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# Police Civilian Review Panel

## Meeting Agenda

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Location: Conducted electronically due to COVID-19 Pandemic

Date: December 10, 2020

Time: 7:00 pm

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### Agenda details:

#### I. Call to Order

#### II. Agenda Items

- a. Motions to Conduct Electronic Meeting
- b. Approval of November 12 Meeting Summary
- c. Review Meeting for CRP-20-19 and CRP-20-27
- d. Approval of Subcommittee Initial Review Report for CRP-20-30
- e. Ethics Complaint Subcommittee Report
- f. Closed session for the purpose of discussing and considering a personnel matter involving retention of a specific individual who provides services to the Panel
- g. Preparation for 2021 Panel Leadership Elections in January

#### III. New Business

#### IV. Adjournment

#### Panel Meeting Schedule:

- January 7, 2021 at 7:00 pm
- January 21, 2021 at 7:00 pm
- February 4, 2021 at 7:00 pm
- March 4, 2021 at 7:00 pm

Police Civilian Review Panel

November 12, 2020

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:

Hansel Aguilar

Jimmy Bierman

Bob Cluck

Hollye Doane, Panel Chair

Frank Gallagher<sup>1</sup>

Doug Kay

Shirley Norman-Taylor

Sris Sriskandarajah, Panel Vice-Chair<sup>2</sup>

Panel Members Absent:

Rhonda VanLowe

Others Present:

Gentry Anderson, OIPA

Captain Hanson, FCPD

Major Lay, FCPD

Anita McFadden, Interim Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel's November 12 meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Panel's business meeting was called to order at 7:00 p.m. and eight Panel Members were present. Ms. VanLowe was absent from the meeting.

Ms. Doane welcomed everyone to the Panel's November 12 meeting and noted a few housekeeping rules.

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

Mr. Aguilar was present and participated from Arlington, Virginia.

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

Mr. Cluck was present and participated from Reston, Virginia.

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<sup>1</sup> Mr. Gallagher exited the meeting around 8:20 p.m.

<sup>2</sup> Mr. Sriskandarajah exited the meeting at 7:33 p.m.

Ms. Doane was present and participated from Oakton, Virginia.

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

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

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

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

Ms. Doane moved that each member's voice may be adequately heard by each other member of this Panel. The motion was seconded by Mr. Sriskandarajah and it carried by unanimous vote, with Ms. VanLowe being absent.

Ms. Doane moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. She further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 173 021 8538 as noted in the Public Meeting Notice. Mr. Sriskandarajah seconded the motion and it carried by unanimous vote, with Ms. VanLowe being absent.

Ms. Doane moved that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Bierman seconded the motion and it carried by unanimous vote, with Ms. VanLowe being absent.

Approval of October 22 Meeting Summary: Ms. Doane moved approval of the Panel's October 22 meeting summary. Mr. Bierman seconded the motion and it carried by unanimous vote, with Ms. VanLowe being absent.

Approval of Subcommittee Initial Review Report for CRP-20-29: Ms. Doane reviewed the events that led to the submission of a complaint to the Panel on March 10, 2020 alleging malicious prosecution by an FCPD officer, and specifically that an officer provided false testimony to a magistrate, failed to document an investigation, and failed to fully investigate a felonious assault with a knife (CRP-20-29). The FCPD Internal Affairs Bureau (IAB) investigation found there was no conspiracy between the officer and the complainant's ex-girlfriend. The complainant also submitted a separate complaint to the Panel on May 13, 2020 about how the warrant for his arrest was executed. This complaint was also investigated by IAB, which determined that the officers' actions were appropriate during the incident. IAB found that FCPD regulations were violated in that the complainant should have been contacted before the warrant was executed and he should have been given the opportunity to surrender at a police facility. Ms. Doane informed the Panel that, while the subcommittee determined that these

were serious allegations, there was nothing in the record to suggest that the officers acted improperly. She said that the subcommittee recommends that the complaint not be reviewed by the Panel given that there was no evidence in the investigative file to support the complainant's allegations.

