

Police Civilian Review Panel

September 2, 2021

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:¹

Jimmy Bierman, Chair

Dirck Hargraves, Vice-Chair

Todd Cranford

Frank Gallagher

Shirley Norman-Taylor

William Ware

Panel Members Joined Remotely

Cheri Belkowitz

Others Present:

Lt. Derek Gray

Capt. Dana Robinson

Richard Schott, Independent Police Auditor

Dre'Ana Whitfield, OIPA

Others Present Joined Remotely

Anita McFadden. Counsel

The Panel's business meeting was called to order at 7:03 p.m. Mr. Bierman welcomed everyone to the Panel's September 2, 2021, meeting. Mr. Bierman took roll call to verify a quorum of the Panel was present. Everyone that was present in Conference Room 232 stated their name and the position that they hold. Ms. Belkowitz stated that she was participating remotely from Fairfax Station, Virginia.

Approval of Meeting Agenda: Mr. Gallagher moved approval of the meeting agenda. Mr. Hargraves seconded the motion and it carried unanimously.

Remote Participation Approval: Mr. Bierman stated that they are still working on updating the remote participation policy. He expressed that he will be working with Ms. McFadden on updating the remote participation policy. He further explained that the old policy allowed individuals to participate remotely in a certain number of meetings for sickness or personal reasons. Mr. Bierman talked about the changes to the FOIA law governing remote participation of members of public bodies and stated that the Panel will move forward with adopting a new remote participation policy.

Approval of August 12 Meeting Summary: Mr. Hargraves moved the approval of the Panel's August 12 meeting summary. Ms. Norman- Taylor seconded the motion and it carried unanimously.

¹ Two Panel seats were vacant for this meeting.

Consideration of Good Cause to Review CRP-21-14: Mr. Bierman referred to the two review requests on the meeting agenda. He said that each complainants received a disposition letter and are currently requesting reviews.

Mr. Bierman provided a brief summary of the first complaint. He said that the complainant reported multiple instances of false arrest, harassment, and violations of the law. The Fairfax County Police Department (FCPD) informed the Panel that they completed two administrative investigations into the allegations. The FCPD sent the complainant letters on November 8, 2018, and January 29, 2021. The complainant's request for review was received on August 4, 2021, which is outside of the sixty-day period. Mr. Bierman stated that the complainant was asked to explain why he may have "good cause." Mr. Bierman explained that under the Bylaws if the Panel finds "good cause," the complaint can still be reviewed. Mr. Bierman read the complainant's "good cause" to the Panel. He said that the complainant's explanation of "good cause" was said to be due to homelessness. In addition, the complainant had said that he was still compiling evidence and reasons for his complaint.

Mr. Bierman asked the Panel if there was a motion to accept a review of CRP-21-14 for "good cause" or to reject a review and deny "good cause." Mr. Gallagher made the motion to reject the review. The motion was seconded by Mr. Hargraves. Mr. Gallagher voiced that the complainant did not state in his correspondence how long he was in fact homeless. He said that he viewed the complainant as being nonresponsive due to being able to stay communicative. Mr. Cranford asked whether the complainant alleged any reason, such as not receiving the letter due to being sent to an old address. Mr. Bierman stated that the complainant did not make that claim. Mr. Cranford stated that it seemed the complainant was communicating with others and did not claim that he received the disposition letter late because of homelessness.

Mr. Bierman called to question the motion to deny "good cause" and to deny the request to review. The motion was carried six to one, with Mr. Ware voting nay.

Consideration of Good Cause to Review CRP-21-17:

Mr. Bierman provided a summary of the complaint. The complainant alleged that officers acted unfairly and prejudiced in not investigating the theft of his personal property during incidents in 2016, and interactions on December 10, 2020. Mr. Bierman explained that the Panel notified the complainant on June 15, 2021, in a letter that he had until August 7, 2021, to request a review. Mr. Bierman stated that the complainant submitted his request for review on August 10, 2021, three days past the sixty-day deadline.

Mr. Bierman voiced that the complainant did not provide any reason for a "good cause." He expressed concern that arguably individuals may not understand what the Panel wants to know regarding "good cause." Mr. Gallagher recommended that the Panel look at the language in its correspondence to complainants about requesting information to consider "good cause". Mr. Bierman suggested that this can be considered going forward and asked Panel Members to send any suggested revisions to him. However, Mr. Bierman stated that when the Panel asked for "good cause" it was not provided in this case.

