

Annual Report of
the Fairfax County
Independent Police Auditor

2021



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Independent Police Auditor

2021 Annual Report of the Fairfax County Independent Police Auditor

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SECTION I: OVERVIEW

The Office of the Independent Police Auditor (“OIPA”) was established by the Fairfax County Board of Supervisors (“BOS”) on September 20, 2016,¹ in response to recommendations from the Ad Hoc Police Practices Review Commission² and became operational on April 17, 2017. OIPA’s mission is to bolster trust between the citizens of Fairfax County and the Fairfax County Police Department (“FCPD”) by providing accountability, fairness, transparency, and trust in the complaint system and investigative process.

The Independent Police Auditor (“Auditor”) is mandated by the BOS to review:

1. All investigations of death or serious injury cases conducted by the Internal Affairs Bureau (“IAB”) of the FCPD; and
2. Use of Force (“UOF”) investigations which are subject of a public complaint made to the FCPD or the Auditor and which meet the definition of police use of force as incorporated in Police Department General Orders (“G.O.”) as of the date of the UOF or alleged misconduct.

The Auditor reviews FCPD internal administrative investigations of all relevant use of force cases and in custody-deaths for thoroughness, completeness, accuracy, objectivity, and impartiality, and issues a public report following the review. The OIPA also produces an annual report,³ as well as additional reports on FCPD policy recommendations or data reviews. Through its reports, the OIPA makes public recommendations for revisions to FCPD policies, training, and practices.

¹ <https://www.fairfaxcounty.gov/boardofsupervisors/sept-20-2016-meeting>

² <https://www.fairfaxcounty.gov/policecommission/>

³ Independent Police Auditor Richard G. Schott presented the 2020 Annual Report to the BOS during the September 28, 2021 Public Safety Committee meeting, available at: <https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/ipa%202020%20annual%20psc%20presentation%20for%20bos.pdf>. This 2021 Annual Report will be presented to the BOS during a 2022 Public Safety Committee meeting.

Since 2017, the OIPA has provided administrative support to the BOS-mandated Fairfax County Police Civilian Review Panel (“Panel”).⁴ The Panel, which is made up of nine volunteer County residents, receives complaints and reviews police investigations involving serious police misconduct or abuse of authority allegations.

The OIPA serves as an accessible, safe, impartial, and responsive intake venue for complaints against the FCPD. Citizens may request that the Auditor or the Panel review an already completed FCPD investigation if they remain dissatisfied with the results. Since 2017, the OIPA has processed citizen complaints concerning use of force, and allegations of serious misconduct and abuse of authority which fall under the purview of the Panel. In 2022, as the new Office of the Police Civilian Review Panel (OPCRP) is established, the OIPA will work with the (OPCRP) to ensure citizen complaints are handled by the appropriate agency.

The global pandemic caused by the Covid-19 coronavirus continued to impact the functions of the OIPA in 2021. Staff worked both remotely and in-person and most Panel public meetings were conducted virtually due to safety concerns and/or lack of meeting space. The University of Texas at San Antonio and the University of Cincinnati (“UTSA/UC”) research team findings, which had been delayed because of the pandemic, were presented to the BOS during the June, 2021, Public Safety Committee meeting. The findings were included in a report examining the racial disparities in use of force incidents in Fairfax County between 2016 – 2018. Community outreach efforts continued to be virtual throughout much of 2021.

This Annual Report provides a description of key OIPA activities that occurred during 2021 with an emphasis on individual case reviews conducted, recommendations made by the Auditor, the data review and analysis conducted and presented by UTSA/UC, complaint intake, and support provided to the Panel.

⁴ The newly established OPCRP will assume the administrative support duties currently provided by the OIPA beginning in 2022.

SECTION II: INDIVIDUAL CASE REVIEWS

The OIPA monitored or reviewed a total of 16 FCPD investigations during 2021.⁵ The majority (12) of cases were monitored, meaning that at the time or shortly after the incident, the IPA was able to comment or provide immediate feedback and/or recommendations concerning the ongoing FCPD investigation.

Seven investigations were monitored by the OIPA automatically due to the nature of the incident: 5 were officer-involved shootings and 2 were death or serious injury cases. The Auditor monitored 3 investigations at the request of FCPD Chief Edwin C. Roessler Jr., which included a takedown and force to cuff in one incident, a force to cuff and choke in a second, and the use of an electronic control weapon in a third incident.

Two FCPD investigations⁶ into uses of force were monitored because the complainants had submitted their allegations to the OIPA shortly following the incidents, and the FCPD investigations were still ongoing. The allegations included being punched and dragged in one complaint and being pushed in the other.

The Auditor reviewed and/or monitored a total of 6 investigations that were the subject of a public complaint of excessive force made to either the OIPA (2) or the FCPD (4). The types of force used by FCPD officers in these allegations were varied and included one of each of the following: assault, brandished firearm, choke, drag, punch, push, and takedown.

⁵ Additional details on the investigations monitored or reviewed during 2021 are provided in Appendix A.

⁶ IPA-20-06 and IPA-20-09

In 2021, the OIPA released seven reports on incidents that occurred during 2019 (6) or 2020 (1)⁷:

OIPA Case #	Incident Date	Incident or Allegation Description	Initiated By	Review Start Date	Report Date
IPA-19-04	4/25/2019	UOF (Takedown, Force to Cuff)	Request by Chief	4/30/2019	5/18/2021
IPA-19-05	6/25/2019	OIS (Domesticated Animal)	Automatic	6/25/2019	3/25/2021
IPA-19-06	7/20/2019	UOF (Force to Cuff, Choke)	Request by Chief	7/22/2019	3/5/2021
IPA-19-07	10/21/2019	OIS	Automatic	10/22/2019	7/30/2021
IPA-20-01	10/20/2019	Death/Serious Injury	Automatic	1/27/2020	3/25/2021
IPA-20-03	10/25/2019	UOF (Choke)	Complaint to FCPD	5/29/2020	5/7/2021
IPA-20-06	5/27/2020	UOF (Punch; Drag)	Complaint to OIPA	6/23/2020	2/25/2021

KEY:

- OIS – Officer-Involved Shooting
- ICD – In-Custody Death
- UOF – Use of Force

Of the seven reports published during 2021, the IPA found that all seven FCPD investigations met the standards of being complete, thorough, accurate, objective, and impartial. However, the IPA did make recommendations in four reports, which are discussed in greater detail in Section III.

