine-member Panel’s mission is to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (“Department” or “FCPD”) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigations. The Panel is appointed by, and reports directly to, the Board of Supervisors. The Panel is governed both by the Bylaws approved by the Board of Supervisors and a Code of Ethics adopted by the Panel.²

The Panel generally meets the first Thursday of each month at the Fairfax County Government Center. It will meet more often as needed based on the volume of investigations under review. Meeting locations are expected to vary to encourage citizen participation throughout the county. Panel meeting dates and locations are announced on the County’s Public Meetings Calendar (<https://www.fairfaxcounty.gov/calendar/ShowCalendar.aspx>). Pursuant to the Action Item and Bylaws, the Office of the Independent Police Auditor (“OIPA”) provides all administrative support to the Panel. This support includes coordinating meeting logistics, preparing draft meeting summaries, receiving and disseminating Complaints and Requests for Review, assistance with marketing and outreach activities, and related correspondence.

Scope of Panel Authority

The Panel serves as an independent avenue or “portal” for members of the public to submit Initial Complaints (i.e., a complaint not previously submitted to the FCPD) concerning

¹ The December 6, 2016 Action Item and February 28, 2017 clarifications can be found in the February 28, 2017 Final Board Package (pp. 268-279) from the County’s website: <https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting%20materials/board/2017/feb28-final-board-package.pdf>

² Capitalized terms in this Report have the meaning set forth in the Defined Terms attached to the Bylaws, unless the context indicates otherwise.

allegations of abuse of authority or serious misconduct by an FCPD Officer. The Panel also has the authority to review completed FCPD internal administrative investigations regarding a complaint of the same nature filed with the Department against an officer. The Panel may conduct a Review of an investigation within its scope only upon a request from the complainant. All FCPD letters to complainants advising them of the results of the Department's investigation of their complaints also inform them of their right to seek a review of the investigation by the Auditor or the Panel depending on the nature of their complaint.

As a part of its Review, the Panel may hold a public meeting at which an FCPD representative will review and answer questions about the Investigation, including findings of fact, evidence collected and received, witness statements, and action taken or not. Only Complaints as to incidents occurring on or after December 6, 2016, may be considered by the Panel. Examples of Complaints that the Panel may receive and/or review include:

- The use of abusive, racial, ethnic or sexual language or gestures;
- Harassment or discrimination based on race, color, gender, sexual orientation, religion, national origin, marital status, age, familial status, immigration status, or disability
- Acting in a rude, crude, angry, retaliatory or threatening manner not necessary for self-defense;
- The reckless endangerment of a detainee or person in custody;
- Violations laws or ordinances; or
- Other serious violations of Fairfax County of FCPD policies or procedures.

The Civilian Review Panel does not address the potentially criminal use of force or police-involved shootings. Cases of that magnitude would likely involve an investigation by the Commonwealth's Attorney and would be monitored and reviewed by the Independent Police Auditor ("Auditor" or "IPA"), Richard G. Schott.

The Panel may hold public meetings on issues within the Panel's jurisdiction and on law enforcement policies and practices at which the public is invited to comment to assist the Panel in making recommendations for policy and practices changes to the Chief of Police and Board of Supervisors. The Panel may also meet periodically with the Auditor concerning his findings and conclusions as to use of force cases so that the Panel can provide its views to the Board of

Supervisors and the Chief of Police as to changes in policies and practices that may be warranted.

The Panel will issue an annual public report describing its activities for the year, including recommendations to the Board of Supervisors, the Auditor and the Chief of Police for revisions to FCPD policies, training and practices that the Panel concludes are needed.³

Panel Members

The Panel members appointed by the Board were sworn in at a ceremony on March 20, 2017. The Honorable William H. Webster, former Director of the Federal Bureau of Investigation as well as the Central Intelligence Agency, gave remarks to commemorate the occasion. Judge Webster related how his experiences as a judge and as FBI and CIA Director led him to have a strong belief that transparency is necessary in order to maintain public trust. He said that civilian oversight of police is key to having a country where people are safe, feel safe, and have trust in law enforcement.



Pictured from left: Deputy Clerk of the Circuit Court Gerarda Culipher, Randy Sayles, Rhonda VanLowe, Kathleen Davis-Siudut, Adrian Steel, Board of Supervisors Chairman Sharon Bulova, Judge William Webster, Braddock District Supervisor John Cook, Jean Senseman, Douglas Kay, Hollye Doane, Steve Descano, and Hansel Aguilar.

³ Consistent with the Action Item and Bylaws which set the due date for the first Annual Report to be March 31, 2018, this Report covers the period from March 1, 2017, to February 28, 2018. In future years, the reporting year will be January 1 to December 31, with the Report due on the subsequent March 1.

The Board of Supervisors appointed Adrian L. Steel, Jr. to serve as the first Chair of the Civilian Review Panel. All subsequent Chairs will be selected by members of the Panel. Panel members serve three year terms with a two-term limit, although some inaugural members serve for less time to allow for staggered terms. Rhonda VanLowe was elected by the Panel to serve as Vice-Chair. Biographies of the Panel members are attached as Appendix A.

The nine Panel members are:

- Hansel Aguilar, Fairfax
- Kathleen Davis-Siudut, Springfield
- Steve Descano, Burke
- Hollye Doane, Oakton
- Douglas Kay, Fairfax
- Randy Sayles, Oak Hill
- Jean Senseman, Lorton
- Adrian L. Steel, Jr., McLean (Chair)
- Rhonda VanLowe, Reston (Vice-Chair)

SECTION II: 2017 ACTIVITIES

Bylaws and Code of Ethics

After an initial meeting to discuss organizational issues and the roles and responsibilities of the Panel, the Panel focused its attention on drafting bylaws and a code of ethics. On June 1, 2017, the Panel approved draft bylaws and a code of ethics. Both drafts were submitted to the Board of Supervisors, and, on July 11, 2017, the Board approved both, with modifications to the bylaws. The Panel accepted the modified bylaws at its August 3, 2017 meeting. The Panel's Bylaws and Code of Ethics can be found on the Panel's website and in Appendices B and C.

Materials Development

In addition to developing the Bylaws and Code of Ethics, the Panel, in partnership with the Auditor, developed a complaint form and a brochure for distribution across the County. The complaint form and brochure are being translated into Korean, Spanish and Vietnamese. A

website (www.fairfaxcounty.gov/policecivilianreviewpanel/) was also developed for the Panel to include a description of its purpose and mission, a link to the Complaint form, and an archive of meeting materials. The Complaint form and instructions on how to file a Complaint are also available on the Panel website.

Training and Education

In coordination with Major Gun Lee of the Department who served as the Panel's liaison, the Panel members received training from the FCPD on April 8, May 13, and September 30, 2017. Training content included an overview FCPD operations, including the various bureaus, and a review of FCPD general orders pertinent to the Panel's work. During a meeting on June 27, 2017, the Panel conducted a "mock review" of an alleged racial profiling incident. Individual Panel members have participated in numerous "ride-alongs" with FCPD officers. At the Panel's September 7, 2017, meeting, Paul Ashton, Chair of the D.C. Police Complaints Board (PCB), presented to the Panel on the structure, mission, jurisdiction, and the process for review of citizen complaints against the Metropolitan Police Department. Some Panel members observed CIT training on November 15, 2017. Panel members toured the new FCPD headquarters on December 7, 2017.

Public Outreach

Throughout 2017, the Panel focused on developing its plans for outreach to the community, which included planning two public forums and developing a schedule of meetings with various community groups. The Chair attended two public meetings for the purpose of updating the community on the Ad Hoc Commission's progress report and on the Panel. The Chair (and the Auditor) answered questions about their respective positions. The May 22, 2017 meeting took place at the Government Center, and the November 1, 2017 meeting took place in Mount Vernon. Other outreach to community groups included attendance by the Chair at an NAACP Forum, attendance by the Vice-Chair at a Citizen Advisory Committee ("CAC") meeting at the Reston FCPD Station, and attendance by Panel members at a County's Criminal Justice Advisory Board meeting. Panel members also presented information about the Panel to CAC meetings, a Council of Citizens Associations meeting, and a church congregation. The Chair and Vice Chair

appeared, in concert with the Auditor, in various videos to introduce the Panel and the Auditor to the public. Videos included an interview on the show “Connecting with Supervisor Hudgins” and a public service announcement YouTube video.

Public Forums

The Panel conducted public forums to raise awareness about the Panel and the Auditor and the services they provide on November 16, 2017, in Annandale and December 12, 2017, in Reston. Both forums were advertised through the County’s website, social media (e.g., Facebook and Twitter), and through local media. Board Chairman Sharon Bulova attended the Annandale forum and expressed her support for the work of the Panel and indicated her view that the Panel will promote transparency and openness in community policing. Supervisor Catherine Hudgins attended the Reston forum and noted that the process put in place by the Board is an important opportunity for County residents to have greater oversight of the FCPD. At both forums, members of the public were offered an opportunity to provide comments or ask questions about matters within the Auditor’s and Panel’s scopes. Among the questions asked were:

- Whether the Auditor or Panel have authority to entertain complaints pertaining to the Sheriff’s Office or ICE?
- Whether the Auditor or Panel can recommend a change to the discipline imposed by the FCPD?
- How, given the racial and ethnic makeup of the Panel, minorities can be assured that the Panel will be sensitive to the concerns of minority populations in the County?
- Why do the Auditor and Panel not have the power to investigate alleged FCPD misconduct?
- Why are there two oversight bodies?
- Do you have to be involved in an incident to submit a complaint?
- How can citizens be assured that the FCPD is forthcoming with all evidence it collected or received and the Department’s findings?
- How many attorneys sit on the Panel?
- How did the Board of Supervisors select the Panel members?
- Can the Panel make policy recommendations to the FCPD?

- What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?
- What is being done to advertise the Auditor's and Panel's services to different groups within the community, particularly minorities?
- Do you only look at individual cases? My organization would like to see a systematic review of the FCPD's use of force cases, including the apparent racial disparities.
- Are all complaints received by the Auditor and Panel available to the public for viewing?

In addition to the questions above, a concern was expressed that FCPD officers (who are usually white and not from the community) routinely harass young people of color, as well as individuals at the homeless shelters in the Mason District. A forum participant indicated that he has witnessed police officers targeting low income neighborhoods (e.g., apartment buildings in Bailey's Crossroads), conducting searches of individuals without getting proper consent due to the individuals' inability to understand English, driving around in unmarked vehicles and in plain clothes (no badge visible), and switching cars often, making it difficult for citizens to identify the officer and make a complaint. The forum participant also wanted to know why no one (especially a young person) from the "east side" of the County (i.e., Alexandria/Route 1, Mount Vernon, Bailey's Crossroads) is on the Panel.

The Panel provided responses to these questions and comments. The responses are reflected in the Summaries of the two forums which are attached as Appendices D and E and are on the Panel's website.

Meeting with Auditor

As provided in the Action Item and Bylaws, the Panel met with the Auditor concerning his findings and conclusions as to the use of force investigations he has monitored and reviewed so that the Panel can provide its views to the Board of Supervisors and the Chief of Police as to changes in policies and practices that may be warranted. The Auditor summarized his findings and conclusions with respect to the two incident reports he has released (Herndon Officer Involved Shooting ("OIS") – January 2017, and Electronic Control Weapon Use – April 2017) and the IPA's 2017 Annual report. The Auditor's use of force recommendations included that: (1) additional numbers of "less-lethal" options in the form of Kinetic Energy Impact Systems and

PepperBall systems be made available to FCPD patrol officers and SWAT team members; (2) the FCPD incorporate new factors into current policy which may be considered when determining whether a particular use of force used on an individual not engaged in criminal activity was reasonable; and (3) the FCPD revert to the use of the term “non-deadly” force, and to eliminate the term “less-lethal” force in its general orders. In response to a question from a Panel member, the Auditor confirmed that it was his view that there were no communication issues during the Herndon OIS incident.

SECTION III: INITIAL COMPLAINTS AND REQUESTS FOR REVIEW

Panel Processes and Procedures under the Bylaws

- Upon receipt of an Initial Complaint, the Panel will immediately refer the Complaint to the FCPD for investigation. Under its Bylaws, the Panel does not conduct investigations. The Department is required to complete its investigation of the Complaint and provide an Investigation Report to the Panel within sixty (60) days (absent a finding of good cause for delay by the Panel).
- The Panel may conduct a Review Meeting if requested by a complainant to evaluate the accuracy, completeness, thoroughness, objectivity and impartiality of the FCPD Investigation. At the Meeting, the complainant will have the opportunity to state the reasons for filing the Review Request, and the Panel may ask the complainant about those reasons. At the Panel’s request, an FCPD representative knowledgeable about the Investigation will attend the Meeting to review and answer questions about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not. At the Panel’s discretion, the Panel may request further investigation by the FCPD, and the FCPD is required to conduct that investigation within a reasonable time and report the results to the Panel.
- After completing a requested Investigation Review, the Panel may reach one of three Findings: (i) concur with the FCPD’s findings and determination detailed in the Investigation Report; (ii) advise the Board of Supervisors that the FCPD’s findings are not supported by the information reasonably available to the Department and recommend

further review and consideration by the Chief of Police; or (iii) advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.

- Based on its review of Investigations, the Panel may recommend to the Chief of Police and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed.
- At its December 7, 2017 meeting, the Panel discussed the need for documenting protocols and operating procedures for the Panel. These include responding to Initial Complaints and Requests for Review, determining Panel jurisdiction, and determining the appropriate protocol at public Review Meetings.

Initial Complaints

- In August 2017, the Panel received an Initial Complaint from [REDACTED] regarding an incident that occurred in May 2016. The incident was not reviewed because the date it occurred preceded the establishment of the Panel on December 6, 2016. The Panel informed the complainant that he could attend a Panel public forum to voice concerns about FCPD policies and practices.
- In October 2017, the OIPA received two Initial Complaints concerning an arrest by the FCPD which took place in Annandale VA. One of those complaints was directed to both the Auditor and the Panel. At the request of the Chair of the Board of Supervisor's Public Safety Committee and the Chief of Police, the Auditor is monitoring and reviewing the FCPD administrative investigation of the arrest. The Panel determined at its November 9, 2017 meeting to defer any discussion of the Annandale arrest or any Panel action until the FCPD has completed that investigation.
- In January 2018, the Panel received an Initial Complaint concerning an incident that occurred in 2012, which made it ineligible for Panel or Auditor review. The Complaint was forwarded to the Department because it is FCPD policy to review all complaints regardless of when they are received.
- A second Initial Complaint was received in January 2018. It concerned an incident of alleged officer rudeness that occurred in January 2018. As required, the Complaint was

referred to the FCPD for investigation. The FCPD will complete its investigation and provide an Investigation Report to the Panel within sixty (60) days (absent a finding of good cause by the Panel).

Requests for Review

- The Panel received a Request for Review in November 2017 from ██████████ ██████████ regarding her complaint to the FCPD that an officer failed to comply with a subpoena requiring the officer to appear in court. The Panel voted at its December 7, 2017, to review the FCPD's investigation of ██████████'s Complaint, subject to ██████████'s confirmation of her understanding of the Panel's limited jurisdiction. The Review Meeting was held on January 4, 2018. ██████████ and the Chief of Police appeared at the Meeting. At its February 1, 2018 meeting, the Panel voted to concur with the Department's findings and determination. Some individual Panel members raised concerns regarding the FCPD process to track and monitor subpoenas served on officers; whether training was needed for officers regarding court appearances; and whether all internal affairs interviews (at the Internal Affairs Bureau and at the station level) should be audio recorded. The Panel voted not to recommend policy or practice changes at the meeting with respect to the concerns raised.
- The Panel received a Request for Review in February 2018 of a completed FCPD investigation involving alleged false arrest and abuse. As with all Requests for Review, the Panel will proceed initially to determine whether it has jurisdiction over the Request under the Bylaws.

SECTION IV: PLANS FOR 2018

- The Panel will continue its community outreach and engagement strategy in 2018 to ensure that it is reaching broader portions of the public. Outreach activities will include conducting meetings with various community groups, inviting police associations to meet with the Panel about its responsibilities and scope of authority, and distributing informational brochures (made available in four languages) across the county. Panel members will also participate in segments for a magazine-style video in 2018.

- In 2018, the Panel will continue to refine its operating procedures, including, for example, the intake process for Initial Complaints and Requests for Review, and the Panel's disposition decision-making process.
- Another key effort in the coming year will include strengthening the Panel's working relationships with the Board of Supervisors and the Police Department.

SECTION V: CONCLUSION/APPRECIATION

The Civilian Review Panel has had an active first year in beginning its task to provide effective civilian oversight. We successfully organized ourselves and drafted and adopted the Bylaws which govern our work. We are receiving and processing Initial Complaints and Requests for Review, and we held our first Review Meeting. We are reaching out to the public through forums and speaking before numerous community groups and organizations. We have more to do. We need to work to more broadly spread the word about what it is we do. We need to adopt clear procedures and standards to govern our work and to ensure that there is a clear record detailing the Panel's rationale for our actions. We look forward to working with the public and the FCPD in the next year in achieving the goals set for us by the Board of Supervisors when it created the Panel.

We would like to express our appreciation to the Board of Supervisors for entrusting us with the responsibility of serving on the inaugural Panel and to the FCPD for its support and continuing recognition of the need for effective oversight to build trust and transparency. As Judge Webster said at our swearing in ceremony, civilian oversight of police is key to having a country where people are safe, feel safe, and have trust in law enforcement. We also want to express our particular appreciation to Major Gun Lee for the many hours that he devoted serving as our liaison to the FCPD this past year. His efforts ranged from extensive training to ensure that Panel members are familiar with FCPD policies and practices to ensuring that we had various opportunities to join FCPD officers in the field to answering our numerous questions. His work and guidance have been invaluable.

APPENDICES

Appendix A: Biographies of the Panel Members

Appendix B: Bylaws of the Fairfax County Police Civilian Review Panel

Appendix C: Fairfax County Police Civilian Review Panel Code of Ethics

Appendix D: Summary of the November 16, 2017 Annandale Public Forum

Appendix E: Summary of the December 12, 2017 Reston Public Forum

The Fairfax County Police Civilian Review Panel

Public Forum on November 16, 2017

Heritage Human Services Center, Annandale

Meeting Summary

Panel Members present:

Hansel Aguilar

Kathleen Davis-Siudut

Steve Descano

Hollye Doane

Doug Kay

Randy Sayles

Jean Senseman

Adrian Steel, Panel Chairman

Others present:

Sharon Bulova, Chairman, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Member absent:

Rhonda Van Lowe, Vice Chair

The forum began at 7:05 p.m.

Panel Chairman Adrian Steel and Board of Supervisors Chairman Sharon Bulova welcomed attendees to the Panel's first Public Forum. Chairman Bulova provided some framing remarks on the Ad Hoc Police Practices Review Commission and the subsequent establishment of the Fairfax County Police Civilian Review Panel and the Office of the Independent Police Auditor.

Panel Chairman Steel reviewed the agenda.

Each Panel Member present introduced him or herself, and shared information on related expertise and experiences and what brought them to the panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Panel Chairman Steel provided an overview of the Civilian Review Panel including: how they were formed, how panel members were selected, terms of service, the panel's purpose, and work conducted to date. The Panel has reviewed best practices in police oversight and developed Bylaws and a Code of Ethics (available at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>). The Panel's purpose is to provide an independent process for commencing an initial complaint against the Fairfax County Police Department (FCPD). The panel will review completed investigations of public complaints of abuse of authority or serious misconduct by a FCPD officer when requested. Definitions of "abuse of authority" and "serious misconduct" were provided.

Next, Independent Police Auditor Richard Schott provided an overview of the purpose and scope of the Office of the Independent Police Auditor. The Auditor is responsible for monitoring and reviewing Internal Affairs investigations of: police officer involved shootings; in-custody deaths; and use of force

cases that result in death or serious injury. The Auditor also reviews any other use of force cases in which a public complaint is received.

Panel members Kathleen Davis-Siudut and Doug Kay reviewed the complaint filing process. Written complaints or requests for review can be submitted to the Panel via the Auditor’s office in person, by mail, or online (email). Complaints are shared with the FCPD, which conducts the investigation and sends findings to the complainant and the Panel/Auditor. The Panel will conduct public meetings to review investigations, during which it may hear from the complainant and an FCPD representative. Some limitations were noted, including that neither the Auditor nor the Panel has investigative authority but may only review completed investigations by the FCPD. They do not have jurisdiction over the Sheriff’s Office or federal law enforcement (i.e., ICE). Also, they cannot review complaints related to incidents that occurred before December 6, 2016 and, absent a finding of good cause, must abide by established time limits for the submission of an initial complaint or a request for review.

The meeting was then opened up for audience questions about the Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

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Questions and Answers

1. To the majority of residents, the Fairfax County Police Department (FCPD) and the Sheriff’s Department are considered law enforcement officials. Does the Panel or the Auditor have authority to take complaints about the Sheriff’s Department?

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2. How much business/how many complaints do you expect to receive?

At this time, we cannot estimate the volume of complaints that the Panel and Auditor will receive. The purpose of the public forums is to inform county residents about the work of the Panel and the Auditor and provide information on how to submit a complaint or request for review. Regardless of the number of complaints received, it is our intention to provide another layer of transparency of FCPD practices, as well as an intake venue in which no citizen is afraid to come forward and submit a complaint.

3. Where will your meetings be held?

The Panel will generally meet the first Thursday of each month. They will meet more often as needed based on the volume of investigations under review. Meeting locations are expected to vary to encourage citizen participation throughout the county. Panel meeting dates and locations will be announced on the County’s Public Meetings Calendar

(<https://www.fairfaxcounty.gov/calendar/ShowCalendar.aspx>). The next meeting of the Panel is December 7th at 7:00 p.m. in the Government Center.

4. If the Auditor reviews an investigation and disagrees with the FCPD's decision in regards to disciplining an officer, does he have the authority to change the discipline imposed or charge an officer with a crime?

No. The Police Chief has the authority to impose or change disciplinary decisions and only the Commonwealth's Attorney has authority to bring criminal charges. The Auditor has authority to monitor investigations as they are ongoing. In this role, he meets regularly with the FCPD to provide input and recommendations regarding the thoroughness, accuracy, and impartiality of the investigation. The Auditor may request further investigation if he determines that the internal investigation was deficient or that the conclusions were not supported by the evidence. If the Auditor and the Chief of Police cannot resolve a disagreement, the issue will be reported to the Board of Supervisors.

5. Is there anything this panel can do to respond to complaints about the Sheriff's Department or ICE? Is there a legal impediment if the Sheriff wants this Panel to review? Why not invite the Sheriff's Department and ICE to attend these forums?

We are not aware of a legal impediment, however, as the Sheriff's Department is not under the authority of the Board of Supervisors, it is up to the Sheriff to determine that Department's process for oversight and internal review of complaints. The Panel has the authority to issue a public annual report in which it can identify the concerns expressed by residents. This may be an opportunity for those concerns to be shared with the Sheriff's Department.

6. A speaker noted that many individuals who would want to submit a complaint would likely be minorities. Given the racial and ethnic makeup of the Panel, how can the community be assured that the Panel will be sensitive to the concerns of minority populations in the county and help them to navigate the complaint process (which may be seen as complex and lengthy)?

The individuals on the Panel were chosen based on a variety of factors including expertise and experience relevant to the Panel's responsibilities, previous civic involvement, and diversity of membership. Panel members are currently conducting outreach to various community groups representing different racial and ethnic minorities to hear their concerns and explain the complaint and review process. In addition, they encourage community members to invite the Panel to meet with their groups individually to discuss their specific concerns about the FCPD or ask questions about the complaint and review process.

The Fairfax County Police Civilian Review Panel

Public Forum on December 12, 2017

Reston Community Center

Meeting Summary

Panel Members present:

Hansel Aguilar

Steve Descano

Hollye Doane

Doug Kay

Randy Sayles

Adrian Steel, Panel Chairman

Rhonda Van Lowe, Vice Chair

Others present:

Catherine Hudgins, Hunter Mill District, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Member absent:

Kathleen Davis-Siudut

Jean Senseman

The forum began at 7:07 p.m.

Panel Chairman Adrian Steel, Panel Member Randy Sayles, and Supervisor Hudgins welcomed attendees to the Panel's second Public Forum. Supervisor Hudgins provided some framing remarks on the establishment of the Fairfax County Police Civilian Review Panel and the Office of the Independent Police Auditor, and noted that the process put in place is an important opportunity for County residents to have greater oversight of the Fairfax County Police Department (FCPD).

Mr. Sayles reviewed the agenda.

Each Panel member introduced him or herself, and shared information on related expertise and experiences and what brought them to the Panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Mr. Sayles provided an overview of the Civilian Review Panel including: how they were formed, how Panel members were selected, terms of service, the Panel's purpose, and work conducted to date. The Panel has reviewed best practices in police oversight and developed Bylaws and a Code of Ethics (available at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>). The Panel's purpose is to provide an independent process for commencing an initial complaint against the Fairfax County Police Department (FCPD). The Panel will review completed investigations of public complaints of abuse of authority or serious misconduct by a FCPD officer when requested. Definitions of "abuse of authority" and "serious misconduct" were provided. It was noted that the Panel does not investigate, but reviews investigations completed by the FCPD to ensure they are accurate, complete, thorough, objective, and impartial.

Next, Independent Police Auditor Richard Schott provided an overview of the purpose and scope of the Office of the Independent Police Auditor. The Auditor is responsible for monitoring and reviewing

Internal Affairs investigations of: police officer involved shootings; in-custody deaths, while under FCPD custody; and use of force cases that result in death or serious injury. The Auditor also reviews any other use of force cases in which a public complaint is received.

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Some limitations of the Panel's authority were noted, including that neither the Auditor nor the Panel has investigative authority but may only review completed investigations by the FCPD. They do not have jurisdiction over the Fairfax County Sheriff's Office or federal law enforcement (i.e., ICE). Also, they cannot review complaints related to incidents that occurred before December 6, 2016 and, absent a finding of good cause, must abide by established time limits for the submission of an initial complaint or a request for review.

The meeting was then opened up for audience questions about the Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The forum adjourned at 9:02 p.m.

Questions and Answers

1. Why doesn't the Auditor, nor the Panel, have the authority to investigate complaints against the FCPD?

There is no clear enabling legislation to permit the Panel to investigate. Therefore, both entities review investigations that are conducted by the FCPD. The Auditor has authority to review and monitor ongoing investigations. The Auditor and the Panel have the right to request further investigation by the FCPD if it finds the investigation deficient.

2. Why are there two oversight bodies – the Auditor and the Panel – rather than one?

The Ad Hoc Police Practices Review Commission noted a strong public interest in having citizen input and so it recommended that two entities be created: the Auditor to provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings; and the Civilian Review Panel to respond to community concerns or complaints about alleged incidents of FCPD abuse of authority and serious misconduct.

3. Do you have to be involved in the incident to submit a complaint?

No. Any individual, whether or not they were involved or witness to an incident, can submit a complaint.

4. How is the FCPD involved in the Auditor and Panel's review processes? How can citizens be assured that the FCPD is forthcoming with all evidence received and findings?

Initial complaints submitted to the Auditor or Panel (i.e. those not previously submitted to the FCPD) are forwarded to the FCPD for investigation.

- If the case falls under the Auditor's authority, the Auditor will monitor the ongoing investigation and provide input to the FCPD as the investigation is unfolding. (Note: The Auditor automatically monitors and reviews all officer involved shootings, uses of force resulting in death or serious injury, and deaths of individuals while in the custody of the FCPD, regardless of whether a complaint is received.) Concerns about the investigation being deficient or the need for further investigation will be brought forward to the Chief of Police. If the Auditor and the Chief of Police cannot resolve a disagreement, the issue will be reported to the Board of Supervisors and the Chief's resolution will be shared in a public statement. The Auditor will also issue a public report on each incident monitored.
- If the case falls under the Panel's authority, the Panel will receive notice of the FCPD's findings (along with the Complainant) when the FCPD completes its investigation. The Complainant will be advised in that notice of their right to request a review by the Panel.

Citizens may request a review of a completed FCPD investigation.

- If the case falls under the Auditor's authority, the Auditor will review the completed investigation and issue a public report with its findings. (Note: The Auditor automatically monitors and reviews all officer involved shootings, uses of force resulting in death or serious injury, and deaths of individuals while in the custody of the FCPD, regardless of whether a complaint is received.)
- If the case falls under the Panel's authority, the FCPD makes the investigative file available for Panel members to review. An FCPD representative knowledgeable about the investigation will appear at the public meeting to review and answer questions about the investigation, including all findings of fact, evidence collected and received, witness statements, and action taken or not.
- If the Panel or Auditor is made aware that there is additional evidence or witnesses not previously considered in an investigation by the FCPD, they can forward that information to the FCPD as a part of their review and request that the FCPD conduct further investigation. The FCPD is required to conduct the requested investigation and to report back to the Panel.

5. Why can't the Auditor and Panel take complaints about ICE?

Complaints against ICE do not fall within the scope of the Civilian Review Panel or the Independent Police Auditor, which only have authority to respond to complaints against the FCPD.

6. Can you tell me more about Chairman Steel’s background? How many attorneys sit on the Panel?

Mr. Steel is a Senior Counsel with the law firm Mayer Brown LLP. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters. Currently, six Panel members are attorneys and three are not. Two Panel members have previous law enforcement experience.

7. How did the Board of Supervisors select individuals to serve on the Panel?

The Board of Supervisors announced the creation of the Panel and requested nominations from community organizations and self-nominations from interested individuals in December 2016. More than 140 resumes or letters of interest were reviewed. The individuals on the Panel were selected based on criteria including expertise and experience relevant to the Panel’s responsibilities, previous civic involvement, and diversity of membership.

8. Can the Panel make policy recommendations to the FCPD?

The Panel has the authority to issue a public annual report in which it can identify concerns expressed by residents. If patterns emerge from the complaints received, the Panel can make policy recommendations and include them in their annual report.

9. What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?

Absent good cause, initial complaints must be made within one year of the incident, and the incident must not have occurred before December 6, 2016, for the Panel to review. Requests for review must be submitted by the complainant within 60 days of their receiving the FCPD’s notice that an investigation is complete, absent good cause. For ongoing incidents, the Panel will consider the nearest date when determining whether a complaint falls within time constraints.

10. What are you doing to advertise the Auditor’s and Panel’s services to different groups within the community, particularly minorities?

We are in the process of translating our brochure and complaint form to three other languages (Korean, Spanish, and Vietnamese) for distribution across the county. We are seeking recommendations for venues where these brochures should be posted to ensure the greatest reach. (Recommendations from forum participants for posting brochures included: retail and restaurant locations (e.g., the Eden Center), schools, hospitals, community health centers, and churches.) The Panel is currently conducting outreach to various community groups representing different racial and ethnic minorities to hear their concerns and explain the complaint and review process. The Panel encourages community members to invite the Panel to meet with their groups individually to discuss their specific concerns about the FCPD or ask questions about the complaint and review process. Announcements and information on the

Auditor and Panel have been publicized in multiple places on the County's website, through social media, in Supervisors' newsletters, and other news sources, such as WTOP and the Fairfax County Connection (McLean, Reston, and Burke editions).

11. A concern was expressed that police officers (who are usually white and not from the community) routinely harass young people of color, as well as individuals at the homeless shelters, in the Mason District. A forum participant indicated that he has witnessed police officers targeting low income neighborhoods (e.g. apartment buildings in Bailey's Crossroads); conducting searches of individuals without getting proper consent due to the individuals' inability to understand English; driving around in unmarked vehicles and in plain clothes (no badge visible); and switching cars often, making it difficult for citizens to identify the officer and make a complaint.

The Panel encouraged citizens at the forum to file an official complaint (along with any documentation, video footage, etc.) so that the FCPD and the Panel can be made aware of these concerns. If someone does not want to make a complaint directly to the FCPD, they can submit it to the Auditor/Panel, who will facilitate the submission of an initial complaint. It was reiterated that anyone can file a complaint, including witnesses and individuals who want to file a complaint on behalf of someone else.

12. Do you only look at individual cases? My organization would like to see a systematic review of the FCPD's use of force cases.

The Auditor is currently reviewing the data regarding racial disparities in use of force cases from 2015 and 2016. Also, if the Panel were to receive numerous complaints about the inappropriate use of force based on race, they will also be able to identify racial disparity as a concern in their annual report and make public recommendations on FCPD policies and practices.

13. Are all complaints received by the Auditor and Panel available to the public for viewing?

Yes. The Panel's meetings, during which reviews will be conducted, are open to the public. Also, both the Auditor and the Panel will issue public annual reports summarizing complaints received.

The Fairfax County Police Civilian Review Panel

Public Forum on November 16, 2017

Heritage Human Services Center, Annandale

Meeting Summary

Panel Members present:

Hansel Aguilar

Kathleen Davis-Siudut

Steve Descano

Hollye Doane

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The Fairfax County Police Civilian Review Panel

Public Forum on December 12, 2017

Reston Community Center

Meeting Summary

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Steve Descano

Hollye Doane

Doug Kay

Randy Sayles

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4. How is the FCPD involved in the Auditor and Panel's review processes? How can citizens be assured that the FCPD is forthcoming with all evidence received and findings?

Initial complaints submitted to the Auditor or Panel (i.e. those not previously submitted to the FCPD) are forwarded to the FCPD for investigation.

- If the case falls under the Auditor's authority, the Auditor will monitor the ongoing investigation and provide input to the FCPD as the investigation is unfolding. (Note: The Auditor automatically monitors and reviews all officer involved shootings, uses of force resulting in death or serious injury, and deaths of individuals while in the custody of the FCPD, regardless of whether a complaint is received.) Concerns about the investigation being deficient or the need for further investigation will be brought forward to the Chief of Police. If the Auditor and the Chief of Police cannot resolve a disagreement, the issue will be reported to the Board of Supervisors and the Chief's resolution will be shared in a public statement. The Auditor will also issue a public report on each incident monitored.
- If the case falls under the Panel's authority, the Panel will receive notice of the FCPD's findings (along with the Complainant) when the FCPD completes its investigation. The Complainant will be advised in that notice of their right to request a review by the Panel.

Citizens may request a review of a completed FCPD investigation.

- If the case falls under the Auditor's authority, the Auditor will review the completed investigation and issue a public report with its findings. (Note: The Auditor automatically monitors and reviews all officer involved shootings, uses of force resulting in death or serious injury, and deaths of individuals while in the custody of the FCPD, regardless of whether a complaint is received.)
- If the case falls under the Panel's authority, the FCPD makes the investigative file available for Panel members to review. An FCPD representative knowledgeable about the investigation will appear at the public meeting to review and answer questions about the investigation, including all findings of fact, evidence collected and received, witness statements, and action taken or not.
- If the Panel or Auditor is made aware that there is additional evidence or witnesses not previously considered in an investigation by the FCPD, they can forward that information to the FCPD as a part of their review and request that the FCPD conduct further investigation. The FCPD is required to conduct the requested investigation and to report back to the Panel.

5. Why can't the Auditor and Panel take complaints about ICE?

Complaints against ICE do not fall within the scope of the Civilian Review Panel or the Independent Police Auditor, which only have authority to respond to complaints against the FCPD.

6. Can you tell me more about Chairman Steel's background? How many attorneys sit on the Panel?

Mr. Steel is a Senior Counsel with the law firm Mayer Brown LLP. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters. Currently, six Panel members are attorneys and three are not. Two Panel members have previous law enforcement experience.

7. How did the Board of Supervisors select individuals to serve on the Panel?

The Board of Supervisors announced the creation of the Panel and requested nominations from community organizations and self-nominations from interested individuals in December 2016. More than 140 resumes or letters of interest were reviewed. The individuals on the Panel were selected based on criteria including expertise and experience relevant to the Panel's responsibilities, previous civic involvement, and diversity of membership.

8. Can the Panel make policy recommendations to the FCPD?

The Panel has the authority to issue a public annual report in which it can identify concerns expressed by residents. If patterns emerge from the complaints received, the Panel can make policy recommendations and include them in their annual report.

9. What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?

Absent good cause, initial complaints must be made within one year of the incident, and the incident must not have occurred before December 6, 2016, for the Panel to review. Requests for review must be submitted by the complainant within 60 days of their receiving the FCPD's notice that an investigation is complete, absent good cause. For ongoing incidents, the Panel will consider the nearest date when determining whether a complaint falls within time constraints.

10. What are you doing to advertise the Auditor's and Panel's services to different groups within the community, particularly minorities?

We are in the process of translating our brochure and complaint form to three other languages (Korean, Spanish, and Vietnamese) for distribution across the county. We are seeking recommendations for venues where these brochures should be posted to ensure the greatest reach. (Recommendations from forum participants for posting brochures included: retail and restaurant locations (e.g., the Eden Center), schools, hospitals, community health centers, and churches.) The Panel is currently conducting outreach to various community groups representing different racial and ethnic minorities to hear their concerns and explain the complaint and review process. The Panel encourages community members to invite the Panel to meet with their groups individually to discuss their specific concerns about the FCPD or ask questions about the complaint and review process. Announcements and information on the

Auditor and Panel have been publicized in multiple places on the County's website, through social media, in Supervisors' newsletters, and other news sources, such as WTOP and the Fairfax County Connection (McLean, Reston, and Burke editions).

11. A concern was expressed that police officers (who are usually white and not from the community) routinely harass young people of color, as well as individuals at the homeless shelters, in the Mason District. A forum participant indicated that he has witnessed police officers targeting low income neighborhoods (e.g. apartment buildings in Bailey's Crossroads); conducting searches of individuals without getting proper consent due to the individuals' inability to understand English; driving around in unmarked vehicles and in plain clothes (no badge visible); and switching cars often, making it difficult for citizens to identify the officer and make a complaint.

The Panel encouraged citizens at the forum to file an official complaint (along with any documentation, video footage, etc.) so that the FCPD and the Panel can be made aware of these concerns. If someone does not want to make a complaint directly to the FCPD, they can submit it to the Auditor/Panel, who will facilitate the submission of an initial complaint. It was reiterated that anyone can file a complaint, including witnesses and individuals who want to file a complaint on behalf of someone else.

12. Do you only look at individual cases? My organization would like to see a systematic review of the FCPD's use of force cases.

The Auditor is currently reviewing the data regarding racial disparities in use of force cases from 2015 and 2016. Also, if the Panel were to receive numerous complaints about the inappropriate use of force based on race, they will also be able to identify racial disparity as a concern in their annual report and make public recommendations on FCPD policies and practices.

13. Are all complaints received by the Auditor and Panel available to the public for viewing?

Yes. The Panel's meetings, during which reviews will be conducted, are open to the public. Also, both the Auditor and the Panel will issue public annual reports summarizing complaints received.

APPENDIX D.2

(2018 Annual Report)



Fairfax County Police Civilian Review Panel Annual Report 2018

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2018



A Fairfax County, VA Publication

Publication Date: March 21, 2019

PANEL MEMBERS

Hansel Aguilar, Fairfax

Robert Cluck, Reston

Hollye Doane, Oakton

Colonel Gregory Gadson, Alexandria

Anna Northcutt, Reston

Shirley Norman-Taylor, Lorton

Adrian L. Steel, Jr., McLean

Rhonda VanLowe, Reston (Chair)

Douglas Kay, Fairfax (Vice-Chair)

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To request this information in an alternate format, call 703-324-3459, TTY 711.

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SECTION I: 2018 ACTIVITIES¹

Initial Complaints and Investigation Review Requests

The Panel's year² was productive. Continuing to build on its experiential foundation, the Panel received and processed 31 complaints³ (25 Initial Complaints; 6 investigation Review Requests), an increase of 28 Complaints from 2017. The surge in complaints submitted is no doubt due, in part, to the Panel's community outreach efforts to educate our community on the Panel's mission and processes. The Panel presented to 16 community and civic groups during the year.⁴

Operating Processes

The Panel also expanded its policy foundation with the approval of operating procedures⁵ that:

- establish a process to ensure consistent treatment of all submitted complaints and requests for investigation reviews;
- provide future Panel Members with a roadmap for Panel operations;
- create correspondence templates; and
- document the administrative tasks performed by the Independent Police Auditor Staff.

In addition, the Panel proposed to the Board of Supervisors three Bylaw Amendments (approved on October 16, 2018)⁶ to clarify certain aspects of the Panel process. Most notable, the change to Section VI.E.1(a) makes clear that the Panel must perform an investigation review if the Panel determines that there is an allegation of abuse of authority or serious misconduct by a Fairfax County Police Department (FCPD) officer stated within the four corners of the complaint. Further, the amendments clarify that a complainant's appearance is not required for the Panel to conduct a Review Meeting. That said, there is no change to the Panel's

¹ See Appendix A for an overview of the Panel's mission and history.

² March 2018 to February 2019

³ See Appendix B for a summary table of the complaints and review requests received.

⁴ See Appendix C for a list of the community and civic organization presentations

⁵ See Appendix D for the Panel's current Operating Procedures.

⁶ See Appendix E for the Bylaws of the Fairfax County Police Civilian Review Panel

obligation to provide complainants with notice of the Review Meeting, and, if the complainant elects to address the Panel, the complainant will have the opportunity to do so.

Public Forum

The Mount Vernon Governmental Center was the site of the Panel's sole public forum for the year. The December 10, 2018⁷ public forum was well attended by county residents. Both Supervisor Dan Storck and Chief Edwin Roessler attended as well. While public participants raised several salient questions during the forum, two themes surfaced that are also aligned with concerns Panel Members expressed during our meetings and deliberations: (i) FCPD accountability (the obligation of the FCPD to communicate to complainants and the public the results of its investigations), and (ii) transparency (the specific, detailed information shared with the public through FCPD communications to complainants and through Panel Reports). Addressing these two concerns with some urgency is incumbent upon the Board of Supervisors, the FCPD, and the Panel, if the Panel is to succeed in its mission to build public trust and confidence in the FCPD through an investigation review process that bolsters FCPD accountability.

SECTION II: ISSUES FOR BOARD OF SUPERVISORS CONSIDERATION

Accountability and Transparency

Concerns about transparency are not new. Discussions around the issue date back to the Ad Hoc Police Practices Commission. Having discussed the transparency issue during its meetings and received several public comments regarding the same, the Panel's view is that more information about the results of the FCPD investigations of complaints must be shared with complainants. Two areas noted for improvement are: (i) the FCPD letter sent to the complainant upon completion of an investigation (the "Disposition Letter") and (ii) the Panel's Review Report, which is issued (and made public) after completion of a Review Meeting.

⁷ See Appendix F for the Summary of the Panel's 2018 Public Forum

i. The FCPD Disposition Letters

The Disposition Letters must contain sufficient, specific detail to provide the complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings. The Panel finds that, while the Disposition Letters have stated the outcome of the investigations in broad general terms, too many Disposition Letters issued since the Panel's inception do not provide complainants with details about the investigation or the reasons for the FCPD's conclusions. Chief Roessler pledged during the pendency of the Commission that Disposition Letters would be more than just boilerplate responses, yet the Panel has not seen consistent and appreciable movement towards change.

The Panel recommends that all Disposition Letters contain, at a minimum, the following:

- a description of investigation undertaken;
- key factual findings and supporting evidence;
- a summary of relevant evidence and witness statements;
- a statement of reasons for FCPD conclusions;
- Virginia Code and FCPD General Orders that were considered in the investigation and whether violations were found; and
- whether disciplinary action was taken or not (without disclosing actual discipline imposed).

We believe that a more detailed and transparent response will: (i) provide the complainant with a positive understanding of the FCPD efforts to address the complainant's concerns and (ii) build greater community trust through greater transparency.

ii. Panel Review Reports

A corollary issue to concerns regarding the content of Disposition Letters, is the detail provided in the Panel Review Report. The Panel has heard concerns from the public that the content of the Panel's Review Report is limited, and we would like to address

the concern by including more details about the FCPD investigation in the Report. That said, the Panel has some apprehension that the language of the Board of Supervisor Action Item 17, dated December 6, 2016 (p. 278), limits the Panel's ability to include salient facts in public reports. The relevant section provides: "each Panel Member who is provided the opportunity to review [an Investigation Report] shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public." One possible interpretation of the language is to characterize the entire Investigation Report as a "personnel record." This interpretation of the Action Item (i) would unduly limit the Panel's ability to discuss or refer to information from the FCPD investigation file at a Review Meeting or in a Panel Report, and (ii) seems contrary to the objective of more transparency with respect to FCPD actions. Further, this restrictive interpretation would inhibit the Panel's ability to achieve its purpose "to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public." The Panel proposes that the following principles apply to the content of Panel Review Reports:

- Information cited in Disposition Letters, disclosed by the FCPD in Panel Review Meetings and information in the investigation file, other than Personnel Record Information, may be included in Panel Reports.
- "Personnel Record information" is defined as specific officer discipline (excluding the fact of a violation of a FCPD General Order or policy, law, or rule) and certain statements of police officers taken (as required under the provisions of *Garrity v. New Jersey*), unless officer consent is secured.
- Names, addresses, and other identifying information of complainants, officers, and witnesses will not be included in Panel Reports (a practice consistent with that of the Independent Police Auditor).

Panel Comments and Recommendations⁸

The Panel offered comments and recommendations to the FCPD during the year through Panel Review Reports that reflect a combination of observations offered by complainants and reflections by Panel Members after Review Meetings. However, there is no process in place for Panel comments and recommendations to be reviewed, considered, and, where appropriate implemented. If the Panel's review process is to have a meaningful impact for the community, the Panel's comments and recommendations must be given serious consideration as part of the investigation review process.