Mr. Bierman called to question the motion to deny “good cause” and decline to review the case. Mr. Cranford moved the rejection to deny “good cause.” Mr. Ware seconded the motion and it carried unanimously.

Bylaws Amendments on Subcommittee Process

Mr. Hargraves referenced the proposed new language in the draft Bylaws document in the meeting materials. He said the proposed language is in blue text and the language to be replaced is highlighted gray. He said that he and Mr. Cranford integrated the suggestions made by Panel members during the last meeting and suggestions received from a former Panel Chair.

Mr. Hargraves referenced section D.3.(a)(ii). of the new proposed language. He said that Mr. Gallagher and Mr. Bierman expressed concerns with the evidentiary standard. Mr. Hargraves said that a concern with a higher bar is that it might omit credible complaints. He said that he and Mr. Cranford are fine with the language as is since a unanimous vote to get rid of frivolous complaints is required, the full Panel can override a recommendation, and the same members will not be serving on the subcommittees. Mr. Cranford said that the language as is sets forth the standard because the review will determine whether serious misconduct or abuse of authority is alleged.

Mr. Bierman said his concern was that the Panel made a recommendation in the Four-Year Review that this process be a summary judgement like process. He referenced the recommendation in the Four-Year Review that says the subcommittee should “determine whether the allegations of the complaint constitute allegations of a serious misconduct or abuse of authority,” which is the same as 3.(a)(i). He said that the Four-Year Review report recommendation also says, “if yes, the subcommittee should determine whether the Investigation report reveals any observable substantiation of the allegations of serious misconduct or abuse of authority in the complaint... If there is any observable substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should recommend that the full Panel take up review.” He said the recommendation says the bar should be: is this the case that no reasonable Panel could come out and say there was need for additional investigation or there was a violation here. Mr. Bierman said that if 3.(a)(ii) language stays as proposed, “the evidence contained in the investigative file supports the allegations” it becomes a question of what one subcommittee member thinks will be the ultimate outcome, rather than whether he or she believes no reasonable Panel member could come to this outcome.

He said the point of the recommendation in the Four-Year Review is that when the subcommittee recommends the full Panel not take a complaint it should say that no reasonable Panel could find there was evidence of abuse of authority or serious misconduct. He said his concern is that the current proposed language does not include consideration of a reasonable Panel. He recommends that 3.(a)(ii) say instead, “There is any substantiation and there is any evidence contained in the investigative file that supports the allegations”. He said that a subcommittee member to find there is no evidence or that no reasonable Panel member can find evidence supporting the allegation is different from a single Panel member saying the he or she alone thinks there is a problem.

Mr. Gallagher said the way it is currently written is too broad. He said the subcommittee should determine whether there is anything in the file that supports the allegations and then decide whether it should go to the Panel.

Ms. Belkowitz said she was concerned there could be a pattern of the subcommittee not sending complaints to the full Panel or that there may be bias in not pushing them forward to the Panel. She said she is fine with the way it is written but that there needs to be checks and balances. She suggested providing the form that the subcommittee completes prior to the vote of the full Panel. Mr. Gallagher said that subcommittee membership rotates. Mr. Hargraves said that D.2.(b) specifies that there be rotating membership.

Mr. Bierman said another failsafe is that the full Panel will always consider the subcommittee recommendation and vote to accept or reject it. Mr. Bierman proposed to change 3(a)(ii) to say: "any evidence contained in the investigative file supports the allegations." He also proposed creating a new section 3.(b) that says "if the conditions of (a)i and (a)ii are both met, the subcommittee should recommend that the full Panel review." He proposed that the current 3.(b) then become 3.(c) and the language stay the same about the unanimous vote needed to recommend that a complaint not be considered by the full Panel.

Mr. Ware said he had concerns about the use of the term "shall" in the new proposed 3.(c) as he thinks it will limit the discretion of the subcommittee.

Mr. Hargraves moved that the new proposed language in Section 3(a)(ii) be accepted as amended by striking the word "the" and replacing it with "any." Mr. Ware seconded the motion.

Mr. Gallagher said he wanted to propose a change to Section C.1.(a). in the Bylaws but the discussion was tabled.