⁷ Links to all reports published in 2021, and their publication dates, are provided in Appendix B.

Five reviews⁸ underway at the start of 2021 have not been completed and will continue during 2022. Public reports will be issued as they are completed:

OIPA Case #	Incident Date	Incident or Allegation Description	Initiated By	Review Start Date
IPA-19-08	12/4/2019	Death/Serious Injury IAB Investigation	Automatic	12/19/2019
IPA-20-02	1/28/2020	OIS	Automatic	1/29/2020
IPA-20-05	6/5/2020	UOF (ECW)	Request by Chief	6/6/2020
IPA-20-09	11/10/2020	UOF (Push)	Complaint to OIPA	11/16/2020
IPA-20-10	12/17/2020	OIS	Automatic	12/18/2020

During 2021 the OIPA began monitoring or reviewing FCPD investigations into four incidents. These OIPA reviews will continue into 2022 and public reports will be issued as they are completed:

OIPA Case #	Incident Date	Incident or Allegation Description	Initiated By	Review Start Date
IPA-21-01	6/7/2019	UOF (Brandished Firearms)	Complaint to FCPD	4/12/2021
IPA-21-02	11/23/2020	UOF (Assault)	Complaint to OIPA	7/7/2021
IPA-21-03	7/19/2021	OIS	Automatic	7/19/2021
IPA-21-04	1/18/2021	UOF (Takedown)	Complaint to FCPD	8/3/2021

⁸ A sixth review (IPA-20-04), which had been open at the start of 2021, was closed administratively when it was determined that the use of force did not result in serious injury and there was no public complaint.

Trends in Case Reviews

The OIPA reviewed the data on case reviews over the four full years the office has been in operation. Since OIPA was established in 2017, it has reviewed one or two officer-involved shootings per year, including one involving an animal in both 2017 and 2019. There have been very few death/serious injury incidents with only two in each 2017 and 2019. In three of these incidents, serious injuries were sustained and in one incident the subject died. To date, the OIPA reviewed one in-custody death, which occurred in 2018. The remaining incidents reviewed or monitored by OIPA were uses of force that did not result in serious injury or death, and did not include an officer-involved shooting. The use of force cases on OIPA's caseload has decreased each year from 2018 (12 cases) to 2021 (1 case).⁹

SECTION III: POLICY REVIEW & RECOMMENDATIONS

In addition to conducting individual incident reviews, the BOS authorized the Auditor to make public recommendations to the Chief of Police concerning the revision of FCPD policies, training, and practices. The BOS is notified when the Auditor issues recommendations. In 2021, the Auditor examined FCPD policies, practices, and training, both in the context of individual incident reviews and independent of these reviews.

OIPA Recommendations

A 2020 OIPA incident report¹⁰ included the recommendation that the FCPD add certain consensual encounters, investigative detentions, and arrests to the list of situations when the FCPD mandates the activation of in-car video ("ICV") equipment. Specifically, I recommended that ICV be activated whenever it is foreseeable that the consensual encounter, investigative detention, or arrest, will be initiated or occur within the range of the ICV equipment. In a report published on February 25, 2021,¹¹ I reiterated that FCPD G.O. 430.8 IN CAR VIDEO

⁹ Data as of March, 2022. The OIPA or the FCPD may still receive complaints of use of force concerning incidents occurring in 2021.

¹⁰ IPA-20-07 published December 14, 2020.

¹¹ IPA-20-06

PROGRAM which addresses the mandatory activation of ICV equipment does not mandate its use in these circumstances; therefore, the 2021 OIPA report repeated the prior recommendation made in the 2020 report.

In a report published on March 5, 2021,¹² OIPA recommended changes to FCPD policy on bias-based policing. Two changes were to reflect that bias-based policing is prohibited even during consensual law enforcement activity. The proposed changes were intended to make clear that an FCPD officer cannot consider race or ethnicity even when deciding to engage an individual in purely consensual activity. A third recommendation was to explicitly state that FCPD's IAB will investigate all allegations of bias-based policing in an effort to prove or disprove them. These recommendations were included in FCPD's revised G.O. 002 HUMAN RELATIONS which went into effect on July 9, 2021.

In a report published on March 25, 2021,¹³ OIPA identified two grammatical inconsistencies in FCPD's G.O. 502 which covers "normal vehicle operations." To resolve the grammatical inconsistencies, I recommended changes to the wording of G.O. 502.0 and G.O. 502.3. Also recommended in the OIPA report was the deletion of four provisions of G.O. 502.3, which were duplicative of earlier provisions in G.O. 502.3.

In a report published on May 7, 2021,¹⁴ OIPA pointed out that the FCPD policy governing internal investigations provides four potential findings at the conclusion of an internal investigation. The "Sustained" finding is used when the "allegation is supported by a preponderance of the evidence" and is the only one of the four findings that includes the "preponderance of the evidence" burden of proof standard. I recommended that, because the "preponderance of the evidence" is the appropriate standard upon which to base findings in any internal investigation, the "preponderance of the evidence" burden of proof standard be added to both the "Unfounded" and the "In Compliance" findings listed in FCPD G.O. 301 VI. This change would leave only the "Not Sustained" finding without the "preponderance of the evidence" threshold. This is appropriate because "Not Sustained" implies that "[i]nsufficient

¹² IPA-19-06

¹³ IPA-19-05

¹⁴ IPA-20-03

evidence exists to either prove or disprove the allegation.” Should this recommendation be adopted by the FCPD, G.O. 301 VI. will read, in relevant part (with proposed added language italicized):

VI. CLASSIFICATION OF ALLEGATIONS After completion of an administrative investigation, each allegation shall be classified with one of the following findings:

1. Unfounded - *Based on a preponderance of the evidence*, the allegation is false, and did not occur.
2. In Compliance - *Based on a preponderance of the evidence*, the employee's actions were in compliance with the rules and regulations of the Department.
3. Not Sustained - Insufficient evidence exists to either prove or disprove the allegation.
4. Sustained - The allegation is supported by a preponderance of the evidence.

