
Police Civilian Review Panel

Meeting Agenda

Location: Fairfax County Government Center, Conference Room 11

Date: August 11, 2022

Time: 7:00 pm

Agenda details:

I. Call to Order

II. Agenda Items

- a. Approval of Agenda
- b. Introduction of Counsel (and FOIA discussion)
- c. Approval of June 2, 2022 Draft Meeting Summary
- d. Approval of Subcommittee Initial Review Report for CRP-22-08
- e. Proposed PCRCP Training with FCPD

III. Executive Director's Report

IV. OIPA Update

V. PCRCP Matters

VI. New Business

VII. Adjournment

Panel Meeting Schedule:

- September 1, 2022 at 7:00 p.m.
- October 6, 2022 at 7:00 p.m.
- November 3, 2022 at 7:00 p.m.



VFOIA OVERVIEW

THE VIRGINIA FREEDOM OF INFORMATION ACT
V.A. Code § 2.2 - 3700 TO § 2.2 - 3714

Bynum & Jenkins Law – Madison N. Gibbs & Kenneth D. Bynum



V.A. Code § 2.2 – 3700 (B)

“By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted.

The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, ***every meeting shall be open to the public and all public records shall be available for inspection and copying*** upon request. ***All public records and meetings shall be presumed open, unless an exemption is properly invoked.***”

OPEN/PUBLIC MEETINGS v. CLOSED MEETINGS

- Defined by § 2.2-3701 as:
 - *OPEN MEETING: a meeting at which the public may be present*
 - *CLOSED MEETING: a meeting at which the public is excluded*
 - *MEETING:*
 - physically or electronically as a body, OR
 - informal assemblage of:
 - *3 members, or*
 - *Quorum, if less than three*

- Example from Mr. Bynum re exception

PUBLIC RECORDS

- Defined by § 2.2-3701 as:
 - *All writing and recordings* that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and *regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.*

SPECIFIC CODIFIED EXCEPTIONS

- Ongoing Criminal Investigations
- Attorney-Client Privileged Legal Advice
- Information containing personal information identifying any victim, witness, or undercover officer
- Records that reveal investigative techniques or procedures

QUESTIONS

Police Civilian Review Panel

June 2, 2022

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:

Jimmy Bierman
Cheri Belkowitz
Bryon Garner
Dirck Hargraves, Chair
William Ware
Janell Wolfe

Panel Members Joined Remotely:

Todd Cranford, Fairfax
Celeste Peterson, Centreville

Others Present:

Captain Laitinen, Internal Affairs Bureau
Rachelle Ramirez, OIPA
Steven Richardson, Executive Director, PCRCP
2nd Lt. Saafoori, Internal Affairs Bureau
2nd Lt. Tim Forrest, Internal Affairs Bureau
Richard Schott, Independent Police Auditor
Dre'Ana Whitfield, PCRCP

The Panel's business meeting was called to order at 7:05 p.m. Mr. Hargraves, Chairman, welcomed everyone to the Panel's June 2, 2022 meeting. Mr. Hargraves took a roll call to verify a quorum of the Panel was present. Everyone present in Conference Room 232 stated their name and their position. Two Panel members joined remotely and stated the location from which they participated.

Approval of Agenda: Mr. Bierman moved to amend the Panel's agenda. He suggested that the Executive Director's report be added to the agenda after the approval of the May 5, 2022 draft meeting summary. Mr. Garner seconded the motion. Ms. Belkowitz suggested it be added as a recurring agenda item at III. The motion carried with a unanimous vote.

Approval of June 2, 2022 Draft Meeting Summary: Mr. Bierman moved the approval of the Panel's May 5, 2022, draft meeting summary. Mr. Garner seconded the motion, and it carried with a unanimous vote.

Executive Director's Report: Mr. Richardson outlined three items in the Executive Director's report. He informed the Panel that the County Attorney has approved Bynum and Jenkins law firm as the new independent counsel for the Police Civilian Review Panel and the Office of the Independent Police Auditor. Mr. Richardson informed the Panel that on June 6, he and Major Billeb will be visiting each station house to begin structuring future station house reviews. Lastly, he informed the Panel that they are members of the National Association for Civilian Oversight of Law Enforcement. Each Panel member will begin receiving correspondence about training and other opportunities.

Mr. Hargraves informed the Panel that he will be meeting with the Executive Director to discuss community outreach.

Mr. Hargraves explained his vision for the Panel, he expressed that he wanted the Panel to be the best in class for community oversight.

Ms. Belkowitz informed the Panel that she connected Brook Wright with the head of transition services for Fairfax County Public Schools. She stated that there will be an open house experience for high school students. She explained that the employment and transition representatives from Fairfax County Public Schools will be conducting a use of force workshop day for students. She further explained that the employment and transition representatives will hand pick students who may be interested in law enforcement. Ms. Belkowitz expressed her happiness with students being matched with possible career opportunities.

