

Police Civilian Review Panel

March 4, 2021

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:¹

Todd Cranford

Jimmy Bierman, Acting Chair

Frank Gallagher

Doug Kay

Shirley Norman-Taylor

William Ware

Others Present:

Lt. Camille Stewart, FCPD

Anita McFadden, Interim Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel's March 4 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 all Panel Members were present. Mr. Bierman welcomed everyone to the Panel's March 4, 2021 meeting and noted a few housekeeping rules.

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

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

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

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

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

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

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

¹ Three Panel seats were vacant for this meeting.

Mr. Bierman 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. Bierman moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. He further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 179 499 0738 as noted in the Public Meeting Notice. Mr. Kay seconded the motion and it carried by unanimous vote.

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

Introductions of New and Current Panel Members: Mr. Bierman announced that there were two new members of the Panel. He said this meeting will serve as a refresher course for Panel members. There will be three new members appointed in the next few months. He introduced himself and then the other Panel members introduced themselves. The two new members, Mr. Cranford and Mr. Ware, introduced themselves and described their backgrounds. The Independent Police Auditor and his staff, and the Panel's independent Counsel, also introduced themselves to the new members.

Panel Foundations: Review of Bylaws and Code of Ethics: Mr. Bierman said that the Panel was created out of the work of an Ad Hoc Police Practices Commission following the John Geer shooting in Fairfax County. He described the Board of Supervisors December 6, 2016 Action Item, which established the Panel. The Panel first met in March 2017. He referenced the Panel's recent report, the Panel's *Four-Year Review*, as a resource for new members.

Mr. Bierman described the Panel's purpose and stated that the three main functions as outlined in the Action Item and Bylaws are to:

- Review certain investigations to ensure that they are complete, thorough, accurate, objective, and impartial.
- Provide an independent process for initiating a Complaint against an FCPD officer.
- Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police and the Board of Supervisors in policy review.

Mr. Bierman said the Panel does not have investigatory power but reviews investigations conducted by the FCPD Internal Affairs Bureau (IAB). He described the scope of the Panel's review authority as being when the subject matter of an Investigation is an allegation of "abuse of authority" or "serious misconduct" by a FCPD officer, and when a Review Request is filed. He

described the process of a complaint being lodged with the Panel and how the Panel forwards it to the FCPD for investigation. The FCPD provides the Complainant a disposition letter when the investigation is complete. Then for the Panel to review, the Complainant has to request a review. He said the Panel does not review investigations into complaints that fall under the scope of the Auditor, such as those that relate to uses of force. The Panel also does not review time-barred complaints or matters subject to criminal or civil proceedings.

Mr. Bierman reviewed “abuse of authority” and “serious misconduct” as they are outlined in the Bylaws. They are defined as:

- The use of abusive racial, ethnic or sexual language or gestures.
- Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.
- Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.
- Reckless endangerment of detainee or person in custody.
- Violation of laws or ordinances.
- Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

He said that the FCPD is quite a transparent department and that its General Orders are published online for the public to view.

Mr. Bierman said that the Panel has three options in making its findings:

- Concur with the investigation, finding that it is complete, thorough, impartial, objective, and accurate.
- Send the investigation back to the FCPD with request for additional investigation.
- Inform the Board of Supervisors that in the Panel’s judgment the investigation is incomplete.

He said the Panel must review, meet, and issue a review report within 90 days of the review request. He summarized the Panel’s Code of Ethics and noted specifically the importance of confidentiality.

Panel Mission and Processes: Mr. Bierman stated that Complainants can submit a complaint directly to the FCPD or to the Panel. He said the FCPD will investigate and send the Complainant a disposition letter. The Complainant must request a review for the Panel to review. Mr. Bierman said that once a request for review is made, the complaint is assigned to a subcommittee of three members to initially review the investigation. The subcommittee reviews the file in person at FCPD headquarters and then meets to determine jurisdiction in a public meeting. The subcommittee considers: if the complaint is time-barred, whether it alleges serious misconduct or an abuse of authority, and whether the allegations are wholly

unfounded. He provided a recent example. The Subcommittee then presents its findings to the full Panel and the Panel votes on whether to take up the Review.

Mr. Bierman described the process by which the full Panel conducts a public Review Meeting. He said the Complainants are invited to attend and to speak to the Panel, but they can choose not to. Panel members are allowed to ask questions of the Complainant but this not about taking testimony. A representative of the FCPD is invited to attend and speak, but this is not about interrogating the police. The meeting is open to the public, but the public does not participate. The Panel then deliberates and votes on its findings, as described earlier. The Panel can also make recommendations on FCPD policies, practices, or procedures to assist the Chief of Police and the Board of Supervisors with policy review. Mr. Bierman said it is a process of working with the police to make sure their investigations are as complete, thorough, accurate, objective, and impartial as possible.

Mr. Bierman said that the Panel created a Recommendations Matrix, which is available on the website. The matrix includes all recommendations made by the Panel in its public reports, the FCPD's response to the recommendations, and the Panel's response to the FCPD's response.

He provided an overview of the Panel's *Four-Year Review* report, including the recommendations made in the report. He specifically mentioned the recommendation that the Panel be able to electronically review investigative files and the recommendation related to the need for an Executive Director. He noted the recent changes by the Virginia assembly to allow civilian oversight bodies to have investigatory authority. He said that the Panel has recommended that it have investigatory authority in limited circumstances and the ability to automatically review complaints when they are about racial bias. He talked about the recommendation to conduct at least two public forums a year and a forum with the FCPD.