A separate recommendation included in the May 7, 2021, report was for the FCPD to mandate, whenever possible, that any vehicle used to transport an arrestee be equipped with forward-facing and rear-facing in-car video capability, and that they be equipped with safety partitions between the front and rear seats. The vehicle used by the officer in the incident under review had neither of these features. Although I found that the preponderance of the evidence supported the FCPD’s finding that the alleged use of force did not occur in the incident, rear-facing ICV footage may have provided more conclusive evidence. Complementing that recommendation was the recommendation to outfit every police cruiser used to transport people with safety partitions between the front and rear seats. Although the officer involved in the incident under review did not routinely transport people in his cruiser, he did infrequently transport people. Utilizing vehicles equipped with both safety partitions and front and rear-facing ICV systems, for all transports, would benefit both officers and members of the community.

Following FCPD's incorporation of a previous OIPA recommendation into its G.O. 601 VI. SEARCH OF PERSONS on January 1, 2021,¹⁵ the Auditor recommended another revision on June 9, 2021. OIPA's previous recommendation was designed to recognize the full extent of and limitations on the lawful search incident to arrest.¹⁶ The Auditor's next recommendation for revision to G.O. 601 VI.¹⁷ followed an opinion rendered by the Fourth Circuit Court of Appeals on May 7, 2021.

In its decision,¹⁸ the Fourth Circuit Court of Appeals held that the limits of the search of the passenger compartment of a vehicle based on a recent occupant's arrest prescribed by the United States Supreme Court, in its Arizona v. Gant¹⁹ decision, apply beyond the automobile context. Specifically, the Fourth Circuit in the Davis case held that "the first Gant holding applies to searches of non-vehicular containers incident to a lawful arrest 'only when the arrestee is unsecured and within reaching distance of the [container] at the time of the search.'"

Based on the decision, I recommended that G.O. 601 be revised immediately to read:

G.O. 601 VI. SEARCH OF PERSONS

In order to ensure the safety of the arresting officer and prevent possible harm to the arrestee or other persons, officers shall search persons in their custody for evidence, contraband, and weapons or other objects which could be used to inflict harm or effect an escape.

¹⁵ See May 26, 2020, OIPA Policy Change Recommendation Memorandum to Chief Edwin C. Roessler Jr. available at <https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/oipa%20memo%205-26-20%20go601.pdf>.

¹⁶ The United States Supreme Court first put parameters on the scope of the search incident to arrest in Chimel v. California, 395 U.S. 752 (1969). The Arizona v. Gant, 556 U.S. 332 (2009) decision prescribed the limits of the search of the passenger compartment of a vehicle based on a recent occupant's arrest. Finally, in Riley v. California, the Court prohibited the search of an arrestee's personal electronic device (including a cell phone), pursuant to the search incident to arrest exception.

¹⁷ See June 9, 2021, memo to FCPD Chief Kevin Davis available from <https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/oipa%20memo%206-9-21%20g.o.%20601.pdf>

¹⁸ United States v. Davis, 997 F.3d 191 (4th Cir. 2021).

¹⁹ Note 14, *supra*.

A. Search incident to arrest - in effecting the arrest of a suspect, officers should perform a systematic search of the person at the earliest possible time and, unless conditions dictate otherwise, prior to transporting prisoners in police vehicles. The search is made by sliding the hand over the suspect's body, feeling for weapons, other objects, evidence, and contraband with special attention to the waistband, armpit, collar, and groin areas. If an unusual object is detected, the officer will reach into or under the clothing to remove it. Search incident to arrest includes a thorough search of the suspect's clothing and pockets, and the removal of coats, jackets, or other outer garments.

The search incident to arrest includes a search of the area within the arrestee's immediate control at the time of their arrest. That search may include any unlocked bags, purses, or containers within that area, but only if the arrestee is unsecured and within reaching distance of the container at the time of the search. (United States v. Davis, 997 F.3d 191 (4th Cir. 2021)).²⁰ This authority does not extend to locked items, as they are not accessible to the arrestee. If the arrestee was the driver, passenger, or recent occupant of a vehicle, the interior passenger compartment of the vehicle may be searched incident to the arrest only if the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search; or, it is reasonable to believe the vehicle contains evidence of the offense for which the person was arrested (Arizona v. Gant, 556 U.S. 332 (2009)).

Search incident to arrest does not extend to digital information on a cell phone or other personal electronic device seized from an arrestee.

The limitations on the search incident to arrest of bags, purses, containers, digital information on a cell phone or other personal electronic device, or the passenger compartment of a vehicle, does not prevent a more complete search if the search is

²⁰ This is the full citation, which was unavailable when the June 9, 2021, memo was written.

based on another exception to the warrant requirement—such as consent, inventory, or the motor vehicle exception.

UTSA Study Recommendations

In addition to the recommendations made directly by OIPA, the research team from UTSA/UC—commissioned by OIPA in 2020 to conduct a comprehensive examination of available FCPD use of force data (further described in Section IV of this Annual Report)—made several recommendations to the FCPD in the report it provided to the BOS in June, 2021. Those recommendations were categorized into Data Collection recommendations, Policy recommendations, and Training and Organizational recommendations. Because OIPA will track the progress of implementation of UTSA/UC’s recommendations, some of the key recommendations are highlighted below.

UTSA/UC Data Collection recommendations:

- 1) Capture all instances of force and resistance sequentially during each encounter involving the use of force;
- 2) Improve the capture of medical and injury data for civilians and officers (consider using the Abbreviated Injury Scale (or similar) from the medical literature to more accurately categorize the nature and severity of injuries (if any) sustained);
- 3) Adjust the Force Type field to clearly distinguish force used against animals and vehicles from force used against persons;
- 4) Add a field to capture civilian demeanor at the time force initially was used;
- 5) Add an “Effectiveness” field for all control type options to identify when a control tactic or weapon was effective, ineffective, or of limited effectiveness;
- 6) Begin capturing all instances when deadly force would have been authorized by law and policy but was not used.