Ms. Doane also noted that since the subcommittee met, the complainant sent a letter indicating his dissatisfaction with the subcommittee's recommendation and making a FOIA request for Panel documents.

Mr. Bierman stated that the subcommittee believes that an officer providing false testimony and the conspiracy claim rise to the level of serious misconduct. However, they found no substantiation of malfeasance when reviewing the investigative file. The IAB appeared to conduct a complete, thorough, and accurate investigation and found that the officer was in compliance with policy.

Mr. Sriskandarajah said that the processing of this complaint provides a good example to consider during the revision of Panel procedures that he is working on with Ms. VanLowe.

Mr. Kay moved that the Panel approve the findings and recommendations of the subcommittee regarding complaint CRP-20-29. Mr. Sriskandarajah seconded the motion and it carried by a vote of 7, with Mr. Aguilar unable to cast his vote due to technical difficulties<sup>3</sup> and with Ms. VanLowe being absent.

Approval of Review Report for CRP-19-19: Ms. Doane asked Panel members for feedback on the draft Review Report for CRP-19-19. There were no comments. Mr. Sriskandarajah moved that the Panel adopt the Review Report for CRP-19-19. Mr. Kay seconded the motion and it carried by a vote of 7, with Mr. Aguilar unable to cast his vote due to technical difficulties<sup>4</sup> and Ms. VanLowe being absent.

Panel Consideration of Good Cause for CRP-20-31: Ms. Doane stated that the Panel must determine whether there is good cause to review a complaint that an FCPD officer was racially biased in assigning fault to a Black driver in a traffic accident report. The incident occurred prior to November 16, 2018 and a complaint was made to the FCPD on February 2, 2019. The complainant requested a review on October 27, 2020, more than 60 days after the FCPD provided notice to the complainant on July 29, 2019 that the investigation was complete. Discussion ensued on how the complaint is time-barred unless good cause is found. Ms. Norman-Taylor and Mr. Aguilar asked when the Panel reached out to the complainant to request information for the Panel to consider while determining good cause. Ms. Anderson

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<sup>3</sup> When Mr. Aguilar later joined the meeting, he indicated that he would have voted Nay on the motion. He believed that the allegations fell within the jurisdiction of the Panel and the full Panel should have reviewed it, even if they ultimately agreed with the conclusions of IAB.

<sup>4</sup> When Mr. Aguilar later joined the meeting, he indicated that his vote on the motion was Nay, but he did not plan on filing a written dissent.

stated that the Panel sent a letter to the complainant on October 28, 2020, the response was requested by November 11, 2020, and there was no response from the complainant.

Mr. Kay moved that the Panel not entertain CRP-20-31. Mr. Sriskandarajah seconded the motion and it carried unanimously, with Ms. VanLowe being absent.

Presentation by the Independent Police Auditor: Richard Schott presented to the Panel a review of the first three and a half years of his work as the Independent Police Auditor. He began with a review of the legal and policy provisions that he considers while reviewing FCPD investigations into uses of force. He then summarized the number and types of force incidents that he has monitored and reviewed to date and the reports published by his office. Finally, Mr. Schott talked about how he envisions the future of the office and answered questions from Panel members:

- Mr. Aguilar asked Mr. Schott what areas of training he recommends the Panel members receive. Mr. Schott recommended training on the 4<sup>th</sup> Amendment, particularly for new Panel members without law enforcement experience, and training on the 14<sup>th</sup> 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

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 on their stomach. People with Down's Syndrome may be at risk for asphyxiation and death when this maneuver is used. 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 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's Syndrome.

Four Year Review Action Plan: Mr. Bierman stated that he is working with Mr. Aguilar to conduct a review of the Panel's activities to date and he referred to the Four Year Review Action Plan in the meeting materials packet. He outlined the goals of the review and the sources that will be consulted. Mr. Aguilar will develop a set of questions that they will use to interview current and previous Panel members. Mr. Bierman presented the anticipated outline for the report, which includes an analysis of changes that have occurred over the years, challenges faced by the Panel, and the outcomes produced. The report will also include recommendations for making the Panel more successful in improving police accountability and the relationship between the police and the public.

