
Police Civilian Review Panel

Meeting Agenda

Location: Conducted electronically due to COVID-19 Pandemic

Date: January 7, 2021

Time: 7:00 pm

Agenda details:

I. Call to Order

II. Agenda Items

- a. Motions to Conduct Electronic Meeting
- b. Approval of December 10 Meeting Summary
- c. Extend Deadline of Completion of Review Report for CRP-20-19 and CRP-20-27
- d. Approval of Subcommittee Initial Review Report for CRP-20-34
- e. Consideration of Good Cause for CRP-20-31
- f. 2021 Panel Leadership Elections

III. New Business

IV. Adjournment

Panel Meeting Schedule:

- January 28, 2021 at 7:00 pm
- February 4, 2021 at 7:00 pm
- February 25, 2021 at 7:00 pm
- March 4, 2021 at 7:00 pm

Police Civilian Review Panel

December 10, 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
Doug Kay
Shirley Norman-Taylor
Sris Sriskandarajah, Panel Vice-Chair
Rhonda VanLowe

Others Present:

Lieutenant Colonel Lee, FCPD
Captain Hanson, FCPD
Major Lay, FCPD
Second Lieutenant Ferreira
Second Lieutenant Giaccio
Anita McFadden, Interim Counsel
Rachelle Ramirez, OIPA
Richard Schott, Independent Police Auditor

NOTE: The Panel's December 10 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 7:01 p.m. and eight Panel Members were present. Mr. Aguilar was absent from the start of the meeting.¹

Ms. Doane welcomed everyone to the Panel's December 10 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. Bierman was present and participated from McLean, Virginia.

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

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

¹ Mr. Aguilar joined the meeting at approximately 7:05 p.m.

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

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

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

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

Ms. Doane was present and participated from Oakton, 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 Mr. Aguilar 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 173 010 8581 as noted in the Public Meeting Notice. Mr. Bierman seconded the motion and it carried by unanimous vote, with Mr. Aguilar 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. The second to the motion was inaudible and it carried by unanimous vote, with Mr. Aguilar being absent.

Mr. Aguilar joined the meeting and stated that he was participating from the Braddock District in Virginia.

Approval of November 12 Meeting Summary: Mr. Gallagher moved approval of the Panel's November 12 meeting summary. Mr. Bierman seconded the motion and it carried by unanimous vote.

Panel Review of CRP-20-19 and CRP 20-27:

Ms. Doane welcomed the complainant and FCPD representatives to the Review Meeting. The first complaint CRP-20-19 included a narcotics arrest of the complainant in the Franconia District. The complainant alleged that he was criminally assaulted while in custody in the interview room at the District Station and again in the garage at the Adult Detention Center (ADC). The use of force allegations within the complaint will be addressed separately by the Independent Police Auditor.

The Panel's review of CRP-20-19 considered allegations of use of abusive language, threats, illegal detention, unethical behavior and violations of police procedures, regulations, and laws. While the officer (referred to herein as Officer 1) identified the stop as consensual, the investigation revealed that the officer communicated with the complainant using an app in an undercover capacity to arrange the purchase of narcotics. Officer 1 had also used this unauthorized technique to make other similar drug related arrests and other officers within the station had personal knowledge of these actions. The use of the app was not disclosed to the Commonwealth's Attorney or made available to defense attorneys during the discovery process. The investigation found several violations including that Officer 1 did not ensure his body and cruiser microphones were working properly, not securing the complainant in the cruiser properly, misplacing evidence, failing to update and amend the incident report, failing to provide the Commonwealth Attorney information about his communication with the complainant prior to the encounter, not informing his supervisor about using an app which violated stakeout and surveillance procedures, failing to document actions in an incident report, failing to cooperate and coordinate with the Street Crimes Unit.

The Panel's review of CRP-20-27 involved a separate an unrelated arrest of the complainant by the Street Crimes Unit (SCU) for the distribution of narcotics to an undercover officer. The complainant alleged that the detective did not provide sufficient discovery, he was not arrested in a proper manner, his vehicle was seized improperly, and the detective was unprofessional in the interview.