UTSA/UC Policy recommendations:

- 1) Re-define the use of force reporting threshold to include any significant physical contact beyond a firm grip, including the use or threatened use of any weapon;

- 2) Refine the policy preference for de-escalation by emphasizing the use of de-escalation to reduce the need for and the level of force required and to emphasize that officers must use only the minimum amount of force reasonably needed to overcome resistance;
- 3) Incorporate a use of force continuum that clearly links levels of force to levels of resistance while allowing officers to escalate quickly if reasonably required under the circumstances;
- 4) Amend G.O. 540.8 to allow for the use of deadly force to apprehend a felon fleeing from a crime of violence only if the suspect poses an imminent risk of death or serious injury to the officer or a third party, or consider eliminating the fleeing felon provision entirely and adopt a single, clear standard for the use of deadly force – Deadly force is permissible only if the suspect poses an imminent risk of death or serious injury to the officer or others;
- 5) Review FCPD policies on the use of patrol dogs and consider limiting canine bites only to certain types of crimes or other narrowly-defined conditions;
- 6) Consider adopting a foot pursuit policy to help reduce force and injuries to officers and suspects.

UTSA/UC Training and Organizational recommendations:

- 1) Substantially increase the amount of training hours provided annually for de-escalation skills and tactics;
- 2) Consider adoption of Integrating Communication Assessment and Tactics (ICAT) training, developed by the Police executive Research Forum (PERF), to supplement the de-escalation training currently provided;
- 3) Consider adoption of a collaborative responder model for handling incidents with persons with behavioral health (BH) issues and/or intellectual/developmental disabilities (IDD);
- 4) Consider rotating officers out of high crime patrol areas and district stations on a regular basis to help reduce officer stress and the potential influence of implicit bias on decision-making;

- 5) Conduct annual or biannual follow-up analyses with improved force data to evaluate whether observed disparities diminish or change over time;
- 6) Utilize body-worn camera footage to evaluate racial/ethnic disparities in treatment by the FCPD, force escalation or de-escalation, and to improve training and accountability.

OIPA largely agrees with the recommendations provided by UTSA, with the exception of the recommendation that “if force is required, officers *will* use only the amount of force reasonably needed to overcome an individual’s resistance and to gain control.” I disagree with trying to assign the minimum amount of force reasonably needed in a given situation. I agree that police departments should strive for and train officers to utilize a minimum amount of objectively reasonable force when justified, but I do not agree that the written policy should be overly restrictive. Additional details on this recommendation, and my response to it, will be outlined in a forthcoming memo to the BOS, which will be published on the OIPA webpage.

FCPD Responses to Recommendations

Recommendations made by the OIPA on FCPD policies and practices are compiled and addressed by the FCPD on an annual basis. A Recommendations Matrix is periodically updated to reflect the progress of OIPA recommendations made to the FCPD to keep the Board of Supervisors and the public informed. An update to the matrix was published on the OIPA webpage in May, 2021 and March, 2022. Below is an excerpt of the matrix with the Auditor’s recommendations made to or implemented by the FCPD during 2021:

Case # Incident Date	Report Date	Recommendation	Status
Memo	12/11/2018	Clarifying in G.O. 610.3 III. C. that warrants must be served within 15 days after being obtained and removing the possibility of an exception to this timeline and ensuring adherence to VA code § 19.2-56.	Implemented (see G.O. 611, effective 7/1/2021)
Memo	12/11/2018	Specifying within G.O. 610.3 IV. B. that the presence of domesticated animals should be presented at the briefing prior to executing a search warrant to make it consistent with G.O. 540.10 I. B.	Implemented (see G.O. 611, effective 7/1/2021)
Memo	12/11/2018	Clarifying in G.O. 610.3 V. B. that a member of the search team should “document” the execution of a search warrant, not “record” it, which could be construed as audio or video recording.	Implemented (see G.O. 611, effective 7/1/2021)
Memo	12/11/2018	Adding language to G.O. 610.3 VI. to specify that the knock and announce requirements prior to entry still apply when a search site is known or thought to be vacant.	Implemented (see G.O. 611, effective 7/1/2021)
Memo	12/11/2018	Clarify in G.O. 610.3 VII. C. that no frisk can occur unless the officer conducting the frisk can articulate reasonable suspicion that the individual frisked is armed and poses a danger.	Implemented (see G.O. 611, effective 7/1/2021)
Memo	12/11/2018	In G.O. 610.3 IX. B. removing confusing language regarding where a statement should be filed when no items are seized in a search.	Implemented with modifications (see G.O. 611, effective 7/1/2021)
Memo	5/26/2020	Policy changes to G.O. 603.4 POLICE CITIZEN CONTACT, including clarifying elements of reasonable suspicion and making the reasonable suspicion standard consistent throughout the G.O.	Implemented (see G.O. 002 Human Relations, 7/9/2021)
Memo	5/26/2020	Policy changes to G.O. 601 ARREST PROCEDURES, including to recognize the full extent of and limitations on the lawful search incident to arrest.	Implemented (G.O. 601, effective 1/1/2021)
20-06 5/27/2020	2/25/2021	Reiterated recommendation from 20-07	In progress

19-06 7/20/2019	3/5/2021	Revise the language in FCPD Regulation 201.22 to reflect that bias-based policing is prohibited even during consensual law enforcement activity and that the department's IAB will investigate all allegations of bias-based policing in an effort to prove or disprove them.	Implemented (see G.O. 002, effective 7/9/2021)
20-01 10/20/2019	3/25/2021	FCPD G.O 502 on "normal vehicle operations" should be revised to fix grammatical errors and reduce redundant language.	In progress
20-03 10/25/2019	5/7/2021	Add the "preponderance of the evidence" burden of proof standard to both the "Unfounded" and the "In Compliance" findings listed in FCPD G.O. 301 VI.	In progress
20-03 10/25/2019	5/7/2021	Whenever possible, any vehicle used to transport an arrestee shall be equipped with forward-facing and rear-facing in-car video capability and shall be equipped with safety partitions between the front and rear seats.	In progress
Memo	6/9/2021	Revision to FCPD G.O. 601 ARREST PROCEDURES to reflect 4th Circuit ruling in U.S. v. Davis.	In progress

The complete Recommendations Matrix is available from <https://www.fairfaxcounty.gov/policeauditor/reports-and-recommendations>.

