

---

# Police Civilian Review Panel

## Meeting Agenda

---

Location: Fairfax County Government Center, Conference Room 232

Date: September 2, 2021

Time: 7:00 pm

---

### Agenda details:

#### I. Call to Order

#### II. Agenda Items

- a. Approval of Agenda
- b. Remote Participation Approval
- c. Approval of August 12 Meeting Summary
- d. Consideration of Good Cause to Review CRP-21-14
- e. Consideration of Good Cause to Review CRP-21-17
- f. Bylaws Amendments on Subcommittee Process

#### III. New Business

#### IV. Adjournment

#### Panel Meeting Schedule:

- October 12, 2021 at 7:00 p.m.
- November 16, 2021 at 7:00 p.m.
- December 2, 2021 at 7:00 p.m.

Police Civilian Review Panel

August 12, 2021

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:<sup>1</sup>

Cheri Belkowitz

Todd Cranford (by phone)

Jimmy Bierman, Chair

Frank Gallagher

Dirck Hargraves, Vice-Chair

Shirley Norman-Taylor

Panel Members Absent

William Ware

Others Present:

Anita McFadden, Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

Lt. Derek Gray, Internal Affairs Bureau

Capt. Camille Stewart, FCPD

The Panel's business meeting was called to order at 7:03 p.m. Mr. Bierman welcomed everyone to the Panel's August 12, 2021. Mr. Bierman took roll call to verify a quorum of the Panel was present. Mr. Cranford stated that he was participating remotely from Fairfax, Virginia. Mr. Bierman told Panel Members that they will meet in person now that there is no state of emergency but will let them know if and when the Panel will meet again virtually.

Approval of Meeting Agenda: Mr. Gallagher moved approval of the meeting agenda. Ms. Norman-Taylor seconded the motion and it carried with a vote of six, with Mr. Ware being absent.

Approval of July 1 Meeting Summary: Ms. Norman-Taylor moved approval of the Panel's July 1 meeting summary. Mr. Hargraves seconded the motion and it carried with a vote of five, with Mr. Gallagher abstaining, and Mr. Ware being absent.

Approval of Subcommittee Initial Review Report for CRP-21-13: Ms. Norman-Taylor Shirley provided a summary of the complaint. She said the Complainant bought a phone at Target and was concerned that there were apps installed on the phone being used by the government to spy on her. The Complainant had filed cases with various law enforcement agencies regarding multiple phones and with her mobile phone carrier. She went to the police station to report the crimes and alleged that she was not taken seriously by an FCPD officer and, because she was a Black woman, the officer was being dismissive and not investigating the crimes. She complained

---

<sup>1</sup> Two Panel seats were vacant for this meeting.

that an officer asked her to take an oath regarding her having mental health issues. The officer did in fact asked questions about her mental health.

Ms. Norman-Taylor said that the Panel subcommittee met and went through the criteria checklist. She said that they answered no to all criteria except for the second criterion related to discrimination based on race. She said that the subcommittee looked at the totality of the case and as a committee voted that the full Panel does not review the complaint because it had nothing to do with her being a Black woman. Ms. Norman-Taylor said that the officers were compassionate and professional and took the complaint seriously. She said the subcommittee thought the officers did a great job.

Mr. Bierman said they do not recommend the full Panel take the case. He said there was no substantiation to the record of the complaint and nothing to suggest that the police investigation was not complete, thorough, accurate, impartial, or objective.

Mr. Hargraves asked whether the police making derogatory comments was included in the checklist. Mr. Bierman said that it might fit under the second criterion regarding harassment. Mr. Hargraves asked how the record reflected that the officers went over and above and were compassionate. Mr. Bierman said the officers were calm, used active listening, and took the complaint seriously. He said the wellness check was conducted compassionately and that the officer explained to the Complainant that he had to ask the questions based on the law. Ms. Norman-Taylor said that included in the file was the Complainant telling the investigating officer that she did not think she was being blown off but that she felt overwhelmed.

Mr. Gallagher moved that the Panel accept the recommendation of the subcommittee regarding CRP-21-13. The motion was seconded by Ms. Belkowitz, and it carried unanimously, with Mr. Ware being absent.

Proposal for Codifying the Subcommittee Process: Mr. Bierman said that Mr. Hargraves and Mr. Cranford were working to develop draft language for the Bylaws on the subcommittee process. He referred to the draft document in the meeting materials, which included comments and suggested edits from Ms. Ramirez. Mr. Bierman said that to change the Bylaws, the Panel must make the request of the Board of Supervisors. He said he would like the Panel to have a discussion tonight and then consider the language again at its September meeting.

Mr. Hargraves said Article VI in the Panel's Bylaws spells out that a subcommittee can be formed to review complaints. He referred to the draft document before the Panel. He said that they recommend there should be a minimum of three members on the subcommittee but not more than one-third of the members. He said they think the decision to review should be unanimous and want to give the Complainant as much review time as possible. He said the full Panel can override the decision of the subcommittee.