Review Meeting for CRP-22-06:

Mr. Bierman explained the rules of the review meeting session to the Panel members. He stated that the Panel does not discuss police tactics, nor does it refer to any police officers by name in public. He noted that the Panel does not quote directly from internal interviews with officers.

Mr. Hargraves explained the Panel's review meeting process, he said that the Panel does not take testimonies. He further explained the purpose of the Panel to the complainant. He stated that the Panel reviews the investigation of the IAB to see if it was complete, accurate, thorough, impartial, and objective. He further explained that the Panel can either concur with the IAB's disposition of the case or send the investigation back to IAB for additional investigation. Mr. Hargraves further explained the subcommittee process.

Mr. Hargraves provided an overview of the subject complaint. He stated that the complainant was delivering packages for Amazon in McLean, Virginia. The complainant parked in a space that was labeled as reserved space. While parking in the reserved space, another driver pulled beside the complainant. They asked the individual whether she was parked in their parking space and did not receive a response from the driver. The individual asked the complainant if she was going to move her vehicle. The complainant moved her vehicle and proceeded to the apartment building elevator to deliver the packages. The complainant looked behind her and observed the alleged perpetrator with a handgun. The complainant felt uncomfortable and scared and retreated to her vehicle. The complainant called her mother, and the mother called the FCPD expressing her concern. The FCPD arrived 21 minutes later. The complainant described her experience to the FCPD. The complainant identified the alleged perpetrator's vehicle. The FCPD ran the alleged perpetrator's tags and found that the individual had a concealed carry permit. The FCPD located the alleged perpetrator's residence. The alleged perpetrator was dressed in blue jeans and a dark shirt. The alleged perpetrator invited the FCPD inside. The alleged perpetrator expressed that it must have been a misunderstanding and that he did not speak to the complainant. The alleged perpetrator expressed that he had just come from the gym and that he had on sweats. The alleged perpetrator claimed while in his sweats he cannot put the handgun in his waistband because it would have been baggy. The alleged perpetrator affirmed that he did not point the handgun at the complainant and that it was just in his hand.

Mr. Hargraves noted that the interaction of the officers with the complainant and their interaction with the alleged perpetrator was slightly different. Mr. Hargraves stated that in both interactions the FCPD officers were polite, but the interaction with the alleged perpetrator was more familiar. After the FCPD spoke to the alleged perpetrator, the FCPD officers concluded that there was very little evidence that rose to the level of criminality.

Ms. Wolfe noted that the alleged perpetrator insisted that the handgun was in a holster and the complainant claimed that the gun was not in a holster.

Mr. Ware noted that after the complainant observed the alleged perpetrator with the handgun in his hand, she encountered a FedEx driver who witnessed the incident. The complainant asked the additional driver if she should be concerned. The additional driver told the complainant not to be concerned.

Complainant Statement:

The co-complainant, who is the complainant's mother, was present at the meeting and provided a statement. She stated that her daughter Facetimed her and told her that a white man pulled a gun on her. The mother expressed that the complainant was afraid. The mother called the FCPD and stated that she gave as much information as she could. The co-complainant further provided details about the incident. It was the complainant's first day at Amazon. The complainant was parked in a reserved space to deliver packages. The co-complainant noted that the complainant was not familiar with the Northern Virginia area. When the complainant parked in the reserved space, the alleged perpetrator asked the complainant to get out of the space. While looking back the complainant saw the alleged perpetrator with a handgun. The complainant turned around to go back because she was afraid.

The co-complainant expressed that she was shocked that no one called her or the complainant after the incident. The co-complainant said that she had to call FCPD to receive further information. The co-complainant said when she finally spoke to the FCPD, the officer said that they spoke with the alleged perpetrator and did not feel that a crime was committed. The FCPD said that the alleged perpetrator brandished the gun and had a concealed carry permit. The co-complainant said the alleged perpetrator does not have the right to intimidate people, especially a young Black female. The co-complainant asked the FCPD for the alleged perpetrator's name so that she can press charges and file a civil suit. The FCPD would not give the alleged perpetrator's information to the co-complainant.

The complainant said that had she been a White female and the alleged perpetrator Black, the incident would have been handled differently. The co-complainant said that she wants to get justice for her daughter.

Complainant Questioning:

Mr. Ware said understanding the limits of the Panel's authority, he asked what would you like to see come from this process? The co-complainant said better training for the officers and the alleged perpetrator's information to file a civil complaint. The co-complainant expressed she wants to protect her daughter and other African Americans who want to work in Virginia from a law that says you have the right to carry. The co-complainant said that the FCPD did not call her or the daughter back regarding the incident. She expressed that, that is a red flag. The co-complainant said she wants the FCPD to go

back over the case and reevaluate what went wrong, and why it went wrong, require classes, and hold officers accountable.