SECTION IV: DATA REVIEW & ANALYSIS

UTSA/UC Research Study on Use of Force: In 2019, the Board of Supervisors charged the OIPA with identifying an academic or research entity to conduct a comprehensive examination of available use of force data in the County. OIPA developed a statement of work to solicit proposals and led a review committee to evaluate the proposals received. OIPA recommended the selection of the team from the University of Texas at San Antonio in partnership with researchers from the University of Cincinnati. The study was designed to identify patterns and trends in uses of force by the FCPD during 2016-2018 with emphasis on race and ethnicity. The multivariate statistical study analyzed the influence of civilian race, ethnicity, and other factors on force used by the FCPD, which went beyond the scope of OIPA's previous data reviews.

The study began in 2020 and was completed in July 2021.²¹ During that time, OIPA played a liaison role in transferring data from the FCPD and other County agencies to the UTSA researchers. OIPA also provided UTSA with its own use of force data and collected data elements that were not already available in the FCPD records management system.

In May 2021, OIPA received a draft of UTSA's report and provided feedback to the researchers. OIPA shared the draft report with the BOS and with FCPD leadership. In June 2021, OIPA convened meetings between the researchers and representatives of the BOS to prepare for its presentation to the Board's Public Safety Committee. A meeting with UTSA and the new FCPD Chief and members of his staff was held in June 2021, during which the researchers' decision to classify the pointing of a firearm or taser as a Level 3 use of force for the study was discussed. Following that meeting, the researchers did not make any changes to its original analysis as presented in their draft report, but it did conduct an *additional* analysis of the data to see how the findings changed if the pointing of a firearm or taser was coded as a Level 1 use of force. The results of the additional analysis were added to the report as *Addendum IX. Force Re-coded* for the Board of Supervisors and the Fairfax County community to consider.

At the June 29, 2021, Public Safety Committee meeting of the BOS, the research team from UTSA/UC presented *An Investigation of the Use of Force by the Fairfax County Police Department* detailing their findings, analyses, and recommendations, to include the additional analysis requested by the FCPD.²² A final report with addendum was provided to OIPA in July 2021, and can be accessed on the OIPA's webpage.²³

Members of the research team returned to Fairfax County in October 2021 to present the findings of their study to the community during a public meeting convened by Supervisor

²¹ Due to the pandemic and unexpected delays in the data transfer, the completion date of the contract was extended by six months to July 31, 2021.

²² Presentation slides available from:

<https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting-materials/2021/june29-public-safety-police-department-use-of-force-presentation.pdf>.

²³ See Smith, M.R., Tillyer, R., and Engel, R.S. (July 2021). *An Investigation of the Use of Force by the Fairfax County Police Department* available at:

<https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/revised%20final%20outsas%20report%207-6-21.pdf>.

Rodney Lusk (Chair of the Public Safety Committee). Also in October 2021, members of the research team took part in a virtual meeting of a community committee empaneled by Supervisor Lusk to advise the Board of Supervisors on the researchers' recommendations made in their report. These appearances were fulfilled by the researchers despite the closing of the contract between them and the County in July 2021.

The OIPA was extremely pleased with the expertise and professionalism of the UTSA research team and their willingness to provide useful recommendations to the County to help it continue to improve its use of force data collection and the steps it can take to possibly reduce racial and ethnic disparity in use of force incidents. Further, the FCPD seems poised to consider the study's findings and incorporate many of its recommendations. In a video posted by the FCPD on June 22, 2021, Chief Davis stated that "this study and its recommendations will serve as action items that will simply make us better."²⁴

SECTION V: ADMINISTRATIVE SUPPORT, COMMUNITY OUTREACH, AND PROFESSIONAL DEVELOPMENT

Support to the Police Civilian Review Panel

Throughout 2021, the OIPA served as an independent intake venue for complaints against the FCPD, including allegations of serious police misconduct or abuse of authority, which fall under the review authority of the Panel. In 2021, OIPA staff received 14 initial complaints and 14 requests for review on behalf of the Panel. OIPA staff processed all complaints and requests for review by corresponding with complainants on the Panel's behalf, disseminating complaints to the FCPD for investigation, and tracking the status of all complaints through the intake and review process.

In addition to receiving and processing all complaints and requests for review made to the Panel, the OIPA provided ongoing administrative support to the Panel during 2021. This support included managing the logistics of Panel business meetings and subcommittee meetings; maintaining data on complaints and Panel processes; and producing timely meeting

²⁴ See <https://www.youtube.com/watch?v=gQqrAVtPMnY>.

summaries and audio recordings of all Panel public meetings.²⁵ During 2021, OIPA staff attended and provided administrative support for each of the Panel's 14 business meetings, 9 subcommittee meetings, and a public forum with FCPD Chief Kevin Davis. OIPA staff also supported the Panel in conducting three "Quarterly Meetings" with representatives from the FCPD, OIPA staff, the County Attorney's Office, the Panel Chair and Vice Chair, the deputy County Executive for Public Safety, and the Chiefs of Staff for the Chairman of the Board of Supervisors and the Chairman of the Public Safety Committee.

Additionally, OIPA staff served as liaison between the Panel and FCPD's Internal Affairs Bureau, maintained all Panel public records and responded to FOIA requests, drafted correspondence and reports, and maintained the Panel's webpage. As 2021 saw high turnover in Panel membership, OIPA assisted in the onboarding of five new Panel members, which included obtaining county email accounts and orienting them to Panel materials and processes. OIPA staff also made sure Panel members knew about available training opportunities, registered their virtual participation in webinars, and coordinated travel for the Panel Vice-Chair to attend the National Association of Civilian Oversight of Law Enforcement's (NACOLE) annual conference in Tucson, Arizona in December 2021.

