

APPENDIX A

(Authorizing Action Item and Revisions)

APPENDIX A.1

ACTION – 17

Establishment of a Police Civilian Review Panel, as Recommended by the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission

ISSUE:

Board of Supervisors approval of the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish a Police Civilian Review Panel (“the Panel”), reporting to the Board of Supervisors (“Board”), for the purpose of building and maintaining public trust between the Police Department, the Board of the Supervisors and the public, and police legitimacy. The Civilian Review Panel will request and review completed Police Department internal administrative investigations of civilian complaints concerning allegations of abuse of authority and serious misconduct.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors establish a Civilian Review Panel based on recommendations of the Ad Hoc Police Practices Review Commission, as modified.

TIMING:

Board action is requested on December 6, 2016, so the Board can move forward with establishment and implementation.

BACKGROUND:

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Board on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes to help the Board and the Police Department achieve the goals of maintaining a safe community, ensuring a culture of public trust, providing for the fair and timely resolution of police-involved incidents and information release, and reviewing Crisis Intervention Training (CIT) and police responses for cases involving mental health.

On October 20, 2015, the Ad Hoc Police Practices Review Commission submitted its final report and recommendations to the Board of Supervisors. On November 17, 2015, the Board of Supervisors approved a process for assigning, prioritizing, reviewing, tracking, and considering the 202 Commission recommendations.

On November 17, 2015, the Board also directed an annual report and a final summary report on the status and implementation of all of the Commission's recommendations. The first annual report shall be presented to the Board by December 13, 2016.

This Action Item is specifically related to the implementation and furtherance of the recommendations of the Independent Oversight and Investigations Subcommittee for the establishment and scope of a police Civilian Review Panel, consistent with the presentations and discussion at the October 25, 2016, Public Safety Committee meeting and other meetings and presentations.

Fundamental to the recommendations of the Independent Oversight and Investigations Subcommittee is that the Board adopt recommended changes, consistent with the Code of the Commonwealth of Virginia and County policies, that will help the County achieve its goals of maintaining a safe community, enhancing a culture of public trust, and ensuring that policies provide for the fair and timely resolution of police-involved incidents. These recommendations are aimed at building and maintaining public trust in the Police Department and its officers by the establishment of a Police Civilian Review Panel, a function in line with the recommendations of the Final Report of the President's Task Force on 21st Century Policing, May 2015. Recommendation 2.8 of that report states, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

Commission Recommendation

In its final report, the Commission's Independent Oversight and Investigations Subcommittee made 24 overall recommendations. Seven of those recommendations, numbers 18 – 24 as in the Commission report, were specific to the establishment of the Police Civilian Review Panel and its scope and are listed below as presented in the report:

- 18) Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct.
 - a) Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
 - b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
 - c) Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or

criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).

d) The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.

19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

a) "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.

b) The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.

c) Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.

a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.

b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

- 21) The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review.
 - a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
- 22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.
- 23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.
- 24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.
- 25) The Board has the right to review the workload of the Citizen Review Panel and make any necessary adjustments.

These recommendations are also listed on the Ad Hoc Police Practices Review commission Report Recommendations Assignment and Tracking Spreadsheet (Attachment 1) as IOV&I (Independent Oversight & Investigations) 18 through 24, inclusive.

Recommended Action by the Board of Supervisors

Based on a review of the Commission recommendations, Board discussion, staff review, and legal review, it is recommended that the Board establish a Civilian Review Panel, based on the recommendations of the Ad Hoc Commission, with modifications as outlined in this Action Item.

a. Composition of the Panel (Recommendation 18)

Panel members shall be appointed by the Board of Supervisors for terms of three (3) years. Panel members will serve at the pleasure of the Board. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel, with the exception of the first Chair, who shall be appointed by the Board of Supervisors.

The Panel shall be composed of nine (9) members, and each should be a resident residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.

The Board of Supervisors shall seek to create an independent and fair body for the Panel. The Board of Supervisors shall consider the following factors, among others it may choose, in appointing members of the Panel: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current employee of Fairfax County, a current or former member of the Fairfax County Police Department or the Fairfax County Sheriff's Office, have a relative (i.e., an immediate or extended family member) who is a member of FCPD or FCSO, hold public office, or be a candidate for public office. At least one (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD or FSO).

In order to assist it in appointing a Panel representing the full diversity of Fairfax County, the Board of Supervisors shall invite organizations and individuals to nominate candidates for the Panel to the Board. The Board may ask business, civic, civil rights, legal, and other organizations to nominate candidates. The Board shall also accept into the pool of candidates self-nominated individuals.

The Board of Supervisors shall select Panel members from those nominated by considering those factors set forth in this Action Item, and any other factors that the Board deems appropriate.

The Office of the Police Auditor shall provide staff support to the Panel. Panel members shall complete recommended trainings to be determined.

b. Jurisdiction and Process (Recommendation 19)

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

- 1) "Abuse of authority" and "serious misconduct" shall be defined by the Panel in its bylaws and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
- 2) The Panel shall refer any Complaint within its scope that it receives to the FCPD for review and handling, including any necessary investigation.
- 3) Absent good cause, the Panel shall not consider any Complaint filed more than one (1) year after the date of the incident that is the subject of the Complaint, nor regarding any incident that occurred prior to the passage of this Action Item establishing the Panel. The Panel shall not consider any Request for Review of any investigation of any incident that occurred prior to the passage of this Action Item.
- 4) Any Request for Review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

All Complaints to and Requests for Review by the Panel of a completed FCPD investigation shall be in writing. Requests for Review shall state the specific reason(s) for the request. Upon receiving a Complaint or Request for Review, the Panel shall determine if the Complaint or Request concerns matters which are the subject of pending criminal proceedings or pending or anticipated civil proceedings. If it does, then the Panel shall defer the matter pending resolution of the criminal or civil proceedings. The Panel shall notify the Complainant and the Board of Supervisors, in writing, of any such deferrals. The Panel may request the assistance of Counsel, the Auditor, or the Chief of Police, or the County Attorney in making its determination. The Panel shall track any deferred matter and notify the complainant and the Board once the criminal or civil proceedings are closed and the request for review may proceed.

For any Complaint filed with the Panel and sent to the FCPD for investigation, the FCPD shall provide a report back to the Panel within sixty (60) days with respect to its review and handling of the complaint. The Panel shall provide an extension if requested by the Chief of Police in order to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice also provided to the complainant and the Board of Supervisors. Absent good cause provided by the Police Department for production of the report within a reasonable time period, the Panel may report any delay in the handling of the matter to the Board of Supervisors. The Board may direct the Chief of Police to ensure completion of the investigation, or to report on the reasons for delay and an expected completion date.

If the complainant is not satisfied with the Police Department's investigation or findings for any allegation made within the scope of the Panel, the complainant may then request a Panel review of the completed Police Department internal administrative investigation.

c. Timing and Meetings (Recommendation 20)

Absent good cause, for any request for review, within forty-five (45) days of receipt of the completed police department internal administrative investigation, the Panel may, at its discretion, schedule a public meeting to review the FCPD investigation. The Panel shall send notification of the date and time of the meeting to Panel members, Police Department Internal Affairs Office, the County Attorney's Office, and the complainant. The meeting shall be noticed on the County's Public Meetings Calendar and otherwise advertised as appropriate.

At any meeting held to review an investigation, the Panel shall not take testimony or receive factual evidence of the underlying matter that is the subject of the investigation. However, the complainant shall have the opportunity to state his or her reason(s) for the request for review, and the Panel may ask questions of the complainant as to those reasons. Upon completion of the complainant's statement, the Police Department representative(s) knowledgeable of the investigation shall review and answer questions from the Panel about its investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not, subject to the following limitations:

1. The statement of any police officer required by the Department to give a statement 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 the purpose of its review. The Police Department representative(s) presenting information to the Panel may publicly state only that the officer admitted or denied the allegation, unless the officer consents to the public release of the entire statement.
2. The Panel may convene in private to deliberate; however, any deliberations by the Panel which do not address the alleged improper conduct or performance of duties of an officer shall be conducted in an open public meeting. Neither the police department representative, nor any Panel member shall reveal the identity of any victim of sexual assault, unless authorized to do so by the victim, or of any juvenile.

The County Executive or his/her designee shall require the attendance of any County employee, other than the involved officer(s), whose appearance is requested by the Panel unless such required attendance violates any statutory or constitutional right of the employee. The County Executive shall also require the submission of any relevant documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived. At the Panel's discretion, further investigation by the Police Department may be requested and the Police Department shall conduct such further investigation and provide a supplemental public report to the Panel with respect to the further investigation.

During the Panel's review of a completed FDPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigative case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia § 16.1-301, or any successor provision.

Panel review meetings shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition schedule.

The Panel shall draft Bylaws to govern more specifically its functions. Such bylaws, and any amendments thereto, must be approved by the Board of Supervisors before taking effect.

d. Panel findings (Recommendation 21)

The Panel review of the investigation shall be completed and a public written report issued within 60 days of the filing of a request for review unless good cause exists for an extension, such as a delay due to a pending criminal or internal administrative investigation or the unavailability of a key witness. A delay and the cause shall be reported to the Board of Supervisors.

Upon completion of its review, the Panel, in its findings, may:

1. Concur with the findings and determination of the Police Department investigation.
2. Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the Police Department and recommend further review and consideration by the Chief of Police.
3. Advise the Board of Supervisors that in its judgment the investigation is incomplete and recommend additional investigation.
4. Conclude that the complaint is not appropriate for review by the Panel.

Upon a finding by the Panel under provisions 2 and 3, the Board may direct the Chief of Police to take further action as it deems appropriate.

e. Panel reports (Recommendation 22)

The Panel shall issue an annual written report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors, Auditor, and the Chief of Police, including any recommendations for revisions to FCPD policies, training, and practices that the Panel concludes are needed. These annual reports shall be delivered to the Board through the Auditor and the Chair of the Board's Public Safety Committee, and then released to the public.

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The Panel shall have the authority to conduct public meetings on issues within its jurisdiction and on law enforcement policies and practices to assist it in making recommendations for policy and practice changes to the Chief of Police and the Board of Supervisors. The Panel may meet periodically with the Independent Police Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide its view to the Board of Supervisors and the Chief of Police as to policy and practice changes that may be warranted.

The Board may conduct a review of the Civilian Review Panel at any time in the future, but to ensure a timely assessment of this important measure and to make any desired or needed procedural or other changes one shall be conducted within six months of receipt of the Panel's first annual report. This would allow sufficient time to select and train members, draft and approve bylaws, conduct some reviews, and present the first annual report.

FISCAL IMPACT:

The Civilian Review Panel will be supported primarily by staff of the Office of Independent Police Auditor. Other associated costs will primarily include as of yet undetermined Police Department and County Attorney's Office, independent counsel, staff time and any required materials and supplies for the Panel.

ENCLOSED:

Attachment 1: Ad Hoc Police Practices Review Commission Report Recommendations Assignment and Tracking Spreadsheet

STAFF:

David M. Rohrer, Deputy County Executive
Colonel Edwin C. Roessler Jr., Chief of Police

APPENDIX A.2

ACTION - 17

Approval of Amendments and Revisions to Action Item 17, Establishment of a Police Civilian Review Panel, Approved by the Fairfax County Board of Supervisors on December 6, 2016

ISSUE:

To approve amendments and revisions to the December 6, 2016 Action Item 17, which established the Police Civilian Review Panel (Panel), to allow for greater transparency when the Panel issues public Review Reports; and, to approve a revision to clarify that the Panel cannot review an employee grievance or complaint made by a Fairfax County employee arising out of an incident or conduct occurring during the course and scope of that employee's employment.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve these amendments and revisions to the December 6, 2016, Action Item which established the Panel.

TIMING:

Board action is requested on September 24, 2019, so that, effective immediately, future public Review Reports issued by the Panel can contain more factual details and, therefore, provide more transparency to the public; and, so that no employee grievance or complaint will be reviewed by the Panel. The Panel will also amend and submit its Bylaws for approval by the Board as required.

BACKGROUND:

The Board approved the establishment of the Panel on December 6, 2016. The Board established the Panel for the purposes of building and maintaining public trust between the Fairfax County Police Department (FCPD), the Board, and the public, and to enhance police legitimacy. To help achieve these purposes, the Panel is required to complete a public written report of each review it conducts. However, the Action Item (c. Timing and Meetings (Recommendation 20)) establishing the Panel contains the following provision:

During the Panel's review of a completed FCPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting

discipline or a Police Department internal administrative investigation case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and

case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia §16.1-301, or any successor provision.

The Panel has discovered that the limitation on disclosing any information in the administrative investigation case file severely limits its ability to provide relevant information in its public written reports. To increase transparency, thereby building and maintaining trust and enhancing police legitimacy, a revision should be made so that the aforementioned provision reads as follows:

~~During the Panel's review of a completed FCPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigation case file,~~
Each Panel member who is provided the opportunity to review that an officer's personnel record or an investigative case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a 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 nor shall copies be provided to the public 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.

In addition, 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.

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If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia §16.1-301, or any successor provision.

A second change to the December 6, 2016, Action Item creating the Panel is needed to clarify that the Panel cannot review an employee grievance or complaint made by a Fairfax County employee arising out of the course and scope of employment. Currently,

the Action Item (b. Jurisdiction and Process (Recommendation 19)) describing the Panel's authority to receive a complaint or conduct a review of a completed investigation reads as follows:

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

In addition, the Action Item also requires the Panel to defer their review of a matter if the matter is the subject of any pending criminal proceeding or any pending or anticipated civil proceeding. However, there is no similar explicit restriction on the Panel reviewing a matter that constitutes an employee complaint or grievance. When the Panel received a Complaint from an FCPD employee (an Animal Protection Police Officer) alleging an "abuse of authority" or "serious misconduct" by his supervisor, also a Fairfax County employee (an Animal Protection Police Officer), the FCPD advised that it considered the matter to be a personnel matter.

General Order 301, Internal Investigations, and Fairfax County Personnel Regulation Chapter 17, Grievance Procedure, state in part:

The purpose of the grievance procedure is to provide a fair, detailed process whereby employees may voice complaints concerning issues related to their personal employment experience and/or circumstance within the County. The

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objective is to improve employee-management relations through a prompt and fair method of resolving problems.

Based on these provisions and the grievance process already in place, language prohibiting the Panel from reviewing employment grievances should be added to the December 6, 2016, Action Item 17 (b. Jurisdiction and Process (Recommendation 19)), creating the Panel, so that it reads:

The Panel shall have jurisdiction to review complaints of “abuse of authority” or “serious misconduct” by a Fairfax County Police Officer. The Panel shall define “abuse of authority” and “serious misconduct” in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor. The Panel does not have the authority to hear 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.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1: December 6, 2016, Board item - Action 17

STAFF:
David M. Rohrer, Deputy County Executive
Richard Schott, Independent Police Auditor, Office of the Independent Police Auditor

ASSIGNED COUNSEL:
Julia Judkins, Panel Counsel

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December 6, 2016

ACTION – 17

Establishment of a Police Civilian Review Panel, as Recommended by the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission

ISSUE:

Board of Supervisors approval of the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish a Police Civilian Review Panel (“the Panel”), reporting to the Board of Supervisors (“Board”), for the purpose of building and maintaining public trust between the Police Department, the Board of the Supervisors and the public, and police legitimacy. The Civilian Review Panel will request and review completed Police Department internal administrative investigations of civilian complaints concerning allegations of abuse of authority and serious misconduct.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors establish a Civilian Review Panel based on recommendations of the Ad Hoc Police Practices Review Commission, as modified.

TIMING:

Board action is requested on December 6, 2016, so the Board can move forward with establishment and implementation.

BACKGROUND:

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Board on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes to help the Board and the Police Department achieve the goals of maintaining a safe community, ensuring a culture of public trust, providing for the fair and timely resolution of police-involved incidents and information release, and reviewing Crisis Intervention Training (CIT) and police responses for cases involving mental health.

On October 20, 2015, the Ad Hoc Police Practices Review Commission submitted its final report and recommendations to the Board of Supervisors. On November 17, 2015, the Board of Supervisors approved a process for assigning, prioritizing, reviewing, tracking, and considering the 202 Commission recommendations.

On November 17, 2015, the Board also directed an annual report and a final summary report on the status and implementation of all of the Commission's recommendations. The first annual report shall be presented to the Board by December 13, 2016.

This Action Item is specifically related to the implementation and furtherance of the recommendations of the Independent Oversight and Investigations Subcommittee for the establishment and scope of a police Civilian Review Panel, consistent with the presentations and discussion at the October 25, 2016, Public Safety Committee meeting and other meetings and presentations.

Fundamental to the recommendations of the Independent Oversight and Investigations Subcommittee is that the Board adopt recommended changes, consistent with the Code of the Commonwealth of Virginia and County policies, that will help the County achieve its goals of maintaining a safe community, enhancing a culture of public trust, and ensuring that policies provide for the fair and timely resolution of police-involved incidents. These recommendations are aimed at building and maintaining public trust in the Police Department and its officers by the establishment of a Police Civilian Review Panel, a function in line with the recommendations of the Final Report of the President's Task Force on 21st Century Policing, May 2015. Recommendation 2.8 of that report states, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

Commission Recommendation

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 - b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
 - c) Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or

criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).

d) The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.

19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

a) "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.

b) The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.

c) Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.

a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.

b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

- 21) The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review.
 - a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
- 22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.
- 23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.
- 24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.
- 25) The Board has the right to review the workload of the Citizen Review Panel and make any necessary adjustments.

These recommendations are also listed on the Ad Hoc Police Practices Review commission Report Recommendations Assignment and Tracking Spreadsheet (Attachment 1) as IOV&I (Independent Oversight & Investigations) 18 through 24, inclusive.

Recommended Action by the Board of Supervisors

Based on a review of the Commission recommendations, Board discussion, staff review, and legal review, it is recommended that the Board establish a Civilian Review Panel, based on the recommendations of the Ad Hoc Commission, with modifications as outlined in this Action Item.

a. Composition of the Panel (Recommendation 18)

Panel members shall be appointed by the Board of Supervisors for terms of three (3) years. Panel members will serve at the pleasure of the Board. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel, with the exception of the first Chair, who shall be appointed by the Board of Supervisors.

The Panel shall be composed of nine (9) members, and each should be a resident residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.

The Board of Supervisors shall seek to create an independent and fair body for the Panel. The Board of Supervisors shall consider the following factors, among others it may choose, in appointing members of the Panel: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current employee of Fairfax County, a current or former member of the Fairfax County Police Department or the Fairfax County Sheriff's Office, have a relative (i.e., an immediate or extended family member) who is a member of FCPD or FCSO, hold public office, or be a candidate for public office. At least one (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD or FSO).

In order to assist it in appointing a Panel representing the full diversity of Fairfax County, the Board of Supervisors shall invite organizations and individuals to nominate candidates for the Panel to the Board. The Board may ask business, civic, civil rights, legal, and other organizations to nominate candidates. The Board shall also accept into the pool of candidates self-nominated individuals.

The Board of Supervisors shall select Panel members from those nominated by considering those factors set forth in this Action Item, and any other factors that the Board deems appropriate.

The Office of the Police Auditor shall provide staff support to the Panel. Panel members shall complete recommended trainings to be determined.

b. Jurisdiction and Process (Recommendation 19)

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

- 1) "Abuse of authority" and "serious misconduct" shall be defined by the Panel in its bylaws and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
- 2) The Panel shall refer any Complaint within its scope that it receives to the FCPD for review and handling, including any necessary investigation.
- 3) Absent good cause, the Panel shall not consider any Complaint filed more than one (1) year after the date of the incident that is the subject of the Complaint, nor regarding any incident that occurred prior to the passage of this Action Item establishing the Panel. The Panel shall not consider any Request for Review of any investigation of any incident that occurred prior to the passage of this Action Item.
- 4) Any Request for Review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

All Complaints to and Requests for Review by the Panel of a completed FCPD investigation shall be in writing. Requests for Review shall state the specific reason(s) for the request. Upon receiving a Complaint or Request for Review, the Panel shall determine if the Complaint or Request concerns matters which are the subject of pending criminal proceedings or pending or anticipated civil proceedings. If it does, then the Panel shall defer the matter pending resolution of the criminal or civil proceedings. The Panel shall notify the Complainant and the Board of Supervisors, in writing, of any such deferrals. The Panel may request the assistance of Counsel, the Auditor, or the Chief of Police, or the County Attorney in making its determination. The Panel shall track any deferred matter and notify the complainant and the Board once the criminal or civil proceedings are closed and the request for review may proceed.

For any Complaint filed with the Panel and sent to the FCPD for investigation, the FCPD shall provide a report back to the Panel within sixty (60) days with respect to its review and handling of the complaint. The Panel shall provide an extension if requested by the Chief of Police in order to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice also provided to the complainant and the Board of Supervisors. Absent good cause provided by the Police Department for production of the report within a reasonable time period, the Panel may report any delay in the handling of the matter to the Board of Supervisors. The Board may direct the Chief of Police to ensure completion of the investigation, or to report on the reasons for delay and an expected completion date.

If the complainant is not satisfied with the Police Department's investigation or findings for any allegation made within the scope of the Panel, the complainant may then request a Panel review of the completed Police Department internal administrative investigation.

c. Timing and Meetings (Recommendation 20)

Absent good cause, for any request for review, within forty-five (45) days of receipt of the completed police department internal administrative investigation, the Panel may, at its discretion, schedule a public meeting to review the FCPD investigation. The Panel shall send notification of the date and time of the meeting to Panel members, Police Department Internal Affairs Office, the County Attorney's Office, and the complainant. The meeting shall be noticed on the County's Public Meetings Calendar and otherwise advertised as appropriate.

At any meeting held to review an investigation, the Panel shall not take testimony or receive factual evidence of the underlying matter that is the subject of the investigation. However, the complainant shall have the opportunity to state his or her reason(s) for the request for review, and the Panel may ask questions of the complainant as to those reasons. Upon completion of the complainant's statement, the Police Department representative(s) knowledgeable of the investigation shall review and answer questions from the Panel about its investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not, subject to the following limitations:

1. The statement of any police officer required by the Department to give a statement 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 the purpose of its review. The Police Department representative(s) presenting information to the Panel may publicly state only that the officer admitted or denied the allegation, unless the officer consents to the public release of the entire statement.
2. The Panel may convene in private to deliberate; however, any deliberations by the Panel which do not address the alleged improper conduct or performance of duties of an officer shall be conducted in an open public meeting. Neither the police department representative, nor any Panel member shall reveal the identity of any victim of sexual assault, unless authorized to do so by the victim, or of any juvenile.

The County Executive or his/her designee shall require the attendance of any County employee, other than the involved officer(s), whose appearance is requested by the Panel unless such required attendance violates any statutory or constitutional right of the employee. The County Executive shall also require the submission of any relevant documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived. At the Panel's discretion, further investigation by the Police Department may be requested and the Police Department shall conduct such further investigation and provide a supplemental public report to the Panel with respect to the further investigation.

During the Panel's review of a completed FDPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigative case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia § 16.1-301, or any successor provision.

Panel review meetings shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition schedule.

The Panel shall draft Bylaws to govern more specifically its functions. Such bylaws, and any amendments thereto, must be approved by the Board of Supervisors before taking effect.

d. Panel findings (Recommendation 21)

The Panel review of the investigation shall be completed and a public written report issued within 60 days of the filing of a request for review unless good cause exists for an extension, such as a delay due to a pending criminal or internal administrative investigation or the unavailability of a key witness. A delay and the cause shall be reported to the Board of Supervisors.

Upon completion of its review, the Panel, in its findings, may:

1. Concur with the findings and determination of the Police Department investigation.
2. Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the Police Department and recommend further review and consideration by the Chief of Police.
3. Advise the Board of Supervisors that in its judgment the investigation is incomplete and recommend additional investigation.
4. Conclude that the complaint is not appropriate for review by the Panel.

Upon a finding by the Panel under provisions 2 and 3, the Board may direct the Chief of Police to take further action as it deems appropriate.

e. Panel reports (Recommendation 22)

The Panel shall issue an annual written report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors, Auditor, and the Chief of Police, including any recommendations for revisions to FCPD policies, training, and practices that the Panel concludes are needed. These annual reports shall be delivered to the Board through the Auditor and the Chair of the Board's Public Safety Committee, and then released to the public.

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The Panel shall have the authority to conduct public meetings on issues within its jurisdiction and on law enforcement policies and practices to assist it in making recommendations for policy and practice changes to the Chief of Police and the Board of Supervisors. The Panel may meet periodically with the Independent Police Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide its view to the Board of Supervisors and the Chief of Police as to policy and practice changes that may be warranted.

The Board may conduct a review of the Civilian Review Panel at any time in the future, but to ensure a timely assessment of this important measure and to make any desired or needed procedural or other changes one shall be conducted within six months of receipt of the Panel's first annual report. This would allow sufficient time to select and train members, draft and approve bylaws, conduct some reviews, and present the first annual report.

FISCAL IMPACT:

The Civilian Review Panel will be supported primarily by staff of the Office of Independent Police Auditor. Other associated costs will primarily include as of yet undetermined Police Department and County Attorney's Office, independent counsel, staff time and any required materials and supplies for the Panel.

ENCLOSED:

Attachment 1: Ad Hoc Police Practices Review Commission Report Recommendations Assignment and Tracking Spreadsheet

STAFF:

David M. Rohrer, Deputy County Executive
Colonel Edwin C. Roessler Jr., Chief of Police

AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
NUMBER (original or assigned)	TOPIC	REPORT PAGE	RECOMMENDATION NARRATIVE	LEAD AGENCY / ENTITY	OTHER AGENCIES / STAKEHOLDERS	LINK PERF REPORT / CALEA	POTENTIAL LEGAL REVIEW / LEGISLATIVE CHANGE REQUIRED	APPROVING AUTHORITY (i.e., BOS, PD, CSB, etc.)
COMMUNICATIONS SUBCOMMITTEE								
COMM - 1	Timely Info Disclosure	46	Provide accurate, timely and actionable information (good or bad) using redundant forms of communication.	Police Dept. (PD)	Office of Public Affairs (OPA)	PERF #70		Police Dept. (PD)
COMM - 2	Timely Info Disclosure	46	Adopt a "predisposition to disclose" approach with public records presumed to be public and exceptions strictly and narrowly construed.	PD	Co. Atty's Office, OPA	PERF #70		Board of Supervisors (BOS)
COMM - 3	Timely Info Disclosure	46	Share and regularly update details of all officer-involved shootings in multiple ways; disclose not only facts, but also procedures and timing.	PD	Co. Atty's Office, OPA	PERF #70		BOS
COMM - 3a	Timely Info Disclosure	46	Provide the name of the officer(s) as soon as possible but preferably within a week. If a decision is made not to release the name within a week, publicly share specific information that illustrates the reason the name is being withheld.	PD	Co. Atty's Office, Commonwealth's Attorney's Office (CWA)			PD
COMM - 3b	Timely Info Disclosure	47	In cases where a suspect is deceased as a result of an officer-involved shooting, make available immediately upon FOIA request all body-camera, in-dash camera or audio recordings of responding officers to an incident.	PD	Co. Atty's Office, CWA, OPA, Dept. of Information Technology (DIT)		Yes	BOS
COMM - 3c	Timely Info Disclosure	47	In officer-involved shootings where a suspect is shot but not deceased, provide a citizens' committee (a communications advisory committee appointed by either the Board of Supervisors or the Chief of Police to carry out this function) access to the recordings for a recommendation on release which should balance public and private interest. This committee's recommendation would be submitted to the Chief of Police who would factor it into a final decision.	PD	Co. Atty's Office, CWA, OPA		Yes	BOS
COMM - 3d	Timely Info Disclosure	47	All digital recordings in officer-involved shooting investigations should be carefully preserved, and investigations should end with the public release of all digital recordings within 6 months of the incident.	PD	Co. Atty's Office, CWA, OPA		Yes	BOS
COMM - 4	Timely Info Disclosure	47	Annually report on the demographics of the subjects in all use-of-force incidents including race, gender, age, whether mental health status was a factor, previous involvement with FCPD and any other data.	PD	OPA, CSB	PERF #70	Yes	PD
COMM - 5	Timely Info Disclosure	47	Devote more effort to sharing day-to-day information of police activity with the public. Facilitate unfettered access to blotter-type information, to include a list of every incident and call with the basic who/what/when/where/how information.	PD	OPA, DIT	PERF #70		PD
COMM - 6	Timely Info Disclosure	47	Include incident based reporting (IBR) categories of statistical crime information broken down by district stations and provided quarterly in accessible, comprehensive online reports. Provide quarterly information by district for all use-of-force and officer involved shootings, CIT calls for service, traffic and pedestrian accidents.	PD	OPA, DIT		Yes	PD
COMM - 7	Community Engagement	47	Embrace and practice increased, proactive community engagement.	PD	OPA			PD
COMM - 7a	Community Engagement	47	Communicate with key community leaders as soon as bad news breaks.	PD	OPA			PD
COMM - 7b	Community Engagement	47	Hold community meetings early and often.	PD	OPA			PD
COMM - 7c	Community Engagement	48	Continue cross-district command meetings to increase situational awareness, spot trends and provide a centralized forum to identify and coordinate responses to emerging community issues.	PD				PD
COMM - 7d	Community Engagement	48	Create a "Community Engagement Team" within FCPD to respond to community concerns and manage programs that create community trust and engagement. The team members should be fluent in the language and knowledgeable of the customs of the particular community they serve, and the team should reflect the diversity of Fairfax County in order to best serve as liaisons between the community and FCPD.	PD	DMB			BOS
COMM - 8	Community Engagement	48	Continue supporting Citizen Advisory Committees (CAC); Chief's Citizens Advisory Council; and Citizen's Police Academy (CPA) classes.	PD	Citizen Advisory Committees (CAC), Citizens Police Academy (CPA), OPA			PD
COMM - 8a	Community Engagement	48	Expand promotion of these valuable public forums.	PD	CACs, OPA			PD
COMM - 8b	Community Engagement	48	Improve and expand CAC and Chief's Citizens Advisory Council succession planning and online information.	PD	CACs, OPA			PD
COMM - 8c	Community Engagement	48	Increase the meeting frequency of the Chief's Citizens Advisory Council from four meetings per year to 10 monthly meetings to be in line with the 10 monthly CAC meetings.	PD	CACs			PD

AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
NUMBER (original or assigned)	TOPIC	REPORT PAGE	RECOMMENDATION NARRATIVE	LEAD AGENCY / ENTITY	OTHER AGENCIES / STAKEHOLDERS	LINK PERF REPORT / CALEA	POTENTIAL LEGAL REVIEW / LEGISLATIVE CHANGE REQUIRED	APPROVING AUTHORITY (i.e., BOS, PD, CSB, etc.)
COMM - 8d	Community Engagement	48	The structure of the eight CACs and the Chief's Citizens Advisory Council should facilitate a two-way flow of information about police services.	PD	CACs			PD
COMM - 8e	Community Engagement	48	Expand the CPA program by offering a compact, three-hour version in addition to the current 10-session program and include in the CPA training the best practices and reports discussed at meetings of the Ad Hoc Police Practices Review Commission and subcommittee meetings.	PD	CPA			PD
COMM - 8f	Community Engagement	48	The CPA should be designed and structured to be understood by all in the diverse communities of Fairfax County.	PD	OPA			PD
COMM - 9	Policies, Procedures & Personnel	48	Hire a civilian public information officer (a professional communicator knowledgeable of best communication practices and experienced in the practice and ethics of media and journalism) to lead the FCPD public information office, and have that position and function report directly to the Police Chief.	PD	Dept. of Human Resources (DHR), OPA	PERF #70		PD
COMM - 10	Policies, Procedures & Personnel	48	Fund and employ 24/7 PIO staff in the central Public Information Office with additional PIO staff assigned to each district station.	PD	DMB	PERF #70		BOS
COMM - 11	Policies, Procedures & Personnel	48	The Chief of Police should be the official spokesperson for officer-involved shootings.	PD	Co. Atty's Office		Yes	PD
COMM - 12	Policies, Procedures & Personnel	48	Develop a policy statement regarding FCPD PIO release of information for critical events to include the relationship with the Office of Public Affairs (OPA) and the process for a hand-off to OPA in certain situations.	PD	OPA, Co. Atty's Office	PERF #70		PD
COMM - 13	Policies, Procedures & Personnel	49	FCPD should prioritize realignment of resources to ensure more transparency, and become the trusted and valued source of information for Fairfax County.	PD				PD
COMM-14	Policies, Procedures & Personnel	49	FCPD should develop a continuous process of information declassification, to ensure proactive information release for cases that are no longer active.	PD	Co. Atty's Office		Yes	PD
COMM - 15	Policies, Procedures & Personnel	49	Current FCPD policies overemphasize the media, FCPD should use its own platforms and tools to share information directly with the public. Policies should reflect the communications paradigm by promoting more community engagement and direct information dissemination to the community.	PD	OPA			PD
COMM - 16	Policies, Procedures & Personnel	49	Shorten the current 6-20 month timeframe to internally investigate and close officer-involved shooting cases; throughout the investigation be responsive to questions and concerns from the public, news media, and elected officials. <u>It is recommended the Board of Supervisors take an active approach throughout the investigative stage by periodically requesting and receiving updates on such incidents in a public forum.</u>	PD	Co. Atty's Office, CWA	PERF #70	Yes	BOS
COMM - 17	Policies, Procedures & Personnel	49	Update policies (with the assistance of FCPD Community Engagement Team members) and mandate usage of plain language that is culturally appropriate for the diverse communities in Fairfax County to eradicate any perceived biases.	PD	OPA			PD
COMM - 18	F.O.I.A.	49	The Board of Supervisors should publicly adopt a resolution (and forward it to the County's delegation in the General Assembly) to revisit FOIA laws with an eye toward expanding instead of limiting the public release of information related to police-involved shootings and other police practices and procedures.	BOS	PD, Co. Atty's Office, CWA, OPA		Yes	BOS
COMM - 19	F.O.I.A.	49	The County Executive should establish a countywide FOIA policy and procedure through issuance of a new procedural memorandum that would replace former County Executive Griffin's memo regarding FOIA compliance, which currently guides county staff. The new policy should encourage transparency and accountability by establishing a culture of disclosure. It should give guidance to all county staff custodians of public records to lean automatically toward releasing all public records upon request, changing the current practice of automatically withholding all exempt records.	Co. Atty's Office	County Executive's Office, OPA		Yes	Co. Exec.
COMM - 20	F.O.I.A.	49	Where possible, release police reports with redactions rather than creating a summary document.	PD	Co. Atty's Office, CWA, OPA		Yes	PD

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COMM - 21	F.O.I.A.	50	Develop FCPD administrative guidelines for FOIA, even in the absence of FOIA reform at the state level.	PD	Co. Atty's Office, OPA		Yes	PD
COMM - 22	F.O.I.A.	50	Move function and staff for responding to FOIA requests out of Internal Affairs and into the FCPD Public Information Office.	PD	Co. Atty's Office			PD
COMM - 23	F.O.I.A.	50	Cease the blanket approach to FOIA requests; when records are withheld, an explanation should be provided without merely claiming exemption.	PD	Co. Atty's Office		Yes	PD
COMM - 24	Transparency	50	With goal of becoming a transparent and highly accountable police department, the Department should make proactive statements to the community it serves, communicating with the public on all aspects of police procedure, policy, and actions, particularly in an officer-involved shooting or other high-profile incident involving use of force. The use of numerous communications channels should be utilized to explain what happened, what is known at the time, what is revealed over time, and lessons learned and perspective after the fact.	PD	Co. Atty's Office, OPA,			PD
COMM - 25	Transparency	50	Fairfax County should adopt the type of progressive release of information practices and policies that govern most states as FCPD's current practices on releasing information is not aligned with agencies located <u>outside</u> the Commonwealth of Virginia.	PD	Co. Atty's Office, all County agencies		Yes	BOS
COMM - 26	Transparency	50	Create and utilize written standards and criteria for the day-to-day release of information from FCPD PIO to standardize information flow/release, and to enhance professional communications, transparency, and accountability.	PD	Co. Atty's Office, OPA			PD
COMM - 27	Transparency	50	Get "buy-in" and cooperation from all levels of the FCPD to improve communications and expand information release.	PD				PD
COMM - 28	Transparency	50-51	Basic requests for information should be addressed in a timely manner by openly providing routine information about incidents, activities, calls, investigations (internal and external) with unfettered public access.	PD		PERF #70		PD
COMM - 29	Transparency	51	Endorse and implement the recommendations of the final report of The President's Task Force on 21st Century Policing, dated May 2015, that are related to communications, which call for such actions as making all Department policies available for public review, clearly stating what types of information will be released, when and in what situation after serious incidents; communicating swiftly, openly and neutrally while complying with legal requirements related to confidentiality.	PD	OPA			PD
COMM - 30	Transparency	51	Create a change management process to change the FCPD culture and facilitate the successful implementation of the improved policies.	PD	DHR	PERF #71		PD
COMM - 31	Transparency	51	Endorse and implement communications-related recommendations contained in the report of the U.S. Conference of Mayors' Working Group of Mayors and Police Chiefs, "Strengthening Police-Community Relations in America's Cities."	PD	OPA			PD
COMM - 32	Transparency	51	Endorse and implement communications-related recommendations from PERF's use-of-force policy and practice review of FCPD.	PD	OPA	PERF #70		PD
COMM - 33	Open Data	51	Develop an open data policy to improve transparency; this will reduce the cost of responding to FOIA requests, since data and reports will be published online making FCPD more efficient and serving community needs more effectively.	PD	Co. Atty's Office, OPA, DIT		Yes	PD
COMM - 34	Open Data	51	Provide more specificity and detail in crime stats and information released by the district stations.	PD	Co. Atty's Office, DIT	PERF #70		PD
COMM - 35	Open Data	51	Make all department policies and procedures available for public review online, updating them as needed.	PD	Co. Atty's Office	PERF #70	Yes	PD
COMM - 36	Moving Forward	52	The Board of Supervisors should publicly set dates for community forums to revisit the recommendations of the Ad Hoc Police Practices Review Commission and the progress made toward their implementation. These reviews should take place in April 2016, October 2016, April 2017 and annually thereafter. Other methods should also be used to update the public, possibly an online 'report card' that is continually updated.	Dep. Co. Exec. for Public Safety	PD, CSB, Sheriff's Office (SO), CWA, OPA			BOS

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COMM - 37	Moving Forward	52	Recommends that this subcommittee continue its service beyond presentation of its final report, in order to meet with the PERF contractors conducting an independent review of the county's communications practices and review and comment on the PERF report and recommendations when they are finally submitted.	Dep. Co. Exec. for Public Safety				Dep. Co. Exec. for Public Safety
COMM - 38	Moving Forward	52	Anticipating a proposal for an independent citizen oversight group emerging from the Investigations and Oversight Subcommittee, it is recommended that any group established be mandated to provide robust communications in a transparent process that keeps the community informed and ensures a culture of public trust.	Dep. Co. Exec. for Public Safety	PD, OPA		Yes	BOS
RECRUITMENT, DIVERSITY AND VETTING SUBCOMMITTEE								
RD&V - 1	Recruitment	58	Provide a referral incentive for employees who are successful in recruiting personnel into the Department.	PD	DHR, Co. Atty's Office, DMB			BOS
RD&V - 2	Recruitment	58	Develop and implement a marketing plan for all programs and vacancies to include e-mail blasts to interfaith organizations and School Career Centers.	PD	OPA, NCS/Community Interfaith Coordination, Faith Communities in Action (FCIA), Fairfax County Public Schools (FCPS)			PD
RD&V - 3	Recruitment	58	Expand the Explorer and Cadet programs to include a diverse pool of participants.	PD	DHR, FCPS			PD
RD&V - 4	Recruitment	58	Enter into a Recruitment Agreement with all Cadets to include reimbursement of educational expenses for breach of contract.	PD	Co. Atty's Office, DHR, DMB		Yes	BOS
RD&V - 5	Recruitment	58	Collaborate and build recruitment-oriented partnerships with key segments of the Fairfax County community to further diversify both the applicant pool and workforce to more closely reflect the community.	PD	DHR, FCPS, Faith Communities in Action (FCIA)			PD
RD&V - 6	Recruitment	58	Identify ways to reduce the time from application to hiring (includes staffing resources).	PD	DHR, DMB			BOS
RD&V - 7	Recruitment	58	Formalize the selection process by putting certain standards and processes into writing.	PD	DHR, Co. Atty's Office	PERF #1	Yes	PD
RD&V - 8	Recruitment	58	Ensure written directives are kept up to date.	PD		PERF #2		PD
RD&V - 9	Recruitment	58	Create a diverse Selection Review Committee that includes community leaders.	PD	DHR, Co. Atty's Office	PERF #3	Yes	PD
RD&V - 10	Diversity	59	Establish a diversity goal for each commander, making them responsible for enhancing the diversity within the department. The progress toward achieving that goal should be reflected in the performance management system.	PD	DHR			PD
RD&V - 11	Diversity	59	Educate and train recruiting and selecting officers about implicit bias, which the current neuroscience research shows can occur even in people with no-prejudiced attitudes, and the impact on both individual and organizational selection decision.	PD	DHR			PD
RD&V - 12	Vetting	61	Increase resources in order to reduce length of time it takes to conduct background investigations and polygraphs.	PD	DMB			BOS

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RD&V - 13	Vetting	61	Formalize the officer selection process.	PD	DHR	PERF #1		PD
RD&V - 14	Retention	62	The Board of Supervisors should continue to work with the Department's Pay and Benefits Committee to ensure competitive salaries and benefits to secure and maintain a diverse workforce.	PD	DHR, DMB			BOS
MENTAL HEALTH AND CIT SUBCOMMITTEE								
MH-CIT - 1	FCPD	81	Establish Memphis Model/Virginia CIT Essential Elements. FCPD should immediately establish the Memphis Model for Crisis Intervention Team training as adopted by the Virginia Essential Elements of CIT, ensuring each squad has a CIT trained officer and creating a specialty squad of selected CIT officers to work closely with CSB and Mobile Crisis units.	PD	CSB	PERF #58, 67, 68	Yes	PD & BOS
MH-CIT - 2	FCPD	82	Attract the right officers for CIT, FCPD should create incentives, such as flexible shift hours, to make serving on a Crisis Intervention Team attractive to potential volunteers	PD	DMB, CSB			PD
MH-CIT - 3	FCPD	82	The subcommittee recommends that the FCPD create a uniform pin to identify Crisis Intervention Team Trained officers to the public.	PD				PD
MH-CIT - 4	FCPD	82	Make CIT a requirement for selected command assignments. The subcommittee recommends that FCPD leadership consider CIT training and experience in selections to certain command positions, for instance in the patrol division.	PD	DHR	PERF #57		PD
MH-CIT - 5	FCPD	82	Form teams. The subcommittee recommends that officers detailed to Crisis Intervention Teams maintain their regular patrol duties, but also form partnerships with mental health workers and community partners trained and experienced in dealing with residents living with mental illness. These teams would be available to be dispatched to identified mental health calls.	PD	CSB	PERF #67		PD & Community Services Board (CSB)
MH-CIT - 6	FCPD	82	Be proactive. The subcommittee recommends that Crisis Intervention Teams be empowered to work proactively to help mentally ill persons obtain treatment and take other steps to manage their illness, diverting them from the criminal justice system and the courts.	PD	CSB, Courts, CWA			PD
MH-CIT - 7	FCPD	83	Integrate dispatch personnel. The subcommittee recommends 100% of all dispatchers continue to receive at least eight hours of CIT training.	Dept. of Public Safety Communications (DPSC)	PD, CSB	PERF #69		Dept. of Public Safety Communications (DPSC)
MH-CIT - 8	FCSO & CSB	84	Implement "Stepping Up." The Board of Supervisors, the CSB, the Judiciary, State legislators, and the Sheriff's Office should collaborate to implement a community-wide system of care overhaul using the BOS-endorsed, national initiative known as "Stepping Up."	CSB	Multiple			BOS
MH-CIT - 9	FCSO & CSB	84	Fully implement Diversion First. The subcommittee recommends Fairfax County develop a mechanism for oversight of systems of mental health/substance use/justice services — a diversion-oriented system of care collaborative stakeholder group now known as "Diversion First."	CSB	PD, SO		Yes	BOS
MH-CIT - 10	FCSO & CSB	84	Identify and collect pertinent data to establish metrics for success. The subcommittee strongly emphasizes the importance of data collection and its intimate linkage to measuring the progress and impact of CIT programs.	CSB	PD, SO, DIT			CSB
MH-CIT - 11	FCSO & CSB	85	Increase language and cultural competency. The subcommittee recommends that Fairfax County increase services to special populations to include cultural competency to better serve non-English-speaking justice-involved individuals, as de-escalation and diversion require the ability to effectively communicate with persons.	CSB	PD, SO			BOS

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MH-CIT - 12	FCSO & CSB	85	Provide CIT Training to jail and custodial personnel. The subcommittee recommends that the Sheriff's Office provide the forty-hour Crisis Intervention Team training course to deputies detailed to courtroom security and deputies working inside the Adult Detention Center.	SO	CSB, PD			SO
MH-CIT - 13	FCSO & CSB	85	Establish strategically located CIT assessment sites. The subcommittee recommends that Fairfax County establish strategically located 24-hour assessment sites staffed and operated by CSB, FCPD, and the Sheriff's Office collaboratively.	CSB	PD, SO, DMB			BOS
MH-CIT - 14	FCSO & CSB	86	Redeploy CSB to provide services when they are needed most. The subcommittee recommends that the CSB should redeploy both forensic and community-based teams to expand capacity to provide mental health services at each point in the criminal/community mental health continuum rather than incarcerate individuals.	CSB	PD, SO			CSB
MH-CIT - 15	FCSO & CSB	86	Expand Mobile Crisis Unit (MCU) program to strategic locations in Fairfax County. MCU is an emergency mental health program of the Fairfax-Falls Church Community Services Board that provides on-scene evaluation, treatment, and crisis intervention in the community. The recommendation is to have MCUs by Jan. 1, 2017.	CSB				BOS
MH-CIT - 16	FCSO & CSB	87	CSB and Sheriff's Office to consider increasing behavioral health clinician staff hour availability inside the Adult Detention Center (ADC), to include not only on-site, but through technology.	CSB	SO, DIT			CSB & Sheriff's Office (SO)
MH-CIT - 17	FCSO & CSB	87	Increase release planning to support successful reentry. The subcommittee recommends that more CSB staff resources be devoted to release planning inside the ADC. It is also recommended that Dept. of Family Services (DFS) make available resources to initiate benefit eligibility determination.	CSB	SO, Dept. of Family Services (DFS)			CSB
MH-CIT - 18	FCSO & CSB	87	Review pharmacy policies inside the ADC. The subcommittee recommends that the CSB and ADC medical staff review policies, especially for psychotropic medications, to ensure that inmates receive the most effective treatment relative to their conditions and medical histories by January 1, 2016.	SO	CSB		Yes	CSB & SO
MH-CIT - 19	Judiciary & Mental Health Dockets	88	Implement Mental Health dockets. The subcommittee recommends that Fairfax County work with judges and the Clerk of the Court to establish a Mental Health Docket for both adults and juveniles by January 1, 2016.	Dep. Co. Exec. for Public Safety (preliminary)	Courts, Clerk of the Court, CWA, CSB, PD, SO		Yes	BOS & Courts
MH-CIT - 20	Judiciary & Mental Health Dockets	88	Encourage Mental Health Awareness training for the judiciary. The subcommittee recommends that appropriate mental health awareness training be developed and deployed for judges, magistrates, probation and parole officers, and other officials who may come into contact with people who are living with mental illness by January 1, 2016.	CSB	Courts, Magistrates, Probation & Parole, Others			CSB
MH-CIT - 21	VA CIT Elements	89	Establish standing law enforcement Mental Health Units staffed by full-time police officers and deputies tasked with responding to individuals experiencing a mental health crisis.	PD & SO	CSB, DMB, Co. Atty's Office			BOS
MH-CIT - 22	VA CIT Elements	89	Institute plainclothes Mental Health Unit officers. Mental Health Unit officers in Bexar County wear civilian clothing and use unmarked vehicles during the course of their duties to avoid unintentionally escalating a mental health crisis.	PD & SO	PD, CSB			PD & SO
MH-CIT - 23	VA CIT Elements	89	Re-focus and develop a full range of mental health and disability awareness training at the Criminal Justice Academy. CIT is important, but other trainings are also vital.	PD	PD, CSB			PD & SO
MH-CIT - 24	VA CIT Elements	90	Clarify mental health response protocols for first responders. The Fairfax County Fire and Rescue responds to more than 50,000 calls annually, and must transport some individuals without a medical condition to emergency rooms rather than a mental health facility as this is required by the Code of Virginia. Subcommittee recommends the Board of Supervisors consider supporting a bill that would allow first responders to transport individuals whose primary condition is a mental health issue directly to a mental health facility once medically cleared by an EMT.	Fire and Rescue Dept. (FRD)	Govt. Relations, CSB, Co. Atty's Office		Yes	BOS

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MH-CIT - 25	VA CIT Elements	90	Involve peers whenever and wherever possible. According to Virginia's Essential Elements program guide for CIT, dynamic community involvement should reflect the composition of the local community, with particular emphasis on the inclusion of persons with mental illness.	CSB	PD, SO	PERF #67		CSB
MH-CIT - 26	Public Outreach	91	Develop a public outreach program. The subcommittee recommends that the FCPD work with the CSB to develop materials for delivery to the public, to increase awareness of steps that may be taken prior to the instance of a potential interaction.	CSB	PD, SO, OPA			CSB
USE OF FORCE SUBCOMMITTEE								
UOF - 1	Guiding Philosophy	107	Ensure that FCPD's philosophy, policies and orders promote treating persons respectfully and are protective of their dignity; maintain an appropriate balance between an officer's role as a guardian/warrior or peacemaker/fighter; reinforce a reverence for the sanctity of human life.	PD		PERF #4, 5		PD
UOF - 2a	Guiding Philosophy	107	Adopt policies, programs and practices that require officers to identify themselves by their full name, rank, and command (as applicable) and provide that information, when practicable, on a business card to individuals they have stopped.	PD				PD
UOF - 2b	Guiding Philosophy	107	Adopt policies, programs and practices that, for policing mass demonstrations, continue to employ a continuum of managed tactical resources designed to be protective of officer safety and promote de-escalation of tensions; minimize the appearance of a military operation; and avoid provocative tactics, equipment, and language that might heighten tensions.	PD				PD
UOF - 2c	Guiding Philosophy	108	Adopt policies, programs and practices that continue and strengthen opportunities for patrol officers to regularly interact with neighborhood residents, faith leaders, and business leaders.	PD				PD
UOF - 2d	Guiding Philosophy	108	Adopt policies, programs and practices that reward officers for their efforts to engage members of the community and the partnerships they build and make this part of the performance evaluation process, placing an increased value on developing such partnerships.	PD	DHR			PD
UOF - 2e	Guiding Philosophy	108	Adopt policies, programs and practices that ensure deployment schedules provide sufficient time for patrol officers to participate in problem solving and community engagement activities.	PD				PD
UOF - 2f	Guiding Philosophy	108	Adopt policies, programs and practices that infuse a renewed commitment to community policing throughout the FCPD culture and organizational structure.	PD				PD
UOF - 3	Guiding Philosophy	108	Commit and assure in G.O. 201.6 - PRESERVATION OF PEACE AND PROTECTION OF LIFE AND PROPERTY, that medical assistance will be provided to anyone who is injured, alleges an injury, or requests medical assistance, stating, as follows: <i>It shall be the duty of each sworn officer of the Department to: preserve the public peace; protect life and property; assure medical assistance; and enforce and uphold the laws of the Commonwealth of Virginia and the Ordinances of the County of Fairfax.</i>	PD	Co. Atty's Office		Yes	PD
UOF - 4	Guiding Philosophy	108	Review policies on use of physical control equipment and techniques to assure that they address any unique requirements of vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others deemed appropriate by the on-scene officer(s).	PD	Co. Atty's Office	PERF #7	Yes	PD
UOF - 5	PERF Recommended	109	Implement all PERF Use of Force report recommendations except #54, "termination of the use of PIT." FCPD should complete an analysis for approval by the Board of Supervisors on whether or not to maintain or restrict PIT use. Complete a publicly available and periodically updated action plan that assigns responsibility by name or position and target date for completion of all of the other recommendations.	PD	Co. Atty's Office	PERF #1 - 71 (except #54)	Yes	PD (BOS for PERF Recommendation #54)
UOF - 6	Use of Force Policies	110	Establish a comprehensive and integrated policy on use of force to include training, investigations, prosecutions, data collection and information sharing. This policy must be clear, concise, and openly available for public inspection.	PD	Co. Atty's Office	PERF #13,14,16	Yes	PD
UOF - 7	Use of Force Policies	110	Consistent with the PERF Use of Force report, replace the current Department definition of use of force with a more comprehensive definition. Proposed new language: "Force means the following actions by a member of the department; any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. Force includes the use of firearms, Electronic Control Weapons (ECWs), chemical spray, bean bag shotgun, PepperBall gun and hard empty hands; the taking of a person to the ground; the use of vehicles; or the deployment of a canine; and excludes escorting or handcuffing a person who is exhibiting minimal or no resistance."	PD	Co. Atty's Office	PERF #12, 13, 30, 45, 46, 47	Yes	PD

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UOF - 8a	Use of Force Policies	110	Amend General Order 540.1, USE OF FORCE, to Establish "sanctity of life" clearly and unambiguously as a philosophy and value system that remains paramount in the mind of every officer.	PD	Co. Atty's Office	PERF #4	Yes	PD
UOF - 8b	Use of Force Policies	110	Amend General Order 540.1, USE OF FORCE, to maintain "objectively reasonable" as the standard to be followed by an officer when determining whether to use force and all references to "reasonable" must therefore be understood to mean "objectively reasonable."	PD	Co. Atty's Office	PERF#8	Yes	PD
UOF - 8c	Use of Force Policies	110	Amend General Order 540.1, USE OF FORCE, to include as the definition of "reasonable: "...use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against his or her responsibility to protect public safety, as well as the suspect's civil liberties."	PD	Co. Atty's Office	PERF #8, 13	Yes	PD
UOF - 8d	Use of Force Policies	110	Amend General Order 540.1, USE OF FORCE, to reword, II. POLICY as follows: "A police officer shall employ only such force in discharge of his or her duty as is objectively reasonable in all circumstances. The use of force is to be generally considered by an officer as a last resort after discussion, negotiation or persuasion has been found to be ineffective or inappropriate in light of the situation. While the use of force is occasionally unavoidable, every police officer will refrain from unwarranted infliction of pain or suffering and will never engage in cruel, degrading or inhumane physical or verbal treatment of any person."	PD	Co. Atty's Office		Yes	PD
UOF - 8e	Use of Force Policies	111	In revising the General Order, and while first and foremost meeting the criteria specified by the Supreme Court, consider the Customs and Border Patrol's definition with regard to "Objectively Reasonable and the Totality of Circumstances," which is as follows: i. The reasonableness inquiry for an application of force is an objective one: the question is whether the officer's actions are objectively reasonable in light of the totality of facts and circumstances confronting him or her, without regard to underlying intent or motivation. ii. In determining whether a use of force is "objectively reasonable" an officer must give careful attention to the totality of facts and circumstances of each particular case, including: 1. Whether the suspect poses an imminent threat to the safety of the officer/agent or others; 2. The severity of the crime at issue; 3. Whether the suspect is actively resisting seizure or attempting to evade arrest by flight; 4. Whether the circumstances are tense, uncertain and rapidly evolving; and 5. The foreseeable risk of injury to involved suspects and others. iii. Totality of circumstances refers to all factors existing in each individual case. In addition to those listed in subsection e.ii., these factors may include (but are not limited to) the: 1. training, mental attitude, age, size and strength of the officer; 2. training, mental attitude, age, size and perceived strength of the suspect; 3. weapon(s) involved; 4. presence of other officers, suspects or bystanders; and 5. environmental conditions.	PD	Co. Atty's Office		Yes	PD
UOF - 8f	Use of Force Policies	111	Institute the following use of firearms requirements, by establishing or clarifying that: i. the act of a police officer placing his or her weapon "in a ready gun position" at a suspect will be a reportable action [NOTE: Un-holstering his or her weapon, pointing downward toward the ground next to an officer's leg, with finger on frame of weapon, is not to be a reportable action in the context of this policy as officers may do so when they reasonably believe or know suspects are nearby, i.e., entering a dark building, alley, other location of concern]; ii. the "ready gun" position is defined as pointing the weapon, with finger on the frame of the weapon, so the officer can see the suspect's hands and waist; iii. the officer must announce "Police!" after and not before attaining the "ready gun" position and if feasible followed by simple, specific and clear direction to the suspect; iv. the "ready gun" position will be utilized in the specific circumstance where it is necessary to establish control and gain compliance through the pointing of a firearm; v. the pointing of the firearm will be considered non-deadly use of force in this circumstance if the weapon is not aimed at center of mass, which is normally the chest; and vi. an officer's finger should be moved from the frame to the trigger of a weapon only if the use of deadly force is authorized under the objectively reasonable standard, which would exclude pointing a weapon at center of mass simply for control and compliance under the "ready gun" position addressed in iv. above.	PD	Co. Atty's Office		Yes	PD
UOF - 8g	Use of Force Policies	112	Requirements for assuring medical assistance should be instituted consistent with the following: i. State in Section II that "[i]n all situations, medical assistance shall be provided promptly to any person who is obviously injured, alleges an injury, or requests medical assistance." ii. Incorporate a separate implementation section, including a requirement that an operational and implementation plan be created and incorporated in the General Order. iii. Assure that any such plan includes ECW (Taser) non-lethal incidents and specifies the officer's medical action requirements in the event that an ECW deployment is taken against a suspect.	PD	Co. Atty's Office		Yes	PD

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UOF - 8h	Use of Force Policies	112	A requirement should be established with regard to the state of the officer at the time of an officer involved death or serious injury per the following: Drug and steroid testing will be conducted on police officers involved in incidents that result in death or serious injury as soon as possible after the incident but not longer than an amount of time as determined by medical experts to detect whether drugs or steroids were present in the officers at the time of the incident.	PD	DHR, Co. Atty's Office		Yes	BOS
UOF - 9	Use of Force Policies	112	Benchmark FCPD Use of Force policies and practices with those of five urban jurisdictions that are comparable in their economic base, population density, and population demographics to Fairfax County.	PD				PD
UOF - 10	Use of Force Policies	112	Restrict vehicle pursuit to only those situations where there is a reasonable suspicion that a violent felony has been committed and that there is a potential for imminent risk to public safety and/or injury to individuals if pursuit is not initiated.	PD	DPSC	PERF #52, 53, 54, 55	Yes	PD
UOF - 11	Use of Force Reporting	113	Engage in robust public reporting on the demographics of the suspects in all use of force incidents and in-custody deaths, including for each incident: race, gender, age; any indicators of homelessness and of mental illness and CIT response; any previous involvement with FCPD; the type of weapon, if any, in the suspect's possession; police use of force; and resulting death/injury.	PD	PD, Co. Atty's Office	PERF # 65, 70	Yes	PD
UOF - 12	Use of Force Reporting	113	Collect and publicly report online all uses of force that result in death or serious injury; specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior instances of use of force by the officer(s) involved and determination of appropriateness; and (c) opportunities for officer, supervisor, and commander training. (Note: Release of use of force data does not necessarily have to include names of officers or victims until cases are concluded.)	PD	Co. Atty's Office, CWA	PERF # 65, 70	Yes	PD
UOF - 13	Use of Force Reporting	114	Annually report to the U.S. Department of Justice through the FBI's Uniform Crime Reporting System, all use of force and in-custody deaths, and disseminate such data to the public.	PD	OPA	PERF # 65, 70		PD
UOF - 14a	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include a narrative of the incidents and aftermath, updated in real time, including all UOF events that result in death or serious injury, not just shootings.	PD	OPA	PERF # 65, 70	Yes	PD
UOF - 14b	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include the details available in all press releases, updates and other public information should be integrated into the summaries, including names suspects and officers and links to press releases and their updates provided.	PD	Co. Atty's Office	PERF # 65, 70	Yes	PD
UOF - 14c	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include demographic information: race, age, gender, whether the call included concerns about a mental health crisis, whether the suspect was homeless.	PD	Co. Atty's Office	PERF # 65, 70	Yes	PD
UOF - 14d	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include information on what special teams were involved, if any.	PD		PERF # 65, 70	Yes	PD
UOF - 14e	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include appropriate information about whether/what discipline was administered in cases with policy violations.	PD	Co. Atty's Office, DHR	PERF # 65, 70	Yes	BOS
UOF - 14f	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include any changes of policy or training that result from review and lessons learned from the use of force incidents.	PD	Co. Atty's Office	PERF #65, 70	Yes	PD
UOF - 15a	Body Cameras	116	Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the enactment of laws, policies, and procedures that protect individual privacy.	PD	Co. Atty's Office, DIT, CWA, Govt. Relations		Yes	BOS
UOF - 15b	Body Cameras	116	Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the provision that police officers are consulted, with feedback provided as to how their concerns and recommendations were considered.	PD	Co. Atty's Office, DIT, CWA		Yes	BOS

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UOF - 15c	Body Cameras	116	Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the implementation of a training program not only for police officers, but the wide-ranging personnel who will oversee, process and manage the digital data, as well as for prosecutors who will use the data for criminal prosecutions.	PD	Co. Atty's Office, DIT, CWA		Yes	BOS
UOF - 16	Tasers / ECW	117	Reclassify Electronic Control Weapons as "less-lethal weapons" rather than "non-deadly weapons" per the recommendation by the 2011 Electronic Control Weapons Guidelines and the PERF Report.	PD	Co. Atty's Office	PERF #30	Yes	PD
UOF - 17	Tasers / ECW	117	Mandate that all uniformed officers in enforcement units carry an ECW on their duty belt (or elsewhere on their person if necessary) when on patrol. The recommendation is contingent on police officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.	PD	DMB	PERF #32		BOS
UOF - 18	Tasers / ECW	118	Mandate that all detectives and plainclothes officers, regardless of rank, carry an ECW in their vehicles when on duty; contingent on officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.	PD	DMB			BOS
UOF - 19	Tasers / ECW	118	General Order 540.1, USE OF FORCE - replace all use of the term "excited delirium" with a more medically and physiologically descriptive term.	PD	Co. Atty's Office, CWA	PERF #18	Yes	PD
UOF - 20	Tasers / ECW	118	Prohibit use of an ECW on a handcuffed, or otherwise restrained individual, who is actively resisting, unless an objectively reasonable officer concludes that the resistance could result in serious injury to him or herself or others and less severe force alternatives have been ineffective or are deemed unacceptable for the situation.	PD	Co. Atty's Office	PERF #27	Yes	PD
UOF - 21	Tasers / ECW	118	Prohibit use of an ECW on a frail or elderly person, child or a pregnant woman unless deadly force would otherwise be justified, since they face an elevated risk.	PD	Co. Atty's Office	PERF #28	Yes	PD
UOF - 22	Tasers / ECW	118	Absent exigent circumstances, require supervisory approval for ECW use on a suspect in excess of three cycles.	PD	Co. Atty's Office		Yes	PD
UOF -23	Tasers / ECW	118	Treat each ECW cycle as an independent application of the device, thus requiring its own justification, since multiple or prolonged ECW shocks may increase the risk of adverse effects on the heart or respiratory system.	PD	Co. Atty's Office	PERF #33	Yes	PD
UOF - 24	SWAT	119	Employ SWAT and the use of other advanced tactics only in situations where there is a high risk of violence, resistance, or harm to the officers involved, the public or the suspect as defined by set of "high risk" factors that are captured in the recent modifications to the Risk Assessment Matrix.	PD	Co. Atty's Office	PERF #62, 63, 64		PD
UOF - 25	SWAT	119	Consolidate FCPD policies and protocols, including threat assessment, supervisory approval, training and post-use review and lessons learned, for the use and documentation of SWAT and other advanced tactics.	PD		PERF #66	Yes	PD
UOF - 26	SWAT	119	Require that all police divisions, most notably the Narcotics Division, employ the same risk assessment procedures as SWAT for planning any high-risk operation.	PD				PD
UOF - 27	SWAT	119	Ensure broad community understanding of FCPD SWAT capabilities and how and when SWAT can be deployed.	PD		PERF #60		PD
UOF - 28	SWAT	119	Ensure that SWAT SOPs and the recently updated threat assessment process are clear in their requirement for approval by a single designated command officer who will bear overall responsibility for each use of SWAT.	PD		PERF #60, 62, 63, 64, 65, 66		PD
UOF - 29a	SWAT	119	Establish policies and practices that ensure SWAT is deployed proportional to the unique needs of each individual incident.	PD		PERF #60		PD