Mr. Bierman noted that they will also consider in their review the implications of the bill passed by the Virginia legislature that gives the Board of Supervisors the opportunity to expand the reach of the Panel, the potential for the Panel to have an Executive Director position, and the ability of the Panel to conduct listening sessions.

Mr. Aguilar and Mr. Bierman recognized Ms. Anderson's contribution to the Panel in keeping detailed and organized Panel records. Mr. Kay recommends conducting an interview of Ms. Anderson for her insight on improvements to Panel operations. Mr. Bierman said that he anticipates a document for the Panel to review by the December or January meeting.

Ms. Doane stated that the review will serve as a useful roadmap for the Board of Supervisors to consider when making changes to the Panel in the future.

New Business: Ms. Doane informed the Panel members that there is an Action Item under consideration by the Board of Supervisors to allow the Panel to conduct or participate in six meetings per year with the public on FCPD policies, practices, and regulations.

Ms. Doane thanked Ms. Anderson, who will be leaving her position in OIPA, for going above and beyond in her support of the Panel's work since its inception.

Ms. Doane welcomed Major Dean Lay who is the new Commander of IAB. Major Lay said he looks forward to working with the Panel.

Adjournment: Mr. Kay moved to adjourn the meeting. Mr. Bierman seconded the motion and it carried by a vote of 6, with Mr. Sriskandarajah, Mr. Gallagher, and Ms. VanLowe being absent.

The meeting adjourned at 8:29 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, December 10 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.

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# Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

## Request for Review – Basic Information

**CRP Complaint Number:** CRP-20-30

**Subcommittee Meeting Date:** December 2, 2020

### Subcommittee Members:

- Hansel Aguilar, Subcommittee Member
- Hollye Doane, Subcommittee Chair (Panel Chair)
- Rhonda VanLowe, Subcommittee Member

**Complaint Submission Date:** Review Request submitted on October 24, 2020 (Incident Date: August 5, 2020. Initial Complaint submitted directly to FCPD (estimated date in September, 2020). FCPD Disposition Letter date: October 14, 2020)

This report is subject to Federal and Virginia Freedom of Information Acts. Panel members will maintain to the greatest extent possible under the law and in accordance with the Bylaws all sensitive and confidential information not intended for a public release.

## Purpose

The Subcommittee Initial Review Report sets forth the Subcommittee's recommendation on whether the Complainant's allegation(s) meet the standard for review provided in the Panel's Bylaws. The Panel may accept or not accept the Subcommittee's recommendation on whether to review a complaint.

## Findings

The Panel's review authority states in Article VI (A)(1) of its Bylaws: "The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity and impartiality where (1) the subject matter of an Investigation is an allegation of 'abuse of authority' or 'serious misconduct' by a FCPD officer, and (2) a Review Request is filed."

The subject matter of this investigation concerns an allegation by the Complainant of corruption, abuse of power, false statements, and cover up by a Fairfax County Police Department officer. The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, does not meet the threshold requirement for "abuse of authority" and "serious misconduct."



## Recommendation

The Subcommittee recommends that the Panel not undertake a review of CRP-20-30 because the complaint does not meet the scope of review criteria set forth in its Bylaws.

## Panel Bylaws Abuse of Authority and Serious Misconduct Checklist

Criteria Met?	Abuse of Authority and/or Serious Misconduct	Complainant Details*
No	Use of abusive racial, ethnic or sexual language or gestures.	
No	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	
No	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	
No	Reckless endangerment of detainee or person in custody.	
No	Violation of laws or ordinances.	
No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD 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.**

Police Civilian Review Panel

December 2, 2020

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-20-30

Members Present:

Hansel Aguilar, Review Liaison

Hollye Doane, Subcommittee Chair

Rhonda VanLowe, Review Liaison

Others Present:

Rachelle Ramirez, OIPA

NOTE: The Panel’s subcommittee meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Initial Disposition Subcommittee was called to order at 5:30 p.m.