Since the Complainant did not appear to be present at the meeting, Ms. Doane recognized Chief Roessler, Colonel Gun Lee, Major Lay, Captain Hanson, and Second Lieutenant Ferreira, and Second Lieutenant Giaccio. Chief Roessler indicated that Major Lay will introduce the staff to present on the investigation findings.

Major Lay noted the dedication of the Panel during the Pandemic. He stated that in response to a use of force complaint from the community member, the Internal Affairs Bureau (IAB) partnered with the Major Crimes Bureau (MCB) and the Organized Crime and Narcotics (OCN) section to investigate beyond the use of force allegation and found over 30 policy violations by a former FCPD officer.

FCPD Statement on CRP-20-19:

Captain Hanson introduced Second Lieutenant Ferreira to present a summary of the findings of the investigation into CRP-20-19. Second Lt. Ferreira provided a summary of the facts of the case and the investigative steps taken.

A now former FCPD officer arrested the complainant on a narcotics investigation in April 2019. After the complaint was filed with the officer's supervisor, the officer admitted to using an app prior to the arrest, that the interaction with the complainant became "heated," and that he held a knife while have a conversation with the complainant. The officer was removed from a position where he would have contact with the public and was sent home early from his shift

before a pre-planned vacation and later was placed on indefinite administrative leave until the officer resigned. FCPD conducted parallel administrative and criminal investigations into the incident. The complainant alleged that the officer bragged that the interview was not being recorded, and when he declined to be interviewed the officer slapped a water bottle out of his hand. He also alleged that the officer brandished a knife at him and refused to take him to the hospital. The complainant later admitted to fabricating the existence of injuries sustained during the event. The Commonwealth Attorney's office confirmed that the officer never disclosed his use of the unauthorized app to arrange the meeting, but instead stated in his report that the arrest resulted from proactive policing. The Commonwealth Attorney's office declined to charge the officer with assault and perjury based on a lack of probable cause. The administrative investigation resulted in numerous sustained violations including conduct unbecoming of an officer, and violations of policies pertaining to use of force, use of in-car video systems, care and custody of evidence, conduct of stakeouts, insubordination, and truthfulness.

FCPD Statement on CRP-20-27:

Captain Hanson introduced Second Lieutenant Giaccio to present a summary of the findings in the investigation into CRP-20-27. Second Lt. Giaccio provided a summary of the facts of the case and the investigative steps taken.

In June 2019, the community member responded to an online ad posted by Detective 1 to meet to conduct a narcotics transaction. Immediately following the transaction, he was arrested and his vehicle was located nearby with marijuana inside. His car was taken to initiate the seizure process but later returned. The community member had made allegations about Officer 1 regarding his April arrest around the time of his June arrest. The community member made allegations against the SCU detectives including that sufficient discovery was not provided to his attorney and the manner in which the SCU arrested him in June 2019, specifically that twelve officers had pointed guns at him and threw him out of the car. Second Lt. Giaccio reviewed the routine tactics used by the Street Crimes Unit and said they are approved by the Commonwealth's Attorney to maintain a high level of control and reduce confrontation. The complainant said he had a scratch to his knee from being placed on the ground and requested treatment. The investigation failed to uncover evidence to support the claim of injury. The complainant also objected that the SCU had seized his vehicle, held it without telling him where it was, and that officers drove his vehicle instead of towing it. The vehicle was seized in accordance with state code and G.O.s 520.4, and 520.10. Prior to initiation of civil proceedings, an Assistant Commonwealth Attorney declined to move forward, so Detective 2 returned the vehicle within the 90 days required by Virginia code. He said that the practice of officers driving a seized vehicle is common. The complainant also alleged that Detective 2 was unprofessional when he told him he needed to provide information because he "didn't want to kill your dad or your kid when they kicked in the door to his residence". There was no indication of any threat and instead this statement was intended to keep any other occupants in the home safe.

Complainant Statement:

The complainant said that he was satisfied with the investigation, except that it took a long time for him to receive his disposition letter. He said he filed a complaint about filing a complaint and that there were “shady practices” from the top to the bottom. He indicated that he was satisfied after hearing from Second Lt. Ferreira during this meeting that the officer was no longer employed at the department. The complainant said he learned this just today and not from Chief Roessler’s letter, which was vague. He wanted to know whether this was standard protocol for handling complaints.