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UOF - 29b	SWAT	119	Include a trained crisis negotiator with every SWAT deployment.	PD				PD
UOF - 29c	SWAT	119	Require SWAT officers to wear body cams during every deployment.	PD	Co. Atty's Office		Yes	BOS
UOF - 29d	SWAT	119	Require that every SWAT deployment results in a post-deployment report that documents the following, in a manner that allows for the data to be readily compiled and analyzed for lessons learned: i. the purpose of the deployment; ii. the specific reason for believing that the situation for which the SWAT team was being deployed presented an imminent threat to the lives or safety of civilians and/or police personnel; iii. whether forcible entry or a breach was conducted and, if so, the equipment used and for what purpose; iv. whether a distraction device was used and, if so, what type and for what purpose; v. whether an armored personnel carrier was used and, if so, for what purpose; vi. the race, sex, ethnicity and age of each individual encountered during the deployment, whether as a suspect or bystander; vii. whether any civilians, officers, or domestic animals sustained any injury or death; viii. a list of any controlled substances, weapons, contraband, or evidence of crime that is found on the premises or any individuals; and ix. a brief narrative statement describing any unusual circumstances or important data elements not captured in the list above.	PD		PERF #66		PD
UOF - 30	Mobile Crisis	120	Establish as a budget priority the 24-hour staffing of three additional Mobile Crisis Units, by directing the immediate funding of a second Mobile Crisis Unit, in support of the Mental Health Subcommittee recommendation 15; and over the appropriate budget cycles, but no later than January 1, 2017, fund of two additional Mobile Crisis Units, for a total of four units, one for each human services district.	CSB	PD, DMB			BOS
UOF - 31	Oversight	122	Implement independent investigative oversight and civilian review of Use of Force incidents. Consistent with the findings of the White House Task Force and the recommendations of NACOLE, independent oversight and civilian review will provide public accountability, trust and confidence, education of both the public and the police, and a positive, ongoing feedback loop that would result in the reduction of both UOF incidents and complaints.	Dep. Co. Exec. for Public Safety	PD, Co. Atty's Office, CWA		Yes	BOS
UOF - 32	Oversight	122	Establish a police legal advisor position within FCPD who would not only advise the department on legal issues but also ensure implementation of recommendations and timely implementation of policy changes.	PD	Co. Atty's Office, DMB		Yes	BOS
UOF - 33	Oversight	122	Collect data, and publish an annual statistical report, covering all stops, frisks, citations, arrests, and use-of force by district station and magisterial district - include the race, gender, and ethnicity of the individual involved and note whether the suspect is homeless and/or if a mental health crisis is a factor. The data should also include the race, gender and ethnicity of the FCPD officer involved and whether the interaction was initiated by FCPD or by the suspect. Document the outcome of each incident and regularly report the collected data to the BOS and the public and post the data online.	PD	Co. Atty's Office	PERF #70	Yes	PD
UOF - 34	Oversight	122	Reconstitute the FCPD Use of Force Committee to review selective use of force events, to include the decision to employ UOF, use of de-escalation and alternatives, compliance with law and regulations, as well as administrative, training, supervisory and tactical issues.	PD	Co. Atty's Office			PD
UOF - 34a	Oversight	122	The Use of Force Committee should receive and consider after action reports (AARs) on each selected use of force event, identify lessons learned, and make recommendations as to any needed changes in policy or practice. The Committee should meet on a regular basis (no less than semi-annually) with the Independent Auditor and the Civilian Review Panel to identify and address issues of concern arising out of use of force incidents and FCPD policies and practices.	PD	Co. Atty's Office		Yes	BOS
UOF - 34b	Oversight	122	At least two members of the public should be appointed to the Use of Force Committee to ensure that the police and public can mutually benefit from their respective views about a use of force situation and contribute to any lessons that might be learned in the process. The policies and procedures guiding the appointment and role of the civilian appointees should be developed with public review and input and should protect against real or perceived conflicts of interest and assure that they are bound by the level of confidentiality that will protect candid and honest assessments, which is at the core of an effective continuous improvement process, as well as related criminal investigations.	PD	Co. Atty's Office		Yes	BOS
UOF - 34c	Oversight	123	Experts and representatives from other law enforcement agencies should be invited to attend Use of Force Committee meetings to provide critical external perspective, insight and expertise on a permanent or ad hoc basis.	PD				PD

AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
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UOF - 35	Oversight	123	The Board of Supervisors should review the Police Chief's determination in all lethal UOF cases and go on record with approval or disapproval of the action.	Co. Atty's Office	PD		Yes	BOS
UOF - 36a	Workforce Practices	124	Give emphasis in police officer basic and in-service training to the distinction in the use of "ready gun" and muzzle pointing in the conduct of a building search and room clearing.	PD		PERF #58		PD
UOF - 36b	Workforce Practices	124	Give emphasis in police officer basic and in-service training to skill development in the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force.	PD		PERF #41, 57, 58		PD
UOF - 36c	Workforce Practices	124	Give emphasis in police officer basic and in-service training to the expected and effective use of Crisis Intervention Training.	PD		PERF #67		PD
UOF - 36d	Workforce Practices	124	Give emphasis in police officer basic and in-service training to tactical and operational training on lethal and nonlethal use of force, with emphasis on de-escalation and tactical retreat skills.	PD		PERF #56, 57, 58		PD
UOF - 37	Workforce Practices	124	Establish a "hire-to-retain" focus on officer fitness to serve, particularly in relation to any propensity for being overly aggressive in the conduct of duty. This focus should be a key component in: vetting and selection; ensuring that the Early Identification System is monitoring officer-involved shootings, excessive use of force incidents, and complaints of abuse of power; monitoring each officer's known and understood risk factors to ensure that they maintain the right personality and temperament for policing; reinforcing the "duty-to-intervene"; providing services to assist officers who may need attention or treatment.	PD	Co. Atty's Office, DHR	PERF #1	Yes	PD
UOF - 38	Workforce Practices	125	Conduct a study of the relationship of the supervisor to the patrol officers, including the current ratio as a potential factor in strengthening the leadership direction provided to patrol officers in non-routine situations, particularly as it relates to the potential for use of force.	PD	DHR, DMB			BOS
UOF - 39	Workforce Practices	125	Conduct a workforce climate survey and publish summary results on a biennial basis to monitor FCPD's operating culture, including officer attitudes about their work, leadership and equipment; or any perceived barriers to their ability to perform their duties consistent with FCPD's values, philosophy and policies. Use the detailed survey results broken down by organizational unit as a basis for dialogue between and among police officers, supervisors and the command structure.	PD	DHR			PD
UOF - 40	UOF Sub-Committee	126	The charter for the UOF subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to meet its charge to "...review the roles of and relationships between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses; follow up on open issues, such as the internal FCPD UOF Committee charter; and support implementation of any of the UOF recommendations for which UOF Subcommittee participation would be beneficial.	Dep. Co. Exec. for Public Safety	PD, Co. Atty's Office, CWA		Yes	BOS
INDEPENDENT OVERSIGHT AND INVESTIGATIONS COMMITTEE								
IOV&I - 1	Investigations	180	Criminal investigations of FCPD officers involved in incidents in which an individual is killed or seriously injured as defined in General Order 540.1 ("Death or Serious Injury Cases") should continue to be conducted by the FCPD Major Crimes Division. Exceptions could occur when the Chief of Police, in consultation with the Commonwealth's Attorney, determines that the criminal investigation should be conducted by investigators from another Northern Virginia jurisdiction police department or by the Virginia State Police.	PD & CWA	Co. Atty's Office		Yes	PD & CWA
IOV&I - 2	Investigations	180	Funds should be appropriated to the Commonwealth's Attorney's Office to allow for the fulltime employment of two independent criminal investigators who will report to and be used at the discretion of the Commonwealth's Attorney in connection with criminal investigations within the scope of the Independent Police Auditor.	CWA	Dep. Co. Exec. for Public Safety, DMB			BOS
IOV&I - 2a	Investigations	181	Such investigators shall participate in MCD criminal investigations of cases as the Commonwealth's Attorney may direct and may be used in connection with other criminal investigations, time permitting.	PD & CWA	Co. Atty's Office		Yes	PD & CWA
IOV&I - 2b	Investigations	181	The Independent Police Auditor shall monitor MCD criminal investigations of cases and other criminal investigations within the scope of the responsibilities of the Independent Police Auditor.	Dep. Co. Exec. for Public Safety	CWA, Co. Atty's Office, PD		Yes	BOS

AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
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IOV&I - 3	Investigations	181	FCPD Internal Affairs investigations should be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.	Dep. Co. Exec. for Public Safety	CWA, Co. Atty's Office		Yes	BOS & CWA
IOV&I - 4	Investigations	181	The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of Police.	Dep. Co. Exec. for Public Safety	CWA, Co. Atty's Office		Yes	BOS & CWA
IOV&I - 5	Investigations	181	All FCPD officers shall be required to abstain from speaking to other officers involved or having witnessed any conduct subject to a MCD or IAB investigation within the scope of the responsibilities of the Independent Police Auditor, or to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	PD
IOV&I - 6	Prosecution	181	The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a death or serious injury case, or other case within the scope of the responsibilities of the Independent Police Auditor, should continue to be handled by the Commonwealth's Attorney for Fairfax County unless the Commonwealth's Attorney determines that the prosecution, including the decision to charge, should be handled by another Virginia Commonwealth's Attorney.	CWA	Dep. Co. Exec. for Public Safety, PD, Co. Atty's Office		Yes	CWA
IOV&I - 7	Prosecution	181	The Commonwealth's Attorney should be requested to issue timely and comprehensive public reports in any case involving death or serious injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney.	CWA	Dep. Co. Exec. for Public Safety, Co. Atty's Office, PD, OPA		Yes	CWA
IOV&I - 8	Independent Auditor	183	The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor ("Auditor").	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 8a	Independent Auditor	183	The Auditor shall be appointed by and report directly to the Board of Supervisors.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 8b	Independent Auditor	183	The Auditor shall have experience in public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Independent Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 8c	Independent Auditor	183	The Auditor shall review (i) all investigations of death or serious injury cases conducted by the IAB; and (ii) all use of force investigations by IAB which are the subject of a public complaint made to the FCPD or the Auditor.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, CWA		Yes	BOS
IOV&I - 8d	Independent Auditor	183	The Auditor shall have full access to the MCD criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, CWA,		Yes	BOS
IOV&I - 8e	Independent Auditor	183	The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 8f	Independent Auditor	183	The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 9	Independent Auditor	183	The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 9a	Independent Auditor	184	The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, DHR		Yes	BOS
IOV&I - 10	Independent Auditor	184	If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 11	Independent Auditor	184	Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, OPA		Yes	BOS

AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
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IOV&I - 12	Independent Auditor	184	The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 13	Independent Auditor	184	An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a death or serious injury case, the use of force, or the death of an individual with the FCPD for investigation or the citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, which will report on the disposition of the complaint within 30 days..	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 14	Independent Auditor	184	If the Auditor disagrees with the results or conclusions of an IAB investigation in a death or serious injury case, the Auditor shall advise the Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 15	Independent Auditor	184	The Auditor shall make public recommendations to the Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, OPA		Yes	BOS
IOV&I - 16	Independent Auditor	184	The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 17	Independent Auditor	184	Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18	Civilian Review	186	Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18a	Civilian Review	186	Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18b	Civilian Review	186	The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18c	Civilian Review	186	Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18d	Civilian Review	186	The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 19	Civilian Review	186	An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 19a	Civilian Review	186	"Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 19b	Civilian Review	186	The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 19c	Civilian Review	186	Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS

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IOV&I - 20	Civilian Review	186	Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 20a	Civilian Review	186	The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 20b	Civilian Review	186	Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 21	Civilian Review	187	The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review. If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 22	Civilian Review	187	The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, OPA		Yes	BOS
IOV&I - 23	Civilian Review	187	The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, OPA		Yes	BOS
IOV&I - 24	Follow-Up	187	Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.	Dep. Co. Exec. for Public Safety	PD		Yes	BOS

APPENDIX A.3

Board Agenda Item
December 1, 2020

ACTION - 9

Approval of an Addition to Action Item No. 17, Establishment of a Police Civilian Review Panel, Approved by the Fairfax County Board of Supervisors on December 6, 2016, and Related Bylaws Amendment

ISSUE:

Whether an addition to Action Item No. 17 on the Board of Supervisors' December 6, 2016 agenda, whereby the Board established the Police Civilian Review Panel (Panel), and a related amendment to the Panel's Bylaws should be approved. Such approval would authorize the Panel, up to six times annually, to solicit and receive public comment and respond to questions in public meetings, sponsored by the Panel or others, where the public is invited to comment on law enforcement policies, practices, and procedures.

RECOMMENDATION:

If the Board of Supervisors wishes to grant the Panel the authority to receive public comment about any and all law enforcement related policies, practices, and procedures, then the Board should authorize the Panel to do so by approving this Action Item and the proposed revisions to the Panel's bylaws.

TIMING:

Board action is requested on December 1, 2020, so that the Panel will be authorized to participate in public meetings where public comment is received about law enforcement policies, practices, and procedures.

BACKGROUND:

The Board of Supervisors approved the establishment of the Panel on December 6, 2016, as part of Action Item No. 17 on the Board's agenda that day. The Board established the Panel for the purposes of building and maintaining public trust between the Fairfax County Police Department, the Board, and the public, and to enhance police legitimacy. To help achieve its mission, the Panel wishes to receive public input about law enforcement policies, practices, and procedures so that the Panel may make recommendations to the Board of Supervisors about such matters.

Board Agenda Item
December 1, 2020

If the Board of Supervisors wishes to give the Panel the authority to receive public comment about any law enforcement related policy, practice, or procedure, the following paragraph should be added to Action Item No. 17:

The Panel is authorized to solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures. As long as all Virginia Freedom of Information Act (VFOIA) requirements are followed, Panel members may solicit, receive, and respond to such public comment up to six times annually in public meetings, sponsored by the Panel or by others, where the public is invited to comment on law enforcement policies, practices, and procedures. The Panel may present recommendations to the Board of Supervisors about any law enforcement policy, practice, or procedure based upon knowledge obtained through its work, without regard to whether such recommendations are associated with a review of an investigation of a Complaint.

If the Board of Supervisors wishes to approve this addition to the 2016 Action Item, then the Panel's Bylaws also must be amended. Such amendments are necessary to give the Panel the authority to receive public comment about any law enforcement related policy, practice, or procedure. A redlined version of the necessary amendments to the Bylaws is attached as Attachment 1.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Amendment to the Panel's Bylaws

ASSIGNED COUNSEL:

Anita V. McFadden, Panel Counsel
Elizabeth D. Teare, County Attorney

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, ~~and~~

November 19, 2019, and _____, 2020

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, ~~and~~ practices, and procedures as they pertain to case reviews 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

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

due consideration to the following factors, among others it may choose: community and 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. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term 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.

2. Initial Disposition Notice.

- (a) The Panel shall conduct an initial review of each Review Request and may conduct

the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.

- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

- 1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
- 2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject

of pending proceedings.

3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

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

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

the Panel a supplemental report that details the findings of the additional investigation.

- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

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

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.
- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

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

2. Panel Findings.

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

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

A. Review of Law Enforcement Policies and Practices.

- 1. ~~Based on the Panel's review of Investigations, t~~The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, ~~and~~ 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. ~~Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Chief and the Board of Supervisors.~~

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 THE AUDITOR; 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 Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. 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.

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.

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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.

APPENDIX B

(Panel Bylaws and Amended Bylaws)

APPENDIX B.1

(Pre-2020 Revision Bylaws)

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, and
November 19, 2019**

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 and practices as they pertain to case reviews 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

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

due consideration to the following factors, among others it may choose: community and 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. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term 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.

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.

2. Initial Disposition Notice.

- (a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at

least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.

- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.

3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

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

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

investigation.

- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

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

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.
- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

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

2. Panel Findings.

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

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

A. Review of Law Enforcement Policies and Practices.

- 1. Based on the Panel's review of Investigations, the Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed.

2. The Panel may conduct Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Chief and the Board of Supervisors.

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 THE AUDITOR; 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 Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. 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.

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.

APPENDIX B.2

(2020 Revised Bylaws)

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, and December 1, 2020

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. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term 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 receive public comment at up to three of its meetings each year to assist it in making recommendations to the Board of Supervisors regarding law enforcement policies, practices, and procedures. As long as all applicable VFOIA procedures are observed, Panel members also may participate annually in up to three listening sessions and similar public meetings sponsored by others to receive public input to assist the

Panel in forming such recommendations.

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.

2. Initial Disposition Notice.

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

D. Pending Proceedings.

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

Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.

3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

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

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

FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.

- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

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

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.
- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

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

2. Panel Findings.

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

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

A. Review of Law Enforcement Policies and Practices.

- 1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.

2. The Panel may conduct up to three Public Meetings each year where it solicits and receives public comment about law enforcement related policies, practices, and procedures to assist the Panel in making recommendations for policy and practice changes to the Chief and the Board of Supervisors. As long as all VFOIA requirements are followed, the Panel also may attend, up to three times annually, listening sessions and other public meetings sponsored by others to receive public input about law enforcement related policies, practices, and procedures.

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 THE AUDITOR; 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 Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. 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.

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.

APPENDIX C

(Code of Ethics)

FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL CODE OF ETHICS

Panel Approved: 15 May 2017

PREAMBLE¹

Civilian Police Review Panel members have a unique and critical role as public servants in reviewing law enforcement agency actions. Accordingly, the public, government, and law enforcement agencies have entrusted these individuals to conduct their oversight in a professional, informed, fair, and impartial manner. They earn this trust through a firm commitment to the public good, to the mission of their review panel, and to the ethical and professional standards described herein. The spirit of these ethical and professional standards shall guide panel members' conduct when conflicts of interest or ethical uncertainties arise as well as provide standards to which the public shall hold panel members accountable for their actions. The Code shall be a constant reminder that panel members are beholden to the interest of and fidelity to the public, which requires regularly promoting public trust, integrity, and transparency.

I. DIGNITY AND RESPECT²

Treat all persons with dignity, respect, equality, equity, and fairness and without preference, prejudice, or discrimination based on, but not limited to: age, ethnicity, culture, race, color, disability, sex, gender, religion, sexual orientation, gender identity or expression, socioeconomic status, housing status, marital status, parental status, citizenship, nationality, immigration status, language, political beliefs, and all other protected classes.

II. PERSONAL INTEGRITY³

Demonstrate the highest standards of personal and professional conduct to inspire and maintain public and stakeholder confidence and trust. Act honestly and responsibly and promote the ethical practices at all times.

III. COMMITMENT⁴

Represent the public's interest, uphold the constitutions and laws, and adhere to the mission and objectives of this panel, while seeking to improve policies and procedures to promote the public good in accordance with the Fairfax County Police Civilian Review Panel Bylaws. Place service to the public above personal and organizational self-interest.

¹ National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics ([Link](#))

² NACOLE Code of Ethics; included equality, equity, and fairness as they are not necessarily covered under respect and dignity. Language focuses on ability to communicate in native languages or for hearing impaired that may not necessarily be covered under ethnicity, culture, or disability.

³ American Society of Public Administration Code of Ethics (ASPA) ([Link](#)); NACOLE Code of Ethics; National Association of Social Workers (NASW) Code of Ethics ([Link](#))

⁴ NACOLE Code of Ethics; ASPA Code of Ethic

IV. COMMUNITY ENGAGEMENT⁵

Engage in open, candid, and culturally sensitive outreach with community stakeholders in order to share information and to learn about community policing issues and concerns impacting communities throughout the county.

V. IMPARTIAL OVERSIGHT

Conduct reviews with diligence, objectivity, fairness, inquisitiveness, comprehensiveness, and in a timely matter. Present facts and findings without regard to personal beliefs or concerns for personal, professional, or political consequences.

VI. TRANSPARENCY⁶

Be open, transparent, responsive, and explanative to the public about the panel's role and processes, while in accordance with the Fairfax County Police Civilian Review Panel Bylaws, to include, but not limited to, maintaining meeting minutes and releasing regular annual reports on oversight activities.

VII. CONFIDENTIALITY⁷

Recognize that individual lives are impacted regardless of who they are and what the panel determines. Accordingly, maintain confidentiality of information, and in accordance with the Fairfax County Police Civilian Review Panel Bylaws, that cannot or should not be disclosed and protect the security of confidential records and identities of crime victims and police officers. Any disclosure of confidential information shall require written consent from the complainant and/or victim.

VIII. PROFESSIONAL EXCELLENCE⁸

Acquire the necessary knowledge and understanding of law enforcement, community dynamics, and current social, cultural, legal, and professional issues that impact the community, law enforcement agencies, and county government. Seek and encourage other members to seek professional development opportunities to enhance the ability to act competently, culturally sensitively, appropriately, and ethically in the capacity of a panel member.

IX. ACCOUNTABILITY AND SELF-EXAMINATION⁹

Seek continuous improvement in the effectiveness, efficiency, and advocacy of the panel, the law enforcement agencies it works with, and their relations with the communities they serve. Gauge this through community and cross-organizational feedback and evaluation as well as through internal panel policy and procedural reviews to advance performance, organizational reforms, and accountability. Sustain a respectful relationship with the Fairfax County Board of Supervisors, to whom the panel reports.

⁵ NASW Code of Ethics, NACOLE Code of Ethics

⁶ ASPA Code of Ethics; NACOLE Code of Ethics

⁷ NACOLE Code of Ethics; ASPA Code of Ethics

⁸ NACOLE Code of Ethics; ASPA Code of Ethics

⁹ NACOLE Code of Ethics

X. COURAGE¹⁰

Have the mental, moral, and physical fortitude to see through challenges, make tough decisions under stress and pressure, and to do what is right in the face of adversity.

XI. CONFLICTS OF INTEREST

Panel members shall avoid conflicts of interest, as set forth in the Fairfax County Police Civilian Review Panel Bylaws, that compromise or have the perception of interfering with their fair, impartial, and independent judgment and execution of their roles and responsibilities.

¹⁰ United States Marine Corps Core Values ([Link](#))

APPENDIX D

(Annual Reports 2017, 2018, 2019)

(Note: Duplicative report appendices have been omitted.)

APPENDIX D.1

(2017 Annual Report)



Fairfax County
Police Civilian Review Panel
Annual Report 2017

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2017



A Fairfax County, VA Publication

Publication Date: February 28, 2018

PANEL MEMBERS

Hansel Aguilar, Fairfax

Kathleen Davis-Siudut, Springfield

Steve Descano, Burke

Hollye Doane, Oakton

Douglas Kay, Fairfax

Randy Sayles, Oak Hill

Jean Senseman, Lorton

Adrian L. Steel, Jr., McLean (Chair)

Rhonda VanLowe, Reston (Vice-Chair)

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To request this information in an alternate format, call 703-324-3459, TTY 711.

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SECTION I: OVERVIEW AND BACKGROUND

Establishment and Mission of the Civilian Review Panel

The Fairfax County Police Civilian Review Panel (“Panel”) was established by the Board of Supervisors on December 6, 2016, in response to recommendations from the Ad Hoc Police Practices Review Commission.¹ The nine-member Panel’s mission is to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (“Department” or “FCPD”) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigations. The Panel is appointed by, and reports directly to, the Board of Supervisors. The Panel is governed both by the Bylaws approved by the Board of Supervisors and a Code of Ethics adopted by the Panel.²

The Panel generally meets the first Thursday of each month at the Fairfax County Government Center. It will meet more often as needed based on the volume of investigations under review. Meeting locations are expected to vary to encourage citizen participation throughout the county. Panel meeting dates and locations are announced on the County’s Public Meetings Calendar (<https://www.fairfaxcounty.gov/calendar/ShowCalendar.aspx>). Pursuant to the Action Item and Bylaws, the Office of the Independent Police Auditor (“OIPA”) provides all administrative support to the Panel. This support includes coordinating meeting logistics, preparing draft meeting summaries, receiving and disseminating Complaints and Requests for Review, assistance with marketing and outreach activities, and related correspondence.

Scope of Panel Authority

The Panel serves as an independent avenue or “portal” for members of the public to submit Initial Complaints (i.e., a complaint not previously submitted to the FCPD) concerning

¹ The December 6, 2016 Action Item and February 28, 2017 clarifications can be found in the February 28, 2017 Final Board Package (pp. 268-279) from the County’s website: <https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting%20materials/board/2017/feb28-final-board-package.pdf>

² Capitalized terms in this Report have the meaning set forth in the Defined Terms attached to the Bylaws, unless the context indicates otherwise.

allegations of abuse of authority or serious misconduct by an FCPD Officer. The Panel also has the authority to review completed FCPD internal administrative investigations regarding a complaint of the same nature filed with the Department against an officer. The Panel may conduct a Review of an investigation within its scope only upon a request from the complainant. All FCPD letters to complainants advising them of the results of the Department's investigation of their complaints also inform them of their right to seek a review of the investigation by the Auditor or the Panel depending on the nature of their complaint.

As a part of its Review, the Panel may hold a public meeting at which an FCPD representative will review and answer questions about the Investigation, including findings of fact, evidence collected and received, witness statements, and action taken or not. Only Complaints as to incidents occurring on or after December 6, 2016, may be considered by the Panel. Examples of Complaints that the Panel may receive and/or review include:

- The use of abusive, racial, ethnic or sexual language or gestures;
- Harassment or discrimination based on race, color, gender, sexual orientation, religion, national origin, marital status, age, familial status, immigration status, or disability
- Acting in a rude, crude, angry, retaliatory or threatening manner not necessary for self-defense;
- The reckless endangerment of a detainee or person in custody;
- Violations laws or ordinances; or
- Other serious violations of Fairfax County of FCPD policies or procedures.

The Civilian Review Panel does not address the potentially criminal use of force or police-involved shootings. Cases of that magnitude would likely involve an investigation by the Commonwealth's Attorney and would be monitored and reviewed by the Independent Police Auditor ("Auditor" or "IPA"), Richard G. Schott.

The Panel may hold public meetings on issues within the Panel's jurisdiction and on law enforcement policies and practices at which the public is invited to comment to assist the Panel in making recommendations for policy and practices changes to the Chief of Police and Board of Supervisors. The Panel may also meet periodically with the Auditor concerning his findings and conclusions as to use of force cases so that the Panel can provide its views to the Board of

Supervisors and the Chief of Police as to changes in policies and practices that may be warranted.

The Panel will issue an annual public report describing its activities for the year, including recommendations to the Board of Supervisors, the Auditor and the Chief of Police for revisions to FCPD policies, training and practices that the Panel concludes are needed.³

Panel Members

The Panel members appointed by the Board were sworn in at a ceremony on March 20, 2017. The Honorable William H. Webster, former Director of the Federal Bureau of Investigation as well as the Central Intelligence Agency, gave remarks to commemorate the occasion. Judge Webster related how his experiences as a judge and as FBI and CIA Director led him to have a strong belief that transparency is necessary in order to maintain public trust. He said that civilian oversight of police is key to having a country where people are safe, feel safe, and have trust in law enforcement.



Pictured from left: Deputy Clerk of the Circuit Court Gerarda Culipher, Randy Sayles, Rhonda VanLowe, Kathleen Davis-Siudut, Adrian Steel, Board of Supervisors Chairman Sharon Bulova, Judge William Webster, Braddock District Supervisor John Cook, Jean Senseman, Douglas Kay, Hollye Doane, Steve Descano, and Hansel Aguilar.

³ Consistent with the Action Item and Bylaws which set the due date for the first Annual Report to be March 31, 2018, this Report covers the period from March 1, 2017, to February 28, 2018. In future years, the reporting year will be January 1 to December 31, with the Report due on the subsequent March 1.

The Board of Supervisors appointed Adrian L. Steel, Jr. to serve as the first Chair of the Civilian Review Panel. All subsequent Chairs will be selected by members of the Panel. Panel members serve three year terms with a two-term limit, although some inaugural members serve for less time to allow for staggered terms. Rhonda VanLowe was elected by the Panel to serve as Vice-Chair. Biographies of the Panel members are attached as Appendix A.

The nine Panel members are:

- Hansel Aguilar, Fairfax
- Kathleen Davis-Siudut, Springfield
- Steve Descano, Burke
- Hollye Doane, Oakton
- Douglas Kay, Fairfax
- Randy Sayles, Oak Hill
- Jean Senseman, Lorton
- Adrian L. Steel, Jr., McLean (Chair)
- Rhonda VanLowe, Reston (Vice-Chair)

SECTION II: 2017 ACTIVITIES

Bylaws and Code of Ethics

After an initial meeting to discuss organizational issues and the roles and responsibilities of the Panel, the Panel focused its attention on drafting bylaws and a code of ethics. On June 1, 2017, the Panel approved draft bylaws and a code of ethics. Both drafts were submitted to the Board of Supervisors, and, on July 11, 2017, the Board approved both, with modifications to the bylaws. The Panel accepted the modified bylaws at its August 3, 2017 meeting. The Panel's Bylaws and Code of Ethics can be found on the Panel's website and in Appendices B and C.

Materials Development

In addition to developing the Bylaws and Code of Ethics, the Panel, in partnership with the Auditor, developed a complaint form and a brochure for distribution across the County. The complaint form and brochure are being translated into Korean, Spanish and Vietnamese. A

website (www.fairfaxcounty.gov/policecivilianreviewpanel/) was also developed for the Panel to include a description of its purpose and mission, a link to the Complaint form, and an archive of meeting materials. The Complaint form and instructions on how to file a Complaint are also available on the Panel website.

Training and Education

In coordination with Major Gun Lee of the Department who served as the Panel's liaison, the Panel members received training from the FCPD on April 8, May 13, and September 30, 2017. Training content included an overview FCPD operations, including the various bureaus, and a review of FCPD general orders pertinent to the Panel's work. During a meeting on June 27, 2017, the Panel conducted a "mock review" of an alleged racial profiling incident. Individual Panel members have participated in numerous "ride-alongs" with FCPD officers. At the Panel's September 7, 2017, meeting, Paul Ashton, Chair of the D.C. Police Complaints Board (PCB), presented to the Panel on the structure, mission, jurisdiction, and the process for review of citizen complaints against the Metropolitan Police Department. Some Panel members observed CIT training on November 15, 2017. Panel members toured the new FCPD headquarters on December 7, 2017.

Public Outreach

Throughout 2017, the Panel focused on developing its plans for outreach to the community, which included planning two public forums and developing a schedule of meetings with various community groups. The Chair attended two public meetings for the purpose of updating the community on the Ad Hoc Commission's progress report and on the Panel. The Chair (and the Auditor) answered questions about their respective positions. The May 22, 2017 meeting took place at the Government Center, and the November 1, 2017 meeting took place in Mount Vernon. Other outreach to community groups included attendance by the Chair at an NAACP Forum, attendance by the Vice-Chair at a Citizen Advisory Committee ("CAC") meeting at the Reston FCPD Station, and attendance by Panel members at a County's Criminal Justice Advisory Board meeting. Panel members also presented information about the Panel to CAC meetings, a Council of Citizens Associations meeting, and a church congregation. The Chair and Vice Chair

appeared, in concert with the Auditor, in various videos to introduce the Panel and the Auditor to the public. Videos included an interview on the show “Connecting with Supervisor Hudgins” and a public service announcement YouTube video.

Public Forums

The Panel conducted public forums to raise awareness about the Panel and the Auditor and the services they provide on November 16, 2017, in Annandale and December 12, 2017, in Reston. Both forums were advertised through the County’s website, social media (e.g., Facebook and Twitter), and through local media. Board Chairman Sharon Bulova attended the Annandale forum and expressed her support for the work of the Panel and indicated her view that the Panel will promote transparency and openness in community policing. Supervisor Catherine Hudgins attended the Reston forum and noted that the process put in place by the Board is an important opportunity for County residents to have greater oversight of the FCPD. At both forums, members of the public were offered an opportunity to provide comments or ask questions about matters within the Auditor’s and Panel’s scopes. Among the questions asked were:

- Whether the Auditor or Panel have authority to entertain complaints pertaining to the Sheriff’s Office or ICE?
- Whether the Auditor or Panel can recommend a change to the discipline imposed by the FCPD?
- How, given the racial and ethnic makeup of the Panel, minorities can be assured that the Panel will be sensitive to the concerns of minority populations in the County?
- Why do the Auditor and Panel not have the power to investigate alleged FCPD misconduct?
- Why are there two oversight bodies?
- Do you have to be involved in an incident to submit a complaint?
- How can citizens be assured that the FCPD is forthcoming with all evidence it collected or received and the Department’s findings?
- How many attorneys sit on the Panel?
- How did the Board of Supervisors select the Panel members?
- Can the Panel make policy recommendations to the FCPD?