Mr. Cranford said that the proposal mirrors what the Panel has already been doing in practice but codifies it. He said they welcome comments and suggestions from the Panel.

Mr. Hargraves said they reviewed the meeting notes contained in the Four-Year Review regarding discussions on how to weed out complaints that do not need the full Panel's attention.

Discussion ensued on the proposal. Mr. Gallagher and Ms. Norman-Taylor stated that they agreed that the decision should be unanimous.

Ms. Belkowitz stated that items iii. and iv. under section II. Subcommittee Review Criteria should be in their own section, B. She also said that one-third of the current Panel is three Panel members. Mr. Cranford said the proposed language accounts for the possibility that the number of members on the Panel could increase in the future.

Ms. Belkowitz said she agrees with the comment on page 8 of Bylaws. She also said that section VI. C. 2. (b) regarding sending out the Initial Disposition Notice within 30 days should be consolidated into the subcommittee provision and that there should be something in the language about the duties of the subcommittee. Mr. Bierman expressed his agreement with her suggestion.

Mr. Bierman said that he wants to be sure the subcommittee is efficient, but that the outcome of whether the full Panel reviews, does not depend on who sits on subcommittee. He said he wants section II. A. ii. in the proposed language to say: "If so, is there any evidence contained in the investigative file to support the allegations?" He said he wants it to be a low bar. Mr. Cranford stated that the subcommittee is making the determination whether there is sufficient evidence to support the allegation. Mr. Bierman said he thinks the question is not whether there is *sufficient* evidence to support the allegation, but whether there is *any* evidence to support it. He said there have been disagreements and dissents in the past about whether there was sufficient evidence to review. He said the legal term is whether there is a "scintilla" of evidence. Mr. Cranford said that if the bar is that low, then more cases would meet the standard and it could negate the need for the subcommittee. Mr. Bierman said he does not think the bar is too low as the Panel has rejected many review requests using the standard, including the request considered by the Panel today. Mr. Hargraves said there could be a Panel Member that believes any complaint can have a scintilla of evidence. Mr. Gallagher said he agreed with how it is currently written, and that the subcommittee can choose to apply the standard and make the determination. Mr. Bierman expressed his agreement in not making a change to the language.

Mr. Bierman referred to section II. A. iv. in the proposal and suggested that language be added that the full Panel ultimately makes the determination of whether it accepts a review. He said if there is a belief of any members that the standard is not being applied properly, they can always override it. Mr. Cranford said that language should be added that the full Panel "can override the opinion of the subcommittee" and Mr. Bierman agreed.

Mr. Bierman asked Mr. Hargraves and Mr. Cranford to work with Ms. Ramirez to integrate draft language into the Bylaws for the Panel to review and circulate. He said the Panel can consider a

motion at its September 2 meeting for a proposed Bylaw changes to submit to the Board of Supervisors.

Ms. Belkowitz suggested that they make clear the procedures concerning the subcommittee process. She asked what happens if three subcommittee members do not show up to the subcommittee meeting. Mr. Bierman said the subcommittee quorum is two Panel members. He agrees that more information needs to be integrated into the procedures. She asked if the Panel has 30 days to get back to the Complainant. Mr. Bierman said the Panel has thirty days from the receipt of the Investigation Report. Mr. Bierman said the Panel may want to consider whether to extend the 30-day timeline. He asked Ms. Belkowitz to send any ideas on how to deal with the issue to Mr. Hargraves.

Mr. Gallagher referenced section II. A. iv. and asked if the Panel subcommittee provides a written summary. Mr. Bierman answered affirmatively. He said the subcommittee's decision was once provided to the Panel in an oral report, but then the subcommittee meetings were scheduled to occur a few days before the Panel meeting to provide a written report. Mr. Gallagher suggested removing the word "written" from the proposal. Discussion ensued on whether to require written reports. Mr. Bierman said that the Panel could strive to provide written reports whenever possible but may need to provide an oral report in some cases. Ms. Norman-Taylor said that the recorded summary can provide a backup to the report.

Ms. Belkowitz asked if the subcommittee can complete a form. Mr. Bierman said that there is a form used by the subcommittee. Mr. Hargraves asked whether the Bylaws should mention that the subcommittee uses a checklist. Mr. Bierman said he did not think it was needed because the checklist follows the criteria outlined in the Bylaws. He said the evolution of the subcommittee process was that there were more considerations than just the criteria for abuse of authority and serious misconduct as outlined in the Bylaws.

Mr. Bierman said the Panel will try to vote on a Bylaws recommendation at the next meeting.