Request for Action

The Panel leadership met with the Panel's FCPD Liaisons and the Commander of the Internal Affairs Bureau (on January 7, 2019) to discuss the issues outlined in this Section II. The Panel's leadership hoped to address concerns through continuing discussions with FCPD as a working group. However, FCPD expressed its preference that the Panel's concerns be taken directly to the Board of Supervisors. As a result, through the submission of this report, the Panel requests that the Board of Supervisors establish a process to address and resolve the concerns outlined in this Section II and future recommendations offered by the Panel. As a start, the Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same. The Panel is committed to an investigation review process that fosters transparency to the public and accountability from the FCPD. A process for vetting concerns that surface through investigation reviews, public comments, and public forums is imperative for the Panel's effective discharge of its mission.

⁸ See Appendix G for Panel Review Reports published during the year, which includes Panel comments and recommendations.

SECTION III: WITH APPRECIATION

Our sincere thanks to Jean Senseman, Kathleen Davis-Siudut, Randy Sayles, and Steve Descano for their service and invaluable contributions to the Panel. We welcomed four new Panel Members during the year to complete the terms of our colleagues:

- Anna Northcutt
- Robert Cluck
- Col. Gregory Gadson
- Shirley Norman-Taylor

We are grateful for their willingness to serve and for the continued service of Panel Members appointed as part of the inaugural Panel.⁹ A heartfelt thank you also goes to the Independent Police Auditor and Staff for their continued support.

The Panel also acknowledges the complainants for their courage in coming forward to participate in the Panel's complaint and investigation review processes and entrusting their concerns to the Panel. We look forward to continuing the Panel's work in the coming year.

⁹ See Appendix H for Panel Member Biographies

Establishment and Mission of the Police Civilian Review Panel

The Fairfax County Police Civilian Review Panel (“Panel”) was established by the Board of Supervisors on December 6, 2016, in response to recommendations from the Ad Hoc Police Practices Review Commission.¹ The nine-member Panel’s mission is to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (“Department” or “FCPD”) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigations. The Panel is appointed by, and reports directly to, the Board of Supervisors. The Panel is governed both by the Bylaws approved by the Board of Supervisors and a Code of Ethics adopted by the Panel.²

The Panel generally meets the first Thursday of each month at the Fairfax County Government Center. Panel meeting dates and locations are announced on the County’s Public Meetings Calendar (<https://www.fairfaxcounty.gov/Calendar/ShowCalendar.aspx>).

¹ The December 6, 2016 Action Item and February 28, 2017 clarifications can be found in the February 28, 2017 Final Board Package (pp. 268-279) from the County’s website: <https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting%20materials/board/2017/feb28-final-board-package.pdf>

² Capitalized terms in this Report have the meaning set forth in the Defined Terms attached to the Bylaws, unless the context indicates otherwise.

2018 Panel Complaint Summary Table

| CRP Case Number | Date Received | Complaint Type | Incident Type | Status |
|-----------------|---------------|--------------------|---|--|
| N/A | 1/12/2018 | Initial Complaint | Alleges that excessive force was involved, falsely arrested, assaulted and abused while in handcuffs. Alleges procedural violations prevalent, abuses of authority as well as misconduct by FCPD officers. | Incident occurred before December 6, 2016. |
| CRP-18-01 | 1/24/2018 | Initial Complaint | Complaint against a School Resource Officer alleging the officer as being "defiant and disrespectful", "rude and intimidating." | Complainant did not request a review. |
| CRP-18-02 | 2/5/2018 | Request for Review | Alleges false arrest for being "drunk in public" and claims that he was "abused throughout the entire scenario." | Panel voted to concur with FCPD findings on 4-5-2018. Report published on 10-4-2018. |
| N/A | 4/24/2018 | Initial Complaint | Alleges false arrest when at police department to press charges against aggressor. | Incident occurred before December 6, 2016. |
| N/A | 4/27/2018 | Initial Complaint | Claims that FCPD failed to investigate drowning of client. Complaint submitted by counsel of Mr.F. | Incident occurred before December 6, 2016. |
| CRP-18-03 | 5/11/2018 | Initial Complaint | Alleges that excessive force was involved, falsely arrested, assaulted and abused while in handcuffs. Alleges procedural violations prevalent, abuses of authority as well as misconduct by FCPD officers. | Complainant did not request a review. |
| CRP-18-04 | 5/11/2018 | Initial Complaint | Claims he has as not been able to retrieve seized property back from the FCPD. | Complainant did not request a review. |
| CRP-18-05 | 6/4/2018 | Initial Complaint | Alleges that an officer made false reports regarding a motorcycle accident and refuses to correct the reports. | Complainant requested a review (see CRP-18-12) |
| CRP-18-06 | 6/13/2018 | Initial Complaint | Alleges that FCPD has not addressed the loitering of minors (in possession of a knife) at the entrance of his condominium building after multiple calls. | Complainant did not request a review. |
| CRP-18-07 | 6/19/2018 | Initial Complaint | Alleges that FCPD did not allow her to make a criminal assault report against a former roommate. | Complainant did not request a review. |
| CRP-18-08 | 6/20/2018 | Initial Complaint | Alleges an officer failed to file a report after having a direct contact with an individual who is stalking her. | Complainant did not request a review. |
| CRP-18-09 | 7/2/2018 | Initial Complaint | Alleges harassment by the Police Department, which started in November of 2017. | Complainant did not request a review. |
| CRP-18-10 | 7/6/2018 | Initial Complaint | Alleges the officer was following and harassing him, that the officer did not have enough probable cause to search the vehicle he was driving, and the officer searching him multiple times was excessive. | Complainant did not request a review. |
| CRP-18-11 | 7/13/2018 | Initial Complaint | Alleges an officer has turned the rest of the department against her. Alleges "aggressive, rude, nasty" behavior. Alleges that officers have declined to take her reports. Alleges she is being intimidated, bullied, and harrassed. Alleges that she is receiving differential treatment and is being discriminated against due to her race. | Complainant did not request a review. |

2018 Panel Complaint Summary Table

| | | | | |
|-----------|------------|--------------------|---|--|
| CRP-18-12 | 8/21/2018 | Request for Review | Requesting a Review of Initial Complaint he filed with the Panel in June 2018. | Panel voted to concur with the findings and determination of the FCPD on 11-1-18. Review Report published on 1-9-19. |
| CRP-18-13 | 9/10/2018 | Initial Complaint | Alleges improper investigative techniques, violation of forfeiture procedures, and abusive language | FCPD Investigation Complete |
| CRP-18-14 | 9/24/2018 | Initial Complaint | Alleges a lack of trust with the detective assigned to the case. | Complainant Withdrew Complaint |
| CRP-18-15 | 9/24/2018 | Initial Complaint | Alleges misrepresentation of Hispanics in FCPD data reporting. Issue Based Reporting. | Anonymous complaint forwarded to FCPD as an inquiry. |
| CRP-18-16 | 9/27/2018 | Initial Complaint | Alleges racial profiling. | Complainant Withdrew Complaint |
| CRP-18-17 | 9/29/2018 | Initial Complaint | Alleges harassment, racial profiling, illegal search. | FCPD Investigation Complete |
| CRP-18-18 | 9/30/2018 | Initial Complaint | Alleges issues filing police reports after filing a police report alleging misconduct, discrimination against complainant occupation, harassment, hostile behavior. | Forwarded to FCPD for Investigation. Complainant could not be reached by Staff or FCPD. |
| CRP-18-19 | 10/11/2018 | Request for Review | Alleges coercion, threats, and violation of constitutional rights. | Unable to Review due to Pending Litigation. Complainant was instructed to notify the Panel when litigation is concluded. |
| CRP-18-20 | 10/19/2018 | Initial Complaint | Alleges racial profiling and false police report. | Complainant Withdrew Complaint |
| CRP-18-21 | 10/29/2018 | Initial Complaint | Alleges harrasment. | FCPD Investigation Complete |
| CRP-18-22 | 11/7/2918 | Initial Complaint | Alleges negligence related to officer statements and the filing of a National Missing Persons Report. | FCPD Investigation Complete |
| CRP-18-23 | 11/9/2018 | Initial Complaint | Alleges misconduct, abuse of power, and unethical practices. | Complaint did not involve a current or former FCPD employee. |
| CRP-18-24 | 11/13/2018 | Initial Complaint | Alleges misconduct, unlawful arrest, illegal search. | Incident occurred before December 6, 2016. |
| CRP-18-25 | 11/15/2018 | Request for Review | Alleges negligence related to animal welfare checks by Animal Control Officers. | Complainant Withdrew Complaint |
| CRP-18-26 | 11/26/2018 | Request for Review | Initial complaint alleged bias during a traffic stop. Complainant is Requesting a Review because complainant did not receive a report that detailed results of the investigations but instead a short letter. Complainant also believes that the investigation was not independently conducted. Alleges racial Profiling. | Panel voted to concur with the findings and determination of the FCPD on 1-3-19. Review Report is currently being drafted. |
| CRP-18-27 | 12/10/2018 | Request for Review | Requesting a Review of alleged illegal stop (Panel) and physical assault (Auditor) by FCPD officers on a victim | Panel Recommends additional Investigation by FCPD. |
| CRP-18-28 | 12/17/2018 | Initial Complaint | Requesting the Panel work with the Chief of FCPD to examine policies and procedures that allow for the high number of criminal arrests in the County that are dismissed or determined Nolle Prosequi | Forwarded to FCPD for Investigation |

Community and Civic Organization Presentations

- ❖ ADAMS Center
- ❖ ADAMS Center Leadership Team
- ❖ Autism Society NOVA
- ❖ Centreville Labor Resource
- ❖ Cornerstones
- ❖ Criminal Justice Advisory Board
- ❖ Fair Oaks Citizen Advisory Committee
- ❖ Fairfax County Federation of Citizens Association Public Safety Program
- ❖ Faith Communities in Action
- ❖ International Visitor Leadership Program – Ukrainian Delegation
- ❖ McLean Citizen Advisory Committee
- ❖ McLean Citizens Association Public Safety Program
- ❖ Mount Vernon Citizen Advisory Committee
- ❖ Mount Vernon Council of Citizens Association
- ❖ Unitarian Universalist Association
- ❖ West Springfield Citizens Advisory Committee

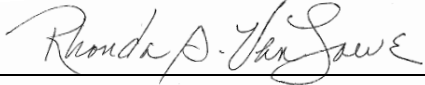
Other community outreach efforts include:

- ❖ 2018 Public Forum
- ❖ Chanel 16 produced video
- ❖ Reston Impact video interview



Fairfax County Police Civilian Review Panel Procedures & Foundational Documents

Building Community Trust Through Accountability

| Fairfax County Police Civilian Review Panel Procedural Memorandum | |
|--|---|
| No: A-1 | Subject: Administrative Support Provided by the Office of the Independent Police Auditor Staff |
| Approval Date: December 6, 2018 | Review Date: December 2020 |
| Signed by Rhonda S. VanLowe, Chair |  |

Purpose: This document serves as a guideline for the Auditor’s Staff charged with providing administrative support to the Panel.

Complaint Intake and Processing Support

- Staff will receive Complaints on behalf of the Panel during County business hours Monday – Friday. Complaints may be received in person, via the secured Complaint Form drop box (located outside of the Auditor Office), and by email, phone, or U.S. Mail. Staff will check the Complaint Form drop box for incoming complaints.
- Staff will maintain all records regarding a Complaint on the County’s shared drive. Complaint files will include: written Complaints submitted by complainants, formal Panel correspondence with the complainant (i.e., emails from the Panel’s email address or letters on Panel letterhead), copies of FCPD correspondence to the complainant shared with the Panel, and related Panel Review Reports.
- In addition, Staff will maintain printed copies of complaint files in the Auditor’s Office for reference by Staff or Panel Members.
- The Complaints Master Log spreadsheet (Attachment 1) will be updated with the Complaint information. The Complaints Master Log spreadsheet will continually be updated while the Complaint is processing until it has been closed. Complainant and officer identifying information (if included) will be redacted from the Master Log spreadsheet at the expiration of the retention period per OIPA Procedural Memorandum 03 on Records Management. The Complaints Master Log spreadsheet containing complainant or officer identifying information will be used for internal Panel purposes only.
- Staff will assist the Panel Chair in determining whether Complaints are: Initial Complaints or Requests for Review, timely filed, and/or the subject of pending civil, criminal, or administrative litigation.
- At the direction of the Panel Chair, Staff will prepare correspondence to be sent to complainants.¹ This correspondence will be sent (once authorized by the Panel Chair) to the complainant hardcopy via U.S. Mail and electronically via email (when available).

¹ Specific correspondence types are described in greater detail in Police Civilian Review Panel Procedural Memoranda entitled, *Intake and Processing of Initial Complaints* and *Intake and Processing of Review Requests*.

- At the direction of the Panel Chair, Staff will prepare correspondence to be sent to County officials on behalf of the Panel, to include the transmission of Panel reports.
- At the direction of the Panel Chair, Staff may call and/or email complainants to provide information regarding the Panel's processes, and/or to gather additional information from complainants. Staff may record information from complainants to convey to the Panel but will not discuss substantive issues with complainants on behalf of the Panel. Substantive questions or concerns from complainants will be referred to the Panel Chair to address.

Meetings Support

- Staff will prepare and post public meeting notices within the timeframe required by the Virginia Freedom of Information Act for all Panel Meetings, including meetings of subcommittees.
- Staff will provide the required notice to County officials before Panel Review Meetings.
- Staff will be responsible for reserving meeting rooms to include closed session rooms.
- In coordination with the Panel Chair, Staff will create, copy, and collate documents that will be disseminated during Panel Meetings.
- Staff will attend Panel Meetings and compose a summary of each meeting.
- Staff will provide logistical support for the Panel during Panel Meetings.
- Staff will coordinate with County staff to have Panel Meetings audio recorded.
- When necessary, Staff will coordinate for translation services to be provided at ~~the~~ Panel Meetings.

Panel Website

- Staff, in consultation with the Panel Chair, will maintain the Panel website, to include posting reports and other content as determined by the Panel and in compliance with the County's web content Procedural Memorandum No. 13-04 and Department of Information Technology policies and guidelines.

Outreach Support

- Staff, at the direction of the Panel Chair, will reach out to community organizations, houses of worship, non-profits, or other groups within the County to make an initial outreach effort introducing the Panel. Staff will document and track the Panel's community outreach effort.
- Staff will provide logistical support during outreach events for the Panel, as needed.
- Staff may attend County sponsored outreach events and act as a liaison to link the Panel to other County agencies.
- Staff may attend other outreach events when there is a clear need for administrative or logistical support, as agreed by the Panel Chair and the Auditor.

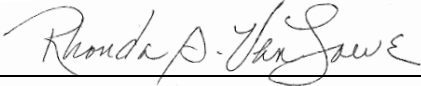
Other Support

- Staff will perform other administrative duties as cited in the Procedures and Foundational Documents manual and as agreed upon by the Panel Chair, Staff, and the Auditor.

Summary of Headings found on Complaints Master Log

The bulleted list below outlines the column headings that are found on the Complaints Master Log. This information is tracked for each complaint received.

- Complaint Number
- Date Complaint Received
- Complainant First Name
- Complainant Last Name
- Description: Incident Description Provided or Reasons for Review Request
- How was Complaint Received?
- Completed a Complaint Form?
- Initial Complaint or Request for Review?
- Actions Taken Log
- CRP Complaint Number
- Complainant Email Address
- Phone Number
- Address
- City, State, Zip Code
- Age
- Gender
- Race/Ethnicity/National Origin
- Witness Information
- Officer Information
- Incident Date
- Incident Time
- Incident Location
- Records Purge Date based on Procedural Memorandum 03 Records Retention

| Fairfax County Police Civilian Review Panel Procedural Memorandum | |
|--|--|
| No: A-2 | Subject: Panel Meeting Agenda Items |
| Approval Date: December 6, 2018 | Review Date: December 2020 |
| Signed by Rhonda S. VanLowe, Chair |  |

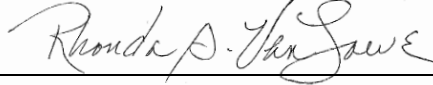
Purpose: To outline guidelines for establishing the monthly Panel Meeting Agenda that allows for (i) input from Panel Members and (ii) timely notice to the public.

Agenda Items

- Panel Member may, at any time before a meeting agenda is circulated, contact the Chair to propose topics for the next meeting agenda.
- The Chair will send a draft Panel Meeting Agenda to the Panel Members at least 10 days before the scheduled meeting date.
- Panel Members may propose changes to the draft Meeting Agenda not later than seven days before the scheduled meeting date.
- Any documents that support an agenda item must be sent to the Chair for distribution to the Panel Members at least seven days before the scheduled meeting date to allow for ample time for review and consideration.
- If a Panel Policy or Procedure is proposed for consideration the Chair may require a review from Panel Counsel to ensure compliance with the Bylaws.

Public Notice of the Agenda

- The Panel Meeting Agenda will be published at least three (3) days before a scheduled meeting date

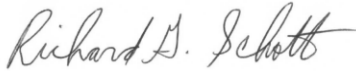
| Fairfax County Police Civilian Review Panel Procedural Memorandum | |
|--|---|
| No: A-3 | Subject: Participation in Meetings due to Personal Matter; Certain Disabilities; Distance from Meeting |
| Approval Date: December 6, 2018 | Review Date: December 2020 |
| Signed by Rhonda S. VanLowe, Chair |  |

Purpose: This policy allows Panel Members to participate in Panel Meetings through electron communications within the terms and limits outlined below.

Requirements for Remote Participation

- A member of the Civilian Review Panel (“the Panel”) may participate in a meeting governed by the provisions of Virginia Code §§ 2.2-3700 *et. seq.*, the Virginia Freedom of Information Act (“VFIA”), through electronic communication means from a remote location that is not open to the public only as follows:
 - If, on or before the day of the meeting, a member of the Panel holding the meeting notifies the chair of the Panel that such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter, and the Panel holding the meeting records in its minutes the specific nature of the personal matter and the remote location from the which the member participated; and,
 1. A quorum of the Panel is physically assembled at the primary or central meeting location; and
 2. The Panel makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.
 3. If a member’s participation from a remote location is disapproved because such participation would violate this policy such disapproval shall be recorded in the minutes with specificity.
 4. This policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.
 5. Such participation by the member shall be limited each calendar year to two meetings:

- If a member of the Panel notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the Panel records this fact and the remote location from which the member participated in its minutes.

| | |
|---|--|
| Office of the Independent Police Auditor Procedural Memorandum | |
| No: 03 | Subject: Records Management |
| Approval Date: December 1, 2018 | Review Date: December 1, 2020 |
| Signed by Richard Schott, Independent Police Auditor |  |

Purpose: This policy establishes the general responsibilities of staff in the Office of the Independent Police Auditor (OIPA) and members of the Police Civilian Review Panel (Panel) in regards to retaining and disposing of records in compliance with the Virginia Public Records Act (Code of Virginia § 42.1-76 et seq.). The OIPA oversees the management of records by Panel Members to ensure that both entities are coordinated and uniform in the retention and disposition of records.

Agency Records Officer

The Management Analyst II will serve as the agency records officer for OIPA and will be responsible for the development, implementation, and ongoing coordination of the OIPA’s records management program. Responsibilities include:

- Serving as the liaison with the Archives and Records Management Branch, DIT.
- Maintaining a working knowledge of applicable local, State, and Federal Statutes and/or regulations affecting records management practices.
- Developing procedures to implement OIPA’s records management program and establishing records retention and disposition schedules for the office.
- Serving as the point of contact for Panel Members regarding records management and providing them with guidance (in consultation with Panel counsel) to ensure compliance with established procedures.
- Providing training and resources as necessary to OIPA staff and Panel Members.
- Ensuring that archival and permanent records are properly identified and maintained.
- Supporting OIPA staff and Panel Members in their individual responsibilities to retain temporary records according to their retention schedules and to dispose of non-records.
- Directing OIPA staff and Panel Members to review their files and emails on a semi-annual basis and certifying that records have been destroyed according to established OIPA procedures.

Definition of Records and Non-Records

- A “Public Record” is any recorded information that documents a transaction or activity by or with any public official if it is produced, collected, received or retained in connection with the transaction of public business (Code of Virginia § 42.1-77). Records

include, but are not limited to, notes, letters, documents, printouts, audio recordings, videos, emails, and texts.¹

- A material or email will be considered a record when it is related to one’s responsibilities as a public official and explains/justifies/documents an action or decision. An email will be treated as a record (and retained accordingly) when it does one of the following:
 - Corresponds with staff, complainants, vendors, or the general public about official business (may include incoming messages)
 - Involves negotiations on behalf of department or locality
 - Approves or authorizes actions or expenditures
 - Signifies policy changes or developments
 - States official opinions relating to a public official’s position
 - Creates precedents, such as messages issuing instructions or advice
- Correspondence that is of a routine administrative nature shall be considered a record and will be retained only as long as it is administratively useful. Correspondence will be considered routine when it is part of a regular/established procedure or typical sequence of actions (e.g., building an agenda, scheduling meetings).
- Materials (and emails) that do not meet the criteria will be considered non-records and will not be retained (e.g., informational emails that do not require a response, general announcements, reference materials or copies of materials retained by someone else, draft material related to documents that have since been finalized).

Records Retention and Disposition Schedules

- Records retention and disposition schedules for OIPA and Panel were developed in accordance with the Library of Virginia General Schedule No. GS-19 for County and Municipal Governments.
- A summary table of the OIPA and Panel Retention Schedules is provided below. A more detailed document, *Retention Schedules for the Office of the Independent Police Auditor and the Police Civilian Review Panel*, will be maintained by the OIPA which outlines for each record type: agency retention period, agency disposition process, and related Library of Virginia Record Series information

| Summary of OIPA/Panel Retention Schedules | |
|---|-------------------------------|
| Record Type | Retention Period |
| OIPA Policies/Procedures | permanent (approved versions) |
| Panel Bylaws | permanent (approved versions) |

¹ See also the definition of “public record” in the Virginia Freedom of Information Act, Va. Code Ann. §§ 2.2-3700 through 2.2-3714 (FOIA).

| | |
|--|--|
| Panel Adopted Policies/Procedures | permanent (current versions) |
| OIPA/Panel Annual Reports | permanent |
| OIPA Incident Review and Other Public Reports | permanent |
| Panel Review Reports | permanent |
| Panel Meeting Agendas, Summaries and Audio Files | permanent |
| Complaint Forms/Emailed Complaints | 1 year from close of complaint (redacted versions saved for as long as administratively/historically useful) |
| OIPA/Panel Official Correspondence with Complainants | 1 year from close of complaint (redacted versions saved for as long as administratively/historically useful) |
| Internal Correspondence concerning a Complaint (to Panel Members or OIPA staff) | 1 year from close of complaint |
| Correspondence to FCPD concerning a Complaint | 1 year from close of complaint |
| Copies of FCPD Official Correspondence to Complainants | Redacted version kept with complaint file |
| Internal Correspondence not concerning a Complaint (to Panel Members or OIPA staff) | 2 years after the end of the calendar year |
| Internal Correspondence not concerning a Complaint (from IPA only) | 3 years after the end of the calendar year |
| OIPA/Panel Non-Routine Official Correspondence with External Stakeholders (e.g., BOS, FCPD, media) | 3 years after the end of the calendar year |
| Draft Documents/Reports | until the subsequent draft or the final document is completed |
| Routine/Administrative Documents/Correspondence | none, as long as administratively useful |
| OIPA Master Complaint/Review Spreadsheets | none, as long as administratively useful (PII redaction 1 year from close of complaint) |
| Spreadsheets to track processes (e.g., outreach) | none, as long as administratively useful |
| Reports/Status Updates for Internal Use | none, as long as administratively useful |
| Informal Guidelines, Instructions etc. (not approved procedures) | none, as long as administratively useful |
| Presentation materials (with new substantive content) | 1 year and then for as long as administratively useful |
| Routine voicemails/telephone messages | none |
| Substantive Voicemails from Complainants left with OIPA | 1 year from close of complaint |

| | |
|--|--|
| Substantive Voicemails from Complainants left with Panel Members | none |
| FOIA Requests | 3 years after responses are provided |
| RM-3 Forms approved | 3 years after the end of the calendar year |

- OIPA will serve as the custodian for all permanent records, including those of the Panel. All OIPA reports, Panel reports, Panel Bylaws, and Panel meeting materials will be maintained on the website as well as on the S: Drive. OIPA Procedures and Procedures adopted by the Panel will be maintained on the S: Drive.
- OIPA will serve as the custodian for all records related to the complaint file (complaints, official correspondence sent to complainants) and will redact personally identifiable information (PII) (i.e., name, phone, email, address, date of birth) of the complainant and involved officer(s)/staff at the expiration of the retention period. Redacted versions of documents in the complaint file will be retained for as long as deemed administratively useful, or for statistical or historical purposes.
- OIPA staff and Panel Members will be individually responsible for retaining temporary records (i.e., individual correspondence, draft documents) of which they are the custodian per the retention schedules noted above.
- OIPA staff should store temporary records on Outlook, H: Drive, or S: Drive.
- Panel Members should store temporary records in a designated folder in their email accounts until County Outlook accounts are provided. Temporary records may be stored on Panel Member’s personal computers in a folder designated solely for Panel business.

Disposition of Records and Non-Records

- Documents and emails that are considered non-records will be purged on a regular basis (i.e., every 30 days).
- Records that are considered routine administrative will be deleted as soon as they are no longer administratively useful.
- Records that are considered draft materials will be deleted once the subsequent draft or the final document is completed.
- All other temporary records will be deleted according to their retention period on a semi-annual basis (January and July), at the prompting of the OIPA records officer.
- The OIPA records officer will provide reminders to OIPA staff and Panel Members to review their documents and emails and ensure that non-records have been deleted. Reminders will include specific instructions on the type of records that have reached the end of their retention period and can be deleted.
- The destruction of records by OIPA staff and Panel Members will be documented by the submission of Certificates of Records Destruction (Form RM-3) to the Archives and Records Management Branch, DIT.

Succession Planning


- Official records of public officials are the property of Fairfax County and must be returned at the expiration of a term of office or immediately following a resignation.
- Departing OIPA staff will be asked to clean out their Outlook accounts, transfer any records on their Outlook and H Drive to a designated OIPA staff person, and inform OIPA staff of the location of certain records on the S: Drive.
- Exiting Panel Members will be instructed by OIPA prior to the end of their term, or upon notice of their resignation, to send all records to OIPA for retention and to delete all records in their possession after transmission to OIPA.

Collection and Handling of Personally Identifying Information (PII)

- Complaints with PII will be stored electronically only on the S: Drive that is accessible by the Independent Police Auditor and his two staff persons.
- Hard copy versions of Complaints will be stored in the OIPA office, which is locked at all times when OIPA staff are not physically present.
- After the retention period expires (1 year from the close of the complaint), complaint forms will be redacted of any PII of the complainant (name, phone, email, address, DOB) and involved officer(s)/staff. Non-redacted complaint forms will be disposed of (electronic and hardcopy) and replaced with redacted versions for future reference. PII stored in spreadsheets to track complaints will also be redacted at the end of the retention period.

Definitions

- **Close of complaint:** The complaint will be considered closed when:
 - OIPA publishes the final incident report and provides notice to complainant that the report is complete, or when
 - the Panel publishes a final review report and sends the notice of completion to the Complainant (request for review) occurs or on the date of the Panel's last correspondence with the Complainant following the FCPD letter (initial complaint).
- **Complaint file:** Documentation related to the processing of a complaint, including the original (or redacted) complaint, official OIPA or Panel correspondence with the Complainant, copies of FCPD correspondence shared with the OIPA/Panel.
- **Personally identifiable information or PII:** Information that "describes, locates or indexes anything about an individual... or... affords a basis for inferring personal characteristics." The following information will be treated as PII by OIPA and the Panel and redacted per this procedure: name, phone, email, address, and date of birth.

| Fairfax County Police Civilian Review Panel Procedural Memorandum | |
|--|--|
| No: O-1 | Subject: Intake and Processing of Initial Complaints |
| Approval Date: December 6, 2018 | Review Date: December 2020 |
| Signed by Rhonda S. VanLowe, Chair |  |

Purpose: To provide procedures for filing Complaints and processing Initial Complaints submitted to the Panel in a timely, responsive, and consistent manner.

Filing a Complaint

- Persons may submit a Complaint to the Panel on the Complaint Form (Attachment 1, updated periodically) or in another written format (email, letter, etc.). A Complaint form is available electronically on the Panel’s webpage, in hard copy in the Auditor’s Office, and at other County locations (where brochures are displayed).
- A complainant may file a Complaint by:
 - Sending the Complaint Form or other written correspondence to the Panel:
 - via U.S. Mail to the Panel or Auditor at 12000 Government Center Parkway, Suite 233A, Fairfax, VA 22035.
 - via email to the Panel or Auditor at: PoliceCivilianReviewPanel@fairfaxcounty.gov or IPAPoliceAuditor@fairfaxcounty.gov.
 - Calling the Office of the Independent Police Auditor. Staff can direct the complainant to complete a Complaint form or, if preferred by the complainant, Staff will fill out a Complaint Form on his or her behalf. Complainants will be given the opportunity to review the accuracy of the Complaint form before it is forwarded to the Panel.
 - Delivering the Complaint Form or other written correspondence in person to the Auditor’s office or placing in the secured Complaint Form drop box outside of the office.

Initial Complaints

- The Panel Chair, in consultation with Staff, will determine whether:
 - a Complaint is an Initial Complaint or a Request for Review,

- the matter described in the Complaint is the subject of pending civil, criminal, or administrative litigation, and
- whether the incident occurred after December 6, 2016 and is otherwise timely filed.
- Staff, in consultation with the Panel Chair, will prepare correspondence acknowledging the Panel's receipt of the Initial Complaint, using the attached template:
 - Confirmation of Receipt – Initial Complaint (No Pending Litigation) (Attachment 2)
 - Confirmation of Receipt – Initial Complaint (Pending Litigation) (Attachment 3)
- The Panel Chair will forward Complaints to the FCPD Liaison.
- Once an Initial Complaint is forwarded to the FCPD Liaison, the FCPD will have 60 days to conduct its investigation (unless the time period is extended upon request of FCPD to the Panel) and send its findings to the complainant and to the Panel.
- If the FCPD requests a time extension for the Investigation of the complaint, Staff, in consultation with the Panel Chair, will draft and send a letter to the complainant notifying the complainant of the time extension and the FCPD's expected date of completion of the Investigation, using the attached template:
 - Notification of Investigation Extension Request by FCPD (Attachment 4)
- Upon receiving the findings letter from the FCPD, Staff, in consultation with the Panel Chair, will draft and send a letter to the complainant that explains the process for requesting a review of the Investigation, using the appropriate template as follows:
 - FCPD Investigation Complete – Instructions to Request a Review (Attachment 5)

Other Actions

- The Panel Chair will appoint two Review Liaisons to perform the duties outlined in Fairfax County Police Civilian Review Panel Procedural Memorandum: Duties of Review Liaisons.
- The Panel Chair, with assistance from Staff, will send Complaints to Panel Members for their information.

- The Panel Chair may consult with the Fairfax County Community Services Board with respect to the processing of Complaints.

Requests for Review

- Requests for review will be processed in accordance with Fairfax County Police Civilian Review Panel Procedural Memorandum: Review Requests.



Fairfax County Police Civilian Review Panel Complaint Form

| SUBMISSION OPTIONS | |
|---------------------------------|--|
| Hand Deliver or Mail to: | Office of the Independent Police Auditor 12000 Government Center Parkway, Suite 233A Fairfax, VA 22035 |
| Call: | 703-324-3459, TTY 711 |
| Email: | PoliceCivilianReviewPanel@fairfaxcounty.gov |

This form and information on the complaint process may be accessed at www.fairfaxcounty.gov/policecivilianreviewpanel. Brochures with complaint forms in English, Korean, Spanish, and Vietnamese are also available.

| CONTACT INFORMATION | |
|--|---|
| <i>The identity of a juvenile or a victim of sexual assault will remain confidential consistent with the Board Agenda Item dated February 28, 2017, ACTION-17 at p. 275, and to the extent allowed under the Virginia Freedom of Information Act, Virginia Code Sections 2.2-3700, et seq.</i> | |
| Name: | |
| Telephone Number: | Email: |
| Address: | |
| City: | State & Zip Code: |
| Were you a participant in the incident? | YES NO |
| Were you a witness to the incident? | YES NO |
| Are you submitting this form on behalf of someone else? | <i>If yes, please provide his or her contact information.</i> |
| YES NO | |
| If yes, does the person know you are filing this complaint? | |
| YES NO | |

| DEMOGRAPHIC INFORMATION | | |
|-------------------------|-------------|------------------------|
| Gender: | Age: | Race/Ethnicity: |

| Who Were the Fairfax County Police Department (FCPD) OFFICER(s) Involved? |
|--|
| Describe the officer(s). <i>Provide any known information about the FCPD officer(s)/employee(s) involved in the misconduct. Helpful information includes: Name, Badge Number, Police District, Physical Description (Age, Race, Gender, Height, Weight, Hair/Eye Color, Clothing), Vehicle Number/Description (Color, Make, Model). Attach additional information if necessary.</i> |
| |

| Did Anyone Witness/See What Happened? |
|---|
| Who? <i>Provide contact information (name, phone, email, address) for witnesses to the misconduct, if known. Indicate if the witness(es) are aware that you are submitting this complaint. Attach additional information if necessary.</i> |
| |

For questions or more information, contact us at 703-324-3459, TTY 711 or visit:
www.fairfaxcounty.gov/policecivilianreviewpanel/

What Happened?

*Provide the incident date, time, location, and details. If the misconduct occurred on multiple days, times, or locations, list each to your best recollection. Attach additional information if necessary. **If you want the Panel to review a completed FCPD Investigation, please state the reasons for your request.***

| | |
|-----------------------|-----------------------|
| Incident Date: | Incident Time: |
|-----------------------|-----------------------|

Incident Location:


Incident Details:

| | | |
|---|------------|-----------|
| Is the incident described above the subject of a court proceeding? <i>If yes, please attach a description of the proceedings.</i> | YES | NO |
|---|------------|-----------|

| | | |
|--|------------|-----------|
| Has the FCPD been asked to investigate this incident in the past? <i>If yes, please attach any correspondence you received from the FCPD.</i> <i>If the incident described above has not been investigated by the FCPD, the Panel must send the complaint to the FCPD for investigation. The FCPD may contact you as a part of the investigation process.</i> | YES | NO |
|--|------------|-----------|

By signing this form, I certify that the statements made herein, and on any attached documentation, are true and complete to the best of my knowledge, information, and belief.

| | |
|-------------------|--------------|
| Signature: | Date: |
|-------------------|--------------|

| Fairfax County Police Civilian Review Panel Procedural Memorandum | |
|--|--|
| No: O-2 | Subject: Intake and Processing of Review Requests |
| Approval Date: December 6, 2018 | Review Date: December 2020 |
| Signed by Rhonda S. VanLowe, Chair |  |

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.
- 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.
- Discussion of the results of the FCPD investigation will be limited to information provided in the FCPD disposition letter. Details from the FCPD Internal Affairs investigative/personnel file must not be included in the Panel Review Report.
- 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).

Fairfax County Police Civilian Review Panel Initial Review Report

| Request for Review – Basic Information | |
|---|--------------------------------------|
| Complainant: | CRP Complaint Number: CRP-#-# |
| Subcommittee Members: <ul style="list-style-type: none"> Panel Member Name, Review Liaison Panel Member Name, Review Liaison Chair or Vice-Chair Name, Chair/Vice-Chair | |
| Complaint Submission Date: | |

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 |
|---|
| <p>The Initial Review Report outlines the Review Liaisons’ (a) determination on Panel authority to review an investigation based on complaint details and in accordance with the Bylaws and (b) recommendations on whether to accept or decline to review a submitted Request for Review.</p> |

| Findings |
|--|
| <p>Use this section to identify the key facts and factors supporting the recommendation.</p> |

| Recommendation |
|---|
| <p>Use this section to report if the Panel has authority to review the Investigation.</p> |

| Panel Bylaws Abuse of Authority and Serious Misconduct Checklist | | |
|--|---|----------------------|
| Criteria Met? | Abuse of Authority and/or Serious Misconduct | Complainant Details* |
| Yes/No | Use of abusive racial, ethnic or sexual language or gestures. | |
| Yes/No | Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability. | |

| | | |
|--------|--|--|
| Yes/No | Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense. | |
| Yes/No | Reckless endangerment of detainee or person in custody. | |
| Yes/No | Violation of laws or ordinances. | |
| Yes/No | Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon 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.**



County of Fairfax, Virginia

MEMORANDUM

DATE: //_

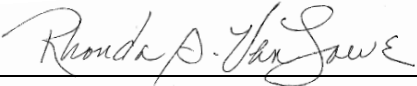
TO: Fairfax County Board of Supervisors
 Col. Edwin C. Roessler, Jr., Chief of Police
 Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of **Complainant**

- I. Introduction
- II. Review Request
- III. Procedural Background
- IV. Panel Meeting
- V. Comments

CC: **Complainant**

| Fairfax County Police Civilian Review Panel Procedural Memorandum | |
|--|--|
| No: O-3 | Subject: Duties of Panel Review Liaisons |
| Approval Date: December 6, 2018 | Review Date: December 2020 |
| Signed by Rhonda S. VanLowe, Chair |  |

Purpose: To provide guidelines for executing the responsibilities of Review Liaisons.

Requirements

- All Panel members will serve as Review Liaisons (on a rotating basis and when appointed to do so by the Chair) to ensure that all Complaints are handled in a timely manner in accordance with the Panel’s Bylaws.
- Once appointed, the Review Liaisons will manage the disposition of the Complaints for the Panel. Disposition commences from the date the Panel receives the Initial Complaint or Review Request and ends after the complaint process is concluded.
- If a Review Liaison is unable to fulfill the responsibilities on an appointed Investigations, they will immediately notify the Chair to identify an alternate Panel member.

Review Liaisons Responsibilities

- **Initial Complaints**
 - For Initial Complaints, the Review Liaisons will:
 - Coordinate the follow-up with the FCPD Liaison to ensure timely completion of the investigation.
 - Confirm with the FCPD Liaisons that the FCPD is investigating the full scope and all issues raised in the Complaint.
 - Report to the Chair the FCPD investigation outcome or any significant challenges that arise during the FCPD investigation period.
 - If the Complainant submits a Review Request after FCPD notifies the Complainant of the investigation outcome/disposition, the Review Liaisons assigned to the Initial Complaint will remain as the Review Liaisons for the review process, unless otherwise agreed.
- **Request for Review**

- For Request for Reviews, the Review Liaisons will:
 - Review the completed FCPD Investigation File.
 - Serve as members of the subcommittee to perform the Initial Review.
 - Consult with the Panel’s legal counsel to seek advice on whether the alleged conduct is within the Panel’s review authority.
 - Coordinate with the FCPD Liaison to discuss possible FCPD policies and/or procedures that the Panel will need to consider in its review.
 - If the Panel reviews the Investigation, the Review Liaisons will:
 - Prepare the Panel report based on the Panel’s findings. (Note: If an appointed Review Liaison voted with the Panel minority, he/she may request the Chair to appoint another Panel member to prepare the report based on the majority Panel findings.)
 - Present the draft Panel Review Report to the Panel for consideration.
 - Make modifications to the draft Panel Review Report based on Panel deliberations.
 - Coordinate with the Chair and Staff to send the final Review Report to the Complainant, the Board of Supervisors, the Chief of Police, and the Auditor.
- In addition, the Review Liaisons may:
 - Speak to the FCPD Panel Liaison to clarify material uncertainty in the record and/or discuss possible FCPD policies or procedures that the Panel may need to consider in its review.
 - Speak to the complainant to clarify material uncertainty in the record.

Fairfax County Police Civilian Review Panel

Public Forum on December 10, 2018

Mount Vernon Governmental Center

Meeting Summary

Panel Members Present:

Hansel Aguilar

Hollye Doane

Col. Greg Gadson

Anna Northcutt

Adrian Steel

Rhonda VanLowe, Chair

Others Present:

Dan Storck, Mount Vernon District, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Members Absent:

Bob Cluck

Doug Kay

The Public Forum began at 7:03 p.m.

Ms. VanLowe and Supervisor Storck welcomed attendees to the Fairfax County Police Civilian Review Panel's (Panel) Public Forum. Supervisor Storck provided framing remarks on the establishment of the Panel and the Office of the Independent Police Auditor and noted that civilian oversight is something the community cares deeply about.

Ms. VanLowe reviewed the agenda. She thanked Supervisor Storck, Chief Roessler, Captain Owens, and Major Reed, and audience members for attending. She explained that the purpose of the public forum is to introduce the Panel and engage with the public. The Panel received twenty-three complaints and three requests for review in 2018 and has participated in many outreach events to meet with different organizations and members of the community.

Each Panel Member present introduced themselves and shared information on their background, experiences, and expertise that led them to join the Panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Mr. Steel provided information on the history and the establishment of the Panel, and the Panel's scope of authority. He noted that Fairfax County is one of the few places in the country to have a hybrid system of oversight, with a Civilian Review Panel and an Independent Police Auditor. The Panel reviews completed Fairfax County Police Department (FCPD) investigations into allegations of serious misconduct or abuse of authority. While the Panel is unable to gather evidence, the Panel allows complainants to appear before the Panel to state their reasons for requesting a review. The Panel may also ask an FCPD representative to attend the meeting and to review and answer questions about the investigation and may, if it deems it warranted, require the FCPD to conduct additional investigation.

Ms. Doane reviewed the Panel's complaint filing process. Complaints can be submitted to the Panel via email to the Panel, or in person, mail, or phone call to the Auditor's office. Complainants can request the help of staff when filling out a Complaint Form and staff will assist. The Panel reviews completed FCPD investigations to ensure accuracy, completeness, thoroughness, objectivity, and impartiality. Complaints received by the Panel that have not been previously investigated are shared with the FCPD. Once the FCPD has completed its investigation, the complainant may request a review of the investigation by the Panel if they are unsatisfied. The Panel conducts its review of complaints in public meetings and may hear from the complainant and an FCPD representative. The Panel then issues a public report on its findings. In addition, the Panel can make policy recommendations related to complaints they receive. It was noted that all Panel Meetings are open to the public. Audio recordings and summaries of the meetings are available on the Panel's webpage.

Mr. Schott explained the Auditor's role in oversight. The Auditor automatically reviews incidents involving an officer involved shooting, in custody death, and use of force that results in serious injury, even if a complaint is not filed. The Auditor also reviews uses of force that do not result in serious injury if a member of the community submits a complaint. The Auditor, like the Panel, does not have investigative authority. However, the Auditor has the ability to monitor investigations while they are ongoing. A public report of each review conducted is published on the Auditor's webpage and shared with the Board of Supervisors and the Chief of Police. The Panel periodically meets with the auditor to discuss his reports and is able to comment on policy changes to the Board and Chief of Police

Questions were taken from the audience regarding Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The Public Forum adjourned at 9:07 p.m.

Questions and Answers

1. Could you describe the type and status of complaints received by the Panel?

The complaints received by the Panel vary by type of allegation and cover many different issues. In 2018, the Panel processed twenty-three Initial Complaints and held three reviews. Most complaints received by the Panel were initial complaints where the complainant did not request the Panel's review after the FCPD completed its investigation.

2. What is the difference between an Initial Complaint and a Request for Review? Was the procedure for a Review Request created by the Panel?

An Initial Complaint refers to a complaint that is submitted to the Panel but not previously investigated by the FCPD. In these cases, the Panel must forward the complaint to the FCPD for investigation. After the complainant receives a letter from the FCPD detailing the findings of the investigation, the complainant may choose to submit a Request for Review to the Panel if they are unsatisfied with the FCPD investigation. The Panel is only able to review completed FCPD investigations. The Request for Review process is outlined in the Board of Supervisors Action Item that established the Panel.

3. Is legal status of a complainant protected? If someone has an illegal status and was the victim of discrimination, what is their safety net?

If an individual is uncomfortable filling out the Complaint Form, a friend, relative, or witness can complete the form on their behalf. The FCPD's investigation includes interviewing involved individuals. If an individual does not want to participate in the investigation process with the FCPD, they will not be pressed to participate.

4. Does the FCPD have Spanish speaking investigators?

The FCPD General Orders states that language access is to be provided through an interpreter or the language line when there is a language barrier present.

5. The FCPD received 268 citizen complaints. Do you have the ability to review these complaints?

The Panel does not have the authority to automatically review every complaint received by the FCPD. A complainant must submit a review request to the Panel for the review process to commence. The letter that the FCPD sends to complainants with the findings of the investigation provides information about the Panel and the complainant's ability to request a review of the investigation by the Panel if the complainant is still unsatisfied.

6. Does the Sheriff have a similar oversight commission?

The Sheriff is an elected constitutional officer who is not under the authority of the county Board of Supervisors. The Final Report of the Ad Hoc Police Practices Review Commission Implementation Group included a recommendation for oversight of the Sheriff. These recommendations are to be reviewed by the Board of Supervisors in 2019.