- What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?
- What is being done to advertise the Auditor's and Panel's services to different groups within the community, particularly minorities?
- Do you only look at individual cases? My organization would like to see a systematic review of the FCPD's use of force cases, including the apparent racial disparities.
- Are all complaints received by the Auditor and Panel available to the public for viewing?

In addition to the questions above, a concern was expressed that FCPD officers (who are usually white and not from the community) routinely harass young people of color, as well as individuals at the homeless shelters in the Mason District. A forum participant indicated that he has witnessed police officers targeting low income neighborhoods (e.g., apartment buildings in Bailey's Crossroads), conducting searches of individuals without getting proper consent due to the individuals' inability to understand English, driving around in unmarked vehicles and in plain clothes (no badge visible), and switching cars often, making it difficult for citizens to identify the officer and make a complaint. The forum participant also wanted to know why no one (especially a young person) from the "east side" of the County (i.e., Alexandria/Route 1, Mount Vernon, Bailey's Crossroads) is on the Panel.

The Panel provided responses to these questions and comments. The responses are reflected in the Summaries of the two forums which are attached as Appendices D and E and are on the Panel's website.

Meeting with Auditor

As provided in the Action Item and Bylaws, the Panel met with the Auditor concerning his findings and conclusions as to the use of force investigations he has monitored and reviewed so that the Panel can provide its views to the Board of Supervisors and the Chief of Police as to changes in policies and practices that may be warranted. The Auditor summarized his findings and conclusions with respect to the two incident reports he has released (Herndon Officer Involved Shooting ("OIS") – January 2017, and Electronic Control Weapon Use – April 2017) and the IPA's 2017 Annual report. The Auditor's use of force recommendations included that: (1) additional numbers of "less-lethal" options in the form of Kinetic Energy Impact Systems and

PepperBall systems be made available to FCPD patrol officers and SWAT team members; (2) the FCPD incorporate new factors into current policy which may be considered when determining whether a particular use of force used on an individual not engaged in criminal activity was reasonable; and (3) the FCPD revert to the use of the term “non-deadly” force, and to eliminate the term “less-lethal” force in its general orders. In response to a question from a Panel member, the Auditor confirmed that it was his view that there were no communication issues during the Herndon OIS incident.

SECTION III: INITIAL COMPLAINTS AND REQUESTS FOR REVIEW

Panel Processes and Procedures under the Bylaws

- Upon receipt of an Initial Complaint, the Panel will immediately refer the Complaint to the FCPD for investigation. Under its Bylaws, the Panel does not conduct investigations. The Department is required to complete its investigation of the Complaint and provide an Investigation Report to the Panel within sixty (60) days (absent a finding of good cause for delay by the Panel).
- The Panel may conduct a Review Meeting if requested by a complainant to evaluate the accuracy, completeness, thoroughness, objectivity and impartiality of the FCPD Investigation. At the Meeting, the complainant will have the opportunity to state the reasons for filing the Review Request, and the Panel may ask the complainant about those reasons. At the Panel’s request, an FCPD representative knowledgeable about the Investigation will attend the Meeting to review and answer questions about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not. At the Panel’s discretion, the Panel may request further investigation by the FCPD, and the FCPD is required to conduct that investigation within a reasonable time and report the results to the Panel.
- After completing a requested Investigation Review, the Panel may reach one of three Findings: (i) concur with the FCPD’s findings and determination detailed in the Investigation Report; (ii) advise the Board of Supervisors that the FCPD’s findings are not supported by the information reasonably available to the Department and recommend

further review and consideration by the Chief of Police; or (iii) advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.

- Based on its review of Investigations, the Panel may recommend to the Chief of Police and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed.
- At its December 7, 2017 meeting, the Panel discussed the need for documenting protocols and operating procedures for the Panel. These include responding to Initial Complaints and Requests for Review, determining Panel jurisdiction, and determining the appropriate protocol at public Review Meetings.

Initial Complaints

- In August 2017, the Panel received an Initial Complaint from [REDACTED] regarding an incident that occurred in May 2016. The incident was not reviewed because the date it occurred preceded the establishment of the Panel on December 6, 2016. The Panel informed the complainant that he could attend a Panel public forum to voice concerns about FCPD policies and practices.
- In October 2017, the OIPA received two Initial Complaints concerning an arrest by the FCPD which took place in Annandale VA. One of those complaints was directed to both the Auditor and the Panel. At the request of the Chair of the Board of Supervisor's Public Safety Committee and the Chief of Police, the Auditor is monitoring and reviewing the FCPD administrative investigation of the arrest. The Panel determined at its November 9, 2017 meeting to defer any discussion of the Annandale arrest or any Panel action until the FCPD has completed that investigation.
- In January 2018, the Panel received an Initial Complaint concerning an incident that occurred in 2012, which made it ineligible for Panel or Auditor review. The Complaint was forwarded to the Department because it is FCPD policy to review all complaints regardless of when they are received.
- A second Initial Complaint was received in January 2018. It concerned an incident of alleged officer rudeness that occurred in January 2018. As required, the Complaint was

referred to the FCPD for investigation. The FCPD will complete its investigation and provide an Investigation Report to the Panel within sixty (60) days (absent a finding of good cause by the Panel).

Requests for Review

- The Panel received a Request for Review in November 2017 from ██████████ ██████████ regarding her complaint to the FCPD that an officer failed to comply with a subpoena requiring the officer to appear in court. The Panel voted at its December 7, 2017, to review the FCPD's investigation of ██████████'s Complaint, subject to ██████████'s confirmation of her understanding of the Panel's limited jurisdiction. The Review Meeting was held on January 4, 2018. ██████████ and the Chief of Police appeared at the Meeting. At its February 1, 2018 meeting, the Panel voted to concur with the Department's findings and determination. Some individual Panel members raised concerns regarding the FCPD process to track and monitor subpoenas served on officers; whether training was needed for officers regarding court appearances; and whether all internal affairs interviews (at the Internal Affairs Bureau and at the station level) should be audio recorded. The Panel voted not to recommend policy or practice changes at the meeting with respect to the concerns raised.
- The Panel received a Request for Review in February 2018 of a completed FCPD investigation involving alleged false arrest and abuse. As with all Requests for Review, the Panel will proceed initially to determine whether it has jurisdiction over the Request under the Bylaws.

SECTION IV: PLANS FOR 2018

- The Panel will continue its community outreach and engagement strategy in 2018 to ensure that it is reaching broader portions of the public. Outreach activities will include conducting meetings with various community groups, inviting police associations to meet with the Panel about its responsibilities and scope of authority, and distributing informational brochures (made available in four languages) across the county. Panel members will also participate in segments for a magazine-style video in 2018.

- In 2018, the Panel will continue to refine its operating procedures, including, for example, the intake process for Initial Complaints and Requests for Review, and the Panel's disposition decision-making process.
- Another key effort in the coming year will include strengthening the Panel's working relationships with the Board of Supervisors and the Police Department.

SECTION V: CONCLUSION/APPRECIATION

The Civilian Review Panel has had an active first year in beginning its task to provide effective civilian oversight. We successfully organized ourselves and drafted and adopted the Bylaws which govern our work. We are receiving and processing Initial Complaints and Requests for Review, and we held our first Review Meeting. We are reaching out to the public through forums and speaking before numerous community groups and organizations. We have more to do. We need to work to more broadly spread the word about what it is we do. We need to adopt clear procedures and standards to govern our work and to ensure that there is a clear record detailing the Panel's rationale for our actions. We look forward to working with the public and the FCPD in the next year in achieving the goals set for us by the Board of Supervisors when it created the Panel.

We would like to express our appreciation to the Board of Supervisors for entrusting us with the responsibility of serving on the inaugural Panel and to the FCPD for its support and continuing recognition of the need for effective oversight to build trust and transparency. As Judge Webster said at our swearing in ceremony, civilian oversight of police is key to having a country where people are safe, feel safe, and have trust in law enforcement. We also want to express our particular appreciation to Major Gun Lee for the many hours that he devoted serving as our liaison to the FCPD this past year. His efforts ranged from extensive training to ensure that Panel members are familiar with FCPD policies and practices to ensuring that we had various opportunities to join FCPD officers in the field to answering our numerous questions. His work and guidance have been invaluable.

APPENDICES

Appendix A: Biographies of the Panel Members

Appendix B: Bylaws of the Fairfax County Police Civilian Review Panel

Appendix C: Fairfax County Police Civilian Review Panel Code of Ethics

Appendix D: Summary of the November 16, 2017 Annandale Public Forum

Appendix E: Summary of the December 12, 2017 Reston Public Forum

The Fairfax County Police Civilian Review Panel

Public Forum on November 16, 2017

Heritage Human Services Center, Annandale

Meeting Summary

Panel Members present:

Hansel Aguilar

Kathleen Davis-Siudut

Steve Descano

Hollye Doane

Doug Kay

Randy Sayles

Jean Senseman

Adrian Steel, Panel Chairman

Others present:

Sharon Bulova, Chairman, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Member absent:

Rhonda Van Lowe, Vice Chair

The forum began at 7:05 p.m.

Panel Chairman Adrian Steel and Board of Supervisors Chairman Sharon Bulova welcomed attendees to the Panel's first Public Forum. Chairman Bulova provided some framing remarks on the Ad Hoc Police Practices Review Commission and the subsequent establishment of the Fairfax County Police Civilian Review Panel and the Office of the Independent Police Auditor.

Panel Chairman Steel reviewed the agenda.

Each Panel Member present introduced him or herself, and shared information on related expertise and experiences and what brought them to the panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Panel Chairman Steel provided an overview of the Civilian Review Panel including: how they were formed, how panel members were selected, terms of service, the panel's purpose, and work conducted to date. The Panel has reviewed best practices in police oversight and developed Bylaws and a Code of Ethics (available at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>). The Panel's purpose is to provide an independent process for commencing an initial complaint against the Fairfax County Police Department (FCPD). The panel will review completed investigations of public complaints of abuse of authority or serious misconduct by a FCPD officer when requested. Definitions of "abuse of authority" and "serious misconduct" were provided.

Next, Independent Police Auditor Richard Schott provided an overview of the purpose and scope of the Office of the Independent Police Auditor. The Auditor is responsible for monitoring and reviewing Internal Affairs investigations of: police officer involved shootings; in-custody deaths; and use of force

cases that result in death or serious injury. The Auditor also reviews any other use of force cases in which a public complaint is received.

Panel members Kathleen Davis-Siudut and Doug Kay reviewed the complaint filing process. Written complaints or requests for review can be submitted to the Panel via the Auditor's office in person, by mail, or online (email). Complaints are shared with the FCPD, which conducts the investigation and sends findings to the complainant and the Panel/Auditor. The Panel will conduct public meetings to review investigations, during which it may hear from the complainant and an FCPD representative. Some limitations were noted, including that neither the Auditor nor the Panel has investigative authority but may only review completed investigations by the FCPD. They do not have jurisdiction over the Sheriff's Office or federal law enforcement (i.e., ICE). Also, they cannot review complaints related to incidents that occurred before December 6, 2016 and, absent a finding of good cause, must abide by established time limits for the submission of an initial complaint or a request for review.

The meeting was then opened up for audience questions about the Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The forum adjourned at 8:50 p.m.

Questions and Answers

1. To the majority of residents, the Fairfax County Police Department (FCPD) and the Sheriff's Department are considered law enforcement officials. Does the Panel or the Auditor have authority to take complaints about the Sheriff's Department?

No. The Sheriff's Department does not fall under the authority of the Board of Supervisors due to the fact that the Sheriff is an elected Constitutional Officer. The Sheriff's Department has its own internal process for investigating complaints. Complaints against the Sheriff's Department do not fall within the scope of the Civilian Review Panel or the Independent Police Auditor, which only have authority to respond to complaints against the FCPD.

2. How much business/how many complaints do you expect to receive?

At this time, we cannot estimate the volume of complaints that the Panel and Auditor will receive. The purpose of the public forums is to inform county residents about the work of the Panel and the Auditor and provide information on how to submit a complaint or request for review. Regardless of the number of complaints received, it is our intention to provide another layer of transparency of FCPD practices, as well as an intake venue in which no citizen is afraid to come forward and submit a complaint.

3. Where will your meetings be held?

The Panel will generally meet the first Thursday of each month. They will meet more often as needed based on the volume of investigations under review. Meeting locations are expected to vary to encourage citizen participation throughout the county. Panel meeting dates and locations will be announced on the County's Public Meetings Calendar

(<https://www.fairfaxcounty.gov/calendar/ShowCalendar.aspx>). The next meeting of the Panel is December 7th at 7:00 p.m. in the Government Center.

4. If the Auditor reviews an investigation and disagrees with the FCPD's decision in regards to disciplining an officer, does he have the authority to change the discipline imposed or charge an officer with a crime?

No. The Police Chief has the authority to impose or change disciplinary decisions and only the Commonwealth's Attorney has authority to bring criminal charges. The Auditor has authority to monitor investigations as they are ongoing. In this role, he meets regularly with the FCPD to provide input and recommendations regarding the thoroughness, accuracy, and impartiality of the investigation. The Auditor may request further investigation if he determines that the internal investigation was deficient or that the conclusions were not supported by the evidence. If the Auditor and the Chief of Police cannot resolve a disagreement, the issue will be reported to the Board of Supervisors.

5. Is there anything this panel can do to respond to complaints about the Sheriff's Department or ICE? Is there a legal impediment if the Sheriff wants this Panel to review? Why not invite the Sheriff's Department and ICE to attend these forums?

We are not aware of a legal impediment, however, as the Sheriff's Department is not under the authority of the Board of Supervisors, it is up to the Sheriff to determine that Department's process for oversight and internal review of complaints. The Panel has the authority to issue a public annual report in which it can identify the concerns expressed by residents. This may be an opportunity for those concerns to be shared with the Sheriff's Department.

6. A speaker noted that many individuals who would want to submit a complaint would likely be minorities. Given the racial and ethnic makeup of the Panel, how can the community be assured that the Panel will be sensitive to the concerns of minority populations in the county and help them to navigate the complaint process (which may be seen as complex and lengthy)?

The individuals on the Panel were chosen based on a variety of factors including expertise and experience relevant to the Panel's responsibilities, previous civic involvement, and diversity of membership. Panel members are currently conducting outreach to various community groups representing different racial and ethnic minorities to hear their concerns and explain the complaint and review process. In addition, they encourage community members to invite the Panel to meet with their groups individually to discuss their specific concerns about the FCPD or ask questions about the complaint and review process.

The Fairfax County Police Civilian Review Panel

Public Forum on December 12, 2017

Reston Community Center

Meeting Summary

Panel Members present:

Hansel Aguilar

Steve Descano

Hollye Doane

Doug Kay

Randy Sayles

Adrian Steel, Panel Chairman

Rhonda Van Lowe, Vice Chair

Others present:

Catherine Hudgins, Hunter Mill District, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Member absent:

Kathleen Davis-Siudut

Jean Senseman

The forum began at 7:07 p.m.

Panel Chairman Adrian Steel, Panel Member Randy Sayles, and Supervisor Hudgins welcomed attendees to the Panel's second Public Forum. Supervisor Hudgins provided some framing remarks on the establishment of the Fairfax County Police Civilian Review Panel and the Office of the Independent Police Auditor, and noted that the process put in place is an important opportunity for County residents to have greater oversight of the Fairfax County Police Department (FCPD).

Mr. Sayles reviewed the agenda.

Each Panel member introduced him or herself, and shared information on related expertise and experiences and what brought them to the Panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Mr. Sayles provided an overview of the Civilian Review Panel including: how they were formed, how Panel members were selected, terms of service, the Panel's purpose, and work conducted to date. The Panel has reviewed best practices in police oversight and developed Bylaws and a Code of Ethics (available at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>). The Panel's purpose is to provide an independent process for commencing an initial complaint against the Fairfax County Police Department (FCPD). The Panel will review completed investigations of public complaints of abuse of authority or serious misconduct by a FCPD officer when requested. Definitions of "abuse of authority" and "serious misconduct" were provided. It was noted that the Panel does not investigate, but reviews investigations completed by the FCPD to ensure they are accurate, complete, thorough, objective, and impartial.

Next, Independent Police Auditor Richard Schott provided an overview of the purpose and scope of the Office of the Independent Police Auditor. The Auditor is responsible for monitoring and reviewing

Internal Affairs investigations of: police officer involved shootings; in-custody deaths, while under FCPD custody; and use of force cases that result in death or serious injury. The Auditor also reviews any other use of force cases in which a public complaint is received.

Panel members Steve Descano and Hansel Aguilar reviewed the complaint filing process. Written complaints or requests for review can be submitted to the Panel via the Auditor's office in person, by mail, or online (email). Complaints are forwarded to the FCPD, which conducts the investigation and sends findings to the complainant and the Panel/Auditor. The Panel will conduct public meetings to review investigations, during which it may hear from the complainant and an FCPD representative. The Panel will inform the Complainant and FCPD of its findings, issue a public report, and may also recommend policy changes to the FCPD based on the complaints received.

Some limitations of the Panel's authority were noted, including that neither the Auditor nor the Panel has investigative authority but may only review completed investigations by the FCPD. They do not have jurisdiction over the Fairfax County Sheriff's Office or federal law enforcement (i.e., ICE). Also, they cannot review complaints related to incidents that occurred before December 6, 2016 and, absent a finding of good cause, must abide by established time limits for the submission of an initial complaint or a request for review.

The meeting was then opened up for audience questions about the Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The forum adjourned at 9:02 p.m.

Questions and Answers

1. Why doesn't the Auditor, nor the Panel, have the authority to investigate complaints against the FCPD?

There is no clear enabling legislation to permit the Panel to investigate. Therefore, both entities review investigations that are conducted by the FCPD. The Auditor has authority to review and monitor ongoing investigations. The Auditor and the Panel have the right to request further investigation by the FCPD if it finds the investigation deficient.

2. Why are there two oversight bodies – the Auditor and the Panel – rather than one?

The Ad Hoc Police Practices Review Commission noted a strong public interest in having citizen input and so it recommended that two entities be created: the Auditor to provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings; and the Civilian Review Panel to respond to community concerns or complaints about alleged incidents of FCPD abuse of authority and serious misconduct.

3. Do you have to be involved in the incident to submit a complaint?

No. Any individual, whether or not they were involved or witness to an incident, can submit a complaint.

4. How is the FCPD involved in the Auditor and Panel's review processes? How can citizens be assured that the FCPD is forthcoming with all evidence received and findings?

Initial complaints submitted to the Auditor or Panel (i.e. those not previously submitted to the FCPD) are forwarded to the FCPD for investigation.

- If the case falls under the Auditor's authority, the Auditor will monitor the ongoing investigation and provide input to the FCPD as the investigation is unfolding. (Note: The Auditor automatically monitors and reviews all officer involved shootings, uses of force resulting in death or serious injury, and deaths of individuals while in the custody of the FCPD, regardless of whether a complaint is received.) Concerns about the investigation being deficient or the need for further investigation will be brought forward to the Chief of Police. If the Auditor and the Chief of Police cannot resolve a disagreement, the issue will be reported to the Board of Supervisors and the Chief's resolution will be shared in a public statement. The Auditor will also issue a public report on each incident monitored.
- If the case falls under the Panel's authority, the Panel will receive notice of the FCPD's findings (along with the Complainant) when the FCPD completes its investigation. The Complainant will be advised in that notice of their right to request a review by the Panel.

Citizens may request a review of a completed FCPD investigation.

- If the case falls under the Auditor's authority, the Auditor will review the completed investigation and issue a public report with its findings. (Note: The Auditor automatically monitors and reviews all officer involved shootings, uses of force resulting in death or serious injury, and deaths of individuals while in the custody of the FCPD, regardless of whether a complaint is received.)
- If the case falls under the Panel's authority, the FCPD makes the investigative file available for Panel members to review. An FCPD representative knowledgeable about the investigation will appear at the public meeting to review and answer questions about the investigation, including all findings of fact, evidence collected and received, witness statements, and action taken or not.
- If the Panel or Auditor is made aware that there is additional evidence or witnesses not previously considered in an investigation by the FCPD, they can forward that information to the FCPD as a part of their review and request that the FCPD conduct further investigation. The FCPD is required to conduct the requested investigation and to report back to the Panel.

5. Why can't the Auditor and Panel take complaints about ICE?

Complaints against ICE do not fall within the scope of the Civilian Review Panel or the Independent Police Auditor, which only have authority to respond to complaints against the FCPD.

6. Can you tell me more about Chairman Steel's background? How many attorneys sit on the Panel?

Mr. Steel is a Senior Counsel with the law firm Mayer Brown LLP. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters. Currently, six Panel members are attorneys and three are not. Two Panel members have previous law enforcement experience.

7. How did the Board of Supervisors select individuals to serve on the Panel?

The Board of Supervisors announced the creation of the Panel and requested nominations from community organizations and self-nominations from interested individuals in December 2016. More than 140 resumes or letters of interest were reviewed. The individuals on the Panel were selected based on criteria including expertise and experience relevant to the Panel's responsibilities, previous civic involvement, and diversity of membership.

8. Can the Panel make policy recommendations to the FCPD?

The Panel has the authority to issue a public annual report in which it can identify concerns expressed by residents. If patterns emerge from the complaints received, the Panel can make policy recommendations and include them in their annual report.

9. What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?

Absent good cause, initial complaints must be made within one year of the incident, and the incident must not have occurred before December 6, 2016, for the Panel to review. Requests for review must be submitted by the complainant within 60 days of their receiving the FCPD's notice that an investigation is complete, absent good cause. For ongoing incidents, the Panel will consider the nearest date when determining whether a complaint falls within time constraints.

10. What are you doing to advertise the Auditor's and Panel's services to different groups within the community, particularly minorities?

We are in the process of translating our brochure and complaint form to three other languages (Korean, Spanish, and Vietnamese) for distribution across the county. We are seeking recommendations for venues where these brochures should be posted to ensure the greatest reach. (Recommendations from forum participants for posting brochures included: retail and restaurant locations (e.g., the Eden Center), schools, hospitals, community health centers, and churches.) The Panel is currently conducting outreach to various community groups representing different racial and ethnic minorities to hear their concerns and explain the complaint and review process. The Panel encourages community members to invite the Panel to meet with their groups individually to discuss their specific concerns about the FCPD or ask questions about the complaint and review process. Announcements and information on the

Auditor and Panel have been publicized in multiple places on the County's website, through social media, in Supervisors' newsletters, and other news sources, such as WTOP and the Fairfax County Connection (McLean, Reston, and Burke editions).

11. A concern was expressed that police officers (who are usually white and not from the community) routinely harass young people of color, as well as individuals at the homeless shelters, in the Mason District. A forum participant indicated that he has witnessed police officers targeting low income neighborhoods (e.g. apartment buildings in Bailey's Crossroads); conducting searches of individuals without getting proper consent due to the individuals' inability to understand English; driving around in unmarked vehicles and in plain clothes (no badge visible); and switching cars often, making it difficult for citizens to identify the officer and make a complaint.

The Panel encouraged citizens at the forum to file an official complaint (along with any documentation, video footage, etc.) so that the FCPD and the Panel can be made aware of these concerns. If someone does not want to make a complaint directly to the FCPD, they can submit it to the Auditor/Panel, who will facilitate the submission of an initial complaint. It was reiterated that anyone can file a complaint, including witnesses and individuals who want to file a complaint on behalf of someone else.

12. Do you only look at individual cases? My organization would like to see a systematic review of the FCPD's use of force cases.

The Auditor is currently reviewing the data regarding racial disparities in use of force cases from 2015 and 2016. Also, if the Panel were to receive numerous complaints about the inappropriate use of force based on race, they will also be able to identify racial disparity as a concern in their annual report and make public recommendations on FCPD policies and practices.

13. Are all complaints received by the Auditor and Panel available to the public for viewing?

Yes. The Panel's meetings, during which reviews will be conducted, are open to the public. Also, both the Auditor and the Panel will issue public annual reports summarizing complaints received.

APPENDIX D.2

(2018 Annual Report)



Fairfax County Police Civilian Review Panel Annual Report 2018

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2018



A Fairfax County, VA Publication

Publication Date: March 21, 2019

PANEL MEMBERS

Hansel Aguilar, Fairfax

Robert Cluck, Reston

Hollye Doane, Oakton

Colonel Gregory Gadson, Alexandria

Anna Northcutt, Reston

Shirley Norman-Taylor, Lorton

Adrian L. Steel, Jr., McLean

Rhonda VanLowe, Reston (Chair)

Douglas Kay, Fairfax (Vice-Chair)

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To request this information in an alternate format, call 703-324-3459, TTY 711.

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SECTION I: 2018 ACTIVITIES¹

Initial Complaints and Investigation Review Requests

The Panel's year² was productive. Continuing to build on its experiential foundation, the Panel received and processed 31 complaints³ (25 Initial Complaints; 6 investigation Review Requests), an increase of 28 Complaints from 2017. The surge in complaints submitted is no doubt due, in part, to the Panel's community outreach efforts to educate our community on the Panel's mission and processes. The Panel presented to 16 community and civic groups during the year.⁴

Operating Processes

The Panel also expanded its policy foundation with the approval of operating procedures⁵ that:

- establish a process to ensure consistent treatment of all submitted complaints and requests for investigation reviews;
- provide future Panel Members with a roadmap for Panel operations;
- create correspondence templates; and
- document the administrative tasks performed by the Independent Police Auditor Staff.

In addition, the Panel proposed to the Board of Supervisors three Bylaw Amendments (approved on October 16, 2018)⁶ to clarify certain aspects of the Panel process. Most notable, the change to Section VI.E.1(a) makes clear that the Panel must perform an investigation review if the Panel determines that there is an allegation of abuse of authority or serious misconduct by a Fairfax County Police Department (FCPD) officer stated within the four corners of the complaint. Further, the amendments clarify that a complainant's appearance is not required for the Panel to conduct a Review Meeting. That said, there is no change to the Panel's

¹ See Appendix A for an overview of the Panel's mission and history.

² March 2018 to February 2019

³ See Appendix B for a summary table of the complaints and review requests received.

⁴ See Appendix C for a list of the community and civic organization presentations

⁵ See Appendix D for the Panel's current Operating Procedures.

⁶ See Appendix E for the Bylaws of the Fairfax County Police Civilian Review Panel

obligation to provide complainants with notice of the Review Meeting, and, if the complainant elects to address the Panel, the complainant will have the opportunity to do so.

Public Forum

The Mount Vernon Governmental Center was the site of the Panel's sole public forum for the year. The December 10, 2018⁷ public forum was well attended by county residents. Both Supervisor Dan Storck and Chief Edwin Roessler attended as well. While public participants raised several salient questions during the forum, two themes surfaced that are also aligned with concerns Panel Members expressed during our meetings and deliberations: (i) FCPD accountability (the obligation of the FCPD to communicate to complainants and the public the results of its investigations), and (ii) transparency (the specific, detailed information shared with the public through FCPD communications to complainants and through Panel Reports). Addressing these two concerns with some urgency is incumbent upon the Board of Supervisors, the FCPD, and the Panel, if the Panel is to succeed in its mission to build public trust and confidence in the FCPD through an investigation review process that bolsters FCPD accountability.

SECTION II: ISSUES FOR BOARD OF SUPERVISORS CONSIDERATION

Accountability and Transparency

Concerns about transparency are not new. Discussions around the issue date back to the Ad Hoc Police Practices Commission. Having discussed the transparency issue during its meetings and received several public comments regarding the same, the Panel's view is that more information about the results of the FCPD investigations of complaints must be shared with complainants. Two areas noted for improvement are: (i) the FCPD letter sent to the complainant upon completion of an investigation (the "Disposition Letter") and (ii) the Panel's Review Report, which is issued (and made public) after completion of a Review Meeting.

⁷ See Appendix F for the Summary of the Panel's 2018 Public Forum

i. The FCPD Disposition Letters

The Disposition Letters must contain sufficient, specific detail to provide the complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings. The Panel finds that, while the Disposition Letters have stated the outcome of the investigations in broad general terms, too many Disposition Letters issued since the Panel's inception do not provide complainants with details about the investigation or the reasons for the FCPD's conclusions. Chief Roessler pledged during the pendency of the Commission that Disposition Letters would be more than just boilerplate responses, yet the Panel has not seen consistent and appreciable movement towards change.

The Panel recommends that all Disposition Letters contain, at a minimum, the following:

- a description of investigation undertaken;
- key factual findings and supporting evidence;
- a summary of relevant evidence and witness statements;
- a statement of reasons for FCPD conclusions;
- Virginia Code and FCPD General Orders that were considered in the investigation and whether violations were found; and
- whether disciplinary action was taken or not (without disclosing actual discipline imposed).

We believe that a more detailed and transparent response will: (i) provide the complainant with a positive understanding of the FCPD efforts to address the complainant's concerns and (ii) build greater community trust through greater transparency.

ii. Panel Review Reports

A corollary issue to concerns regarding the content of Disposition Letters, is the detail provided in the Panel Review Report. The Panel has heard concerns from the public that the content of the Panel's Review Report is limited, and we would like to address

the concern by including more details about the FCPD investigation in the Report. That said, the Panel has some apprehension that the language of the Board of Supervisor Action Item 17, dated December 6, 2016 (p. 278), limits the Panel's ability to include salient facts in public reports. The relevant section provides: "each Panel Member who is provided the opportunity to review [an Investigation Report] shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public." One possible interpretation of the language is to characterize the entire Investigation Report as a "personnel record." This interpretation of the Action Item (i) would unduly limit the Panel's ability to discuss or refer to information from the FCPD investigation file at a Review Meeting or in a Panel Report, and (ii) seems contrary to the objective of more transparency with respect to FCPD actions. Further, this restrictive interpretation would inhibit the Panel's ability to achieve its purpose "to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public." The Panel proposes that the following principles apply to the content of Panel Review Reports:

- Information cited in Disposition Letters, disclosed by the FCPD in Panel Review Meetings and information in the investigation file, other than Personnel Record Information, may be included in Panel Reports.
- "Personnel Record information" is defined as specific officer discipline (excluding the fact of a violation of a FCPD General Order or policy, law, or rule) and certain statements of police officers taken (as required under the provisions of *Garrity v. New Jersey*), unless officer consent is secured.
- Names, addresses, and other identifying information of complainants, officers, and witnesses will not be included in Panel Reports (a practice consistent with that of the Independent Police Auditor).

Panel Comments and Recommendations⁸

The Panel offered comments and recommendations to the FCPD during the year through Panel Review Reports that reflect a combination of observations offered by complainants and reflections by Panel Members after Review Meetings. However, there is no process in place for Panel comments and recommendations to be reviewed, considered, and, where appropriate implemented. If the Panel's review process is to have a meaningful impact for the community, the Panel's comments and recommendations must be given serious consideration as part of the investigation review process.

Request for Action

The Panel leadership met with the Panel's FCPD Liaisons and the Commander of the Internal Affairs Bureau (on January 7, 2019) to discuss the issues outlined in this Section II. The Panel's leadership hoped to address concerns through continuing discussions with FCPD as a working group. However, FCPD expressed its preference that the Panel's concerns be taken directly to the Board of Supervisors. As a result, through the submission of this report, the Panel requests that the Board of Supervisors establish a process to address and resolve the concerns outlined in this Section II and future recommendations offered by the Panel. As a start, the Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same. The Panel is committed to an investigation review process that fosters transparency to the public and accountability from the FCPD. A process for vetting concerns that surface through investigation reviews, public comments, and public forums is imperative for the Panel's effective discharge of its mission.

⁸ See Appendix G for Panel Review Reports published during the year, which includes Panel comments and recommendations.

SECTION III: WITH APPRECIATION

Our sincere thanks to Jean Senseman, Kathleen Davis-Siudut, Randy Sayles, and Steve Descano for their service and invaluable contributions to the Panel. We welcomed four new Panel Members during the year to complete the terms of our colleagues:

- Anna Northcutt
- Robert Cluck
- Col. Gregory Gadson
- Shirley Norman-Taylor

We are grateful for their willingness to serve and for the continued service of Panel Members appointed as part of the inaugural Panel.⁹ A heartfelt thank you also goes to the Independent Police Auditor and Staff for their continued support.

