

Police Civilian Review Panel

June 3, 2021

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:¹

Cheri Belkowitz

Todd Cranford

Jimmy Bierman, Acting Chair

Frank Gallagher

Dirck Hargraves

Doug Kay

Shirley Norman-Taylor

William Ware

Others Present:

Anita McFadden, Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel's June 3 meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Panel's business meeting was called to order at 7:00 p.m. and all Panel Members were present except for Mr. Hargraves, who joined at 7:03 p.m. Mr. Bierman welcomed everyone to the Panel's June 3, 2021 meeting and noted a few housekeeping rules.

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

Ms. Belkowitz was present and participated from Fairfax Station, Virginia.

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

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

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

Mr. Hargraves was present and participated from Kingstown, Virginia.

¹ One Panel seat was vacant for this meeting.

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

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

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

Mr. Bierman moved that each member's voice may be adequately heard by each other member of this Panel. Mr. Gallagher seconded the motion and it carried unanimously.

Mr. Bierman moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. He further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 129 039 2790 as noted in the Public Meeting Notice. The motion was seconded by Mr. Hargraves and it carried by unanimous vote.

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

Mr. Bierman expressed his thanks to Chief Davis, Major Lay, Lt. Stewart and others who participated in the Panel's Public Forum on May 26.

Approval of May 6 Meeting Summary

Mr. Gallagher moved approval of the Panel's May 6 meeting summary. Mr. Hargraves asked whether the race of the officer was typically mentioned in the meeting summary. Mr. Bierman said that the summary should reflect accurately what was discussed in the meeting. He said that Panel members should send corrections to the Chair or staff in advance of the meeting, if possible. Mr. Ware asked to change the title of Ms. McFadden to Counsel, instead of Interim Counsel. Mr. Bierman asked Mr. Gallagher if he accepted the friendly amendment to remove Interim from Counsel in the meeting summary. Mr. Gallagher made the motion, it was seconded by Mr. Cranford, and it carried by unanimous vote.

Approval of Subcommittee Initial Review Report for CRP-21-05

Mr. Ware provided a summary of the complaint. He said the incident occurred on September 4, 2020, when two individuals went to the Mason District station to lodge a complaint of misconduct. One individual was the alleged victim, who remained silent, but recorded the interaction on video. The second was the individual lodging the complaint (the Complainant to the FCPD) with the Second Lieutenant present at the station, accompanied by a PFC. The Complainant to the FCPD reported four instances of misconduct, which included two allegations of force. The Second Lieutenant engaged the Complainant and took notes during

the incident. The Complainant refused to answer follow up questions. The Complainant to the FCPD requested information on a third-party officer (whom he claimed engaged in misconduct) but who was not present at the Mason District station at the time the complaint was being lodged. The Second Lieutenant said she smelled alcohol on the person of the Complainant and asked him to leave the station after 14 minutes of engagement.

The Complainant to the Panel was someone who viewed this interaction on YouTube. The subcommittee discussed and considered three allegations made by the Complainant: that the Second Lieutenant failed to provide a complaint form in violation of a G.O., terminated the citizen police contact early, and failed to provide the name and identifying information of a third-party officer, who was not present at the station but involved in the alleged misconduct.

The subcommittee recommends to the Panel that the complaint does not meet the criteria for abuse of authority or serious misconduct. The Second Lieutenant was a supervisor and supervisors are not required to provide a complaint form according to the FCPD G.O. Regarding the early termination of the contact, the Second Lieutenant disengaged from the Complainant after fourteen minutes of contact and had gathered four complaints on her notepad. While she did terminate the contact, it was not until she gathered information and provided her business card to the Complainant. Regarding the failure to identify a third-party officer, the investigative file reported that officers are required to identify themselves, but not third-party officers. One rationale is the possibility of misidentification. The complaint did not meet the Panel's criteria for review, and therefore the subcommittee recommends that the full Panel not review this complaint.

Mr. Hargraves asked was there anything on the YouTube video that rose to the level of violating abuse of power? Mr. Ware stated that the YouTube video correlated with the body worn camera and neither showed anything that would be an abuse of authority or serious misconduct.

Mr. Gallagher stated that the alleged victim at the Mason District Station was represented by a journalist who videotaped the encounter and uploaded it to YouTube. He said the Complainant to the Panel was another person identifying as a journalist from Texas.

Mr. Kay said that the Panel accepts complaints from anyone, including in this case someone from Texas who believed he viewed misconduct in Fairfax County. The subcommittee looked at the investigative file carefully and thought it was well documented. He said the Panel's jurisdictional limit is that there has to be serious misconduct or abuse of authority and it did not cross the line. He said the subcommittee does not refuse cases lightly and that is what they did with this complaint.

Mr. Kay moved that the Panel not review the investigation into CRP-21-05. The motion was seconded by Ms. Norman-Taylor and it carried unanimously.

Mr. Bierman stated that this is what the subcommittee process is supposed to do. He said that the IAB will always investigate complaints, but it is up to the Panel to determine if they have jurisdiction to review any investigation.

Approval of Review Report for CRP-20-24

Mr. Bierman thanked Ms. Norman-Taylor for drafting the report. Mr. Cranford moved that the Panel adopt the Review Report. The motion was seconded by Mr. Gallagher, and it carried unanimously.

Discussion: Transition Back to In-Person Meetings

Mr. Bierman said he asked the Panel's Counsel to review the rules on FOIA to consider when the Panel can return to in-person meetings. He said the reason the Panel can hold virtual meetings is due to the emergency order due to COVID and, when it is lifted, the Panel will have to go back to in-person meetings. Discussion ensued on Panel members' preferences for continuing to meet virtually or in-person. The convenience of virtual meetings was noted and that they are more accessible to the public. Ms. Belkowitz expressed concern with meeting in person, if there is a large turnout from the public. Mr. Bierman summarized that the situation with the pandemic is fluid and that the Panel will consider at its July meeting the start date for moving to in-person meetings. He said the Panel will consider in-person meetings again when the Panel schedules a review meeting and when the situation is deemed safe, most likely in the fall.