7. I am constantly harassed by the FCPD and I film the police and their interactions with the public. Is there any way for the Panel to protect people like me and prioritize complaints?

The Panel processes complaints in a timely manner and is sensitive to being responsive to complainants. If you have a concern about retaliation, you may submit a complaint.

8. It seems that if a person is unsatisfied with the FCPD investigation but does not want exposure, there is no option for them. Do complainants have the option to submit a complaint to the Panel anonymously?

The Panel is a public body that conducts its business during public meetings. Also, in the event of a Virginia Freedom of Information Act request, the Panel is required to release information as required by law. However, the identities of minors and victims of sexual misconduct will not be released.

9. Can the Panel use aliases for complainants to maintain confidentiality?

The Panel is committed to not disclosing names of complainants when publishing public reports. Confidentiality is a challenging issue that the Panel is working through.

10. How can you identify trends from complaints if you only review the complaints that are processed through the Panel?

The Panel does not have the authority to review all complaints submitted to the FCPD. The Panel can only identify trends within the complaints that are processed by the Panel.

11. Does the Panel have a schedule for publishing reports to the Board of Supervisors?

The Panel prepares and publishes an annual report that is due March 31st of each year. It is delivered to the Board of Supervisors and available for public review on the Panel's webpage. In June 2018, we met with the Board at a Public Safety Committee Meeting to make a presentation on the 2017 Annual Report.

12. How can a complainant provide witness information to the Panel if the witness would like to remain anonymous and not have their information divulged?

Include the information that the witness has regarding the incident within your complaint without providing the witness name or contact information.

13. When someone sends an email to the Panel's email account, who sends back a reply?

Staff or the Panel Chair responds to emails that are sent to the Panel's email box.

14. Are the FCPD investigation files that Panel Members and the Auditor review redacted?

No, the investigation files are not redacted. The Panel and the Auditor review complete FCPD files and are also given the opportunity to review body worn camera and in car video footage if there is footage associated with the file.

15. Since both bodies report to the Board of Supervisors, is the FCPD still ultimately responsible for policing themselves?

Recommendations made by the Panel and the Auditor are sent to the Board of Supervisors and the Chief of Police and are shared in public meetings.

16. Why is the Panel unable to review incidents that involve use of force, in custody death, or officer involved shootings?

The Ad Hoc Police Practices Commission thought that the review of use of force, in custody death, and officer involved shootings should be conducted by an individual trained in investigations. Therefore, it is the responsibility of the Auditor to review these types of complaints. The Panel meets with the Auditor periodically to review his reports and may provide input on these topics to the Board of Supervisors.

17. What is the process to change the way the Panel is authorized to function?

The Board of Supervisors Action Item dictates the way that the Panel can operate. Concerned citizens may wish to provide their thoughts on this matter to the Board of Supervisors and other elected officials.

18. Why is the Auditor unable to conduct his own investigations?

Under Virginia Law, it is not clear that the Board of Supervisors is able to delegate investigative authority to other entities.

19. When can we receive a report on the racial disparity against African Americans in the county?

The Auditor's Report, titled "A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015", was published in July 2018. The report outlines the key findings from the review as well as policy implications and recommendations. It was sent to the Board of Supervisors and is posted on the Auditor's webpage for public review. The Auditor is currently reviewing the use of force data for 2016.

20. Is there a residency requirement for officers of the FCPD?

There is no requirement that recruits or officers of the FCPD live in the county. The FCPD seeks candidates from across the entire state of Virginia to increase the diversity of the force. It is a challenge to reflect the county's diversity within the department.

21. Can an officer of the FCPD be prosecuted because of the submission of a complaint to the Panel?

The Commonwealth Attorney's office would make the decision whether to prosecute an officer for criminal conduct. Discipline decisions are made by the Chief prior to the Panel's review of a completed FCPD investigation.

22. Why are complaints routed through the Auditor's office?

The Auditor's office is responsible for providing administrative support to the Panel, which is comprised of nine civilian volunteers. The Panel's email box is monitored by staff from the Auditor's office and all emails are forwarded to the Panel Chair and Vice-Chair for a response.

Comments from Audience

- The Review Request procedure seems to be a bureaucratic barrier. A complainant must share their personal information twice at a time when they are most likely feeling vulnerable. It takes a lot of courage for a complainant to come forward. This process seems to put people through a lot for very little. The Panel's review of complaint should be automatic after a complainant submits an Initial Complaint.
- There is little information found in the Panel's reports. It would be helpful to know the date the complaint was received, if extensions were requested by the FCPD, and the date the FCPD completed their investigation. More information should be included on the Panel website about complaints being reviewed. The commenter asked the reason for the lengthy delay before Panel reports are published.
- The Panel Meeting agendas are not informative. It would be helpful to include corresponding meeting materials for each agenda item online, like the Board of Supervisor's meeting agenda.
- It would be helpful to include what time, according to the meeting audio, each agenda item begins within the Panel Meeting summaries.
- The issues that the Ad Hoc Commission addressed are still concerns today and remedies need to be implemented. We urge you to take a firm position on policy matters in the 2018 Annual Report.
- It is concerning that an incident must occur more than once for a resolution to be offered. Everyone is aware of the Panel and Auditor's limitations. The word accountability should no longer be used because I am not seeing any accountability or responsibility from the FCPD.
- No one has addressed the great things the FCPD does for our community. They put their lives at risk every day to keep us safe.
- The Complaint Form needs to be simplified into layman's terms. The Panel is doing something wrong if it is receiving a fraction of the complaints that the FCPD receives.
- Consider holding future public forums at locations in the county that are not co-located with a Police Station, such as a library, community center, or school.
- While Public Safety Committee Meetings are public meetings, there is not an opportunity for public comment to engage with the Board.
- It is disturbing that the FCPD has not publicly reported the use of force statistics for 2017 or 2018.

APPENDIX D.3

(2019 Annual Report)



Fairfax County Police Civilian Review Panel Annual Report 2019

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2019



A Fairfax County, VA Publication

Publication Date: February 28, 2020

PANEL MEMBERS

Hansel Aguilar, Fairfax

James Bierman, McLean

Robert Cluck, Reston

Frank Gallagher, Burke

Shirley Norman-Taylor, Lorton

Sris Sriskandarajah, Fairfax

Rhonda VanLowe, Reston

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To request this information in an alternate format, call 703-324-3459, TTY 711.

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SECTION I: INTRODUCTION

In its third full year of operation, the Panel has settled into its principal role – reviewing completed Fairfax County Police Department (“FCPD”) Investigations where a citizen complains of abuse of authority or serious misconduct by an FCPD officer. In year one, the Panel focused on establishing [Bylaws](#)¹ and receiving necessary training to carry out its mission. In year two, the Panel carried out its mission, and in the process, identified several critical impediments to its success and reported them to the Board of Supervisors in its [2018 Annual Report](#). The Panel is pleased to report that in 2019 the Panel addressed each of the obstacles identified in last year’s annual report with the cooperation of key stakeholders including the Board of Supervisors and the FCPD.

SECTION II: 2019 ACTIVITIES

Quarterly Meetings

As recommended in the Panel’s 2018 Annual Report, the Panel Chair and Vice-Chair met on five occasions with the chiefs of staff for the Chairman of the Board of Supervisors and the Chair of the Board of Supervisors’ Public Safety Committee, FCPD representatives and County Attorney representatives to discuss Panel business. These “Quarterly Meetings” were occasionally attended by the Chairman of the Board of Supervisors, the Chair of the Public Safety Committee, the Chief of Police, and the County Attorney. During the Quarterly Meetings, attendees discussed and addressed various Panel concerns including, but not limited to, (1) FCPD disposition letters, (2) limitations on transparency imposed on the Panel by the Action Item and (3) recommendations of the Panel reflected in its Public Reports. All three critical issues have been addressed as explained below. The Quarterly Meetings will continue in 2020.

¹ Capitalized terms will have the same meaning noted in the Bylaws.

Disposition Letters

In last year's Annual Report, the Panel recommended that the FCPD improve the format and content of the letter sent to the complainant upon completion of an investigation (the "Disposition Letter"). At the Chief's direction, the Commander of the Internal Affairs Bureau ("IAB") formed a working group to study the issue and make recommendations. The working group, including the Panel Vice-Chair, former commissioners of the Ad Hoc Police Practices Commission, and a representative from the Communities of Trust, met several times and prepared a template for the Disposition Letter to address the Panel's concern that the Disposition Letters lacked details about the FCPD's Investigation or the reasons for the FCPD's conclusion. We are pleased to report that Chief Roessler accepted the group's template Disposition Letter in Summer 2019 and required the FCPD command staff to receive appropriate instruction. If fully implemented as designed, the improved Disposition Letters will better address concerns raised by complainants and lead to greater community trust through greater transparency. The Panel will continue to monitor progress.

Action Item and Bylaw Amendments

The Bylaws state that the purpose of the Panel is "to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public." Reviewing Investigation Reports is one of the principal ways the Panel carries out this mission. However, the original [Action Item](#) dated December 6, 2016, provided as follows:

During the Panel's review of a completed FCPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigative case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. [Emphasis supplied.] (Page 622 of Board of Supervisors December 6, 2016, Agenda Package)

While this provision did not inhibit the Panel's ability to review the Investigative Report and evaluate the conduct in question, the Panel recognized that this provision stifled the Panel's ability to author fulsome Review Reports that informed the public about the Panel's work. Simply put, this provision constituted a barrier to transparency.

Having surfaced this issue in its 2018 Annual Report, the Panel presented the problem at the first Quarterly Meeting and worked with key stakeholders to amend the Action Item and the Bylaws to enable the Panel to report to the Board of Supervisors and the public all non-confidential relevant information found in the Investigation Report. Critically, the Chief of Police supported the Panel's effort. The Board of Supervisors approved the Panel's amended authorizing Action Item on September 24, 2019, and the Bylaws were subsequently updated to be consistent with the revised Action Item.² The first Review Report authored after these amendments evidence the Panel's ability to publish comprehensive Review Reports providing greater transparency to the public. *Compare* [Review Report: CRP-19-11](#) to [Review Report: CRP-18-02](#).

Publication of Panel Recommendations

Making recommendations on FCPD policies and practices to assist the Chief of Police and the Board of Supervisors is one of only three imperatives noted in Article II of the Bylaws. The Panel is committed to meeting this obligation where appropriate and carefully considers opportunities to offer the FCPD recommendations while seeking always to strike the appropriate balance between offering too many suggestions and remaining mute where the appropriate opportunity presents itself. Since its inception, the Panel has authored a dozen recommendations; however, said recommendations were previously scattered about in a variety of documents sometimes buried in multipage reports. Moreover, no mechanism existed for the Panel to attain some response from the FCPD to the recommendations.

The Panel is pleased to report that it resolved both issues through the publication of a Panel Recommendation Matrix ("Matrix"). The Matrix offers a single repository for Panel recommendations while offering the FCPD the opportunity to comment upon the recommendations and to note any actions taken in response. Finally, the Matrix records the Panel's assessment of the FCPD's actions in response to the recommendation. Below is an example of a Panel recommendation from the Matrix:

² The revised Action Item is found [here](#).

| <u>Report</u> | <u>Panel Recommendation</u> | <u>FCPD Action</u> | <u>Status (as determined by the Panel)</u> |
|--|--|---|--|
| CRP-18-26 (Published March 8, 2019) | “During FCPD administrative investigations, where statistical evidence is used, [the Panel] recommends the Crime Analyst Unit (CAU) be consulted in the gathering, preparation and reporting of the statistical data.” | The compilation of statistical evidence is the responsibility of the Analyst assigned to the Internal Affairs Bureau. | Implemented by FCPD |

The complete Matrix and updates to the Matrix are available to the Board of Supervisors and the public on the Panel’s website. See Appendix A for a copy of the Matrix as of the date of this report.

Use of Statistics

Review of racial bias complaints against FCPD officers are among the most challenging duties of the Panel. Where such complaints are received, the FCPD routinely includes in its Investigation Reports, among other things, the officer’s arrest statistics broken down by race as compared to his or her peers. The Panel expressed concerns about conclusions expressed in the Investigation Reports based upon these statistics and recommended that investigators consult qualified professionals within the department who have the appropriate statistical expertise. As indicated above, the FCPD concurred with the Panel’s recommendation in this regard. In the future, statistical data included in Investigation Reports will be compiled by an analyst with appropriate statistical proficiency. The Panel will be monitoring Investigation Reports for compliance.

Panel Training

Training is critical the Panel’s mission. The Panel received a full day training session from representatives of the National Association for Civilian Oversight of Law Enforcement (“NACOLE”) which focused on the historical origins of civilian oversight, working with key stakeholders, promoting the work of the Panel in the community, and effective practices for reviewing investigations³. Panel Vice-Chair, Hollye Doane, attended the 2019 NACOLE Annual

³ The agenda for the full day NACOLE training is [here](#)

Conference in Detroit, Michigan with staff from the Office of the Independent Police Auditor (“OIPA”). The theme of the 2019 Annual Conference was “Courage, Collaboration, and Community,” and covered topics such as data driven policing, strategies for community engagement, and oversight from a law enforcement perspective. Several Panel Members attended NACOLE’s regional training session in Washington D.C., which focused on community police relationships and communication, and an in-depth study of the review focused oversight model. Finally, the Panel received a half day of training from the FCPD which encompassed FCPD recruiting practices, the FCPD Criminal Justice Academy curriculum, intrinsic bias training, and the FCPD’s investigation and review process⁴. Special thanks to Major Owens and his staff for putting together an outstanding and informative program.

SECTION III: ISSUES FOR BOARD OF SUPERVISORS CONSIDERATION

Extension Requests

Article VI. C.1.c of the Panel’s Bylaws provide in relevant part:

The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

Of the twenty Initial Complaints the Panel received in 2019, the FCPD extended the 60-day period or otherwise failed to timely deliver the Disposition Letter more often than not. On average, the Disposition letters were delivered 92 days after the Panel forwarded the Initial Complaint to the FCPD. See Appendix B for a summary of FCPD extension requests for Initial Complaints.

As per the Bylaws, the FCPD received an extension each time it sought one (and the Panel notified the complainant and the Board of Supervisors of each extension). The subject of these extension requests has been the topic of discussion at the Quarterly Meetings. It may be that the 60-day period for investigation of an Initial Complaint set forth in the Bylaws should be

⁴ The agenda for the half day FCPD training is [here](#).

lengthened to 90 days. The FCPD has offered a number of reasonable explanations for the delays, which requires them to request extensions. The Panel will continue to monitor this situation but makes no request for action at this time.

Recommendation

The Panel has reviewed several complaints involving claims of racial bias which are just as difficult for the Panel as they are important to the mission of the Panel. The racial bias complaints reviewed by the Panel vary widely. At least one was demonstrably unfounded. For example, in the Panel's Review Report for [CRP-18-26](#), the Panel unanimously concluded upon review of in-car video and body worn camera footage that the accused officer could not have known the race of the complainant before stopping him for a traffic infraction. Other complaints have been much more difficult for the Panel to determine. For example, in the Panel's Review Report for [CRP-18-27](#) the Panel concurred with the results of the FCPD's investigation concluding that the Investigation, taken in its totality, supported the conclusion of a race-neutral basis for investigatory detention despite troubling statistically suspicious arrest records of accused officer.

During Review Meetings, in training and elsewhere in interactions with the Panel, the FCPD has disagreed with suggestions by the Panel that in certain racial bias cases additional investigation into the background of the accused officer may be necessary to rule out racial bias. Moreover, the FCPD investigated the social media of the complainant in CRP-18-27 for evidence of bias on the part of the complainant. Notwithstanding its willingness to investigate potential bias of a complainant (who was not even physically present for arrest in question) and publish her social media information, the FCPD has been unwilling to conduct a similar investigation of accused officers.

Therefore, the Panel makes the following recommendation to the FCPD: where the evidence gathered during an Investigation into a Complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer's conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer's social media accounts and/or interviewing witnesses.

SECTION IV: WITH APPRECIATION

The Panel welcomed four new members during 2019:

- James Bierman
- Frank Gallagher
- Shirley Norman-Taylor
- Sris Srisikandarajah

We are grateful for their talents and willingness to serve. Thanks also for the continued service of the other Panel Members.⁵ In addition, the Panel offers thanks to Adrian Steel, Randy Sayles, Anna Northcutt and Col. Gregory Gadson (Ret.) for their service to the Panel which came to an end in 2019.

Adrian Steel was the inaugural Panel Chair and deserves special recognition. His enthusiasm and dedication to the Panel's foundation left an indelible mark on this body. His unflagging support of the Panel's mission is an inspiration to all.

Randy Sayles was an inaugural member of the Panel. He sadly passed away in 2019 far too early. A retired law enforcement officer and an eyewitness to racial injustice, Randy provided an invaluable perspective to the Panel. But it was Randy's infectious smile, warm demeanor and common-sense approach to Panel business that we will miss the most.

The Panel also wishes to thank the Independent Police Auditor and Staff for their continued support – especially Gentry Anderson, who has demonstrated remarkable dedication to day-to-day operations of the Panel and shown herself again and again to be wise and capable. Thanks also to Major Owens, the IAB Commander, for his excellent work on Panel training, his calm demeanor, and remarkable patience during the many Panel meetings he attended this year. The Panel also acknowledges all the complainants who came forward in 2019 and entrusted the Panel with their complaints. We look forward to continuing the Panel's work in the coming year.

⁵ See Appendix C for Panel Member Biographies

APPENDIX E

(Recommendations Matrix [Updated 2020])

| <u>Report</u> | <u>Panel Recommendation</u> | <u>FCPD Action</u> | <u>Status (as determined by the Panel)</u> |
|---|--|---------------------------|---|
| CRP-19-29 (Published October 23, 2020) | <p>“The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer’s public social media profiles; (2) interviewing coworkers in the officer’s unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints. Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer’s actions under each of the criteria listed above.”</p> | <p>pending</p> | <p>pending</p> |
| CRP-19-29 (Published October 23, 2020) | <p>“All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer’s community contacts, stops, searches and arrests should be broken down by the race and ethnicity of</p> | <p>pending</p> | <p>pending</p> |

| | | | |
|---|--|----------------|----------------|
| | <p>community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention.”</p> | | |
| <p>CRP-19-29 (Published October 23, 2020)</p> | <p>“Data analysis of an officer’s community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district station where the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.”</p> | <p>Pending</p> | <p>pending</p> |
| <p>CRP-19-29 (Published October 23, 2020)</p> | <p>“For the purposes of investigations into allegations of bias or profiling, data analysis of the officer’s community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has</p> | <p>pending</p> | <p>pending</p> |

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| | worked in different districts within the county, the review and analysis of the officer's community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period." | | |
| CRP-19-29 (Published October 23, 2020) | "Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer's community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group." | pending | pending |
| CRP-19-29 (Published October 23, 2020) | "The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing." | pending | pending |
| CRP-19-29 (Published October 23, 2020) | "Officers should receive implicit bias training on an annual basis." | pending | pending |
| 2019 Annual Report (Published | "Where the evidence gathered during an Investigation into a Complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused | The Fairfax County Police Department Internal Affairs Bureau conducts investigations into all complaints | pending |

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| <p>February 28, 2020)</p> | <p>officer, the FCPD should continue to investigate seeking some explanation for the officer’s conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer’s social media accounts and/or interviewing witnesses.”</p> | <p>involving any allegation of perceived bias. Bias-based complaints will include obtaining all available evidence; such as, but not limited to, witness statements, videos, publicly available social media, statistics, reports, etc. Consistent with all investigations completed by the police department; any available evidence is thoroughly examined for appropriate response and lawful action.</p> | |
| <p>CRP-19-11 (Published January 15, 2020)</p> | <p>“With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.”</p> | <p>General Order 301 , Internal Investigations, states that witnesses shall be interviewed if they would assist in an investigation of a complaint or incident. Commanders were reminded of this policy in a March 2020 Command Staff meeting. Furthermore, Bureau Commanders are responsible for ensuring all investigative tasks have been properly completed as an additional quality control and review oversight protocol.</p> | <p>pending</p> |
| <p>CRP-19-11 (Published January 15, 2020)</p> | <p>“FCPD civilian ride-a-long individuals should be tracked and recorded in all instances. A police ride-a-long individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.”</p> | <p>General Order 430.3 sets policy and procedure for each Ride-Along to include maintenance of the application and required documentation for every Ride-Along. Commanders were reminded of</p> | <p>pending</p> |

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| | | this importance during a Command Staff meeting in March 2020. | |
| <p>CRP-19-11 (Published January 15, 2020)</p> | <p>“The FCPD should implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.”</p> | <p>FCPD policy requires officers to “<i>preserve the sanctity of life</i>” and, as community caretakers, officers must attend to the needs of any person who is unable to care for themselves as expeditiously as possible. Regulation 201.6, Preservation of Peace and Protection of Life and Property, states:</p> <p><i>“It shall be the duty of each sworn officer of the Department to:</i></p> <ul style="list-style-type: none"> • <i>Preserve the public peace;</i> • <i>Protect life and property; and</i> • <i>Enforce and uphold the laws of the Commonwealth of Virginia and the ordinances of the County of Fairfax.”</i> <p>This policy requires officers to attend to children, and any other person who is left alone and unable to care for themselves, under their oath as a sworn</p> | <p>pending</p> |

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| | | officer to protect life. Furthermore, officers are provided guidance from the Fairfax County Family Services Child Supervision Guidelines regarding unattended minors and children. | |
| CRP-18-27 (Published July 12, 2019) | “[T]he Panel recommends that in the future the Department refrain from publicly releasing [investigatory information pertaining to the Complainant’s social media accounts], because it “discourages individuals from filing future complaints, and it undermines community trust in the Panel.” If the FCPD believes such information is relevant to the investigation, “that information should be included only in the Department’s investigative file.” | All of the information was obtained via public websites from a Google search. The information that was released was already publicly available on the internet. | Not Implemented by FCPD |
| 2018 Annual Report (Published March 21, 2019) | FCPD disposition letters to the complainant upon conclusion of FCPD investigations, “must contain sufficient, specific detail to provide complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.” | The FCPD co-produced a disposition letter with members of the community. Commanders who author these letters were then trained on the new form in September. Since that time, the new form has been in use. | New format for more explanatory disposition letters has been adopted by the FCPD and is being implemented. |

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| <p>2018 Annual Report (Published March 21, 2019)</p> | <p>“Action Item 17, dated December 6, 2016 (p. 278), limits the Panel’s ability to include salient facts in public reports. This restriction inhibits “the Panel’s ability to achieve its purpose ‘to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public.”</p> | <p>During Quarterly Meetings, FCPD representatives coordinated with the CRP in preparation of the proposed Action Item that was adopted by the Board of Supervisors on September 24, 2019, giving the Panel the authority to disclose facts of the investigation in the Panel’s Review Reports, with certain restrictions.</p> | <p>Action Item adopted by the Board of Supervisors on September 24, 2019, gives the Panel authority to disclose facts of the investigation in Review Reports with certain limited restrictions.</p> |
| <p>2018 Annual Report (Published March 21, 2019)</p> | <p>“The Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of the Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same.</p> | <p>The FCPD supports the quarterly meetings and the sharing of information regarding Panel comments and recommendations. These meetings began in June 2019 and are continuing to occur with FCPD staff present for each of them.</p> | <p>Implemented by FCPD</p> |
| <p>CRP-18-26 (Published March 8, 2019)</p> | <p>“During FCPD administrative investigations, where statistical evidence is used, [the Panel] recommends the Crime Analyst Unit (CAU) be consulted in the gathering, preparation and reporting of the statistical data.”</p> | <p>The compilation of statistical evidence is the responsibility of the Analyst assigned to the Internal Affairs Bureau.</p> | <p>Implemented by FCPD</p> |

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| <p>CRP-18-26 (Published March 8, 2019)</p> | <p>“The FCPD should make BWC and In-Car Video (ICV) footage available for viewing at Panel Review Meetings as requested by the Panel.”</p> | <p>Requests for the Panel to view video and audio footage will be approved on a case-by-case basis.</p> | <p>FCPD explanation noted. The Chief has committed to review any Panel request for footage and determine whether to release of requested footage on a case-by-case basis.</p> |
| <p>CRP-18-26 (Published March 8, 2019)</p> | <p>“The Panel recommends that the FCPD ensures that individuals involved in incidents with FCPD officers which are subject to a complaint be provided with an opportunity to review the video footage of the incidents.”</p> | <p>It has been the policy of the Police Department to allow complainants to view video footage consistent with Body Worn Camera Pilot Program SOP 18-506, Section VII, Paragraph B and General Order 430.8, In Car Video Program Procedures, Section IV, Paragraph C-5.</p> | <p>Implemented by FCPD</p> |
| <p>CRP-18-12 (Published January 9, 2019)</p> | <p>“The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name.”</p> | <p>In keeping with our commitment to transparency, the FCPD annually publishes an Internal Affairs Bureau Statistical Report, which is made available both within and outside of the</p> | <p>Under Review by FCPD.</p> |

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| | | Department. IAB is currently researching best practices. Once a template is developed, it will be discussed with the County Attorney for legal review. | |
| <u>CRP-18-12</u> <u>(Published January 9, 2019)</u> | “The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.” (Officer’s demeanor was not explicitly discussed in the Investigation Report, even though it had been an issue in the Complaint).” | Complaints received by the FCPD are thoroughly investigated. As stated in your report, Major Reed assured the Civilian Review Panel (CRP) members that investigators take a holistic approach to ensure that all aspects of a complaint are addressed. Upon completion, all investigations are subject to a multi-layer review. This investigative review may be conducted by Station Commanders, Bureau Commanders, Deputy Chiefs, and the Chief of Police to ensure accuracy and thoroughness. | FCPD explanation noted. |
| <u>CRP-18-12</u> <u>(Published January 9, 2019)</u> | “The Panel recommends that the FCPD develop an efficient methodology to reintegrate some level of supervision over the submission of [FR300P accident report] forms [by FCPD officers].” The Panel concluded that the consequences for errors could be problematic, as certain insurance claims were initially denied based on erroneous information in the initial FR300P.” | Under the Traffic Records Electronic Data System (<u>TREDS</u>) system, which is a VA State Program, when an officer submits an FR300P, a layered approval process begins. The first layer is the TREDS system itself, which provides a real-time review to ensure all required fields are populated. After the TREDS system review, the report is submitted | The Panel accepts explanation of FCPD regarding supervision under TREDS System. |

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| | | for internal review by the FCPD Central Records Division. The Central Records Division has received specialized training on TREDIS and have the delegated authority to accept or reject accident reports if they are not in compliance. In addition, the Central Records Staff distributes error reports to supervisory staff to ensure quality control and accountability. | |
| <u>CRP-17-10</u> <u>(Published March 26, 2018)</u> | “[T]he Complainant indicated in her statement to the Panel that, other than the Notification, she had not received any further explanation from the FCPD. The Panel recommends that the FCPD contact the complainant and offer her whatever additional explanation that is legally permissible and appropriate under the circumstances.” | Letter signed by Station Commander was sent to the complainant indicating the officer’s violation was addressed and how to seek additional recourse. Internal Affairs Bureau (IAB) personnel also had a phone conversation with the complainant to address their concerns. | Implemented by FCPD |

APPENDIX F

(Panel Data Summary)

Four-Year Review: Panel Data Requests

Prepared December 30, 2020

| | 2017 | 2018 ^{&} | 2019 | 2020 | All Years |
|---|------|-----------------------|------|----------------|-----------|
| Number of Complaints filed against the FCPD (Panel Authority) | 2 | 31 | 29 | 35 | 97 |
| Number of Initial Complaints brought to the Panel | 1 | 24 | 20 | 21 | 66 |
| Number of Initial Complaints filed with the Panel but for which there is no ultimate review request | 1 | 18 | 14 | 6 | 39 |
| Number of Initial Complaints that are later requested to be reviewed by the Panel | 0 | 2 | 5 | 8 | 15 |
| Number of Review Requests Brought to the Panel | 1 | 7 | 9 | 14 | 31 |
| Number of Review Requests Taken by the Panel | 1 | 4 | 5 | 5 | 15 |
| Number of Review Requests Declined by the Panel | 0 | 2 | 4 | 6 | 12 |
| Number of Review Requests in process | 0 | 0 | 0 | 3 | 3 |
| Number of FCPD Investigations still pending | 0 | 0 | 0 | 8 [^] | 8 |

| Allegations [#] | 2017 | 2018 | 2019 | 2020 | All Years |
|------------------------------------|----------|-----------|-----------|-----------|------------|
| Bias - race/ethnicity | | 7 | 6 | 4 | 17 |
| Bias - other discrimination | | 2 | 1 | | 3 |
| False arrest/Malicious prosecution | 1 | 4 | 3 | 4 | 12 |
| FCPD communication issue | | 1 | 1 | 4 | 6 |
| Harassment | | 6 | 3 | 4 | 13 |
| Hostile/threatening manner | | 4 | 2 | 3 | 9 |
| Illegal search | | 3 | 1 | 1 | 5 |
| Illegal stop | | 1 | | | 1 |
| Incomplete investigation | | | 1 | | 1 |
| Law/FCPD policy violation | 1 | 5 | 6 | 9 | 21 |
| Misconduct | | 4 | | | 4 |
| Negligence | | 6 | 4 | | 10 |
| Officer did not identify | | | | 1 | 1 |
| Officer had unprofessional manner | | 1 | 1 | 9 | 11 |
| Officer was untruthful | | 2 | 4 | 5 | 11 |
| Other | | 3 | 4 | 1 | 8 |
| Use of Force | | 2 | 1 | 3 | 6 |
| Grand Total | 2 | 51 | 38 | 48 | 139 |

Notes:

[^]In 2020, 5 investigations are ongoing into Initial Complaints; 3 investigations are ongoing into Review Requests

& In 2018, 3 Initial Complaints and 1 Review Request was withdrawn

[#] There may be multiple allegations associated with a single complaint.

APPENDIX G

(Review Reports)

APPENDIX G.1

(CRP-17-01)



County of Fairfax, Virginia

MEMORANDUM

DATE: 3/26/2018

TO: Fairfax County Board of Supervisors

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-17-01

I. Introduction

This memorandum informs you of the findings of the Fairfax County Police Civilian Review Panel (the “Panel”) following its review of the case submitted by a complainant. Having completed its investigation review, the Panel concurs with the findings and determination detailed in the Investigative Report prepared by the Fairfax County Police Department (“FCPD”).¹

II. Review Request

The complainant was a party to a civil action in the Fairfax County General District Court. She subpoenaed an FCPD officer (the “Officer”) to the trial of that case scheduled for July 28, 2017. The Officer timely received the subpoena, but failed to attend the trial as required by Virginia law and FCPD general orders. Thereafter, the complainant filed a complaint with the FCPD against the Officer principally contending that the absence of the Officer prejudiced the complainant’s case, which resulted in a judgment against complainant. The FCPD investigated the complainant’s complaint and issued an undated notification of its findings to the her (the “Notification”). The Notification states, among other things, that “[the Officer’s] actions were improper and in violation of Departmental regulations” and that “measures have been imposed to prevent a recurrence of this type of incident in the future.”

III. Procedural Background

On November 20, 2017, the complainant delivered an email to the Independent Police Auditor (the “IPA”) complaining about the FCPD’s investigation. The next day, the IPA forwarded her Email together with the Notification to the Panel for possible action.

On December 7, 2017 at a public meeting, the Panel discussed whether the complainant’s Email constituted a Review Request. Uncertain whether the complainant wanted relief the Panel could provide, the Panel decided by majority vote to deliver to the complainant a letter seeking clarification from her. Attached as Exhibit 1 is the letter sent to the complainant on December 8, 2018. She confirmed by email dated December 18, 2017 that she wanted the Panel to review the FCPD investigation. On December 20, 2018, the Panel’s Chairman sent the complainant a letter attached as Exhibit 2.

Thereafter, the Panel issued a Panel Review Meeting Notice and the Panel Members each reviewed the contents of the investigative file made available by the FCPD.

IV. Panel Review Meeting

On January 4, 2018 at a public meeting, the Panel afforded the complainant the opportunity to state the reasons for seeking the Panel's review. The complainant attended the meeting and made a statement that was followed by questioning of her by Panel Members. Thereafter, the Chief appeared before the Panel to discuss the investigation. An audio recording and a summary of the Panel Review Meeting may be reviewed here:

www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings

V. Panel Findings

On February 1, 2018 at a public meeting, a majority of the Panel voted to concur with the findings and determinations detailed in the Investigation Report. On March 1, 2018, the Panel voted to approve publication of this report.

VI. Additional Conclusions and Recommendations

Several Panel Members noted that the interview notes of the initial interview of the complainant were not included in the investigative file. In addition, the complainant indicated in her statement to the Panel that, other than the Notification, she had not received any further explanation from the FCPD. The Panel recommends that the FCPD contact the complainant and offer her whatever additional explanation that is legally permissible and appropriate under the circumstances.

CC: Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor
Complainant

ⁱ Unless stated, capitalized terms shall have the same meaning stated in the Bylaws.



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

December 8, 2017

Ms. Laxmi Chegu
[REDACTED]

Dear Ms. Chegu:

Thank you for submitting your complaint to the Panel dated November 20, 2017. The Panel discussed the process for reviewing your complaint in our meeting last evening and determined that we need to clarify with you the scope of the Panel's jurisdiction before moving forward.

With respect to your complaint, the Panel has authority: to review the completed internal police department investigation for thoroughness, completeness, accuracy, objectivity, and impartiality. Our review of your complaint and others may also lead to recommendations on law enforcement policies and practices to assist the Chief and the Board of Supervisors in policy review.

As a result, when reviewing investigations the Panel may conclude one of the following:

- (i) Concur with the findings and determination detailed in the Investigation Report;
- (ii) 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; or
- (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.

Your November 20th email suggests that you would like the Panel to consider the award of monetary compensation. The Panel is not authorized to award or recommend the payment of monetary compensation to complainants.

With this information in mind, please advise whether you would like for the Panel to proceed with the review consistent with the Panel's authority. If you do, the Panel will move forward to review the investigation and schedule an opportunity for you to appear before the Panel.

Sincerely,

Adrian L. Steel, Jr.

Chairman

Fairfax County Police Civilian Review Panel

Fairfax County Police Civilian Review Panel
12000 Government Center Parkway, Suite 233A
Fairfax, VA 22035
703-324-3459, TTY 711
www.fairfaxcounty.gov/policecivilianreviewpanel/



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

December 20, 2017

Ms. Laxmi Chegu
[REDACTED]

Dear Ms. Chegu:

Thank you for your e-mail of December 18, 2017, indicating that you want to proceed with the Panel's review of the FCPD's investigation of the missed court appearance by a subpoenaed FCPD officer. The Panel has concluded that it has jurisdiction to review that investigation. However, the Panel does not have jurisdiction under its Bylaws to review concerns that you may have pertaining to the Virginia state court system. Please plan to address matters related to the officer's failure to appear and not broader concerns about the court system.

The Panel has tentatively set the date and time for the meeting to review the FCPD investigation for Thursday, January 4, 2018, at 7:00 pm at the Fairfax County Government Center, Conference Room 232. Please confirm that you will be able to attend the meeting at that date and time. If that date and time do not work for you, our next scheduled Panel meeting is set for February 1, 2018. We will provide you with further information concerning the details on the meeting as the date nears.

Sincerely,

Adrian L. Steel, Jr.

Chairman

Fairfax County Police Civilian Review Panel

Fairfax County Police Civilian Review Panel
12000 Government Center Parkway, Suite 233A
Fairfax, VA 22035
703-324-3459, TTY 711
www.fairfaxcounty.gov

APPENDIX G.2

(CRP-18-02)



County of Fairfax, Virginia

MEMORANDUM

DATE: 5/7/2018

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-02

I. Introduction

We are writing to inform you that the Fairfax County Police Civilian Review Panel (the “Panel”) has concurred with the findings and determination of the Fairfax County Police Department (“FCPD”) regarding the investigation of a complaint submitted by a complainant.ⁱ

II. Review Request

On June 22, 2017, two FCPD officers responded to calls concerning a landlord-tenant civil dispute at two residences in Lorton. During their encounter with the complainant at his home, the officers observed him slurring his speech, smelling of alcohol and having watery eyes. The officers advised the complainant not to leave his house because doing so would expose him to arrest for a violation of Fairfax County Code Section 5-1-1 (which prohibits persons from being drunk in public). Thereafter, the complainant left his house and approached the vehicle of one of the officers. The officers observed the complainant as being unsteady as he walked, and he was arrested for being drunk in public. The Complainant filed a Complaint with the FCPD, claiming that he was falsely arrested and was not drunk. He stated that the arresting officer did not have sufficient time to observe him in order to make a determination that he was drunk. He said that he asked the officers to give him an alcohol breath test and that they refused.

III. Procedural Background

The complainant initially filed a Complaint with the FCPD on July 5, 2017. An investigation by the FCPD found that the arrest was in compliance with Regulation 2013, General Order 601. Mr. Loesch was informed of the finding on January 9, 2018, and on January 26, 2018, he was informed that he had the right to seek a review by the Panel. On February 7, 2018, the complainant asked for a Panel review of the police investigation of his Complaint.

IV. Panel Meeting

The Panel met on March 1, 2018, at a public meeting. Prior to the meeting, all members had reviewed the FCPD investigation file concerning the complainant's complaint. At the meeting, the Panel voted unanimously that (i) the complainant's allegation of false arrest falls within the Panel's scope of review authority, and (by a vote of 5 in favor, 2 opposing and 2 abstaining) that (ii) a separate Review Meeting with the complainant and the FCPD was not needed prior to a vote on a finding. On April 5, 2018, the Panel met at a public meeting and voted to concur with the findings and determinations detailed in the FCPD Investigation Report. On May 3, 2018, the Panel voted to approve publication of this report. Audio recordings and summaries of the Panel meetings may be reviewed here: <https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>

V. Comments

Several Panel members noted that the audio tapes of the interviews and the video of the police transport of the complainant after his arrest were helpful in their determinations.

In addition, a body-worn camera recording might have been useful in the matter to give a better view of the complainant's behavior during the arrest.

CC: Complainant

ⁱ Unless stated, capitalized terms shall have the same meaning stated in the Bylaws

APPENDIX G.3

(CRP-18-12)



County of Fairfax, Virginia

MEMORANDUM

DATE: 1/8/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-12

I. Introductionⁱ

The Panel held a Panel Review Meeting on November 1, 2018 to review the Investigation resulting from a complaint submitted to the Panel on June 4, 2018. After reviewing the Investigation file and hearing from the complainant (the “Complainant”) and his wife, the Panel voted to concur with the findings of the FCPD documented in the Investigation Report. All Panel Members attended the Panel Review Meeting.

II. Review Request

On March 15, 2018, FCPD officers responded to a report of a crash between a motorcycle and a car—Complainant was the driver of the motorcycle. The Complainant stated that he rear-ended a car that stopped suddenly in front of him on the roadway. Complainant suffered severe injuries in the accident. The driver of the rear-ended car left the scene of the accident and was never located. The request for Panel review stems from the FR300P accident report (FR300P) written by the responding officer (the “Officer”). Complainant complained that the FR300P was inaccurate and that the Officer refused to change the FR300P after Complainant and his wife made the Officer aware of certain inaccuracies.

Complainant complained that the following items were incorrect on the FR300P:

1. The make of the rear-ended car;
2. The identity, relative to their role in the crash, of the individuals who tended to the injured Complainant;
3. The extent of Complainant’s injuries;
4. The extent to which the driver of the rear-ended car (who was not at the scene to be interviewed by the officer) was under the influence of alcohol;
5. The presence or absence of a defect in the rear-ended car’s brake lights, which the Officer did not observe;

6. The determination of driver fault; and
7. The speed limit on the road.

Upon seeing the report, Complainant's wife requested that the Officer revise the FR300P to correct alleged inaccuracies. The Officer declined to do so. The Officer had made no changes to the FR300P at the time Complainant complained to FCPD about the inaccuracies in the FR300P, which he classified as lies.

III. Procedural Background of Review

Unsatisfied with the Officer's response, Complainant filed an Initial Complaint through the Panel. The Panel referred Complainant's complaint to the FCPD Internal Affairs Bureau for investigation and preparation of a report (the "Investigation Report"). The FCPD investigated the complaint and issued a notification of its findings to the Complainant on August 17, 2018 (the "Notification"). The Notification states, among other things, that "[the Officer's] actions were improper and in violation of Departmental regulations" and that "measures have been imposed to prevent a recurrence of this type of incident in the future." After completion of the Investigation, the Officer amended the FR300P correcting some, but not all, of the information disputed by Complainant.

On August 21, 2018, Complainant requested that the Panel review the Investigation Report. On October 4, 2018, the Panel voted that the Panel had authority to review the Investigation and issued an Initial Disposition Notice. This report of Panel Findings is issued as per the Bylaws following a Panel Review Meeting convened to review the Investigation Report.

IV. Panel Review Meeting

All Panel members reviewed the Investigation Report prior to participating in the Panel Review Meeting. The Complainant and his wife were present at the Panel Review Meeting and made statements and answered questions of the Panel. Maj. Gervais Reed appeared on behalf of the FCPD and answered questions from the Panel.

After hearing from the Complainant and his wife and Maj. Reed, the Panel deliberated and voted to concur with the findings and determinations of the Investigation Report. The vote, held on November 1, 2018, was six in favor, one opposed, and one abstention. On January 3, 2019, the Panel voted to approve publication of these Panel Findings. An audio recording and a summary of the Panel Review Meeting may be reviewed here:

<https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>

V. Additional Comments

- A. Panel Members expressed concern about the adequacy of training and would like to know what steps have been taken to ensure that all officers know how to complete FR300Ps and the steps to make corrections if needed.

- B. The Officer's demeanor in the face of the Complainant's entreaties for a revised FR300P is challenging. The Officer's seeming dismissal of the Complainant's pleas struck the Panel members as uncaring and unprofessional. There was some discussion between Panel members as to whether the Officer's demeanor warranted further investigation, as it was not explicitly discussed in the Investigation Report. However, Maj. Reed's assurance that the investigators took a holistic approach to the complaint, coupled with the fact that issues of the Officer's demeanor are inextricably tied to the officer's refusal to update the FR300P satisfied the Panel that the officer's demeanor was reviewed as part of the Investigation and that a separate investigation into the officer's demeanor was unwarranted.

VI. Recommendations

- A. The Panel Members expressed concern that there is currently no supervisory review of completed FR300Ps before they are submitted to the VA Department of Motor Vehicles. Maj. Reed informed the Panel that previously supervision of accident reporting was more robust. The Virginia State Police's creation of an electronic system for FR300Ps inhibited review of completed FR300Ps. The Panel recommends that the FCPD develop an efficient methodology to reintegrate some level of supervision over the submission of the forms. Complainant stated that the consequences for errors could be problematic as certain insurance claims were initially denied based on the erroneous information in the initial FR300P.
- B. The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.
- C. The Panel Members recommend that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name. The benefit of publishing a discipline summary is that all officers, regardless of their home station, could learn from the mistakes of their peers across the County. Such a system is used successfully in the practice of law in Virginia and in other law enforcement agencies across the country.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

Panelist Aguilar Dissenting

I dissent from the judgment and opinion(s) pronounced by the majority of the Panel in this case for the below outlined reasons:

In his written declaration and subsequent verbal statements to the FCPD and the Panel, the complainant alleged, that he was subjected to: (1) improper police procedures (i.e. incomplete crash investigation and reporting) and (2) discourteous customer service. The former resulted in tangible injuries (via complications with his insurance company) and the latter resulted in the subject officer's misguided refusals for a review and revision of the report which brought the Department into disrepute. Upon receiving the disposition letter, the complainant requested a review of the investigation by the Panel. The Panel correctly agreed that it had jurisdiction to assess and review the matter.

However, as reflected in the verbal statements made during the deliberations of the case in the public review session and the written Panel conclusions, the Panel erred in concluding that the investigation was complete. Specifically, the Panel placed greater emphasis on the allegation concerning the improper crash investigation and the subsequent erroneous report than to the allegation concerning the demeanor of the officer. Paradoxically, the demeanor of the subject officer was noted to be below the expected standards of the Department in the majority's decision. Specifically, in the **Additional Comments**. section **B**. of the majority report it justifies the rationale in concluding the investigation was complete in stating:

“The Officer’s demeanor in the face of the Complainant’s entreaties for a revised FR300P is challenging. The Officer’s seeming dismissal of the Complainant’s pleas struck the Panel members as uncaring and unprofessional. There was some discussion between Panel members as to whether the Officer’s demeanor warranted further investigation, as it was not explicitly discussed in the Investigation Report. However, Maj. Reed’s assurance that the investigators took a holistic approach to the complaint, coupled with the fact that issues of the Officer’s demeanor are inextricably tied to the officer’s refusal to update the FR300P satisfied the Panel that the officer’s demeanor was reviewed as part of the Investigation and that a separate investigation into the officer’s demeanor was unwarranted.”

In addition to those written statements, some panelists also voiced their opinions on the matter to include the following verbal statements¹:

“...there was a part that seemed to go unaddressed and that was the officer’s demeanor”
[00:40:18]

“...there was an element of this that was potentially related to the demeanor of the officer, but I think the crux of the complaint was the form, the accuracy of the form...” **[00:41:49]**

¹ A transcript of the meeting is not available, however as it is practice of the Panel, a link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-nov-1-2018> . Time stamps of selected statements from the session are provided in brackets.