The Panel also acknowledges the complainants for their courage in coming forward to participate in the Panel's complaint and investigation review processes and entrusting their concerns to the Panel. We look forward to continuing the Panel's work in the coming year.

⁹ See Appendix H for Panel Member Biographies

Establishment and Mission of the Police Civilian Review Panel

The Fairfax County Police Civilian Review Panel (“Panel”) was established by the Board of Supervisors on December 6, 2016, in response to recommendations from the Ad Hoc Police Practices Review Commission.¹ The nine-member Panel’s mission is to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (“Department” or “FCPD”) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigations. The Panel is appointed by, and reports directly to, the Board of Supervisors. The Panel is governed both by the Bylaws approved by the Board of Supervisors and a Code of Ethics adopted by the Panel.²

The Panel generally meets the first Thursday of each month at the Fairfax County Government Center. Panel meeting dates and locations are announced on the County’s Public Meetings Calendar (<https://www.fairfaxcounty.gov/Calendar/ShowCalendar.aspx>).

¹ The December 6, 2016 Action Item and February 28, 2017 clarifications can be found in the February 28, 2017 Final Board Package (pp. 268-279) from the County’s website: <https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting%20materials/board/2017/feb28-final-board-package.pdf>

² Capitalized terms in this Report have the meaning set forth in the Defined Terms attached to the Bylaws, unless the context indicates otherwise.

2018 Panel Complaint Summary Table

CRP Case Number	Date Received	Complaint Type	Incident Type	Status
N/A	1/12/2018	Initial Complaint	Alleges that excessive force was involved, falsely arrested, assaulted and abused while in handcuffs. Alleges procedural violations prevalent, abuses of authority as well as misconduct by FCPD officers.	Incident occurred before December 6, 2016.
CRP-18-01	1/24/2018	Initial Complaint	Complaint against a School Resource Officer alleging the officer as being "defiant and disrespectful", "rude and intimidating."	Complainant did not request a review.
CRP-18-02	2/5/2018	Request for Review	Alleges false arrest for being "drunk in public" and claims that he was "abused throughout the entire scenario."	Panel voted to concur with FCPD findings on 4-5-2018. Report published on 10-4-2018.
N/A	4/24/2018	Initial Complaint	Alleges false arrest when at police department to press charges against aggressor.	Incident occurred before December 6, 2016.
N/A	4/27/2018	Initial Complaint	Claims that FCPD failed to investigate drowning of client. Complaint submitted by counsel of Mr.F.	Incident occurred before December 6, 2016.
CRP-18-03	5/11/2018	Initial Complaint	Alleges that excessive force was involved, falsely arrested, assaulted and abused while in handcuffs. Alleges procedural violations prevalent, abuses of authority as well as misconduct by FCPD officers.	Complainant did not request a review.
CRP-18-04	5/11/2018	Initial Complaint	Claims he has as not been able to retrieve seized property back from the FCPD.	Complainant did not request a review.
CRP-18-05	6/4/2018	Initial Complaint	Alleges that an officer made false reports regarding a motorcycle accident and refuses to correct the reports.	Complainant requested a review (see CRP-18-12)
CRP-18-06	6/13/2018	Initial Complaint	Alleges that FCPD has not addressed the loitering of minors (in possession of a knife) at the entrance of his condominium building after multiple calls.	Complainant did not request a review.
CRP-18-07	6/19/2018	Initial Complaint	Alleges that FCPD did not allow her to make a criminal assault report against a former roommate.	Complainant did not request a review.
CRP-18-08	6/20/2018	Initial Complaint	Alleges an officer failed to file a report after having a direct contact with an individual who is stalking her.	Complainant did not request a review.
CRP-18-09	7/2/2018	Initial Complaint	Alleges harassment by the Police Department, which started in November of 2017.	Complainant did not request a review.
CRP-18-10	7/6/2018	Initial Complaint	Alleges the officer was following and harassing him, that the officer did not have enough probable cause to search the vehicle he was driving, and the officer searching him multiple times was excessive.	Complainant did not request a review.
CRP-18-11	7/13/2018	Initial Complaint	Alleges an officer has turned the rest of the department against her. Alleges "aggressive, rude, nasty" behavior. Alleges that officers have declined to take her reports. Alleges she is being intimidated, bullied, and harrassed. Alleges that she is receiving differential treatment and is being discriminated against due to her race.	Complainant did not request a review.

2018 Panel Complaint Summary Table

CRP-18-12	8/21/2018	Request for Review	Requesting a Review of Initial Complaint he filed with the Panel in June 2018.	Panel voted to concur with the findings and determination of the FCPD on 11-1-18. Review Report published on 1-9-19.
CRP-18-13	9/10/2018	Initial Complaint	Alleges improper investigative techniques, violation of forfeiture procedures, and abusive language	FCPD Investigation Complete
CRP-18-14	9/24/2018	Initial Complaint	Alleges a lack of trust with the detective assigned to the case.	Complainant Withdrew Complaint
CRP-18-15	9/24/2018	Initial Complaint	Alleges misrepresentation of Hispanics in FCPD data reporting. Issue Based Reporting.	Anonymous complaint forwarded to FCPD as an inquiry.
CRP-18-16	9/27/2018	Initial Complaint	Alleges racial profiling.	Complainant Withdrew Complaint
CRP-18-17	9/29/2018	Initial Complaint	Alleges harassment, racial profiling, illegal search.	FCPD Investigation Complete
CRP-18-18	9/30/2018	Initial Complaint	Alleges issues filing police reports after filing a police report alleging misconduct, discrimination against complainant occupation, harassment, hostile behavior.	Forwarded to FCPD for Investigation. Complainant could not be reached by Staff or FCPD.
CRP-18-19	10/11/2018	Request for Review	Alleges coercion, threats, and violation of constitutional rights.	Unable to Review due to Pending Litigation. Complainant was instructed to notify the Panel when litigation is concluded.
CRP-18-20	10/19/2018	Initial Complaint	Alleges racial profiling and false police report.	Complainant Withdrew Complaint
CRP-18-21	10/29/2018	Initial Complaint	Alleges harrasment.	FCPD Investigation Complete
CRP-18-22	11/7/2918	Initial Complaint	Alleges negligence related to officer statements and the filing of a National Missing Persons Report.	FCPD Investigation Complete
CRP-18-23	11/9/2018	Initial Complaint	Alleges misconduct, abuse of power, and unethical practices.	Complaint did not involve a current or former FCPD employee.
CRP-18-24	11/13/2018	Initial Complaint	Alleges misconduct, unlawful arrest, illegal search.	Incident occurred before December 6, 2016.
CRP-18-25	11/15/2018	Request for Review	Alleges negligence related to animal welfare checks by Animal Control Officers.	Complainant Withdrew Complaint
CRP-18-26	11/26/2018	Request for Review	Initial complaint alleged bias during a traffic stop. Complainant is Requesting a Review because complainant did not receive a report that detailed results of the investigations but instead a short letter. Complainant also believes that the investigation was not independently conducted. Alleges racial Profiling.	Panel voted to concur with the findings and determination of the FCPD on 1-3-19. Review Report is currently being drafted.
CRP-18-27	12/10/2018	Request for Review	Requesting a Review of alleged illegal stop (Panel) and physical assault (Auditor) by FCPD officers on a victim	Panel Recommends additional Investigation by FCPD.
CRP-18-28	12/17/2018	Initial Complaint	Requesting the Panel work with the Chief of FCPD to examine policies and procedures that allow for the high number of criminal arrests in the County that are dismissed or determined Nolle Prosequi	Forwarded to FCPD for Investigation

Community and Civic Organization Presentations

- ❖ ADAMS Center
- ❖ ADAMS Center Leadership Team
- ❖ Autism Society NOVA
- ❖ Centreville Labor Resource
- ❖ Cornerstones
- ❖ Criminal Justice Advisory Board
- ❖ Fair Oaks Citizen Advisory Committee
- ❖ Fairfax County Federation of Citizens Association Public Safety Program
- ❖ Faith Communities in Action
- ❖ International Visitor Leadership Program – Ukrainian Delegation
- ❖ McLean Citizen Advisory Committee
- ❖ McLean Citizens Association Public Safety Program
- ❖ Mount Vernon Citizen Advisory Committee
- ❖ Mount Vernon Council of Citizens Association
- ❖ Unitarian Universalist Association
- ❖ West Springfield Citizens Advisory Committee

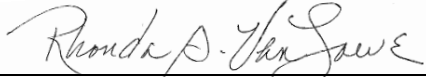
Other community outreach efforts include:

- ❖ 2018 Public Forum
- ❖ Chanel 16 produced video
- ❖ Reston Impact video interview



Fairfax County Police Civilian Review Panel Procedures & Foundational Documents

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: A-1	Subject: Administrative Support Provided by the Office of the Independent Police Auditor Staff
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: This document serves as a guideline for the Auditor’s Staff charged with providing administrative support to the Panel.

Complaint Intake and Processing Support

- Staff will receive Complaints on behalf of the Panel during County business hours Monday – Friday. Complaints may be received in person, via the secured Complaint Form drop box (located outside of the Auditor Office), and by email, phone, or U.S. Mail. Staff will check the Complaint Form drop box for incoming complaints.
- Staff will maintain all records regarding a Complaint on the County’s shared drive. Complaint files will include: written Complaints submitted by complainants, formal Panel correspondence with the complainant (i.e., emails from the Panel’s email address or letters on Panel letterhead), copies of FCPD correspondence to the complainant shared with the Panel, and related Panel Review Reports.
- In addition, Staff will maintain printed copies of complaint files in the Auditor’s Office for reference by Staff or Panel Members.
- The Complaints Master Log spreadsheet (Attachment 1) will be updated with the Complaint information. The Complaints Master Log spreadsheet will continually be updated while the Complaint is processing until it has been closed. Complainant and officer identifying information (if included) will be redacted from the Master Log spreadsheet at the expiration of the retention period per OIPA Procedural Memorandum 03 on Records Management. The Complaints Master Log spreadsheet containing complainant or officer identifying information will be used for internal Panel purposes only.
- Staff will assist the Panel Chair in determining whether Complaints are: Initial Complaints or Requests for Review, timely filed, and/or the subject of pending civil, criminal, or administrative litigation.
- At the direction of the Panel Chair, Staff will prepare correspondence to be sent to complainants.¹ This correspondence will be sent (once authorized by the Panel Chair) to the complainant hardcopy via U.S. Mail and electronically via email (when available).

¹ Specific correspondence types are described in greater detail in Police Civilian Review Panel Procedural Memoranda entitled, *Intake and Processing of Initial Complaints* and *Intake and Processing of Review Requests*.

- At the direction of the Panel Chair, Staff will prepare correspondence to be sent to County officials on behalf of the Panel, to include the transmission of Panel reports.
- At the direction of the Panel Chair, Staff may call and/or email complainants to provide information regarding the Panel's processes, and/or to gather additional information from complainants. Staff may record information from complainants to convey to the Panel but will not discuss substantive issues with complainants on behalf of the Panel. Substantive questions or concerns from complainants will be referred to the Panel Chair to address.

Meetings Support

- Staff will prepare and post public meeting notices within the timeframe required by the Virginia Freedom of Information Act for all Panel Meetings, including meetings of subcommittees.
- Staff will provide the required notice to County officials before Panel Review Meetings.
- Staff will be responsible for reserving meeting rooms to include closed session rooms.
- In coordination with the Panel Chair, Staff will create, copy, and collate documents that will be disseminated during Panel Meetings.
- Staff will attend Panel Meetings and compose a summary of each meeting.
- Staff will provide logistical support for the Panel during Panel Meetings.
- Staff will coordinate with County staff to have Panel Meetings audio recorded.
- When necessary, Staff will coordinate for translation services to be provided at the Panel Meetings.

Panel Website

- Staff, in consultation with the Panel Chair, will maintain the Panel website, to include posting reports and other content as determined by the Panel and in compliance with the County's web content Procedural Memorandum No. 13-04 and Department of Information Technology policies and guidelines.

Outreach Support

- Staff, at the direction of the Panel Chair, will reach out to community organizations, houses of worship, non-profits, or other groups within the County to make an initial outreach effort introducing the Panel. Staff will document and track the Panel's community outreach effort.
- Staff will provide logistical support during outreach events for the Panel, as needed.
- Staff may attend County sponsored outreach events and act as a liaison to link the Panel to other County agencies.
- Staff may attend other outreach events when there is a clear need for administrative or logistical support, as agreed by the Panel Chair and the Auditor.


Other Support

- Staff will perform other administrative duties as cited in the Procedures and Foundational Documents manual and as agreed upon by the Panel Chair, Staff, and the Auditor.

Summary of Headings found on Complaints Master Log

The bulleted list below outlines the column headings that are found on the Complaints Master Log. This information is tracked for each complaint received.

- Complaint Number
- Date Complaint Received
- Complainant First Name
- Complainant Last Name
- Description: Incident Description Provided or Reasons for Review Request
- How was Complaint Received?
- Completed a Complaint Form?
- Initial Complaint or Request for Review?
- Actions Taken Log
- CRP Complaint Number
- Complainant Email Address
- Phone Number
- Address
- City, State, Zip Code
- Age
- Gender
- Race/Ethnicity/National Origin
- Witness Information
- Officer Information
- Incident Date
- Incident Time
- Incident Location
- Records Purge Date based on Procedural Memorandum 03 Records Retention

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: A-2	Subject: Panel Meeting Agenda Items
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

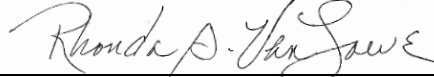
Purpose: To outline guidelines for establishing the monthly Panel Meeting Agenda that allows for (i) input from Panel Members and (ii) timely notice to the public.

Agenda Items

- Panel Member may, at any time before a meeting agenda is circulated, contact the Chair to propose topics for the next meeting agenda.
- The Chair will send a draft Panel Meeting Agenda to the Panel Members at least 10 days before the scheduled meeting date.
- Panel Members may propose changes to the draft Meeting Agenda not later than seven days before the scheduled meeting date.
- Any documents that support an agenda item must be sent to the Chair for distribution to the Panel Members at least seven days before the scheduled meeting date to allow for ample time for review and consideration.
- If a Panel Policy or Procedure is proposed for consideration the Chair may require a review from Panel Counsel to ensure compliance with the Bylaws.

Public Notice of the Agenda

- The Panel Meeting Agenda will be published at least three (3) days before a scheduled meeting date

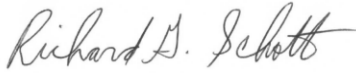
Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: A-3	Subject: Participation in Meetings due to Personal Matter; Certain Disabilities; Distance from Meeting
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: This policy allows Panel Members to participate in Panel Meetings through electron communications within the terms and limits outlined below.

Requirements for Remote Participation

- A member of the Civilian Review Panel (“the Panel”) may participate in a meeting governed by the provisions of Virginia Code §§ 2.2-3700 *et. seq.*, the Virginia Freedom of Information Act (“VFIA”), through electronic communication means from a remote location that is not open to the public only as follows:
 - If, on or before the day of the meeting, a member of the Panel holding the meeting notifies the chair of the Panel that such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter, and the Panel holding the meeting records in its minutes the specific nature of the personal matter and the remote location from the which the member participated; and,
 1. A quorum of the Panel is physically assembled at the primary or central meeting location; and
 2. The Panel makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.
 3. If a member’s participation from a remote location is disapproved because such participation would violate this policy such disapproval shall be recorded in the minutes with specificity.
 4. This policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.
 5. Such participation by the member shall be limited each calendar year to two meetings:

- If a member of the Panel notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the Panel records this fact and the remote location from which the member participated in its minutes.

Office of the Independent Police Auditor Procedural Memorandum	
No: 03	Subject: Records Management
Approval Date: December 1, 2018	Review Date: December 1, 2020
Signed by Richard Schott, Independent Police Auditor	

Purpose: This policy establishes the general responsibilities of staff in the Office of the Independent Police Auditor (OIPA) and members of the Police Civilian Review Panel (Panel) in regards to retaining and disposing of records in compliance with the Virginia Public Records Act (Code of Virginia § 42.1-76 et seq.). The OIPA oversees the management of records by Panel Members to ensure that both entities are coordinated and uniform in the retention and disposition of records.

Agency Records Officer

The Management Analyst II will serve as the agency records officer for OIPA and will be responsible for the development, implementation, and ongoing coordination of the OIPA's records management program. Responsibilities include:

- Serving as the liaison with the Archives and Records Management Branch, DIT.
- Maintaining a working knowledge of applicable local, State, and Federal Statutes and/or regulations affecting records management practices.
- Developing procedures to implement OIPA's records management program and establishing records retention and disposition schedules for the office.
- Serving as the point of contact for Panel Members regarding records management and providing them with guidance (in consultation with Panel counsel) to ensure compliance with established procedures.
- Providing training and resources as necessary to OIPA staff and Panel Members.
- Ensuring that archival and permanent records are properly identified and maintained.
- Supporting OIPA staff and Panel Members in their individual responsibilities to retain temporary records according to their retention schedules and to dispose of non-records.
- Directing OIPA staff and Panel Members to review their files and emails on a semi-annual basis and certifying that records have been destroyed according to established OIPA procedures.

Definition of Records and Non-Records

- A "Public Record" is any recorded information that documents a transaction or activity by or with any public official if it is produced, collected, received or retained in connection with the transaction of public business (Code of Virginia § 42.1-77). Records

include, but are not limited to, notes, letters, documents, printouts, audio recordings, videos, emails, and texts.¹

- A material or email will be considered a record when it is related to one’s responsibilities as a public official and explains/justifies/documents an action or decision. An email will be treated as a record (and retained accordingly) when it does one of the following:
 - Corresponds with staff, complainants, vendors, or the general public about official business (may include incoming messages)
 - Involves negotiations on behalf of department or locality
 - Approves or authorizes actions or expenditures
 - Signifies policy changes or developments
 - States official opinions relating to a public official’s position
 - Creates precedents, such as messages issuing instructions or advice
- Correspondence that is of a routine administrative nature shall be considered a record and will be retained only as long as it is administratively useful. Correspondence will be considered routine when it is part of a regular/established procedure or typical sequence of actions (e.g., building an agenda, scheduling meetings).
- Materials (and emails) that do not meet the criteria will be considered non-records and will not be retained (e.g., informational emails that do not require a response, general announcements, reference materials or copies of materials retained by someone else, draft material related to documents that have since been finalized).

Records Retention and Disposition Schedules

- Records retention and disposition schedules for OIPA and Panel were developed in accordance with the Library of Virginia General Schedule No. GS-19 for County and Municipal Governments.
- A summary table of the OIPA and Panel Retention Schedules is provided below. A more detailed document, *Retention Schedules for the Office of the Independent Police Auditor and the Police Civilian Review Panel*, will be maintained by the OIPA which outlines for each record type: agency retention period, agency disposition process, and related Library of Virginia Record Series information

Summary of OIPA/Panel Retention Schedules	
Record Type	Retention Period
OIPA Policies/Procedures	permanent (approved versions)
Panel Bylaws	permanent (approved versions)

¹ See also the definition of “public record” in the Virginia Freedom of Information Act, Va. Code Ann. §§ 2.2-3700 through 2.2-3714 (FOIA).

Panel Adopted Policies/Procedures	permanent (current versions)
OIPA/Panel Annual Reports	permanent
OIPA Incident Review and Other Public Reports	permanent
Panel Review Reports	permanent
Panel Meeting Agendas, Summaries and Audio Files	permanent
Complaint Forms/Emailed Complaints	1 year from close of complaint (redacted versions saved for as long as administratively/historically useful)
OIPA/Panel Official Correspondence with Complainants	1 year from close of complaint (redacted versions saved for as long as administratively/historically useful)
Internal Correspondence concerning a Complaint (to Panel Members or OIPA staff)	1 year from close of complaint
Correspondence to FCPD concerning a Complaint	1 year from close of complaint
Copies of FCPD Official Correspondence to Complainants	Redacted version kept with complaint file
Internal Correspondence not concerning a Complaint (to Panel Members or OIPA staff)	2 years after the end of the calendar year
Internal Correspondence not concerning a Complaint (from IPA only)	3 years after the end of the calendar year
OIPA/Panel Non-Routine Official Correspondence with External Stakeholders (e.g., BOS, FCPD, media)	3 years after the end of the calendar year
Draft Documents/Reports	until the subsequent draft or the final document is completed
Routine/Administrative Documents/Correspondence	none, as long as administratively useful
OIPA Master Complaint/Review Spreadsheets	none, as long as administratively useful (PII redaction 1 year from close of complaint)
Spreadsheets to track processes (e.g., outreach)	none, as long as administratively useful
Reports/Status Updates for Internal Use	none, as long as administratively useful
Informal Guidelines, Instructions etc. (not approved procedures)	none, as long as administratively useful
Presentation materials (with new substantive content)	1 year and then for as long as administratively useful
Routine voicemails/telephone messages	none
Substantive Voicemails from Complainants left with OIPA	1 year from close of complaint

Substantive Voicemails from Complainants left with Panel Members	none
FOIA Requests	3 years after responses are provided
RM-3 Forms approved	3 years after the end of the calendar year

- OIPA will serve as the custodian for all permanent records, including those of the Panel. All OIPA reports, Panel reports, Panel Bylaws, and Panel meeting materials will be maintained on the website as well as on the S: Drive. OIPA Procedures and Procedures adopted by the Panel will be maintained on the S: Drive.
- OIPA will serve as the custodian for all records related to the complaint file (complaints, official correspondence sent to complainants) and will redact personally identifiable information (PII) (i.e., name, phone, email, address, date of birth) of the complainant and involved officer(s)/staff at the expiration of the retention period. Redacted versions of documents in the complaint file will be retained for as long as deemed administratively useful, or for statistical or historical purposes.
- OIPA staff and Panel Members will be individually responsible for retaining temporary records (i.e., individual correspondence, draft documents) of which they are the custodian per the retention schedules noted above.
- OIPA staff should store temporary records on Outlook, H: Drive, or S: Drive.
- Panel Members should store temporary records in a designated folder in their email accounts until County Outlook accounts are provided. Temporary records may be stored on Panel Member’s personal computers in a folder designated solely for Panel business.

Disposition of Records and Non-Records

- Documents and emails that are considered non-records will be purged on a regular basis (i.e., every 30 days).
- Records that are considered routine administrative will be deleted as soon as they are no longer administratively useful.
- Records that are considered draft materials will be deleted once the subsequent draft or the final document is completed.
- All other temporary records will be deleted according to their retention period on a semi-annual basis (January and July), at the prompting of the OIPA records officer.
- The OIPA records officer will provide reminders to OIPA staff and Panel Members to review their documents and emails and ensure that non-records have been deleted. Reminders will include specific instructions on the type of records that have reached the end of their retention period and can be deleted.
- The destruction of records by OIPA staff and Panel Members will be documented by the submission of Certificates of Records Destruction (Form RM-3) to the Archives and Records Management Branch, DIT.

Succession Planning


- Official records of public officials are the property of Fairfax County and must be returned at the expiration of a term of office or immediately following a resignation.
- Departing OIPA staff will be asked to clean out their Outlook accounts, transfer any records on their Outlook and H Drive to a designated OIPA staff person, and inform OIPA staff of the location of certain records on the S: Drive.
- Exiting Panel Members will be instructed by OIPA prior to the end of their term, or upon notice of their resignation, to send all records to OIPA for retention and to delete all records in their possession after transmission to OIPA.

Collection and Handling of Personally Identifying Information (PII)

- Complaints with PII will be stored electronically only on the S: Drive that is accessible by the Independent Police Auditor and his two staff persons.
- Hard copy versions of Complaints will be stored in the OIPA office, which is locked at all times when OIPA staff are not physically present.
- After the retention period expires (1 year from the close of the complaint), complaint forms will be redacted of any PII of the complainant (name, phone, email, address, DOB) and involved officer(s)/staff. Non-redacted complaint forms will be disposed of (electronic and hardcopy) and replaced with redacted versions for future reference. PII stored in spreadsheets to track complaints will also be redacted at the end of the retention period.

Definitions

- **Close of complaint:** The complaint will be considered closed when:
 - OIPA publishes the final incident report and provides notice to complainant that the report is complete, or when
 - the Panel publishes a final review report and sends the notice of completion to the Complainant (request for review) occurs or on the date of the Panel's last correspondence with the Complainant following the FCPD letter (initial complaint).
- **Complaint file:** Documentation related to the processing of a complaint, including the original (or redacted) complaint, official OIPA or Panel correspondence with the Complainant, copies of FCPD correspondence shared with the OIPA/Panel.
- **Personally identifiable information or PII:** Information that "describes, locates or indexes anything about an individual... or... affords a basis for inferring personal characteristics." The following information will be treated as PII by OIPA and the Panel and redacted per this procedure: name, phone, email, address, and date of birth.

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: O-1	Subject: Intake and Processing of Initial Complaints
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: To provide procedures for filing Complaints and processing Initial Complaints submitted to the Panel in a timely, responsive, and consistent manner.

Filing a Complaint

- Persons may submit a Complaint to the Panel on the Complaint Form (Attachment 1, updated periodically) or in another written format (email, letter, etc.). A Complaint form is available electronically on the Panel’s webpage, in hard copy in the Auditor’s Office, and at other County locations (where brochures are displayed).
- A complainant may file a Complaint by:
 - Sending the Complaint Form or other written correspondence to the Panel:
 - via U.S. Mail to the Panel or Auditor at 12000 Government Center Parkway, Suite 233A, Fairfax, VA 22035.
 - via email to the Panel or Auditor at: PoliceCivilianReviewPanel@fairfaxcounty.gov or IPAPoliceAuditor@fairfaxcounty.gov.
 - Calling the Office of the Independent Police Auditor. Staff can direct the complainant to complete a Complaint form or, if preferred by the complainant, Staff will fill out a Complaint Form on his or her behalf. Complainants will be given the opportunity to review the accuracy of the Complaint form before it is forwarded to the Panel.
 - Delivering the Complaint Form or other written correspondence in person to the Auditor’s office or placing in the secured Complaint Form drop box outside of the office.

Initial Complaints

- The Panel Chair, in consultation with Staff, will determine whether:
 - a Complaint is an Initial Complaint or a Request for Review,

- the matter described in the Complaint is the subject of pending civil, criminal, or administrative litigation, and
- whether the incident occurred after December 6, 2016 and is otherwise timely filed.
- Staff, in consultation with the Panel Chair, will prepare correspondence acknowledging the Panel's receipt of the Initial Complaint, using the attached template:
 - Confirmation of Receipt – Initial Complaint (No Pending Litigation) (Attachment 2)
 - Confirmation of Receipt – Initial Complaint (Pending Litigation) (Attachment 3)
- The Panel Chair will forward Complaints to the FCPD Liaison.
- Once an Initial Complaint is forwarded to the FCPD Liaison, the FCPD will have 60 days to conduct its investigation (unless the time period is extended upon request of FCPD to the Panel) and send its findings to the complainant and to the Panel.
- If the FCPD requests a time extension for the Investigation of the complaint, Staff, in consultation with the Panel Chair, will draft and send a letter to the complainant notifying the complainant of the time extension and the FCPD's expected date of completion of the Investigation, using the attached template:
 - Notification of Investigation Extension Request by FCPD (Attachment 4)
- Upon receiving the findings letter from the FCPD, Staff, in consultation with the Panel Chair, will draft and send a letter to the complainant that explains the process for requesting a review of the Investigation, using the appropriate template as follows:
 - FCPD Investigation Complete – Instructions to Request a Review (Attachment 5)

Other Actions

- The Panel Chair will appoint two Review Liaisons to perform the duties outlined in Fairfax County Police Civilian Review Panel Procedural Memorandum: Duties of Review Liaisons.
- The Panel Chair, with assistance from Staff, will send Complaints to Panel Members for their information.

- The Panel Chair may consult with the Fairfax County Community Services Board with respect to the processing of Complaints.

Requests for Review

- Requests for review will be processed in accordance with Fairfax County Police Civilian Review Panel Procedural Memorandum: Review Requests.



Fairfax County Police Civilian Review Panel Complaint Form

SUBMISSION OPTIONS	
Hand Deliver or Mail to:	Office of the Independent Police Auditor 12000 Government Center Parkway, Suite 233A Fairfax, VA 22035
Call:	703-324-3459, TTY 711
Email:	PoliceCivilianReviewPanel@fairfaxcounty.gov

This form and information on the complaint process may be accessed at www.fairfaxcounty.gov/policecivilianreviewpanel.
Brochures with complaint forms in English, Korean, Spanish, and Vietnamese are also available.

CONTACT INFORMATION	
<i>The identity of a juvenile or a victim of sexual assault will remain confidential consistent with the Board Agenda Item dated February 28, 2017, ACTION-17 at p. 275, and to the extent allowed under the Virginia Freedom of Information Act, Virginia Code Sections 2.2-3700, et seq.</i>	
Name:	
Telephone Number:	Email:
Address:	
City:	State & Zip Code:
Were you a participant in the incident?	YES NO
Were you a witness to the incident?	YES NO
Are you submitting this form on behalf of someone else? YES NO	<i>If yes, please provide his or her contact information.</i>
If yes, does the person know you are filing this complaint? YES NO	

DEMOGRAPHIC INFORMATION		
Gender:	Age:	Race/Ethnicity:

Who Were the Fairfax County Police Department (FCPD) OFFICER(s) Involved?
Describe the officer(s). <i>Provide any known information about the FCPD officer(s)/employee(s) involved in the misconduct. Helpful information includes: Name, Badge Number, Police District, Physical Description (Age, Race, Gender, Height, Weight, Hair/Eye Color, Clothing), Vehicle Number/Description (Color, Make, Model). Attach additional information if necessary.</i>

Did Anyone Witness/See What Happened?
Who? <i>Provide contact information (name, phone, email, address) for witnesses to the misconduct, if known. Indicate if the witness(es) are aware that you are submitting this complaint. Attach additional information if necessary.</i>

What Happened?

Provide the incident date, time, location, and details. If the misconduct occurred on multiple days, times, or locations, list each to your best recollection. Attach additional information if necessary. **If you want the Panel to review a completed FCPD Investigation, please state the reasons for your request.**

Incident Date:

Incident Time:

Incident Location:

Incident Details:

Is the incident described above the subject of a court proceeding?

If yes, please attach a description of the proceedings.

YES

NO

Has the FCPD been asked to investigate this incident in the past? *If yes, please attach any correspondence you received from the FCPD.*

If the incident described above has not been investigated by the FCPD, the Panel must send the complaint to the FCPD for investigation. The FCPD may contact you as a part of the investigation process.


YES

NO

By signing this form, I certify that the statements made herein, and on any attached documentation, are true and complete to the best of my knowledge, information, and belief.

Signature:

Date:

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: O-2	Subject: Intake and Processing of Review Requests
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: To provide procedures for filing and processing Review Requests submitted to the Fairfax County Police Civilian Review Panel (the “Panel”) in a timely, responsive, and consistent manner.

Filing a Review Request

- A complainant can file a Review Request with the Panel the same way they can file an Initial Complaint (see page one of Panel Procedure: Intake and Processing of Initial Complaints).
- A complainant must include in the Review Request a statement describing the reason(s) for the Review Request.
- Upon receipt of a Review Request:
 - Staff, in consultation with the Chair, will determine whether the Review Request is timely filed (within 60 days of the date of the FCPD Disposition Letter), unless the Panel determines that there is good cause to extend the filing deadline.
 - Staff, in consultation with the Chair, will determine whether the matter described in the Review Request is the subject of pending civil, criminal, or administrative litigation.
 - The Chair will forward the Review Request to the FCPD (for informational purposes only) and request a copy of the FCPD Disposition Letter if not attached to the Review Request.
 - Staff, in consultation with the Chair, will draft and send a letter to the complainant acknowledging receipt of the Review Request and delineating next steps, using the attached template:
 - Confirmation of Receipt – Request for Review (No Pending Litigation) (Attachment 1)

- Confirmation of Receipt – Request for Review (Pending Litigation) (Attachment 2)

Initial Review

- The Initial Review Committee will conduct the Initial Review.
- The Review Liaisons for the Complaint, together with the Chair or Vice Chair (as determined by the Chair), will form the subcommittee to conduct the Initial Review (the “Initial Review Subcommittee”).
- The Chair will coordinate with the FCPD Liaison dates and times for the Initial Review Subcommittee to review the Investigation File.
- The Chair will schedule the meeting date for the Initial Review Meeting and set the agenda.
- After the review of the Investigation File, the Subcommittee will meet to (i) determine whether the Panel has the authority to review the Investigation, and (ii) complete the Initial Review Report Template (Attachment 3). If the Initial Review Subcommittee determines that the Panel does not have authority to review the Investigation, the Initial Review Report will note the Subcommittee’s reasoning.
- After the Initial Review meeting, Staff, in consultation with the Chair, will draft and send the Initial Disposition Notice to the complainant notifying the complainant of the Panel’s determination of authority to undertake a review of the subject Investigation. If the Initial Review Subcommittee concludes that the Panel has authority to review, the letter will also notify the complainant of the date and time of the Panel Review Meeting, a description of the review process, the deadline for completing the review, and the complainant’s right to attend the Panel Review Meeting and options to address the Panel, using the attached templates:
 - Determination of Panel Authority and Review Meeting Notification (Attachment 4)
 - Determination of Panel Authority – Review Meeting Notification – Optional Attendance (Attachment 5)
 - Determination of Panel Authority – No Authority to Review (Attachment 6)
- Staff, in consultation with the Chair, will draft and send the Initial Disposition Notice to the complainant within 30 days of receipt of the Investigation Report.