Mr. Gallagher said that many documents are available on the Teams folder. Ms. Ramirez said that they are in the process of setting up the new members with County email accounts.

Mr. Ware asked if Complainants can speak with the Panel members without the FCPD present. Mr. Bierman said they cannot since the Reviews occur during public meetings. Mr. Gallagher clarified that Complainants have the opportunity to speak during Review Meetings but not during Subcommittee Meetings.

Preparation for Review of CRP-20-20 and CRP-20-21: Mr. Bierman said he wants to prepare the Panel for the next Review Meeting to take place on April 1. He described the complaint and incident subject of the complaint as described in the meeting summary. He said the Panel sent the complaint back to the FCPD for additional investigation. He recommends Panel Members listen the audio from the Review Meeting portion of the September meeting. Mr. Bierman said the FCPD investigated the complaints and determined there was no wrongdoing. The Panel requested that, as part of the additional investigation, the FCPD:

- Investigate and analyze the gulf between the plain language of General Order 601.4 and actions taken during the incident about announcing themselves.
- Interview the relevant witnesses named in the Complaint, specifically the neighbors.
- Further analyze the scene.
- Take any other investigation steps as necessary.

He said Panel members should make an appointment with the IAB to review the file at the FCPD headquarters. Ms. Ramirez will send the contact information for IAB staff for Panel members to request an appointment.

Introductions of Independent Police Auditor and Staff: Mr. Schott gave a brief history of the Office of the Independent Police Auditor. He said the office was created by a Board of Supervisors' Action Item at their September 2016 meeting, just before the Panel was created. He provided information on his background as an FBI agent. Mr. Schott described the staff in his office and their responsibilities in supporting the Auditor and the Panel. He said that the second analyst position is currently vacant and is in reserve to potentially fall under the Executive Director position, should the Board create one.

Mr. Schott referenced a PowerPoint slide and described his authority as the Independent Police Auditor, which includes reviewing or monitoring FCPD investigations of certain uses of force – those that are the subject of a public complaint or result in serious injury or death; officer involved shootings, and deaths or serious injuries while in the custody of the FCPD (which may not include a use of force). He said he monitors investigations in real time when there is no complaint required. The Auditor reviews investigations to determine whether they are complete, thorough, accurate, objective, and impartial and, like the Panel, issues public reports of his findings and recommendations. Mr. Cranford asked if there was a definition of serious injury. Mr. Schott said it is defined in the FCPD General Orders and as life threatening injury, something that requires hospitalization, or the loss of a limb. It does not include, for example, a broken bone.

Mr. Schott said that the Auditor's office manages a generic Panel email address and inbox on behalf of the Panel. The Panel's staff person coordinates with the Panel Chair to use the email address to correspond with Complainants. He said that calls from Complainants come to his office phone. The Auditor's staff works to make the complaint process as easy as possible and takes complaints on behalf of the Panel via phone, email, and U.S. mail. Ms. Ramirez noted that staff to the Panel works closely with the Chair to ensure all correspondence is addressed in a timely manner.

Training Needs: Mr. Bierman reviewed the options for new Panel members to receive training and orientation. The Panel received training in July 2019 from the National Association for Civilian Oversight of Law Enforcement (NACOLE) and the videos from that training are available for viewing. NACOLE continues to serve as a resource for oversight professionals across the country including the Panel in Fairfax County. In November 2019, the FCPD provided a training

for Panel members; the audio and meeting summary are available. Mr. Bierman noted that Mr. Schott has also provided presentations to the Panel, including on the Fourth Amendment, that are available for viewing. He said that he would like to table training for now until all seats on the Panel are filled. Mr. Kay expressed his agreement and stated that the full Panel can consider what additional training may be needed in the future. Mr. Bierman asked Panel members to write down questions that come up so that future trainings can address them.

Review of Panel Meeting Schedule: Mr. Bierman stated that the Panel typically meets the first Thursday of each month, but that could change if scheduling conflicts arise that would prevent a quorum, or if there is a backlog of cases. He said that the Panel will conduct Review Meetings on April 1 and on May 6. He said the Panel will need to consider good cause for a late filing in another request for review and that the Panel received today yet another request. He mentioned the need to find a balance between addressing requests for review efficiently with the Panelists' ability to meet more frequently than once a month.

Mr. Gallagher asked if the FCPD has completed the investigation in CRP-20-20 and CRP-20-21 and if the file was ready to review. Mr. Bierman answered affirmatively and that the Panel will conduct the review at the April meeting. Ms. Ramirez stated that the FCPD Chief will be providing the Panel with a supplemental report about the additional investigation.

New Business: Mr. Bierman said that usually the Vice-Chair assumes the Chair position after one year as Vice-Chair. He said that the previous Vice-Chair had to resign to due to work reasons. Mr. Bierman said that he is currently serving as Acting Chair and that the Panel needs to hold an election for a new Chair. He said that hopefully with a full Panel, the Panel can hold its election for a Chair at the May 6 meeting. Mr. Bierman asked Panel members who are interested in potentially serving as Chair to contact him by mid-April.

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

The meeting adjourned at 8:27 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, April 1 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.