Mr. Bierman asked if the Panel can move its August meeting from August 5 to August 12, 2021, and it was so scheduled.

Panel Leadership Elections

Ms. Norman-Taylor nominated Mr. Bierman for the position of Chair. Ms. Belkowitz seconded the motion. Mr. Cranford asked if there were any other nominations to which there were none. The motion carried unanimously.

Ms. Norman-Taylor nominated Mr. Hargraves to serve as Vice-Chair of the Panel. Mr. Cranford seconded the motion. Mr. Bierman stated that he thought that Mr. Hargraves would be a great Vice-Chair. Mr. Cranford asked if there were any other nominations to which there were none. Mr. Gallagher asked when Mr. Bierman's term as Chair expires and Mr. Bierman said that it expires on March 1, 2022, when Mr. Hargraves would be nominated to take over as Chair. Ms. Belkowitz asked if Mr. Bierman was eligible to serve as Chair for a second term and Mr. Bierman said that the Bylaws allowed for it. Mr. Gallagher said that the Bylaws state that the Chair cannot serve two successive terms. Mr. Bierman called the question, and the motion was adopted unanimously.

Outreach Update

Mr. Bierman stated that the Panel should try to have Chief Davis back around the 100-day mark. He said the Panel could potentially have another public forum with the Chief.

Mr. Bierman said he and Ms. Belkowitz will address the new class of FCPD recruits with the Independent Police Auditor this month. Mr. Bierman will also attend an admin meeting with the Deputy Chiefs and Majors from across the department.

Mr. Hargraves asked if the County has a master list of community organizations so that the Panel members can reach out to them. Mr. Bierman said that the Panel generated a list in 2018 and said staff will circulate the list to the Panel members. He said Panel members can let him know if they want to individually reach out to any organizations. Mr. Kay said he will be presenting on the Panel to a retirement community.

Ms. Belkowitz inquired about dates when Panel members could attend the FCPD's implicit bias training, as noted by the Chief during the public forum. Mr. Bierman will raise this question at the admin meeting next week. Mr. Kay asked for a point of contact to schedule ride-alongs with the FCPD and said that Panel members should try to participate in a ride-along one to two times per year. Mr. Bierman said that he would like the FCPD to conduct another training for the Panel in the fall.

New Business

Mr. Bierman said that the discussion earlier provided a great example of the subcommittee process working as it was designed, which involves the disposition of complaints not within the Panel's jurisdiction. The subcommittee process focuses on the complaint itself and whether it rises to the level of serious misconduct or abuse of authority. Even though the formal mandate is to consider if the Panel has jurisdiction, the subcommittee looks beyond the four corners of the complaint and whether there is any substantiation in the record.

Mr. Bierman said that in its Four-Year Review, the Panel recommended that it formalize the subcommittee process and how it looks beyond the four corners of the complaint and determines if a complaint is wholly unfounded. He said the Panel has to change its Initial Review Report form and consider a Bylaws change. Mr. Bierman asked for two volunteers to form a subcommittee to look into this issue and present to the Panel with options at the July meeting. Mr. Hargraves and Mr. Cranford volunteered to serve on the subcommittee. Mr. Bierman said that Ms. Ramirez has drafted a new Initial Review Report form for the subcommittee to consider and that he will send them relevant information from the Four-Year Review.

Mr. Ware said that during the last subcommittee meeting, Mr. Kay was helpful in suggesting that the subcommittee consider whether other Panel Members would be inclined to consider the complaint. He said it is helpful to consider other perspectives and how the full Panel would deliberate on the complaint.

Mr. Ware said that he wanted to share additional observations about CRP-21-05. He said one issue raised was that the Second Lieutenant did not provide a copy of the complaint form. He said that while it is not required that supervisors do so, he believes they should be required to provide a complaint form, as it could be beneficial for everyone. The complainants can still express themselves verbally if they chose not to complete the form. The form would provide additional documentation for IAB or the station to begin their investigation.

Mr. Ware said that during the interaction between the Second Lieutenant and the Complainant to the FCPD, she explained that there are certain criteria that the IAB uses to initiate an investigation, rather than having it investigated at the station level. Mr. Ware said there was not a clear articulation about which entity investigates which complaints. He said it is explicitly written in the G.O. and it would be better if FCPD officers understood the different criteria and conveyed them to the public.

Mr. Bierman said it is within the Panel's authority to make recommendations on policy and practice. He said Mr. Ware may want to formulate a recommendation for the Panel to consider at its next meeting. The Chair can bring it up at the next Quarterly Meeting with FCPD leadership, IAB, and the Board of Supervisor's Chiefs of Staff. Mr. Bierman asked Mr. Ware to send the relevant G.O. to staff to be circulated to the Panel.

Mr. Kay asked when the next Quarterly Meeting will occur and Mr. Bierman said he would like to schedule one in July. Mr. Kay said that the Panel receives updates from the FCPD at Quarterly Meetings on its Recommendations Matrix, which includes recommendations made in Review Reports and Annual Reports. He said that other issues or recommendations not included in Panel reports can be discussed at Quarterly Meetings. The FCPD may be able to further explain or provide a reason why they do something a certain way and sometimes they implement recommendations made during the meetings. Mr. Bierman reassured the Panel they will have the opportunity to discuss topics for him to address at the next Quarterly Meeting before it occurs.

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

The meeting adjourned at 8:11 p.m.

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