Mr. Cranford said he finds the word "any" too expansive and would compel the subcommittee members to go forward when there is any evidence. He suggested the following language: "The evidence contained in the investigative file would lead a reasonable Panel to conclude that there is a scintilla of evidence to support the allegations." He said it includes language from the Four-Year Review report but does not say "any" and allows the subcommittee to exercise its judgment and discuss whether they believe a reasonable Panel would feel the same way. Ms. Belkowitz expressed agreement but suggested striking the word "scintilla." Further discussion ensued on the proposed language.

Ms. Belkowitz asked if the Panel rejects the complaint is there any appeal process. Mr. Bierman said that if the Panel rejects a complaint there is no appeal process, but if a subcommittee makes a recommendation to the Panel to reject a complaint, then the new language in D.3.(d) states that the full Panel can overrule the recommendation. Ms. Belkowitz asked if there was ever a time when the Panel rejected a subcommittee's recommendation and Mr. Bierman stated there has not been.

Ms. Belkowitz made a friendly amendment to the motion that a semi-colon be placed after "Bylaws" in 3(a)(i). Mr. Hargraves accepted the amendment.

Mr. Cranford moved to amend the motion on the floor to revise the language in 3.(a)(ii) to read "The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations." Ms. Norman-Taylor seconded the motion.

Mr. Hargraves suggested keeping the same language in 3.(a)(ii) but replacing the word "the" with "sufficient" rather than "any".

Mr. Bierman called the question that the Panel vote on the amendment proposed by Mr. Cranford. He re-read the proposed language to be included in D.3.(a). The motion carried by unanimous vote.

Mr. Bierman called the question that the Panel accept the new language proposed by Mr. Cranford. The motion carried unanimously.

Mr. Gallagher referred to Article VI.C.1.(a) in the Bylaws draft that says "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." He asked if the Panel receives a phone call is it accepted as delivered. Mr. Bierman said that they do consider a phone call to be delivered. Mr. Schott stated that when he speaks on the phone with a complainant, he reduces to writing what is conveyed.

Ms. Belkowitz asked if they should address what happens if the subcommittee does not unanimously vote. She asked if that means that the Panel would automatically take on the complaint. Mr. Bierman said that the subcommittee is making a recommendation to the Panel and that the only way the Panel can accept a recommendation to not review a complaint is if there is a unanimous subcommittee vote. He said it can be implied that if it is not a unanimous subcommittee vote then the subcommittee cannot recommend that the complaint not be heard by the Panel. Ms. Belkowitz asked what happens next and is it automatically heard by the Panel. Mr. Bierman said the full Panel considers the recommendation from the subcommittee. Mr. Bierman said that Ms. Belkowitz raises the question of what happens if the subcommittee is not unanimous and then the Panel decides it does not want to accept the complaint? Mr. Hargraves said that because the meetings are open to the public, the full Panel can discuss why they accept or reject a complaint. He said that the vote of the subcommittee will be considered in the decision of the full Panel. Mr. Bierman said the point of the process is to be sure there is consistency in decisions made by subcommittees and that the failsafe is that the ultimate decision is made by the full Panel.

New Business:

Mr. Bierman updated the Panel. He stated that he and Mr. Ware met with the Communities of Trust. Mr. Ware provided a brief summary about the Communities of Trust. He stated that the Communities of Trust is a committee that was established by the Board of Supervisors in response to Ferguson, Missouri after a police officer involved shooting. The Communities of Trust focuses on building trust between the community and the police through events and forums.

Mr. Bierman said that he reached out to the Chief to schedule his one-hundred-day forum. Mr. Bierman said that no specific date is set. He stated that future meetings will occur between the Panel and the rank and file of the FCPD. He expressed the desire for the new Executive Director to attend these meetings and explain the role of the Panel.

Mr. Bierman reminded the Panel that the Public Safety Committee meeting will be held on September 28, 2021, at 9:30 a.m. He said he will be presenting along with Mr. Schott.

Mr. Bierman said that if the state of emergency in the county is not lifted the Panel can move away from in-person meetings.

Adjournment:

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

The meeting adjourned at 8:20 p.m.

Next Meeting:

The Panel's next business meeting will be held on October 12, 2021, at 7:00p.m. A decision will be made whether the meeting will be held remotely.