- If the Initial Review Subcommittee concludes that the Panel has review authority the Initial Review Subcommittee will also (i) set the date for the Panel Review Meeting and (ii) determine whether the FCPD should be asked to appear at the Panel Review Meeting.
- The Chair will (i) notify Panel Members of the results of the Initial Review Meeting and request that all Panel Members review the Investigation file, (ii) coordinate with the FCPD Liaisons to (a) determine times when the Investigation file will be made available to the remaining Panel Members for review and (b) request the FCPD, through the FCPD Liaisons, to appear at the Panel Review Meeting, if necessary.

Panel Review Meetings

- The Staff, in consultation with the Chair, will prepare and post the Panel Review Meeting Notice in accordance with Article VI.E.1 of the Bylaws.
- Staff will send an official email notification of the date of the Review Meeting to the Panel, the Panel's Counsel, the County Attorney, the FCPD Liaisons, and the major in command at the FCPD Internal Affairs Bureau at least fourteen days in advance of the Review Meeting, as required by Article IV.E.1.c of the Panel's Bylaws.
- The Chair will preside over Panel Review Meetings in accordance with Article VI.E.1 of the Bylaws.
- When opening a Panel Review Meeting, the Chair will ask Panel Members, the FCPD representative, and the complainant to introduce themselves for the record and the Chair will outline the process for conducting the Panel Review Meeting, reminding those in attendance that:
 - the purpose of the Panel's review of the Investigation is to determine whether the Investigation is thorough, complete, accurate, objective and impartial.
 - the complainant will have 15 minutes to address the Panel to state his or her reasons for filing the Review Request and that Panel Members may ask questions regarding those reasons. On motion from a Panel Member, the Panel may consider an extension of the 15-minute time period.

- Panel Members may ask the FCPD representative questions regarding the process of the Investigation and the conclusions reached in the Investigation.
 - questions regarding officer discipline are personnel matters that must be discussed in closed session.
 - Panel Members may also request consultation with legal counsel during the Panel Review Meeting, which must also be discussed in closed session.
- If the complainant does not attend the Panel Review Meeting, or attends but chooses not to address the Panel, the Panel may complete the Investigation review process.
 - If other witnesses attend the Panel Review Meeting, their contact information will be obtained and given to the FCPD for follow-up.

Panel Findings

- At the discretion of the Chair, Panel Members may continue the Panel Review Meeting with a discussion of their findings from the review. If not, discussion of Panel review findings can be deferred to the next Panel Meeting.
- Opening the deliberations, the Chair will restate the Panel Findings options for Panel Members, as outlined in Article VI.F.2.a of the Panel's Bylaws. The Panel may:
 - Concur with the findings detailed in the Investigation Report.
 - 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 of the FCPD.
 - Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- A majority of the appointed Panel Members must vote to concur with the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.

- Panel Members who do not agree with the majority may offer a written dissent that explains his or her rationale for dissenting. The dissent will be included in the Panel's review report.
- Panel Members may offer policy recommendations or other comments that the Panel will consider for inclusion in the Panel's Review Report.
- After the Panel votes on the Panel Findings, Staff, in consultation with the Chair, will draft and send correspondence informing the complainant of the Panel's Findings and the next steps in the process, using the attached template:
 - Notification of Panel Vote (Attachment 7).

The Panel Review Report

- The assigned Review Liaisons for a Review Request will draft the Panel Review Report using the Panel Review Report Template (Attachment 8).
- The Panel Review Report will not contain identifying information for either the police officer(s), the complainant, or witnesses.
- Discussion of the results of the FCPD investigation will be limited to information provided in the FCPD disposition letter. Details from the FCPD Internal Affairs investigative/personnel file must not be included in the Panel Review Report.
- The Chair will circulate the draft report for comment with the Agenda for the meeting during which the Panel Review Report will be discussed.
- The Review Liaisons will present the draft Panel Review Report at the Panel Meeting.
- The Panel will discuss the draft Panel Review Report. A separate vote will be taken on each proposed recommendation or comment to determine its inclusion in the final Panel Review Report.
- Based on the discussion and vote, the Review Liaisons will finalize the Panel Review Report.

- Staff, in consultation with the Chair, will send the final Panel Review Report to the Board of Supervisors, the Chief of the FCPD, and the Auditor, and will post the Panel Review Report on the Panel’s website.
- Staff, in consultation with the Chair, will draft and send correspondence, along with the final Panel Review Report, to the complainant, using the attached template:
 - Notification of Panel Report (Attachment 9).

Fairfax County Police Civilian Review Panel Initial Review Report

Request for Review – Basic Information	
Complainant:	CRP Complaint Number: CRP-#-#
Subcommittee Members: <ul style="list-style-type: none"> Panel Member Name, Review Liaison Panel Member Name, Review Liaison Chair or Vice-Chair Name, Chair/Vice-Chair 	
Complaint Submission Date:	

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
<p>The Initial Review Report outlines the Review Liaisons’ (a) determination on Panel authority to review an investigation based on complaint details and in accordance with the Bylaws and (b) recommendations on whether to accept or decline to review a submitted Request for Review.</p>

Findings
<p>Use this section to identify the key facts and factors supporting the recommendation.</p>

Recommendation
<p>Use this section to report if the Panel has authority to review the Investigation.</p>

Panel Bylaws Abuse of Authority and Serious Misconduct Checklist		
Criteria Met?	Abuse of Authority and/or Serious Misconduct	Complainant Details*
Yes/No	Use of abusive racial, ethnic or sexual language or gestures.	
Yes/No	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	

Yes/No	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	
Yes/No	Reckless endangerment of detainee or person in custody.	
Yes/No	Violation of laws or ordinances.	
Yes/No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon 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.**



County of Fairfax, Virginia

MEMORANDUM

DATE: __/__/__


TO: Fairfax County Board of Supervisors
 Col. Edwin C. Roessler, Jr., Chief of Police
 Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of **Complainant**

- I. Introduction
- II. Review Request
- III. Procedural Background
- IV. Panel Meeting
- V. Comments

CC: **Complainant**

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: O-3	Subject: Duties of Panel Review Liaisons
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: To provide guidelines for executing the responsibilities of Review Liaisons.

Requirements

- All Panel members will serve as Review Liaisons (on a rotating basis and when appointed to do so by the Chair) to ensure that all Complaints are handled in a timely manner in accordance with the Panel’s Bylaws.
- Once appointed, the Review Liaisons will manage the disposition of the Complaints for the Panel. Disposition commences from the date the Panel receives the Initial Complaint or Review Request and ends after the complaint process is concluded.
- If a Review Liaison is unable to fulfill the responsibilities on an appointed Investigations, they will immediately notify the Chair to identify an alternate Panel member.

Review Liaisons Responsibilities

- **Initial Complaints**
 - For Initial Complaints, the Review Liaisons will:
 - Coordinate the follow-up with the FCPD Liaison to ensure timely completion of the investigation.
 - Confirm with the FCPD Liaisons that the FCPD is investigating the full scope and all issues raised in the Complaint.
 - Report to the Chair the FCPD investigation outcome or any significant challenges that arise during the FCPD investigation period.
 - If the Complainant submits a Review Request after FCPD notifies the Complainant of the investigation outcome/disposition, the Review Liaisons assigned to the Initial Complaint will remain as the Review Liaisons for the review process, unless otherwise agreed.
- **Request for Review**

- For Request for Reviews, the Review Liaisons will:
 - Review the completed FCPD Investigation File.
 - Serve as members of the subcommittee to perform the Initial Review.
 - Consult with the Panel's legal counsel to seek advice on whether the alleged conduct is within the Panel's review authority.
 - Coordinate with the FCPD Liaison to discuss possible FCPD policies and/or procedures that the Panel will need to consider in its review.
 - If the Panel reviews the Investigation, the Review Liaisons will:
 - Prepare the Panel report based on the Panel's findings. (Note: If an appointed Review Liaison voted with the Panel minority, he/she may request the Chair to appoint another Panel member to prepare the report based on the majority Panel findings.)
 - Present the draft Panel Review Report to the Panel for consideration.
 - Make modifications to the draft Panel Review Report based on Panel deliberations.
 - Coordinate with the Chair and Staff to send the final Review Report to the Complainant, the Board of Supervisors, the Chief of Police, and the Auditor.
- In addition, the Review Liaisons may:
 - Speak to the FCPD Panel Liaison to clarify material uncertainty in the record and/or discuss possible FCPD policies or procedures that the Panel may need to consider in its review.
 - Speak to the complainant to clarify material uncertainty in the record.

Fairfax County Police Civilian Review Panel

Public Forum on December 10, 2018

Mount Vernon Governmental Center

Meeting Summary

Panel Members Present:

Hansel Aguilar

Hollye Doane

Col. Greg Gadson

Anna Northcutt

Adrian Steel

Rhonda VanLowe, Chair

Others Present:

Dan Storck, Mount Vernon District, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Members Absent:

Bob Cluck

Doug Kay

The Public Forum began at 7:03 p.m.

Ms. VanLowe and Supervisor Storck welcomed attendees to the Fairfax County Police Civilian Review Panel's (Panel) Public Forum. Supervisor Storck provided framing remarks on the establishment of the Panel and the Office of the Independent Police Auditor and noted that civilian oversight is something the community cares deeply about.

Ms. VanLowe reviewed the agenda. She thanked Supervisor Storck, Chief Roessler, Captain Owens, and Major Reed, and audience members for attending. She explained that the purpose of the public forum is to introduce the Panel and engage with the public. The Panel received twenty-three complaints and three requests for review in 2018 and has participated in many outreach events to meet with different organizations and members of the community.

Each Panel Member present introduced themselves and shared information on their background, experiences, and expertise that led them to join the Panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Mr. Steel provided information on the history and the establishment of the Panel, and the Panel's scope of authority. He noted that Fairfax County is one of the few places in the country to have a hybrid system of oversight, with a Civilian Review Panel and an Independent Police Auditor. The Panel reviews completed Fairfax County Police Department (FCPD) investigations into allegations of serious misconduct or abuse of authority. While the Panel is unable to gather evidence, the Panel allows complainants to appear before the Panel to state their reasons for requesting a review. The Panel may also ask an FCPD representative to attend the meeting and to review and answer questions about the investigation and may, if it deems it warranted, require the FCPD to conduct additional investigation.

Ms. Doane reviewed the Panel's complaint filing process. Complaints can be submitted to the Panel via email to the Panel, or in person, mail, or phone call to the Auditor's office. Complainants can request the help of staff when filling out a Complaint Form and staff will assist. The Panel reviews completed FCPD investigations to ensure accuracy, completeness, thoroughness, objectivity, and impartiality. Complaints received by the Panel that have not been previously investigated are shared with the FCPD. Once the FCPD has completed its investigation, the complainant may request a review of the investigation by the Panel if they are unsatisfied. The Panel conducts its review of complaints in public meetings and may hear from the complainant and an FCPD representative. The Panel then issues a public report on its findings. In addition, the Panel can make policy recommendations related to complaints they receive. It was noted that all Panel Meetings are open to the public. Audio recordings and summaries of the meetings are available on the Panel's webpage.

Mr. Schott explained the Auditor's role in oversight. The Auditor automatically reviews incidents involving an officer involved shooting, in custody death, and use of force that results in serious injury, even if a complaint is not filed. The Auditor also reviews uses of force that do not result in serious injury if a member of the community submits a complaint. The Auditor, like the Panel, does not have investigative authority. However, the Auditor has the ability to monitor investigations while they are ongoing. A public report of each review conducted is published on the Auditor's webpage and shared with the Board of Supervisors and the Chief of Police. The Panel periodically meets with the auditor to discuss his reports and is able to comment on policy changes to the Board and Chief of Police

Questions were taken from the audience regarding Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The Public Forum adjourned at 9:07 p.m.

Questions and Answers

1. Could you describe the type and status of complaints received by the Panel?

The complaints received by the Panel vary by type of allegation and cover many different issues. In 2018, the Panel processed twenty-three Initial Complaints and held three reviews. Most complaints received by the Panel were initial complaints where the complainant did not request the Panel's review after the FCPD completed its investigation.

2. What is the difference between an Initial Complaint and a Request for Review? Was the procedure for a Review Request created by the Panel?

An Initial Complaint refers to a complaint that is submitted to the Panel but not previously investigated by the FCPD. In these cases, the Panel must forward the complaint to the FCPD for investigation. After the complainant receives a letter from the FCPD detailing the findings of the investigation, the complainant may choose to submit a Request for Review to the Panel if they are unsatisfied with the FCPD investigation. The Panel is only able to review completed FCPD investigations. The Request for Review process is outlined in the Board of Supervisors Action Item that established the Panel.

3. Is legal status of a complainant protected? If someone has an illegal status and was the victim of discrimination, what is their safety net?

If an individual is uncomfortable filling out the Complaint Form, a friend, relative, or witness can complete the form on their behalf. The FCPD's investigation includes interviewing involved individuals. If an individual does not want to participate in the investigation process with the FCPD, they will not be pressed to participate.

4. Does the FCPD have Spanish speaking investigators?

The FCPD General Orders states that language access is to be provided through an interpreter or the language line when there is a language barrier present.

5. The FCPD received 268 citizen complaints. Do you have the ability to review these complaints?

The Panel does not have the authority to automatically review every complaint received by the FCPD. A complainant must submit a review request to the Panel for the review process to commence. The letter that the FCPD sends to complainants with the findings of the investigation provides information about the Panel and the complainant's ability to request a review of the investigation by the Panel if the complainant is still unsatisfied.

6. Does the Sheriff have a similar oversight commission?

The Sheriff is an elected constitutional officer who is not under the authority of the county Board of Supervisors. The Final Report of the Ad Hoc Police Practices Review Commission Implementation Group included a recommendation for oversight of the Sheriff. These recommendations are to be reviewed by the Board of Supervisors in 2019.

7. I am constantly harassed by the FCPD and I film the police and their interactions with the public. Is there any way for the Panel to protect people like me and prioritize complaints?

The Panel processes complaints in a timely manner and is sensitive to being responsive to complainants. If you have a concern about retaliation, you may submit a complaint.

8. It seems that if a person is unsatisfied with the FCPD investigation but does not want exposure, there is no option for them. Do complainants have the option to submit a complaint to the Panel anonymously?

The Panel is a public body that conducts its business during public meetings. Also, in the event of a Virginia Freedom of Information Act request, the Panel is required to release information as required by law. However, the identities of minors and victims of sexual misconduct will not be released.

9. Can the Panel use aliases for complainants to maintain confidentiality?

The Panel is committed to not disclosing names of complainants when publishing public reports. Confidentiality is a challenging issue that the Panel is working through.

10. How can you identify trends from complaints if you only review the complaints that are processed through the Panel?

The Panel does not have the authority to review all complaints submitted to the FCPD. The Panel can only identify trends within the complaints that are processed by the Panel.

11. Does the Panel have a schedule for publishing reports to the Board of Supervisors?

The Panel prepares and publishes an annual report that is due March 31st of each year. It is delivered to the Board of Supervisors and available for public review on the Panel's webpage. In June 2018, we met with the Board at a Public Safety Committee Meeting to make a presentation on the 2017 Annual Report.

12. How can a complainant provide witness information to the Panel if the witness would like to remain anonymous and not have their information divulged?

Include the information that the witness has regarding the incident within your complaint without providing the witness name or contact information.

13. When someone sends an email to the Panel's email account, who sends back a reply?

Staff or the Panel Chair responds to emails that are sent to the Panel's email box.

14. Are the FCPD investigation files that Panel Members and the Auditor review redacted?

No, the investigation files are not redacted. The Panel and the Auditor review complete FCPD files and are also given the opportunity to review body worn camera and in car video footage if there is footage associated with the file.

15. Since both bodies report to the Board of Supervisors, is the FCPD still ultimately responsible for policing themselves?

Recommendations made by the Panel and the Auditor are sent to the Board of Supervisors and the Chief of Police and are shared in public meetings.

16. Why is the Panel unable to review incidents that involve use of force, in custody death, or officer involved shootings?

The Ad Hoc Police Practices Commission thought that the review of use of force, in custody death, and officer involved shootings should be conducted by an individual trained in investigations. Therefore, it is the responsibility of the Auditor to review these types of complaints. The Panel meets with the Auditor periodically to review his reports and may provide input on these topics to the Board of Supervisors.

17. What is the process to change the way the Panel is authorized to function?

The Board of Supervisors Action Item dictates the way that the Panel can operate. Concerned citizens may wish to provide their thoughts on this matter to the Board of Supervisors and other elected officials.

18. Why is the Auditor unable to conduct his own investigations?

Under Virginia Law, it is not clear that the Board of Supervisors is able to delegate investigative authority to other entities.

19. When can we receive a report on the racial disparity against African Americans in the county?

The Auditor's Report, titled "A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015", was published in July 2018. The report outlines the key findings from the review as well as policy implications and recommendations. It was sent to the Board of Supervisors and is posted on the Auditor's webpage for public review. The Auditor is currently reviewing the use of force data for 2016.

20. Is there a residency requirement for officers of the FCPD?

There is no requirement that recruits or officers of the FCPD live in the county. The FCPD seeks candidates from across the entire state of Virginia to increase the diversity of the force. It is a challenge to reflect the county's diversity within the department.

21. Can an officer of the FCPD be prosecuted because of the submission of a complaint to the Panel?

The Commonwealth Attorney's office would make the decision whether to prosecute an officer for criminal conduct. Discipline decisions are made by the Chief prior to the Panel's review of a completed FCPD investigation.

22. Why are complaints routed through the Auditor's office?

The Auditor's office is responsible for providing administrative support to the Panel, which is comprised of nine civilian volunteers. The Panel's email box is monitored by staff from the Auditor's office and all emails are forwarded to the Panel Chair and Vice-Chair for a response.

Comments from Audience

- The Review Request procedure seems to be a bureaucratic barrier. A complainant must share their personal information twice at a time when they are most likely feeling vulnerable. It takes a lot of courage for a complainant to come forward. This process seems to put people through a lot for very little. The Panel's review of complaint should be automatic after a complainant submits an Initial Complaint.
- There is little information found in the Panel's reports. It would be helpful to know the date the complaint was received, if extensions were requested by the FCPD, and the date the FCPD completed their investigation. More information should be included on the Panel website about complaints being reviewed. The commenter asked the reason for the lengthy delay before Panel reports are published.
- The Panel Meeting agendas are not informative. It would be helpful to include corresponding meeting materials for each agenda item online, like the Board of Supervisor's meeting agenda.
- It would be helpful to include what time, according to the meeting audio, each agenda item begins within the Panel Meeting summaries.
- The issues that the Ad Hoc Commission addressed are still concerns today and remedies need to be implemented. We urge you to take a firm position on policy matters in the 2018 Annual Report.
- It is concerning that an incident must occur more than once for a resolution to be offered. Everyone is aware of the Panel and Auditor's limitations. The word accountability should no longer be used because I am not seeing any accountability or responsibility from the FCPD.
- No one has addressed the great things the FCPD does for our community. They put their lives at risk every day to keep us safe.
- The Complaint Form needs to be simplified into layman's terms. The Panel is doing something wrong if it is receiving a fraction of the complaints that the FCPD receives.
- Consider holding future public forums at locations in the county that are not co-located with a Police Station, such as a library, community center, or school.
- While Public Safety Committee Meetings are public meetings, there is not an opportunity for public comment to engage with the Board.
- It is disturbing that the FCPD has not publicly reported the use of force statistics for 2017 or 2018.

APPENDIX D.3

(2019 Annual Report)



Fairfax County Police Civilian Review Panel Annual Report 2019

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2019



A Fairfax County, VA Publication

Publication Date: February 28, 2020

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SECTION I: INTRODUCTION

In its third full year of operation, the Panel has settled into its principal role – reviewing completed Fairfax County Police Department (“FCPD”) Investigations where a citizen complains of abuse of authority or serious misconduct by an FCPD officer. In year one, the Panel focused on establishing [Bylaws](#)¹ and receiving necessary training to carry out its mission. In year two, the Panel carried out its mission, and in the process, identified several critical impediments to its success and reported them to the Board of Supervisors in its [2018 Annual Report](#). The Panel is pleased to report that in 2019 the Panel addressed each of the obstacles identified in last year’s annual report with the cooperation of key stakeholders including the Board of Supervisors and the FCPD.

SECTION II: 2019 ACTIVITIES

Quarterly Meetings

As recommended in the Panel’s 2018 Annual Report, the Panel Chair and Vice-Chair met on five occasions with the chiefs of staff for the Chairman of the Board of Supervisors and the Chair of the Board of Supervisors’ Public Safety Committee, FCPD representatives and County Attorney representatives to discuss Panel business. These “Quarterly Meetings” were occasionally attended by the Chairman of the Board of Supervisors, the Chair of the Public Safety Committee, the Chief of Police, and the County Attorney. During the Quarterly Meetings, attendees discussed and addressed various Panel concerns including, but not limited to, (1) FCPD disposition letters, (2) limitations on transparency imposed on the Panel by the Action Item and (3) recommendations of the Panel reflected in its Public Reports. All three critical issues have been addressed as explained below. The Quarterly Meetings will continue in 2020.

¹ Capitalized terms will have the same meaning noted in the Bylaws.

Disposition Letters

In last year's Annual Report, the Panel recommended that the FCPD improve the format and content of the letter sent to the complainant upon completion of an investigation (the "Disposition Letter"). At the Chief's direction, the Commander of the Internal Affairs Bureau ("IAB") formed a working group to study the issue and make recommendations. The working group, including the Panel Vice-Chair, former commissioners of the Ad Hoc Police Practices Commission, and a representative from the Communities of Trust, met several times and prepared a template for the Disposition Letter to address the Panel's concern that the Disposition Letters lacked details about the FCPD's Investigation or the reasons for the FCPD's conclusion. We are pleased to report that Chief Roessler accepted the group's template Disposition Letter in Summer 2019 and required the FCPD command staff to receive appropriate instruction. If fully implemented as designed, the improved Disposition Letters will better address concerns raised by complainants and lead to greater community trust through greater transparency. The Panel will continue to monitor progress.

Action Item and Bylaw Amendments

The Bylaws state that the purpose of the Panel is "to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public." Reviewing Investigation Reports is one of the principal ways the Panel carries out this mission. However, the original [Action Item](#) dated December 6, 2016, provided as follows:

During the Panel's review of a completed FCPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigative case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. [Emphasis supplied.] (Page 622 of Board of Supervisors December 6, 2016, Agenda Package)

While this provision did not inhibit the Panel's ability to review the Investigative Report and evaluate the conduct in question, the Panel recognized that this provision stifled the Panel's ability to author fulsome Review Reports that informed the public about the Panel's work. Simply put, this provision constituted a barrier to transparency.

Having surfaced this issue in its 2018 Annual Report, the Panel presented the problem at the first Quarterly Meeting and worked with key stakeholders to amend the Action Item and the Bylaws to enable the Panel to report to the Board of Supervisors and the public all non-confidential relevant information found in the Investigation Report. Critically, the Chief of Police supported the Panel's effort. The Board of Supervisors approved the Panel's amended authorizing Action Item on September 24, 2019, and the Bylaws were subsequently updated to be consistent with the revised Action Item.² The first Review Report authored after these amendments evidence the Panel's ability to publish comprehensive Review Reports providing greater transparency to the public. Compare [Review Report: CRP-19-11](#) to [Review Report: CRP-18-02](#).

Publication of Panel Recommendations

Making recommendations on FCPD policies and practices to assist the Chief of Police and the Board of Supervisors is one of only three imperatives noted in Article II of the Bylaws. The Panel is committed to meeting this obligation where appropriate and carefully considers opportunities to offer the FCPD recommendations while seeking always to strike the appropriate balance between offering too many suggestions and remaining mute where the appropriate opportunity presents itself. Since its inception, the Panel has authored a dozen recommendations; however, said recommendations were previously scattered about in a variety of documents sometimes buried in multipage reports. Moreover, no mechanism existed for the Panel to attain some response from the FCPD to the recommendations.

The Panel is pleased to report that it resolved both issues through the publication of a Panel Recommendation Matrix ("Matrix"). The Matrix offers a single repository for Panel recommendations while offering the FCPD the opportunity to comment upon the recommendations and to note any actions taken in response. Finally, the Matrix records the Panel's assessment of the FCPD's actions in response to the recommendation. Below is an example of a Panel recommendation from the Matrix:

² The revised Action Item is found [here](#).

<u>Report</u>	<u>Panel Recommendation</u>	<u>FCPD Action</u>	<u>Status (as determined by the Panel)</u>
CRP-18-26 (Published March 8, 2019)	“During FCPD administrative investigations, where statistical evidence is used, [the Panel] recommends the Crime Analyst Unit (CAU) be consulted in the gathering, preparation and reporting of the statistical data.”	The compilation of statistical evidence is the responsibility of the Analyst assigned to the Internal Affairs Bureau.	Implemented by FCPD

The complete Matrix and updates to the Matrix are available to the Board of Supervisors and the public on the Panel’s website. See Appendix A for a copy of the Matrix as of the date of this report.

Use of Statistics

Review of racial bias complaints against FCPD officers are among the most challenging duties of the Panel. Where such complaints are received, the FCPD routinely includes in its Investigation Reports, among other things, the officer’s arrest statistics broken down by race as compared to his or her peers. The Panel expressed concerns about conclusions expressed in the Investigation Reports based upon these statistics and recommended that investigators consult qualified professionals within the department who have the appropriate statistical expertise. As indicated above, the FCPD concurred with the Panel’s recommendation in this regard. In the future, statistical data included in Investigation Reports will be compiled by an analyst with appropriate statistical proficiency. The Panel will be monitoring Investigation Reports for compliance.

Panel Training

Training is critical the Panel’s mission. The Panel received a full day training session from representatives of the National Association for Civilian Oversight of Law Enforcement (“NACOLE”) which focused on the historical origins of civilian oversight, working with key stakeholders, promoting the work of the Panel in the community, and effective practices for reviewing investigations³. Panel Vice-Chair, Hollye Doane, attended the 2019 NACOLE Annual

³ The agenda for the full day NACOLE training is [here](#)

Conference in Detroit, Michigan with staff from the Office of the Independent Police Auditor (“OIPA”). The theme of the 2019 Annual Conference was “Courage, Collaboration, and Community,” and covered topics such as data driven policing, strategies for community engagement, and oversight from a law enforcement perspective. Several Panel Members attended NACOLE’s regional training session in Washington D.C., which focused on community police relationships and communication, and an in-depth study of the review focused oversight model. Finally, the Panel received a half day of training from the FCPD which encompassed FCPD recruiting practices, the FCPD Criminal Justice Academy curriculum, intrinsic bias training, and the FCPD’s investigation and review process⁴. Special thanks to Major Owens and his staff for putting together an outstanding and informative program.

SECTION III: ISSUES FOR BOARD OF SUPERVISORS CONSIDERATION

Extension Requests

Article VI. C.1.c of the Panel’s Bylaws provide in relevant part:

The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. 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.

Of the twenty Initial Complaints the Panel received in 2019, the FCPD extended the 60-day period or otherwise failed to timely deliver the Disposition Letter more often than not. On average, the Disposition letters were delivered 92 days after the Panel forwarded the Initial Complaint to the FCPD. See Appendix B for a summary of FCPD extension requests for Initial Complaints.

As per the Bylaws, the FCPD received an extension each time it sought one (and the Panel notified the complainant and the Board of Supervisors of each extension). The subject of these extension requests has been the topic of discussion at the Quarterly Meetings. It may be that the 60-day period for investigation of an Initial Complaint set forth in the Bylaws should be

⁴ The agenda for the half day FCPD training is [here](#).

lengthened to 90 days. The FCPD has offered a number of reasonable explanations for the delays, which requires them to request extensions. The Panel will continue to monitor this situation but makes no request for action at this time.

Recommendation

The Panel has reviewed several complaints involving claims of racial bias which are just as difficult for the Panel as they are important to the mission of the Panel. The racial bias complaints reviewed by the Panel vary widely. At least one was demonstrably unfounded. For example, in the Panel's Review Report for [CRP-18-26](#), the Panel unanimously concluded upon review of in-car video and body worn camera footage that the accused officer could not have known the race of the complainant before stopping him for a traffic infraction. Other complaints have been much more difficult for the Panel to determine. For example, in the Panel's Review Report for [CRP-18-27](#) the Panel concurred with the results of the FCPD's investigation concluding that the Investigation, taken in its totality, supported the conclusion of a race-neutral basis for investigatory detention despite troubling statistically suspicious arrest records of accused officer.

During Review Meetings, in training and elsewhere in interactions with the Panel, the FCPD has disagreed with suggestions by the Panel that in certain racial bias cases additional investigation into the background of the accused officer may be necessary to rule out racial bias. Moreover, the FCPD investigated the social media of the complainant in CRP-18-27 for evidence of bias on the part of the complainant. Notwithstanding its willingness to investigate potential bias of a complainant (who was not even physically present for arrest in question) and publish her social media information, the FCPD has been unwilling to conduct a similar investigation of accused officers.

Therefore, the Panel makes the following recommendation to the FCPD: where the evidence gathered during an Investigation into a Complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer's conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer's social media accounts and/or interviewing witnesses.

SECTION IV: WITH APPRECIATION

The Panel welcomed four new members during 2019:

- James Bierman
- Frank Gallagher
- Shirley Norman-Taylor
- Sris Srisikandarajah

We are grateful for their talents and willingness to serve. Thanks also for the continued service of the other Panel Members.⁵ In addition, the Panel offers thanks to Adrian Steel, Randy Sayles, Anna Northcutt and Col. Gregory Gadson (Ret.) for their service to the Panel which came to an end in 2019.

Adrian Steel was the inaugural Panel Chair and deserves special recognition. His enthusiasm and dedication to the Panel's foundation left an indelible mark on this body. His unflagging support of the Panel's mission is an inspiration to all.

Randy Sayles was an inaugural member of the Panel. He sadly passed away in 2019 far too early. A retired law enforcement officer and an eyewitness to racial injustice, Randy provided an invaluable perspective to the Panel. But it was Randy's infectious smile, warm demeanor and common-sense approach to Panel business that we will miss the most.

The Panel also wishes to thank the Independent Police Auditor and Staff for their continued support – especially Gentry Anderson, who has demonstrated remarkable dedication to day-to-day operations of the Panel and shown herself again and again to be wise and capable. Thanks also to Major Owens, the IAB Commander, for his excellent work on Panel training, his calm demeanor, and remarkable patience during the many Panel meetings he attended this year. The Panel also acknowledges all the complainants who came forward in 2019 and entrusted the Panel with their complaints. We look forward to continuing the Panel's work in the coming year.

