

Police Civilian Review Panel
October 22, 2020

Conducted Electronically due to COVID-19 Pandemic
Meeting Summary

Panel Members Present:

Hansel Aguilar
Jimmy Bierman
Bob Cluck
Hollye Doane, Panel Chair
Frank Gallagher
Doug Kay
Shirley Norman-Taylor
Sris Sriskandarajah, Panel Vice-Chair
Rhonda VanLowe

Others Present:

Gentry Anderson, OIPA
Captain Hanson, FCPD
Major Lay, FCPD
Anita McFadden, Interim Counsel
Rachelle Ramirez, OIPA
Richard Schott, Independent Police Auditor

NOTE: The Panel's October 22nd meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Panel's business meeting was called to order at 7:00 p.m. and all Panel Members were present.

Ms. Doane welcomed everyone to the Panel's October 22nd meeting and noted a few housekeeping rules.

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

Mr. Aguilar was present; however, he experienced a technical difficulty and was unable to provide his location at this time.

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

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

Ms. Doane was present and participated from Oakton, Virginia.

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

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

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

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

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

Ms. Doane moved that each member's voice may be adequately heard by each other member of this Panel. The motion was seconded by Mr. Bierman and it carried by a vote of eight with Mr. Aguilar unable to cast his vote due to technical difficulties.

Ms. Doane moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. She further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 173 017 5480 as noted in the Public Meeting Notice. Mr. Sriskandarajah seconded the motion and it carried by a vote of eight with Mr. Aguilar unable to cast his vote due to technical difficulties.

Ms. Doane moved that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Sriskandarajah seconded the motion and it carried by a vote of eight with Mr. Aguilar unable to cast his vote due to technical difficulties.

Approval of October 8 Meeting Summary:

Ms. VanLowe moved approval of the Panel's October 8 meeting summary. Mr. Bierman seconded the motion and it carried by a vote of eight with Mr. Aguilar unable to cast his vote due to technical difficulties.

Approval of Subcommittee Initial Review Reports for CRP-20-19 and CRP-20-27:

Ms. Norman-Taylor presented the subcommittee's recommendations for complaints CRP-20-19 and CRP-20-27. She informed the Panel that the Subcommittee voted to recommend that the Panel undertake a review of CRP-20-19 and that she and Mr. Kay voted to recommend that the Panel undertake a review of CRP-20-17. Mr. Sriskandarajah made clear for the record that he abstained from participating in the initial review of CRP-20-27 because he did not have an opportunity to review that specific FCPD investigation file prior to the subcommittee meeting.

Mr. Gallagher moved that the Panel accept the subcommittee's recommendations and undertake a review of both CRP-20-19 and CRP-20-27. The motion failed to get a second. Ms. VanLowe asked why a large time gap existed from the time the incident occurred to when the complainant requested a review and whether the subcommittee thought it was an issue. Ms. Norman-Taylor acknowledged that the complainant first filed CRP-20-19 and later filed CRP-20-27 and that the subcommittee did not find the lapse in time to be problematic.

Mr. Kay moved that the Panel undertake a review of complaints CRP-20-19 and CRP-20-27. Mr. Gallagher seconded the motion and it carried by unanimous vote.

Mr. Aguilar resolved the technical difficulty he experienced and announced that he was participating from the Braddock District.

Ms. Doane informed the Panel that Ms. Norman-Taylor and Mr. Sriskandarajah told her that the files are extensive. She announced that due to the length of the files, the Panel would conduct both reviews at the Panel's meeting scheduled for December 10.

Approval of Review Report for CRP-19-29:

Ms. Doane thanked Mr. Bierman for his assistance in drafting the Review Report and noted that this is the first time that the Panel has not ultimately concurred with the findings of the FCPD's investigation. The Panel will send the approved Review Report to the Board of Supervisors with the Panel's finding that the investigation is incomplete, and it is then up to the Board of Supervisors to decide if further investigation is necessary. She explained that complaint CRP-19-29 included allegations of racial profiling and racial bias, and that many Panel Members believed that the FCPD should consider new ways to investigate these allegations and adopt mitigation strategies to prevent implicit bias. She asked that the Panel first discuss the substance of the Review Report and then consider each recommendation individually before taking a final vote on the Review Report. Ms. VanLowe expressed appreciation for how comprehensive and thorough the report was and thanked the authors. Many Panel Members echoed this sentiment.

Mr. Gallagher suggested that the FCPD could have been given more credit in the Review Report for the work they did to satisfy the request for additional investigation by the Panel. Ms. Doane replied that she believed the report gave the FCPD credit by pointing out the additional investigation conducted by the FCPD and summarizing the discussion held at the Review Meetings. Mr. Bierman noted his agreement with Ms. Doane. Panel Members did not have any edits or additional comments related to the body of the Review Report.

The Panel then considered each of the nine recommendations found in Part VII of the Review Report. Ms. Doane explained that the recommendations were written to be declarative sentences so that they can easily be incorporated to the Panel's recommendations matrix.