“...As far as the demeanor of the officer...I think, overall, the Fairfax County Police, in my limited experience, does a good job that way...” [00:48:40]

“You all voted on what we had authority to review and the things that we felt we had- I remember outlining what we had authority to review pertained to, not the demeanor but it pertained to the accuracy of the report...” [01:04:26]

“You could argue that he [the complainant] brought up a separate allegation tonight that we didn’t consider jurisdiction on, so we could actually vote to see whether we believed that rose to the level of serious misconduct...” [01:05:01]

The result of the majority’s decision was that an allegation of police misconduct made against a FCPD officer remains formally unadjudicated. The Panel certainly had jurisdiction to review an allegation of this caliber. In **ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES**. Section B of the Bylaws, serious misconduct is, in part, described as conduct where officers act: *“in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.”* The inaccurate report was careless and so were the subsequent refusals to amend it. The comment that “it is what it is” was objectively rude and the subject officer did not deny saying it. The act could be viewed from the lens of at least three of the Department’s general orders:

201.7 STANDARDS OF CONDUCT

A) Unbecoming Conduct

Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Conduct unbecoming an employee shall include that which brings the Department into disrepute or reflects discredit upon the employee as a member of the Department, or that which impairs the operation or efficiency of the Department or employee.

201.13 HUMAN RELATIONS

A. Citizen Contacts

Employees shall conduct themselves professionally at all times when representing the Department. They shall use respectful, courteous forms of address to all persons...

202.1 LOITERING, SLEEPING, LOAFING ON DUTY

No employee shall loiter, sleep, or loaf on duty, or in any other manner shirk responsibilities in the performance of duty.

The fact that the allegation was not “explicitly discussed in the Investigation Report,” in my view invalidated the completeness of the investigation. Considering the totality of the circumstances surrounding the allegations and the investigation, I believe the only appropriate disposition in this matter was to render it incomplete. Having reached that conclusion, I believe that voting to concur

with the findings and determinations of the Investigation Report would have been a dereliction of my duty.

The Panel should not be concerned whether the Department's outcome of the investigation will remain the same if the Panel renders it incomplete after its review. The Panel must hold the internal investigations process of the Department to higher standards if it is to remain true to its stated mission *"to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigation."*

This is no trivial matter, but I pray and hope it is an isolated incident. If such approach remains the modus operandi of the Panel, I fear the Panel may be on the dangerous path towards irrelevancy. The Panel is still in its infancy and such hiccups are understandable, but it must remain vigilant for the sake and future of civilian oversight in our beloved county.

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APPENDIX G.4

(CRP-18-26)



County of Fairfax, Virginia

MEMORANDUM

DATE: 3/7/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-26

I. Introductionⁱ

The Panel held a Panel Review Meeting on January 3, 2019 to review the Investigation resulting from a complaint submitted to the Panel for review on November 26, 2018. After reviewing the Investigation file, the Panel voted unanimously to concur with the findings of the FCPD documented in the Investigation Report. All Panel members attended the Panel Review Meeting.

II. Review Request

On or about August 25, 2018, at approximately 3:46 PM, the Complainant was stopped within the Fairfax County jurisdiction by a uniformed FCPD Officer (hereafter referred to as “Subject Officer”) in a marked cruiser for a window tint violation. The Complainant alleged the Subject Officer racially profiled him when stopping his vehicle. Specifically, the Complainant believed the Subject Officer’s reference that the Complainant could not be seen through the windows was more related to his dark complexion than the window tint. The Complainant further believed the Subject Officer’s inquiry of “Where are you headed?” was inappropriate and beyond the scope of the infraction at hand.

III. Procedural Background

The Complainant filed a complaint with the FCPD on or about August 27, 2018. The FCPD Internal Affairs Bureau (“IAB”) investigated the complaint and issued a notification of its findings to the Complainant on or about November 9, 2018. The FCPD investigation found that there was “no credible evidence to support” the Complainant’s allegation of bias.

Later that month, on or about November 26, 2018 the Complainant sent an email to the Office of Independent Police Auditor requesting a review the IAB investigation by the Panel. The Complainant expressed dissatisfaction with the lack of details as to the results of the IAB's investigation and shared his belief and perception that the assigned investigator demonstrated a lack of impartiality.

On December 17, 2018, a sub-committee of the Panel met to review the Review Request and determined the Panel had authority to review the Investigation since the subject matter of the Investigation alleged an abuse of authority and issued an Initial Disposition Notice.

IV. Panel Review Meeting

All Panel members reviewed the Investigation Report prior to participating in the Panel Review Meeting on January 3, 2019. The Complainant was not present at the Review Meeting nor was a representative on his behalf. The Complainant was contacted on several occasions, both via telephonically and via correspondence, and provided the date/time and location information on the meeting. Major Gervais Reed appeared on behalf of the FCPD. He reviewed the investigation conducted by IAB and answered questions from the Panel.

Based on Major Reed's presentation and responses and on the Panel's review of the Investigation file, the Panel determined as follows:

The IAB investigator interviewed the Complainant (by email) and the Subject Officer regarding the August 25, 2018 traffic stop. The Subject Officer's in-car video (ICV) and body worn camera (BWC) footage were also reviewed by the investigator, the investigation established that the Subject Officer was on patrol on August 25 when she observed a vehicle pass by her with dark tinted windows. Because she was unable to see the driver through the windows, she initiated a traffic stop on-the-basis of a possible violation of the Virginia law on the tinting of car windows. VA Code 46.2-1052. The Subject Officer explained to the Complainant the reason for the stop and tested the driver side and left rear passenger windows with a tint meter. The driver side window tested at 36% (i.e., 36% of light passed through), and the passenger window tested at 16%. The Virginia Code requires a minimum 50% transparency for a front seat window and a 35% transparency for a rear window. The meter was tested before and after the Subject Officer's shift and found to be working properly. She explained to the Complainant that she decided to issue a summons because of the violation of the Code standards, especially as to the rear window.

A review of the ICV and BWC footage indicates that the Subject Officer's conduct was proper and in compliance with all applicable FCPD policies, including FCPD's Bias Based Policing policy as set forth in Reg. 201.22 which requires traffic stops to be based on reasonable suspicion or probable cause and prohibits the consideration of race or ethnicity in making law enforcement decisions. The Subject Officer had probable cause that the Complainant's car windows violated the Virginia Code, and she acted

properly in stopping the car. In so doing, she was courteous and professional, explained the reason for her actions, and asked the Complainant if he had any questions. The ICV and BWC footage also reflected that the Complainant and the Subject Officer engaged in routine conversation as would be associated with any traffic stop with no profanity, harsh or derogatory language, and no racial slurs or other discriminatory remarks by either of them. The questions that the Subject Officer asked are common to traffic stops. The Subject Officer also advised the Complainant that, if he were to bring evidence that he had remediated the excessive tint to the court hearing, there was a good possibility that the charge would be dismissed.

With respect to the Complainant's concern that the Subject Officer stopped the Complainant's car and issued a summons on the basis of race, the ICV footage shows that she could not have seen through the windows of the Complainant's car as it passed by her and that she could not have determine the driver's race before initiating the stop due to the heavy tint. Both the ICV and BWC footage showed that there were no other cars in front of the Complainant's car when his car passed the Subject Officer's police vehicle. The footage further shows that the Subject Officer asked the Complainant to move his car to a side street to avoid blocking a street.

Based on the above, the Panel deliberated and voted unanimously to concur with the findings and determinations of the Investigation Report.

An audio recording of the January 3, 2019, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-jan-3-2019>.

On February 7, 2019, the Panel discussed the Finding Summary, an audio recording an may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-feb-7-2019>

V. Comments

- A. Panel members reviewed the video from both the BWC and ICV and agreed this footage provided impartial documentation of the alleged conduct in question and further remarked on the usefulness of such evidence for future cases of a similar nature.
- B. Some Panel members expressed concern about the FCPD's use of statistical evidence for determining racial disparities. Specifically, the FCPD used descriptive data and attempted to make correlations without taking into consideration the demographics of the District in comparison to the District's criminal statistics. Major Reed confirmed that the FCPD employs crime analysts and that IAB investigators do not receive specialized training on statistics.

VI. Recommendations

- A. The Panel recommends that the FCPD ensures that individuals involved in incidents with FCPD officers which are subject to a complaint be provided with an opportunity to review the video footage of the incidents. FCPD policy provides for such review. See BWC Standard Operating Procedure 18-506 and General Order 430.8.XI.B. The Panel believes that enabling complainants to view video and audio of incidents giving rise to complaints will enhance the FCPD's transparency and assist complainants in understanding the FCPD's conduct during the incidents.
- B. Panel members should be provided with the opportunity to review video and audio footage of all interviews conducted during FCPD administrative investigations.
- C. The FCPD should make BWC and ICV footage available for viewing at Panel Review Meetings as requested by the Panel.
- D. During FCPD administrative investigations, where statistical evidence is used, we recommend the Crime Analyst Unit be consulted in the gathering, preparation and reporting of the statistical data.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

APPENDIX G.5

(CRP-18-27)



County of Fairfax, Virginia

MEMORANDUM

DATE: 7/12/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-27

I. Introductionⁱ

The Panel held a Panel Review Meeting on February 7, 2019, to review the Fairfax County Police Department (FCPD) Investigation resulting from a complaint submitted to the Panel for review on December 11, 2018. The complaint was filed by a person who was not a witness and was not at the scene of the incident. The Complainant's knowledge of the incident is based on viewing video of part of the incident on social media and watching media coverage. After reviewing the Investigation file and hearing from the Complainant and FCPD, the Panel expressed concern about the thoroughness, completeness, accuracy, objectivity and impartiality of the Investigation. The Panel requested further investigation of the incident focusing on (1) possible racial bias and/or racial profiling, and (2) the legality of the stop leading to the arrest of an individual by a FCPD officer.

The FCPD conducted further investigation and on April 5, 2019, informed the Panel that an independent legal review concluded that the stop leading to the arrest of the individual was legal and free from any racial bias.

After reviewing the supplemental Investigative file, on May 30, 2019, the Complainant addressed the Panel a second time, and the Panel considered the additional findings by the FCPD. The Panel voted to concur with the findings of the FCPD Investigation on a vote of 6 to 1. Panel member Hansel Aguilar voted not to concur, and Panel members Gregory Gadson and Shirley Taylor were absent from the meeting.¹

¹ Audio of the February 7, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-feb-7-2019>. Audio of the May 30, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-may-30-2019>.

II. Incident and Review Request

According to the officer, on July 6, 2018, he observed an individual walk toward a Mount Vernon apartment complex looking down at his phone as if he was looking for an address and was unfamiliar with the neighborhood. The officer was on patrol in the neighborhood at the request of management at the apartment complex because of trespassing and criminal activity (including illegal drug trafficking) in the area. Managers of the complex had given the officer keys to the entrance. The officer watched as the individual was let into the complex through a controlled access door.

The individual remained out of view for about 10 seconds and then exited the building and walked toward a nearby shopping center. The officer suspected that the individual may have been involved in a drug transaction based on his behavior and past calls in the area. The officer followed the individual and as he approached the individual, he asked to speak to him about a possible trespassing. The individual replied, “No,” and walked away from the officer. At that point, the officer said that he noticed a strong odor of marijuana on the individual and observed that his right hand was clenched. The officer initiated an investigative detention, and a physical struggle ensued, ending with the individual being arrested and handcuffed. The Independent Police Auditor has conducted a review of the officer’s use of force in this incident.²

The Complainant claimed that the individual was not trespassing, was stopped illegally, and was a target of racial profiling. Following the initial FCPD Investigation, the Complainant requested that the Panel review the Investigation. The Panel determined that it had authority to review the allegations in the complaint of abuse of authority and serious misconduct by the FCPD. At the Complainant’s first appearance at the February Panel meeting, the Panel noted that the complaint did not include a specific allegation of racial profiling, and the initial FCPD investigation did not address the issue. When asked if the Complainant would like to amend the complaint to include racial profiling, the Complainant replied affirmatively. Based on the Complainant’s request and the Panel’s questions regarding the legal justification for the stop, the Panel requested further review by the FCPD.

III. FCPD Finding: Legality of the Stop

In its supplemental investigation, the FCPD requested and received a legal analysis of the stop from the Office of the Fairfax County Attorney and the Office of the Fairfax County Commonwealth’s Attorney. These analyses relied heavily upon federal and state court cases that allow an officer to briefly detain a person based upon reasonable suspicion of criminal activity long enough to dispel the suspicion or allow it to rise to the level of probable cause for an

² Link to OIPA Report 7-6-18: [July 6, 2018: Use of Force Complaint](#)

arrest.³ Additionally, federal and Virginia law allows an officer to conduct a search based upon probable cause if the officer detects the smell or odor of drugs on a person.⁴ (“Plain Smell Doctrine”)

Applying the “plain smell doctrine” to the facts of this incident, both the County Attorney and the Office of the Commonwealth’s Attorney stated that the officer smelled fresh marijuana on the individual and he was subsequently found to have marijuana on his person. As such, there was reasonable suspicion and/or probable cause for the stop, and it was justified under both state and federal law. The attorneys also opined that the observations of the officer and his experience with criminal drug activity also gave the officer “reasonable suspicion” to stop the individual.

The majority of the Panel were satisfied with the legal analyses and concurred with the findings and determination detailed in the Investigation Report.

IV. FCPD Finding: Racial Profiling

In its supplemental Investigation, the FCPD found that no credible evidence was found indicating racial bias played a role in this incident. This conclusion was based upon interviews of the individual, the officers and witnesses, including one who posted a video of the incident. The Investigation also relied upon the officer’s arrest statistics.

Several members of the Panel were troubled by the FCPD’s reliance on arrest statistics to substantiate a finding of no racial profiling in this incident. The Panel has recommended to the FCPD that when statistical evidence is used, the Crime Analyst Unit be consulted regarding the gathering, preparation and reporting of statistical data. When asked whether the Crime Analyst Unit was consulted in this Investigations, the FCPD replied that the unit was not consulted.

Nevertheless, the Panel found that the Investigation, taken in its totality, supported the conclusion that there was no racial profiling, and the Panel concurred with the FCPD finding and determination detailed in the Investigation Report.

V. Comment

- A. Some Panel Members expressed concern over the police officer stopping and arresting for trespass when the individual had been granted access by a resident of the apartment complex and was no longer on the property when stopped.

³ Terry v. Ohio, 392 U.S. 1 (1968)

⁴ Bunch v. Commonwealth, 51 Va. App.491 (2008); United States v. Humphries, 372 F.3d 653, 660 (4th Cir. 2004); United States v. Haynie, 637 F.2d 227, 234 (4th Cir. 1980)

VI. Recommendation

- A. The Police Department sent a letter to the Panel informing the Panel of its supplemental findings. Attached to that letter was investigatory information pertaining to the Complainant's social media accounts. Inclusion of the social media information was inappropriate and unnecessary. Such public disclosure by the Police Department may discourage individuals from filing future complaints, and it undermines community trust in the Panel, even though the information may have been publicly available through other means. Therefore, the Panel recommends that in the future the Department refrain from publicly releasing such information about complainants. If the Department believes that certain information about a complainant may be relevant to the investigation, that information should be included only in the Department's investigative file.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

Panelist Aguilar dissenting

I respectfully dissent from the majority's conclusion in this matter for the below outlined reason:

- In failing to provide a proper statistical analysis concerning the reported racial disparities in the enforcement activities of the subject officer, it is not clear that the Department accurately, completely and thoroughly, reviewed and considered the allegation of racial bias as prohibited by G.O. 201.22, Biased Based Policing.

Specifically, in its investigation, the Department noted that the arrest activity of the subject officer demonstrated there was margin of at least 20 percentage points¹ in the officer's arrest of African Americans compared to his District level peers' arrests of African Americans. In its report, the Department reasoned that the discrepancy was not of concern because the subject officer was patrolling a neighborhood that did not share the same demographic characteristics of the entire District (i.e. the assigned neighborhood of the subject officer consisted of a higher concentration of African Americans residents than what is seen in the entire District). No further analyses or attempts to compare similarly situated or assigned officers were made to explore whether the racial discrepancies reported by the subject officer's arrest activity were consistent or inconsistent with proper comparators. In addition to the officer's record revealing more arrests of African Americans by a considerable margin (through the Department's own data); the statistics provided in the

¹ This specific point was also discussed in the May 30, 2019 meeting where the Panel discussed the case for a second time. [00:15:30] Audio of this discussion could be accessed by visiting: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-may-30-2019>

Department's report also indicated the subject officer was less likely to arrest White offenders than his District counterparts by a margin of at least 20 percentage points.

The lack of statistical scrutiny provided to the pattern of arrests revealed by the department's records was also evident in the questioning of the officer. The questioning of the subject officer could have explored the concept of racial bias in his policing activities or implicit bias by prompting him with questions regarding racial bias or exploring his pattern of arresting more African Americans than White individuals.

For this reason, I cannot accept the Department's conclusion that "*no credible evidence was found indicating racial bias played a role in this incident*"² NOR can I accept the Panel's similar conclusion "*that the Investigation, taken in its totality, supported the conclusion that there was no racial profiling.*" Furthermore, I emphasize the recommendation made by the Panel in its March 7, 2019 report³: (D.) *During FCPD administrative investigations, where statistical evidence is used, we recommend the Crime Analyst Unit be consulted in the gathering, preparation and reporting of the statistical data.* Considering the subject matter expertise of members of the CAU, it appears to be the unit, within the FCPD, best suited to conduct proper statistical analyses. Lastly, as outlined in G.O. 530.7 Crime Analysis Unit, there already exists a mechanism by which the Department may enlist and delegate this task to the CAU, "*Analysts shall, upon request, gather data and prepare statistical reports related to a variety of Departmental activities.*"

² As indicated by FCPD Chief Edwin C. Roessler Jr., Colonel in his April 5, 2019 letter to CRP Chairman Doug Kay.

³ Report of Panel Findings for Complaint CRP-18-26:

<https://www.fairfaxcounty.gov/policecivilianreviewpanel/sites/policecivilianreviewpanel/files/assets/crp-18-26%20review%20report%20official%20memo.pdf>

MEMORANDUM

To: The Fairfax County Police Civilian Review Panel

From: Rhonda VanLowe

Date: July 8, 2019

Re: The Utley Complaint

I. Introduction

After a careful review of the report in the Utley matter and the corresponding dissent, I find that I am not able to support the conclusion stated in the report that, with respect to the issue of racial profiling, “the investigation taken in its totality, supported the conclusion that there was no racial profiling.” At best, the investigation is inconclusive on this issue, and, for this reason, I cannot concur in the FCPD conclusions and findings on the issue of racial bias and profiling. On this aspect of the report, I join Mr. Aguilar in dissenting.

II. The Investigation on the issue of Racial Bias/ Profiling is Inconclusive

Determining whether the officer exhibited a racial bias or profiled the individual involved in the arrest based on race is likely a question that cannot be answered at this point. That said, neither can a definitive conclusion be made based on the information reported in the investigation.

What we have on the issue as an initial input is the Officer’s arrest statistics. These statistics indicate that the officer has an unfavorable margin of at least 20% in the number of arrests of African Americans compared to his District level peers’ arrests of African Americans. The FCPD concluded that the officer’s arrest statistics reflect his patrol assignment to an area heavily populated by African Americans. While this conclusion may be plausible, no other evidenced-based information is provided to support the conclusion. For example, the investigation file does not contain any information about the existence of other community complaints or compliments about the officer that might be related to the question of bias. Nor does the investigation reflect any social media scrutiny similar to that provided on the complainant (which, as indicated to the Panel, was offered to show the complainant’s bias). Mr. Aguilar notes the need for a more comprehensive statistical analysis (the Panel has recommended the same in the past). Further, and regrettably, we do not have any body worn camera footage or corroboration from another officer at the scene of the initial encounter to see and understand how the police stop began and developed.

The Panel has reviewed other complaints alleging racial profiling. In one notable incident involving a traffic stop, body worn camera footage was available. The Panel could view the traffic stop from beginning to end. The recording gave the Panel a clear perspective on the

officer's demeanor, motivation and conduct. The policing in that example was commendable; the Panel could and did support the FCPD conclusion that there was no racial profiling present in the stop.

Because of the persuasive legal analysis by the Office of Fairfax County Attorney and the Office of the Fairfax County Commonwealth Attorney on the issue of the legality of stop and subsequent arrest, concluding that there was no exhibited racial bias may seem like a logical consequence. However, the conclusion conflates two distinct issues.

III. Comments

A significant number of complaints (16% in 2018) received by the Panel contain an allegation of racial bias or racial profiling. Whether perceived or real, the broader community is concerned. I believe that having the FCPD speak with the Panel on the issue of racial profiling and bias within the department would be useful to educate the Panel on the initiatives undertaken by FCPD to address the issue.

IV. Conclusion

Based on the legal analysis provided in the supplemental investigation, I concur with the conclusion with the Panel's conclusion on the legality of the stop. I dissent from the conclusion that there was no racial bias or profiling evident in the incident.

APPENDIX G.6

(CRP-19-05)



County of Fairfax, Virginia

MEMORANDUM

DATE: 8/1/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-05

On behalf of the members of the Fairfax County Civilian Review Panel, I submit to you Panel Findings for Complaint CRP-19-05 (“Complaint”). As explained below, the Panel found the Investigation met the criteria of accuracy, completeness, thoroughness, objectivity, and impartiality.

I. Introductionⁱ

The Panel held a Panel Review Meeting on June 20, 2018, to review the Investigation resulting from a complaint submitted to the Panel for review on November 26, 2018. After discussion, the Panel voted unanimously that the FCPD’s Investigation Report met the criteria expected of them. All Panel members, except Colonel Gregory Gadson, attended the Panel Review Meeting.

II. Background Facts and Review Request

On April 17, 2019, an undercover narcotics detective with the FCPD placed an advertisement on the Internet and broadcast it throughout the local District of Columbia, Maryland and Virginia region. In the advertisement, an undercover FCPD detective masqueraded as a couple looking for a third person to engage in a sexual fantasy relationship. The advertisement also subtly solicited drugs. The Complainant responded to the advertisement using electronic communications. Review of these communications reveals early and frequent discussion of the Complainant’s procurement of cocaine and marijuana during several weeks of communications between the detective and the Complainant. On May 24, 2017, the Complainant arrived at an appointed meeting place where the FCPD arrested him for possession with intent to distribute cocaine and marijuana and with possession of a firearm while in possession of narcotics. The FCPD also seized the vehicle Complainant used to meet with the undercover detective.

Thereafter, the Complainant became a confidential informant (“CI”) with the expectation that it would help his case. During Complainant’s efforts as a CI, he asked for guidance about how to engage in drug sales, and a detective responded via text message, “Look Retard.....don’t actually buy drugs or get drugs from them. Simply get them to agree to sell to you. This is why you should not be doing this. U don’t have any idea about what you are doing. And I am not teaching a class.” After the Complainant’s work as a CI concluded, his criminal prosecution ensued. The Complainant was represented by counsel who negotiated a plea bargain that resolved all criminal charges finally on August 24, 2018.

Shortly after Complainant’s arrest, the Commonwealth of Virginia filed a separate civil forfeiture proceeding concerning the Complainant’s vehicle. But the Commonwealth’s Attorney concluded that the outstanding liens on Complainant’s vehicle made inappropriate further pursuit of forfeiture proceedings. On instructions from the Commonwealth’s Attorney, the FCPD returned the vehicle to the lienholder. Neither the Commonwealth’s Attorney nor the FCPD gave Complainant notice of the disposition of his vehicle.

On September 10, 2018, filed the Complaint which asserts a multitude of claims principally including that the FCPD engaged entrapment, that he was subjected to offensive language in violation of the FCPD General Orders, and that his vehicle had been illegally forfeited.

III. Procedural Background

Pursuant to the Bylaws, the Complaint was forwarded to the FCPD for Investigation. After the Investigation was completed, Chief Roessler sent a letter to the Complainant notifying him of the outcome of the FCPD’s review. The Complainant timely filed a Review Request.

On May 23, 2019, the Panel conducted an initial review of the Review Request in which it addressed: 1) whether the request was timely and 2) whether the complaint met the seriousness standards of the Panel’s by-laws. The Complaint was filed more than one (1) year after the date of the incident, and a month after the close of Complainant’s criminal case. The Bylaws permit the Panel to review an untimely Complaint if the Panel finds good cause for the delay. The Panel concluded good cause existed since it was reasonable for the Complainant to wait until after conclusion of his (1) efforts as a CI and (2) criminal prosecution since Complainant probably believed filing a complaint against the FCPD would cause the FCPD to be prejudiced against him during the pendency of either of the two circumstances. The Panel also concluded that the Complainant’s allegations were sufficiently serious to warrant review.

IV. Panel Review Meeting

The Panel Review meeting for CRP-19-05 was held on June 20, 2019.¹ Prior to the Panel review meeting, all Panel members had reviewed the voluminous Investigation Report created in response to the Complaint.

Second Lieutenant Low attended the Panel Meeting and provided an overview of the case, the investigation of the Complaint, and a summary of the FCPD response to each item in the Complaint:

Entrapment. The Office of the Commonwealth’s Attorney and the Office of the County Attorney each reviewed the incidents and determined that the tactics used by the FCPD were within the law and entrapment did not occur. To overcome the defense of entrapment, the government must prove that the defendant was disposed to commit the criminal act prior to first being approached by government agents. The Complainant claimed he could provide “party favors” without prompting from the detective and within minutes of their first communications. Throughout the lengthy written exchange available to the Panel for inspection, the Complainant exhibited knowledge of the drug trade and a lack of hesitation to procure drugs for use during the offered sexual encounter. The Panel was satisfied that the FCPD consulted with and obtained legal opinions that were included in the Investigation Report.

Use of Offensive Language. The FCPD’s investigation found that the Officer’s use of offensive language was in violation of General Orders. (The violation was addressed, but personnel actions are subject to privacy restrictions and will not be described herein.) The Panel was satisfied with the FCPD’s handling of this violation.

Vehicle Seizure. The actions taken in this case were consistent with FCPD policies and procedures in existence at the time of the seizure. The Panel expressed concerns about the failure to notify the Complainant that his vehicle was returned to the lienholder. However, the FCPD has since implemented improved procedures that address the concern. Moreover, several on the Panel expressed concern over future seizure of vehicles by the FCPD may constitute an excessive fine under recent U.S. Supreme Court precedent.

After discussion of the adequacy and appropriateness of the FCPD’s actions and Investigation of the Complaint, the Panel voted unanimously to concur with the findings and determination detailed in the Investigation Report.

¹ Audio of the June 20, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-june-20-2019>. A summary of the June 20, 2019 meeting is at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/sites/policecivilianreviewpanel/files/assets/6-20-19%20summary.pdf>

V. Comments

- A. The Panel commends the FCPD for their prompt issuance of an updated policy on the seizure of vehicles.
- B. The FCPD investigation properly found that the Officer's use of the word, "retard" was offensive and was in violation of its General Orders. The Panel agrees that use of such abusive and repugnant language is unacceptable and unbecoming of a police officer in any circumstance. The word, "retard" debases one's human dignity and worth. Individuals with intellectual disabilities and their families are hurt and injured when the word is used to describe themselves, their loved ones, or anyone. Further, use of the word serves to divide our community, instead of uniting, including and recognizing that all residents bring value in diverse ways. Police officers should be the role models in our community, and they should never engage in name-calling.

VI. Recommendations

No recommendations.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

APPENDIX G.7

(CRP-19-07)



County of Fairfax, Virginia

MEMORANDUM

DATE: 9/17/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-07

On behalf of the members of the Fairfax County Civilian Review Panel, I submit to you Panel Findings for Complaint CRP-19-07 (“Complaint”). As explained below, the Panel found the Investigation met the criteria of accuracy, completeness, thoroughness, objectivity, and impartiality.

I. Introductionⁱ

The Panel held a Panel Review Meeting on August 1st, 2019, to review the Investigation resulting from a complaint submitted to the Panel for review on April 11, 2019. After discussion, the Panel voted unanimously that the FCPD’s Investigation Report met expected criteria.

II. Background Facts and Review Request

According to the complainant, on or around December 18, 2018 an FCPD investigated concerns of complainant that an affidavit (germane to his court case) was removed from the physical case file as well as the electronic case file management system of the Fairfax County Circuit Court. Upon completing his review of the file, the detective informed the complainant that the affidavit was not actually missing from the file at all, and that the complainant apparently failed to locate it in the case file. The complainant did not believe the detective thoroughly investigated his complaint, so he filed a complaint against the detective with the FCPD Internal Affairs Bureau, and the FCPD conducted an Investigation into the complaint. Upon the completion of the Investigation, the FCPD sent a letter to the complainant, dated April 1, 2019, informing him that the FCPD concluded the subject detective’s actions were lawful and in compliance with FCPD regulations. The complainant requested a Panel Review.

The complainant expressed that the assigned detective closed out the investigation making “false statements” and remaining “silent” on key facts. Specifically, according to the complainant, the detective:

- Claimed the ‘missing’ Affidavit was in its "appropriate location".

- Claimed that the complainant was "conducting research" and that the complainant asked the filing clerks to conduct research for him.
- Remained silent on whether the Affidavit he found was an original document.
- Remained silent on whether the electronic Affidavit was missing in the case file management system.

When seeking a review of the Investigation, the complainant made three specific requests that fell within the scope of the Panel's mandate: a thorough review of the detective's investigation to determine whether proper procedures were followed; verify whether the affidavit in question was missing from both the physical and electronic case file; and verify whether the complainant asked the filing clerks to conduct research. The complainant also made three requests that were outside the purview of the Panel's duties: conduct a forensic analysis of the August 31, 2018 affidavit to determine whether it is an original document; conduct a forensic digital analysis to determine who deleted the electronic record of the affidavit; and confirm whether a scanned copy of the affidavit ever existed.

III. Procedural Background

Pursuant to the Bylaws, the Panel forwarded the Complaint to the FCPD for investigation. After the Investigation Report was completed, Chief Roessler sent a letter to the Complainant notifying him of the outcome of the FCPD's review. The Complainant timely filed a Review Request.

On June 20, 2019, the Panel conducted an initial review of the Review Request in which it addressed: 1) whether the request was timely and 2) whether the complaint met the seriousness standards of the Panel's by-laws. The Panel concluded that the Complainant's allegations met both requirements for review.

IV. Panel Review Meeting

The Panel Review Meeting for CRP-19-07 was held on August 1, 2019.¹ Prior to the Panel Review Meeting, all Panel members had reviewed the Investigation Report.

The complainant attended the Panel Review Meeting and reiterated the allegations as outlined in his email communications to the IAB and the Panel. Specifically, he stressed that the affidavit shown in the file was not an original document, which he believed was evidence that it was removed and or altered from the official file.

The Commander of the Internal Affairs Bureau, Major Matt Owens, attended the Panel Meeting and provided an overview of the case, the Investigation of the Complaint, and a

¹ Audio of the August 1, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-august-1-2019>. A summary of the August 1, 2019 meeting is at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/sites/policecivilianreviewpanel/files/assets/august%201%20summary.pdf>

summary of the FCPD response to each item in the Complaint:

“Appropriate location.” There was no evidence to suggest there was reasonable suspicion, let alone probable cause, that the file was misplaced and or removed from its appropriate location.

Conducting Research. The complainant went to the courthouse to attempt to locate the affidavit in question.

Original document. There was no evidence to suggest there was reasonable suspicion, let alone probable cause, that there was any wrongdoing or criminal behavior in this matter.

Electronic affidavit. There was no evidence to suggest there was reasonable suspicion, let alone probable cause, that there was any wrongdoing or criminal behavior in this matter.

After discussion of the adequacy and appropriateness of the FCPD’s actions and Investigation of the Complaint, the Panel voted unanimously to concur with the findings and determination detailed in the Investigation Report.

V. Comment

No Comments

VI. Recommendations

No recommendations.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

APPENDIX G.8

(CRP-19-11)



County of Fairfax, Virginia

MEMORANDUM

DATE: 1/9/2020

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
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-19-11

I. Introductionⁱ

The Panel held a Panel Review Meeting on December 17, 2019, to review the Investigation resulting from the complaint first submitted to the Panel on May 21, 2019. The requested review was of an investigation originally completed on April 4, 2019, following a citizen complaint submitted directly to the FCPD at the Franconia District Station on December 27, 2018. In June 2019, the FCPD reopened its investigation and issued a second disposition letter dated August 30, 2019.

After reviewing the Investigation file, the Panel Members present¹ voted 6-1 that the Investigation was complete, thorough, accurate, objective, and impartial, and concurred with the ultimate findings of the FCPD documented in the Investigation Report. The Panel Members present determined to present several comments and recommendations for future Investigation Reports and police procedures based on unique aspects of the file.

II. Background Facts and Review Request

On December 27, 2017, at approximately 6:00pm, the individual who filed the complaint at issue (hereinafter referred to as the "Complainant") was stopped by a uniformed FCPD Officer (herein after referred to as the "Subject Officer") in a marked cruiser for parking in a handicapped parking spot without a handicapped sticker in the parking lot of an extended stay hotel where the Complainant and his family were staying. The Complainant, who is a Black male, was driving the car with a Black male passenger in the front seat and a White female passenger, his wife, in the back seat. The Complainant had exited the car and was walking into the hotel when the Subject Officer stopped him. The Complainant would later admit at the Review Meeting that he parked in the handicap spot because he was nervous that the Subject Officer was following him and the Complainant did not have a driver's license.

¹ Panel members Rhonda VanLowe and Sris Sriskandarajah were not present.

Upon being stopped, the Complainant acknowledged to the Subject Officer that his car did not have a handicapped sticker but told the Subject Officer that he believed that the renter of the car had one. The Complainant offered to go upstairs to retrieve the sticker from the renter, but the Subject Officer instructed the Complainant to return to the vehicle and the Subject Officer also explained that he would be calling for backup. The Complainant called his family friend, the renter of the car, who came down to explain the situation, but the family friend, a Hispanic female, admitted that she did not have a handicap sticker.

While waiting for other officers to arrive, the Subject Officer requested that all four individuals remain in the vehicle. According to the Subject Officer, he also informed the individuals that he smelled marijuana in the vehicle. According to the Subject Officer, the Complainant admitted to having smoked marijuana in the vehicle earlier that day.

The Complainant repeatedly asked the Subject Officer if he was under arrest, was told that he was not, and then informed the Subject Officer that his children were left unattended up in the hotel room. In addition, the Complainant's family friend who had been watching the children and had come down from the hotel room explained that the stove was still on. The Complainant's children were three years old and seven months old. The Complainant insisted that he be allowed to attend to his children, but the Subject Officer thwarted his efforts to leave the car, which prevented the Complainant from opening the door, leading to the Complainant's leg to be pinched in between the door and the car. The Complainant put his hands outside the window of the car, informed the officer that he would be remaining in the car, and moved his leg back into the car. The Complainant was not injured.

When backup arrived, consisting of several marked cruisers, additional police officers, and a police ride-a-long civilian, the Complainant and the other passengers were removed from the car. Male officers patted down all occupants of the vehicle. The Subject Officer handcuffed the Complainant and placed him in a police cruiser. Officers retrieved the children from the hotel room and brought them to the lobby.

Upon searching the vehicle, the Subject Officer informed the Complainant that he had recovered a small bag with apparent marijuana residue on the driver's side of the vehicle and a loaded handgun in the glove compartment with a filed off serial number. The Subject Officer issued a summons to the Complainant for possession of marijuana. The Complainant did not receive a summons in connection with the handgun and ultimately was never charged as all investigatory efforts (including using fingerprint and DNA evidence) failed to tie the gun to a particular person.

According to the Complaint, the whole incident took roughly forty-five minutes, during which the Complainant's young children were left unattended. The Complainant calculated his estimate by noting that roughly ten minutes passed before his family friend came down from the hotel room, during which the Subject Officer attempted to run the Complainant's social security number and date of birth, that further fifteen or so minutes passed before backup arrived, and that another fifteen or so minutes further passed before the children were retrieved.

The Complainant also asserts that the gun recovered on the scene was not his and did not, in fact, come from the car, and that there was no marijuana in the car either. The Complainant further asserts that the pat downs of his female companions were improper. In addition, the Complainant asserts that he was assaulted when the Subject Officer closed the door on his leg. Finally, Complainant asserts that he was the victim of racial profiling.

Specifically, the Complaint read:

Complaint (1): [Subject Officer] claiming he found Marijuana in the vehicle.

Complaint (2): Being charged with Possession of Marijuana.

Complaint (3): Racial Profiling.

Complaint (4): Assault by a police officer.

Complaint (5): Records stating I had a weapon (GUN) but never was charged with having a weapon in my possession.

Complaint (6): Children unattended to for 45 minutes.

The Commonwealth's Attorney dismissed the possession of marijuana charge against the Complainant. The Complaint alleged his attorney advised him to wait a full year until the statute of limitations had run out on the possession charge before filing a citizen complaint against the Subject Officer on December 27, 2018.

III. Procedural Background

As explained above, the Complainant filed a citizen complaint on December 27, 2018, directly with the Franconia District Station. The Complainant's family friend and his wife also filed complaints at that time.

A supervisor at the Franconia District Station investigated the incident, interviewing the Complainant, his wife and his family friend, the Subject Officer, and two police officers who had provided backup. This investigation addressed all allegations of misconduct in the complaint, including the Complainant's assertions of racial bias. Although the investigator located no videos documenting the incident due to the passage of time (over one year), the investigator was also able to review the Computer Aided Dispatch ("CAD") history of the patrol cars involved, which documents when officers leave and reenter their cars. The investigator further reviewed the evidence logs from the time of the incident in question and the history of the prosecution of the case—or in this instance the lack thereof.

On April 4, 2019, the FCPD informed the Complainant that it had concluded "a comprehensive examination of the facts and circumstances surrounding the allegations" and found that the Subject Officer's initial stop "was not based upon bias, but instead, on a clear violation of law for parking in a handicapped parking spot without the proper placard displayed." Further, addressing the other allegations, the letter to the Complainant explained:

A review of all relevant information, in addition to witness interviews, indicated that [Subject Officer] acted in accordance with policy and procedures. [Subject Officer] detained you for the plain smell of marijuana in the vehicle and gave

you lawful commands to remain in the vehicle. When you attempted to exit the vehicle, he sought to contain you by closing the door. When he subsequently searched the vehicle, evidence of marijuana was located as well as an illegal gun. All evidence recovered was entered into the Police Department Property Room. As soon as it was practical to do so, [Subject Officer] ensured your children were attended to. Finally, it is permissible by Department Policy, for an officer to conduct a cross gender search or pat down.

The letter further informed the Complainant that he could request that this Panel review the investigation of his complaint.

On May 21, 2019, the Complainant requested review by the Panel and provided his complaint to the police as well as those of his wife and his family friend. He requested the Panel review all three police complaints. The Panel assigned them all the same intake number and the investigation addressed all three complaints.

Because the complaint contained an allegation of bias-based policing, and specifically racial profiling, the Internal Affairs Bureau (“IAB”) chose to reopen the investigation and notified the Panel of its intent to do so on June 4, 2019. A Second Lieutenant conducted a second investigation along the same lines as the first, also entailing witness interviews, including with the Complainant, and a comprehensive record review. This second investigation occurred because the initial complaint had been reviewed by the Franconia District Station and not the IAB. On August 30, 2019, the FCPD informed the Complainant that:

During this review, [IAB] completed additional investigative steps into the allegation of bias based policing. [IAB] observed that this specific allegation was investigated [by the Franconia District Station], however, not to the standards of the Internal Affairs Bureau. Additional investigative steps that were taken regarding your bias based policing allegation included seeking clarification from you regarding what occurred during the event, further interviews with the involved officers, and discussing your experiences, and related options, regarding your concerns with other agencies that were involved. The additional factfinding measures were completed and documented. At the conclusion of this supplemental investigation and review, the outcome and analysis came to the same conclusion: [Subject Officer’s] actions were within Department policy.

The letter was sent to the Panel in addition to the Complainant.

On Monday, October 7, 2019, a subcommittee of the Panel met to discuss the Investigation. Having reviewed the Investigation and the complaint, the Panel determined that the Investigation concerned matters within the purview of the Panel because complaint was timely submitted and concerned allegations that rose “to the Panel’s standard of abuse of authority and serious misconduct.”

At the Panel meeting on November 19, 2019, the subcommittee recommended the Panel review the Investigation. In light of the claim of assault, the subcommittee asked the Independent Police Auditor whether the allegations rose to the definition of use of force set forth by FCPD General Order 540 and thus was within his purview. The Independent Police Auditor and the Panel agreed that the allegations were not sufficient to require that the Auditor, not the Panel, review the allegations. By a vote of 8-0, the Panel Members present² accepted the recommendation of the subcommittee, determined that the Panel had the authority to review the Investigation, and issued an initial disposition notice.

IV. Panel Meeting

All Panel Members present for the Panel Review Meeting reviewed the Investigation Report prior to the Meeting on December 17, 2019. The Complainant and his family friend were present at the Panel Review Meeting. The Complainant made a statement and answered questions of the Panel. Major Matt Owens appeared on behalf of the FCPD and answered questions from the Panel.

Based on the Complainant's statement and responses to questions, Major Owens's statement and responses to questions, and the Panel's review of the Investigation file, the Panel made the following findings:

The Investigation interviewed the Complainant and his wife and family friend, also complaining witnesses; the Subject Officer; and two other officers. The Investigation also examined the available records of the patrol cars in question. The Investigation further reviewed contemporaneous files concerning the incident, including police reports and evidence logs concerning the handgun and the alleged marijuana found in the car.

The lengthy passage of time between the incident and the Complaint created challenges for investigators and, unfortunately, meant that certain potentially important evidence simply was not available. For instance, under state law, police departments are required to retain video evidence for one year, but there was no in car video or similar evidence that had not been purged after a year had passed.

That said, FCPD vehicles are equipped with CAD systems. Based on the CAD information, the Subject Officer exited his vehicle and the event started at 6:34pm.³ According to CAD information from the other patrol cars involved, officer backup arrived on the scene within seven and a half minutes of the Subject Officer's request. While there were discrepancies between the perspectives of the complaining witnesses, who claimed the incident had lasted forty-five minutes, and the police officers, who asserted a much shorter timeline

² Panel Member Hansel Aguilar was not present.

³ Officers are trained to press a button in their vehicle connected to the CAD system to signify when they leave and enter their vehicles. This system helps track the location of police officers.

(and who claimed that the children were attended to after backup arrived on the scene), the Investigation found that the evidence did not as a whole suggest the lengthy detention asserted, nor that the safety of the Complainant's children was compromised. While the Panel expressed concern that there was not a clear policy in place to deal with a situation where children were left unattended by a then-detained individual, the Panel concurred with the Investigation's finding that it was reasonable for a solo officer dealing with an illegally parked car smelling of marijuana who received backup within seven and one half minutes to continue to detain the individuals in question and deal with the children upon the arrival of backup.

Further, the Complainant's claim that neither a firearm nor marijuana were found in the car was simply unsupported by the evidence uncovered in the Investigation. The officers involved contended that they found marijuana and the handgun in the vehicle. The Subject Officer submitted the contraband to the evidence custodian contemporaneously with the incident. The Complainant argues, more or less, that the fact that the police never obtained a gun charge or pursued the simple marijuana possession charge suggest that said contraband was not really seized. But this position is mere unfounded speculation; charging discretion simply does not prove that evidence obtained and logged never existed. Moreover, the Investigation revealed, for example, that the FCPD tested the firearm for fingerprint and DNA evidence in the hopes of connecting it to the Complainant or another person. Said testing was unsuccessful.

The Panel also considered the claims that the Complainant had been assaulted. The Complainant admitted that he was unhurt when the Subject Officer closed the door that struck his leg. The parties were all in agreement that the Subject Officer was preventing the Complainant from leaving the vehicle during the stop. Nothing in the Investigation suggested anything more than an inadvertent striking of the Complainant, rather than a use of force (as explained by the Independent Police Auditor). The Panel's lone dissenter disagreed with this finding and suggested that a use of force investigation should have been conducted. However, the Panel found that the incident had been properly investigated.

With respect to the two females who complained of invasive pat downs conducted by a male officer, the Panel found that the Investigation took these allegations seriously but was reasonable in clearing the Subject Officer. While the department has expressed a preference for same-gender pat downs, opposite gender pat downs are permissible, and the evidence did not support the assertion that the pat downs had been excessively invasive. Nevertheless, the Panel discussed making a comment or recommendation regarding future cross-gender pat downs. *See Part V supra.*

Lastly, the Panel considered the allegations of racial profiling. The Complainant offered that he was a target and asserted that Subject Officer had no basis to stop him expressing his belief that he was stopped because he is Black, and his wife is White. Complainant claimed that Subject Officer initiated racially motivated contact with him before he parked illegally in a handicap spot.

The Investigation did not support the Complainant's claims. The Subject Officer claimed that he stopped the Complainant only after the car was illegally parked, at which point the Complainant had exited the vehicle. The Complainant admitted that he had parked illegally and was trying to get away from the Subject Officer because he was driving without a license and did not want to get a ticket. The written complaint provided by the Complainant's wife, contradicted the Complainant's position, as did the interview with Complainant's wife: she asserted that the police car had been driving behind the car and Subject Officer made contact with Complainant only *after* Complainant had parked in a handicap space. The interview with Complainant's wife further contradicted claims of the husband that he did not use marijuana and asserted her belief that Complainant had pulled into the handicapped space because he did not have a license. Complainant also could not explain his belief that he alone was targeted because of his race, whereas his front seat passenger of the same race was not charged with any crime.