Ms. Wolfe asked if the complainant received the FCPD's disposition letter. The co-complainant answered affirmatively. Ms. Wolfe asked the co-complainant had she talked to her daughter a lot about what happened since the incident? The co-complainant said not a lot.

Ms. Wolfe asked the co-complainant had she asked her daughter exactly what words were exchanged between her and the alleged perpetrator? The co-complainant said she did not. The co-complainant explained that only the information that was given to her daughter was what she knew. The co-complainant said that is why she asked the FCPD for the body camera footage or to hear the audio.

Ms. Wolfe asked the co-complainant from talking with her daughter, that there is no doubt that the alleged perpetrator had the handgun in his hand and not in a holster? The co-complainant said there was no doubt.

Ms. Wolfe asked the co-complainant do you know the distance between the alleged perpetrator holding the handgun and when your daughter decided to turn around and leave? The co-complainant said she did not know.

Ms. Wolfe asked was there anything in the disposition letter that struck you as not accurate? She said she did not notice anything. The co-complainant expressed it seemed like the old buddy system and that the letter was a form letter and not personable.

Ms. Wolfe asked did the co-complainant read the case cited in the disposition letter? The co-complainant said no.

Ms. Wolfe asked does her daughter still work at Amazon? The co-complainant said no, not since that day.

Mr. Bierman asked were you ever given the opportunity by the IAB or by FCPD to view the body camera footage? The co-complainant said that she requested the footage and never received any information back.

Mr. Bierman asked if the police officer had called you later that night, and contacted your daughter or you, and had said we went and approached the suspect, he explained to us that he was holding the gun in a holster, he showed the holster and said he was holding it to his side, and his wife who was there told us the same thing, the additional driver was mentioned and will be followed up with and we will get back to you. Would that have been an appropriate response? The co-complainant said she cannot answer what-if questions on something that did not happen.

Mr. Bierman described another scenario involving a White complainant and a Black perpetrator and asked would that have been an appropriate police interaction or an inappropriate police interaction? The co-complainant said that she doubts that it would have happened that way. She expressed that if the races were reversed and the alleged perpetrator was a Black man it would have been handled differently. The co-complainant said she cannot offer recommendations on the spot but could make a list.

Ms. Wolfe asked do you think your daughter's age or sex had anything to do with what happened besides the racism part? The co-complainant said she does.

Mr. Hargraves thanked the co-complainant for her participation in the Panel's process.

FCPD Statement:

Captain Laitinen from the IAB introduced Second Lieutenant Safoori. Lt. Safoori provided a summary of the facts of the case and the investigation. He explained that in the summary the mother is identified as the complainant, and the daughter is referred to as the complainant's daughter. The complainant in her email to the Panel stated that the suspect produced a gun when he confronted her daughter about her parking in his assigned parking spot and reiterated this to the 911 call taker. The complainant's daughter stated to the 911 call taker that she had a conversation with the parking space owner and then continued to deliver her Amazon packages after moving her van. Shortly thereafter she walked into the elevator at the same time as the man in the parking lot and saw that he had a gun down by his side along with other items. The complainant's daughter said to the 911 call taker that the alleged perpetrator did not really pull his gun on me, he just has it in his hand while he was behind me. The complainant's daughter informed the FCPD that the individual with the firearm never pointed it at her. The complainant's daughter made an excuse that she forgot something to avoid going up the elevator with the suspect. The complainant expressed that the alleged perpetrator probably had something against her since she had parked in his spot. Lt. Safoori listed the following complaints from the complainant and her daughter: the officer did not properly perform his duties by not placing the suspect under arrest; after the investigation, the officer did not follow up with the complainant as promised; the officer would have treated her differently if she were a White woman in a Black neighborhood; and the officers took a long time to arrive on the scene.

The FCPD did not believe that probable cause existed to make an arrest. Lt. Safoori said that he proffered the facts to the Commonwealth's Attorney's Office, and they also determined that no crime occurred and would not attempt to prosecute such a case. Lt. Safoori further provided the statement, he read that the Virginia case law defines brandishing as the suspect to have acted in an ostentatious, shameful, or aggressive manner, none of which were observed or described by anyone involved. Immediately after the investigation, the officer attempted to call the complainant's daughter, however, the phone call went to voicemail. The officer did not leave a message with the intention to call the complainant back on his next shift, which would be the following day. Before the officer's next shift, the complainant called the FCPD to inquire about the results of the event. The officer's supervisor told him that he would handle the call and the officer believed his supervisor would perform the follow-up. Therefore the officer never attempted another phone call. The officer's supervisor incorrectly advised the complainant on multiple parts of the criminal investigation and the deficiencies were addressed by providing additional training. Lt. Safoori said that regarding the allegations of bias, no evidence was found that race was a factor. He said, regarding the allegation of slow police response, the complainant called 911 at 4:34 p.m., the 911 call taker created an event 3 minutes later. The primary officer was handling a different event in the area. The officer cleared the event he was handling 10 minutes after the complaint was created and 13 minutes after the complainant originally called 911. The officer was dispatched 43 seconds after he cleared the other event and arrived on the scene at 4:58 p.m. The response time of the officer was 10 minutes and 18 seconds. It took another 6 minutes and 57 seconds

before the officer located the complainant's daughter, who had continued to deliver packages in the same location.