Motions to Conduct Electronic Meeting: Ms. Doane took roll call to verify a quorum of the Panel’s subcommittee was present and to ensure each subcommittee member’s voice could be heard clearly. She asked each subcommittee member to state their name and the location from which they were participating.

Mr. Aguilar was present and participated from Honduras in Central America.

Ms. Doane was present and participated from Oakton, Virginia.

Ms. VanLowe was present and participated from Reston, Virginia.

Ms. Doane moved that each member’s voice may be adequately heard by each other member of this Panel. The motion was seconded by Mr. Aguilar and it carried by unanimous vote.

Ms. Doane moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the subcommittee to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA’s usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. She further moved that the subcommittee may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 173 464 3690 as noted in the Public Meeting Notice. The second to the motion was inaudible and it carried by unanimous vote.

Ms. Doane moved that that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. The second to the motion was inaudible and it carried by unanimous vote.

Completion of Initial Review Report for CRP-20-30:

Ms. Doane provided information on the incident underlying the complaint, which was a traffic accident involving two drivers. An FCPD officer arrived after the crash to investigate, spoke with both parties at the scene, and found that there were no injuries and minimal damage to both vehicles. The officer later determined that there was no probable cause to issue a traffic ticket. The complainant filed a complaint with police department and it was investigated. A request for review was received by the Panel in a voicemail from the Complainant.

Ms. Doane stated that the complainant's allegations included corruption, abuse of power, false statements, and cover up by a Fairfax County Police Department officer.

Discussion ensued on whether the allegations met the threshold for abuse of authority or serious misconduct.

Ms. Doane outlined two tiers for consideration of whether the Panel should conduct a review: Does the complainant allege serious misconduct or abuse of authority? If the answer is yes, are the allegations supported by the evidence in the investigative file? She stated that, in this case, she did not believe there was substantiation in the file of any of the allegations. And in regard to the officer not issuing a ticket and not finding probable cause, she does not think this rises to the level of a serious misconduct.

Ms. VanLowe said that she did not think the Panel should review because there was nothing in the investigation to support complainant's allegations. The complainant expressed concern that the other driver drove away, however, the file indicates that information was exchanged, facilitated by the officer. Ms. Doane added that the FCPD offered to assist the complainant in his desire to seek court action.

Mr. Aguilar expressed his concern over the level of analysis at the subcommittee level. He said he is unsure whether the conclusion of the file should be addressed at the subcommittee or the Panel level. He stated that he thought the allegations in this case would prompt the full Panel to look at the file, but agrees that the allegations are unsupported. The review would be easier if the complainant had expressed more of his concerns, particularly in writing.

Ms. Doane noted that the complainant's voicemail indicates that he may believe the Panel would investigate, which is often a misconception. She clarified that the Panel's role is to review police investigations, as it has not been granted the authority to investigate. The subcommittee is concerned with the scope of authority, which is whether it is an abuse of authority or serious misconduct.

Mr. Aguilar stated that the complainant did not allege that the officer failed to investigate the crash, which would be a serious abuse of authority. He said that he understood the complainant was dissatisfied with the conclusion of the officer's investigation of the incident. Ms. Doane expressed her agreement with this statement.

The subcommittee reviewed each of the criteria in the Initial Review Report checklist and found that none of the complainant's allegations met the criteria for abuse of authority or serious misconduct.

Ms. VanLowe moved that the full Panel should not review this file on CRP-20-30. Ms. Doane seconded the motion and it carried by unanimous vote.

Ms. Doane moved to adjourn the meeting. Ms. VanLowe and Mr. Aguilar both seconded the motion and it carried by unanimous vote.

The meeting adjourned at 5:51 p.m.