Moreover, the IAB made the deliberate choice to reopen and review the case in light of the complaint of racial bias. The IAB conducted additional interviews and pulled arrest statistics for the Subject Officer and similarly situated officers, namely those in the Franconia District Station. The statistics revealed that the Subject Officer arrested fewer Black suspects than the average police officer of the Franconia District Station.

While one Panel Member expressed concern that the initial district station Investigation had not been as comprehensive with respect to the racial bias complaint in particular, the IAB reopened the Investigation on its own volition to ensure that the matter was handled in accordance with IAB practices. In light of the actions taken by the IAB and the investigative choices made in considering the complaint, the Panel found by a vote of 6 to 1 that the Investigation is complete, thorough, and accurate, and concurred with the conclusions of the Investigation.

At the same time, the Panel felt that room for improvement in the Investigation exist, and decided to make certain Comments and Recommendations seen below.

First, while the Investigation included interviews with the Complainant, his wife, and his family friend, the Police failed to interview with the passenger in the front seat of the car. Major Owens did not know why the front seat passenger had not been interviewed. While a number of innocent hypothetical reasons may exist for why the front seat passenger was not interviewed, including, given the passage of time, a difficulty finding said witness, the Panel criticized the Investigation for failing to provide any explanation for why a known and obvious witness had not been interviewed.

Second, while the Investigation interviewed several responding officers, the ride-a-long civilian who arrived at the scene and apparently played a role in securing the children was also never interviewed. The Investigation determined that the officer described in complaining witness statements as a "female officer," a "rookie cop in training," and an "officer in training" was, in fact, a police ride-a-long civilian, an employee of the Department of Public Safety Communications, but the Investigation Report admitted that investigators could not determine

who that individual was. The Panel did not have reason to believe that the investigator had never tried to identify the ride-a-long individual, but it did fault the Investigation, and the record keeping related to ride-a-longs, for being unable to obtain a statement from a potentially unbiased observer to the incident, given that she was neither a member of the Police Department nor an individual detained by the Subject Officer. Indeed, such a witness could have been just as helpful in clearing the actions of the Subject Officer as she could have been supporting the allegations of the complaint.

Third, while the Panel concurred with the Investigation Report finding that the Subject Officer had not acted improperly when waiting for backup before addressing the issue of unsupervised children, the Panel expressed concern that there was not clarity with respect to how an officer should make such decisions.

An audio recording of the December 17, 2019, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019>.

On January 9, 2020, the Panel discussed the Finding Summary; an audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-jan-9-2020>

V. Recommendations

- a. With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.
- b. FCPD civilian ride-a-long individuals should be tracked and recorded in all instances. A police ride-a-long individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.
- c. The FCPD should implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

MEMORANDUM

To: The Fairfax County Police Civilian Review Panel

From: Hansel Aguilar, Panelist

Date: January 9, 2020

Re: CRP-19-11 Complaint Dissent

I. Introduction

After a careful consideration of the case file, the review meeting deliberation, and the Majority report of the CRP-19-11 matter, I find that I am not able to support the conclusion stated in the report that the "...Investigation is complete, thorough, and accurate..." At best, the investigation is inconclusive on various areas of concern brought forth by the complainant.

II. The Investigation concerning the allegation of assault by a police officer was not completely, thoroughly and accurately investigated and is inconclusive

Determining whether the officer exhibited an excessive use of force on the complainant is likely a question that cannot be answered at this point. That said, neither can a definitive conclusion be made based on the information reported in the investigation.

The complainant reported that he was struck by the door of the vehicle when the subject officer pushed the door shut to contain him in the backseat of the vehicle. During the investigation of the allegations lodged by the complainant, the subject officer did not deny that he closed the door of the vehicle and informed the Department that it appeared the complainant was attempting to exit the vehicle at the time when he instructed him to remain in the vehicle. In his complaint to the Department, the complainant classified this event as an "assault by a police officer."

While the FCPD investigators did question the subject officer regarding this allegation of force, the Department did not classify the event as a "use of force" incident even though FCPD General Order 540 describes this event as force:

"G. Force: Any physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual's movement."

Based on the review of the file, there is sufficient reason to believe that there was instrumental contact (i.e. the door) with the complainant caused by an action taken by the officer. The inquiry should then have moved to attempt to identify why the event was not classified as a use-of-force incident and whether the force was justified. The majority asserts in its report that in the November 19, 2019¹ Panel meeting the IPA explained that the event appeared to be an "inadvertent striking." While this is accurate, the IPA also

¹ Panelist Aguilar was not present for this Panel review meeting; however, he was able to review the recording of the meeting.

indicated in that same meeting, “that could certainly be reviewed by the Panel as well.”[07:30-07:39]² As such, I maintain that the FCPD failed to properly document and investigate that allegation as a use of force incident.

A thorough and complete investigation of the incident would have required a questioning of the witnesses regarding this allegation and attempting to review available footage (i.e. surveillance footage of the hotel cameras; other public cameras, and or in-car-video). As noted in the Majority’s report, due to the passage of time from when the police encounter occurred and when it was investigated, some evidence appeared to be unavailable. The case file, however, did not indicate whether the investigators attempted to review the footage or just assumed it was no longer available due to the lapse of time. Specifically, in the December 18, 2019 Panel meeting, I asked Major Owens whether he had knowledge of whether the subject officer had an in-car-video activated on the day in question, to which he replied, “it would be impossible to tell if he had an in-car-video, if it was working that night, or anything because of the time frame of the initial incident to the time of the complaint prohibits us from finding that.” [41:25-41:40]³ Furthermore, Major Owens explained to the Panel that even if there was an in-car-video system installed in the subject officer’s patrol cruiser on the day of the incident in question, there would be no way for the FCPD to determine whether it was activated on the day of the incident and whether it collected any footage because of the lapse of time from when the incident occurred and when it was investigated.

III. Witnesses were not completely, thoroughly and or accurately identified or interviewed

As noted in the Majority’s report and recommendations, the Investigation Report indicated that the investigators did not identify and or interview all known witnesses.

IV. Cross-gender pat down/searches

While the FCPD (via the Investigation Report and Major Owens affirmation at the Panel meeting) indicated that the Department permits cross-gender pat downs and searches, in my opinion, it failed to completely and thoroughly investigate whether (in this particular instance) it would have been “practical” to avoid it as instructed in FCPD General Order 203, “*Whenever practical, cross sexual search should be avoided.*”

V. Conclusion

While I understand and share the Chair’s sentiments about the “futility of additional investigation” [56:45]⁴ by returning this case to the FCPD for information that individuals would be unlikely to remember, based on the unknown (and unknowable) aspects of this case I must dissent from the conclusion that this investigation is complete, thorough, and accurate.

² A transcript of the meeting is not available, however as it is practice of the Panel, a link to the SoundCloud audio recording of the public meeting can be accessed via <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-nov-19-2019> . Time stamps of selected statements from the session are provided in brackets.

³ A link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019> . Time stamps of selected statements from the session are provided in brackets.

⁴ A link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019> . Time stamps of selected statements from the session are provided in brackets.

APPENDIX G.9

(CRP-19-19)



County of Fairfax, Virginia

MEMORANDUM

DATE: 11/17/2020

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-19

I. Introduction

The Fairfax County Police Civilian Review Panel (Panel) held a public meeting on October 8, 2020, to review a complaint submitted to the Panel on April 18, 2019.¹ The Complainant alleged that several incidents of serious misconduct and abuse of authority by Fairfax County police officers occurred from October 2015 to December 2018. The complaint was investigated by the Fairfax County Police Department (FCPD). Following the investigation, the Complainant was notified that the officers' actions were in compliance with FCPD policies and regulations. The Complainant requested that the Panel review the investigation.

The Panel determined that the investigation relating to several allegations in the complaint could not be reviewed by the Panel because they were not timely filed by the Complainant. However, the Panel also found that two allegations in the complaint were timely filed, and the Panel reviewed the investigation pertaining to those allegations. Seven Panel members voted that the investigation was complete, thorough, accurate, objective and impartial. One Panel member dissented, and one Panel member abstained.

¹ As explained later in this report, the delay in the Panel's review process was due to pending litigation that concerned matters in the Complaint.

II. Background Facts

On June 27, 2018, a community member reported to the Mount Vernon District Police Station that there had been a physical fight between several people in a neighborhood earlier that day. A FCPD officer was assigned to investigate the altercation. The officer interviewed witnesses and viewed a video of the altercation that had been sent to him.

The Complainant said the fight occurred in front of the house of her daughter. It involved several family and community members, some of whom were minors. A portion of the incident was recorded on cell phone video by a witness at the scene. Another witness observed the Complainant at the fight holding what appeared to be a metal rod over her shoulders. The witness alleged that the Complainant struck multiple people who were involved in the fight or who were attempting to break up the fight. One witness reported that the Complainant struck him on the head, and that he had suffered headaches as a result of the assault. The video reportedly did not show that the Complainant hit anyone with the rod, but it did indicate that the Complainant was armed with a weapon and was attempting to prevent others from stopping the fight.

Based on witness interviews and the cell phone video, the officer sought warrants for the Complainant's arrest for malicious wounding and contributing to the delinquency of a minor. The officer presented probable cause testimony to a local magistrate, who issued the warrants, and the Complainant was arrested.

III. Procedural Background, Allegations and Investigation Findings

The Complainant filed a complaint with the Panel on April 18, 2019. She alleged that the FCPD officer falsely charged her with malicious wounding and contributing to the delinquency of a minor and that he harassed her. The Panel referred the complaint to the Internal Affairs Bureau (IAB) for investigation.

IAB investigators interviewed the Complainant and reviewed the video. The Complainant admitted to holding what she said was a "slim pole," but denied hitting anyone with it. She said no one was hurt and that she was attempting to protect her daughter, who was involved in the fight. "I was like, okay, okay, let them fight, but I was making sure nobody jumped in," she told the FCPD investigator.

IAB investigators also interviewed the officer and reviewed the witness statements and the video. The investigation found that the officer's decision to seek warrants was based entirely on statements from the involved parties, as well as the video. Also, members of the community, not the officer, initiated the investigation of the Complainant's actions that led to the issuance of the warrants. The officer supplied his probable cause testimony to the Magistrate who issued the warrants, and there was no indication that the charges were excessive. The investigators noted that

magistrates are independent third parties who exist as checks to prevent reckless, excessive and unethical actions by police officers. In this case, the Magistrate found that the charges were based on probable cause.

As for the harassment charge, the investigators found that the officer had never met the Complainant prior to the incident. Therefore, he did not single out the Complainant for harassment. The investigation found that there was no evidence to support the Complainant's allegations. It also found that the officer was in compliance with all FCPD policies and regulations. A disposition letter was sent to the Complainant on June 20, 2019, informing her of the findings of the investigation and notifying her that she could request a review from the Panel.

On August 7, 2019, the Complainant requested that the Panel review the investigation. A week later, on August 14, 2019, the Panel received notice from the Office of the County Attorney that the Complainant had commenced litigation associated with allegations in the complaint. A subcommittee of the Panel met on September 16, 2019 and voted to recommend to the full Panel that it defer consideration of the review until resolution of the litigation. The Panel voted to accept the recommendation of the subcommittee on October 7, 2019, and deferred its review in accordance with Article VI, Section D (1) of its Bylaws.²

The Complainant informed the Panel in June 2020 that litigation associated with the complaint was no longer pending. The Office of the County Attorney confirmed that the litigation had concluded. A subcommittee of the Panel met virtually on August 20, 2020 to consider whether the panel had authority to review the complaint.

As stated earlier, some of the allegations in the complaint involved incidents that had occurred prior to December 6, 2016. The Panel's Bylaws prohibit the Panel from reviewing any investigation relating to an incident that occurred before that date.³ The subcommittee determined that four specific allegations fell into this category and could not be reviewed by the Panel. These allegations were as follows: (1) FCPD officers falsely accused the Complainant of robbery at gunpoint; (2) FCPD officers improperly searched the Complainant's car; (3) FCPD officers issued a defective search warrant pertaining to the Complainant; and (4) FCPD officers falsely accused the Complainant of distributing cocaine and marijuana.

² Article VI, Section D (1) of the Panel's Bylaws provides: "If at any point in the review process the Panel learns that the matters of a Review Request are the subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall (a) suspend its review; (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court; (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed."

³ Article VI, Section A (1) (b) states that the Panel shall not review any complaint related to an incident that occurred before December 6, 2016.

Six other allegations in the complaint were submitted to the Panel more than one year after the date of the incident. In such cases, the Panel may review the investigation of allegations if the Complainant provides the Panel with good cause.⁴ Good cause was not shown. The subcommittee noted that the Complainant had not provided reasons for missing the filing deadline. These allegations were as follows: (1) a FCPD officer intimidated the Complainant in a text message; (2) a FCPD officer extorted the Complainant by charging her with felony distribution of marijuana; (3) a FCPD officer lied to the housing authority that the Complainant was selling drugs from her home; (4) FCPD officers unlawfully searched the Complainant's car; (5) a FCPD officer lied under oath during the Complainant's trial; and (6) The Complainant was falsely incarcerated and harassed while in jail.

As discussed previously, two allegations in the complaint were timely filed. The complainant alleged that she was falsely accused and arrested on charges of malicious wounding and contributing to the delinquency of minors by an FCPD officer and that she was harassed and charged with serious crimes by the officer.

One member of the subcommittee expressed her belief that the Panel did not have authority to review the investigation because the allegations were not substantiated with evidence in the investigation file. She also expressed concern that the allegations involving charges of malicious wounding and contributing to the delinquency of minors had been previously adjudicated and considered by a magistrate and a judge. She said that it is not the Panel's job to second guess a court's decision. The other two members disagreed, stating that the Panel's Bylaws specifically allow the Panel to review an investigation where prior litigation concerning the matter had concluded. One subcommittee member commented that legal determinations of probable cause by a court are different from the Panel's review standards for abuse of authority and serious misconduct of a police officer. The subcommittee agreed that the issue was worthy of further discussion by the Panel.

The Panel subcommittee voted 2-1 to recommend that the full Panel review the allegations that had been timely filed. They suggested that the Panel send a letter to the Complainant requesting an explanation as to why the filing deadline was not met for those allegations where the complaint was filed more than one year after the date of the incidents. The Panel sent the letter, but the Complainant did not provide a response showing good cause for missing the deadline.

On August 27, 2020, the Panel considered the subcommittee's recommendations and voted not to review the allegations where the incidents occurred prior to December 6, 2016. The Panel also voted that there was not good cause to extend the filing deadline for those allegations where the complaint was filed more than

⁴ Article VI, Section A (1) (c) provides that the Panel shall not review an Initial Complaint that is filed more than one year after the date of the incident that is the subject of the investigation (unless the Panel determines that there is good cause to extend the filing deadline).

one year after the date of the incidents.⁵ However, the Panel voted to review the two remaining allegations that had been timely filed.⁶ The Panel discussed whether prior litigation on the criminal charge of malicious wounding should preclude review by the Panel. A majority of the Panel agreed that the Bylaws do not prohibit Panel reviews of a police investigation where a court has previously addressed issues associated with allegations in a complaint. The Panel majority also agreed that the Panel's role in reviewing a police investigation is distinct from a court's role in adjudicating criminal proceedings.

IV. Panel Meeting

The Panel Review Meeting was held virtually on October 8, 2020. All Panel members had reviewed the investigation file prior to the meeting, and the Complainant was present at the meeting. In her statement to the Panel, the Complainant stressed that no one was hurt, and that everyone had willingly participated. "I could not stop it," she said. "It was out of my control, but I was there to protect my daughter who was in the fight, and I told her that it wasn't a good idea, but that's what they chose to do." She said parents of children who participated in the fight lied when they said she struck others with the pole. She said that the charge of malicious wounding was excessive, reckless and false, and that it was later dropped. She added that she lost her job and her housing as a result of the charges, and she had experienced financial pain, loss and distress. She said that she felt like she was a "target" of the police.

The Complainant was asked during questioning whether she thought all the witnesses were interviewed by the IAB. She indicated that everyone was interviewed and that she was certain that the investigators had seen the video.

The FCPD presented their investigation findings to the Panel and concluded by saying that the officer practiced "evidenced-based policing" in this case and adhered to all FCPD policies and regulations. It was also revealed that one witness sought and obtained a protective order against the Complainant independent of the FCPD and its investigation.

Panel members were concerned that during their review of the investigation file, the video was not in the file. One Panel member said that this was a vital piece of evidence that made his review of the investigation incomplete. Captain Alan Hanson, who represented the FCPD at the meeting, said that the video should have been in the file and offered to provide it to any Panel member who wanted to view it. Several Panel members pointed out that while the video should have been in the file, other evidence in the file suggested that it did not show the Complainant hitting anyone. Further, the video corroborated other accounts from witnesses that the

⁵ One Panel member abstained from voting on the motion to not review the allegations.

⁶ Six members of the Panel voted to review the two timely filed allegations, and two Panel members voted not to undertake the review. One Panel member did not vote because of technical difficulties during the virtual meeting.

Complainant was armed and was threatening others. Several members commented that although the video was important, it was not the determinant factor in the officer's decision to seek warrants.

Members of the Panel pointed out that the officer was thorough in his interviews of witnesses and that he considered all the evidence provided to him from community members. Also, he could not have harassed the Complainant because he did not know her previously. Finally, a magistrate also considered the evidence, concurred with the testimony of the officer, and issued the warrants.

The Panel voted that the investigation was thorough, complete, accurate, objective and impartial, with one Panel member voting nay and another abstaining.

An audio recording of the October 8, 2020 Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-october-8-2020>

On November 12, 2020, the Panel discussed the Review Report. An audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-november-12-2020>

CC: Complainant

APPENDIX G.10

(CRP-19-29)



County of Fairfax, Virginia

MEMORANDUM

DATE: 10/22/2020

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-29

Executive Summary

This report concerns a citizen complaint related to an interaction between the citizen (Complainant) and a Fairfax County police officer in a parking lot. The incident began when the officer, while driving his patrol car, observed the Complainant as the officer drove past him. The officer followed the Complainant into the parking lot of the Complainant's apartment building and questioned the Complainant. The officer's questions focused on whether the Complainant lived in the apartment complex. The complaint alleges that racial profiling was the impetus for this conversation, and that the Complainant had done nothing wrong. The Complainant maintained that he should have never been approached by the officer.

The Fairfax County Police Department (FCPD) investigated the incident and ultimately agreed with the Complainant that the officer had no reasonable suspicion to suspect that the Complainant had violated a law or was in the process of committing a crime. The FCPD concluded that the Complainant had every right to not answer the officer's questions. Further, the FCPD found that the officer acted improperly and was in violation of FCPD regulations. However, with regard to the Complainant's allegation of racial profiling, the FCPD concluded that the investigation did not find any evidence that racial bias played a role in the incident. The Complainant asked the Police Civilian Review Panel (Panel) to review the police investigation. While the Panel agreed with the FCPD in its assessment that the officer's behavior had been improper, the Panel was not satisfied that the investigation had adequately examined the question of whether racial profiling played a role in the incident. The Panel sent the complaint back to the FCPD for additional investigation. In response, the FCPD took some, but not all, of the Panel's investigatory recommendations. After a review of the FCPD's secondary investigation, the Panel determined again that the FCPD's investigation did not adequately investigate the allegation of racial profiling involved in the incident.

I. Introduction

On May 23, 2019, the Panel received a citizen complaint alleging racial profiling by a FCPD officer during an incident that occurred on May 17, 2019, where the officer followed the Complainant into the parking lot of the Complainant's apartment complex and repeatedly questioned whether the Complainant lived there. The FCPD investigated the complaint and sent a disposition letter to the Complainant notifying him of its findings on December 19, 2019. The FCPD investigation concluded that the evidence did not support the Complainant's allegation of bias-based policing, but it also found that some of the officer's actions were improper and in violation of FCPD regulations. The Complainant requested a review of the investigation by the Panel on December 20, 2019.

The Panel held a Review Meeting on March 9, 2020. By a vote of 6-3, it determined that with regard to the racial profiling allegation, the FCPD investigation was not complete, thorough, accurate, objective and impartial. The Panel requested further investigation by the FCPD and specifically requested four additional investigative actions relating to the racial profiling allegation.

The Panel received a letter from FCPD Chief Edwin Roessler on June 10, 2020, that responded to some, but not all, of the Panel's requests and further explained that the FCPD would not complete the investigation as requested. An additional response was provided to the Panel in a letter dated August 17, 2020. At a public meeting on September 10, 2020, the Panel considered the additional FCPD investigation findings and voted by 7-2 to advise the Board of Supervisors that, in the Panel's judgement, the investigation is incomplete and additional investigation is recommended.

II. Background Facts

On May 17, 2019, the Complainant, a young adult Black man, stopped his vehicle at a red traffic light in the Herndon area of Fairfax County. While he was stopped, a FCPD officer drove past him in the opposite direction. According to both the officer and the Complainant, the two made eye contact. At the time, the officer had been with the FCPD for approximately six years and was assigned as a detective in the Reston Criminal Investigations section of the FCPD. On the date of the incident, he was working overtime on patrol for the Reston District on the evening shift.

According to the investigation file, the officer was observing other motorists for their reaction to his cruiser when he noticed the Complainant's vehicle. Internal Affairs Bureau (IAB) Investigators stated that the Complainant turned around in his seat, leaned towards the window, and stared at the officer. The officer became suspicious, made a U-turn, and pulled behind the Complainant's vehicle. No other action taken by the Complainant precipitated the incident in question, nor did the Complainant commit any illegal violation. The officer began to run the Complainant's license plate registration, but he did not have time to fully review the returns because the traffic light

turned green. However, the officer did have time to note that the license plate was registered under two names. One of the names was that of a woman who lived in Virginia Beach. IAB investigators noted that the officer was aware that Virginia Beach was a “source city” for illicit substances in Fairfax County, and that he became more suspicious of the Complainant.

The Complainant stated that when the officer began to follow him, he became fearful, “because I knew I did not do anything wrong, but yet was followed.” After the light turned green, the Complainant turned, drove a short distance to his apartment complex, turned right into his parking lot, and parked his car.

The officer followed the Complainant into the apartment complex parking lot. According to investigators, the officer became increasingly concerned when the Complainant turned into the first available parking lot, because his experience and training as an officer suggested that individuals who behave suspiciously often park their vehicles quickly after being spotted by police, and they often abandon them to run away from police.

The officer parked his cruiser in the parking lot and approached the Complainant, who was still sitting in his parked vehicle. As the officer walked to the vehicle, he noticed that the Complainant was moving toward the floorboard of the vehicle and seemed to be reaching for something. After approaching the Complainant, the officer observed that the Complainant was holding a backpack to his chest, and this caused the officer to suspect that drugs, contraband or weapons could be in the backpack. The officer also observed that the Complainant was nervous and that there was a strong odor of air freshener coming from the vehicle, indicating to the officer that the Complainant might be trying to conceal incriminating odors. (Notably, there was an air freshener hung on the rearview mirror). The Complainant remained in his vehicle as the officer approached, so the officer determined that the Complainant was willing to engage him in conversation.

The Complainant stated that as he saw the officer approach his vehicle, he leaned down to get his cell phone, and he quickly set it to record, as shown in the video provided by the Complainant. He positioned the phone so that the video could capture half of the driver’s door opening, which would reveal part of the officer’s body but not his face. The Complainant admitted that he was extremely frightened and nervous.

A conversation between the Complainant and the Officer was recorded as follows and posted later on YouTube:

Complainant: Hey
Officer: Hey sir, how you doing?
Complainant: Doing well, how are you?
Officer: Hey good. Hey, do you live here?
Complainant: I do, yes.
Officer: Okay, where do you live at?

Complainant: In this apartment, right here.
Officer: Oh, okay. You got ID on you?
Complainant: No, I don't.
Officer: You don't have an ID?
Complainant: Well, I do have an ID, but do I have to show it to you?
Officer: You don't have an ID on you?
Complainant: I do have an ID.
Officer: Okay.
Complainant: Do I have to show it to you?
Officer: You don't have to. Is this your car?
Complainant: Yes, it is.
Officer: Okay.
Complainant: Is there a problem?
Officer: What building do you live in?
Complainant: This building right here.
Officer: What's the address?
Complainant: I don't have to tell. I don't have to tell, I don't have to tell you the address.
Officer: What's that?
Complainant: Do I need to tell you the address?
Officer: Yeah, what's the address?
Complainant: Why do I need to tell you my address?
Officer: I'm asking you what the address is.
Complainant: But why do I need to tell you that?
Officer: 'Cause I'm asking you.
Complainant: But is there a reason why you're asking me?
Officer: Because I want to know if you live here. Because if you don't live here...
Complainant: But I just told you, I do live here.
Officer: Right, but if you don't know the address, it doesn't look like, to me, like you live here, okay?
Complainant: But I do, and why is that?
Officer: To be honest with you...
Complainant: Why is that?
Officer: Whose vehicle is this?
Complainant: This is my vehicle.
Officer: Is it in your name?
Complainant: It's in my Mom's name, and it's in my name also.
Officer: Okay. How long have you lived in this area?
Complainant: Do I have to tell you that?
Officer: I'm just asking you the question.
Complainant: Okay, but why are you asking me these questions?
Officer: Do you live here or not, sir?
Complainant: I already told you. I live here.
Officer: Okay, 'cause if you don't live here, you're trespassing.
Complainant: I know that, and I told you. I live here.

Officer: Okay, what's the address that you live at?
Complainant: Why do I have to tell you that?
Officer: 'Cause I don't believe you live here, sir.
Complainant: And why don't you believe me? Why don't you believe I live here?
Officer: 'Cause you don't know the address.
Complainant: I already told you, I do know the address.
Officer: Okay, what's the address that you live?
Complainant: I don't have to tell you that. I live here. Why are you harassing me?
Officer: Okay, I'm not harassing you.
Complainant: You're in my neighborhood, coming up to me asking me what my address is, 'cause you say I don't live here. Why don't you believe I live here?
Officer: Sir, I'm not harassing you.
Complainant: Can I have your name and badge number?
Officer: You can. Ah [redacted] and my badge number is [redacted]
Complainant: Okay, thank you.
Officer: So do you have an ID on you or not?
Complainant: I do. I already told you. I do have an ID.
Officer: Okay, what's your name?
Complainant: I don't have to tell you that. Am I being detained or am I free to go?
Officer: You're free to go, sir.
Complainant: Thank you, you have a good day.
Officer: You, too.
Complainant: Thank you.

The conversation between the Complainant and the officer lasted two minutes and 21 seconds. As is clear from the transcript, the officer waited until the end of the conversation to tell the Complainant that he was free to leave, and he did so in response to the Complainant's specific question. After the officer stepped away, the Complainant exited his vehicle and continued to record the officer and his cruiser. The Complainant stopped recording after a few minutes and went back to his car. He stated that he did not go to his apartment because he knew the officer was watching him, and he did not want the officer to follow him. He also said he wanted to remain in a public space where other individuals could see him. The Complainant considered driving away, but he did not because he thought the officer would follow him and pull him over for a minor traffic violation. The Complainant said he was shaken by the encounter.

The officer remained in the parking lot for several more minutes. During that time, he observed the Complainant and finished reviewing the entire Department of Motor Vehicles return on the license plate check. The officer verified the Complainant's identity using a photograph provided by the DMV and also determined that the Complainant lived at the apartment complex. He then left the area.

III. Procedural Background, Allegations, and Investigation Findings

As noted above, the Panel received the complaint on May 23, 2019, six days after the incident. The Complainant alleged, “The detective could not tell me why he followed me and why he believed I did not live there, so one can only assume that this is a result of racial profiling.” Further, the Complainant stated that, “If the detective would have done his due diligence, he would have saw [sic] that I had the same parking permit in my window as every other car there.” The complaint included this link to his video: <https://www.youtube.com/watch?v=GI9S6H-ilww&feature=youtu.be>

A. The Internal Affairs Bureau Investigation and Findings

The Panel referred the complaint to the FCPD for investigation. Investigators at the IAB reviewed the video sent to them by the Complainant. The officer had not activated his in-car video during the encounter. No explanation was provided in the investigation file for why the car video was not activated during the encounter. However, it was activated after the encounter, and it recorded approximately sixteen minutes of video following their interaction. The Complainant could be seen walking around the area where his vehicle was parked while talking on his cell phone. At one point, the officer zoomed the camera on the Complainant. The video ended as the officer drove away.

IAB Investigators used email to contact the Complainant, who preferred to remain anonymous.¹ They were able to determine his name but did not reveal to the Complainant that they had that knowledge. The Complainant answered several questions by email but refused to meet with investigators. The Complainant told investigators that he felt he had been targeted and suspected of trespassing “for no reason at all.” He said that the fact that the officer did not believe he lived in the apartment complex indicated that the encounter was racially motivated. The Complainant also stated that the officer stood in a manner that inhibited his ability to get out of the car. He confirmed, however, that the officer did not use force to detain him. Further, the officer did not make any racial slurs or use inflammatory language. The Complainant never had any prior or subsequent interactions with the officer.

Investigators found that the video was grainy and difficult to see, but it appeared that the officer stood to the rear of the driver’s door, which was slightly open. They observed that the officer did not appear to be hindering the Complainant’s ability to get out of the vehicle.

Investigators also interviewed the officer. Investigators revealed that the reason the officer wanted to talk to the Complainant was to determine if there was trespassing, so that he could elevate what was a consensual encounter to an investigative detention.

¹ Although the Complainant initially filed an anonymous complaint, he revealed his name to the Panel after he filed his Request for Review of the investigation.

Additionally, they determined that when the officer approached the Complainant, he did not have reasonable suspicion of a specific crime but did believe the Complainant's behavior was odd. The officer denied race was a factor in his decision to make contact with the Complainant.

The investigation revealed that the officer believed that the apartment complex was posted with signs prohibiting trespassing. However, the apartment complex had no posted signs prohibiting trespassing. The entrance to the complex had a gate, but it was standing open. Investigators spoke to employees in the management office, and they said that the gate had been broken for some time and had been left open to allow residents to leave and enter. The investigation also revealed that the officer did not know whether the complex had a letter on file at the Reston District Station authorizing the FCPD to enforce trespassing laws on the premises. The officer was not familiar with the apartment complex. Moreover, the officer did not notice that the Complainant's vehicle had a parking sticker for the complex on the windshield on the driver's side.

Investigators went back to the complex and knocked on the doors of 48 apartments and made contact with 17 residents. None of those contacted witnessed the interaction between the officer and the Complainant.

Investigators also reviewed the officer's arrests in the Reston District from January 1, 2018, to June 30, 2019. The officer made a total of 36 arrests, of which 23 were white (64%), 12 were Black (33%) and one was Asian. The investigation compared the officer's arrests to that of the Reston District as a whole and found that the arrest statistics were comparable. For the Reston District, white arrests accounted for 67% of the total arrests for the same period, and Black arrests accounted for 30% of the total arrests. The investigation also reviewed the officer's training records and found that he had completed eight courses on criminal patrol, interrogation and interdiction since 2014. The officer had six training hours relating to culture and diversity. Investigators noted that the officer relied on his training in assessing whether the Complainant's behavior could be connected to criminal activity.

The IAB reviewed the evidence and considered: (1) whether the encounter was a voluntary citizen contact under General Order 603.4; (2) whether the Complainant was seized or detained at any point; (3) whether the officer engaged in bias-based or unlawful discrimination under Regulations 201.14 and 201.22; (4) whether the officer violated Regulation 603.4 by not advising the Complainant as to why he was stopped; and (5) whether the officer violated Regulation 201.13 by acting in an unprofessional manner.

The IAB found that the encounter was a legitimate voluntary field contact and that the officer was in compliance with General Order 603.4, which provides procedures for such contacts. Investigators pointed out that voluntary field contacts may be initiated when an officer wants to approach someone to talk or wants to ask a person for identification. Officers do not violate an individual's Fourth Amendment

rights if they merely approach a person and ask if that person is willing to answer some questions. However, during a voluntary field contact, the individual does not have to answer questions and may leave at any time. A contact becomes an investigative stop, and an officer can detain an individual, when there is reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur. The IAB found that the officer was not prohibited from approaching the Complainant for the purpose of conversation,² and that the Complainant was not detained, even though he did not feel comfortable exiting his vehicle. In viewing the video and taking into account all of the circumstances surrounding the incident, a reasonable person would have believed that the Complainant was free to leave.³ Furthermore, even though the officer may have thought the Complainant's behavior was suspicious, at no time did those suspicions become reasonably articulable suspicions of criminal activity as defined by law.

The IAB also found that the officer did not engage in bias-based policing or unlawful discrimination. The investigation found that the officer was able to articulate numerous factors and behaviors that drew his attention, none of which pertained to race. The IAB admitted that, in isolation, the officer's remark, "[It] doesn't look like, to me, that you live here" appears "problematic." However, given the greater context of what the officer had observed, "it's meaning is more apparent." The investigation also reasoned that both the Complainant and the officer viewed the encounter through the lens of their own experiences. The Complainant was offended that the officer did not believe he lived at the complex and felt that he was motivated by racial bias. On the other hand, through his training and experience, the officer had learned to perceive certain behaviors, such as the long look at the officer, entering the first available parking lot, clutching the backpack to his chest during the encounter, using car air freshener, and acting nervously, as potential indicators of criminal activity. Noticing those behaviors of the Complainant had influenced the officer's decisions and actions. Although the IAB found that the officer's questions and statements to the Complainant were not motivated by bias, the IAB acknowledged that they had a negative effect on the Complainant.

The IAB concluded that the officer should have provided an explanation to the Complainant as to why he was making the contact. When appropriate, officers should advise community members why they have been stopped.⁴ "Though [the officer] lacked any intent to offend [the Complainant], the statement he made, absent any explanation of its true meaning, could easily be taken as offensive by an objective and reasonable person." Therefore, the investigators concluded, it was appropriate for the officer to provide the Complainant an explanation of what he had observed that led him to make the contact. The IAB sustained a violation of Regulation 201.3, Obedience to Laws and Regulations, as it pertains to General Order 603.4, Police Citizen Contacts, Section IV, Voluntary Field Contacts, Subsection B, Conducting Voluntary Field Contacts.

² United States v. Mendenhall, 446 US 544 (1980)

³ McGee v. Commonwealth, 219 Va. 560, 248 S.E.2d 808 (1978)

⁴ General Order 603.4(IV)(B)(3)

Finally, the IAB found that even though the officer intended no offense by the words he used in speaking to the Complainant, from an objective viewpoint, the words were offensive. Additionally, the officer's attempt "to provide reasonable suspicion of the crime of trespassing was based on an incorrect assessment of the circumstances surrounding the incident," the IAB found. There were no signs banning trespassing, and the complex had not submitted a letter to the FCPD authorizing police to enforce trespassing on behalf of the management of the complex. The officer did not ask the Complainant if he was visiting anyone living at the complex or had any other lawful purpose being there. Therefore, the IAB concluded that the conduct of the officer was unprofessional and violated Regulation 201.13.⁵

B. The Reston District Commander's Findings

In accordance with FCPD procedures for internal administrative investigations, the IAB findings were reviewed by the Reston District Commander. He disagreed with the IAB and found that the officer was in compliance with all General Orders and Regulations. He stated that the officer could have provided the Complainant with a better explanation of what he had observed and why he was making the contact, but by failing to do that, the officer did not violate FCPD regulations. He also stated that it was reasonable to believe that the Complainant did not live at the apartment complex, because the Complainant did not tell the officer his address. The officer's words must be evaluated objectively, he concluded, and from that standpoint, what he said was clearly not offensive.

C. The Findings of Chief Edwin Roessler

The investigation findings were sent to Chief Roessler for final approval. He determined that the investigation was not thorough, and he conducted an additional review.

In particular, the Chief disagreed with the Commander's finding that the officer was in compliance with Regulation 201.13 Human Relations (professional conduct). He found that the Commander's review was too narrow and focused only on words spoken to the Complainant. The officer's actions must be evaluated from the time of his first glance at the Complainant to the parting of their ways, he stated.

The Chief pointed out that several facts needed to be taken into account: (1) The officer had worked in the Reston District for six years and was a detective; (2) The officer had no knowledge of the apartment complex, did not know whether a trespassing sign was posted at the apartment complex, and was not aware of whether a

⁵ Regulation 201.13 Human Relations, Community Contacts, states in part: "Employees shall conduct themselves professionally at all times when representing the Department. They shall use respectful, courteous forms of address to all persons. Displays of bias towards any person on account of race, sex, ethnicity, religious preferences or sexual orientation shall be considered unbecoming conduct...."

trespassing letter was on file with the Reston District Station; (3) The officer did not know that the apartment complex used an authorized vehicle sticker system; and (4) The officer never fully read the DMV return.

As a detective, the Chief wrote, the officer “is held to a higher standard to know the entire Reston community so that he can police effectively.” He should have been more focused on knowledge of the area and taken into account readily available information. The officer missed critical details that could have enabled him to end the contact earlier or not have had one at all, the Chief said. Moreover, the officer’s justification for getting out of his cruiser “was not based on factual circumstances which required taking the time to fully equip himself with the knowledge to then apply his policing skills properly.” The Chief said that what is most troubling for him is that the officer justified his actions by his training and experience. “Frankly stated, he deals with all community members from a hyper-vigilance standpoint.”

The Chief pointed out that the officer asked the Complainant 11 times about his residency. The Complainant answered the officer at least nine times that he lived in the complex. The officer became discourteous based upon his “substandard knowledge and his demeanor of repeated questioning” about the Complainant’s address. The officer kept pressing the Complainant for answers, “when he was free from any reasonable suspicion of being involved in any sort of crime.”

The Chief noted that when the Complainant asked specifically, “Do I need to tell you the address,” the officer replied, “Yeah, what’s the address?” With that answer, the officer was compelling the Complainant to tell him his address. “This is wrong, as it’s a voluntary field contact,” the Chief stated. “This was not a professional statement,” the Chief wrote, “nor was it accurate, and its utterance poorly reflects upon being respectful and courteous when addressing [the Complainant].” Because the contact was consensual, the Complainant had a right to refuse to answer questions.

In addressing the issue of bias, the Chief asserted that both the Complainant and the officer had implicit biases, because both were lacking in trust for each other based upon their life experiences. However, the Chief found that the officer was held to a higher standard by training, regulations, policies and laws that define how officers are to engage with members of the community. “They are to use professionalism that embodies tact, savvy, and diplomacy,” he said, “and not just proactive training classes as the driver of actions.”

The Chief concluded that the officer did not have ill intent towards the Complainant when he told him, “it does not look like you live here.” However, the Complainant had the right to find the statement offensive, and it would be offensive by any objective and reasonable person. Therefore, the Chief concluded that the officer was in violation of Regulation 201.13, which states that officers must conduct themselves professionally at all times, and that “[d]isplays of bias towards any person on account of race...shall be considered unbecoming conduct.” The Chief further

concluded that the officer was in compliance with all other General Orders and Regulations.

On December 19, 2019, Chief Roessler sent a letter to the Complainant, stating, “As Chief of Police, I am tasked with ensuring that all investigations are thorough and unfortunately, when the investigation arrived for my review, I found that it was not completed to my satisfaction; therefore, additional administrative steps were taken which prolonged the completion of the investigation.”⁶

The Chief further stated, “Based upon my review of the facts discovered during this investigation, I have concluded that evidence does not support your allegation of bias-based policing. However, some of [the officer’s] actions were improper and in violation of departmental regulations, as these were not professional and not within my expectations of all Fairfax County Police officers. Appropriate measures have been imposed to prevent a recurrence of this type of incident.”

On December 20, 2019, the Complainant requested that the Panel review the FCPD investigation. The Complainant stated in his request that the FCPD did not explain why he was followed and why the officer watched him in the parking lot after the encounter. He stated that his allegation was not bias-based policing, but rather racial profiling, which he alleged the police did not investigate.

IV. Panel Meeting

A subcommittee of the Panel was convened on January 9, 2020, to consider whether the Panel had authority to review the investigation. The subcommittee concluded that the complaint had been timely submitted and contained allegations that met the Panel’s standard of “abuse of authority and serious misconduct.” The subcommittee recommended that the Panel review the complaint, and on February 10, 2020, the Panel voted to review the investigation.

On March 9, 2020, the Panel met to review the investigation. All Panel members were present and had reviewed the FCPD investigation file prior to the meeting. The Complainant was present, and Chief Roessler and Major Matt Owens represented the FCPD. The Complainant reiterated that he wanted to know why he was followed by the officer in the first place. He said the investigation only addressed bias-based policing, which he understood typically involves a detention. He said that he would like the Panel to request that the FCPD directly address racial profiling. He also maintained that the investigation was not impartial or objective because it was conducted by the FCPD and not an independent investigator.

⁶ The FCPD requested four extensions to complete its investigation. (July 24, 2019, September 23, 2019, November 13, 2019, and November 27, 2019.) The Board of Supervisors was informed of these extension requests.

A. Presentation and Questioning of the Complainant

Responding to questions from Panel members, the Complainant explained why he was fearful and nervous when he was followed and questioned. He said that he didn't want to tell the officer where he lived, because he was aware of an incident in Texas where an officer went into an apartment and fatally shot an individual. He said he also did not go to his apartment after the encounter because he didn't want the officer to follow him. He further explained that he had two other encounters with Fairfax County police that were not positive. He recalled one incident where he was pulled for a broken taillight. He said that the officer introduced himself and told him why he was being stopped. The Complainant was given a warning. The second incident occurred at a bar in Reston, where he was approached by a FCPD officer because the officer said he smelled marijuana in the area. The officer asked him for his ID, and he felt harassed. The Complainant said his friends have also had negative encounters with the FCPD.

One Panel member asked the Complainant if he had previous training on his rights. The Complainant responded that in his first encounter with the FCPD he had not known his rights, so he educated himself and learned the importance of recording encounters with police.

When asked whether this incident would have been different if the officer had explained why he had wanted to talk to him, the Complainant answered that it would have been different, because he would have known why the officer followed him. However, he still might not have answered any questions, because he had not done anything wrong. He emphasized that he had not committed a crime and did not think he would have been followed if he were not Black.

When asked what remedy he was seeking from the Panel, the Complainant responded that he would like the Panel to recommend that FCPD officers receive additional education and training on implicit bias. He said that he knew that officer discipline could not be disclosed publicly, but he would also like to know which FCPD regulations were violated.

B. Presentation and Questioning of Chief Roessler

In his presentation to the Panel, the Chief stated that the officer had made a series of poor, cascading assumptions and judgments that were wrongly based on his training. However, in his view, there was no evidence that race was a factor in the incident. He recognized that issues concerning racial bias are a concern in the community. He said that he has formed a human relations committee to address the racial and procedural justice policing issues in the county, and he is also reviewing officer training. Admitting that the FCPD has work to do, he said, "This is something we have to train-away. We can't just keep going to proactive patrol training." He concluded his presentation by telling the Complainant, "I pray that you understand that as your Chief I don't want this to happen to anyone else."

During questioning of the Chief, one Panel member asked why there was minimal information and analysis in the investigative file on the allegation of racial bias. The Chief replied that he thoroughly reviewed the investigation, reviewed the officer's training history, and spoke at length with the officer. He said that the officer had not indicated to him that any of his actions were based on race. Rather, he reiterated that the officer's actions were based on several assumptions and poor decisions that started with a glance and ended with "badgering" the Complainant with questions. The Chief added that there was no reason to believe that the officer was not telling the truth when he denied that race was a factor in his decisions.

The Chief was asked whether he had explored how implicit bias may have played a role in the officer's decision to follow the Complainant. He was asked whether the incident would have happened had the Complainant been a white older man. The Chief said that "everyone has implicit bias," but added that he did not want to engage in hypotheticals. "This case is a problem without regard to race," he said. He concluded by saying, "This young man was treated wrong." He said that the complaint was "going to create a lot of change, I assure you."

C. Panel Discussion and Vote

Several members of the Panel were concerned that IAB does not have a standard for investigating allegations of racial bias and racial profiling in complaints, which can differ in unique ways from other types of investigations. Panel members appreciated the work the Chief had done on the complaint, and they agreed with the finding that the officer had not performed in a professional manner and violated Regulation 201.13. However, they were concerned that the issue of racial profiling was not adequately analyzed using objective criteria. One Panel member acknowledged that racial profiling is difficult to prove, but investigators should do more than just ask the officer whether he was racially motivated. It was pointed out that the only evidence in the investigative record that related to the racial profiling allegation was the officer's denial and his arrest statistics.

Further, the Panel had recommended in its 2019 Annual Report that "where the evidence gathered during an investigation into a complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer's conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer's social media accounts and/or interviewing witnesses." While the FCPD did sustain a violation for unprofessional conduct which was race-neutral, this violation focused primarily on the officer's conduct after his first glance at the Complainant. The investigative record was virtually silent as to why the officer decided to follow the Complainant in the first place, and Panel members questioned whether a similarly situated white driver would ever have been followed in such a manner. One Panel member asserted that the officer's decision to follow the

Complainant based on a mere “glance” hardly constituted a justification so clearly race-neutral as to vitiate the need for additional investigation. Moreover, investigation into whether the officer had demonstrated any bias in conversations with co-workers or on social media would have helped to corroborate the race-neutral explanation in the FCPD’s findings.