FCPD Questioning:

Mr. Hargraves asked if Virginia code §18.2-282 regarding pointing, holding, or brandishing a firearm was being cited? Lt. Saafoori replied affirmatively. Mr. Hargraves read from the code.

Mr. Hargraves asked if the complainant was unreasonable in their fear of having a negative interaction with an older white male who was holding a gun behind her. He asked was there a contention that it did not rise to the level of being reasonable fear as the code would indicate? Captain Laitinen said that he cannot comment on the relevance of the details of the code but that the officers did not find probable cause based on the facts.

Ms. Belkowitz referred to related case law and that it is based on the belief or fear of the victim. She asked if the IAB understands that the complainant was very afraid and that it is not the intent of the individual holding the weapon, but the feeling of the person on the other end? Captain Laitinen said that based on the officer's perception of the facts at the time, and speaking with both parties, the officer did not feel that there was probable cause for an arrest.

Ms. Belkowitz asked did the officers ask the complainant if she was afraid? Lt. Saafoori stated that he does not recall and would have to review the BWC footage. She referenced the requirements in the code regarding pointing, holding, or brandishing a firearm.

Ms. Belkowitz asked is it your understanding that the alleged perpetrator was holding the weapon and that the complainant stated she was afraid? Lt. Saafoori replied affirmatively.

Mr. Hargraves asked what does it look like for the FCPD to proffer some information to the Commonwealth's Attorney? Captain Laitinen said that he provided all the information that is in the report after the entire investigation was complete.

Ms. Wolfe asked when you spoke to the Assistant Commonwealth's Attorney, did you tell her that the victim was afraid? Lt. Saafoori said that it was not in his report that the complainant was afraid

Ms. Wolfe asked does that change how you would present it to the Assistant Commonwealth's Attorney? Lt. Saafoori said that he can proffer the facts of the complainant's fear if that is what the complainant stated to the officers. Lt. Saafoori said that he would have to review the body worn camera footage. Mr. Bierman said he recalled the complainant saying that she was afraid and spooked. Mr. Bierman said he thinks the officers should have considered the objective reasonableness of the fear. He stated that it could have been helpful to find and interview the other delivery driver.

He said that the officer's supervisor called and told the complainant's mother that there was no brandishing, which is not correct, and shut down the investigation before there was an attempt to contact other witnesses on the scene. There was an attempt the next day to locate the delivery driver.

Mr. Bierman asked what additional training and what sort of reprimand happened for the supervisor in this case? Captain Laitinen said that he is not sure what additional training was required and cannot disclose information regarding the discipline of the supervisor.

Mr. Richardson asked if IAB investigates the matter or just the complaint that came to IAB? Captain Laitinen summarized the internal investigation process and said that IAB handles the adherence to internal policy and procedures and the performance of duty. Mr. Richardson asked if IAB can refer criminal matters back to the station? Captain Laitinen explained that criminal investigations would be referred to the appropriate person such as an officer or a detective.

Lt. Saafoori stated that as part of his investigation he determined that the camera in the elevator was not operational. He said that he was told it was a dummy camera and not meant to record.

Ms. Wolfe asked did the alleged perpetrator know that there was a dummy camera at the apartment complex? Lt. Saafoori said that he did not know. Ms. Wolfe said the alleged perpetrator told the FCPD to go check the camera. Ms. Belkowitz said there was confusing statements made about the camera.

Mr. Garner asked if they could walk him through the procedure for when an officer contacts someone who has a concealed carry permit? Lt. Forrest explained that it depends on the situation but generally they want to verify they have the permit and its valid.

Mr. Garner asked would it be a missed opportunity for an investigation, if one of the officers, in this case, did not ask for the concealed carry permit? Lt. Forrest said in this case the alleged preparator was not carrying the firearm concealed. Captain Laitinen noted that Virginia is an open-carry state.

Ms. Peterson's question was inaudible. Mr. Hargraves restated the question. He asked is it standard procedure to allow an alleged perpetrator who has a gun to disappear into his residence to retrieve a gun to show the officers? Captain Laitinen answered that it depends on a number of variables, including where the officers are, how many there are, and how they are positioned. He said every officer has to make their own judgement based on their training and experience.