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**DATE: December 4, 2020**

**TO: Police Civilian Review Panel**

**FROM: Frank Gallagher and Douglas Kay**

**SUBJ: Panel Member Complaint Subcommittee Report Regarding Complaint of William Wiehe**

## **I. Executive Summary**

Mr. William Wiehe, Jr. has complained that two members of the Panel violated its Code of Ethics (the "Ethics Complaint"). He made the Ethics Complaint in course of a complaint he made against FCPD officers. The Panel Chair appointed the undersigned subcommittee of the Panel to consider Mr. Wiehe's charges. We conclude that the Ethics Complaint is not supported by the facts and recommend that the Panel inform the Board of Supervisors accordingly.

## **II. Procedural Background**

Mr. Wiehe made a citizen complaint to the Fairfax County Police Department (FCPD) at the Fair Oaks District Station on March 27, 2020 (the "FCPD Complaint"). After the investigation was completed, the FCPD sent a disposition letter to the Complainant on April 4, 2020 advising Mr. Wiehe that IAB concluded that no police misconduct had occurred. On June 12, 2020, the Complainant requested a review of the investigation by the Panel.

The Panel Chair appointed an initial review subcommittee of Sris Sriskandarajah, Bob Cluck and Shirley Norman-Taylor (the "Subcommittee"). The Subcommittee met on July 20, 2020 and concluded the Panel had authority to review the Wiehe Complaint. On July 22, Mr. Wiehe made the Ethics Complaint against Sris Sriskandarajah and Shirley Norman-Taylor. The Panel deferred the Ethics Complaint and proceeded with a review of the investigation.

On August 27, 2020 the Panel met and considered the FCPD Complaint. Mr. Wiehe appeared and spoke and answered questions. So did a representative of the FCPD. The Panel concluded that the investigation was thorough complete accurate and unbiased. It voted to concur with the findings and conclusions – namely that there was no police misconduct. Panel published its report on October 8, 2020.

On October 30, 2020 and several times since then, Mr. Wiehe has made complaints against the entire panel. We do not address these complaints here.

The Panel had no procedure to resolve complaints against its own members. The Panel Chair asked Messrs. Gallagher and Kay to draft a suitable procedure. The Panel considered a procedure for addressing complaints against Panelists at its October 22, 2020 meeting and unanimously adopted Panel Procedure No. O-4 titled: Intake and Processing of Complaints Against Panel Members. Thereafter, the Panel Chair appointed Messrs. Gallagher and Kay to the subcommittee to process the Ethics Complaint.

### III. Factual Background

On March 23, 2020 Mr. Wiehe went to the Fairfax County Solid Waste Transfer Station and requested that he be allowed to dump his trash without paying the normal fee because of the state of emergency caused by the COVID pandemic. While on the premises and over a period of time, Mr. Wiehe got in contact with individuals in the Fairfax County Public Works and Environmental Service Department (FCPW) to request a waiver of these fees. Eventually, FCPW summoned the FCPD. Officers arrived, talked to all involved and requested Mr. Wiehe to depart three times. On the fourth time, Mr. Wiehe asked if he was being “ordered” to leave and was told that he was at which time Mr. Wiehe departed and met with a representative of the FCPW office at a nearby location to continue his discussions.

Mr. Wiehe promptly filed a complaint against the FCPD officers about his treatment at the transfer station (the “FCPD Complaint”). The FCPD Complaint was investigated by the FCPD which found that the FCPD officers acted appropriately. Mr. Wiehe then requested a review by the Fairfax County Police Civilian Review Panel (Panel).

In accordance with established procedures of the Panel, the Chair assigned the FCPD Complaint to the Subcommittee to determine whether Mr. Wiehe’s claims asserted in the FCPD Complaint met the standard to be referred to the full Panel for review. The Subcommittee reviewed the investigation into the FCPD Complaint and met on July 20, 2020.