Recap of Quarterly Meeting: Mr. Bierman provided the Panel with an update on the Quarterly Meeting held with Chiefs of Staff to Chairman McKay and Supervisor Lusk, Chief Davis, and other FCPD command staff.

He announced that the Board of Supervisors approved an Executive Director position for the Panel, which was a major request of the Panel in its 2020 Annual Report and Four-Year Review. He outlined three main duties for the position including: helping with investigation reviews, drafting Panel reports, and conducting outreach for the Panel. He said the Executive Director will report directly to the Board of Supervisors and there will not be an administrative staff position to support the Executive Director, at least initially. He said there is no specific timeframe for the hiring of the position, but the authority and funding are in place, and the salary range is reflective of this being a competitive position.

Mr. Bierman said that the Panel will give its presentation to Board of Supervisors at its September 28th Public Safety Committee meeting.

He said that he learned at the meeting that the Board of Supervisors is working to fill the vacancies on the Panel and are conducting interviews. Mr. Bierman announced that Panel Member Doug Kay had to leave the Panel due to a conflict of interest.

Mr. Bierman said the Panel would like to receive training in the fall of 2021 from the FCPD. The Panel was last trained by the FCPD and by NACOLE in 2019.

Mr. Bierman said there was a discussion at the meeting on the Panel gaining electronic access to investigative files. He said Chief Davis is considering this request and said he may be able to give Panel Members access at district stations. Mr. Bierman said he reiterated that Panel Members take confidentiality and their responsibilities seriously.

Mr. Bierman said there was discussion about the Panel meeting with the next class of recruits and the rank and file at the FCPD, and whether Chief Davis may join with the Panel in presenting.

Mr. Bierman said that they discussed at the Quarterly Meeting the Panel's Recommendation Matrix, and he noted that there were some recommendations that needed an FCPD response or action, and in some recommendations, the FCPD's response was not accepted by the Panel.

Mr. Bierman said the FCPD has established a process for officers to make anonymous complaints regarding other officers. He said Internal Affairs publishes a summary of sustained complaints against officers. Mr. Hargraves added that sustained complaints are summarized by employee level such as the officer, supervisor, and commander levels.

Mr. Bierman said that Dr. Fritz will be the FCPD's first director of data for the department and the Chief will set up an introduction of Dr. Fritz to the Panel.

Mr. Bierman discussed his experience presenting to the admin staff of the FCPD. Mr. Gallagher asked what kind of questions they had about the Panel. Mr. Bierman said there were some questions related to whether the Panel was increasing trust or not. He said he made the argument that accountability is beneficial for the FCPD and will increase trust. He said some questions were like ones asked when the Panel addressed FCPD recruits, such as what the Panel does and what is its training. He told them that the Panel focuses on the how and the what of the investigation and not on the why of the complaint.

Second Public Forum with Chief Davis: Mr. Bierman said that Chief Davis agreed to join the Panel in conducting another public forum to talk about what he has accomplished in his first 100 days. Mr. Gallagher suggested that the Panel check in with Chief Davis to identify dates when he might be available.

Updated Panel Remote Participation Policy: Mr. Bierman said there has been a change in the FOIA law allowing a certain number of unexplained or personal reasons for participating

remotely in public meetings, which he believes is at least two per year or 25% of the meetings, whichever is greater. Mr. Bierman read from the Panel's current remote participation procedure. He said the Panel has to update its procedure to reflect the changes in the law. He said that the question before the Panel is how to operate with the COVID cases rising. Ms. McFadden said that the County is still in a state of emergency and, if there is a local or state emergency, the Panel can meet virtually. She said the Panel can meet remotely, meet in-person, or have members participate remotely in an in-person meeting using the procedure. Mr. Bierman said he will work with Panel counsel to draft revisions to the procedure before the next meeting.

New Business: Mr. Hargraves and Mr. Bierman updated the Panel that they have been meeting with individual Supervisors and their staff to discuss the Panel's recommendations and, specifically, the Executive Director position.

Mr. Hargraves said that he participated in Kingstown's National Night Out and encourages the other Panel members to do the same.

Ms. Norman-Taylor said she will be absent from the Panel's December 2, 2021, meeting.

Ms. Ramirez said that the consultant who is providing training to the FCPD on implicit bias is scheduled to provide a presentation to the Panel at its next meeting. Mr. Cranford said that he would like the Panel to receive training on implicit bias as well.

Ms. Belkowitz said that she serves on the Special Education Parent Teacher Association, which is going to hold an event with the FCPD. She would like the Panel to also be represented.

Adjournment: Mr. Hargraves moved to adjourn the meeting. Mr. Gallagher seconded the motion and it carried unanimously.

The meeting adjourned at 8:28 p.m.

Next Meeting: The Panel's next business meeting will be held on Thursday, September 2 at 7:00 p.m. in the Fairfax County Government Center Conference Room 232.