Mr. Cranford made a comment that he believed that the complainant was fearful. He said the complainants fear is relevant and important, it is not dispositive. He said other factors need to be considered.

Ms. Belkowitz asked Captain Saafoori when he spoke with the Commonwealth's Attorney was that about holding the weapon under Virginia code §18.2-282 or was he referring to Virginia code §19.2-81 about brandishing? Lt. Saafoori said that he referred to Virginia code §18.2-282. Lt. Saafoori said that everything that is in the report was explained to the prosecutor.

Ms. Belkowitz asked that it was not in terms of getting an arrest at the time versus approaching a magistrate? Lt. Saafoori said no, it was solely about whether there was probable cause to make an arrest.

Ms. Belkowitz asked was there a reason why the arrest statistics were not included in the report? Captain Laitinen explained that statistics are pulled in cases of traffic stops or if an arrest is made on an individual that makes a complaint of bias. Lt. Forrest further explained that the code section requires that the FCPD captures that information for arrests, subject stops, and traffic stops. Mr. Bierman stated that if there is an allegation of bias it is helpful to look at statistics of the officer to see if there are anomalies to suggest bias. He said the Panel previously advised the IAB that it would like these statistics provided for all bias allegations, along with open-source investigation results, such as social media. Mr.

Hargraves said it would be interesting to see if the officer has a record of arresting Blacks for brandishing or not.

Ms. Belkowitz asked if the officers tried to locate the delivery driver or mailman and if the witness was interviewed? Lt. Saafoori said the witness was not. He explained that when the officers attempted to locate the witness, they could not figure out who was in the area without a truck number. Ms. Belkowitz said that the rental office said they didn't know the driver but the alleged perpetrator said he was outside talking to the mailman and knew his name.

Ms. Belkowitz asked if there is a reason why the wife was not interviewed about what she observed? Lt. Saafoori stated that would be something to ask the officers and referenced spousal protection. Ms. Belkowitz said she can voluntarily say what she observed.

Ms. Belkowitz asked what happened with the video footage from Amazon? Lt. Saafoori said that he called multiple times and was not able to receive a response.

Ms. Belkowitz asked if a waist holster and a belly holster were the same? Captain Laitinen explained that there are various holsters and cannot explain what the alleged preparator may be referring to in the report. Discussion ensued on the type of holster the alleged perpetrator may have used. Ms. Peterson said that they may be able to determine the type of holster based on the body worn camera footage.

Mr. Bierman asked should the officer have left a voicemail when he called to follow up with the complainant the night of? Captain Laitinen said that it would have been ideal and it would have helped the complainant understand who was calling and why. He said the officer choose not to because he was going to call on his next shift.

Mr. Bierman asked if it is standard operational procedure to leave a voicemail or is it left up to the officer? Captain Laitinen said that it is up to the officer and the individual situation.

Mr. Bierman stated the investigation included that there were mistakes made by the supervisor in informing the complainant about the investigation but that there was not an interview of the supervisor. Mr. Bierman asked why the supervisor was not considered part of the complaint that this was not handled properly by the police? Lt. Saafoori said that the entire conversation was recorded so there was no need to interview the supervisor about what was said.

Mr. Bierman asked if the supervising officer sent the officer back to ask about the delivery driver before talking to the complainant or after? Lt. Saafoori stated that he does not know. He explained that he only has the date of when the officer went back to talk to the property manager.

Mr. Bierman asked if the IAB in its investigations ever asks the officers, what if the races were reversed? Captain Laitinen said that is not a standard question. He said that every case is different. Captain Laitinen said that the IAB can certainly look at an individual scenario and see based on the facts if that is an appropriate question.

Mr. Ware asked how can fear, a critical piece of information included in the code and the case law, be overlooked in the interactions between the officers and the complainant, and between the IAB and the Commonwealth's Attorney? Captain Laitinen said that they take every situation and look at the totality of the entire event. He said that he cannot speak to the mindset of the officer, but that, they must look

at facts and what can be proved. He further explained that they have to take an objective look at the situation and decide if there is probable cause for arrest.

Mr. Garner asked why would the officers make the statement about the alleged perpetrator carrying the firearm oddly if Virginia is an open-carry state? One officer suggested that he could have placed it in his gym bag. Captain Laitinen said he cannot say why the officers made the statement.

Mr. Garner asked with the alleged perpetrator carrying the firearm in an unorthodox way behind a woman in an elevator, should that require further questioning? Captain Laitinen said it certainly could. Mr. Garner said this would speak to her fear. Captain Laitinen expressed agreement.

