



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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