Moreover, the Complainant had expressly asked the Panel to review whether the investigation was thorough, complete, accurate, and objective specifically with regard to his racial profiling allegation. Panel members concluded that based on their reviews of the file, the investigation as it related to the racial profiling allegation was not complete. In accordance with Article VI(E)(1)(h) of the Panel’s Bylaws, the Panel voted by 6-3 to request further investigation by the FCPD and provide a supplemental report that details the findings of the additional investigation. Specifically, the Panel requested further investigation into the allegation of racial profiling by:

1. conducting a search of the officer’s publicly available social media profiles to ensure an absence of racial bias;
2. interviewing the officer’s coworkers for evidence of racial bias;
3. reviewing data related to the officer’s community contacts and stops in the same manner the FCPD viewed arrest statistics, and
4. comparing the circumstances and claims of the current complaint to any prior complaints against this officer.

V. Additional Investigation by FCPD

The Panel sent a letter to the Chief requesting further investigation on March 11, 2020. The letter stated that the suggested investigative steps should in no way limit the FCPD from conducting further investigation into the racial profiling allegation.

On June 10, 2020, the Chief responded to the Panel with a letter updating the Panel on the additional investigation. The letter stated that the IAB investigated the officer’s social media profiles by completing an open source review of publicly available information. It also stated that IAB had not completed its additional investigation relating to the community contacts of the officer.

The Chief informed the Panel that the FCPD would not interview the coworkers of the officer for evidence of racial bias. “The mere curiosity seeking, through interviews of random employees, absent any reasonable suspicion and/or probable cause, would violate the procedural rights of employees as established by prevailing laws and personnel regulations,” he said. Furthermore, conducting such interviews would “significantly hinder the operations” of the FCPD. The Chief added, “Any officer who is aware of racial bias exhibited by a coworker not only has a duty to report such bias, but is required by policy to report it.”⁷

⁷ See General Order, Regulation 201.5 (regarding reporting obligations for conduct unbecoming); Regulation 201.13 (explaining that “while in the performance of their duties, or while otherwise representing the Department,

With regard to the Panel’s request to compare the circumstances and claims of the current complaint to any prior complaints against the officer, the Chief wrote that the reviewing commander considers prior complaints and allegations when determining appropriate discipline. Disciplinary matters are a part of an employee’s personnel record and cannot be publicly shared, he said. The reviewing commanders found no nexus to apply any progressive discipline. In summary, the Chief reported that the investigation did not reveal any evidence to support the allegation of bias-based policing.

On August 17, 2020, the Chief reported to the Panel that the additional investigation was complete. Investigators had reviewed data relating to the officer’s community contacts and stops between January 1, 2018, and May 17, 2019, in the Reston District. The report indicated that, with the exception of the encounter with the Complainant, the officer had no consensual encounters that “were not based on reasonable suspicion or probable cause, where no reasonable suspicion or probable cause was ever developed, and where the involved community member was never detained.”

All Panel members reviewed the investigation file. The additional investigation found that the officer had no social media presence.

A manual search and analysis of the officer’s field contacts and stops was conducted, but it was unsuccessful. Investigators conducted a narrow search of consensual encounters that matched the exact circumstances of the complaint – i.e., a consensual encounter not based on reasonable suspicion or probable cause, where no reasonable suspicion or probable cause was ever developed and where the community member was never detained. Based on that criteria, the officer had no other similar contacts.

The investigation noted that there were three instances with four individuals (including the Complainant) where it was unclear if the officer made a consensual contact without reasonable suspicion or probable cause and where none was ever generated. “Due to lack of clear information,” the investigation concluded, “these stops were not included in this analysis.”

The investigation did not analyze the officer’s traffic stops by breaking them down by race and ethnicity. Investigators also did not analyze by race and ethnicity the officer’s non-consensual contacts, that began as voluntary contacts, but eventually led to a detention based upon reasonable suspicion or probable cause. Investigators attempted to compare the officer’s consensual contacts with those of all officers in the Reston District. However, the data for consensual contacts in the Reston District was incomplete and inconsistent. The investigation revealed that documentation of

officers shall refrain from using offensive words and language. At times it may be appropriate to use raised voices to issue commands and to gain compliance, however, the use of cursing, obscenities and/or racial, ethnic, sexual, religious or sexual orientation slurs will not be tolerated.”

community contacts is insufficient to identify the true nature of the contact. The FCPD is taking steps to address this.

VI. Panel Meeting and Findings

The Panel met virtually on September 10, 2020, to review the additional investigation. The Complainant was present, and the Chief and Major Tonny Kim represented the FCPD. Several Panel members disagreed with the FCPD's decision to not interview the officer's coworkers. One Panel member said he disagreed with the conclusion that there was no probable cause related to the allegation of racial bias. He was also dissatisfied with the FCPD's explanation that there was no need to interview coworkers because officers had an affirmative duty to report bias of coworkers if they observe it. He noted, for instance, that coworkers have an affirmative duty to report biases based on sex, but that any investigation into alleged sexual harassment in the workplace would certainly involve interviewing other coworkers.

Another Panel member asked the Chief whether criminal investigative detectives are organized into squads. The Chief responded that the criminal investigative units report to a Police Second Lieutenant. When asked how many officers comprise the criminal investigative section of the Reston Police District station, the Chief replied that he did not know exactly but there would be at least five officers.

The Chief defended the decision not to interview the officer's coworkers. He explained that the investigation looked at all the evidence, and there was "not a nexus" between the officer's actions and racial bias. Absent any evidence, the FCPD would not interview coworkers.

The Panel also was concerned about the lack of statistical analysis in the additional investigation. Major Kim explained that the FCPD's records management system is not designed to produce reports with the requested information. He said that an intensive manual search of the officer's contacts was conducted, but investigators could not reliably recreate past events, since some information was not captured into the system.⁸

One member asked why the additional investigation did not break down community contact and stop statistics by race and ethnicity. The Chief said the file should have included traffic stop data for the officer. He was also asked why the statistical analysis for arrests, stops and community contacts covered only one year. The Chief offered to expand the data analysis to more than one year. He also invited the Panel to review the different systems and modules used by the FCPD to better understand what information is collected and captured.

⁸ Notably, while a large spreadsheet was provided with incident summaries related to community contacts, the printing of the Microsoft Excel file did not create a paper record containing full incident summaries for the Panel members to review.

One Panel member asked whether the FCPD had established a threshold that would prompt additional review if the data indicated an officer's arrests, stops or community contacts were excessive for a particular racial or ethnic group. For example, if an officer's arrest record for a certain group was overrepresented by 20%, would that trigger additional review? The Chief answered that investigators review each officer's record as it is related to complaints. He said the current study commissioned by the county to evaluate use of force incidents will help in the development of an early identification system.

The Chief was also asked why the officer had not been found in violation of General Order 603.4. It was pointed out that the Chief had admitted that when the officer asked the Complainant to provide his address, the encounter stopped being a consensual encounter. At the March meeting, the Chief stated that once the officer said, 'Yeah,' in response to the Complainant's question as to whether he must tell the officer his address, the officer "violated our policy." However, the Chief found that the officer was in compliance with General Order 603.4.⁹ Major Kim confirmed that the only violation that was sustained against the officer was for a violation of Regulation 201.13.

During its deliberation, a majority of the Panel was not satisfied with the FCPD's response to the request for additional investigation. They did not think that the Panel's request for investigators to interview the officer's squad was unreasonable, since a squad is comprised of at most five officers. Passive reliance on officers to come forward with evidence of an officer's racial bias in response to a complaint does not meet best practice standards for investigations. Interviewing possible witnesses is standard procedure for any investigation, regardless of the reporting obligations of potential witnesses. Additionally, the statement that there was no "probable cause" to engage in such further investigation was met with skepticism by some members of the Panel, who pointed out that the "probable cause" included a witness alleging racial bias – the Complainant himself – and there was evidence that encounter was based on a "glance" that had not been adequately demonstrated by investigators to be wholly unbiased.

A majority of the Panel also concluded that the data analysis provided was incomplete. While the Panel understood that the current records management system needs updating, the data analysis that was carried out was incomplete. All traffic stop data should have been analyzed, as well as consensual contacts and stops (where there was reasonable suspicion and probable cause before, during or after the encounter). Even if, for instance, the statistics had shown that a high percentage of the officer's consensual contacts had turned into non-consensual stops due to reasonable suspicion or probable cause, a high disparity in the race of the subjects could have been indicative of treating potential suspects of one race differently from potential suspects of another. Although the Panel did not ask for it, the FCPD should have broadened the data analysis to include the officer's contacts and stops for the past five years. The data

⁹ General Order 603.4 is titled Police Citizen Contacts, Section IV, Voluntary Field Contacts, Subsection B, Conducting Voluntary Field Contacts.

analysis also should have been broken down by race and ethnicity. The FCPD should not wait for the results of the commissioned study to analyze use-of-force incidents, which may not be available until mid-2021. The FCPD must expedite its update of the data management system and change how it analyzes data so that it can improve early warning systems and investigations of complaints.

During the Panel's deliberation, several Panel members pointed out that the FCPD is in the best position to evaluate and improve its investigative processes. Panel members are not experts on police practices and procedures. However, the Panel has now reviewed several complaints alleging racial bias and racial profiling. In those reviews, the Panel has noted repeatedly that the investigation files did not have a process for adequately investigating racial bias and profiling. In this case, the Panel made four specific requests for additional investigation. The FCPD complied fully with only one, which related to a search of the officer's social media profiles.

Several members also stated that they did not want the Panel to focus merely on the specifics of how the investigation was conducted. They thought it was important not to lose sight of the broader issue of implicit bias and how it impacts policing. The Report on 21st Century Policing states that the unconscious nature of implicit bias demands that police departments look for new evidence-based strategies to mitigate the impact of implicit bias in policing. The FCPD should consider implementing new, objective, evidence-based procedural justice practices that could prevent an officer from making decisions based upon his implicit bias. For example, what if, before making community contacts, officers were required to ask themselves whether they had prior information that tied a particular person to a specific crime? Would that have prevented the questioning of the Complainant in this case? After the first glance, would the officer have checked himself before making assumptions based on how the Complainant looked? Would he have completed the license plate check, noted that there was no posted trespassing sign, and checked to see if the Complainant had a parking sticker on his car? Other police departments have required officers to go through a short checklist before making community contacts, and this practice has been demonstrated to significantly reduce unnecessary questioning of community members by police. The FCPD should consider doing the same.¹⁰

In conclusion, a majority of the Panel agreed with the Chief that the incident in this complaint reflected a "cascade" of mistakes and wrong assumptions made by the officer and supported his finding that the officer violated Regulation 201.13. However, with respect to the Complainant's allegation of racial profiling, the Panel voted by 7-2 that the investigation was not thorough and complete. As such, according to Article VI(F)(2)(iii), the Panel advises the Board of Supervisors that, in the Panel's judgment, the investigation is incomplete and recommends additional investigation into the allegation of racial profiling by interviewing the officer's coworkers at the Reston criminal investigation section for evidence of racial bias and reviewing data related to

¹⁰ The Oakland, California Police Department implemented a checkbox requirement for stops in 2018. In 2017, Oakland officers made approximately 32,000 stops. After implementing the checkbox, officers made about 19,000 stops in 2018.

the officer's community contacts and stops in the same manner the FCPD reviewed arrest statistics.

An audio recording of the March 9, 2020 Panel meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-march-9-2020>

An audio recording of the September 10, 2020 Panel meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-sept-10-2020>

An audio recording of the October 22, 2020 Panel meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-october-22-2020>

VII. Recommendations

1. The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer's public social media profiles; (2) interviewing coworkers in the officer's unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints. Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer's actions under each of the criteria listed above.
2. All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer's community contacts, stops, searches and arrests should be broken down by the race and ethnicity of community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention.
3. Data analysis of an officer's community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district station where

the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.

4. For the purposes of investigations into allegations of bias or profiling, data analysis of the officer's community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has worked in different districts within the county, the review and analysis of the officer's community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period.
5. Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer's community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group.
6. The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing.
7. Officers should receive implicit bias training on an annual basis.

CC: Complainant

APPENDIX G.11

(CRP-20-15)



County of Fairfax, Virginia

MEMORANDUM

DATE: October 8, 2020

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-20-15

I. Introduction

The Fairfax County Police Civilian Review Panel (Panel) held a public meeting on August 27, 2020, to review the investigation resulting from a citizen complaint submitted to the Fairfax County Police Department (FCPD) at the Fair Oaks District Station on March 27, 2020. After the investigation was completed, the FCPD sent a disposition letter to the Complainant on April 4, 2020. The letter concluded that no police misconduct had occurred. On June 12, 2020, the Complainant requested a review of the investigation by the Panel.

After reviewing the investigation file, the Panel members voted by 8-1 that the investigation was complete, thorough, accurate, objective, and impartial, and they concurred with the findings of the FCPD documented in the Investigation Report.

II. Background Facts

On March 23, 2020, the Complainant drove a truck loaded with trash to Fairfax County's I-66 Transfer Station. At the entrance, he told employees that he wanted to be allowed to dump the trash without paying the standard fee of \$13.00. He requested a waiver of the fee because of the state of emergency declared by Fairfax County and the Commonwealth of Virginia in response to the Covid-19 epidemic.

The Complainant was informed by site employees that free dumping had not been authorized. When he continued to refuse to pay the fee, an assistant manager offered him the options of receiving a bill, using a payment plan, or paying a reduced

fee. The Complainant declined these offers. During the conversation, he was told several times by the assistant manager that if he did not want to pay, he would have to leave the property.

A call was made to the FCPD after the Complainant refused to comply with the requests to leave. Two uniformed officers arrived at the scene. They talked initially with the facility employees, who described the failed negotiations with the Complainant. The officers initiated a discussion with the Complainant, who remained in his truck during the conversation that followed. Both officers told him several times that he would have to pay or leave. He asked the officers for their names, which they provided. According to the officers, on multiple occasions he rolled up his truck window when one of the officers attempted to talk with him.

While the officers continued their effort to persuade him to comply with their request, the Complainant talked by cell phone to an official at the Department of Public Works and Environmental Services. He described the situation to the official and repeated his demand for a waiver of the dumping fee. The official advised him to leave the property and offered to meet with him at a nearby gasoline station. The discussions with the police officers ended when the Complainant drove his truck to the meeting place. He met with the official and agreed to pay a reduced fee.

III. Procedural Background, Allegations and Findings

As noted above, the complaint was communicated directly to the FCPD on March 27, 2020, when the Complainant contacted a supervisor at the Fair Oaks District Station. The Complainant alleged the following: (1) The officers issued an unlawful order by demanding that the Complainant immediately leave the Transfer Station because of a civil dispute; (2) The Complainant's First Amendment right to peacefully assemble and petition the government for a redress of grievances was violated; (3) The number of officers on the scene was excessive because it was not proportionate to the nature of the incident; (4) The names of the officers printed on their badges were not visible to the Complainant and had been covered up; (5) The officers yelled at the Complainant and were "talking over him;" and (6) The police record of the incident was not sufficient, because inaccurate and incomplete comments were recorded on the CAD system by one of the officers, and a written report of the incident should have been submitted.

A supervisor at the Fair Oaks District Station investigated the incident. He interviewed the Complainant and also questioned the officers who were involved in the

incident. The assistant manager of the transfer station, who had attempted to resolve the dispute with the Complainant, was also interviewed. In addition, the investigator reviewed the comments that had been recorded into the CAD system by one of the officers at the scene.

Responding to each of these allegations, the investigator found: (1) The officers' actions were not unlawful; (2) It was appropriate for the FCPD to send two officers to the scene and not just one. The normal practice under the dispatching procedures is to send two officers in response to civil disputes that are "in progress." (3) At the scene, the Complainant was given the names of the two officers. (4) According to the officers and the witnesses who were interviewed, the officers did not yell, were not threatening, and were not rude to the Complainant. (4) One of the officers at the scene provided an adequate and detailed description of the incident that was recorded on the CAD system. Also, as explained to the Complainant, the officer correctly determined that the incident was a civil matter. Since written reports on civil matters are not routinely submitted when the CAD system is used, the officer properly concluded that a written report was not necessary.

Based on these findings, the investigator concluded that the two officers met the standards of conduct that applied to the situation, and they complied with all Department rules and regulations. On April 4, 2020, the FCPD sent a letter to the Complainant informing him that it had completed a comprehensive examination of the facts and circumstances surrounding the Complainant's allegations and that the officer's actions "were lawful and in compliance with Department Regulations regarding community member contacts."

On June 12, 2020, the Complainant requested a review by the Panel. A subcommittee of the Panel was convened on July 20, 2020, to review the complaint and the investigation file and then determine whether the Panel had authority to review the investigation. The subcommittee concluded that the investigation concerned matters within the purview of the Panel. It found that the complaint had been timely submitted and contained allegations that met the Panel's standard of "abuse of authority and serious misconduct."

IV. Panel Meeting

The Panel Review Meeting was held virtually on August 27, 2020. All Panel members had reviewed the Investigation Report prior to the meeting. The Complainant was present at the meeting. In his statement to the Panel, the Complainant said that his

civil rights were violated and that the officers violated FCPD General Order 301, which governs internal investigations. Also, the Complainant stated that he never refused to pay the fee. Rather, he wanted a waiver and was questioning the policy when the police arrived. He also expressed his view that the FCPD cannot demand that he leave public property when he is not breaking the law. He reiterated that he felt intimidated and threatened during the interaction with the FCPD, and that he believed the investigation was inaccurate and incomplete.

Chief Edwin Roessler and Major Tonny Kim represented the FCPD at the Review Meeting. Several Panel members were concerned that one witness at the transfer site was not interviewed during the investigation. They noted that the witness could have provided information on the demeanor of the officers during the encounter with the Complainant. It was also noted that the Panel had made a recommendation to the FCPD, published on January 9, 2019, stating, “The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.” Similarly, in a recommendation to the FCPD published on January, 15, 2020, the Panel stated, “With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.”

Two Panel members noted that the disposition letter, which was sent to the Complainant by the FCPD after the investigation was completed, did not provide the reasons for the findings. The two Panel members further noted that the Panel had recommended on March 21, 2019, that FCPD disposition letters to a Complainant upon conclusion of a FCPD investigation, “must contain sufficient, specific detail to provide Complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.”

Some Panel members were also concerned that the investigator did not follow a standardized investigative plan that is based on best practices, policy or practice.¹ One Panel member observed that he has seen a disparity in the quality of investigations, particularly between those conducted at the district level and those at the Internal Affairs Bureau (IAB). Chief Roessler and Major Kim responded that investigators are trained throughout their careers, beginning at the Academy and continuing with advanced training and supervision by field training officers. Investigators are tenured and seasoned professionals, they said. Although each investigation is unique, they

¹ Following the Review Meeting, the FCPD informed the Panel that senior staff are planning to add a bureau commander review requirement for certain district and division cases to be implemented before the conclusion of the investigation. This will add an additional layer of scrutiny to cases that are not investigated by the IAB.

stated, investigators both at the district level and at IAB adhere to the guidelines in an internal administrative manual, and all investigations follow a general structure.

A few Panel members asked the FCPD about how police are trained in potential trespass situations, where a community member is asked to leave or “move along” from a public place. Police receive extensive training on how to handle trespass cases, Major Kim responded. He said police also attempt to de-escalate conflict situations and work to resolve matters without making an arrest. He said that in this incident, the officers asked the Complainant a number of times to move along before demanding that he leave the site. He said the officers used due diligence to resolve the matter and ultimately there was a positive outcome. The parties agreed to settle the matter themselves.

During their deliberation, most Panel members agreed that while the FCPD should have interviewed the witness who observed the encounter, the additional evidence would not likely change the outcome of the investigation.² The weight of the evidence and the substantial completeness of the investigation were important considerations for the Panel in making its finding. Further, the Complainant was asked by Transfer Station managers and FCPD officers to either leave or pay the fee several times before a demand was made for him to leave. To prevent traffic congestion at the site, it was reasonable and lawful for the FCPD to demand the Complainant leave. The Panel voted by 8-1 to concur with the findings in the FCPD investigation.

An audio recording of the August 27, 2020, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-august-27-2020>.

On October 8, 2020, the Panel discussed the Review Report and Recommendations. An audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-october-8-2020>

CC: Complainant

² Following the Review Meeting, Major Kim informed the Panel that Chief Roessler directed his staff to interview the witness who might have observed the incident. On October 3, 2020, the FCPD informed the Panel that investigators had identified the witness and interviewed him. The witness statement was included in the investigative case file, and it supported the FCPD investigation finding.

MEMORANDUM

To: The Fairfax County Police Civilian Review Panel

From: Hansel Aguilar, Panelist

Date: October 8, 2020

Re: CRP-20-15 Complaint Dissent

I. Introduction

After a careful and holistic consideration of the case file, the review meeting deliberation, and the Majority report of CRP-20-15, I find that I am not able to support the conclusion stated in the report that the "...Investigation is complete, thorough, and accurate..." Specifically, I dissent from the Majority report because: (1) at the time of the review and Panel deliberation, the FCPD had not interviewed nor attempted to interview a key witnessⁱ; nor had (2) the FCPD accurately investigated the appropriateness of issuing a "move along order" to the Complainant in the interaction in question.

II. The Investigation concerning the allegation of the officers' demeanors was not completely, thoroughly, and accurately investigated and is inconclusive

Without the use of an objective investigative tool like body-worn camera (BWC) or a comparable video recording of the incident, determining whether the officers exhibited demeanor consistent with FCPD General Order 201.13, which states that,

"Employees shall conduct themselves professionally at all times when representing the Department. They shall use respectful, courteous forms of address to all persons"

was a difficult task for the assigned investigators in this case. Fortuitously, there were several witnesses to the event in question. Perplexingly and without reason or justification, the FCPD failed to interview all the available and present

witnesses that could have corroborated or refuted the claims made in this complaint.

This omission of a key witness is not an event in isolation. In fact, this Panel has already made public comments and recommendations to the FCPD regarding the thoroughness and completeness of their investigatory process. As reiteration of a previously provided Panel recommendationⁱⁱ, I would like to emphasize that the FCPD needs to ensure that “With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.”

Additionally, as previously recommended by this author, the FCPD should strongly consider implementing and standardizing the use of investigation plans for all misconduct investigations to ensure a systematic approach to reviewing and investigating each allegation in the complaint.

III. Appropriateness of a *move along order* in a public space while engaging in constitutionally protected activity

One of the expressed concerns in the complaint was the appropriateness of the FCPD officers’ instructions to the complainant to leave the premises while he was attempting to resolve a dispute with the solid waste facility operators. Specifically, the complainant alleged that the instruction by the officers to leave the waste facility was “unlawful” and violated his “1st amendment right to peaceably assemble and petition the government for a redress of grievances.”

Based on the statements from the complainant, the FCPD, and the witnesses, I disagree with the assertion that the complainant’s first amendment rights to assemble and petition the government were violated. The complainant’s actions in this matter were guided by his interpretation of local and state emergency declarations. It was his understanding that he should have been offered or allowed a waiver considering the global public health emergency. According to the case file, the complainant acknowledged that there were no specific statements or provisions in the emergency declarations regarding the waiver he was seeking.

Objectively speaking, his hardship waiver request was reasonable. Notwithstanding, I do not believe it was reasonable nor consistent for the complainant to physically present himself at the waste station and demand that

the waiver be provided to him. Yes, the waste station is a County facility thus it is a public space which provides certain constitutional protections, however, there were other mechanisms the complainant could have and should have exhausted prior to showing up at the facility. Specifically, the complainant could have exercised his first amendment rights by contacting the waste facility, his local representative, his state representative, etc. via phone, email, or regular mail prior to attempting to speak to someone in person at the waste facility. Additionally, the police appeared to have provided the complainant considerable time before asking him to leave.

My concern with this element of the investigation concerns the lack of clear guidance and instructions provided to FCPD officers regarding issues of trespassing in public spaces. Currently, the FCPD does not have a general order addressing these interactions and allows for officers to utilize their discretion to determine the appropriateness of issuing a move along order or trespassing order to a community member. As I noted in the deliberation of this case, the DC Office of Police Complaints (OPC)- our neighboring civilian oversight agency, which oversees the Metropolitan Police Department- has made similar observations with the misapplication of move along orders by their jurisdiction's law enforcement officers. I believe it would be beneficial for the FCPD to consider analyzing this issue in the County further and explore how to enact clear guidance for FCPD officers. In this review, the FCPD should consider some of the recommendations in OPC's Policy Report #17-3: Blocking Passageⁱⁱⁱ:

"To help improve and facilitate better relations and increase trust between MPD officers and community members, the PCB recommends that:

- 1. MPD require its officers to document any incident where a move along order and/or a blocking passage citation was issued, and the incident reports must detail how specifically the person was blocking passage.*
- 2. MPD should provide additional training on the correct application of the statute as well as cultural and sensitivity training on the proper way to issue move along orders in a manner that promotes cooperation and decreases animosity."*

IV. Conclusion

Based on the unknown aspects of this case (at the time of review) and the accuracy of the *move along order* allegation, I must dissent from the conclusion that this investigation is complete, thorough, and accurate.

ⁱ On Monday, October 5th, 2020 the Panel received a memorandum from the FCPD (dated October 2nd, 2020) certifying that on the FCPD identified the witness in question and conducted an interview. It was reported by the FCPD that the statements from the witness supported the conclusions of the FCPD investigation.

ⁱⁱ CRP-19-11: Published January 9, 2020

ⁱⁱⁱ The complete report can be accessed via:

https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Blocking%20Passage%20Report.FINAL_.pdf

APPENDIX H

(Complaint Form)



Fairfax County Police Civilian Review Panel Complaint Form

SUBMISSION OPTIONS

| | |
|---------------------------------|--|
| Hand Deliver or Mail to: | Office of the Independent Police Auditor 12000 Government Center Parkway, Suite 233A Fairfax, VA 22035 |
| Call: | 703-324-3459, TTY 711 |
| Email: | PoliceCivilianReviewPanel@fairfaxcounty.gov |

This form and information on the complaint process may be accessed at www.fairfaxcounty.gov/policecivilianreviewpanel. Brochures with complaint forms in English, Korean, Spanish, and Vietnamese are also available.

CONTACT INFORMATION

The identity of a juvenile or a victim of sexual assault will remain confidential consistent with the Board Agenda Item dated February 28, 2017, ACTION-17 at p. 275, and to the extent allowed under the Virginia Freedom of Information Act, Virginia Code Sections 2.2-3700, et seq.

| | | |
|--|---|----|
| Name: | | |
| Telephone Number: | Email: | |
| Address: | | |
| City: | State & Zip Code: | |
| Were you a participant in the incident? | YES | NO |
| Were you a witness to the incident? | YES | NO |
| Are you submitting this form on behalf of someone else? | <i>If yes, please provide his or her contact information.</i> | |
| YES NO | | |
| If yes, does the person know you are filing this complaint? | | |
| YES NO | | |

DEMOGRAPHIC INFORMATION

| | | |
|----------------|-------------|------------------------|
| Gender: | Age: | Race/Ethnicity: |
|----------------|-------------|------------------------|

Who Were the Fairfax County Police Department (FCPD) OFFICER(s) Involved?

Describe the officer(s). *Provide any known information about the FCPD officer(s)/employee(s) involved in the misconduct. Helpful information includes: Name, Badge Number, Police District, Physical Description (Age, Race, Gender, Height, Weight, Hair/Eye Color, Clothing), Vehicle Number/Description (Color, Make, Model). Attach additional information if necessary.*

| |
|--|
| |
|--|

Did Anyone Witness/See What Happened?

Who? *Provide contact information (name, phone, email, address) for witnesses to the misconduct, if known. Indicate if the witness(es) are aware that you are submitting this complaint. Attach additional information if necessary.*

| |
|--|
| |
|--|

What Happened?

Provide the incident date, time, location, and details. If the misconduct occurred on multiple days, times, or locations, list each to your best recollection. Attach additional information if necessary. **If you want the Panel to review a completed FCPD Investigation, please state the reasons for your request.**

Incident Date:

Incident Time:

Incident Location:

Incident Details:

Is the incident described above the subject of a court proceeding?

If yes, please attach a description of the proceedings.

YES

NO

Has the FCPD been asked to investigate this incident in the past? *If yes, please attach any correspondence you received from the FCPD. If no, the FCPD may contact you as a part of the investigation process.*

YES

NO

Please Note: The Panel is required to forward all complaints to the FCPD upon receipt

By signing this form, I certify that the statements made herein, and on any attached documentation, are true and complete to the best of my knowledge, information, and belief.

Signature:

Date:

APPENDIX I

(Panel Brochure)

Complaint Form

Name: _____

First

Last

Address: _____

Street

City, State

Email: _____

Date of Birth: _____ M F

Circle One

Date of Incident: _____

Time of Incident: _____ A.M. P.M.

Circle One

Incident Location: _____

Name/Badge # of Officer(s) Involved:

Briefly Describe the Incident:

(Use add'l paper if necessary. Include descriptive details.)

Witnesses to Incident:

Signature

Date

Attend A Meeting

The Panel generally meets in open session on the first Thursday of every month at 7 p.m. The public is welcome to attend.



Meeting locations vary and dates may change. Please check www.fairfaxcounty.gov/calendar/ShowCalendar.aspx

Fairfax County Police Civilian Review



Building Community Trust

Through Accountability



November 2017

A Fairfax County, Va., Publication

To request this information in an alternate format,
call 703 324-3459, TTY 711.

What Is Civilian Review?

The Fairfax County Civilian Review Panel and the Independent Police Auditor were established to review police investigations resulting from public complaints against officers of the Fairfax County Police Department.

The Panel has nine members who are Fairfax County residents. The Panel and the Auditor are independent from the Police Department and report directly to the Fairfax County Board of Supervisors.

What We Do

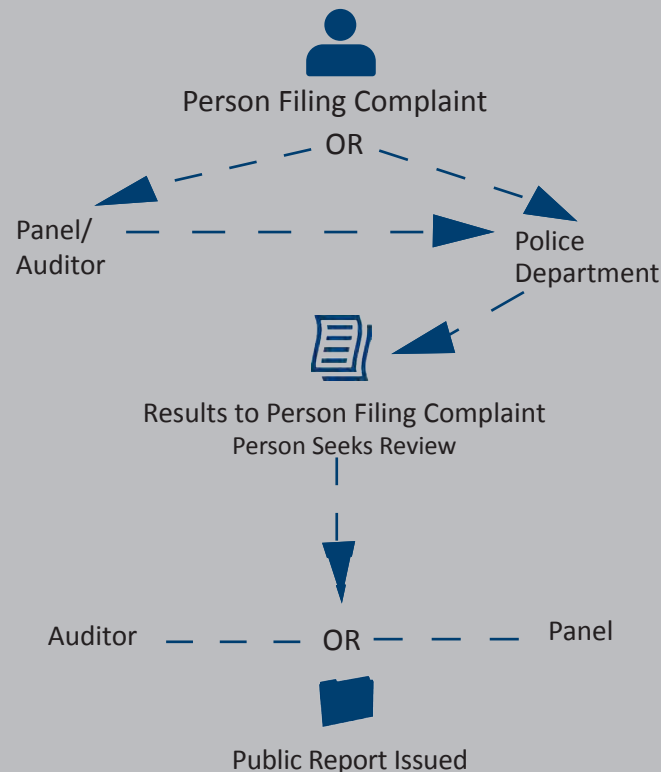
The Panel reviews police investigations involving police misconduct. Examples of police misconduct are:

- Rudeness
- Threats
- Verbal Abuse
- Harassment
- Racial Profiling
- Discrimination

The Auditor reviews police investigations involving the use of force. Both the Panel and the Auditor determine whether the police investigation was thorough, accurate and impartial.

How We Work

- When a complaint is received, it is sent to the Police Department for investigation.
- Investigators interview the person who filed the complaint and witnesses.
- Police examine the evidence and write a report outlining the findings.
- The person who filed the complaint receives a letter summarizing findings of the investigation.
- If the person does not agree with the outcome of the investigation, he or she may ask for a review.
- If a review is requested, either the Panel or the Auditor reviews the investigation and issues a public report.



How to File A Complaint

If you have experienced or observed misconduct by a Fairfax County police officer, you are encouraged to file a complaint. You will not be penalized by the police or any county official for filing a complaint.

Fill Out a Complaint Form

- You may use the complaint form in this brochure or a printed copy of the online form.
- You may also complete a complaint form online. Go to www.fairfaxcounty.gov/policeauditor

To File a Complaint

- You may file your completed form by mailing it to:

Office of the Independent Police Auditor
12000 Government Ctr. Parkway, Ste. 233A
Fairfax, VA 22035
- You may file online. Instructions are provided at the above website.
- You may deliver a completed complaint form to the Auditor's Office at the above address or to any Fairfax County Police Station.

If you need help completing the form, please call (703) 324-3459 or email PoliceCivilianReviewPanel@fairfaxcounty.gov

Formulario de quejas

Nombre: _____
Primer nombre Apellido

Dirección: _____
Número y calle Ciudad, estado

Correo electrónico: _____

Fecha de nacimiento: _____ **M** **F**
Encierre una opción en un círculo

Fecha del incidente: _____

Hora del incidente: _____ **A.M.** **P.M.**
Encierre una opción en un círculo

Lugar del incidente: _____

Nombre/N.º de placa del (de los) oficial(es) involucrado(s):

Describa brevemente el incidente:
(Use papel adicional si es necesario. Incluya detalles descriptivos).

Testigos del incidente:

Firma **Fecha**

Venga a una reunión

Por lo general el Panel se reúne en una sesión abierta el primer jueves de cada mes a las 7:00 p. m. El público está invitado a asistir.



Los lugares y fechas de reunión pueden cambiar. Consulte la página web www.fairfaxcounty.gov/calendar/ShowCalendar.aspx



Noviembre de 2017

Una publicación de Fairfax County, Virginia
Para solicitar esta información en un formato alternativo,
llame al 703 324-3459, TTY 711.

Fairfax County Revisión civil de la policía



**Creando
confianza en la
comunidad**

**A través de la
responsabilidad**

¿Qué es la revisión civil?

El Panel de Revisión Civil de Fairfax County y el Auditor Independiente de la Policía se establecieron para revisar las investigaciones policíacas resultantes en quejas públicas contra los agentes del Departamento de Policía de Fairfax County.

El Panel está formado por nueve miembros que son residentes de Fairfax County. El Panel y el Auditor son independientes del Departamento de Policía y se reportan directamente a la Junta de Supervisores de Fairfax County.

Lo que hacemos

El Panel revisa las investigaciones de la policía en relación con la conducta incorrecta. Ejemplos de conductas incorrectas de la policía:

- grosería
- amenazas
- abuso verbal
- acoso
- perfil racial
- discriminación

El Auditor revisa las investigaciones policíacas relacionadas con el uso de la fuerza. Tanto el Panel como el Auditor determinan si la investigación de la policía fue minuciosa, exacta e imparcial.

Cómo trabajamos

- Cuando se recibe una queja, se envía al Departamento de Policía para ser investigada.
- Los investigadores entrevistan a la persona que presentó la queja y a los testigos.
- La Policía examina las pruebas y elabora un informe con el detalle de los hallazgos.
- La persona que presentó la queja recibe una carta con el resumen de los hallazgos de la investigación.
- Si la persona no está de acuerdo con el resultado de la investigación, puede pedir una revisión.
- Si se solicita una revisión, el Panel o el Auditor revisa la investigación y emite un informe público.



Cómo presentar una queja

Si experimentó u observó una conducta incorrecta de un agente de la Policía de Fairfax County, siéntase en la libertad de presentar una queja. Ni la Policía ni ningún funcionario del condado lo sancionarán por presentar una queja.

Llenar un formulario de queja

- Puede usar el formulario de queja que se incluye en este folleto o una copia impresa del formulario que se encuentra en línea.
- También puede llenar un formulario de queja en línea. Consulte la página web a www.fairfaxcounty.gov/policeauditor

Presentar una queja

- Puede presentar su formulario completado enviándolo por correo a:

Office of the Independent Police Auditor
12000 Government Ctr. Parkway, Ste. 233A
Fairfax, VA 22035
- Puede presentar la queja en línea. En el sitio web que se menciona anteriormente se encuentran las instrucciones.
- Puede enviar un formulario de queja completado a la Oficina del Auditor a la dirección anterior o a cualquier Estación de Policía de Fairfax County.

Si necesita ayuda para llenar el formulario, llame al (703) 324-3459 o envíe un correo electrónico a PoliceCivilianReviewPanel@fairfaxcounty.gov

항의신고 양식

이름: _____

이름 성

주소: _____

이메일: _____

생년월일: _____ 남성 여성

동그라미 하세요

사건 일자: _____

사건 시각: _____ 오전 오후

동그라미 하세요

사건 장소: _____

관련된 경관의 이름/배지 번호:

사건을 간단하게 기술하십시오:

(필요한 경우 종이를 추가로 사용하십시오. 자세히 서술해 주십시오.)

사건 목격자:

서명

날짜

회의 참석

패널은 일반적으로 매달 첫 번째 목요일 저녁 7시에 공개 세션에서 소집됩니다. 대중 여러분의 참석을 환영합니다.



회의 장소 및 날짜는 변경될 수 있습니다.

www.fairfaxcounty.gov/calendar/

[ShowCalendar.aspx](http://www.fairfaxcounty.gov/calendar/ShowCalendar.aspx)에서 확인하십시오.

_____에서 확인하십시오.

Fairfax County 경찰 시민 심사



커뮤니티 신뢰 쌓기

책임 기반



2017년 11월

Fairfax County, Va., 출판

본 정보를 대체 형식으로 요청하려면

703 324-3459, TTY 711로 전화하십시오.

시민 심사란 무엇입니까?

Fairfax County 시민 심사 패널과 독립 경찰 감사기구가 설립되어 Fairfax County 경찰국 경관에 대한 공적인 항의에서 비롯된 경찰 조사를 심사합니다.

패널은 Fairfax County 주민 9명으로 이루어집니다. 패널 및 감사기구는 경찰국과 독립적으로 존재하며 Fairfax County 감독 위원회에 직접 보고합니다.

패널 및 감사기구가 하는 일

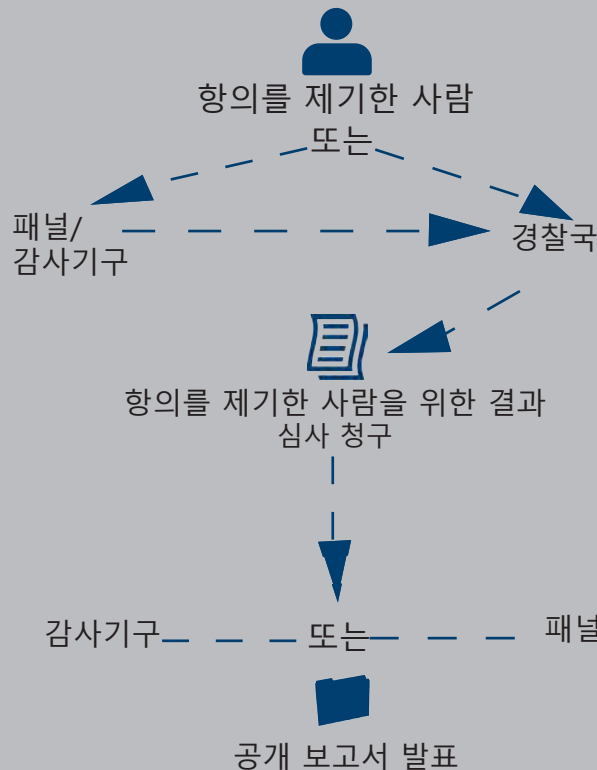
패널은 경찰의 부정행위에 관련된 경찰 조사를 심사합니다. 경찰 부정행위의 예:

- 무례
- 위협
- 폭언
- 희롱
- 인종 프로파일링
- 차별

감사기구는 무력 행사와 관련된 경찰 조사를 심사합니다. 패널 및 감사기구는 경찰 조사가 철저했는지, 정확했는지, 그리고 공평했는지 여부를 결정합니다.

진행 방식

- 항의가 접수되면, 항의는 조사를 위해 경찰국으로 전송됩니다.
- 조사관은 항의를 제기한 사람 및 목격자와 면담합니다.
- 경찰은 증거를 조사하고 결과를 기술하는 보고서를 작성합니다.
- 항의를 제기한 사람은 조사 결과를 요약한 서한을 받게 됩니다.
- 조사 결과에 동의하지 않는 경우, 심사를 청구할 수 있습니다.
- 심사가 청구되면, 패널 또는 감사기구가 조사를 심사하고 공개 보고서를 발표합니다.



항의를 제기하는 방법

Fairfax County 경찰관의 부정 행위를 목격하거나 경험한 경우, 항의를 제기해 주시길 권장합니다. 항의를 제기한 것에 대해 경찰이나 공무원에 의해 난처한 입장에 처하지 않습니다.

항의신고 양식 작성

- 이 브로셔에 있는 항의신고 양식 또는 온라인 양식의 인쇄본을 사용하시면 됩니다.
- 항의신고 양식을 온라인으로 작성하셔도 됩니다. www.fairfaxcounty.gov/policeauditor로 이동하십시오.

항의를 제기하는 방법

- 작성한 양식을 다음 주소로 보내 제기하시면 됩니다.

Office of the Independent Police Auditor
12000 Government Ctr. Parkway, Ste. 233A
Fairfax, VA 22035

- 온라인으로 제기하셔도 됩니다. 상기 웹사이트에 지침이 제공되어 있습니다.
- 작성한 항의신고 양식을 상기 주소의 감사기구 사무실로 보내거나 모든 Fairfax County 경찰서로 보낼 수 있습니다.

양식 작성에 대해 도움이 필요하신 경우, (703) 324-3459번으로 전화주시거나 PoliceCivilianReviewPanel@fairfaxcounty.gov로 메일을 보내 주십시오.

Mẫu đơn khiếu nại

Tên: _____

Tên

Họ

Địa chỉ: _____

Đường _____ Thành phố, Bang _____

Email: _____

Ngày sinh: _____ **Nam Nữ**

Khoanh tròn Một

Ngày xảy ra sự cố: _____

Thời gian xảy ra sự cố: _____ **Sáng Chiều**

Khoanh tròn Một

Địa điểm xảy ra sự cố: _____

Tên/Số ký danh # của vị Cảnh sát có liên quan:

Mô tả ngắn gọn sự cố:

(Sử dụng giấy bỗ sung nếu cần. Bao gồm thông tin chi tiết mô tả.)

Nhân chứng của sự cố:

Chữ ký

Ngày

Dự Họp

Hội đồng thẩm duyệt thường mở ra buổi gặp mặt vào mỗi thứ năm đầu tháng vào lúc 7:00 tối. Công chúng đều được đón chào tới dự.

Các địa điểm và ngày họp có thể thay đổi. Xin vui lòng vào website dưới đây: www.fairfaxcounty.gov/calendar/ShowCalendar.aspx



Cảnh sát Fairfax County Được dân cư Thẩm định



Xây dựng niềm tin
qua trách nhiệm
cộng đồng



Tháng 11 năm 2017
Một ấn phẩm của Fairfax County, Va.,
Để yêu cầu thông tin này dưới hình thức khác,
gọi 703 324-3459, TTY 711.

Thông qua Trách
nhiệm giải trình

Sự thẩm duyệt của dân chúng là gì?

Ban thẩm duyệt của dân cư cùng cơ quan độc lập kiểm soát cảnh sát được thành lập để thẩm duyệt các cuộc điều tra của cảnh sát do những khiếu nại của công chúng với các viên chức của sở cảnh sát Fairfax County.

Ban hội thẩm gồm có chín thành viên dân cư Fairfax County. Ban thẩm duyệt và Kiểm soát viên độc lập với Sở cảnh sát và báo cáo trực tiếp cho Hội đồng giám sát của Fairfax County.

Những việc chúng tôi làm

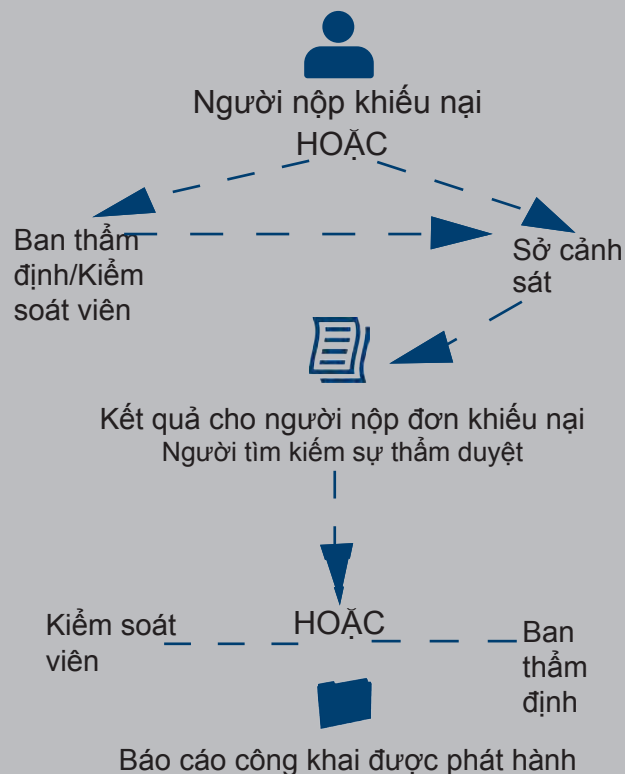
Ban thẩm duyệt xem xét các cuộc điều tra của cảnh sát liên quan tới việc làm sai trái của cảnh sát. Ví dụ về việc làm sai trái của cảnh sát gồm:

- Vô lễ
- Đe dọa
- Lạm dụng lời nói
- Quấy rối
- Có dấu hiệu phân biệt chủng tộc
- Phân biệt đối xử

Kiểm soát viên xem xét các cuộc điều tra của cảnh sát liên quan tới việc sử dụng bạo lực. Hai ban thẩm định và kiểm soát viên xác định xem coi cuộc điều tra của cảnh sát có kỹ lưỡng, chính xác và công bằng không.