Ms. Doane thanked the complainant for addressing the Panel. The Panel did not ask any questions of the complainant.

FCPD Questioning:

Ms. Doane reminded Panel Members that they should not attribute statements or findings to specific officers in public but may speak about the general findings of the investigation.

Mr. Kay complimented Second Lts. Ferreira and Giaccio on their reports and presentations. Mr. Kay asked Second Lt. Ferreira if the witnesses were aware of the technique being used. He said only the officer that backed Officer 1 during the arrest knew about it. Others made inferences that they heard about its use but did not have direct knowledge.

He asked if they considered asking the supervisors of the officers involved at the SCU and the Franconia station? Second Lt. Ferreira stated that he interviewed the subject officer’s two supervisors, and neither were aware of it. However, during the investigation, another similar instance of this behavior was revealed, and corrective action was taken.

Mr. Kay asked if they had concerns that this technique is being used at other stations in the department? Major Lay stated that the department created a policy under 501.2 Investigative Responsibilities and gave verbal directives to station commanders that using this procedure was not allowed in the field. The Franconia Station commander assured Major Lay that he addressed this with his staff.

He asked if the FCPD could share the revised policy with the Panel? Major Lay replied affirmatively.

Second Lt. Giaccio stated that the officers going to the SCU on a temporary assignment have to sign a confidentiality statement that they cannot use investigative techniques when not assigned to the unit.

Mr. Kay asked Second Lt. Ferreira if there was a policy that station interviews be recorded? He responded that there is no policy to that effect at this time.

Mr. Kay stated that the Panel reviewed an investigation in which the same officer was involved (CRP-19-11) but he did not see in the investigative file that the officer had been involved in a

previous complaint with the Panel. He asked if the FCPD has a policy to track which officers are involved in Panel complaints. Second Lt. Ferreira stated that it was not part of his investigation as each investigation should stand on its own. He said it up to the reviewing authority or Commander to look at the history if appropriate. Major Lay said the department has an early warning system in place that alerts the commander when specific actions take place.

Mr. Aguilar commended Second Lt. Ferreira on his thorough report. He asked if the officer would have been caught by the early warning system if there was not a complaint made. Second Lt. Ferreira stated that the early warning system checks for a certain number of triggering events and when it reaches a certain threshold a report is automatically generated and sent to the officer's supervisor, who then manually reviews all events. He is not aware whether the early warning system was alerted during this timeframe for this officer. Captain Hanson stated that the officer's new supervisor started to see some issues, such as with the officer's use of the in-car video and deficiencies in his reports in advance of the complaint.

Mr. Aguilar asked whether the prosecutor meant there was no probable cause from a court standard for perjury or that he was not guilty beyond a reasonable doubt. The criminal investigator said she found no probable cause for both charges, which meant they did not meet the criminal elements of a perjury.

Mr. Aguilar said he is seeing a pattern emerge when officers transfer from another department. He asked whether the department had looked into the performance of transferred officers to see if there is room for improvement in training. Major Lay said he was open to providing training to the Panel on this topic. He said the FCPD contacts other police departments and are given access to files of officers.

Mr. Aguilar asked Second Lt. Giaccio if there was follow up with the officer who made the statement about not wanting to kill the complainant's father. He responded that it was a pretty typical statement when there was going to be a search warrant at their house and so he did not see this as a threat. Mr. Aguilar stated that the police could improve their communications with community members in regard to keeping people safe while conducting search warrants.

Mr. Sriskandarajah asked what further investigations were conducted to identify who else might be using the social media technique. Second Lt. Ferreira said that he was able to identify another officer using the technique and took corrective action.

He asked if it was true there is no policy at the stations to record interviews? Second Lt. Ferreira answered affirmatively.

Mr. Sriskandarajah asked if it was normal protocol that there is always someone observing interviews at the station? Second Lt. Ferreira answered that, yes, it is typical from a safety standpoint, and in this case, there was someone outside monitoring the CCTV but it was not being recorded. However, he was unsure how closely that officer was watching the CCTV.