The Subcommittee meeting was properly noticed and conducted virtually on WebEx due to the pandemic and was recorded. In addition to the three panel members, Richard Schott, the Independent Police Auditor (IPA) and Rachelle Ramirez from the IPA’s office attended online but did not participate. Gentry Anderson from the Office of the IPA was the administrator for this WebEx meeting. The Subcommittee meeting lasted for about 45 minutes. The Subcommittee unanimously voted to refer the FCPD Complaint to the full panel.

On July 22, 2020 Mr. Wiehe made the Ethics Complaint by sending a letter to the Panel alleging that the Panel Code of Ethics and By-Laws were violated during the Subcommittee meeting. He claimed that prior to the start of the meeting (and prior to the start of the recording) Ms. Norman-Taylor said to Mr. Cluck, “I think this will be quick, Bob.” To which he replied, “I think so.” That exchange, coupled with the fact that Ms. Norman-Taylor initially made a motion that this complaint should not go to the full panel, showed to Mr. Wiehe that Ms. Norman-Taylor was prejudiced against the FCPD Complaint. Additionally, Mr. Wiehe asserted that Ms. Norman-Taylor misstated facts of his complaint during the Subcommittee meeting. (In the Subcommittee meeting Ms. Norman-Taylor did say that Mr. Wiehe was blocking traffic at the transfer station when in fact, he had pulled onto a median and was not directly blocking traffic.) Additionally, Mr. Wiehe wrote that he feared that the investigation report made available to the Panel was incomplete or lacked transparency so he attached 10 additional documents to the Ethics Complaint. Among others these documents included: his original complaint; Chief Roessler’s letter to Mr. Wiehe detailing the results of the PD investigation; the U.S. Constitution Bill of Rights; communications between Mr. Wiehe and other members of the FCPD and the FCPW.

On August 27, 2020, the Panel considered the FCPD Complaint in a WebEx meeting due to the pandemic. Mr. Wiehe, FCPD Chief Roessler and Major Kim, the Panel’s counsel, the IPA and two IPA staff members were also present virtually. Mr. Wiehe was allotted 15 minutes to address the Panel. An FCPD representative addressed the panel summarizing its investigation for five minutes and then

answered questions of the Panel for over 20 minutes. The Panel then discussed the FCPD Complaint and investigation for 23 minutes. Ultimately, the Panel voted 8-1 to accept the findings of the FCPD investigation into the FCPD Complaint.

#### **IV. Methodology and Conclusions**

The Panel Chair appointed this Panel Member Complaint Subcommittee (“PMCS”) to consider the Ethics Complaint in the manner outlined in the Panel’s Procedures. The PMCS interviewed all relevant Panel members and employees from the Independent Auditor’s Office who participated in or monitored the Subcommittee meeting. Thereafter, we noticed and conducted a Public Meeting on December 3, 2020 at which we compared the claims made by Mr. Wiehe in the Ethics Complaint to the results of our interviews.

As explained above, the Ethics Complaint pertains to the conduct of panelists at the July 20, 2020 Subcommittee meeting. This meeting was properly noticed, open to the public, and recorded. The undersigned interviewed the three subcommittee panel members, the IPA and two members of the IPA’s Office, all of whom participated in the meeting or monitored it. Ms. Shirley Norman-Taylor said that her comment about the meeting being “quick” pertained to the fact that these subcommittee meetings usually are brief as they only deal with the complainant’s allegations. The reason why the Subcommittee meeting took 45 minutes was due to the confusion of the panel as to whether the investigation conducted by the FCPD could be considered in making the determination as to whether the complaint met one of the six criteria of abuse of authority or serious misconduct needed to refer the complaint to the full Panel. A review of the audio recording of the Subcommittee meeting reveals that Ms. Norman Taylor mistakenly believed that Mr. Wiehe was impeding the flow of traffic at the transfer station; however, the other Subcommittee members corrected this mistake and it did not negatively impact the discussion. Once it was determined that Mr. Wiehe’s allegations should be the focus, the Subcommittee unanimously voted to refer the FCPD complaint to the full Panel. Ms. Norman Taylor and Mr. Cluck’s votes to refer this complaint to the full Panel contradict the allegation that they lacked impartiality to Mr. Wiehe since, at this point in the process, this recommendation of the Subcommittee was the most favorable available to Mr. Wiehe.