Ms. Belkowitz said what are the statistics for how quickly the dispatch office usually dispatches an officer? Captain Laitinen explained that the Department of Public Safety Communications is independent of the police department. He further explained that it depends on the number of officers available at a particular time.

Panel Deliberations:

Mr. Bierman stated that the Panel cannot mete out discipline. He said the Panel has three options: It can concur with the findings and that the investigation was complete, thorough, impartial, accurate and objective. It can send the investigation back to the IAB for additional investigation. Or it can inform the Board of Supervisors that the investigation was incomplete, or not supported, and request further consideration by the Chief and the Board of Supervisors. He said the Panel has only used the third option after the second option of requesting additional investigation.

Mr. Bierman said that this was a tough case to determine how to respond. He said he does not want to fault the officers for not being aggressive enough. He said it could be a teachable moment to consider what would have happened had the races of the roles been reversed. He said there are other factors to consider regarding objective reasonableness. He said the delivery driver who said to the complainant that there is nothing to be afraid of should have been interviewed. He said there was lack of follow up by officers and the follow up by the supervisor officer happened without the benefit of full investigation. He said when there is an allegation of bias, the Panel would like to see the officer's statistics. He said the investigation was not complete and would like to provide recommendations. One recommendation is that the FCPD leave a message with the complainant to include a call back number.

Ms. Wolfe said this is a straightforward investigation. She said she appreciated Sgt. Saffoori's comment that it was not investigated from a standpoint of the fear experienced by the complainant. She said that the officers did not know the brandishing statute or the case law behind it, and she said the interpretation of brandishing was inaccurate. She said that holding a weapon, regardless of whether it was pointed at someone, is considered brandishing. She said it was not investigated properly or accurately.

Mr. Ware said he concurred mostly with Ms. Wolfe's comments. He said we was troubled by the oversight of fear and the difference in treatment between the complainant and the alleged perpetrator. He said as a subcommittee member he was initially satisfied with the investigation but is now thinking about the implications of the discrimination. He said he does not know if further investigation will result in a different outcome but that the issues raised justify requesting additional investigation.

Mr. Garner thanked the IAB for their hard work but stated that there were some questions that were not fully addressed. He recommends returning it to IAB for further investigation.

Ms. Belkowitz said that the investigation had too many loose ends that she would like to see wrapped up. She said it was helpful to learn that IAB contacted Amazon but it did not provide the footage. She expressed that they could have identified the mailman. She said that they looked at brandishing but not that the statute included holding and inducing fear.

Ms. Peterson stated that she agreed it should go back for further investigation. She said that everyone has biases, sometimes unknowingly. She recommended that someone of color be added to IAB investigations in cases where someone is complaining about being treated differently based on their race. She referenced her experiences working with youth and said that training would raise the trust level. She said the officer never looked the complainant in eye but was writing. She said she applauds the composure of the complainant's mother.

Executive Director Richardson said that it would be germane to the overall outcome if there was a revisiting of the original complainants' description of the individuals and whether that lines up with the testimony of the alleged perpetrator, specifically what the alleged perpetrator and the woman with him were wearing. He said allegations of bias are nuanced and that the FCPD does not want it to appear they are overlooking something. He said wherever possible an extra step can be taken that will be helpful and give comfort to the community member.

Mr. Bierman said we need to be clear about what the Panel does and how to effectuate what Mr. Richardson is describing. Mr. Bierman said it would be a recommendation that there is a consideration of the case, or reopening of the case, and that is something that the Panel has never done. He said he thinks it is not in the Panel's purview and that it is not in their role to consider whether something should have been prosecuted. He said one recommendation is that the supervisor should have reviewed the BWC footage before determining there was nothing to see here. Mr. Bierman said the Panel should determine the exact questions it wants answered as part of additional investigation.

Mr. Hargraves reviewed the purpose and authority of the Panel. He said what is the Panel doing to enhance legitimacy and increase trust between the community and the FCPD. He said that the Panel takes allegations of racial bias seriously. He said the use of the term colorblindness is concerning. He said he agrees the fear element was discounted and that fear and pain is part of the Black community's lived experience. Mr. Hargraves said that when fear and pain are dismissed it raises questions about how equitable the system is. He said he believes the FCPD is trying to do the right thing. He said while the officer was polite and respectful to the complainant, it was obvious that the interaction was different from the interaction with the alleged perpetrator. He suggested that Panel members sit in on the FCPD's implicit bias training so they are informed. He said that we are asking the police to do so many things all the while we are living in more armed society. He said that if people are being threatened, there needs to be a way to address it.

Mr. Bierman said the Panel should identify the specific questions we want the FCPD to investigate further, but that it can wait to define its recommendations in this case. He suggested that the investigation include arrest and stop statistics that have been included in previous investigations into bias allegations that went before the Panel.