Mr. Sriskandarajah asked if the officer slapping the water bottle out of the complainant's hand would have been visible on the CCTV. Second Lt. Ferreira replied that he did not know the answer to that question.

Mr. Sriskandarajah referenced a cell phone message about serving justice and asked what steps were taken to investigate or understand what the text meant. Second Lt. Ferreira answered that he interviewed that officer and made a recommendation for a policy violation.

Mr. Sriskandarajah asked if they identified anyone else who was present and understood what this saying meant. Second Lt. Ferreira replied that he interviewed the complainant, and he made no allegation beyond profanity being whispered in his ear. Captain Hanson stated that there was no evidence that the arrest team knew of the link between Officer 1 and the complainant in advance of his responding via the app. One detective did find out about the previous arrest but never made contact with Officer 1 to exchange information. The SCU went in blind as to what occurred during the April arrest and had no reason to treat the complainant differently.

Mr. Sriskandarajah asked why one of the detectives texted Officer 1 saying that "I served justice for him talking shit on you". There was no indication that the detective in the SCU planned the arrest in retribution for Officer 1. He started the text conversation with "Do you remember this person?". The detective who made the statement admitted it was a poorly timed and delivered joke. Major Lay found in the commander's review and action that it placed disrepute on that behavior, even if meant in a different context.

Mr. Sriskandarajah asked if there was now a policy on the use of this social media app? Major Lay responded affirmatively that language was added regarding investigative responsibilities. A direct order from the department was also issued.

Mr. Sriskandarajah stated that it seemed more than one person knew about this activity. He asked how the department ensures that officers are complying with their duty to report? Major Lay stated that in retrospect they should have had a policy in place regarding when officers can and cannot use these apps. Captain Hanson said there was nothing in writing prior to this about not using this app and so there could not be a finding of a violation. He said they realized it was a gap and so the policy was developed, and the officer was found in violation of the stakeout procedure.

Mr. Sriskandarajah asked when the duty to report kicks in. Second Lt. Ferreira stated that the use of app by itself was not a violation, but it was the method by which that application was employed. The officer did not take steps before and after using the app that he should have such as documenting his steps and providing information to the Commonwealth Attorney.

Mr. Sriskandarajah asked how the department will ensure that an officer always turn on the in-car video. Captain Hanson stated that the use of escalated discipline can help and review of events when the cameras are not turned on. Major Lay stated that supervisors conduct ICV

audits and IAB has a division that conducts inspections to identify when there are problems and to correct them.

Mr. Sriskandarajah asked how the FCPD ensures officers understand what is required in terms of complete disclosure to the Commonwealth's Attorney. This is part of basic training at the Academy.

Mr. Sriskandarajah stated that it appeared this officer was dealing with mental stress. How does the FCPD provide services that an officer may need when going through a difficult time? We have an incident support service division that reports to Chief. There are counselors, psychologists, and chaplains available to officers and their families, including when services are needed in response to an IAB decision. Second Lt. Ferreira said these services get tied into the early warning system to ensure that services are offered immediately. Mr. Sriskandarajah stated that he was interested in hearing more about the early warning system.

Mr. Bierman stated that he appreciated the steps that the FCPD has taken in its investigation and agreed with the discipline meted out in this case and the new procedures in place. He stated his concerns about the officer reporting system and specifically that other officers were aware of the subject officer using the app. He asked what officers are supposed to do when they think another officer is not doing the right thing and how does one make a report. Captain Hanson replied that they can report concerns to their immediate supervisor or a senior officer on the squad, they can go to a commander, or they can report anonymously to Internal Affairs.

Mr. Bierman asked if there were general reporting guidelines for constitutional violations and whether officers are obligated to report general conduct unbecoming of an officer. Second Lt. Ferreira responded that if officers see misconduct, they are obligated to report it to a supervisor. Major Lay directly quoted the revised General Order and noted that this is exactly the change made in the policy

Mr. Bierman referenced a complaint previously before the Panel that involved the same subject officer, who did not turn on the in-car video. He asked how to prevent an officer from messing with in-car video. Major Lay stated that there are multiple layers of technology to track officer location including police radios, body-worn cameras, and cell phones. He then read the General Order 201.5 on Reporting Violations.