In 2021, the Panel requested, and the Board of Supervisors approved, the establishment of an Executive Director position for the Panel. OIPA staff researched similar positions in oversight entities in other jurisdictions and provided its findings to the Board to inform the creation of the position in Fairfax County. Because the BOS created an Office of the Police Civilian Review Panel to be separate from the OIPA, OIPA staff developed budget and staffing proposals for the Department of Management and Budget (DMB) to consider in establishing the new office. OIPA coordinated with the County's Department of Human Resources (DHR) and Panel leadership to draft a position description, advertise for applicants on a national scale, and identify highly qualified candidates to be considered. Interviews were scheduled for early 2022 and the position was filled shortly thereafter.²⁶

²⁵ OIPA hired temporary staff in 2021 to assist it in meeting its administrative duties to the Panel.

²⁶ The Board of Supervisors appointed the Panel's first Executive Director, Steven Richardson, on February 22, 2022.

Community Outreach

During 2021, OIPA staff participated in several community meetings and FCPD functions to inform the community about the Auditor, the Panel, and their respective responsibilities.

Among those outreach events were the following:

- April 2021 – Participated (virtually) in the McLean Citizens Association (MCA) Public Safety Forum on Criminal Justice Reform, with Panel member Jimmy Bierman.
- April 2021 – Presented (virtually) to the FCPD Community Police Academy.
- June 2021 – Presented to the FCPD Recruit Class, with Panel members Jimmy Bierman and Cheri Belkowitz.
- August 2021 – Presented (virtually) to the Communities of Trust, with Panel member Jimmy Bierman.
- September 2021 – Presented (virtually) to the Rosslyn/Fort Meyer Rotary Club.
- September 2021 – Presented to the FCPD Community Police Academy.
- October 2021 – Participated in a public meeting for the presentation of UTSA’s Report to the greater Fairfax County community, arranged by Public Safety Committee Chair Rodney Lusk.
- October 2021 – Participated (virtually) in a meeting for the presentation of UTSA’s Report to the Fairfax County Use of Force Community Advisory Committee convened by Public Safety Committee Chair Rodney Lusk.
- November 2021 – Participated (virtually) in the Fairfax County Federation of Citizens Associations Public Safety Forum Panel on Criminal Justice Reform, with Panel member Dirck Hargraves.

As an additional part of community outreach, OIPA staff fielded questions from and facilitated conversations among the IPA, the Panel members and jurisdictions exploring the implementation of civilian oversight. During 2021, these included:

- The city of Columbus, Ohio
- The city of Richmond, Virginia

- The city of Virginia Beach, Virginia
- The city of Alexandria, Virginia

Professional Development

Staff in the OIPA participated in professional development opportunities throughout the year to continue to learn and keep abreast of national trends and research.

During 2019-2020, the Auditor served as the Legal Officers Section representative on the International Association of Chiefs of Police (“IACP”) Working Group on “Unbiased Policing” (renamed by the Working Group to “Bias-Free Policing”). In January 2021, the IACP adopted the Working Group’s product and published new guidance on Bias-Free Policing on IACP’s website.²⁷ The Auditor also continued his service on the IACP Working Group on “Pre-Arrest Diversion” (also called “Alternatives to Arrest”) during 2021. In 2021, the IACP Policy Center Advisory Group reviewed and approved that Working Group’s guidance, which is expected to be published during 2022.

In April 2021, the Auditor participated (in-person) in the Department of Homeland Security’s (“DHS”) Use of Force Simulation Experiment (“SIMEX”). DHS is the largest law enforcement agency in the United States. The SIMEX was designed to explore and analyze current and evolving procedures and technology to ensure the appropriate use of force by state, local, and federal law enforcement officers. Results and data generated from the SIMEX will be used by DHS leadership, and by state and local law enforcement agencies, to develop best practices for the use of force and to tailor those best practices to their respective jurisdictions. DHS brought together representatives from DHS components, police chiefs and sheriffs, law enforcement research organizations, and members of state and local law enforcement agencies to participate in the SIMEX. DHS also solicited individuals involved in civilian oversight of law enforcement to participate. DHS will publish the results of the SIMEX in a public report to be released in 2022.

²⁷ Available at [Bias-Free Policing 2021-01.pdf \(theiacp.org\)](#).

Staff from OIPA attended numerous training sessions provided by the National Association for the Civilian Oversight of Law Enforcement (“NACOLE”) during the virtual component of NACOLE’s 2021 annual training conference. The training sessions focused on issues of interest to oversight professionals such as reform and transformative change in policing, innovations in oversight, and strengthening the work of oversight. Additionally, both OIPA staff members attended the in-person component of NACOLE’s annual training conference in December, 2021. The conference was titled “Civilian Oversight as a Permanent Part of Public Safety” and presented on topics such as reform and innovation, jail and prison oversight, strengthening the work of oversight, and collaboration. Attendance at the training sessions helped both members of the OIPA to maintain their “Certified Practitioner of Oversight” credentials bestowed by NACOLE.

The Auditor also became a member of NACOLE’s Use of Force Policy Development Committee in 2021. The committee is working to develop comprehensive model policies on Use of Force issues which can be consulted by oversight practitioners and law enforcement agencies when they update and modify their existing Use of Force policies.

Finally, OIPA staff attended numerous virtual sessions of the IACP annual training conference. While the conference was scheduled to be held in-person in New Orleans during September, the devastating damage caused by Hurricane Ida in August forced the conference to be held virtually.

SECTION VI: CITIZEN COMPLAINTS TO THE FCPD

As mandated by the BOS,²⁸ the FCPD provides a public report to the Auditor on the disposition of all citizen complaints made against the FCPD so that the Auditor can ensure the FCPD is “properly responding to” and investigating these complaints in a “timely manner.”