Cách thức làm việc của chúng tôi

- Khi nhận được khiếu nại thì nó sẽ được gửi tới Sở cảnh sát để điều tra.
- Các điều tra viên phỏng vấn người đã nộp khiếu nại và các nhân chứng.
- Cảnh sát xem xét chứng cứ và ghi báo cáo liệt kê các phát hiện.
- Người nộp khiếu nại nhận thư tóm lược các phát hiện của cuộc điều tra.
- Nếu người đó không đồng ý với kết luận của cuộc điều tra thì có thể đề nghị xem xét.
- Nếu có yêu cầu để được xem xét thì Ban thẩm định hoặc Kiểm soát viên sẽ xem xét cuộc điều tra và phát hành báo cáo công khai.



Cách nộp khiếu nại

Nếu quý vị đã gặp phải hoặc quan sát thấy sự sai trái của nhân viên cảnh sát Fairfax County thì quý vị nên nộp khiếu nại. Quý vị sẽ không bị cảnh sát hoặc bất kỳ nhân viên nào của quận phạt vì đã nộp khiếu nại.

Điền mẫu đơn khiếu nại

- Quý vị có thể dùng mẫu đơn khiếu nại trong quyển giới thiệu này hoặc dùng bản in ra từ mẫu trực tuyến.
- Quý vị còn có thể hoàn tất mẫu đơn khiếu nại trực tuyến. Vào www.fairfaxcounty.gov/policeauditor

Đề đệ nộp khiếu nại

- Quý vị có thể nộp mẫu đơn đã điền qua bưu điện tới:

Office of the Independent Police Auditor
12000 Government Ctr. Parkway, Ste. 233A
Fairfax, VA 22035
- Quý vị có thể nộp đơn trực tuyến. Hướng dẫn có trên trang mạng ở trên.
- Quý vị có thể nộp mẫu đơn khiếu nại hoàn chỉnh tới Văn phòng Kiểm toán viên theo địa chỉ nêu trên hoặc tới bất kỳ Đồn cảnh sát Fairfax County nào.

Nếu quý vị cần sự trợ giúp để hoàn tất mẫu đơn này, vui lòng gọi (703) 324-3459 hoặc gửi email tới PoliceCivilianReviewPanel@fairfaxcounty.gov

APPENDIX J

(Panelist Biographies)

Panel Member Biographies

Hansel Aguilar, Fairfax (2017–Present)

Mr. Aguilar, originally from Honduras, investigates allegations of police misconduct at the D.C. Office of Police Complaints. Mr. Aguilar is a former police officer for the George Mason University Police Department and previously worked as a case manager and internal investigator for Youth for Tomorrow. He has served with the Vinson Hall Retirement Community in McLean and with the Fairfax County Office for Women & Domestic and Sexual Violence Services. Mr. Aguilar is bilingual in Spanish and English and believes that oversight is an important tenet of maintaining justice and equality in a democratic society.

James Bierman, McLean (2019–Present)

Mr. Bierman is a resident of McLean, where he grew up, and is a litigator who represents clients in complex litigation such as antitrust, securities, pharmaceutical defense, false advertising, trade secrets, copyright infringement, trademark infringement, commercial paper, and domestic matters in federal and state courts across the country as well as before federal administrative agencies. Mr. Bierman also maintains a large pro bono practice in which he has represented undocumented immigrants in wage disputes against predatory employers, disabled individuals in Social Security benefit matters, and criminal defendants in state court at both the trial and appellate levels. Further, he advises nonprofits and community organizations in disputes with state and local governments. Mr. Bierman previously served as a law clerk to the Honorable Beverly B. Martin of the U.S. Court of Appeals for the Eleventh Circuit. Aside from his practice, Mr. Bierman is a leader in the Washington legal community and beyond where he serves as an Associate Trustee of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and serves on the Board of the Washington, D.C. Chapter of the American Constitution Society.

Robert Cluck, Reston (2018–Present)

Mr. Cluck has resided in Fairfax County for 40 years. He was on the Fairfax County Ad Hoc Polices Practices Commission. He served in the US Army and worked for the federal government for over 30 years in finance and administration. Since retirement, he has been active with the National Alliance on Mental Illness (NAMI), including as a member and officer of the Board of the State level organization and as a volunteer in many capacities for the Northern Virginia affiliate. Over period of six years, he gave family member presentations to Fairfax and Arlington County police officers as part of their Crisis Intervention Team training. He is strongly committed to helping enhance public trust between the public and the Police Department.

Kathleen Davis-Siudut, Springfield (2017–2018)

Ms. Davis-Siudut has spent the past 15 years providing training as well policy development and implementation in the areas of sexual violence, human trafficking, and cultural diversity. Ms. Davis-Siudut is of Korean descent and has previously worked for the National Underground Railroad Freedom Center, Polaris Project, and the US Marine Corps. She currently works with the Air Force as a sexual assault prevention and response subject matter expert.

Steve Descano, Burke (2017–2018)

Mr. Descano served as a federal prosecutor for six years in various positions: Special Assistant United States Attorney in the Eastern District of Virginia, Trial Attorney in the Criminal Tax Division, and Trial Attorney in the Consumer Protection Branch. He focused on prosecuting complex frauds and crimes targeting vulnerable victims. While at the Department of Justice, he was awarded Tax Division Outstanding Attorney Awards in 2012, 2013, and 2014. Mr. Descano currently works as the Chief Operating Officer and General Counsel for Paragon Autism Services, a provider of behavioral therapy to children with Autism Spectrum Disorder. Mr. Descano serves on the Fairfax County NAACP's Criminal Justice Committee and was nominated by the Fairfax County NAACP to serve on the Civilian Review Panel.

Hollye Doane, Oakton (2017–Present, Panel Chair 2020, Panel Vice Chair 2019)

A Fairfax County resident for more than 30 years, Ms. Doane spent most of her career as an attorney in Washington D.C. representing an array of clients, including the National Down Syndrome Society and Down Syndrome Research and Treatment Foundation. Ms. Doane has been an advocate for the disability community for more than 20 years and understands the importance of building positive relationships between law enforcement officers and people with disabilities. Her experience as a journalist prior to attending law school gave her an appreciation for clear, timely and transparent communication between government officials and the community. After her retirement, Ms. Doane trained as a mediator and facilitator and currently serves as a lay pastoral minister in her church.

Frank Gallagher, Burke (2019–Present)

Mr. Gallagher is a U.S. Army veteran and a retired FBI Agent with over 32 years of service. He first moved to Fairfax County in 1977 and was transferred out of the area several times. During his time in the FBI, Mr. Gallagher served as the Deputy Assistant Director of the Criminal Division, Special Agent in Charge of a Field Office and as the Chief Inspector for the FBI. He has lived continuously in Fairfax County for the past 19 years. After his retirement from the FBI, he worked for a major global management and information technology consulting firm for 11 years. Subsequent to that he served for two years as the Chairman of the DC Chapter of the Society of Former Special Agents of the FBI. He is a graduate of FBI's National Executive Institute (NEI) and was on the Board of Directors of the NEI Associates for five years. For the past four years he has been the Braddock District representative on the Fairfax County Criminal Justice Advisory Board

Colonel Gregory Gadson, Alexandria (2018–2019)

Colonel Gadson served our nation in the United States Army for more than 26 years. He served in every major conflict of the past two decades and served in various assignments throughout the world. His service culminated as the Garrison Commander of Fort Belvoir, where he oversaw the daily operations of the post, a strategic sustaining base where more than 50,000 military personnel and employees provide logistical intelligence, medical and administrative support, and command control for a mix of more than 140 commands and agencies for the Department of Defense. He is a passionate advocate for wounded warriors, veterans, and those with disabilities; on several occasions, testified before congress on issues related to these groups. Colonel Gadson continues to serve his nation as an entrepreneur and managing partner of Patriot Strategies, LLC, a government services company.

Douglas Kay, Fairfax (2017–Present, Panel Chair 2019, Panel Vice Chair 2018)

Mr. Kay is a trial lawyer who has handled civil litigation, criminal defense and personal injury cases for over 20 years. He currently focuses his practice on commercial litigation matters. As a criminal defense attorney, he has represented individuals charged with everything from simple traffic matters to the most serious felony offenses in state and federal courts. Mr. Kay previously served as a judge advocate in the U.S. Navy and Assistant Commonwealth's Attorney for Fairfax County. A lifelong Fairfax County resident, Mr. Kay attended Fairfax County Public Schools, coaches his son's youth basketball team, and served on Fairfax County's Ad Hoc Police Practices Review Commission. Mr. Kay was nominated to serve on the Civilian Review Panel by the South Fairfax Chamber of Commerce and the Fairfax Bar Association.

Shirley Norman-Taylor, Lorton (2019–Present)

Ms. Norman-Taylor has resided in Fairfax County for the past 21 years. She is licensed to practice as an attorney in Virginia and Washington D.C. The focus of her practice includes Domestic Relations and Criminal and Traffic Defense, however, her greatest joy comes from representing children who are in the Abuse and Neglect system as their Guardian ad litem (GAL). Ms. Norman-Taylor also serves on the Fairfax County School Board's Minority Student Achievement Oversight Committee (MSAOC). Ms. Norman-Taylor is a former military officer and served as a Commander during Operations Desert Shield/Desert Storm.

Anna Northcutt, Reston (2018–2019)

Mrs. Northcutt has lived in Reston over ten years and is involved in the issue of mental health and the resources available within our community to assist individuals and families. For the past several years, she facilitated a family support group for the families and friends of individuals with a mental illness and remains an active supporter of the National Alliance on Mental Illness, NAMI. Ms. Northcutt served in the US Army as a Captain in the Military Police Corps and as a Special Agent in the Federal Bureau of Investigation. She has a Master of Divinity degree and brings both law enforcement experience and the concerns of individuals who often have challenging encounters with law enforcement to the Panel.

Randy Sayles, Oak Hill (2017–2018)

Mr. Sayles had over 35 years of law enforcement and criminal investigations experience. He worked as a Federal Agent for the U.S. Drug Enforcement Administration (DEA), U.S. Department of Justice (DOJ), and served as a police officer for the Denver, Colorado Police Department. Mr. Sayles enjoyed giving back to the community by volunteering for the Clean Fairfax Council and Creekside Homeowners Association, and was the recipient of a Fairfax County 2016 Environmental Excellence Award for removing 800 bags of trash and over 1200 illegal signs along nine miles of Centreville Road. Mr. Sayles served as a member of Fairfax County’s Ad Hoc Police Practices Review Commission and has continued to work with the Board of Supervisors and Fairfax County Police to implement the Commission’s recommendations.

Jean Senseman, Lorton (2017–2018)

Ms. Senseman is a licensed clinical social worker who has spent many years working with clients who experience mental illness, PTSD and substance use disorders. Ms. Senseman has worked in private practice providing treatment and therapy for individuals young and old who experience a wide variety of mental health disorders. Ms. Senseman taught at George Washington University Medical School and volunteers for her Condo Association Finance Committee. Previously, Ms. Senseman worked at the Woodburn Community Mental Health Center and at the Bailey’s Crossroads Community Shelter helping residents of all socio-economic backgrounds receive mental health treatment.

Sris Sriskandarajah, Fairfax (2019–Present, 2020 Vice Chair)

Mr. Sriskandarajah is a resident of Fairfax, Virginia. Everybody calls him “Sris”. He has lived in Fairfax since 2006 and has his law firm in the City of Fairfax. He assists clients with criminal defense and family law cases. He is licensed to practice before the state and federal court of Virginia & Maryland. He is also licensed to practice in DC. Mr. Sris is the legal advisor to the Valluvan Tamil Academy on a pro bono basis. He is also on the panel of listed attorneys for ASHA – a pro bono organization that helps South Asian women in Virginia who are victims of domestic violence or sexual violence. Aside from his practice, Mr. Sris is the father of two children who attend school in Fairfax County. Mr. Sris is a native Tamil speaker and is an active member of the Indian community in Virginia & Maryland.

Adrian L. Steel, Jr., McLean (2017–2018, Inaugural Chair)

Mr. Steel served on Fairfax County’s Ad Hoc Police Practices Review Commission and has continued to work with the Board of Supervisors to implement the Commission’s recommendations. Mr. Steel has been appointed by the Board of Supervisors to serve as the first chair of the Police Civilian Review Panel. Mr. Steel has extensive knowledge and a strong commitment regarding 21st Century police policies and best practices, including civilian oversight. Mr. Steel currently works as a senior counsel at Mayer Brown LLP where he has practiced law for over 35 years, and previously served as a Special Assistant to FBI Director, William H. Webster, handling criminal and counterintelligence intelligence matters.

Rhonda VanLowe, Reston (2017–Present, 2018 Chair, 2017 Vice-Chair)

Ms. VanLowe was appointed to the Governor’s Taskforce for Improving Mental Health Services and

Crisis Response and served on the Public Safety workgroup. She has devoted much of her community service work to serving those with unique physical, mental, emotional, intellectual or cognitive backgrounds. Ms. VanLowe practiced law in law firm and corporate settings, served as Board Chair of The Northern Virginia Therapeutic Riding Program, Inc., and received the National Women of Color Special Recognition Award at the 2008 STEM Conference. Ms. VanLowe is a 36-year resident of Fairfax County and looks forward to working together with members of the Panel to develop procedures that will set the foundational tone and tenor for the work of the Panel.

APPENDIX K

(One Fairfax Memo)



County of Fairfax, Virginia

MEMORANDUM

DATE: June 25, 2020

TO: Members of the Police Civilian Review Panel

FROM: Gentry Anderson
Management Analyst I, Office of the Independent Police Auditor

SUBJECT: The One Fairfax Policy and How the Police Civilian Review Panel Promotes It

The purpose of this memo is to inform the Police Civilian Review Panel (Panel) of the One Fairfax policy and how the Panel promotes the policy through its work. Additionally, there are three recommendations for the Panel's consideration to further promote One Fairfax.

One Fairfax:

One Fairfax is a social and racial equity policy jointly implemented by the Fairfax County Board of Supervisors and the Fairfax County School Board in 2017. The policy provides a framework based on equity for all decision-making in the county, ranging from transportation and land use to recreation and education. The goal of the policy is to ensure equitable access to opportunities and success regardless of an individual's race, gender, ability, or income.¹ The implementation of the policy has helped identify gaps and opportunities to enhance social and racial equity within the county.

The History

Efforts that eventually lead to the implementation of the One Fairfax policy started in the 1990's and focused on identifying inequities that could be addressed at the agency level. As time progressed, the issue was reviewed in broad scope with an institutional and structural focus to effectively target and confront racial and social inequalities.²

A report detailing an institutional analysis of the Fairfax County Juvenile Justice System was published in 2012 to address growing concerns of disproportionate minority contact in the juvenile justice system.³ The analysis showed that the issue of disproportionate minority

¹ Fairfax County Government, [Fairfax County Government]. (2017, November 21). *One Fairfax: Social and Racial Equity Policy* [Video] YouTube. https://www.youtube.com/watch?v=7TaqbUgpvcU&feature=emb_title

² One Fairfax. (N.D.) *Mileposts In the Fairfax Journey to Achieve Equity*. <https://www.fairfaxcounty.gov/topics/sites/topics/files/Assets/images/one%20fairfax/mileposts-to-one-fairfax-graphic.jpg>

³ Center for the Study of Social Policy. (2012). *Disproportionate Minority Contact for African American and Hispanic Youth: The Story Behind the Numbers and the Path to Action*. <https://www.fairfaxcounty.gov/topics/sites/topics/files/assets/documents/pdf/institutional-analysis-disporportionality-criminal-justice.pdf>

contact was a systemic issue that needed to be addressed and corrected by multiple agencies. At this time, there was also a shift in focus from the issue of disproportionality to the solutions of equity and opportunity.

The One Fairfax resolution was approved by the Board of Supervisors in July 2016, and it affirmed the county's commitment to racial and social equity and directed the implementation of a policy. In November 2017, the One Fairfax policy was approved by the Board of Supervisors. It requires that equity be considered in the planning and decision-making process at all levels of county government for the delivery of county services and programs. This includes equity in operations, delivery of services, implementation of programs, and engagement opportunities.

The Policy

The policy outlines 17 focus areas where equity can be promoted. These focus areas encompass all services delivered by the county such as economic and work force development, transportation, education, health, public safety, and criminal justice.

The policy highlights five strategies to achieve equity within the focus areas:

- Community Engagement: foster an open dialogue, promote inclusive participation, and break down barriers that limit participation
- Training: build skills to promote social and racial equity with a focus on implicit bias and institutional and structural racism
- Applying Equity Tools: authorize equity impact analyses and disparity studies to ensure the measure the county's progress in furthering social and racial equity
- Racial and Social Equity Action Plan: set goals and make plans and take action to promote one Fairfax
- Accountability Framework: publish data and performance measure to evaluate goal achievement

Fairfax County Government and Fairfax County Public Schools will work together to lead and coordinate the county's effort in equitable planning and decision-making. The policy specifically calls for county volunteer Boards, Authorities, and Commissions, such as the Panel, to "promote stakeholder engagement and input in support of equity informed planning and decision-making."⁴

The Policy in Practice

Upon the implementation of the One Fairfax Policy, the Board of Supervisors appointed Karla Bruce as Chief Equity Officer to lead the county's effort towards achieving the goals of One Fairfax. To ensure that the One Fairfax policy is being operationalized, multiple studies have

⁴ One Fairfax Policy.(2017, November 21)
<https://wcmtrain.fairfaxcounty.gov/topics/sites/topics/files/assets/documents/pdf/one-fairfax-policy.pdf>

been conducted to address inequities in opportunity, wellness, and health. A study facilitated by the Office of the Independent Police Auditor and conducted by the University of Texas at San Antonio is currently underway to examine the racial disparity in use of force incidents that occur within the county. The One Fairfax theme was integrated into the proposed countywide strategic plan which sets unified goals and vision for the future of Fairfax County.

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 certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity, and impartiality of the investigation. The Panel's mission and work promotes the One Fairfax policy specifically related to Focus Area 6 of the One Fairfax Policy and embodies the themes of access, accountability, and engagement.

Focus Area 6: A focus area documented in the One Fairfax policy that is directly related to the Panel's work is documented in Focus Area 6, which is defined in the policy as follows:

*“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 conducts 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, 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. The Panel's work specifically promotes the One Fairfax policy as encompassed by focus area 6.

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 available in English, Spanish, Korean, and Vietnamese allowing all members of the community, regardless of their native language, can 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 public recommendations for the FCPD's consideration. The Panel tracks the FCPD's response to the recommendations and status of their implementation to hold the FCPD accountable and keep the community informed of the Panel's progress on a matrix publicly available on the Panel's website. 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 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.

Recommendations on How the Panel Can Further Promote One Fairfax:

Enhanced Community Outreach: The Panel should consider bolstering community outreach efforts to provide information about the Panel's oversight responsibilities and work to enhance transparency and accountability within the FCPD. When conducting outreach, the Panel should consider partnering with entities with similar missions, such as the Communities of Trust and the Independent Police Auditor, to promote unity. The Panel should utilize well established networks and partnerships to reach different organizations and communities within the county, such as the Neighborhood and Community Service's Interfaith community. This could allow the Panel to tap into different communities where outreach has not yet been conducted.

Outreach amid the COVID-19 pandemic may look different than typical in-person outreach events. The Panel could host conference calls or WebEx meetings with different groups to hold virtual outreach events. This could be a more effective and efficient way to conduct outreach. Virtual outreach events could reach a broader audience, as attendees would not need to travel, find transportation, make childcare plans, or make other arrangements to attend outreach events. Conducting virtual outreach events could also be beneficial to Panel Members in the same ways. This recommendation coincides with the One Fairfax policy specific to eliminating barriers to participation and promoting access.

Panel Membership and Representation: Panel Members should advocate for the Board of Supervisors to appoint diverse members of the community to the Panel. Encouraging the appointment of individuals who reflect the great diversity in the county, would allow for more enriched and informed Panel discussions and better representation of the community. In addition, Panel Members could advocate for the Board of Supervisors to appoint individuals to the Panel who represent different regions of the county to promote equal geographical representation. Currently, the Panel does not have any members who reside in the Lee, Mason, Mount Vernon, or Sully magisterial districts.

Training: The Panel should continue to participate in training opportunities to learn best practices in the field of oversight and network with other oversight practitioners. In the past, Panel Members have attended trainings, webinars, and national conferences hosted by the National Association for Civilian Oversight of Law Enforcement (NACOLE). In addition, Panel Members should continue to receive training from the FCPD to understand current policies and procedures and regularly participate in “ride-alongs” with FCPD officers. In the past, the Panel has received presentations from FCPD representatives on topics such as implicit bias, recruiting and retention, and an overview of the investigation process. Panel Members have also participated in ride-alongs with FCPD officers to get a better understanding of the duties of front-line officers. Maintaining knowledge of current best practices within the field of civilian oversight and staying apprised of FCPD operations, policies, and training curriculum will benefit Panel Members when crafting recommendations to the FCPD.

APPENDIX L

(Preliminary Recommendations Memo)

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.


APPENDIX M

(Fairfax County Ad Hoc Police Practices Commission)



Final Report on Fairfax County Police Reform
Ad Hoc Police Practices Review Commission
Implementation Group
Fairfax County, Virginia
October 10, 2018





October 10, 2018

The Honorable Sharon Bulova, Chairman
Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, Virginia 22035

Dear Chairman Bulova:

We write to convey to you our independent assessment of the progress achieved by the County after evaluating over two hundred recommendations of the *Ad Hoc Police Practices Review Commission* (Commission) which were conveyed to the Board of Supervisors in October 2015.

In all, 179 of the 202 recommended actions (or 88 percent) are approved as recommended or as modified and are either in process of being implemented or are implemented. For example, full deployment of body-worn cameras (BWC) is approved in concept, but implementation is measured, as a pilot study is completed and funds for BWC acquisition are identified. Another example is the, as of yet, incomplete assignment of electronic control weapons or “Tasers” to each patrol officer, as is the case with guns. Compliance with the Police Department’s “all carry” policy will need Command’s continued attention.

Five recommendations (or 3 percent) are still under review, and 18 (or 9 percent) will not be implemented. The most notable recommendations not implemented involve information-sharing and transparency. Also notable, civilian oversight will be supported by Fairfax police internal affairs investigators, as the County believes independent civilian investigators are not allowed by state statute.

While not endorsing all the changes advocated by the Commission, Fairfax County embraced both the spirit and intent of the Commission’s recommendations. Significant Fairfax County Police Department (FCPD) reforms are underway that will increase police accountability, divert those who suffer from mental illness into treatment rather than incarceration, reduce use of force injuries and death, open public access to incident information, and engender renewed public confidence.

Regarding open access, the County’s Freedom of Information (FOIA) regulations and FCPD’s General Order need to be closely aligned and the circumstances where information is withheld must be carefully prescribed. While Virginia FOIA exempts certain law enforcement information from being released, the

County can limit the use of these exemptions. Not to do so risks a loss of the public's trust regained through these police reform initiatives.

Additional topics came to light subsequent to the Commission's October 2015 Final Report. We believe the following warrant County consideration, all of which are addressed further herein:

1. The Fairfax County Police Department (FCPD) should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel.
2. The public should be provided with an opportunity to comment and be heard on Auditor and Panel findings and recommendations.
3. The FCPD vehicle *Pursuit Review Committee* should be expanded to include civilian representation.
4. The Auditor's responsibilities should be expanded to include:
 - monitoring and reviewing investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any use of force (UOF) incident resulting in death or serious injury;
 - auditing the FCPD's use of BWCs and providing an annual report to the Board and the public setting forth the Police Auditor's findings and recommendations; and
 - participation on the FCPD UOF Technical Review and the Vehicle Pursuit Review Committees
5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF and other data now being collected in response to the Commission's recommendations.
6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident.

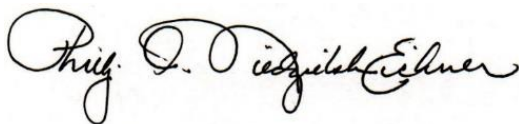
The report contributors are all former members of the Commission who, at your behest, continued our involvement as an informal "implementation group." We worked closely over the last three years with your Office, the Board of Supervisor's Public Safety Committee and the Police Department.

We acknowledge the work of the Policy & Directives Change Team charged by Police Chief Edwin Roessler to assess and implement the Ad Hoc Commission recommendations. The Change Team was commanded by Major Richard J. Perez and, later, by Captain Tonny Kim. The Change Team members are to be commended for their diligent and effective efforts.

We spent many hours working with this group of professionals and have only praise to offer for their competence, the seriousness with which they undertook their charge, their openness to the change promoted by the Commission and their embrace of a significant number of our ideas as we worked together on implementation. Chief Roessler coined the phrase "co-production," and we concur with this characterization of many of the changes incorporated into FCPD directives, with the *Use of Force General Order* being particularly notable.

Should you or the Board of Supervisors have any questions concerning the content of this report, please do not hesitate to let us know. We are honored to work so closely with the Board and FCPD on police reform and are proud to represent our community in the process.

Very truly yours,



/on behalf of...

PREFACE

This assessment was undertaken by former members of the *Ad Hoc Police Practices Review Commission* who have continued their involvement as an informal “implementation group” formed by Fairfax County Board Chairman Sharon Bulova. The collaborators in the production of this report are Phillip Niedzielski-Eichner, who Chaired the Use of Force Subcommittee; Mary Kimm, of the Use of Force, Communication, and Independent Oversight and Investigations Subcommittees; Randy Sayles, of the Use of Force Subcommittee; Dave Statter, of the Communication Subcommittee; Adrian Steel, of the Use of Force and Independent Oversight and Investigations Subcommittees; Shirley Ginwright, Chair of the Recruitment, Diversity and Vetting Subcommittee; and Marcus Simon, Chair of the Mental Health and Crisis Intervention Subcommittee. In addition to the overall monitoring of Fairfax County’s implementation of the Commission’s recommendation, we have individually or collectively been active in the review of and commenting on (a) the Police Department’s revisions to the Use of Force General Order; (b) the Department’s Release of Information, Records and Documents General Order; (c) the Department’s body worn camera pilot project design and policy; (d) the establishment of the Independent Police Auditor (IAB); and (e) the formation of the Citizen Review Panel (CRP) of which Randy Sayles and Adrian Steel are currently charter members; with Steel being the CRP’s inaugural chairman. Full professional biographies are provided in the Appendix.

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OVERVIEW

Fairfax County maintains an excellent police department, and we are fortunate to have high-caliber police personnel protecting us day-in and day-out. However, even the best organizations require renewal and reform to sustain high performance levels.

Often it is a use of force incident, with attendant widespread community concern, that will be a catalyst for action and generate calls for a review of a police department's policies and practices. Such an incident led the Chairman Sharon Bulova of the Fairfax County Board of Supervisors to form the *Ad Hoc Police Practices Review Commission* (Commission) in March 2015.¹

The Commission was tasked to assess the Fairfax County Police Department's overall performance against national best practices and offer recommendations for how a well-functioning department could achieve even higher performance levels. As it executed against this charge, the Commission indeed found areas where Fairfax County police practices and performance could be improved. The Commission also advocated for urgent action to strengthen public trust and confidence in the Department.

Forming a commission is a time-honored tool by public officials to delay action -- or avoid it altogether -- since there are always significant barriers to achieving change to deep-rooted organizational practices, traditions and culture. The Public Safety Committee of the Fairfax County Board of Supervisors, Chaired by Supervisor John Cook, and the Police Department, particularly Chief Edwin Roessler and his command leadership, are to be commended for ensuring that the Commission's work did not sit on the shelf gathering dust. Indeed, the County and Police Department have many policing reforms of which to be proud.

The Commission's work was augmented by a June 2015 Report Chartered by Police Chief Roessler and issued by the Police Executive Research Forum (PERF) entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*. Chief Roessler also committed to seek -- and then received -- accreditation for the Department by the Commission on Accreditation for Law Enforcement Agencies, Inc. (aka CALEA).

This *Final Implementation Report* provides an independent assessment of the progress achieved by the County after evaluating more than two hundred Commission recommendations over the past three years. While not endorsing all the changes advocated by the Commission, information-sharing and transparency being the most notable, Fairfax County policymakers and Police Department (FCPD) leadership embraced the spirit and intent of the Commission's recommendations.²

¹ The August 2013 shooting death of Mr. John Geer by a Fairfax County police officer was the catalyst for the Commission's formation. Mr. Geer was unarmed and standing in his doorway with arms raised when he was shot. The officer who shot Mr. Geer was successfully prosecuted. The investigation of the incident, however, took months to conduct with little information available to the public throughout.

² In summary, 179 of the 202 recommended actions (or 88%) are approved as recommended or as modified and are either in process of being implemented or are implemented; 5 (or 3%) are still under review; and 18 (or 9%) will not be implemented.

Significant reforms are underway that will increase police accountability, divert those who suffer from mental illness into treatment rather than incarceration, reduce use of force injuries and death, open public access to incident information, and engender renewed public confidence.

The numerous major reforms include the following:

1. **“Diversion First,”** which offers alternatives to incarceration for people with mental illness or developmental disabilities.
2. Revisions to FCPD’s **Use of Force General Order** to enshrine sanctity of human life as an organizing principle, with de-escalation as the strategy of first resort when confronted with a threat rather than the use of force. Also, a use of force lessons-learned committee, known as the *Use of Force Technical Review Committee*, is chartered and has been convened under the direction of the Police **Training Academy** Commander.
3. An **Independent Police Auditor** who reviews the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of death or serious injury cases.
4. A **Civilian Review Panel** that reviews the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of civilian complaints regarding “abuse of authority” or “serious misconduct” by a police officer.
5. An office of **Media Relations Bureau**, with civilian leadership and reporting directly to the Police Chief.
6. Revisions to the **Release of Information, Records and Documents General Order** providing for increased public visibility into the Department’s daily activities and performance, with a pre-disposition to disclose information, regardless of incident controversy. The revisions also establish that the names of officers involved in critical incidents, including officer involved shootings, will be disclosed within 10 days, with extension as needed to investigate if a credible threat to the officer exists.
7. Revisions to the policies governing **vehicle pursuit and the precision immobilization technique**, a method for stopping fleeing vehicles, that constrain their use and strengthen supervisory oversight; and
8. Recruitment of **high-caliber personnel that better reflect Fairfax County’s population diversity.**

A number of recommendations are approved but are still in process of being implemented. Of particular note are recommendations calling for deployment of body-worn cameras (BWC) and electronic control weapons (ECW) or “tasers.”

BWC deployment requires careful study and diligent attention to complex legal, privacy, operational and cost details. We commend the County for taking an appropriately measured response to meeting this recommendation by implementing a pilot BWC project. Video and audio data that captures in “real-time” police officer engagement with the public has the potential for profoundly changing law enforcement. The expectation is for this change to be positive. But the risks to individual privacy and,

perhaps paradoxically, to the loss of confidence in FCPD must be mitigated. Additionally, BWC technology and the associated data storage needs will have a substantial price tag that, if full deployment is approved by the Board, will require a few budget cycles to fully implement.

The Commission recommended full BWC deployment. We fully expect the pilot project to provide substantive insights that will strengthen the technology's effectiveness and privacy protections. We also note that, as was stated in a recent Independent Police Auditor public report that "...body-worn cameras may prove to be a valuable tool in identifying problematic behavior (based on race or otherwise) in the years ahead."³ We urge the Board, after due consideration of the results of the pilot project and with the opportunity for public participation, to implement the Commission's recommendation.

Furthermore, in order to ensure transparency and compliance with FCPD policy and directives, we recommend that the Independent Police Auditor be instructed by the Board of Supervisors to audit the FCPD's use of BWCs (including random review of BWC footage as PERF has recommended) and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.

Regarding ECWs, the Commission recommended that all uniformed officers in enforcement units be mandated to "...carry an ECW on their duty belt (or elsewhere on their person) while on patrol." The rationale for this recommendation is that ECWs are a less-lethal use of force and can be an effective alternative to a firearm. FCPD instituted an ECW "all carry" policy, but relies on shared use of ECWs across three shifts. Further, anecdotal observation suggests the "all carry" policy is not yet fully adhered to by patrol officers.

As shared use can lead to equipment reliability and maintenance issues, FCPD plans to equip each officer with his or her own ECW. Like BWCs, this will be an additional significant expenditure that will need to be implemented over several budget cycles. In the interim, Commanders are still expected to ensure that all officers are trained in ECW use and that substations maintain sufficient operational ECWs to equip each police officer during every shift.

Vehicle pursuit policy is now more restrictive, but does not – as the Commission recommended -- limit officer discretion to pursue only fleeing vehicles where reasonable suspicion exists that a violent felony has been committed. A significant refinement is that supervisors are more explicitly required to assume supervisory control of any vehicle pursuit as soon as he/she can do so safely and to independently confirm that the need for immediate apprehension outweighs the risks of potential harm arising from the pursuit.

Importantly, the Police Training Academy's Emergency Vehicle Operations Center has reviewed every pursuit on a monthly basis since October of 2017. Also, per a new Pursuit General Order, the Academy held its first in-depth pursuit review with a newly chartered *Pursuit Review Committee*. The Committee recently reviewed seven randomly selected pursuits for lessons that can be learned and translated into improved training and tactical operations.

³ A *Review of the Disparity in FCPD Use of Force Incidents by Race in 2015* (p. 15), Fairfax County Independent Police Auditor, July 25, 2018 [see: <https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/oipa%20disparity%20uof%202015.pdf>]

However, consistent with openness challenges we believe remain for FCPD overall, we are concerned that the Department is not providing robust public reporting on vehicle pursuits. Transparency and accountability will be of paramount importance once the new Pursuit General Order becomes effective in 2019. Under this Order, a pursuit can be justified only if the “immediate need” for apprehension outweighs the danger the pursuit poses to the public, officers, and offender, including passengers. Detailed data on pursuits will help validate that this FCPD policy is being followed and is working as expected.

All Commission recommendations do not need to be implemented for police reform to be a success. Indeed, we value the extent to which the County leadership thoughtfully and methodically considered the Commission’s recommendations and have worked to implement the vast majority of them.

Acknowledging this success, we believe, that more is required by FCPD to achieve the level of transparency and information sharing to meet the “predisposition to release information” standard the Police Chief sets in revisions to the *Release of Information, Records and Documents General Order*.

While FCPD has valid reasons for withholding information that might undermine an active investigation or for public safety reasons, it also has an obligation in a free society to be predisposed toward releasing information; *i.e.*, the default is release and withholding must be justified. There is no more significant lesson to be learned from Mr. Geer’s shooting and the subsequent months of County silence on the status of the investigation.

In our view, the County’s FOIA regulations and FCPD’s General Order need to be closely aligned and the circumstances where information is withheld from the public must be carefully prescribed. Virginia FOIA broadly exempts certain law enforcement information from being released. The County can, however, limit the use of these exemptions and, when applying them, do so consistently. The County risks losing the public’s trust, which it has so diligently and effectively sought to regain through implementing the Commission’s recommendations, without more clearly delineating when and why information can be withheld.

On one hand, as an example of its commitment to openness, Fairfax County police released -- after three months -- dashboard camera digital footage of a November 2017 shooting by the U.S. Park Police of McLean resident Bijan Ghaisar following a pursuit on the George Washington Memorial Parkway. While not an FCPD investigation, Police Chief Roessler noted that the video “does not provide all the answers,” but indicated he released the video in an effort at transparency.

On the other hand, as a contrary example, significant information – including dashboard camera digital footage – is being withheld from public release because of litigation regarding the December 2017 vehicle pursuit by Fairfax County Police on Centreville Road that resulted in , which ended in an accident that injured six family members. As noted earlier, the litigation rationale was used to withhold information for months following the shooting of Mr. Geer, a key error that greatly impacted the image of the County and FCPD.

With regard to the Commonwealth Attorney’s Office (CWA), the Board should specifically request that the CWA formally evaluate the Commission’s recommendation that two independent investigators be hired to support criminal investigations within the scope of the Independent Police Auditor. The Commission believed that the two independent CWA investigator positions would further promote

impartiality and objectivity in Major Crimes Bureau investigations. The matter has not received Board consideration, as these positions were not requested by the CWA.

Additional topics came to light as the Commission's recommendations were evaluated and implemented. We believe the following warrant County consideration:

1. FCPD should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel. The Commission assumed, but did not explicitly recommend, this expectation. We understand that FCPD does not believe it is obligated to respond. Only the Board can clarify this difference of understanding and should do so if it expects the Independent Police Auditor and the Civilian Review Panel to establish and have credibility within the community.
2. The Board should establish a process that provides the public with an opportunity to comment and be heard on Auditor and Panel findings and recommendations, including the FCPD's responses to the findings and recommendations. Public participation in the process is critical to building and ensuring community trust in the FCPD and the independent oversight established by the Board.
3. The Auditor should be authorized to monitor and review investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any UOF incident resulting in death or serious injury.
4. In order to ensure transparency and compliance with FCPD policy and directives, the Auditor should be instructed by the Board to audit the FCPD's use of BWCs and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.
5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF and other data now being collected in response to the Commission's recommendations. The data should be updated on a more regular basis than annually. As important, the data should be subjected to analysis and a process put in place that engages the public to address any issues the analysis may bring to light. Finally, the monitoring program should fully leverage the capacities of the Auditor and Civilian Review Panel.
6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident. Rather than be perceived as prematurely justifying a police response, a public-trust building response would be to indicate that the incident will be thoroughly investigated and related information will be released as soon as possible.⁴ Also, because suspects are innocent until proven guilty, neutral language is also the best policy when discussing the basis for a suspect's arrest.

⁴ An August 10, 2018 Report by the Independent Police Auditor addressed this issue of a neutral public posture. The Report stated: "The chief's quick defense of his officers' actions certainly could have made it difficult for an IAB investigator to conclude that those same officers acted inappropriately....While it is understandable that Chief Roessler wanted to defend his officers following this controversial situation, concern that his bold statements defending those officers would prohibit a thorough review is also understandable." See <https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/oipa%20public%20report%2010-28-17.pdf>.

7. The newly chartered FCPD vehicle *Pursuit Review Committee*, directed to be established under a new *Pursuit General Order* to review case examples for lessons learned, should be expanded to include civilian representation, as is the case for the UOF Technical Review Committee. Both Committees should include the Auditor as a member.

In closing, sustained high performance by organizations requires a commitment to continuous improvement and to ensuring that policies and practices evolve to meet the ever-changing world in which we live. The challenges to sustained reform are both daunting and are not to be underestimated. Sustaining and “institutionalizing” the changes in the County’s police practices of the magnitude underway requires continued rigorous commitment to reform by the Police Chief, Commanders and Supervisors. As important will be the continued buy-in by rank-and-file police personnel and continued community participation, monitoring and oversight.

INTRODUCTION

This Final Implementation Report supplements the County’s final progress report on implementing the Commission’s recommendations⁵ and represents an independent assessment of where Fairfax County police reform stands today, nearly three years since the October 2015 delivery of the Commission’s Final Report to the County.

The authors are all former members of the Commission who, at the request of Chairman Bulova, have continued their involvement as an informal “implementation committee.” Each member contributed to the recommendation implementation process.⁶ The authors’ involvement ranged from “co-producing” FCPD’s revised Use of Force policy⁷ to advising the FCPD on the deployment of BWCs as a pilot project.

The history section provides background on the Commission’s formation and discusses the progress made to date implementing its recommendations. The implementation section provides a high-level summary of progress and closes with observations, both about the barriers to achieving full implementation and lessons learned that might help sustain the significant progress made since 2015.

This Final Implementation Report is a supplement to the Commission’s 2015 Final Report and will only broadly reference its discussion, findings and recommendations. While the implementation progress report maintained by the County will also be referenced, its level of detail is also not captured in this Report.

In short, the Commission’s original report and the County’s implementation progress report will be required reading by those who desire a more granular background understanding of the Commission’s work and the subsequent 30-month implementation period.

⁵ See: <https://www.fairfaxcounty.gov/policecommission/progress-report>. The final progress report is posted and will not be updated further.

⁶ See Appendix A for a listing of this Final Implementation Report’s authors and their respective backgrounds.

⁷ “Co-production” is a term coined by FCPD’s Chief Roessler to characterize the active and detailed citizen involvement in, for example, drafting the revised General Order 540 on Use of Force.

HISTORY

The Commission was chartered in March 2015. Commissioners were selected based on their law enforcement, legal, academic, media, and community service experiences. In addition to the 40 appointed Commission members, 30 other County residents volunteered to augment -- as non-voting members -- the Commissioners on five subcommittees.

These subcommittees were (1) Communications; (2) Recruitment, Diversity and Vetting; (3) Mental Health and Crisis Intervention; (4) Use of Force; and (5) Independent Oversight and Investigations.

The Commission was tasked with engaging in an open and transparent process to review existing policies, practices and programs regarding police-involved incidents, with emphasis on the use of force; police-community relations; and public release of information. The Commission was expected to recommend changes that would further the goals of maintaining a safe community, ensuring a culture of public trust, and ensuring that County policies provide for the fair and timely resolution of police-involved incidents. As the Commission executed against this charge, it identified both areas for improvement and mechanisms the Commissioners believed would strengthen the public's trust and confidence in the Department.

The August 2013 shooting death of John Geer by a Fairfax County police officer was the catalyst for the Commission's formation. Mr. Geer was unarmed and standing in his doorway with arms raised when he was shot. The officer who shot Mr. Geer was prosecuted and pleaded guilty to manslaughter. The investigation of the incident, however, took months to conduct with little information available to the public throughout.

Also informing consideration and discussion of law enforcement reform at the time was the February 8, 2015 death of an inmate, Ms. Natasha McKenna, while in the Fairfax County Adult Detention Center in the custody of the Sheriff's Department. Ms. McKenna, a woman who had experienced serious mental illness for much of her life, died several days after being subjected to four ECW cycles as Sheriff's Deputies attempted to transport her to Alexandria. However, since the Commission's review was limited specifically to FCPD's use of force policies and practices, the Commission did not address the incident in its Final Report.

More broadly, the Commission did not address practices of the Fairfax County Sheriff's Office or those of the Commonwealth's Attorney (CWA), as both are stand-alone constitutional offices that are not directly accountable to the Board of Supervisors.

While the factors in Ms. McKenna's death were not addressed in the Commission's findings or recommendations, the circumstances of her death did inform the Commission's work, particularly with regard to the use of ECWs. The Commission believed that the Sheriff's Office should consider any recommendations relevant to the Office's responsibilities and authorities in a timely and public manner. The Sheriff's Office did embrace recommendations leading to the implementation of Diversion First.

Regarding the CWA, the Commission expressed the position that County law enforcement would benefit from a review of the respective roles of -- and inter-relationships among -- FCPD, the Office of the County Attorney, and the Office of the CWA regarding the management of -- and communication about -- use of force incidents.

The Commission and its subcommittees held 40 meetings over six months, all of which were open to the public. Additionally, the Commission held two public hearings in May and September 2015 at which dozens of individuals offered testimony and shared their perceptions of law enforcement in Fairfax County, which included concerns about the Police Department's use of deadly force and lack of transparency and accountability.

In addition to the multitude of reports, documents and policies reviewed and a number of presentations of policies and practices by FCPD officials, the Commission and its subcommittees solicited presentations from outside experts on topics such as use of force, crisis intervention training, the psychology of an officer-involved shooting, civilian oversight of police departments, and other relevant topics.

The Commission heard, for example, from the Executive Director of the Police Executive Research Forum (PERF), a former FBI agent and behavioral science consultant, and a National Association for Civilian Oversight of Law Enforcement board member.

County staff from multiple departments supported the Commission's work, including the Police Department, the Sheriff's Office, the Office of Public Affairs, the Office of the County Executive, and the Office of the Board Chairman. The Commission also heard from the CWA.

The Commission delivered its Final Report to the Board of Supervisors on October 8, 2015, setting forth 202 recommendations that the Commission believed would bring needed reform to Fairfax County and the Fairfax County Police Department and would mitigate the then-existing crisis of public confidence.⁸

The Commission recommendations are summarized as follows:

- **Communications**: The Commission made 52 communications recommendations, finding that Fairfax County should improve and update policies, procedures, personnel and tools to state-of-the-art best practices and effect a change to the FCPD culture to embrace a predisposition to disclose information.
- **Recruitment, Diversity and Vetting**: The Commission made 14 recruitment, diversity and vetting recommendations, finding that FCPD should expand current recruitment efforts with the goal of increasing diversity, establish diversity goals for command staff and train recruits on effects of implicit bias, and reduce the length of time needed to conduct background investigations. The Commission also recommended that the Board of Supervisors should ensure FCPD pay is competitive.
- **Mental Health and Crisis Intervention**: The Commission made 26 mental health and crisis intervention recommendations, finding that Fairfax County should fully implement the Memphis

⁸ The Final Report can be found at:

<https://www.fairfaxcounty.gov/policecommission/sites/policecommission/files/assets/documents/pdf/adhoc-final-10.8.15.pdf>.