Ms. Norman-Taylor noted that up to five officers knew that this app was being used and complimented the FCPD on developing a new procedure. Ms. Norman-Taylor asked if the police department should require that interviews at the station be recorded. Major Lay stated that he would like to consider this further and will report back to the Panel about changing the policy. She noted that Second Lt. Ferreira sustained a violation for one of the detectives on this issue but then it was overturned. Major Lay stated that there are multiple layers of review. In this case, the investigative authority had sustained a violation but then the commander weighed the officer's explanation against the IAB findings and overturned it. The file then went to the Deputy Chief and Chief for final review.

Mr. Aguilar asked if officers were allowed to drive vehicles that are being impounded, rather than using a towing company. Second Lt. Giaccio said that officers in the Organized Crime and Narcotics Division are allowed to move the cars to a safe location or storage area for seizure and that this is within the scope of duty according to an opinion by the County Attorney's Office. Mr. Aguilar said the General Order is not clear on this but reads that the officers may initiate the towing service. He said that the FCPD may want to reconsider this General Order as the current language may create confusion if the public does not know the responsibilities of the officers. Major Hanson and Major Lay said there are circumstances where it is preferable not to tow a car and so it is left to the discretion of the officers.

Ms. VanLowe thanked the officers for the thorough investigation and their participation this evening. She said that this kind of dialogue was informative and helpful and she hopes it will continue in the future. Ms. Doane concurred with her sentiments and said the investigation was thorough and clear and went above and beyond the initial complaints. She noted that the Complainant asked why the investigation took so long and she said that the thorough investigation and Commander review was the reason for the length.

Panel Deliberations:

Ms. Doane invited the Panel to discuss whether the FCPD investigation was accurate, complete, thorough, objective, and impartial. The Panel openly deliberated.

Panel Findings:

Mr. Kay moved that the Panel concur with the findings and determinations detailed in the FCPD Investigation Report for both investigations. Ms. Doane seconded the motion. The motion carried by a vote of eight with Mr. Aguilar voting "Nay". Mr. Aguilar stated that he did not agree that one element in the second investigation was thoroughly investigated, but otherwise he concurred with the FCPD's findings.

Ms. Norman-Taylor and Mr. Kay will draft one Review Report for both investigations. Panel members should send them any recommendations to be included.

Approval of Subcommittee Initial Review Report for CRP-20-30: Ms. Doane stated that she and Ms. VanLowe and Mr. Aguilar served on the subcommittee to review the request. She provided information on the incident underlying the complaint, which was a traffic accident involving the complainant, referred to as Driver A. Driver A and Driver B exchanged information and Driver B left the scene before an FCPD officer arrived. When the officer arrived, he found minimal damage to Driver A's car and decided there was no probable cause to obtain a warrant. Ms. Doane stated that the complainant's allegations included corruption, abuse of power, false statements, and cover up. Although the complaint contained serious allegations, the IAB investigation found no evidence to substantiate them. It was determined that the officer acted reasonably, provided information to the complainant about the other driver and acted

professionally. The officer informed the complainant of how he could obtain a warrant from the Magistrate's office.

Ms. Doane said that the subcommittee recommends that the Panel not review the complaint. Ms. VanLowe stated that the officer made great effort to connect the two drivers and that the damage was estimated to be less than \$200.

Mr. Kay moved that the Panel approve the findings and recommendations of the subcommittee regarding complaint CRP-20-30. Mr. Sriskandarajah seconded the motion and it carried unanimously.

Ethics Complaint Subcommittee Report: Mr. Gallagher described the initial complaint and review process of the case concerning an incident at the I-66 transfer station. Following the subcommittee meeting concerning this matter, the complainant lodged a complaint against Panel members, Ms. Norman-Taylor and Mr. Cluck. He stated that in response to the complaint, the Panel developed a procedure to process ethics complaints. Then Mr. Gallagher and Mr. Kay conducted a review of the ethics complaint, including conducting interviews and listening to the audio recordings of the meetings. They concluded that neither Panel member had violated the Panel's Code of Ethics and that they recommended the Board of Supervisors be advised of their findings.