The Ethics Complaint singles out the following two provisions of the Panel’s Code of Ethics:

#### **I. DIGNITY AND RESPECT**

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.

#### **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.

After careful consideration of all of the facts and circumstances, we conclude that Ms. Norman-Taylor and Mr. Cluck violated neither of these provisions nor any other provisions of the Code of Ethics. Simply stated, the Ethics Complaint is not supported by the facts of this investigation.

We recommend the Board of Supervisors should be so advised.



Police Civilian Review Panel

December 3, 2020

Conducted Electronically due to COVID-19 Pandemic

Panel Member Complaint Subcommittee

Members Present:

Frank Gallagher, Panel Subcommittee  
Member

Doug Kay, Panel Subcommittee Member

Others Present:

Rachelle Ramirez, Office of the Independent  
Police Auditor (OIPA)

NOTE: The Panel's subcommittee meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Subcommittee was called to order at 5:30 p.m.

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

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

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

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

Mr. Kay moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the subcommittee to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. He further moved that the subcommittee may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 179 166 2511 as noted in the Public Meeting Notice. The motion was seconded by Mr. Gallagher and it carried by unanimous vote.

Mr. Kay moved that that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. The motion was seconded by Mr. Gallagher and it carried by unanimous vote.

Discussion of Panel Member Complaint Made by Mr. William Wiehe:

Mr. Kay provided a summary of Mr. Wiehe's original complaint against the Fairfax County Police Department (FCPD) and his ethics complaint against the Panel. Mr. Kay described the process by which the Panel developed procedures for reviewing and responding to complaints against Panel members.

Mr. Kay summarized the substance of the complaint made against Panel Members Robert Cluck and Shirley Norman-Taylor in regard to comments made prior to the start of a July 20, 2020 Panel subcommittee meeting concerning his FCPD complaint. He claimed that Ms. Norman-Taylor said to Mr. Cluck, "I think this will be quick, Bob." To which he replied, "I think so."

Mr. Kay reviewed the process by which the Subcommittee conducting its review of the complaint, which included listening to the audio recording from the July 20, 2020 meeting and interviewing Panel members and OIPA staff that were present at the meeting.

Mr. Gallagher summarized what he learned from listening to the audio and the witness interviews he conducted. Witnesses who recalled the comment being made understood that Ms. Norman-Taylor meant that the subcommittee meetings were generally brief as there was not a lot of discussion on the specifics of the complaint, as occurs at the full Panel meetings. They did not think it showed any type of bias on the part of Ms. Norman-Taylor.

Mr. Kay stated that, based on the interviews he conducted, it can be concluded that this conversation did occur. He interviewed Ms. Norman-Taylor who stated her reasons for making the comment were that subcommittee meetings were short because they only consider the allegations made against the standards in the Panel Bylaws, and that while investigative files vary in size, in this case the investigative file was thin.

Additional discussion ensued on the complaint and the two standards within the Panel's Code of Ethics identified by the complainant as being violated: *I. Dignity and Respect*, and *V. Impartial Oversight*. Both subcommittee members noted that, if there was bias against the complainant it was not acted upon, as the subcommittee recommended that the full Panel review his complaint, and the Panel did so.

Mr. Gallagher moved that based on the interviews conducted with all those in attendance at the subcommittee meeting, and discussion on their views of what happened then, that this be presented to the Panel as being unfounded. Mr. Kay stated that Panel members take their jobs very seriously and agreed the complaint was unfounded. Mr. Kay seconded the motion and it carried by unanimous vote.

Mr. Kay said that in accordance with the established procedures, the subcommittee will develop a report for presentation to the full Panel at its meeting next week.

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

The meeting adjourned at 5:54 p.m.

DRAFT