Model for Crisis Intervention Teams (CIT) which includes two main goals: improving the safety of officers and persons with mental illnesses and redirecting individuals with mental illnesses from the judicial system into the health care system. Full implementation would require, at a minimum, the opening of strategically located crisis assessment sites, mobile crisis units, and the creation of a mental health court docket by the judiciary.

- **Use of Force:** The Commission made 68 use of force recommendations, finding that FCPD policies and practices must continue to reinforce the values of policing in a democratic society, such as the sanctity of human life and the need for robust and transparent reporting of information and collection and analysis of data, particularly as it relates to use of force by police. A more unified, clearer and more concise use of force policy is warranted, as is constant attention to FCPD's policing culture, limits on the use of SWAT, and introduction of police-worn technologies.
- **Independent Oversight and Investigations:** The Commission made 42 independent oversight and investigation recommendations, finding that Fairfax County should establish an Office of Independent Police Auditor and a Civilian Review Panel. The Auditor would determine the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of Death or Serious Injury Cases conducted by the Internal Affairs Bureau and all Use of Force investigations by IAB which are the subject of a public complaint made to the Police Department or the Auditor. The Civilian Review Panel would review the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of civilian complaints regarding "abuse of authority" or "serious misconduct" by a Fairfax County police officer.

The Commission's review was augmented by the June 2015 Report issued by PERF entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*. PERF found that "...FCPD is doing a commendable job and meeting or exceeding national best practices," but also offered a number of recommendations for improvements, all but one of which were endorsed by the Commission, Police Chief and Board. The exception pertained to the termination of the use of the precision immobilization technique (PIT) for terminating a vehicular pursuit.

As noted in the Introduction, the County has periodically updated a progress report that lists each of the Commission's recommendations in a tabular format. The most recent posting will not be updated again and is the last progress report the County will generate.

IMPLEMENTATION

This section describes the process by which the County has considered and implemented the Commission recommendations. A high-level summary of progress is also offered by topical area. The implementation section closes with observations about the barriers to achieving full implementation.

A. Process

Upon receipt of the Commission’s Final Report in October 2015, the Board of Supervisors’ Public Safety Committee (PSC) assumed responsibility for reviewing the Report and assessing the Commission’s recommendations. The PSC, which is chaired by Supervisor John Cook and is composed of all Board members, held a series of meetings for these purposes. Members of the Commission subcommittees as well as various stakeholders participated in this policy review.

The PSC generated draft items for Board deliberation and action. With few exceptions, which will be detailed, the recommendations were approved by the Board. The Board assigned FCPD responsibility for implementing the majority of the approved recommendations, with oversight provided by the Deputy County Executive for Public Safety.

As noted earlier, various members of the Commission participated in a policy “co-production” process⁹ – particularly with respect to the recommendations on communications, diversion first, use of force and independent oversight. Other co-production initiatives focused on body worn cameras, pursuit and vehicle stopping techniques, and police recruitment and training (under the aegis of the Communities of Trust).¹⁰

B. Progress

This progress summary is organized according to the topical areas addressed by the Commission. Each discussion includes a table conveying the total number of recommendations for the topical area and how the recommendations are dispositioned according to the decisions and actions taken by the County, as follows:

1. Adopted and implemented; or adopted, with implementation still underway (“implemented”)
2. Modified before being implemented (“implemented, with modifications”)
3. Assessment of recommendation is still underway
4. Not adopted (“not implemented”)

⁹ Co-production is a term coined by the Chief of Police to describe a joint effort by FCPD and community representatives to craft revisions to FCPD policies.

¹⁰ In January 2015, Chairman Bulova created the *Communities of Trust Committee* to advance collaboration, partnerships, and outreach between public safety agencies and the communities they serve. The Committee consists of a diverse citizen group focused on strengthening and building positive relationships. [See: <https://www.fairfaxcounty.gov/police/chief/messages/communitiesoftrustcommittee>]

COMMUNICATIONS

The Commission advocated in strong terms for building and sustaining public trust and confidence in FCPD by instituting information-sharing reforms to include timeliness, completeness and transparency.

Table 1 reflects that the County adopted many Commission recommendations regarding communications, but also rejected others, some of which we believe to be significant.

Table 1. Communications Recommendation Implementation

| Total | Implemented | Implemented (with Modifications) | In Progress | Under Review | Not Implemented |
|-------|-------------|-------------------------------------|-------------|-----------------|--------------------|
| 52 | 36 | 7 | 4 | 1 | 4 |

Implemented

- The majority of the communication-related recommendations are approved by the Board and are either already officially implemented or in process of being implemented.
- The most significant change to date on communications is the hiring a civilian and highly qualified public affairs professional to serve as the Media Relations Bureau (MRB) director, who reports directly to the Police Chief.
- The policy is now established that the names of officers involved in critical incidents, including officer involved shootings, will be disclosed within 10 days, allowing for extension of that time as needed to investigate a credible threat to the officer involved.
- FCPD's *Release of Information, Records and Documents General Order* is completed, approved and operational and should engender agency-wide culture changes, including the continuous declassification of information; shortening the time it takes to release information about officer-involved shootings; and public dissemination of demographically organized crime statistics.
- We are encouraged by the Police Chief's approval of recommendations to create a culture of transparency at FCPD by applying law enforcement best practices and adopting a culture that is predisposed to disclose information rather than withhold it. If implemented as envisioned by the Commission, information-sharing policies and processes will result in more transparent, timely and culturally sensitive information releases.

Under Review

- The Board of Supervisors is still considering as part of its annual legislative review whether to revisit FOIA laws with an eye toward expanding instead of limiting the public release of information related to police-involved shootings and other police practices and procedures.

Not Implemented

Several recommendations will not be implemented, at least at the scale and scope advocated by the Commission.

- The Commission called upon the Board of Supervisors and County Executive to revisit the County’s implementation of the Virginia FOIA provisions with an eye toward eliminating the blanket use of exemptions for public release of information related to police-involved shootings and other official police activities. To our knowledge, FCPD intends to continue to apply the allowed for exemptions at the discretion of the Police Chief, without further clarifying the circumstances that warrant the withholding of such information.
- The Commission recommended releasing actual police reports, with redactions as may be required. FCPD will only provide report summaries of felonies.
- The called for release of information about all incidents was not implemented due to technology and practical considerations. As such, the MRB releases information about a small percentage of incidents. FCPD declined to clarify criteria on what information would be released, *e.g.*, reportable uses of force and pursuits. As a result, the public will not know what information will be released and will not be informed about most police activity.
- FCPD has declined to make closed case files available or to provide criteria for possible declassification.
- 24-7 information staffing will not be implemented, although the MRB has reorganized itself and assigned specially trained officers to allow for 24-7 coverage as incidents require.

RECRUITMENT, DIVERSITY AND VETTING

The Commission believed that police officer recruitment and selection are two keys to building and sustaining community trust in FCPD by ensuring that its workforce is reflective of the diversity of the Fairfax County population, including race, gender, language, life experience, and cultural background. The Commission therefore encouraged FCPD to expand its recruitment efforts to grow diversity to match the County population; establish diversity goals for Command staff; train recruits on effects of implicit bias; reduce the length of time needed to conduct background investigations; and ensure that FCPD pay is competitive. As Table 2 captures, the County adopted all but one of the Commission recruitment, diversity and vetting recommendations.

Table 2. Recruitment, Diversity and Vetting Recommendation Implementation

| Total | Implemented | Implemented (with Modifications) | In Progress | Under Review | Not Implemented |
|-------|-------------|----------------------------------|-------------|--------------|-----------------|
| 14 | 12 | 1 | 0 | 0 | 1 |

Implemented

The Commission recruitment and diversity-related recommendations are approved by the Board. These include building recruitment-oriented partnerships with key segments of the Fairfax County community, such as interfaith organizations and School Career Centers; expanding the Explorer and Cadet programs to include a more diverse pool of participants; developing referral incentives for current employees; training recruitment and selection officers about implicit bias; creating a diverse Selection Review Committee that includes community leaders; and increasing resources to reduce length of time required to conduct background investigations and polygraphs. The officer selection process should be more rigorously attentive to transparency, fairness and equity. Finally, the Board is expected to continue to ensure the competitive salaries and benefits needed to secure and maintain a diverse workforce.

Not Approved or Implemented

The County will not seek to enter into recruitment agreements with Cadets.

MENTAL HEALTH AND CRISIS INTERVENTION

The County has adopted numerous Commission recommendations with regard to mental health and crisis intervention. Police officers have increasingly become the first responders when a citizen is experiencing a mental health crisis. Because of the historical interrelationship of such emergencies and use of force incidents, the Commission recommended de-escalation techniques and the diversion of individuals who are experiencing such crises into treatment rather than incarceration and prosecution.

As Table 3 reflects, the County adopted the Commission the preponderance of the recommendations regarding mental health and crisis intervention.

Table 3. Mental Health and Crisis Intervention Recommendation Implementation

| Total | Implemented | Implemented (with Modifications) | In Progress | Under Review | Not Implemented |
|-------|-------------|-------------------------------------|-------------|-----------------|--------------------|
| 26 | 8 | 2 | 13 | 2 | 1 |

Implemented

- Fairfax County is fully implementing the “Memphis Model” for mental health crisis intervention. Known as "Diversion First," the initiative has two main goals: improving the safety of officers and persons with mental illnesses, and redirecting individuals with mental illnesses from the judicial system into the health care system.
- Instead of incarceration, the Fairfax-Falls Church Community Services Board now operates the Merrifield Crisis Response Center (MCRC) where police are able to transfer custody of nonviolent offenders who may need mental health services to a police officer or deputy sheriff who are trained in crisis intervention (CIT). In less than a year, Fairfax County went from having a limited diversion process to launching MCRC, mostly by leveraging existing resources.

- A team of law enforcement officers are based in the MCRC 24 hours a day, seven days a week to accept custody of a person experiencing a crisis so that the patrol officer can get back on the street quickly. Co-locating Fairfax County Police Officers and Fairfax County Deputy Sheriffs in this setting has set a countywide precedent of collaboration.
- Though not yet fully implemented, hundreds of people experiencing a mental health crisis have been transported to the Merrifield Crisis Response Center where police are able to transfer custody of nonviolent offenders needing mental health services rather than incarcerate them.
- CIT training is aimed at changing the way law enforcement and the judicial system interact with people who have intellectual or developmental disabilities. Fairfax County police officers and deputy sheriffs receiving 40 hours of state-certified training to learn about the challenges of living with a mental illness and how to de-escalate crisis situations, both in the community and in the jail. 100% of all dispatchers receive at least eight hours of CIT training.
- CIT trained public safety personnel are empowered to work proactively to help mentally ill persons obtain treatment and take other steps to manage their illness, diverting them from the criminal justice system and the courts.
- The County is deploying the Fairfax-Falls Church Community Services Board (CSB) Mobile Crisis Unit (MCU) to strategic locations in Fairfax County. The MCU provides emergency mental health programming and on-scene evaluation, treatment, and crisis intervention. One MCU is deployed and a second will soon be added to further the county's capacity in the field to provide emergency mental health services.
- The BOS, CSB, Judiciary, General Assembly, and Sheriff's Office are collaborating to implement a community-wide system of care overhaul using the national initiative known as "Stepping Up." FCPD maintains a public outreach program and materials to increase public awareness.
- A mechanism has been devised for oversight of mental health/substance use/justice services — *i.e.*, metrics for success are being devised and pertinent supporting data are being collected to effectively measure the progress and impact of CIT programs.

Under Review

- Fairfax County is still evaluating the recommendation to increase language cultural competency to better serve non-English speaking justice-involved individuals.
- While approved for partial funding, full implementation of the opening of strategically located crisis assessment sites, mobile crisis units, and the creation by the judiciary of mental health adult and juvenile court dockets will require future budgetary considerations.

Not Implemented

- Mental Health Unit officers will not wear civilian clothing and use unmarked during the course of their duties to avoid unintentionally escalating a mental health crisis.

USE OF FORCE

The Commission found that FCPD use of force policies should be consolidated, clearer and more concise, and reinforce the sanctity of human life and constitutional limits of policing in a democratic society. Further, the Commission called for reforms related to equipment, practices and culture and increased accountability in the use of SWAT.

As Table 4 reflects, the County adopted a significant majority of the Commission recommendations regarding UOF policies, programs and practices, but also rejected several of them.

Table 4. Use of Force Recommendation Implementation

| Total | Implemented | Implemented (with Modifications) | In Progress | Under Review | Not Implemented |
|-------|-------------|-------------------------------------|-------------|-----------------|--------------------|
| 68 | 49 | 6 | 5 | 1 | 7 |

Implemented

- Specific changes to FCPD UOF policies and practices are now incorporated, and officers are being trained and evaluated against these updated standards and expectations. The revised policy raises the bar on the permissible use of force by requiring that it not only be “reasonable” but “objectively reasonable.” “Objectively reasonable” means that another police officer, if standing in the shoes of the officer applying force, would also reasonably perceive the need to apply a comparable level of force in the same circumstance. The revised policy also reinforces a measured use of force by resorting, where feasible, to first use of less-lethal and non-lethal weapons, such as the ECW.
- Other approved changes to FCPD practices address the training of officers in the use of firearms; incorporate into police officer basic and in-service skill development the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force, as well as crisis-intervention; direct the design of threat assessment checklists for planning of SWAT and other high-risk operations; require the conduct of post-incident reporting and lessons-learned analysis; direct the collection and analysis of incident data; specify when medical treatment is to be provided; strengthen community policing; direct how to work with vulnerable populations (such as children and the elderly); promote a “duty-to-intervene” organizational culture; and maintain “hire-to-retain” assessments of officers’ fitness to serve.
- One of the most far-reaching Commission UOF recommendation is to deploy BWCs for use by all police officers and SWAT members. These cameras are to complement the dashboard cameras now mounted in each Fairfax County police patrol vehicle. While a potential aid to criminal prosecution, a BWC’s equally important contribution is to foster greater transparency and the accountability of all parties during the interactions of the police with the public. The County is methodically evaluating the potential use of body worn camera technology, including conducting a pilot project that deployed cameras in three of the County’s nine magisterial districts. Key considerations are legal and operational protocols, privacy, data security and cost.

- We urge the Board, after due consideration of the results of the pilot project and with the opportunity for public participation, to implement the Commission's recommendation.
- Furthermore, in order to ensure transparency and compliance with FCPD policy and directives, we recommend that the Independent Police Auditor be instructed by the Board of Supervisors to audit the FCPD's use of BWCs (including random review of BWC footage as PERF has recommended) and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.
- Vehicle pursuit policy is now more restrictive, but does not – as the Commission recommended -- limit officer discretion to pursue only fleeing vehicles where reasonable suspicion exists that a violent felony has been committed. A significant refinement is that supervisors are more explicitly required to assume oversight of any vehicle pursuit as soon as he/she can do so safely and to independently confirm that the need for immediate apprehension outweighs the risks of potential harm arising from the pursuit. Further, the Police Training Academy's Emergency Vehicle Operations Center has reviewed every pursuit on a monthly basis since October of 2017. Also, per a new *Pursuit General Order*, the Academy held its first in-depth pursuit review with a newly chartered *Pursuit Review Committee*. The Committee recently reviewed seven randomly selected pursuits for lessons that can be learned and translated into improved training and tactical operations. However, we are concerned about continued lack of public transparency regarding the vehicle pursuits undertaken by police officers.
- After a Departmental study and review by the Board, the precision immobilization technique, which uses a police vehicle to end a pursuit, will continue to be a permitted use, but only by officers who have been trained and achieved a demonstrated competency in its use.
- The demographic data about the suspects in all use of force incidents and in-custody deaths will be collected and publicly reported for each incident: race, gender, age; any indicators of homelessness and of mental illness and CIT response; any previous involvement with FCPD; the type of weapon, if any, in the suspect's possession; police use of force; and resulting death/injury.
- Data will be collected and publicly reported online for all uses of force that result in death specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior instances of use of force by the officer(s) involved and determination of appropriateness; and (c) opportunities for training.
- Timely and consistent information will be reported for all officer involved shootings and lethal incidents, to include a narrative of the incidents and aftermath, updated in real time, including all UOF events that result in death or serious injury, not just shootings.
- Data will be collected and an annual statistical report will be published that covers all stops, frisks, citations, arrests, and use of force by district station and magisterial district -- including the race, gender, and ethnicity of the individual involved and note whether the suspect is homeless and/or if a mental health crisis is a factor. The data will include the race, gender and ethnicity of the FCPD officer involved and whether the interaction was initiated by FCPD or by the suspect. The outcome of each incident will be documented and regularly reported to the Board and the public, with the data posted online.

- The FCPD UOF Technical Review Committee, which includes civilian representation, is reconstituted to review selective use of force events, to include the decision to employ UOF, use of de-escalation and alternatives, compliance with law and regulations, as well as administrative, training, supervisory and tactical issues.

Under Review

- FCPD and the CWA are still evaluating whether drug and steroid testing should be required for police officers involved in incidents that result in death or serious injury. The tests should be conducted as soon as possible after the incident but not longer than the time after the incident that drugs or steroids can be detected.

Not Implemented

- Because of privacy concerns, the County will not, on a blanket basis, release disciplinary action information regarding a violation of the UOF policy in a police officer-involved shooting.
- Out of operational concern, the County will not mandate that all detectives and plainclothes officers carry an ECW in their vehicles when on duty.
- The term "excited delirium" has been cleared by the County's medical officer as a medically and physiologically descriptive term and therefore continues to be maintained in the Use of Force General Order 540.
- Testing officers involved in serious use of force incidents for drugs and steroids will not be mandatory.
- A legal advisor position within FCPD will not be established.
- Finally, the Board of Supervisors will not review the Police Chief's determination in lethal UOF cases and go on record with approval or disapproval of the action.

INDEPENDENT OVERSIGHT AND INVESTIGATIONS

The Commission found that civilian oversight promotes public trust and confidence in FCPD, particularly when the use of force by a Fairfax County police officer leads to death or serious injury or with regard to complaints regarding "abuse of authority" or "serious misconduct."

Table 5 reflects that the County adopted the key set of the independent oversight and investigations recommendations, but also rejected a few of them.

Table 5. Independent Oversight and Investigations Recommendation Implementation

| Total | Implemented | Implemented (with Modifications) | In Progress | Under Review | Not Implemented |
|-------|-------------|-------------------------------------|-------------|-----------------|--------------------|
| 42 | 22 | 14 | 0 | 1 | 5 |

Implemented

- The County approved and implemented Commission recommendations to establish an Independent Police Auditor and a Civilian Review Panel.
- The Board established the position of Independent Police Auditor on September 20, 2016. After an extensive search process, the Board appointed the Auditor in April 2017.
- The Civilian Review Panel was established by the Board on December 6, 2016. The nine members of the Panel were appointed by the Board on February 28, 2017, after a selection process which provided all interested persons and organizations with the opportunity to nominate individuals for the Panel. The Panel drafted bylaws which were approved by the Board, with modifications, on July 11, 2017, and accepted by the Panel on August 3, 2017.
- The Commission assumed that FCPD would formally respond to recommendations from the Auditor and Civilian Review Panel. We understand that FCPD does not believe it has an obligation to do so.
- The Auditor and Panel both have websites with links to complaint forms for use by the public.

Under Review

- The recommendation that the CWA's Office be funded to hire two independent investigators to support criminal investigations within the scope of the Independent Police Auditor has not yet been acted upon. These positions will not receive Board consideration unless requested by the CWA.

Not Implemented

- The Board did not appoint the Auditor to a fixed term of 2 to 5 years. Virginia Code requires that appointments to positions such as that of the Auditor be at will, *i.e.*, the appointment can be terminated with or without cause.
- Further, it is not clear under the Virginia Code whether the Board has the discretion to delegate authority to non-police personnel to conduct criminal investigations. The Auditor will, however, have full access to completed criminal investigations conducted by the Major Crimes Bureau (MCB) for the CWA's Office. The Auditor will also monitor and review IAB investigations within its scope and can request that FCPD provide additional information and materials as may be needed to ensure the thorough completion of administrative investigations.
- Because of similar concerns regarding delegation of authority, the Civilian Review Panel will not investigate complaints, but will instead hold public meetings (rather than public hearings) to review FCPD investigations and will not accept evidence or receive testimony at those public meetings held to review an investigation. The complainant can appear at such meetings to state the reasons for the request for review and can answer the Panel's questions, and representatives of FCPD will appear to review and answer questions about their investigation. The FCPD will conduct any further investigation that the Panel deems necessary.
- Finally, the Board did not approve the Commission's recommendation that an Ad Hoc Police Practices Review Commission be established every five years.

IMPACT OF RECOMMENDATIONS NOT APPROVED

All Commission recommendations do not need to be implemented for the County to be able to declare police reform a success. Indeed, we value the extent to which the County leadership thoughtfully and methodically considered the Commission's recommendations.

We do believe, however, that more is required of FCPD to achieve the level of transparency and information sharing required to meet consistently the "predisposition to release information" standard the Police Chief sets in revisions to the Release of Information, Records and Documents General Order.

On one hand, as an example of its commitment to openness, Fairfax County police released -- after three months -- dashboard camera digital footage of a November 2017 shooting by the U.S. Park Police of McLean resident Bijan Ghaisar following a pursuit on the George Washington Memorial Parkway. While not an FCPD investigation, Police Chief Roessler noted that the video "does not provide all the answers," but indicated he released the video in an effort at transparency.

On the other hand, as a contrary example, significant information -- including dashboard camera digital footage -- is being withheld from public release because of litigation regarding the December 2017 vehicle pursuit by Fairfax County Police on Centreville Road, which ended in an accident that injured six family members.

FOIA provides the County and FCPD overly broad and categorical discretion to withhold police use of force and police-involved shooting incident-related digital data from cameras, documents and other information. FCPD will have valid reasons for withholding information that might undermine an active investigation or for public safety reasons. But FCPD also has an obligation in a free society to be predisposed toward releasing information; *i.e.*, the default must be to release information, while justification is required to withhold it. There is no more significant lesson to be learned from the Mr. Geer's shooting and the subsequent months of County silence on the status of the investigation.

In our view, the County's FOIA regulations and FCPD's General Order need to be closely aligned and the circumstances where information is withheld from the public must be carefully prescribed. Virginia FOIA broadly exempts certain law enforcement information from being released. The County can, however, limit the use of these exemptions and, when applying them, do so consistently. The County risks losing the public's trust, which it has so diligently and effectively sought to regain through implementing the Commission's recommendations, without more clearly delineating when and why information can be withheld.

Finally, the Board of Supervisors should request that the CWA's Office formally evaluate the Commission's recommendation that two independent investigators be hired to support criminal investigations within the scope of the Independent Police Auditor, including participation in MCB criminal investigations. Because these positions were not requested by the CWA, the matter has not received Board of Supervisor consideration. The Commission believed that the two independent CWA investigator positions would further promote impartiality and objectivity in MCB investigations.

FINAL THOUGHTS & CONCLUSION

The following additional topics warrant County consideration:

1. FCPD should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel. The Commission assumed, but did not explicitly recommend, this expectation. We understand that FCPD does not believe it is obligated to respond. Only the Board can clarify this difference of understanding and should do so if it expects the Independent Police Auditor and the Civilian Review Panel to establish and have credibility within the community.
2. The Board should establish a process that provides the public with an opportunity to comment and be heard on Auditor and Panel findings and recommendations, including the FCPD's responses to the findings and recommendations. Public participation in the process is critical to building and ensuring community trust in the FCPD and the independent oversight established by the Board.
3. The Independent Police Auditor should be authorized to monitor and review investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any UOF incident resulting in death or serious injury.
4. In order to ensure transparency and compliance with FCPD policy and directives, the Independent Police Auditor should be instructed by the Board to audit the FCPD's use of BWCs and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.
5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF data now being collected in response to the Commission's recommendations. The data should be updated on a more regular basis than annually. As important, the data should be subjected to analysis and a process put in place that engages the public to address any issues the analysis may bring to light. Finally, the monitoring program should fully leverage the capacities of the Independent Police Auditor and Civilian Review Panel.
6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident. An incident occurred in the past year, for example, that a bystander captured on video that appeared to involve a number of officers violently subduing an individual at a parade. The video had wide-distribution, as did the Police Chief's press conference in which he asserted that the officers' use of force had followed policy and was justified. A more public-trust building response would be to indicate that the incident would be thoroughly investigated and related information would be released as soon as possible. Because suspects are innocent until proven guilty, neutral language is also the best policy when discussing the basis for a suspect's arrest.

7. The recently chartered internal *Pursuit Review Committee*, directed to be established under a new *Pursuit General Order*, should be expanded to include civilian representation, as is the case for the UOF Technical Review Committee. The *Pursuit Review Committee* will review case examples for lessons learned to inform training and tactical operations. Both Committees should include the Auditor as a member.

With our seven-month Commission experience and two years' focus on implementation, we can state that, while not endorsing all the changes advocated by the Commission, both the letter and spirit of the Commission's recommendations have been embraced by Fairfax County.

Sustained high performance by organizations requires a commitment to continuous improvement and to ensuring that policies and practices evolve to meet the ever-changing world in which we live. The challenges to sustained reform are both daunting and are not to be underestimated. Sustaining and "institutionalizing" the changes in the County's police practices of the magnitude underway requires continued rigorous commitment to reform by the Police Chief, Commanders and Supervisors. As important will be the continued buy-in by rank-and-file police personnel and continued community participation, monitoring and oversight.

APPENDIX

Ad Hoc Commission Implementation Group Biographies

- Shirley A. Ginwright – Ms. Ginwright retired from the Federal government as a senior manager in information technology and cyber security and became a substitute teacher for Fairfax County Public Schools. She served four years as President of the *Fairfax County NAACP* and is a member of the *Fairfax County Chief of Police Diversity Council for Recruitment*. Ms. Ginwright served on the *Fairfax County Ad Hoc Police Practices Review Commission* and chaired its Subcommittee for Recruitment, Diversity, Vetting and Retention. She has subsequently contributed to an *Implementation Group* arranged by the Chair of the Board of Supervisors. She is a member of the *Fairfax County Criminal Justice Advisory Board*; Chair of the *Fairfax County Communities of Trust Committee*; former Chair of the *Virginia State Conference NAACP Criminal Justice Committee*; and past member of the Board of Directors for the *Virginia National Organization for the Reform of Marijuana Laws (NORML)*. She was recently appointed by the Governor of Virginia to the *Commonwealth Commission for Diversity, Equality and Inclusion*. She has received the 2015 Martha Pennino Community Service Award, 2016 Citizen of the Year Certificate of Merit, 2016 Lady Fairfax award, and the 2016 FBI Director’s Community Leadership Award. Ms. Ginwright is a native of Montgomery, Alabama and holds a Bachelors in Legal Studies and completed work on a Master’s Degree in Criminal Justice.
- Mary Kimm – Ms. Mary Kimm is Editor and Publisher of the *Connection Newspapers*, a chain of 15 weekly newspapers and related websites, including 12 hyper-local print editions in Fairfax County, where she has worked in various roles since 1989. Ms. Kimm served on the *Fairfax County Ad Hoc Police Practices Review Commission*, and on three of its five subcommittees, Use of Force, Communications and Independent Oversight and Investigations. She has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. Her papers won the 2016 Virginia Press Association Award for Journalistic Integrity and Community Service, VPA's top award, for reporting and editorials on police reform. The judges noted, “The [papers] covered the complex issue of police reform from February through December 2016, sparked by the shooting of an unarmed man by a Fairfax County police officer. ... The papers focused community attention on the case, particularly on the efforts of citizens and representatives of law enforcement agencies working together on reforming police practice....” Ms. Kimm’s editorials have been cited in local efforts to end homelessness, support for nonprofits in the community and increase government transparency on many levels. She also serves on the Governing Board of the *Fairfax County Office to Prevent and End Homelessness*.

- Phillip A. Niedzielski-Eichner – Mr. Niedzielski-Eichner is an energy and national security executive with over 40 years of public sector and corporate leadership experience. He held senior executive service appointments in the U.S. Department of Energy, National Nuclear Security Administration and Nuclear Regulatory Commission and is President of Governmental Dynamics, a benefit corporation. Mr. Niedzielski-Eichner served on the Fairfax County *Ad Hoc Police Practices Review Commission* and chaired its Subcommittee on Use of Force; he has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. He currently serves on the *Fairfax County Planning Commission* and was twice-elected to the *Fairfax County School Board*. He also served on the *Fairfax County Park Authority Board* and the *Environmental Quality Advisory Council*. He was designated a Fairfax County “Lord Fairfax” in 2017 for his community service. Mr. Niedzielski-Eichner is a 30-year resident of Fairfax County. Originally from Columbus, he received his Masters of Public Administration from Ohio State University.
- Randy K. Sayles -- Mr. Sayles is a retired Denver uniformed police officer and detective and a federal agent. He served as Deputy Assistant Administrator for the US Drug Enforcement Administration. He has over 35 years of cumulative experiences in use of force, both domestically and internationally. As a law enforcement officer, he has both fired his weapon and has been fired upon. He is experienced with the use of all authorized use of force equipment in use by today’s police forces, except electronic control weapons or “tasers.” He is an active member of the *Fairfax County NAACP*. Mr. Sayles served on the Fairfax County *Ad Hoc Police Practices Review Commission*, including on the Use of Force and Independent Oversight and Investigations Subcommittees, and has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. He is a member of the *Fairfax County Civilian Review Panel* established by the Board of Supervisors. Mr. Sayles was a recipient of the Fairfax County 2016 Environmental Excellence Award and was honored at *Fairfax County NAACP’s* 100th anniversary celebration for his lifetime of service.
- Marcus Simon -- Delegate Simon is a lifelong resident of Fairfax County. Early in his public service career, Delegate Simon served as an officer in the U.S. Army Judge Advocate General's Corps, earning the rank of Army Captain and serving as a prosecutor and also as a part time Special Assistance United States Attorney. He is a co-founder the Law Firm of Leggett, Simon, Freemyers & Lyon and EKKO Title, a real estate settlement, title, and escrow company. First elected to the House of Delegates in 2013, Delegate Simon won re-election last year for another two-year term. He currently serves on the *House Committee on Courts of Justice, the House Committee on Militia, Police, & Public Safety, and the House Committee on Science & Technology*. The 53rd House District, which he represents, includes the entire City of Falls Church and parts of Fairfax County. Delegate Simon served on the *Fairfax County Ad Hoc Police Practices Review Commission* and chaired its Subcommittee on Mental Health and Crisis Intervention; he has subsequently been a contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors.
- David Statter – Mr. Statter runs STATter911 Communications, LLC. STATter911 Communications focuses on strategies for handling reputation issues and crisis communications. He was a reporter for 25 years at WUSA-TV in Washington, D.C. Mr. Statter is also a principal at EventC2, LLC, a Delaware based emergency planning and event management consulting group and is also a partner in First Arriving Emergency Services Network. Mr. Statter served on the *Fairfax County Ad Hoc Police Practices Review Commission* and its Communication Subcommittee and has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors

- Adrian L. Steel, Jr. – Mr. Steel is a Senior Counsel with the law firm Mayer Brown LLP in Washington DC. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters, including the ABSCAM investigation. Mr. Steel recently served as a member of a commission led by Judge Webster which reviewed the FBI’s actions in connection with the 2009 shootings by Major Nidal Hasan at Fort Hood, Texas. The commission made recommendations to then-FBI Director Robert Mueller for enhancements to the FBI’s policies and practices in countering international and domestic terrorism consistent with the public’s Constitutional and individual privacy rights. Mr. Steel served on the *Fairfax County Ad Hoc Police Practices Review Commission* and on two of its five subcommittees, Use of Force and Independent Oversight and Investigations; he has subsequently been an active contributor to an Implementation Group arranged by the Chair of the Board of Supervisors. As its first chairman, he led the effort to stand-up the newly established *Fairfax County Civilian Review Panel* authorized by the Board of Supervisors. Mr. Steel is a 40-year resident of Fairfax County. Originally from St. Louis, he is a graduate of the University of Missouri and the University of Michigan Law School.

APPENDIX N

(The Connection Newspapers)

The Connection

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Sunday, January 10, 2021

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Three Years Later: No Police Oversight Board

Beltrante continues to lobby for citizens panel.

Thursday, April 11, 2013

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Next Meeting

Citizens Coalition for Police Accountability holds its next monthly meeting on April 16 at the Martha Washington Library. The invited speaker is the mother of late Taft Sellers, victim of Alexandria City Police shooting in February.

Details

Citizens Coalition for Police Accountability

P.O. Box 7800

Alexandria, VA 22307-9998

Website: www.virginiaccpa.org

E-mail: virginiaccpa@aol.com

Three years after forming the Citizens Coalition for Police Accountability, retired D.C. homicide detective Nicholas Beltrante and his organization have not realized their goal of getting the Fairfax County Board of Supervisors to establish a citizen police oversight panel.

The genesis of Beltrante's effort was triggered In 2009 when David Masters, a Vietnam veteran, alleged to have stolen flowers from a Route 1 nursery, was shot and killed by Fairfax police after a car chase. Masters was unarmed and sitting in his car while stopped on a service road at the corner of Fort Hunt Road and Route 1.

This incident, and the secrecy surrounding the county investigation led Beltrante to form the CCPA to lobby for the creation of a police citizen oversight board appointed by the Fairfax County Board of Supervisors. Nationally, 150 citizen police oversight panels exist, including one in the District of Columbia and another in Prince Georges County, Md. Eventually, after studying the proposal to establish a citizen police oversight panel, former Police Chief David Rohrer and former County Executive Robert Griffin recommended that the Board of Supervisors designate the independent auditor to review and comment on citizen complaints of alleged police misconduct. Three years later the Board of Supervisors has not changed its position. Mount Vernon Supervisor Gerald Hyland, chair of the Board's Public Safety Committee, reaffirmed that the Board of Supervisors continues to prefer the independent auditor function to review alleged police misconduct complaints. "There is no support on the Board to create a police citizen oversight board," Hyland said.

Despite what Beltrante characterizes as "Board of Supervisors stonewalling," he and his organization have kept pressing for the police accountability panel, supporting changes in the Virginia Freedom of Information Act to amend the blanket exemption for police from releasing police incident reports, and serving as an active voice for citizens complaining about alleged police misconduct.

"There were 110 police citizen oversight boards in the U.S. when I formed our group; there are now 150 such organizations in the U.S.," Beltrante said. He argues that there is virtually no oversight, no accountability, and no transparency over police actions.

Asked to describe his organizations' accomplishments over the past three years Beltrante listed the following:

- 250 members statewide.
- Serve as a focal point and voice for citizen complaints of alleged police misconduct. He said he now regularly gets letters from all over the state about alleged police misconduct. Upon receipt of complaints his organization does the best it can to review the facts and circumstances, and comment to the appropriate jurisdiction about alleged misconduct. For example, the recent shooting fatality in the City of Alexandria will be on the CCPA's monthly public meeting agenda on April 16 at the Martha Washington Library.
- Identified, through the use of the federal FOIA, a list of 61 civil rights complaints sent by Fairfax County citizens to the U.S. Department of Justice Civil Rights Division. In addition, the Justice Department listed 27 complaints from the City of Alexandria, and 19 complaints from Arlington County. Disposition of the complaints was not made available. Beltrante said that if there was an oversight panel many of these complaints would have likely been resolved by a citizens group working with the police.
- Developed an oversight board proposal and submitted it to the Board of Supervisors.
- Gained visibility and public attention on the benefits and opportunities of a police citizen oversight board to the media. Editorials in support of a police citizen oversight panel have been published by several local and national news media.
- Provided support to state-wide organizations seeking a more open and flexible Virginia Freedom of Information Act. Police incident reports in Virginia are withheld even in closed investigations.
- Gained the support of local, state, and national organizations supporting the CCPA's effort to establish police citizen oversight in Fairfax County.

More like this story

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APPENDIX O

(The Washington Post)

The Post's View

Fairfax County appears poised to move from opacity to openness

[+ Add to list](#)By [Editorial Board](#)

July 25, 2016

FAIRFAX COUNTY caught flak last week when its police department [released a report](#) showing that more than 40 percent of its use-of-force cases involved black residents. That's troubling. But the report would not exist at all if not for the county's increased commitment to police transparency in the wake of an unarmed man's [unwarranted death](#) in 2013. It seems even bigger changes are soon to come.

Last fall, a little more than two years after a Fairfax County police officer shot and killed John Geer on the doorstep of his home in Springfield, a commission [recommended](#) 202 revisions to police procedures that would increase accountability. Many gained approval from the Board of Supervisors early on, but the most essential seemed to stick in the board's collective craw: the creation of a civilian panel, approved by the board and appointed by its chairman, to review allegations of abuse. Now, it looks as though most critics have switched course. The board [signaled](#) its support for the panel in a meeting last week, and the policy could see a vote in September.

Geer's death sparked enough outrage to shock the county out of complacency. Even then, it took [public protests](#), a [lawsuit](#) and [letters](#) from a U.S. senator for the police department and prosecutors to take action. The civilian review panel would forward citizen complaints to the police for investigation and, if needed, hold public hearings on the outcomes. That would ensure that the next time the community had questions — on subjects such as, perhaps, those recently released statistics — it would get answers. So would the hiring of an independent auditor to investigate encounters involving serious injury or death, which the board also appears to back.

The review panel was the most crucial and the most controversial proposal from the committee, and it met the most opposition, both from board members and from police unions. Some union representatives still have concerns, but [Police Chief Edwin C. Roessler Jr. has thrown his support](#) behind the measure. Board of Supervisors Chairman Sharon Bulova, in particular, deserves credit for shepherding through the changes and turning the tide.

The details are not set in stone. In the coming months, the board will need to agree on an appointment process to ensure a panel that is at once informed and independent. It will also have to approve [bylaws](#) that

establish fair, effective proceedings that can exist parallel to any concurrent criminal cases. But the signs so far point to progress. If all goes well, a department that once offered a model for obstinacy and opacity may soon set a standard for just the opposite.

Read more on this topic:

[The Post’s View: The unaccountable death of John Geer](#)

[The Post’s View: Will Fairfax police be reformed?](#)

[The Post’s View: In the death of John Geer, a guilty plea is not enough](#)

 **6 Comments**

APPENDIX P

(The Fairfax Times)

http://www.fairfaxtimes.com/articles/board-of-supervisors-approves-police-review-panel/article_cf96b0c6-be4e-11e6-9cc1-e7907cc8743f.html

EDITOR'S PICK

Board of Supervisors approves police review panel

By Angela Woolsey/ Fairfax County Times
Dec 9, 2016



From left, Deputy County Executive David Rohrer, independent counsel Julia Judkins, and Fairfax County Police Chief Edwin C. Roessler Jr. watch as the Fairfax County Board of Supervisors discusses instituting a police civilian review panel.

ANGELA WOOLSEY/FAIRFAX COUNTY TIMES

At its Dec. 6 meeting, the Fairfax County Board of Supervisors approved the establishment of a civilian-led panel that will be responsible for responding to complaints and reviewing police investigations. After a lengthy discussion about how such a panel might work and the potential challenges it could face, the board passed the proposal by a 9-1 vote, with Springfield District Supervisor Pat Herry the only member opposing the measure.

Among the most notable recommendations to come out of the Ad Hoc Police Practices Review Commission assembled by board chairman Sharon Bulova in 2015, the police civilian review panel will consist of nine members selected by the Board of Supervisors and is charged with reviewing complaints alleging an abuse of authority or misconduct by Fairfax County Police Department (FCPD) officers.

“Establishing a police civilian review panel is a historic step in the right direction toward increasing trust and transparency between police and residents,” Bulova said. “I’m proud of how far we’ve come in implementing the recommendations made by the ad hoc commission, and establishing this panel represents a significant milestone.”

Bulova created the ad hoc commission, which was endorsed by the board as a whole on Mar. 3, 2015, in response to concerns about the lack of information that had been made public regarding the August 2013 fatal shooting of Springfield resident John Geer by then-FCPD Officer Adam Torres.

Chaired by Fairfax Group president and CEO Michael Hershman, the ad hoc commission analyzed FCPD policies in areas such as the use of force, diversity and recruitment, mental health and crisis intervention team (CIT) training, and independent oversight. The commission submitted its findings and 202 recommendations to the Board of Supervisors in a public report on Oct. 20, 2015.

In addition to the creation of a civilian review panel, the commission recommended that the county establish an office of independent police auditor to review use of force cases and police-involved incidents that resulted in serious injury or death.

The Board of Supervisors approved the independent auditor position at its Sept. 13 meeting.

Since the commission’s report was released, Fairfax County has also established a Diversion First program for people experiencing mental health challenges, altered its training methods to emphasize de-escalation, and developed a policy requiring that the names of officers involved in critical incidents are released within 10 days.

“I’m very proud of Fairfax County today,” FCPD Chief Edwin C. Roessler Jr. said regarding the approval of the civilian review panel. “What we have is the community, political leaders and highly engaged police department...working together to accomplish a great effort to create more transparency and accountability to the community we serve. This was the right move.”

Individuals can submit complaints directly to the panel, which would then have the police look into the situation, or they can request that the panel review an already-completed internal police investigation.

Because they will be addressed by the office of the independent auditor, the panel won't handle use of force allegations or police-involved shootings. The kinds of complaints it can review include the use of abusive language, harassment or discrimination, the endangerment of a person in custody, and serious violations of county or FCPD procedures.

According to the measure passed by the Board of Supervisors, which can be found on the Fairfax County website, the panel won't review complaints if the incident in question occurred more than a year ago, and requests for review must be filed within 60 days of when the individual was notified of the completion of the FCPD investigation.

When dealing with requests for review, the panel can convene a public meeting within 45 days of receipt of the complete police department internal administrative investigation to ask questions of the complainant and department representatives familiar with the investigation.

This process has raised some concerns about the amount of information that the panel will be able to access, since it is prohibited from taking testimony or receiving "factual evidence" during these public meetings.

Hunter Mill District Supervisor Catherine Hudgins suggested that the proposal be amended to allow the panel to take testimony and hear witnesses that may not have been included in the police investigation.

"The absence of receptivity to the concerns of the community has been the biggest burden that we've had," Hudgins said. "I think we have opened this up, but I still find a void...If we are going to empower the civilian review panel, my last concern here is, will we take information in freely, and will we investigate that?"

Braddock District Supervisor John Cook, who chairs the board's public safety committee, says that permitting the civilian review panel to conduct its own investigation of an incident, as opposed to reviewing an investigation done by the police, would raise administrative, practical and legal issues.

"The problem is the General Assembly establishes what power the Board of Supervisors has to create advisory commissions or other committees," independent counsel Julia Judkins said.

[A367](#)

According to Judkins, state law doesn't give advisory bodies like the civilian review panel the authority to swear witnesses, take testimony or compel people to appear, and if they did any of these things, panel members could open themselves up to legal action.

The Board of Supervisors will be responsible for appointing panel members according to a range of factors, including community involvement, diversity, and law enforcement or criminal investigation experience.

Fairfax County employees, current or former members of FCPD or the Fairfax County Sheriff's Office, anyone with a relative working for either of those agencies, and public officeholders or candidates are excluded from consideration, though the panel must have at least one member with prior law enforcement experience.

After the panel members are appointed, they will develop bylaws that provide more detailed directions and guidelines for the panel. The panel will also be responsible for submitting an annual report to the Board of Supervisors, which will then review the panel's progress to determine whether it's working properly.

The main voice of opposition to the panel came from Herrity, who argued that the board should take more time to consider how it will affect the county budget and that it's redundant to have both a panel and an independent auditor.

The Springfield District supervisor also expressed concerns over how the panel will affect police morale.

"Perhaps the biggest reason I oppose the creation of the citizens' review panel is I believe it's being done for political correctness, largely in response to mistakes made by this board and the police chief in the handling of the Geer shooting," Herrity said. "Exacerbated by the unknown fiscal impact and the terrible impact on the morale of our great police department, I think that makes this something that's going to be unacceptable to me."

Roessler said after the board's vote that he doesn't have any "grave concerns" about how the panel will affect the department financially or in terms of employee morale.

For the volunteers who made up the ad hoc commission, the board's approval of the civilian review panel was yet another sign that their work on the commission had made a difference.

“This is what the public wanted,” Adrian Steel, a McLean resident who worked on the commission’s independent oversight and investigations subcommittee, said. “I think in a very real way, it’s supportive of the police, because it confirms the job that they’ve done. Chief Roessler very much wants to employ best practices and is willing to listen to suggestions for improvements.”

Herrity, the lone dissenting supervisor, later said of the panel: “I have a number of serious issues with the Police Civilian Review Panel proposal including the following: it has an unknown fiscal impact in a very difficult budget year, it adds to multiple levels of review that police complaints already go through, it makes us the only jurisdiction in Virginia with two independent review boards for police complaints, it has a number of legal issues with the implementation, and it negatively impacts the morale in our police department.”