Mr. Gallagher informed the Panel that the complainant also made a subsequent complaint against the entire Panel, but the subcommittee did not look at that complaint. Mr. Kay added that this is because none of the Panel members could be unbiased in reviewing such a complaint. Therefore, the Panel will inform the Board of Supervisors of the complaint against the entire Panel.

Mr. Bierman moved that the Panel adopt the report of the Ethics subcommittee. A roll call vote was called, and the motion carried by a vote of six with Mr. Cluck, Ms. Norman-Taylor, and Mr. Sriskandarajah abstaining.

Discussion on the Retention of Outside Counsel for the Panel: Ms. Doane said the Panel needs to advise the County Attorney whether it rescinds its decision to competitively bid the position for Panel independent counsel and retain its current counsel, Anita McFadden, through a consulting agreement with the County Attorney's office. County Attorney Beth Teare informed the Panel that it has two options for retaining outside counsel: The Panel may enter a contract without competitively bidding the position or they may voluntarily request proposals. Ms. Doane stated that the County did not normally advertise for counsel for a Board, Authority, or Commission of the Board of Supervisors. Mr. Sriskandarajah asked Ms. Teare to confirm that they did not have to competitively bid the position and Ms. Teare did so by quoting language from the purchasing resolution regarding contracts for legal services. Discussion ensued on Panel members' views on making this decision.

Mr. Sriskandarajah made a motion, which was reframed by Ms. Doane and seconded by Mr. Kay, that the Panel rescind the previous action taken by the Panel in June and recommend the

retaining of Anita McFadden as Counsel by the County Attorney. A roll call vote was called, and the motion carried with a vote of six, with Mr. Bierman and Mr. Cluck voting “Nay” and Ms. VanLowe abstaining.

Ms. Doane asked Ms. Teare to change Ms. McFadden’s status from temporary counsel to normal retention of independent counsel. Ms. Teare will draft a document for the Panel’s review.

Upcoming Elections for 2021 Panel Leadership: Ms. Doane called on Ms. Ramirez to address the Panel. She stated that elections for the position of Panel Chair and Vice-Chair will occur at the Panel’s next meeting on January 7th. She said that, according to the Panel’s Bylaws, the Vice-Chair must be available to serve as Chair the following year. Panel members who are interested in serving as Vice-Chair should contact Mr. Sriskandarajah. Mr. Sriskandarajah said he will be reaching out to members as well.

Panel Consideration of Good Cause for CRP-20-31: Ms. Doane informed the Panel that the Complainant in this case informed the Panel that she did not receive correspondence concerning her complaint, including the Panel’s request that she provide information to consider as good cause. The Panel voted at its last meeting to not hear the complaint since such information was not provided by the deadline. Mr. Kay moved that the Panel reconsider CRP-20-31 to allow the complainant to inform the Panel of good cause for the time delay. Mr. Sriskandarajah seconded the motion and it carried unanimously. *Ms. Ramirez will send a letter to the Complainant informing her of tonight’s vote.*

Four Year Review Action Plan Update: Mr. Bierman informed the Panel that the review continues with a focus on the Panel’s challenges and successes, and that they will continue with conducting interviews. The subcommittee plans to circulate a draft report to the Panel in mid-January.

Recognition of FCPD Chief Roessler: Ms. Doane stated that she wanted to publicly recognize Chief Roessler, who is retiring in February. She thanked him for his service to the County for over three decades. She said he supported the creation of the Panel and the Independent Police Auditor and noted his belief in the co-production model of policing and the sanctity of life and his work in revising use of force policies. Ms. Doane said that the Panel thanks him for his commitment to a progressive police department and wishes him the best.

Adjournment: Ms. VanLowe moved to adjourn the meeting. Mr. Bierman seconded the motion and it carried unanimously.

The meeting adjourned at 9:45 p.m.