## **BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL**

**Approved by the Board of Supervisors on July 11, 2017**

**Accepted by the Police Civilian Review Panel on August 3, 2017**

**Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, December 1, 2020, February 23, 2021, and July 27, 2021**

### **ARTICLE I. NAME<sup>1</sup>**

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

### **ARTICLE II. PURPOSE**

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police ("Chief") and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

### **ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS**

- A. Composition and Qualifications.
  1. The Board of Supervisors shall appoint each Panel Member.
  2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel's responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
  3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

---

<sup>1</sup> Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.



civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three- year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

## ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

### A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

### B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1<sup>st</sup> of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

### C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
  - (a) Preside over all Panel meetings at which the Chair is present;
  - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
  - (c) Serve as the Panel's official spokesperson;
  - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
  - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
  - (a) Preside over Panel meetings in the absence of the Chair; and
  - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
  - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

## **ARTICLE V. QUORUM, VOTING AND MEETINGS**

### **A. Quorum.**

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

### **B. Voting.**

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

### **C. Meetings.**

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
  - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
  - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
  - (a) places that are accessible to persons with disabilities,
  - (b) public buildings whenever practical; and
  - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
  - (a) the date, time, and location of each meeting;
  - (b) the Panel Members present and absent;
  - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
  - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### A. Scope of Panel Review Authority.

1. 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 Panel shall not review:
  - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
  - (b) any Complaint related to an incident that occurred before December 6, 2016;
  - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
  - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
  - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Panel or the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
  - (i) identifying information for the person filing the Complaint;
  - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
  - (iii) the specific police behavior of concern;
  - (iv) a description of the incident in which the behavior occurred; and
  - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

**NEW PROPOSED LANGUAGE**

D. Initial Review and Disposition.

1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:
  - (i) is timely filed; or
  - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees (“Initial Review Subcommittee”) comprised of Panel Members to conduct initial reviews of Review Requests filed by community members with the Panel.
- (b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).
- (c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.
- (d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

3. Initial Review Subcommittee Process and Report to the Panel

- (a) The Subcommittee shall review a Complaint to determine whether:
  - (i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws, and
  - (ii) The evidence contained in the investigative file supports the allegations.
- (b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.
- (c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee’s deliberations and recommendation at such time as the Panel considers the subject Complaint.
- (d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

4. Initial Disposition Notice

- (a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

DRAFT



**ORIGINAL LANGUAGE TO BE REPLACED**

2. Initial Disposition Notice

- (a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.
- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
  - (i) is timely filed; or
  - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

- 1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
  - (a) suspend its review;
  - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
  - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
  - (d) track any deferred matter and notify the complainant and the Board of Supervisors

once the proceedings are closed and the request for review may proceed.

2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
- (e) The Panel shall not take testimony or receive evidence.
- (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
- (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about

the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.

- (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

2. Closed Sessions, and Confidential Matters During Panel Review Meetings.

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
  - (i) Concur with the findings and determination detailed in the Investigation Report;
  - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
  - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

**ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES**

A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

**ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS**

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

**ARTICLE IX. RECORDKEEPING; ANNUAL REPORT**

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1<sup>st</sup> of each year.

**ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY**

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

**ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS**

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

**ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS**

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.



Exhibit A

**DEFINED TERMS**

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

**Abuse of Authority** has the meaning assigned to the term in Article VI.B.

**Annual Report** means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

**Auditor** means the Fairfax County Independent Police Auditor.

**Board of Supervisors** means the Board of Supervisors of Fairfax County.

**Bylaws** means the Bylaws of the Fairfax County Police Civilian Review Panel

**Chief** means the FCPD Chief of Police.

**Complaint** means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

**Counsel** means the legal counsel that the Board of Supervisors designates to support the Panel.

**FCPD** means the Fairfax County Police Department.

**FCSO** means the Fairfax County Sheriff's Office.

**Initial Complaint** means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

**Initial Disposition Notice** means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

**Investigation(s)** means a FCPD internal administrative investigation.

**Investigation Report** means the completed written FCPD report setting forth the findings of the Investigation.

**Laws** means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

**Meeting(s)** has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

**Panel** means the Fairfax County Police Civilian Review Panel.

**Panel Findings** means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

**Panel Meeting** means a meeting of the Panel.

**Panel Meeting Notice** means the written notice stating the date, time, and location of a Panel Meeting.

**Panel Member(s)** means each of the persons that the Board of Supervisors appoints to the Panel.

**Panel Review Meeting** means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

**Panel Review Meeting Notice** means the Panel Meeting Notice for a Panel Review Meeting.

**Public Meeting(s)** means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

**Receipt of the Investigation Report** is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

**Review Request** means a person's request for the Panel to review an Investigation.

**Serious Misconduct** has the meaning assigned to the term in Article VI.B.

**VFOIA** means the Virginia Freedom of Information Act, as amended from time to time.