

**Police Civilian Review Panel**

May 3, 2018

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members present:

Hansel Aguilar

Steve Descano

Hollye Doane

Doug Kay, Panel Vice-Chair

Anna Northcutt

Randy Sayles

Adrian Steel

Rhonda VanLowe, Panel Chair

Panel Members absent:

Kathleen Davis-Siudut

Others present:

Julia Judkins

Rachelle Ramirez

Richard Schott

The Panel's business meeting was called to order at 7:07 p.m.

Video: The Panel watched a video produced by Channel 16 that introduces the Independent Police Auditor and the Panel. Ms. Ramirez noted that the video is on the County's YouTube and will be posted to the Panel's website.

Introduction of New Panel Member: Ms. Anna Northcutt, recently appointed by the Board of Supervisors to fill a vacant seat, introduced herself to the Panel. Ms. Gerarda Culipher, Deputy Clerk of the Fairfax County Circuit Court administered an Oath of Office to Ms. Northcutt.

Meeting Summary Approval: Mr. Steel moved to approve the meeting summary from the Panel's April 5 meeting. Mr. Kay seconded the motion, and it carried by a vote of seven, with Ms. Northcutt abstaining, and Ms. Davis-Siudut being absent.

Review of Complaint Status: Ms. VanLowe referenced a handout that summarizes the status of complaints received by the Panel to date. She stated that the Panel received two complaints within the last week, but the Panel will not be able to review either, as both are time barred and one has pending litigation. She also noted that the FCPD completed its investigation into an Initial Complaint received by the Panel (identified as Jane Doe #1) and the Complainant has been notified by the FCPD. The FCPD provided Mr. Aguilar and Mr. Descano (the assigned liaisons) with an opportunity to review the file. It is not open to the rest of the Panel at this time, but will be if the Complainant requests a review. Mr. Steel asked whether all Panel Members will be able to review the FCPD's letter to the Complainant. Ms. VanLowe stated that she requested a copy of the FCPD letter for the Panel's files.

Loesch Report: Ms. VanLowe thanked Ms. Doane and Mr. Sayles for drafting the report on the Loesch matter. Ms. Doane explained that they drafted the memo in a similar format as the Panel's previous report. They believe the content reflects what the Panel voted on during the last meeting. Ms. Doane referred Panel Members to a handout that summarizes additional comments and one policy recommendation put forward since the last meeting.

Mr. Steel recommended the Panel consider the inclusion of a statement in the report that the Panel provided formal notice of the Public Meetings at which the Complainant's request was discussed. He asked the Panel to consider describing the rationale behind the Panel Findings in the report. Ms. Doane noted that the Panel previously discussed a desire to keep the report brief, while providing a reference to the audio recording and meeting summaries on the website. Mr. Steel requested that the Panel revisit this issue in the future.

Next, the Panel discussed the proposed comments and one policy recommendation in the handout.

- The first comment was that the Panel Members found the audio tapes of the interviews and the video of the police transport to be helpful to their review. After Panel discussion, Mr. Descano moved that they reinsert the proposed comment #1. Mr. Sayles seconded the motion, and it passed with a vote of seven, with Ms. Northcutt abstaining, and Ms. Davis-Siudut being absent.
- The Panel then discussed whether to add the language proposed in comment #3. Ms. VanLowe supported the inclusion of the statement that body-worn camera (BWC) footage might have been useful. She noted that since the FCPD is conducting a pilot BWC program, there is value in sharing with the FCPD that there is citizen support for the program. Ms. Doane expressed concerns that the statement implies that the record was not complete. Ms. VanLowe clarified that she thought that BWC footage would have been helpful, not necessary, to the review. Mr. Descano moved that they insert the proposed comment #3 and Mr. Steel seconded the motion. It carried with a vote of five, with Ms. Doane and Mr. Sayles voting "NAY", Ms. Northcutt abstaining, and Ms. Davis-Siudut being absent.
- The Panel discussed comment #4 concerning the fact that the only interviews conducted were of the Complainant and the tenants. Ms. VanLowe expressed concern that these individuals all had an interest in the case and there were no other witnesses interviewed. Other members pointed out that there was no evidence in the record that other witnesses were present. Mr. Sayles noted that the incident mostly took place inside the house and on the front porch, not outside where there would be witnesses present. Ms. Doane stated that including comment #4 would be inconsistent with the Panel's Finding that the investigation was complete and thorough (and the Panel's decision to not hear from the Complainant). Panel Members then discussed the merit of the FCPD including a statement in their investigative files to indicate when there are no other witnesses to interview. Ms. VanLowe withdrew the comment from consideration.
- The Panel discussed the policy recommendation (comment #5). Mr. Aguilar described the Metropolitan Police Department's (D.C.) General Order regarding the handling of intoxicated persons. Discussion ensued on the use of officer discretion, including how much discretion should be afforded to officers in these types of cases, and the potential for officers to discriminate based on

race or disability. Numerous Panel Members noted that it was important for the Panel to review additional cases of Drunk in Public before making any recommendations regarding officer discretion. Ms. VanLowe offered to set up a meeting to discuss this policy point (police use of discretion) with Major Gervais Reed, FCPD. Mr. Steel moved that they do not include the proposed policy recommendation (comment #5) in the report. Mr. Sayles seconded the motion and the motion carried with a vote of four, with Ms. VanLowe, Mr. Descano, and Mr. Aguilar voting “NAY”, Ms. Northcutt abstaining, and Ms. Davis-Siudut being absent. Mr. Steel moved that *Ms. VanLowe and Mr. Aguilar set up a meeting with Major Reed or others in the Department to learn about issues of discretion*. Mr. Sayles seconded the motion, and it carried with a vote of seven, with Ms. Northcutt abstaining, and Ms. Davis-Siudut being absent.