Recommendation 1:

Ms. VanLowe suggested that the FCPD should not only consider criteria but processes as well when it comes to evaluating allegations of bias and that the Panel's recommendation should not be overly prescriptive to allow for the FCPD to determine what is appropriate based on best practices. The Panel agreed to edit the recommendation by inserting "and processes" after "criteria" and replacing "should" with "may." Ms. Doane asked Mr. Aguilar to explain the terms "bivariate" and "multivariate." Mr. Aguilar replied that the terms are related to research methodology and design specific to identifying how more than one variable affects an outcome.

Ms. VanLowe moved that the Panel adopt recommendation one as amended. The motion was seconded by Mr. Kay and it carried by unanimous vote.

Recommendation 2:

Mr. Kay moved that the Panel adopt recommendation two. The motion was seconded by Mr. Sriskandarajah and it carried by unanimous vote.

Recommendation 3:

Mr. Sriskandarajah moved that the Panel adopt recommendation three. The motion was seconded by Ms. VanLowe and it carried by unanimous vote.

Recommendation 4:

Mr. Bierman moved that the Panel adopt recommendation four. The motion was seconded by Mr. Kay and it carried by unanimous vote.

Recommendation 5:

Mr. Kay moved that the Panel adopt recommendation five. The motion was seconded by Mr. Sriskandarajah and it carried by unanimous vote.

Recommendation 6:

Mr. Cluck noted his concern with recommendation 6 and cautioned the Panel from micromanaging the FCPD. He expressed his belief that the Panel should consider a different approach and work cooperatively with the FCPD rather than including a recommendation that embodies something the FCPD is already doing or working on implementing. Mr. Bierman replied that he was unaware of an independent review of FCPD policies by an implicit bias expert. Ms. VanLowe explained that the FCPD would have the opportunity to respond to each recommendation in the Panel's recommendations matrix to inform the community. She added that it is the Panel's responsibility to submit recommendations to the FCPD for their consideration. Panel discussion ensued regarding the Panel's recommendations matrix and the discussion at quarterly meetings related to Panel recommendations. Mr. Kay suggested the

recommendation be amended to read “The FCPD should retain...” and Panel Members agreed with the amendment. Mr. Cluck said he did not disagree with the Panel making recommendations and explained that he sees the Panel as a very important player in affecting change, but that a different approach should be taken when the Panel recommends steps that are already being taken by the FCPD. Ms. VanLowe added that the Panel’s recommendations matrix bolsters transparency and informs the public on what the FCPD is doing.

Mr. Sriskandarajah moved that the Panel adopt recommendation six as amended. The motion was seconded by Ms. VanLowe and it carried by a vote of eight with Mr. Cluck abstaining.

Recommendation 7:

Mr. Gallagher echoed the concern that Mr. Cluck had with Recommendation 6 and expressed his belief that the Panel should not explicitly direct how the FCPD conducts its training. Panel members agreed and Ms. Norman-Taylor suggested that the second sentence of the recommendation be removed.

Mr. Bierman moved that the Panel adopt recommendation seven as amended. The motion was seconded by Mr. Sriskandarajah and it carried by a vote of eight with Mr. Cluck abstaining.

Recommendation 8:

Ms. Norman-Taylor recalled Panel Members expressing concerns about the standardization of making community contacts. She suggested that the word “consider” be replaced with “should.” Ms. Doane expressed that she felt strongly about this recommendation and noted that other departments across the country have developed community contact checklists to help officers make better decisions before engaging with a member of the community. Mr. Sriskandarajah noted his concern that the recommendation would be too prescriptive if “consider” is replaced with “should.” Panel discussion ensued regarding the broad nature of this recommendation and what types of recommendations the Panel should make in its reports. Mr. Kay suggested that if the Panel does not feel comfortable making this recommendation, it should be raised in the future after further consideration.

Mr. Sriskandarajah moved that the Panel table recommendation eight. The motion was seconded by Mr. Gallagher and it carried by unanimous vote.

Recommendation 9:

Panel Members discussed potential amendments to the recommendation and concerns with the reference to “hyper-vigilant practices.” Mr. Sriskandarajah and Mr. Kay suggested that the Panel table the recommendation for further consideration before including it in a review report.

Mr. Kay moved that the Panel table recommendation nine. The motion was seconded by Mr. Sriskandarajah and it carried by a vote of eight with Mr. Aguilar voting “Nay.”

Mr. Bierman moved that the Panel adopt the Review Report for CRP-19-19 with the seven recommendations as discussed by the Panel. Mr. Sriskandarajah and Ms. VanLowe jointly seconded the motion and it carried by a vote of eight with Mr. Cluck voting “Nay.”