⁵ See Appendix C for Panel Member Biographies

2019 Initial Complaints and Disposition Letter Due Dates

Complaint #	Disposition Letter Due Date	Actual Date Disposition Letter Received	# of Days Past Due Date
CRP-19-01	March 29	April 18	20 days past
CRP-19-02	April 1	April 2	1-day past
CRP-19-03	March 4	March 6	2 days past
CRP-19-04	April 15	April 15	On time
CRP-19-06*	June 7	*complainant withdrew complaint*	-
CRP-19-08	June 14	September 4	82 days past
CRP-19-09	June 18	June 27	9 days past
CRP-19-10	July 12	October 31	111 days past
CRP-19-12	July 22	July 22	On time
CRP-19-13	July 23	December 20	150 days past
CRP-19-14	August 12	October 17	66 days past
CRP-19-16	August 28	August 28	On time
CRP-19-17	September 9	August 30	On time
CRP-19-21	October 20	December 4	45 days past
CRP-19-22*	October 26	*Pending Litigation – letter to be received once litigation concludes*	-
CRP-19-23	November 8	December 19	41 days past
CRP-19-25	December 2	November 26	On time
CRP-19-26	December 30	November 26	On time
CRP-19-27*	February 7, 2020	*Date in Future*	TBD
CRP-19-28*	February 14, 2020	*Date in Future*	TBD
*Average: 32 Days Past Due Date			

*Note – this calculation does not include CRP-19-06, CRP-19-22, CRP-19-27, and CRP-19-28 due to the reasons listed in the table.

APPENDIX E

(Recommendations Matrix [Updated 2020])

<u>Report</u>	<u>Panel Recommendation</u>	<u>FCPD Action</u>	<u>Status (as determined by the Panel)</u>
CRP-19-29 (Published October 23, 2020)	<p>“The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer’s public social media profiles; (2) interviewing coworkers in the officer’s unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints. Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer’s actions under each of the criteria listed above.”</p>	<p>pending</p>	<p>pending</p>
CRP-19-29 (Published October 23, 2020)	<p>“All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer’s community contacts, stops, searches and arrests should be broken down by the race and ethnicity of</p>	<p>pending</p>	<p>pending</p>

	<p>community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention.”</p>		
<p>CRP-19-29 (Published October 23, 2020)</p>	<p>“Data analysis of an officer’s community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district station where the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.”</p>	<p>Pending</p>	<p>pending</p>
<p>CRP-19-29 (Published October 23, 2020)</p>	<p>“For the purposes of investigations into allegations of bias or profiling, data analysis of the officer’s community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has</p>	<p>pending</p>	<p>pending</p>

	worked in different districts within the county, the review and analysis of the officer's community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period."		
CRP-19-29 (Published October 23, 2020)	"Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer's community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group."	pending	pending
CRP-19-29 (Published October 23, 2020)	"The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing."	pending	pending
CRP-19-29 (Published October 23, 2020)	"Officers should receive implicit bias training on an annual basis."	pending	pending
2019 Annual Report (Published	"Where the evidence gathered during an Investigation into a Complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused	The Fairfax County Police Department Internal Affairs Bureau conducts investigations into all complaints	pending

<p>February 28, 2020)</p>	<p>officer, the FCPD should continue to investigate seeking some explanation for the officer’s conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer’s social media accounts and/or interviewing witnesses.”</p>	<p>involving any allegation of perceived bias. Bias-based complaints will include obtaining all available evidence; such as, but not limited to, witness statements, videos, publicly available social media, statistics, reports, etc. Consistent with all investigations completed by the police department; any available evidence is thoroughly examined for appropriate response and lawful action.</p>	
<p>CRP-19-11 (Published January 15, 2020)</p>	<p>“With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.”</p>	<p>General Order 301 , Internal Investigations, states that witnesses shall be interviewed if they would assist in an investigation of a complaint or incident. Commanders were reminded of this policy in a March 2020 Command Staff meeting. Furthermore, Bureau Commanders are responsible for ensuring all investigative tasks have been properly completed as an additional quality control and review oversight protocol.</p>	<p>pending</p>
<p>CRP-19-11 (Published January 15, 2020)</p>	<p>“FCPD civilian ride-a-long individuals should be tracked and recorded in all instances. A police ride-a-long individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.”</p>	<p>General Order 430.3 sets policy and procedure for each Ride-Along to include maintenance of the application and required documentation for every Ride-Along. Commanders were reminded of</p>	<p>pending</p>

		this importance during a Command Staff meeting in March 2020.	
<p>CRP-19-11 (Published January 15, 2020)</p>	<p>“The FCPD should implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.”</p>	<p>FCPD policy requires officers to “<i>preserve the sanctity of life</i>” and, as community caretakers, officers must attend to the needs of any person who is unable to care for themselves as expeditiously as possible. Regulation 201.6, Preservation of Peace and Protection of Life and Property, states:</p> <p><i>“It shall be the duty of each sworn officer of the Department to:</i></p> <ul style="list-style-type: none"> • <i>Preserve the public peace;</i> • <i>Protect life and property; and</i> • <i>Enforce and uphold the laws of the Commonwealth of Virginia and the ordinances of the County of Fairfax.”</i> <p>This policy requires officers to attend to children, and any other person who is left alone and unable to care for themselves, under their oath as a sworn</p>	<p>pending</p>

		officer to protect life. Furthermore, officers are provided guidance from the Fairfax County Family Services Child Supervision Guidelines regarding unattended minors and children.	
CRP-18-27 (Published July 12, 2019)	“[T]he Panel recommends that in the future the Department refrain from publicly releasing [investigatory information pertaining to the Complainant’s social media accounts], because it “discourages individuals from filing future complaints, and it undermines community trust in the Panel.” If the FCPD believes such information is relevant to the investigation, “that information should be included only in the Department’s investigative file.”	All of the information was obtained via public websites from a Google search. The information that was released was already publicly available on the internet.	Not Implemented by FCPD
2018 Annual Report (Published March 21, 2019)	FCPD disposition letters to the complainant upon conclusion of FCPD investigations, “must contain sufficient, specific detail to provide complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.”	The FCPD co-produced a disposition letter with members of the community. Commanders who author these letters were then trained on the new form in September. Since that time, the new form has been in use.	New format for more explanatory disposition letters has been adopted by the FCPD and is being implemented.

<p>2018 Annual Report (Published March 21, 2019)</p>	<p>“Action Item 17, dated December 6, 2016 (p. 278), limits the Panel’s ability to include salient facts in public reports. This restriction inhibits “the Panel’s ability to achieve its purpose “to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public.”</p>	<p>During Quarterly Meetings, FCPD representatives coordinated with the CRP in preparation of the proposed Action Item that was adopted by the Board of Supervisors on September 24, 2019, giving the Panel the authority to disclose facts of the investigation in the Panel’s Review Reports, with certain restrictions.</p>	<p>Action Item adopted by the Board of Supervisors on September 24, 2019, gives the Panel authority to disclose facts of the investigation in Review Reports with certain limited restrictions.</p>
<p>2018 Annual Report (Published March 21, 2019)</p>	<p>“The Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of the Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same.</p>	<p>The FCPD supports the quarterly meetings and the sharing of information regarding Panel comments and recommendations. These meetings began in June 2019 and are continuing to occur with FCPD staff present for each of them.</p>	<p>Implemented by FCPD</p>
<p>CRP-18-26 (Published March 8, 2019)</p>	<p>“During FCPD administrative investigations, where statistical evidence is used, [the Panel] recommends the Crime Analyst Unit (CAU) be consulted in the gathering, preparation and reporting of the statistical data.”</p>	<p>The compilation of statistical evidence is the responsibility of the Analyst assigned to the Internal Affairs Bureau.</p>	<p>Implemented by FCPD</p>

<p>CRP-18-26 (Published March 8, 2019)</p>	<p>“The FCPD should make BWC and In-Car Video (ICV) footage available for viewing at Panel Review Meetings as requested by the Panel.”</p>	<p>Requests for the Panel to view video and audio footage will be approved on a case-by-case basis.</p>	<p>FCPD explanation noted. The Chief has committed to review any Panel request for footage and determine whether to release of requested footage on a case-by-case basis.</p>
<p>CRP-18-26 (Published March 8, 2019)</p>	<p>“The Panel recommends that the FCPD ensures that individuals involved in incidents with FCPD officers which are subject to a complaint be provided with an opportunity to review the video footage of the incidents.”</p>	<p>It has been the policy of the Police Department to allow complainants to view video footage consistent with Body Worn Camera Pilot Program SOP 18-506, Section VII, Paragraph B and General Order 430.8, In Car Video Program Procedures, Section IV, Paragraph C-5.</p>	<p>Implemented by FCPD</p>
<p>CRP-18-12 (Published January 9, 2019)</p>	<p>“The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name.”</p>	<p>In keeping with our commitment to transparency, the FCPD annually publishes an Internal Affairs Bureau Statistical Report, which is made available both within and outside of the</p>	<p>Under Review by FCPD.</p>

		Department. IAB is currently researching best practices. Once a template is developed, it will be discussed with the County Attorney for legal review.	
<u>CRP-18-12</u> <u>(Published January 9, 2019)</u>	“The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.” (Officer’s demeanor was not explicitly discussed in the Investigation Report, even though it had been an issue in the Complaint).”	Complaints received by the FCPD are thoroughly investigated. As stated in your report, Major Reed assured the Civilian Review Panel (CRP) members that investigators take a holistic approach to ensure that all aspects of a complaint are addressed. Upon completion, all investigations are subject to a multi-layer review. This investigative review may be conducted by Station Commanders, Bureau Commanders, Deputy Chiefs, and the Chief of Police to ensure accuracy and thoroughness.	FCPD explanation noted.
<u>CRP-18-12</u> <u>(Published January 9, 2019)</u>	“The Panel recommends that the FCPD develop an efficient methodology to reintegrate some level of supervision over the submission of [FR300P accident report] forms [by FCPD officers].” The Panel concluded that the consequences for errors could be problematic, as certain insurance claims were initially denied based on erroneous information in the initial FR300P.”	Under the Traffic Records Electronic Data System (<u>TREDS</u>) system, which is a VA State Program, when an officer submits an FR300P, a layered approval process begins. The first layer is the TREDS system itself, which provides a real-time review to ensure all required fields are populated. After the TREDS system review, the report is submitted	The Panel accepts explanation of FCPD regarding supervision under TREDS System.

		for internal review by the FCPD Central Records Division. The Central Records Division has received specialized training on TREDIS and have the delegated authority to accept or reject accident reports if they are not in compliance. In addition, the Central Records Staff distributes error reports to supervisory staff to ensure quality control and accountability.	
<u>CRP-17-10</u> (Published March 26, 2018)	“[T]he Complainant indicated in her statement to the Panel that, other than the Notification, she had not received any further explanation from the FCPD. The Panel recommends that the FCPD contact the complainant and offer her whatever additional explanation that is legally permissible and appropriate under the circumstances.”	Letter signed by Station Commander was sent to the complainant indicating the officer’s violation was addressed and how to seek additional recourse. Internal Affairs Bureau (IAB) personnel also had a phone conversation with the complainant to address their concerns.	Implemented by FCPD

APPENDIX F

(Panel Data Summary)

Four-Year Review: Panel Data Requests

Prepared December 30, 2020

	2017	2018 ^{&}	2019	2020	All Years
Number of Complaints filed against the FCPD (Panel Authority)	2	31	29	35	97
Number of Initial Complaints brought to the Panel	1	24	20	21	66
Number of Initial Complaints filed with the Panel but for which there is no ultimate review request	1	18	14	6	39
Number of Initial Complaints that are later requested to be reviewed by the Panel	0	2	5	8	15
Number of Review Requests Brought to the Panel	1	7	9	14	31
Number of Review Requests Taken by the Panel	1	4	5	5	15
Number of Review Requests Declined by the Panel	0	2	4	6	12
Number of Review Requests in process	0	0	0	3	3
Number of FCPD Investigations still pending	0	0	0	8 [^]	8

Allegations [#]	2017	2018	2019	2020	All Years
Bias - race/ethnicity		7	6	4	17
Bias - other discrimination		2	1		3
False arrest/Malicious prosecution	1	4	3	4	12
FCPD communication issue		1	1	4	6
Harassment		6	3	4	13
Hostile/threatening manner		4	2	3	9
Illegal search		3	1	1	5
Illegal stop		1			1
Incomplete investigation			1		1
Law/FCPD policy violation	1	5	6	9	21
Misconduct		4			4
Negligence		6	4		10
Officer did not identify				1	1
Officer had unprofessional manner		1	1	9	11
Officer was untruthful		2	4	5	11
Other		3	4	1	8
Use of Force		2	1	3	6
Grand Total	2	51	38	48	139

Notes:

[^]In 2020, 5 investigations are ongoing into Initial Complaints; 3 investigations are ongoing into Review Requests

& In 2018, 3 Initial Complaints and 1 Review Request was withdrawn

[#] There may be multiple allegations associated with a single complaint.

APPENDIX G

(Review Reports)

APPENDIX G.1

(CRP-17-01)



County of Fairfax, Virginia

MEMORANDUM

DATE: 3/26/2018

TO: Fairfax County Board of Supervisors

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-17-01

I. Introduction

This memorandum informs you of the findings of the Fairfax County Police Civilian Review Panel (the “Panel”) following its review of the case submitted by a complainant. Having completed its investigation review, the Panel concurs with the findings and determination detailed in the Investigative Report prepared by the Fairfax County Police Department (“FCPD”).¹

II. Review Request

The complainant was a party to a civil action in the Fairfax County General District Court. She subpoenaed an FCPD officer (the “Officer”) to the trial of that case scheduled for July 28, 2017. The Officer timely received the subpoena, but failed to attend the trial as required by Virginia law and FCPD general orders. Thereafter, the complainant filed a complaint with the FCPD against the Officer principally contending that the absence of the Officer prejudiced the complainant’s case, which resulted in a judgment against complainant. The FCPD investigated the complainant’s complaint and issued an undated notification of its findings to the her (the “Notification”). The Notification states, among other things, that “[the Officer’s] actions were improper and in violation of Departmental regulations” and that “measures have been imposed to prevent a recurrence of this type of incident in the future.”

III. Procedural Background

On November 20, 2017, the complainant delivered an email to the Independent Police Auditor (the “IPA”) complaining about the FCPD’s investigation. The next day, the IPA forwarded her Email together with the Notification to the Panel for possible action.

On December 7, 2017 at a public meeting, the Panel discussed whether the complainant’s Email constituted a Review Request. Uncertain whether the complainant wanted relief the Panel could provide, the Panel decided by majority vote to deliver to the complainant a letter seeking clarification from her. Attached as Exhibit 1 is the letter sent to the complainant on December 8, 2018. She confirmed by email dated December 18, 2017 that she wanted the Panel to review the FCPD investigation. On December 20, 2018, the Panel’s Chairman sent the complainant a letter attached as Exhibit 2.

Thereafter, the Panel issued a Panel Review Meeting Notice and the Panel Members each reviewed the contents of the investigative file made available by the FCPD.

IV. Panel Review Meeting

On January 4, 2018 at a public meeting, the Panel afforded the complainant the opportunity to state the reasons for seeking the Panel's review. The complainant attended the meeting and made a statement that was followed by questioning of her by Panel Members. Thereafter, the Chief appeared before the Panel to discuss the investigation. An audio recording and a summary of the Panel Review Meeting may be reviewed here: www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings

V. Panel Findings

On February 1, 2018 at a public meeting, a majority of the Panel voted to concur with the findings and determinations detailed in the Investigation Report. On March 1, 2018, the Panel voted to approve publication of this report.

VI. Additional Conclusions and Recommendations

Several Panel Members noted that the interview notes of the initial interview of the complainant were not included in the investigative file. In addition, the complainant indicated in her statement to the Panel that, other than the Notification, she had not received any further explanation from the FCPD. The Panel recommends that the FCPD contact the complainant and offer her whatever additional explanation that is legally permissible and appropriate under the circumstances.

CC: Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor
Complainant

ⁱ Unless stated, capitalized terms shall have the same meaning stated in the Bylaws.



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

December 8, 2017

Ms. Laxmi Chegu
[REDACTED]

Dear Ms. Chegu:

Thank you for submitting your complaint to the Panel dated November 20, 2017. The Panel discussed the process for reviewing your complaint in our meeting last evening and determined that we need to clarify with you the scope of the Panel's jurisdiction before moving forward.

With respect to your complaint, the Panel has authority: to review the completed internal police department investigation for thoroughness, completeness, accuracy, objectivity, and impartiality. Our review of your complaint and others may also lead to recommendations on law enforcement policies and practices to assist the Chief and the Board of Supervisors in policy review.

As a result, when reviewing investigations the Panel may conclude one of the following:

- (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.

Your November 20th email suggests that you would like the Panel to consider the award of monetary compensation. The Panel is not authorized to award or recommend the payment of monetary compensation to complainants.

With this information in mind, please advise whether you would like for the Panel to proceed with the review consistent with the Panel's authority. If you do, the Panel will move forward to review the investigation and schedule an opportunity for you to appear before the Panel.

Sincerely,

Adrian L. Steel, Jr.

Chairman

Fairfax County Police Civilian Review Panel

Fairfax County Police Civilian Review Panel
12000 Government Center Parkway, Suite 233A
Fairfax, VA 22035
703-324-3459, TTY 711
www.fairfaxcounty.gov/policecivilianreviewpanel/



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

December 20, 2017

Ms. Laxmi Chegu
[REDACTED]

Dear Ms. Chegu:

Thank you for your e-mail of December 18, 2017, indicating that you want to proceed with the Panel's review of the FCPD's investigation of the missed court appearance by a subpoenaed FCPD officer. The Panel has concluded that it has jurisdiction to review that investigation. However, the Panel does not have jurisdiction under its Bylaws to review concerns that you may have pertaining to the Virginia state court system. Please plan to address matters related to the officer's failure to appear and not broader concerns about the court system.

The Panel has tentatively set the date and time for the meeting to review the FCPD investigation for Thursday, January 4, 2018, at 7:00 pm at the Fairfax County Government Center, Conference Room 232. Please confirm that you will be able to attend the meeting at that date and time. If that date and time do not work for you, our next scheduled Panel meeting is set for February 1, 2018. We will provide you with further information concerning the details on the meeting as the date nears.

Sincerely,

Adrian L. Steel, Jr.

Chairman

Fairfax County Police Civilian Review Panel

APPENDIX G.2

(CRP-18-02)



County of Fairfax, Virginia

MEMORANDUM

DATE: 5/7/2018

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-02

I. Introduction

We are writing to inform you that the Fairfax County Police Civilian Review Panel (the “Panel”) has concurred with the findings and determination of the Fairfax County Police Department (“FCPD”) regarding the investigation of a complaint submitted by a complainant.¹

II. Review Request

On June 22, 2017, two FCPD officers responded to calls concerning a landlord-tenant civil dispute at two residences in Lorton. During their encounter with the complainant at his home, the officers observed him slurring his speech, smelling of alcohol and having watery eyes. The officers advised the complainant not to leave his house because doing so would expose him to arrest for a violation of Fairfax County Code Section 5-1-1 (which prohibits persons from being drunk in public). Thereafter, the complainant left his house and approached the vehicle of one of the officers. The officers observed the complainant as being unsteady as he walked, and he was arrested for being drunk in public. The Complainant filed a Complaint with the FCPD, claiming that he was falsely arrested and was not drunk. He stated that the arresting officer did not have sufficient time to observe him in order to make a determination that he was drunk. He said that he asked the officers to give him an alcohol breath test and that they refused.

III. Procedural Background

The complainant initially filed a Complaint with the FCPD on July 5, 2017. An investigation by the FCPD found that the arrest was in compliance with Regulation 2013, General Order 601. Mr. Loesch was informed of the finding on January 9, 2018, and on January 26, 2018, he was informed that he had the right to seek a review by the Panel. On February 7, 2018, the complainant asked for a Panel review of the police investigation of his Complaint.

IV. Panel Meeting

The Panel met on March 1, 2018, at a public meeting. Prior to the meeting, all members had reviewed the FCPD investigation file concerning the complainant's complaint. At the meeting, the Panel voted unanimously that (i) the complainant's allegation of false arrest falls within the Panel's scope of review authority, and (by a vote of 5 in favor, 2 opposing and 2 abstaining) that (ii) a separate Review Meeting with the complainant and the FCPD was not needed prior to a vote on a finding. On April 5, 2018, the Panel met at a public meeting and voted to concur with the findings and determinations detailed in the FCPD Investigation Report. On May 3, 2018, the Panel voted to approve publication of this report. Audio recordings and summaries of the Panel meetings may be reviewed here: <https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>

V. Comments

Several Panel members noted that the audio tapes of the interviews and the video of the police transport of the complainant after his arrest were helpful in their determinations.

In addition, a body-worn camera recording might have been useful in the matter to give a better view of the complainant's behavior during the arrest.

CC: Complainant

ⁱ Unless stated, capitalized terms shall have the same meaning stated in the Bylaws

APPENDIX G.3

(CRP-18-12)



County of Fairfax, Virginia

MEMORANDUM

DATE: 1/8/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-12

I. Introductionⁱ

The Panel held a Panel Review Meeting on November 1, 2018 to review the Investigation resulting from a complaint submitted to the Panel on June 4, 2018. After reviewing the Investigation file and hearing from the complainant (the “Complainant”) and his wife, the Panel voted to concur with the findings of the FCPD documented in the Investigation Report. All Panel Members attended the Panel Review Meeting.

II. Review Request

On March 15, 2018, FCPD officers responded to a report of a crash between a motorcycle and a car—Complainant was the driver of the motorcycle. The Complainant stated that he rear-ended a car that stopped suddenly in front of him on the roadway. Complainant suffered severe injuries in the accident. The driver of the rear-ended car left the scene of the accident and was never located. The request for Panel review stems from the FR300P accident report (FR300P) written by the responding officer (the “Officer”). Complainant complained that the FR300P was inaccurate and that the Officer refused to change the FR300P after Complainant and his wife made the Officer aware of certain inaccuracies.

Complainant complained that the following items were incorrect on the FR300P:

1. The make of the rear-ended car;
2. The identity, relative to their role in the crash, of the individuals who tended to the injured Complainant;
3. The extent of Complainant’s injuries;
4. The extent to which the driver of the rear-ended car (who was not at the scene to be interviewed by the officer) was under the influence of alcohol;
5. The presence or absence of a defect in the rear-ended car’s brake lights, which the Officer did not observe;

6. The determination of driver fault; and
7. The speed limit on the road.

Upon seeing the report, Complainant's wife requested that the Officer revise the FR300P to correct alleged inaccuracies. The Officer declined to do so. The Officer had made no changes to the FR300P at the time Complainant complained to FCPD about the inaccuracies in the FR300P, which he classified as lies.

III. Procedural Background of Review

Unsatisfied with the Officer's response, Complainant filed an Initial Complaint through the Panel. The Panel referred Complainant's complaint to the FCPD Internal Affairs Bureau for investigation and preparation of a report (the "Investigation Report"). The FCPD investigated the complaint and issued a notification of its findings to the Complainant on August 17, 2018 (the "Notification"). The Notification states, among other things, that "[the Officer's] actions were improper and in violation of Departmental regulations" and that "measures have been imposed to prevent a recurrence of this type of incident in the future." After completion of the Investigation, the Officer amended the FR300P correcting some, but not all, of the information disputed by Complainant.

On August 21, 2018, Complainant requested that the Panel review the Investigation Report. On October 4, 2018, the Panel voted that the Panel had authority to review the Investigation and issued an Initial Disposition Notice. This report of Panel Findings is issued as per the Bylaws following a Panel Review Meeting convened to review the Investigation Report.

IV. Panel Review Meeting

All Panel members reviewed the Investigation Report prior to participating in the Panel Review Meeting. The Complainant and his wife were present at the Panel Review Meeting and made statements and answered questions of the Panel. Maj. Gervais Reed appeared on behalf of the FCPD and answered questions from the Panel.

After hearing from the Complainant and his wife and Maj. Reed, the Panel deliberated and voted to concur with the findings and determinations of the Investigation Report. The vote, held on November 1, 2018, was six in favor, one opposed, and one abstention. On January 3, 2019, the Panel voted to approve publication of these Panel Findings. An audio recording and a summary of the Panel Review Meeting may be reviewed here:

<https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>

V. Additional Comments

- A. Panel Members expressed concern about the adequacy of training and would like to know what steps have been taken to ensure that all officers know how to complete FR300Ps and the steps to make corrections if needed.

- B. The Officer's demeanor in the face of the Complainant's entreaties for a revised FR300P is challenging. The Officer's seeming dismissal of the Complainant's pleas struck the Panel members as uncaring and unprofessional. There was some discussion between Panel members as to whether the Officer's demeanor warranted further investigation, as it was not explicitly discussed in the Investigation Report. However, Maj. Reed's assurance that the investigators took a holistic approach to the complaint, coupled with the fact that issues of the Officer's demeanor are inextricably tied to the officer's refusal to update the FR300P satisfied the Panel that the officer's demeanor was reviewed as part of the Investigation and that a separate investigation into the officer's demeanor was unwarranted.

VI. Recommendations

- A. The Panel Members expressed concern that there is currently no supervisory review of completed FR300Ps before they are submitted to the VA Department of Motor Vehicles. Maj. Reed informed the Panel that previously supervision of accident reporting was more robust. The Virginia State Police's creation of an electronic system for FR300Ps inhibited review of completed FR300Ps. The Panel recommends that the FCPD develop an efficient methodology to reintegrate some level of supervision over the submission of the forms. Complainant stated that the consequences for errors could be problematic as certain insurance claims were initially denied based on the erroneous information in the initial FR300P.
- B. The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.
- C. The Panel Members recommend that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name. The benefit of publishing a discipline summary is that all officers, regardless of their home station, could learn from the mistakes of their peers across the County. Such a system is used successfully in the practice of law in Virginia and in other law enforcement agencies across the country.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

Panelist Aguilar Dissenting

I dissent from the judgment and opinion(s) pronounced by the majority of the Panel in this case for the below outlined reasons:

In his written declaration and subsequent verbal statements to the FCPD and the Panel, the complainant alleged, that he was subjected to: (1) improper police procedures (i.e. incomplete crash investigation and reporting) and (2) discourteous customer service. The former resulted in tangible injuries (via complications with his insurance company) and the latter resulted in the subject officer's misguided refusals for a review and revision of the report which brought the Department into disrepute. Upon receiving the disposition letter, the complainant requested a review of the investigation by the Panel. The Panel correctly agreed that it had jurisdiction to assess and review the matter.

However, as reflected in the verbal statements made during the deliberations of the case in the public review session and the written Panel conclusions, the Panel erred in concluding that the investigation was complete. Specifically, the Panel placed greater emphasis on the allegation concerning the improper crash investigation and the subsequent erroneous report than to the allegation concerning the demeanor of the officer. Paradoxically, the demeanor of the subject officer was noted to be below the expected standards of the Department in the majority's decision. Specifically, in the **Additional Comments**. section **B**. of the majority report it justifies the rationale in concluding the investigation was complete in stating:

“The Officer’s demeanor in the face of the Complainant’s entreaties for a revised FR300P is challenging. The Officer’s seeming dismissal of the Complainant’s pleas struck the Panel members as uncaring and unprofessional. There was some discussion between Panel members as to whether the Officer’s demeanor warranted further investigation, as it was not explicitly discussed in the Investigation Report. However, Maj. Reed’s assurance that the investigators took a holistic approach to the complaint, coupled with the fact that issues of the Officer’s demeanor are inextricably tied to the officer’s refusal to update the FR300P satisfied the Panel that the officer’s demeanor was reviewed as part of the Investigation and that a separate investigation into the officer’s demeanor was unwarranted.”

In addition to those written statements, some panelists also voiced their opinions on the matter to include the following verbal statements¹:

“...there was a part that seemed to go unaddressed and that was the officer’s demeanor”
[00:40:18]

“...there was an element of this that was potentially related to the demeanor of the officer, but I think the crux of the complaint was the form, the accuracy of the form...” **[00:41:49]**

¹ A transcript of the meeting is not available, however as it is practice of the Panel, a link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-nov-1-2018> . Time stamps of selected statements from the session are provided in brackets.

“...As far as the demeanor of the officer...I think, overall, the Fairfax County Police, in my limited experience, does a good job that way...” [00:48:40]

“You all voted on what we had authority to review and the things that we felt we had- I remember outlining what we had authority to review pertained to, not the demeanor but it pertained to the accuracy of the report...” [01:04:26]

“You could argue that he [the complainant] brought up a separate allegation tonight that we didn’t consider jurisdiction on, so we could actually vote to see whether we believed that rose to the level of serious misconduct...” [01:05:01]

The result of the majority’s decision was that an allegation of police misconduct made against a FCPD officer remains formally unadjudicated. The Panel certainly had jurisdiction to review an allegation of this caliber. In **ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES**. Section B of the Bylaws, serious misconduct is, in part, described as conduct where officers act: *“in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.”* The inaccurate report was careless and so were the subsequent refusals to amend it. The comment that “it is what it is” was objectively rude and the subject officer did not deny saying it. The act could be viewed from the lens of at least three of the Department’s general orders:

201.7 STANDARDS OF CONDUCT

A) Unbecoming Conduct

Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Conduct unbecoming an employee shall include that which brings the Department into disrepute or reflects discredit upon the employee as a member of the Department, or that which impairs the operation or efficiency of the Department or employee.

201.13 HUMAN RELATIONS

A. Citizen Contacts

Employees shall conduct themselves professionally at all times when representing the Department. They shall use respectful, courteous forms of address to all persons...

202.1 LOITERING, SLEEPING, LOAFING ON DUTY

No employee shall loiter, sleep, or loaf on duty, or in any other manner shirk responsibilities in the performance of duty.

The fact that the allegation was not “explicitly discussed in the Investigation Report,” in my view invalidated the completeness of the investigation. Considering the totality of the circumstances surrounding the allegations and the investigation, I believe the only appropriate disposition in this matter was to render it incomplete. Having reached that conclusion, I believe that voting to concur

with the findings and determinations of the Investigation Report would have been a dereliction of my duty.

The Panel should not be concerned whether the Department's outcome of the investigation will remain the same if the Panel renders it incomplete after its review. The Panel must hold the internal investigations process of the Department to higher standards if it is to remain true to its stated mission *"to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigation."*

This is no trivial matter, but I pray and hope it is an isolated incident. If such approach remains the modus operandi of the Panel, I fear the Panel may be on the dangerous path towards irrelevancy. The Panel is still in its infancy and such hiccups are understandable, but it must remain vigilant for the sake and future of civilian oversight in our beloved county.

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APPENDIX G.4

(CRP-18-26)



County of Fairfax, Virginia

MEMORANDUM

DATE: 3/7/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-26

I. Introductionⁱ

The Panel held a Panel Review Meeting on January 3, 2019 to review the Investigation resulting from a complaint submitted to the Panel for review on November 26, 2018. After reviewing the Investigation file, the Panel voted unanimously to concur with the findings of the FCPD documented in the Investigation Report. All Panel members attended the Panel Review Meeting.

II. Review Request

On or about August 25, 2018, at approximately 3:46 PM, the Complainant was stopped within the Fairfax County jurisdiction by a uniformed FCPD Officer (hereafter referred to as "Subject Officer") in a marked cruiser for a window tint violation. The Complainant alleged the Subject Officer racially profiled him when stopping his vehicle. Specifically, the Complainant believed the Subject Officer's reference that the Complainant could not be seen through the windows was more related to his dark complexion than the window tint. The Complainant further believed the Subject Officer's inquiry of "Where are you headed?" was inappropriate and beyond the scope of the infraction at hand.

III. Procedural Background

The Complainant filed a complaint with the FCPD on or about August 27, 2018. The FCPD Internal Affairs Bureau ("IAB") investigated the complaint and issued a notification of its findings to the Complainant on or about November 9, 2018. The FCPD investigation found that there was "no credible evidence to support" the Complainant's allegation of bias.

Later that month, on or about November 26, 2018 the Complainant sent an email to the Office of Independent Police Auditor requesting a review the IAB investigation by the Panel. The Complainant expressed dissatisfaction with the lack of details as to the results of the IAB's investigation and shared his belief and perception that the assigned investigator demonstrated a lack of impartiality.

On December 17, 2018, a sub-committee of the Panel met to review the Review Request and determined the Panel had authority to review the Investigation since the subject matter of the Investigation alleged an abuse of authority and issued an Initial Disposition Notice.

IV. Panel Review Meeting

All Panel members reviewed the Investigation Report prior to participating in the Panel Review Meeting on January 3, 2019. The Complainant was not present at the Review Meeting nor was a representative on his behalf. The Complainant was contacted on several occasions, both via telephonically and via correspondence, and provided the date/time and location information on the meeting. Major Gervais Reed appeared on behalf of the FCPD. He reviewed the investigation conducted by IAB and answered questions from the Panel.