- Ms. VanLowe withdrew comment #2. She then summarized that comments #1 and #3 will be added to the report as written under a heading entitled “Comments”. Mr. Kay moved to accept the report, which was seconded by Mr. Sayles. The motion carried with a vote of seven, with Ms. Northcutt abstaining, and Ms. Davis-Siudut being absent.

Review Reports: In the context of the above discussion, members discussed the Panel’s standards of review – that investigations should be thorough, complete, accurate, objective, and impartial – and noted that these standards were not explicitly addressed in either of their first two review reports. Mr. Steel suggested that the Panel review, and possibly revise, the Bylaws concerning this matter. Mr. Aguilar stated that the Panel may miss opportunities to provide recommendations to the FCPD while waiting for additional data or information. He noted that it could be years before the Panel had enough data to make an “evidence-based” recommendation.

Review Procedures: Mr. Kay and Mr. Steel (in consultation with other members) are in process of reviewing the Bylaws to identify where language can be changed or improved. They stated that they are not ready to ask the Panel to review a draft “summary procedure”. Mr. Kay also noted that as part of this process, he reviewed all correspondence to both Complainants who submitted a Request for Review to date. The review of the Bylaws centered on two key questions:

- 1) *Is the Panel obligated to conduct a review of an FCPD investigation if it has the authority to do so?* Mr. Kay’s conclusion, based on language in the Bylaws in Article VI.C.2.(e) and Article VI.E.1.(a), is that the Board of Supervisors (BOS) gave the Panel discretion not to conduct a review if they so choose. He noted that the Panel may want to seek clarification on this from the BOS. Mr. Steel concluded differently based on his reading of the same articles. He does not think that the Panel has the ability to turn down a review within its authority.
- 2) *Is the Panel required to hold a Panel Review Meeting, where the Complainant and the FCPD are present?* Mr. Kay and Mr. Steel’s conclusion is that the Panel is not required to hold a Review Meeting. However, the Panel is required to provide notice to the Complainant if the Panel decides to conduct a Review Meeting. Also, if the Complainant comes to a meeting and wants to speak, the Panel has to hear from him. Mr. Steel stated that even if the Panel chooses not to conduct a full Review Meeting, they are still required to give the Complainant notice. He also believes that if the Panel votes not to have a meeting (i.e., a summary procedure), they cannot deliberate, but will simply vote on the Finding.

The matter was then opened for Panel discussion. Ms. Doane stated the Panel must conduct a review if the Panel has jurisdiction. She does not think the Panel is required to invite the Complainant (i.e., informing them they have the right to show up), but to give notification (i.e., date and time of the meeting). However, she thinks it would be unfair for the Complainant to attend and speak at a meeting when FCPD representatives were not present to defend the investigation.

Ms. Doane noted that she and Mr. Sayles proposed the “summary procedure” as a method to guard against abuses of Panel authority. They do not think the Panel will use it often but would like it in place.

Ms. Doane posed a question to the Panel: *Why would we ever not want to invite a Complainant?* As a general rule there should be a presumption that the Complainant be invited to state reasons for filing a Complaint. Nevertheless, she believes there may be circumstances in which the Panel will want to utilize its discretion not to invite the Complainant including when: the IAB investigation meets the Panel’s standards, there is evidence in the file that the complaint is frivolous or filed with malicious reasons, there is no evidence in the file to substantiate the Complaint, and when members have no questions of the Complainant. She stated that the Panel’s review of unjustified cases would not serve the purpose of the Panel as stated in the Bylaws (i.e., enhance police legitimacy or build public trust).

Mr. Descano stated that the Panel should always invite the Complainant to speak, as this is a main way that the Panel builds trust with the community. He believes that having a summary procedure, or asking a Complainant to come back when the FCPD is present, hurts public trust. He said he has a question for anyone who requests a review: *Is there anyone else that the FCPD could have interviewed?* Finally, without a Review Meeting, the Panel can only vote yes or no based on information in the file provided by the FCPD and is limited in its ability to make policy recommendations.

Ms. VanLowe informed the Panel that Supervisor John Cook and Deputy County Executive David Rohrer conveyed in a meeting that the Panel has an obligation to comment on the investigative file and whether it is complete. She stated that the Panel is still too new to create barriers for the public to come forward and, therefore, they should draft procedure in favor of hearing from the Complainant.

Mr. Aguilar stated that the police can prosecute citizens for filing frivolous complaints and noted that D.C. recently prosecuted such a complaint. He has concerns with the Panel entertaining frivolous Complaints, as he does not want to open up the possibility that a Complainant could be prosecuted.

*Ms. VanLowe charged Mr. Kay and Mr. Steel with proposing changes and new language to the Bylaws to make them more clear.* She asked them to focus on the Bylaws and not on drafting new policy or procedure. *Panel Members should send proposed new language for the Bylaws to Mr. Kay and Mr. Steel for their consideration.* The Panel will discuss these issues again but with the goal of building consensus on how the Panel will operate under the Bylaws. The proposed Bylaw amendments will be presented to the Board of Supervisors for their approval.

Community Outreach: Panel Members continue to conduct various meetings with community groups to discuss the work of the Panel.

OIPA Staff Hiring: OIPA is currently interviewing for a new staff position whose primary responsibility will be providing support to the Panel. Ms. VanLowe sees this person as helping the Panel with community outreach and the drafting of Panel reports.

Next Meeting: The Panel decided not to meet in June, 2018 due to a schedule conflict with Celebrate Fairfax. The Panel's next meeting is scheduled for Thursday, July 5, 2018, at 7:00 p.m. in the Government Center.

The meeting adjourned at 9:10 p.m.