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

Police Civilian Review Panel

January 4, 2021

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-20-34

Members Present:

Jimmy Bierman, Review Liaison

Bob Cluck, Review Liaison

Sris Sriskandarajah, Subcommittee Chair

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

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

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

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

Mr. Sriskandarajah 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 179 095 5222 as noted in the Public Meeting Notice. Mr. Cluck seconded the motion and it carried by unanimous vote.

Mr. Sriskandarajah 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.

Completion of Initial Review Report for CRP-20-34:

Mr. Sriskandarajah provided information on the incident underlying the complaint, which entailed the complainant encountering a man at a gas station, who he believed might be a police officer due to his Fraternal Order of Police license plates. After the complainant completed filling up his gas tank and while the complainant was cleaning his windshield, the man yelled at the complainant to "hurry up." He then took a picture of the complainant. The complainant alleged that the individual threatened him by saying "Now I know where you live."

The complainant filed a complaint directly with the Panel the same night as the incident. Following Panel procedures, the complaint was forwarded to the FCPD, which investigated it. The FCPD issued a disposition letter to the complainant, who then requested a review of the FCPD response by the Panel. The request for review was received by the Panel in an email from the Complainant on November 30, 2020.

Mr. Sriskandarajah stated that the complainant alleged that the man threatened him and caused a sense of fear.

Mr. Cluck suggested that a threshold issue concerned whether reviewing this complaint was within the scope of the Panel's responsibilities because it was not determined whether the individual was a FCPD officer.

Mr. Bierman questioned whether the Panel could review it if an officer does not identify himself or establish his authority as a police officer. He added that there were allegations in the complainant's emails to the Panel that this was a terroristic threat and a criminal act.

Mr. Sriskandarajah reviewed the steps taken by the FCPD to determine whether the person was an FCPD officer or not. He said that there was no evidence found that tied the person to the FCPD.

Discussion ensued whether the allegations met the threshold for abuse of authority or serious misconduct. Mr. Bierman said that allegations of terroristic threats should be investigated as a criminal matter and not an Internal Affairs matter. Mr. Bierman said while he agreed that the allegations did not appear to rise to the level of abuse of authority or serious misconduct by a police officer specifically, he still was left with many questions based on the investigative file. Mr. Cluck said that he believed the investigator concluded that the actions did not rise to the level of a crime. Mr. Sriskandarajah agreed and said that the investigator could not find probable cause and that was why the FCPD could not run the license plate to identify the man.

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 because it could not be determined that a Fairfax County Police Department officer was involved.

Mr. Bierman moved that the subcommittee recommend to the Panel that it not review this complaint as it does not sufficiently establish an abuse of authority or serious misconduct by an FCPD officer. Mr. Sriskandarajah seconded the motion and it carried by unanimous vote.

Mr. Bierman moved to adjourn the meeting. Mr. Sriskandarajah seconded the motion and it carried by unanimous vote.

The meeting adjourned at 6:03 p.m.

DRAFT

Fairfax County Police Civilian Review Panel

Subcommittee Initial Review Report

Request for Review – Basic Information

CRP Complaint Number: CRP-20-34

Subcommittee Meeting Date: January 4, 2021

Subcommittee Members:

- Jimmy Bierman, Subcommittee Member
- Bob Cluck, Subcommittee Member
- Sris Sriskandarajah, Subcommittee Chair (Panel Vice Chair)

Complaint Submission Date: Review Request received on November 30, 2020. Incident Date: August 13, 2020. Initial Complaint (CRP-20-23) submitted to the Panel: August 13, 2020. FCPD Disposition Letter date: November 18, 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 that an individual who may have been a police officer subjected him to threats and intimidation while he was at a service station. The complainant surmised that the individual was an officer based on the Fraternal Order of Police license plates on his car. The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, is 1) outside the scope of its responsibilities in that there was no finding that an FCPD officer was involved in the incident and 2) in any case, the allegations did not rise to the threshold requirements for "abuse of authority" and "serious misconduct."

Recommendation

The Subcommittee recommends that the Panel not undertake a review of CRP-20-34 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 Cannon 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.**