Panel Consideration of Ethics Procedure: Ms. Doane reminded the Panel that Mr. Gallagher and Mr. Kay worked together to develop a procedure for the Panel to process complaints made against Panel Members. Mr. Kay informed the Panel that several different methods were considered, and that Independent Legal Counsel and the Independent Police Auditor were consulted during the process. Mr. Kay and Mr. Gallagher considered employing the Independent Police Auditor to handle these complaints but the Action Item establishing the Independent Police Auditor did not provide for this charge. The procedure calls for the Panel to review its own behavior and make a recommendation for the Board of Supervisors to consider. Mr. Gallagher added that he consulted with the National Association for Civilian Oversight of Law Enforcement (NACOLE), but the organization was unaware of other oversight bodies with a similar procedure. Ms. Doane referred to her experience on Capitol Hill and noted that the House of Representatives handled member misconduct internally.

Mr. Aguilar asked if the procedure was intended to be a short-term solution or if the Panel envisioned a different process for the long-term. Mr. Kay replied that the Panel should use the procedure as guidance as it processes its first complaint against a Panel Member and revise it as needed. Mr. Aguilar noted his appreciation for Mr. Kay and Mr. Gallagher drafting the procedure but that he believed that the Panel should take advantage of the hybrid oversight system in place and have the Independent Police Auditor review these types of complaints. Ms. VanLowe asked that the procedure be reviewed in two years so that the Panel can evaluate the process and make changes if necessary.

Ms. VanLowe moved that the Panel adopt the proposed procedure and that it be reviewed by the Panel in two years. Mr. Sriskandarajah seconded the motion and it carried by unanimous vote.

New Business:

Ms. Doane asked Mr. Bierman to provide a summary to the Panel regarding the General Assembly’s special session and its potential impact on the Panel and policing. Mr. Bierman reported that Senate Bill 5035 was passed by the Virginia House of Delegates and the Senate and it is awaiting the Governor’s signature. The legislation would be effective July 1, 2021. It gives localities the ability to create an oversight body within their jurisdiction and allows wide latitude in terms of constituting it. He is unsure as to whether Fairfax County would provide the Panel with more authority. Mr. Bierman pointed out that the legislation restricts prior members of Virginia Law Enforcement entities to serving on oversight bodies in an ex officio capacity. Mr. Aguilar asked if the legislation defines the term “retired law enforcement officer.” Mr. Bierman replied that it does not define the term specifically but that the legislation points to certain parts of the Virginia Code that defines “Law Enforcement” based on employment

with a Virginia police force. He added that there is no answer as to how long one would need to serve in a Virginia police force to constitute proper retirement from law enforcement duties. Ms. Doane asked how this legislation could impact the Panel's four-year review. Mr. Bierman replied that the legislation creates the potential for the Board of Supervisors to expand the scope of the Panel.

Ms. Doane informed the Panel that a Review Meeting was previously scheduled for the Panel's meeting on November 12 but that it will be rescheduled as the FCPD reopened its investigation into the complaint. She asked that the Panel consider topics to be included in the four-year review report at that meeting. She also informed the Panel that she asked the Independent Police Auditor to present to the Panel his own four-year review related to incidents he has reviewed and recommendations he has made. Mr. Bierman informed the Panel that a draft of the four-year review report will not be ready for the meeting on November 12 but that he and Mr. Aguilar will provide an outline.

Ms. Doane reminded Panel Members to inform Ms. Anderson of their availability for meeting dates in 2021.

Ms. Doane would like for the Panel to have a discussion on the Independent Police Auditor's past Annual Reports. She noted her desire for the Panel to act upon a provision in the Bylaws to allow for the Panel to comment on use of force issues. Ms. VanLowe explained she was receptive to the idea and sees it as being important to comment on the Independent Police Auditor's reports as the Panel is the voice of the community. Mr. Aguilar agreed and noted his appreciation for the work that the Independent Police Auditor puts into his reports. He explained that this discussion is important for the Panel to be informed of the work of its counterpart in oversight.

Ms. Doane recognized Ms. Ramirez to present to the Panel on the FCPD's newly released data dashboard. Ms. Ramirez explained that the public data dashboard includes data related to arrests, traffic warnings, and traffic citations that individuals can filter by year, police district, magisterial district, gender, race, residency status, and location. She added that the FCPD created a working group which included the Independent Police Auditor and representatives from ACLU People Power, the Anti Defamation League, Justice Forward Virginia, and the Fairfax NAACP. The data dashboard appears to be a work in progress and the working group has recommended that the FCPD publish data immediately and make improvements moving forward. Ms. Ramirez said that the data dashboard webpage includes a link to information on police reform. Mr. Aguilar asked if the committee was formed by the County or FCPD specifically and whether there was representation from the Panel on the committee. Ms. Ramirez replied that the working group was organized by the FCPD and she did not believe there was Panel representation. Ms. Doane recognized that the data dashboard as a great step forward and encouraged members of the public to utilize it.

Adjournment:

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

The meeting adjourned at 9:03 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, November 12 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.