Mr. Garner said he would like to see defined the difference between pointing, holding, and brandishing in VA code. Mr. Bierman said previously the Panel asked the FCPD to consult with the Commonwealth Attorney's office to better outline the proper interpretation of the code. Ms. Belkowitz said the law has changed and the cases in the file may have referenced the earlier cases before holding was added. Discussion ensued on the appropriate case law to reference.

Mr. Bierman summarized that the Panel is asking, where an investigation is reliant on certain case law interpretation, that the IAB consult an attorney outside of IAB.

Ms. Belkowitz stated her concerns that the FCPD will be limited in conducting further investigation when so much time has passed. Discussion ensued on what the alleged perpetrator was wearing and whether the Panel has authority to comment on the initial criminal investigation versus the IAB's administrative investigation of the complaint. Mr. Richardson said that IAB can send it back to the district station for further investigation into the criminal matter. Mr. Bierman said the Panel's purpose is not to second guess the results of FCPD's investigations.

Mr. Bierman said that IAB should get an independent legal analysis of holding and whether the approach taken was proper to determine whether someone was holding in a way that was objectively reasonably scary. He said the Panel may want to recommend that IAB consider whether or not there is need for further investigation of the underlying events, but this would be highly unorthodox. Mr. Richardson concurred that IAB could send it back but would not be the entity to investigate whether a crime was committed.

Mr. Hargraves asked the FCPD if there was an SOP that says they are not allowed to give out information to a community member who wants to go to a magistrate about another community member? Lt. Forrest said there was not an SOP, but that an officer can provide the community member with a case number to take to the magistrate. Lt. Saffoori said the officer was seen on the BWC footage telling the complainant that she can go to the magistrate with the case number and that he also told the complainant in a follow up interview.

Mr. Bierman moved that the case be sent back to IAB for additional investigation and that it include an investigation of the arrest and stop statistics of officers involved, a legal analysis regarding situations in which guns are held but not brandished, and an additional complete investigation of the behavior of the supervising officer who provided incorrect information before an investigation into the complaint had been completed. Mr. Garner seconded the motion.

Mr. Hargraves suggested that it be addressed in FCPD implicit bias training how complaints of bias are flagged and taken by diverse community members in a way where they believe they are taken seriously and being treated with respect. He said the complainant articulated fear and that element was completely missed, and he thinks there was a bias element to that.

Mr. Bierman restated the recommendation that the Panel would like the IAB to investigate whether the fear of the complainant was adequately considered by the officers in this case. He said this goes hand in hand with the request for legal analysis. He said recommendations on changes to FCPD training or procedures can come later after the additional investigation is complete. Mr. Hargraves agreed that the recommendation about training can be teased out later.

Ms. Belkowitz and Ms. Wolfe asked about the timeframe for the additional investigation. Mr. Bierman said the timeframe is up to the IAB and that, in a previous case, the additional investigation took months, however this was during the pandemic. Mr. Bierman said a letter will be sent from the Panel's Chair to the FCPD outlining its request for further investigation.

Mr. Bierman restated the motion that the Panel requests additional investigation, including but not limited to, the arrest and stop statistics of the officers involved, a legal analysis of how to approach a claim of holding a weapon in a threatening manner, consideration of whether the fear of the complainant was adequately considered by the officers involved, and a formal consideration of the actions taken by the supervisor in this incident.

Mr. Hargraves requested to add: was implicit bias considered in whether the fear of the complainant was adequately considered?

Mr. Richardson asked about including looking at the original complaint. Mr. Bierman said that would be considered as a recommendation at a later time.

Mr. Bierman amended the motion to include consideration of whether the fear of the complainant was adequately considered by the officers involved and he said he would add a fifth element– consideration of whether the officers involved adequately approached the situation with knowledge and consideration of implicit bias.

Mr. Hargraves said he was comfortable with the motion as stated. Mr. Hargraves called the question and the motion carried with a vote of seven, with Mr. Cranford abstaining.

Mr. Richardson said the Panel should consider a recommendation that the original criminal complaint be re-investigated, specifically that the perpetrator purposefully threatened the complainant. He asked whether that would be of interest to the Panel. Mr. Bierman said he did not think it was an appropriate role of the Panel. He said it while unsatisfying, opening and closing investigations is not in the Panel's purview. He said they could go to the Board of Supervisors and ask for an Action Item change, but he thinks it opens a box. Ms. Belkowitz stated that it is possible the police department discovers there is an error in this case but that she does not believe the Panel has the authority to recommend that the FCPD reopen a criminal case. Mr. Bierman agreed and read from the Bylaws that the Panel can only make recommendations on police policies, practices, and procedures.

Mr. Hargraves asked whether any Panel members wanted to make motion to recommend the FCPD reopen the criminal investigation if appropriate. No such motion was made.