The following chart depicts the status of all citizen complaints lodged against the FCPD during 2021:

Quarterly Case Status by Received Date
Fairfax County Police Department
Internal Affairs Bureau

Citizen Complaint Status	2021 Quarter 1 Jan/March	2021 Quarter 2 April/June	2021 Quarter 3 July/Sept	2021 Quarter 4 Oct/Dec	Total
Active	4	7	13	33	57
In Compliance	16	23	16	10	65
Not Sustained	0	.0	0	0	0
Sustained	2	3	0	0	5
Unfounded	6	5	7	0	18
Total	28	38	36	43	145

Last Updated: January 10, 2022
Source: IAPRO RMS System

Overall, 61% of the investigations opened pursuant to a complaint made in 2021 were resolved by the end of the year. This is substantially higher than the 50% of 2020 complaints that had been resolved by the end of that year. Of course, the pace of investigations conducted during 2020 were affected by Covid-19 pandemic issues; however, the 2021 closure rate of 61% is still a marked increase over the 53% closure rate achieved in 2019. While 58% of complaints made between July - December, 2021 were still being investigated at the end of the year, 80% of the

²⁸ See [September 20, 2016, BOS Action Item](#) establishing the OIPA.

investigations into complaints made between January – June, 2021 had been completed by the end of the year.

In addition to the timeliness of investigations, the substance of FCPD disposition letters sent to complainants continued to be monitored by the Auditor in 2021. The need for improvement of disposition letters was a topic of discussion between the FCPD, OIPA, and the Panel in 2019, which resulted in a working group being convened by the FCPD. The working group produced a template for disposition letters to ensure that adequate information was being shared with complainants at the conclusion of investigations. Improvement in the details contained in disposition letters sent during 2020 was noticed, and the Auditor continued to review disposition letters provided to complainants throughout 2021, finding that they continue to provide greater detail to complainants than in years prior to 2020. In addition to the more detailed information being provided, each disposition letter includes information that describes the complainant's ability to seek a review of the completed FCPD investigation by either the OIPA or the Panel.

SECTION VII: ANTICIPATED 2022 ACTIVITIES

During 2022, the OIPA will continue to monitor and review FCPD internal investigations, recommend changes to FCPD policies, training, and practices, and provide administrative support to the Panel (at least until the administrative support duties can be transferred to the Panel's Executive Director who assumed his role in February, 2022). More specifically, anticipated OIPA activities in 2022 are described below.

Individual Case Reviews

During 2022, the Auditor will continue to monitor and review the five investigations of incidents underway at the end of 2021. New incident reviews in 2022 will include those that are monitored at the inception of the FCPD investigation because of the nature of the incident, those that are initiated by a citizen complaint to the FCPD or to the OIPA during or after the FCPD investigation has concluded, and those that are undertaken at the request of the FCPD Chief.

Policy Review

Body-Worn Cameras: OIPA will continue to monitor the FCPD's use of body-worn cameras and will provide policy input as the FCPD finalizes a new comprehensive General Order (509) covering both Body-worn Camera and In-car Video Systems.

UTSA Research Study on Use of Force: OIPA will continue to monitor the implementation of the recommendations made by the UTSA-led research team. This will include assisting the FCPD and the Fairfax County Use of Force Community Advisory Committee which was empaneled specifically to review and provide feedback to the BOS on UTSA's findings, and to assess data and policy recommendations made by the research team.

Racial Disparity in Use of Force and Other Police Activity: In 2022, the OIPA anticipates returning to its examination of FCPD use of force incidents and conducting data analyses to improve the community's collective understanding of FCPD force incidents and their impact across racial and ethnic groups.²⁹ The OIPA looks forward to collaborating with the FCPD's newly appointed Director of the Office of Data Analytics & Strategic Initiatives to determine any gaps in data collection and whether additional data can be collected for police activities such as requests for consent to search (whether consent is given or not) and situations in which force was justified but was not deployed.

Police Civilian Review Panel

During 2022, OIPA will continue to provide administrative support to the Panel but will eventually transfer its Panel support activities to the Executive Director and the new office after a period of transition. For much of 2022, OIPA anticipates working with the Executive Director to create new policies and procedures for processing citizen complaints as the oversight

²⁹ The OIPA published *A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015* in July, 2018, and *A Review of the Disparity in FCPD Use of Force Incidents by Race in 2016* in March, 2020. The more comprehensive study by the UTSA research team examined use of force incidents occurring between 2016 – 2018, and their findings were published in *An Investigation of the Use of Force by the Fairfax County Police Department* in July, 2021.

structure in the County changes and the two oversight offices determine how they will work together going forward.

Other Anticipated Activities

Finally, in 2022, OIPA expects to continue or resume its:

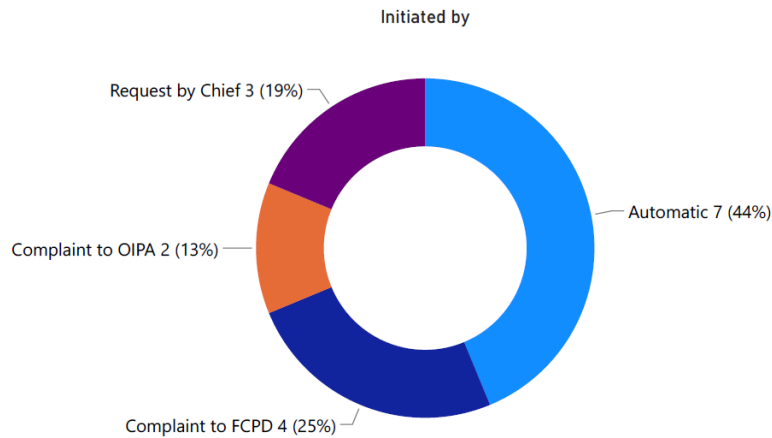
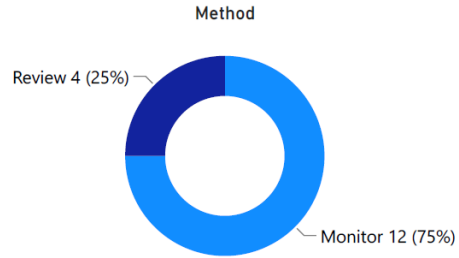
- Participation in community outreach events.
- Discussions with other jurisdictions hoping to implement civilian oversight.
- Involvement with NACOLE's Use of Force Policy Development Committee.
- Review of Virginia General Assembly bills addressing criminal justice and reform measures to provide input to the county's Government Relations Office.

APPENDIX A

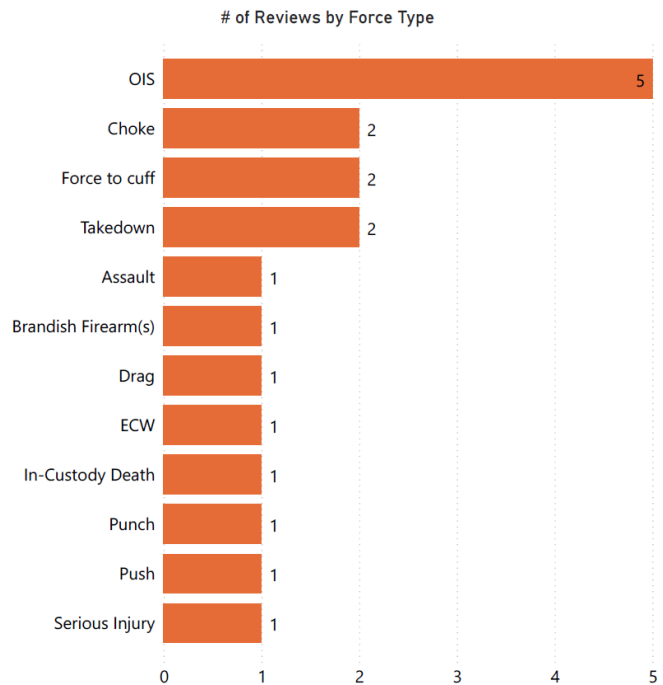
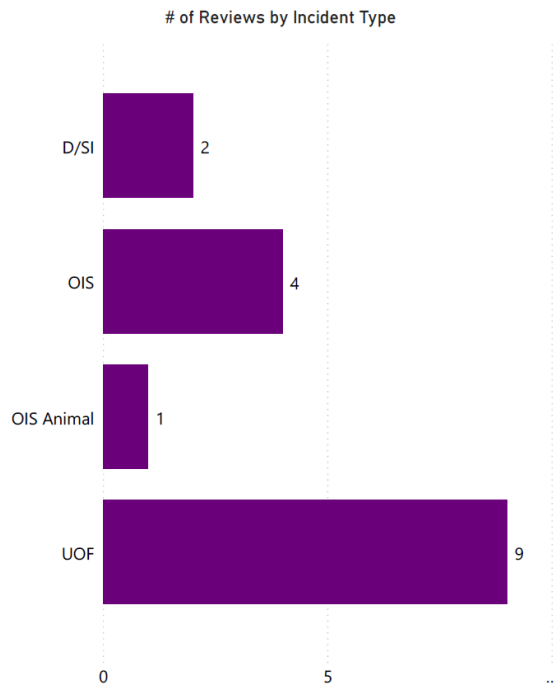
Incidents Reviewed or Monitored in 2021

16
Incident Reviews to Date

Incident Year	# Reviews Open in 2021
2021	2
2020	6
2019	8

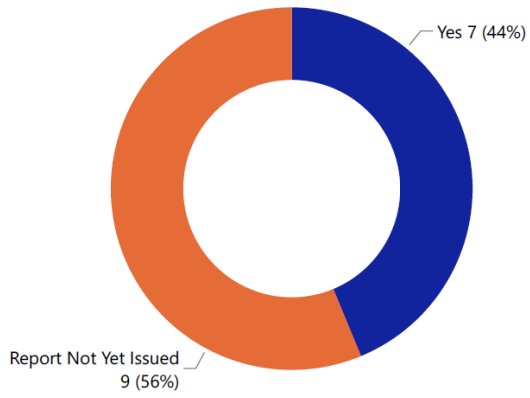


Incident Type and Force Type of Reviews in 2021

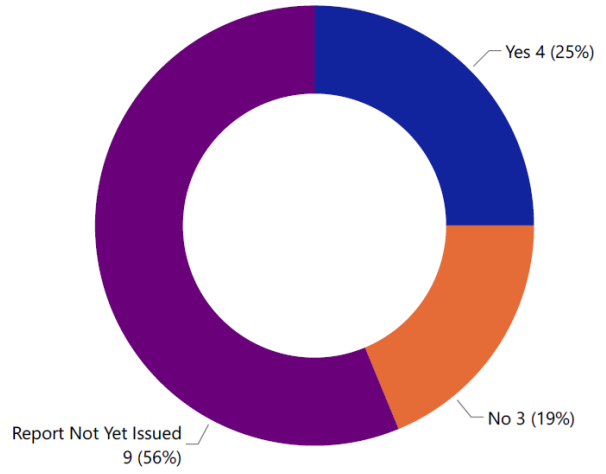


Police Auditor Findings for Incidents Reviewed or Monitored in 2021

Standards Met?



Recommendations Made?



APPENDIX B

Links to 2021 OIPA Public Reports

2020 Annual Report (Published 3-19-21)

Incident Report: May 27, 2020: Use of Force Complaint (IPA-20-06) (Published 2-25-2021)

Incident Report: July 20, 2019: Use of Force - Choke (IPA-19-06) (Published 3-5-2021)

Incident Report: October 20, 2019: Death/Serious Injury IAB Investigation (IPA-20-01) (Published 3-25-2021)

Incident Report: June 25, 2019: Officer Involved Shooting-Domesticated Animal (IPA-19-05)
(Published 3-25-2021)

Incident Report: October 25, 2019: Use of Force Complaint (IPA-20-03) (Published 5-7-2021)

Incident Report: April 25, 2019: Use of Force - Takedown (IPA-19-04) (Published 5-18-2021)

Incident Report: October 21, 2019: Officer Involved Shooting (IPA-19-07) (Published 7-30-2021)

OIPA Policy Change Recommendations G.O. 601 (Published 6-10-21)