Mr. Hargraves reminded Panel members of the Panel's meeting schedule and asked them to notify him or staff if they need technology assistance with access to their County accounts.

Ms. Belkowitz moved to adjourn the meeting. Mr. Bierman seconded the motion, and it carried unanimously.

The meeting adjourned at 10:10 p.m.

Next meeting: The Panel's next business meeting is July 7, 2022 at 7:00 p.m.

Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

Request for Review – Basic Information

CRP Complaint Number: CRP-22-08

Subcommittee Meeting Date: August 4, 2022

Subcommittee Members:

- Todd Cranford, Subcommittee Chair (Panel Vice-Chair)
- Bryon Garner, Subcommittee Member
- Celeste Peterson, Subcommittee Member

Complaint Submission Date: Review Request received on 5/2/2022. Other Key Dates: Incident Date: 8/20/2021; Initial Complaint to Panel (CRP-22-05): 2/28/2022; FCPD Disposition letter: 4/28/2022

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 allegations that an FCPD officer refused to provide the complainant with a report related to an alleged larceny during a fire in the complainant's storage unit.

The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, **does not meet** the threshold requirement for “abuse of authority” and “serious misconduct.”

Recommendation

The Subcommittee recommends that the Panel **not undertake** a review of CRP-22-08 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.**

Police Civilian Review Panel

August 4, 2022

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-22-08

Members Present:

Todd Cranford, Subcommittee Chair

Bryon Garner, Review Liaison

Celeste Peterson, Review Liaison

Others Present:

Rachelle Ramirez, OIPA

Steven Richardson, Executive Director,
OPCRP

Dre-Ana Whitfield, OPCR

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 7:05 p.m.

Motions to Conduct Electronic Meeting: Mr. Cranford 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. Garner was present and participated from Massachusetts.

Ms. Peterson was present and participated from Centreville, Virginia.

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

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

Mr. Cranford 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 2336 551 8867 as noted in the Public Meeting Notice. Ms. Peterson seconded the motion and it carried by unanimous vote.

Mr. Cranford 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. Ms. Peterson seconded the motion and it carried by unanimous vote.

Completion of Initial Review Report for CRP-22-08:

Mr. Cranford provided a summary of the complaint. The complainant rented a unit from a storage facility in Herndon, Virginia. On August 20, 2021, a fire broke out in the complainant's storage unit. The Fairfax County Fire and Rescue Department (FCFRD) and the Fairfax County Police Department (FCPD) were called to the scene to assist with extinguishing the fire. The storage facility contacted the complainant and other renters of the fire and informed them that they could examine their units the next day. On August 21, 2021, a fire reignited in the complainant's unit, and the FCFRD and FCPD were called again to extinguish the fire. Due to the second fire, the FCFRD believed that it was too dangerous to leave the items in the unit. The FCFRD recommended that everything be removed from the unit immediately and discarded. The storage facility agreed and removed all items and discarded them. The complainant did not have the opportunity to examine her unit. When the complainant arrived later that day, the complainant found that all her belongings in the unit had been removed. The complainant claimed that there was a jewelry box containing several valuable pieces that was missing. A complaint was filed at the Fair Oaks Police Station on February 28, 2022, after seeing what the complainant believed to be several of her missing pieces of jewelry being sold on eBay. The complainant alleged that the FCPD, FCFRD, and the storage facility colluded to steal her jewelry. The Internal Affairs Division of Fairfax County Police Department investigated the matter and interviewed the complainant, the FCPD officers who responded to both fires, the FCFRD personnel that were on the scene of both fires, and the storage facility personnel. The investigation concluded that no FCPD officer was near the storage unit at any time and that their role was limited to traffic control. The Internal Affairs Division found no evidence to support any claim of misconduct or inappropriate behavior by any FCPD officer.

Mr. Cranford stated that from reviewing the file there was no provable misconduct from the investigation. He expressed that the investigation was complete, impartial, and fair. Mr. Cranford voiced that he does not think the complaint should be considered by the full Panel. Subcommittee members expressed that there was no scintilla of evidence to support these allegations, and therefore, the criteria for full Panel review were not met.

Ms. Peterson explained to the public that the Panel can only make judgments on how the FCPD conducted themselves.

Mr. Cranford moved that CRP-22-08 not be presented to the full Panel. Ms. Peterson seconded the motion and it carried by unanimous vote.

Mr. Cranford moved to adjourn the meeting. Mr. Garner seconded the motion and it carried by unanimous vote.

The meeting adjourned at 7:19 p.m.

DRAFT

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, July 27, 2021, and July 19, 2022

ARTICLE I. NAME¹

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

¹ 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 1st 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 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.

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 could lead a reasonable Panel to conclude that there is sufficient evidence to support 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.

E. 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.

F. 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.

G. 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 1st 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.