Based on Major Reed's presentation and responses and on the Panel's review of the Investigation file, the Panel determined as follows:

The IAB investigator interviewed the Complainant (by email) and the Subject Officer regarding the August 25, 2018 traffic stop. The Subject Officer's in-car video (ICV) and body worn camera (BWC) footage were also reviewed by the investigator, the investigation established that the Subject Officer was on patrol on August 25 when she observed a vehicle pass by her with dark tinted windows. Because she was unable to see the driver through the windows, she initiated a traffic stop on-the-basis of a possible violation of the Virginia law on the tinting of car windows. VA Code 46.2-1052. The Subject Officer explained to the Complainant the reason for the stop and tested the driver side and left rear passenger windows with a tint meter. The driver side window tested at 36% (i.e., 36% of light passed through), and the passenger window tested at 16%. The Virginia Code requires a minimum 50% transparency for a front seat window and a 35% transparency for a rear window. The meter was tested before and after the Subject Officer's shift and found to be working properly. She explained to the Complainant that she decided to issue a summons because of the violation of the Code standards, especially as to the rear window.

A review of the ICV and BWC footage indicates that the Subject Officer's conduct was proper and in compliance with all applicable FCPD policies, including FCPD's Bias Based Policing policy as set forth in Reg. 201.22 which requires traffic stops to be based on reasonable suspicion or probable cause and prohibits the consideration of race or ethnicity in making law enforcement decisions. The Subject Officer had probable cause that the Complainant's car windows violated the Virginia Code, and she acted

properly in stopping the car. In so doing, she was courteous and professional, explained the reason for her actions, and asked the Complainant if he had any questions. The ICV and BWC footage also reflected that the Complainant and the Subject Officer engaged in routine conversation as would be associated with any traffic stop with no profanity, harsh or derogatory language, and no racial slurs or other discriminatory remarks by either of them. The questions that the Subject Officer asked are common to traffic stops. The Subject Officer also advised the Complainant that, if he were to bring evidence that he had remediated the excessive tint to the court hearing, there was a good possibility that the charge would be dismissed.

With respect to the Complainant's concern that the Subject Officer stopped the Complainant's car and issued a summons on the basis of race, the ICV footage shows that she could not have seen through the windows of the Complainant's car as it passed by her and that she could not have determine the driver's race before initiating the stop due to the heavy tint. Both the ICV and BWC footage showed that there were no other cars in front of the Complainant's car when his car passed the Subject Officer's police vehicle. The footage further shows that the Subject Officer asked the Complainant to move his car to a side street to avoid blocking a street.

Based on the above, the Panel deliberated and voted unanimously to concur with the findings and determinations of the Investigation Report.

An audio recording of the January 3, 2019, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-jan-3-2019>.

On February 7, 2019, the Panel discussed the Finding Summary, an audio recording an may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-feb-7-2019>

V. Comments

- A. Panel members reviewed the video from both the BWC and ICV and agreed this footage provided impartial documentation of the alleged conduct in question and further remarked on the usefulness of such evidence for future cases of a similar nature.
- B. Some Panel members expressed concern about the FCPD's use of statistical evidence for determining racial disparities. Specifically, the FCPD used descriptive data and attempted to make correlations without taking into consideration the demographics of the District in comparison to the District's criminal statistics. Major Reed confirmed that the FCPD employs crime analysts and that IAB investigators do not receive specialized training on statistics.

VI. Recommendations

- A. The Panel recommends that the FCPD ensures that individuals involved in incidents with FCPD officers which are subject to a complaint be provided with an opportunity to review the video footage of the incidents. FCPD policy provides for such review. See BWC Standard Operating Procedure 18-506 and General Order 430.8.XI.B. The Panel believes that enabling complainants to view video and audio of incidents giving rise to complaints will enhance the FCPD's transparency and assist complainants in understanding the FCPD's conduct during the incidents.
- B. Panel members should be provided with the opportunity to review video and audio footage of all interviews conducted during FCPD administrative investigations.
- C. The FCPD should make BWC and ICV footage available for viewing at Panel Review Meetings as requested by the Panel.
- D. During FCPD administrative investigations, where statistical evidence is used, we recommend the Crime Analyst Unit be consulted in the gathering, preparation and reporting of the statistical data.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

APPENDIX G.5

(CRP-18-27)



County of Fairfax, Virginia

MEMORANDUM

DATE: 7/12/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-27

I. Introductionⁱ

The Panel held a Panel Review Meeting on February 7, 2019, to review the Fairfax County Police Department (FCPD) Investigation resulting from a complaint submitted to the Panel for review on December 11, 2018. The complaint was filed by a person who was not a witness and was not at the scene of the incident. The Complainant's knowledge of the incident is based on viewing video of part of the incident on social media and watching media coverage. After reviewing the Investigation file and hearing from the Complainant and FCPD, the Panel expressed concern about the thoroughness, completeness, accuracy, objectivity and impartiality of the Investigation. The Panel requested further investigation of the incident focusing on (1) possible racial bias and/or racial profiling, and (2) the legality of the stop leading to the arrest of an individual by a FCPD officer.

The FCPD conducted further investigation and on April 5, 2019, informed the Panel that an independent legal review concluded that the stop leading to the arrest of the individual was legal and free from any racial bias.

After reviewing the supplemental Investigative file, on May 30, 2019, the Complainant addressed the Panel a second time, and the Panel considered the additional findings by the FCPD. The Panel voted to concur with the findings of the FCPD Investigation on a vote of 6 to 1. Panel member Hansel Aguilar voted not to concur, and Panel members Gregory Gadson and Shirley Taylor were absent from the meeting.¹

¹ Audio of the February 7, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-feb-7-2019>. Audio of the May 30, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-may-30-2019>.

II. Incident and Review Request

According to the officer, on July 6, 2018, he observed an individual walk toward a Mount Vernon apartment complex looking down at his phone as if he was looking for an address and was unfamiliar with the neighborhood. The officer was on patrol in the neighborhood at the request of management at the apartment complex because of trespassing and criminal activity (including illegal drug trafficking) in the area. Managers of the complex had given the officer keys to the entrance. The officer watched as the individual was let into the complex through a controlled access door.

The individual remained out of view for about 10 seconds and then exited the building and walked toward a nearby shopping center. The officer suspected that the individual may have been involved in a drug transaction based on his behavior and past calls in the area. The officer followed the individual and as he approached the individual, he asked to speak to him about a possible trespassing. The individual replied, “No,” and walked away from the officer. At that point, the officer said that he noticed a strong odor of marijuana on the individual and observed that his right hand was clenched. The officer initiated an investigative detention, and a physical struggle ensued, ending with the individual being arrested and handcuffed. The Independent Police Auditor has conducted a review of the officer’s use of force in this incident.²

The Complainant claimed that the individual was not trespassing, was stopped illegally, and was a target of racial profiling. Following the initial FCPD Investigation, the Complainant requested that the Panel review the Investigation. The Panel determined that it had authority to review the allegations in the complaint of abuse of authority and serious misconduct by the FCPD. At the Complainant’s first appearance at the February Panel meeting, the Panel noted that the complaint did not include a specific allegation of racial profiling, and the initial FCPD investigation did not address the issue. When asked if the Complainant would like to amend the complaint to include racial profiling, the Complainant replied affirmatively. Based on the Complainant’s request and the Panel’s questions regarding the legal justification for the stop, the Panel requested further review by the FCPD.

III. FCPD Finding: Legality of the Stop

In its supplemental investigation, the FCPD requested and received a legal analysis of the stop from the Office of the Fairfax County Attorney and the Office of the Fairfax County Commonwealth’s Attorney. These analyses relied heavily upon federal and state court cases that allow an officer to briefly detain a person based upon reasonable suspicion of criminal activity long enough to dispel the suspicion or allow it to rise to the level of probable cause for an

² Link to OIPA Report 7-6-18: [July 6, 2018: Use of Force Complaint](#)

arrest.³ Additionally, federal and Virginia law allows an officer to conduct a search based upon probable cause if the officer detects the smell or odor of drugs on a person.⁴ (“Plain Smell Doctrine”)

Applying the “plain smell doctrine” to the facts of this incident, both the County Attorney and the Office of the Commonwealth’s Attorney stated that the officer smelled fresh marijuana on the individual and he was subsequently found to have marijuana on his person. As such, there was reasonable suspicion and/or probable cause for the stop, and it was justified under both state and federal law. The attorneys also opined that the observations of the officer and his experience with criminal drug activity also gave the officer “reasonable suspicion” to stop the individual.

The majority of the Panel were satisfied with the legal analyses and concurred with the findings and determination detailed in the Investigation Report.

IV. FCPD Finding: Racial Profiling

In its supplemental Investigation, the FCPD found that no credible evidence was found indicating racial bias played a role in this incident. This conclusion was based upon interviews of the individual, the officers and witnesses, including one who posted a video of the incident. The Investigation also relied upon the officer’s arrest statistics.

Several members of the Panel were troubled by the FCPD’s reliance on arrest statistics to substantiate a finding of no racial profiling in this incident. The Panel has recommended to the FCPD that when statistical evidence is used, the Crime Analyst Unit be consulted regarding the gathering, preparation and reporting of statistical data. When asked whether the Crime Analyst Unit was consulted in this Investigations, the FCPD replied that the unit was not consulted.

Nevertheless, the Panel found that the Investigation, taken in its totality, supported the conclusion that there was no racial profiling, and the Panel concurred with the FCPD finding and determination detailed in the Investigation Report.

V. Comment

- A. Some Panel Members expressed concern over the police officer stopping and arresting for trespass when the individual had been granted access by a resident of the apartment complex and was no longer on the property when stopped.

³ Terry v. Ohio, 392 U.S. 1 (1968)

⁴ Bunch v. Commonwealth, 51 Va. App.491 (2008); United States v. Humphries, 372 F.3d 653, 660 (4th Cir. 2004); United States v. Haynie, 637 F.2d 227, 234 (4th Cir. 1980)

VI. Recommendation

- A. The Police Department sent a letter to the Panel informing the Panel of its supplemental findings. Attached to that letter was investigatory information pertaining to the Complainant's social media accounts. Inclusion of the social media information was inappropriate and unnecessary. Such public disclosure by the Police Department may discourage individuals from filing future complaints, and it undermines community trust in the Panel, even though the information may have been publicly available through other means. Therefore, the Panel recommends that in the future the Department refrain from publicly releasing such information about complainants. If the Department believes that certain information about a complainant may be relevant to the investigation, that information should be included only in the Department's investigative file.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

Panelist Aguilar dissenting

I respectfully dissent from the majority's conclusion in this matter for the below outlined reason:

- In failing to provide a proper statistical analysis concerning the reported racial disparities in the enforcement activities of the subject officer, it is not clear that the Department accurately, completely and thoroughly, reviewed and considered the allegation of racial bias as prohibited by G.O. 201.22, Biased Based Policing.

Specifically, in its investigation, the Department noted that the arrest activity of the subject officer demonstrated there was margin of at least 20 percentage points¹ in the officer's arrest of African Americans compared to his District level peers' arrests of African Americans. In its report, the Department reasoned that the discrepancy was not of concern because the subject officer was patrolling a neighborhood that did not share the same demographic characteristics of the entire District (i.e. the assigned neighborhood of the subject officer consisted of a higher concentration of African Americans residents than what is seen in the entire District). No further analyses or attempts to compare similarly situated or assigned officers were made to explore whether the racial discrepancies reported by the subject officer's arrest activity were consistent or inconsistent with proper comparators. In addition to the officer's record revealing more arrests of African Americans by a considerable margin (through the Department's own data); the statistics provided in the

¹ This specific point was also discussed in the May 30, 2019 meeting where the Panel discussed the case for a second time. [00:15:30] Audio of this discussion could be accessed by visiting: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-may-30-2019>

Department's report also indicated the subject officer was less likely to arrest White offenders than his District counterparts by a margin of at least 20 percentage points.

The lack of statistical scrutiny provided to the pattern of arrests revealed by the department's records was also evident in the questioning of the officer. The questioning of the subject officer could have explored the concept of racial bias in his policing activities or implicit bias by prompting him with questions regarding racial bias or exploring his pattern of arresting more African Americans than White individuals.

For this reason, I cannot accept the Department's conclusion that "*no credible evidence was found indicating racial bias played a role in this incident*"² NOR can I accept the Panel's similar conclusion "*that the Investigation, taken in its totality, supported the conclusion that there was no racial profiling.*" Furthermore, I emphasize the recommendation made by the Panel in its March 7, 2019 report³: (D.) *During FCPD administrative investigations, where statistical evidence is used, we recommend the Crime Analyst Unit be consulted in the gathering, preparation and reporting of the statistical data.* Considering the subject matter expertise of members of the CAU, it appears to be the unit, within the FCPD, best suited to conduct proper statistical analyses. Lastly, as outlined in G.O. 530.7 Crime Analysis Unit, there already exists a mechanism by which the Department may enlist and delegate this task to the CAU, "*Analysts shall, upon request, gather data and prepare statistical reports related to a variety of Departmental activities.*"

² As indicated by FCPD Chief Edwin C. Roessler Jr., Colonel in his April 5, 2019 letter to CRP Chairman Doug Kay.

³ Report of Panel Findings for Complaint CRP-18-26:

<https://www.fairfaxcounty.gov/policecivilianreviewpanel/sites/policecivilianreviewpanel/files/assets/crp-18-26%20review%20report%20official%20memo.pdf>

MEMORANDUM

To: The Fairfax County Police Civilian Review Panel

From: Rhonda VanLowe

Date: July 8, 2019

Re: The Utley Complaint

I. Introduction

After a careful review of the report in the Utley matter and the corresponding dissent, I find that I am not able to support the conclusion stated in the report that, with respect to the issue of racial profiling, “the investigation taken in its totality, supported the conclusion that there was no racial profiling.” At best, the investigation is inconclusive on this issue, and, for this reason, I cannot concur in the FCPD conclusions and findings on the issue of racial bias and profiling. On this aspect of the report, I join Mr. Aguilar in dissenting.

II. The Investigation on the issue of Racial Bias/ Profiling is Inconclusive

Determining whether the officer exhibited a racial bias or profiled the individual involved in the arrest based on race is likely a question that cannot be answered at this point. That said, neither can a definitive conclusion be made based on the information reported in the investigation.

What we have on the issue as an initial input is the Officer’s arrest statistics. These statistics indicate that the officer has an unfavorable margin of at least 20% in the number of arrests of African Americans compared to his District level peers’ arrests of African Americans. The FCPD concluded that the officer’s arrest statistics reflect his patrol assignment to an area heavily populated by African Americans. While this conclusion may be plausible, no other evidenced-based information is provided to support the conclusion. For example, the investigation file does not contain any information about the existence of other community complaints or compliments about the officer that might be related to the question of bias. Nor does the investigation reflect any social media scrutiny similar to that provided on the complainant (which, as indicated to the Panel, was offered to show the complainant’s bias). Mr. Aguilar notes the need for a more comprehensive statistical analysis (the Panel has recommended the same in the past). Further, and regrettably, we do not have any body worn camera footage or corroboration from another officer at the scene of the initial encounter to see and understand how the police stop began and developed.

The Panel has reviewed other complaints alleging racial profiling. In one notable incident involving a traffic stop, body worn camera footage was available. The Panel could view the traffic stop from beginning to end. The recording gave the Panel a clear perspective on the

officer's demeanor, motivation and conduct. The policing in that example was commendable; the Panel could and did support the FCPD conclusion that there was no racial profiling present in the stop.

Because of the persuasive legal analysis by the Office of Fairfax County Attorney and the Office of the Fairfax County Commonwealth Attorney on the issue of the legality of stop and subsequent arrest, concluding that there was no exhibited racial bias may seem like a logical consequence. However, the conclusion conflates two distinct issues.

III. Comments

A significant number of complaints (16% in 2018) received by the Panel contain an allegation of racial bias or racial profiling. Whether perceived or real, the broader community is concerned. I believe that having the FCPD speak with the Panel on the issue of racial profiling and bias within the department would be useful to educate the Panel on the initiatives undertaken by FCPD to address the issue.

IV. Conclusion

Based on the legal analysis provided in the supplemental investigation, I concur with the conclusion with the Panel's conclusion on the legality of the stop. I dissent from the conclusion that there was no racial bias or profiling evident in the incident.

APPENDIX G.6

(CRP-19-05)



County of Fairfax, Virginia

MEMORANDUM

DATE: 8/1/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-05

On behalf of the members of the Fairfax County Civilian Review Panel, I submit to you Panel Findings for Complaint CRP-19-05 (“Complaint”). As explained below, the Panel found the Investigation met the criteria of accuracy, completeness, thoroughness, objectivity, and impartiality.

I. Introductionⁱ

The Panel held a Panel Review Meeting on June 20, 2018, to review the Investigation resulting from a complaint submitted to the Panel for review on November 26, 2018. After discussion, the Panel voted unanimously that the FCPD’s Investigation Report met the criteria expected of them. All Panel members, except Colonel Gregory Gadson, attended the Panel Review Meeting.

II. Background Facts and Review Request

On April 17, 2019, an undercover narcotics detective with the FCPD placed an advertisement on the Internet and broadcast it throughout the local District of Columbia, Maryland and Virginia region. In the advertisement, an undercover FCPD detective masqueraded as a couple looking for a third person to engage in a sexual fantasy relationship. The advertisement also subtly solicited drugs. The Complainant responded to the advertisement using electronic communications. Review of these communications reveals early and frequent discussion of the Complainant’s procurement of cocaine and marijuana during several weeks of communications between the detective and the Complainant. On May 24, 2017, the Complainant arrived at an appointed meeting place where the FCPD arrested him for possession with intent to distribute cocaine and marijuana and with possession of a firearm while in possession of narcotics. The FCPD also seized the vehicle Complainant used to meet with the undercover detective.

Thereafter, the Complainant became a confidential informant (“CI”) with the expectation that it would help his case. During Complainant’s efforts as a CI, he asked for guidance about how to engage in drug sales, and a detective responded via text message, “Look Retard.....don’t actually buy drugs or get drugs from them. Simply get them to agree to sell to you. This is why you should not be doing this. U don’t have any idea about what you are doing. And I am not teaching a class.” After the Complainant’s work as a CI concluded, his criminal prosecution ensued. The Complainant was represented by counsel who negotiated a plea bargain that resolved all criminal charges finally on August 24, 2018.

Shortly after Complainant’s arrest, the Commonwealth of Virginia filed a separate civil forfeiture proceeding concerning the Complainant’s vehicle. But the Commonwealth’s Attorney concluded that the outstanding liens on Complainant’s vehicle made inappropriate further pursuit of forfeiture proceedings. On instructions from the Commonwealth’s Attorney, the FCPD returned the vehicle to the lienholder. Neither the Commonwealth’s Attorney nor the FCPD gave Complainant notice of the disposition of his vehicle.

On September 10, 2018, filed the Complaint which asserts a multitude of claims principally including that the FCPD engaged entrapment, that he was subjected to offensive language in violation of the FCPD General Orders, and that his vehicle had been illegally forfeited.

III. Procedural Background

Pursuant to the Bylaws, the Complaint was forwarded to the FCPD for Investigation. After the Investigation was completed, Chief Roessler sent a letter to the Complainant notifying him of the outcome of the FCPD’s review. The Complainant timely filed a Review Request.

On May 23, 2019, the Panel conducted an initial review of the Review Request in which it addressed: 1) whether the request was timely and 2) whether the complaint met the seriousness standards of the Panel’s by-laws. The Complaint was filed more than one (1) year after the date of the incident, and a month after the close of Complainant’s criminal case. The Bylaws permit the Panel to review an untimely Complaint if the Panel finds good cause for the delay. The Panel concluded good cause existed since it was reasonable for the Complainant to wait until after conclusion of his (1) efforts as a CI and (2) criminal prosecution since Complainant probably believed filing a complaint against the FCPD would cause the FCPD to be prejudiced against him during the pendency of either of the two circumstances. The Panel also concluded that the Complainant’s allegations were sufficiently serious to warrant review.

IV. Panel Review Meeting

The Panel Review meeting for CRP-19-05 was held on June 20, 2019.¹ Prior to the Panel review meeting, all Panel members had reviewed the voluminous Investigation Report created in response to the Complaint.

Second Lieutenant Low attended the Panel Meeting and provided an overview of the case, the investigation of the Complaint, and a summary of the FCPD response to each item in the Complaint:

Entrapment. The Office of the Commonwealth’s Attorney and the Office of the County Attorney each reviewed the incidents and determined that the tactics used by the FCPD were within the law and entrapment did not occur. To overcome the defense of entrapment, the government must prove that the defendant was disposed to commit the criminal act prior to first being approached by government agents. The Complainant claimed he could provide “party favors” without prompting from the detective and within minutes of their first communications. Throughout the lengthy written exchange available to the Panel for inspection, the Complainant exhibited knowledge of the drug trade and a lack of hesitation to procure drugs for use during the offered sexual encounter. The Panel was satisfied that the FCPD consulted with and obtained legal opinions that were included in the Investigation Report.

Use of Offensive Language. The FCPD’s investigation found that the Officer’s use of offensive language was in violation of General Orders. (The violation was addressed, but personnel actions are subject to privacy restrictions and will not be described herein.) The Panel was satisfied with the FCPD’s handling of this violation.

Vehicle Seizure. The actions taken in this case were consistent with FCPD policies and procedures in existence at the time of the seizure. The Panel expressed concerns about the failure to notify the Complainant that his vehicle was returned to the lienholder. However, the FCPD has since implemented improved procedures that address the concern. Moreover, several on the Panel expressed concern over future seizure of vehicles by the FCPD may constitute an excessive fine under recent U.S. Supreme Court precedent.

After discussion of the adequacy and appropriateness of the FCPD’s actions and Investigation of the Complaint, the Panel voted unanimously to concur with the findings and determination detailed in the Investigation Report.

¹ Audio of the June 20, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-june-20-2019>. A summary of the June 20, 2019 meeting is at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/sites/policecivilianreviewpanel/files/assets/6-20-19%20summary.pdf>

V. Comments

- A. The Panel commends the FCPD for their prompt issuance of an updated policy on the seizure of vehicles.
- B. The FCPD investigation properly found that the Officer's use of the word, "retard" was offensive and was in violation of its General Orders. The Panel agrees that use of such abusive and repugnant language is unacceptable and unbecoming of a police officer in any circumstance. The word, "retard" debases one's human dignity and worth. Individuals with intellectual disabilities and their families are hurt and injured when the word is used to describe themselves, their loved ones, or anyone. Further, use of the word serves to divide our community, instead of uniting, including and recognizing that all residents bring value in diverse ways. Police officers should be the role models in our community, and they should never engage in name-calling.

VI. Recommendations

No recommendations.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

APPENDIX G.7

(CRP-19-07)



County of Fairfax, Virginia

MEMORANDUM

DATE: 9/17/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-07

On behalf of the members of the Fairfax County Civilian Review Panel, I submit to you Panel Findings for Complaint CRP-19-07 (“Complaint”). As explained below, the Panel found the Investigation met the criteria of accuracy, completeness, thoroughness, objectivity, and impartiality.

I. Introductionⁱ

The Panel held a Panel Review Meeting on August 1st, 2019, to review the Investigation resulting from a complaint submitted to the Panel for review on April 11, 2019. After discussion, the Panel voted unanimously that the FCPD’s Investigation Report met expected criteria.

II. Background Facts and Review Request

According to the complainant, on or around December 18, 2018 an FCPD investigated concerns of complainant that an affidavit (germane to his court case) was removed from the physical case file as well as the electronic case file management system of the Fairfax County Circuit Court. Upon completing his review of the file, the detective informed the complainant that the affidavit was not actually missing from the file at all, and that the complainant apparently failed to locate it in the case file. The complainant did not believe the detective thoroughly investigated his complaint, so he filed a complaint against the detective with the FCPD Internal Affairs Bureau, and the FCPD conducted an Investigation into the complaint. Upon the completion of the Investigation, the FCPD sent a letter to the complainant, dated April 1, 2019, informing him that the FCPD concluded the subject detective’s actions were lawful and in compliance with FCPD regulations. The complainant requested a Panel Review.

The complainant expressed that the assigned detective closed out the investigation making “false statements” and remaining “silent” on key facts. Specifically, according to the complainant, the detective:

- Claimed the ‘missing’ Affidavit was in its "appropriate location".

- Claimed that the complainant was "conducting research" and that the complainant asked the filing clerks to conduct research for him.
- Remained silent on whether the Affidavit he found was an original document.
- Remained silent on whether the electronic Affidavit was missing in the case file management system.

When seeking a review of the Investigation, the complainant made three specific requests that fell within the scope of the Panel's mandate: a thorough review of the detective's investigation to determine whether proper procedures were followed; verify whether the affidavit in question was missing from both the physical and electronic case file; and verify whether the complainant asked the filing clerks to conduct research. The complainant also made three requests that were outside the purview of the Panel's duties: conduct a forensic analysis of the August 31, 2018 affidavit to determine whether it is an original document; conduct a forensic digital analysis to determine who deleted the electronic record of the affidavit; and confirm whether a scanned copy of the affidavit ever existed.

III. Procedural Background

Pursuant to the Bylaws, the Panel forwarded the Complaint to the FCPD for investigation. After the Investigation Report was completed, Chief Roessler sent a letter to the Complainant notifying him of the outcome of the FCPD's review. The Complainant timely filed a Review Request.

On June 20, 2019, the Panel conducted an initial review of the Review Request in which it addressed: 1) whether the request was timely and 2) whether the complaint met the seriousness standards of the Panel's by-laws. The Panel concluded that the Complainant's allegations met both requirements for review.

IV. Panel Review Meeting

The Panel Review Meeting for CRP-19-07 was held on August 1, 2019.¹ Prior to the Panel Review Meeting, all Panel members had reviewed the Investigation Report.

The complainant attended the Panel Review Meeting and reiterated the allegations as outlined in his email communications to the IAB and the Panel. Specifically, he stressed that the affidavit shown in the file was not an original document, which he believed was evidence that it was removed and or altered from the official file.

The Commander of the Internal Affairs Bureau, Major Matt Owens, attended the Panel Meeting and provided an overview of the case, the Investigation of the Complaint, and a

¹ Audio of the August 1, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-august-1-2019>. A summary of the August 1, 2019 meeting is at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/sites/policecivilianreviewpanel/files/assets/august%201%20summary.pdf>

summary of the FCPD response to each item in the Complaint:

“Appropriate location.” There was no evidence to suggest there was reasonable suspicion, let alone probable cause, that the file was misplaced and or removed from its appropriate location.

Conducting Research. The complainant went to the courthouse to attempt to locate the affidavit in question.

Original document. There was no evidence to suggest there was reasonable suspicion, let alone probable cause, that there was any wrongdoing or criminal behavior in this matter.

Electronic affidavit. There was no evidence to suggest there was reasonable suspicion, let alone probable cause, that there was any wrongdoing or criminal behavior in this matter.

After discussion of the adequacy and appropriateness of the FCPD’s actions and Investigation of the Complaint, the Panel voted unanimously to concur with the findings and determination detailed in the Investigation Report.

V. Comment

No Comments

VI. Recommendations

No recommendations.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

APPENDIX G.8

(CRP-19-11)



County of Fairfax, Virginia

MEMORANDUM

DATE: 1/9/2020

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of Complaint No. CRP-19-11

I. Introductionⁱ

The Panel held a Panel Review Meeting on December 17, 2019, to review the Investigation resulting from the complaint first submitted to the Panel on May 21, 2019. The requested review was of an investigation originally completed on April 4, 2019, following a citizen complaint submitted directly to the FCPD at the Franconia District Station on December 27, 2018. In June 2019, the FCPD reopened its investigation and issued a second disposition letter dated August 30, 2019.

After reviewing the Investigation file, the Panel Members present¹ voted 6-1 that the Investigation was complete, thorough, accurate, objective, and impartial, and concurred with the ultimate findings of the FCPD documented in the Investigation Report. The Panel Members present determined to present several comments and recommendations for future Investigation Reports and police procedures based on unique aspects of the file.

II. Background Facts and Review Request

On December 27, 2017, at approximately 6:00pm, the individual who filed the complaint at issue (hereinafter referred to as the “Complainant”) was stopped by a uniformed FCPD Officer (herein after referred to as the “Subject Officer”) in a marked cruiser for parking in a handicapped parking spot without a handicapped sticker in the parking lot of an extended stay hotel where the Complainant and his family were staying. The Complainant, who is a Black male, was driving the car with a Black male passenger in the front seat and a White female passenger, his wife, in the back seat. The Complainant had exited the car and was walking into the hotel when the Subject Officer stopped him. The Complainant would later admit at the Review Meeting that he parked in the handicap spot because he was nervous that the Subject Officer was following him and the Complainant did not have a driver’s license.

¹ Panel members Rhonda VanLowe and Sris Sriskandarajah were not present.

Upon being stopped, the Complainant acknowledged to the Subject Officer that his car did not have a handicapped sticker but told the Subject Officer that he believed that the renter of the car had one. The Complainant offered to go upstairs to retrieve the sticker from the renter, but the Subject Officer instructed the Complainant to return to the vehicle and the Subject Officer also explained that he would be calling for backup. The Complainant called his family friend, the renter of the car, who came down to explain the situation, but the family friend, a Hispanic female, admitted that she did not have a handicap sticker.

While waiting for other officers to arrive, the Subject Officer requested that all four individuals remain in the vehicle. According to the Subject Officer, he also informed the individuals that he smelled marijuana in the vehicle. According to the Subject Officer, the Complainant admitted to having smoked marijuana in the vehicle earlier that day.

The Complainant repeatedly asked the Subject Officer if he was under arrest, was told that he was not, and then informed the Subject Officer that his children were left unattended up in the hotel room. In addition, the Complainant's family friend who had been watching the children and had come down from the hotel room explained that the stove was still on. The Complainant's children were three years old and seven months old. The Complainant insisted that he be allowed to attend to his children, but the Subject Officer thwarted his efforts to leave the car, which prevented the Complainant from opening the door, leading to the Complainant's leg to be pinched in between the door and the car. The Complainant put his hands outside the window of the car, informed the officer that he would be remaining in the car, and moved his leg back into the car. The Complainant was not injured.

When backup arrived, consisting of several marked cruisers, additional police officers, and a police ride-a-long civilian, the Complainant and the other passengers were removed from the car. Male officers patted down all occupants of the vehicle. The Subject Officer handcuffed the Complainant and placed him in a police cruiser. Officers retrieved the children from the hotel room and brought them to the lobby.

Upon searching the vehicle, the Subject Officer informed the Complainant that he had recovered a small bag with apparent marijuana residue on the driver's side of the vehicle and a loaded handgun in the glove compartment with a filed off serial number. The Subject Officer issued a summons to the Complainant for possession of marijuana. The Complainant did not receive a summons in connection with the handgun and ultimately was never charged as all investigatory efforts (including using fingerprint and DNA evidence) failed to tie the gun to a particular person.

According to the Complaint, the whole incident took roughly forty-five minutes, during which the Complainant's young children were left unattended. The Complainant calculated his estimate by noting that roughly ten minutes passed before his family friend came down from the hotel room, during which the Subject Officer attempted to run the Complainant's social security number and date of birth, that further fifteen or so minutes passed before backup arrived, and that another fifteen or so minutes further passed before the children were retrieved.

The Complainant also asserts that the gun recovered on the scene was not his and did not, in fact, come from the car, and that there was no marijuana in the car either. The Complainant further asserts that the pat downs of his female companions were improper. In addition, the Complainant asserts that he was assaulted when the Subject Officer closed the door on his leg. Finally, Complainant asserts that he was the victim of racial profiling.

Specifically, the Complaint read:

Complaint (1): [Subject Officer] claiming he found Marijuana in the vehicle.

Complaint (2): Being charged with Possession of Marijuana.

Complaint (3): Racial Profiling.

Complaint (4): Assault by a police officer.

Complaint (5): Records stating I had a weapon (GUN) but never was charged with having a weapon in my possession.

Complaint (6): Children unattended to for 45 minutes.

The Commonwealth's Attorney dismissed the possession of marijuana charge against the Complainant. The Complaint alleged his attorney advised him to wait a full year until the statute of limitations had run out on the possession charge before filing a citizen complaint against the Subject Officer on December 27, 2018.

III. Procedural Background

As explained above, the Complainant filed a citizen complaint on December 27, 2018, directly with the Franconia District Station. The Complainant's family friend and his wife also filed complaints at that time.

A supervisor at the Franconia District Station investigated the incident, interviewing the Complainant, his wife and his family friend, the Subject Officer, and two police officers who had provided backup. This investigation addressed all allegations of misconduct in the complaint, including the Complainant's assertions of racial bias. Although the investigator located no videos documenting the incident due to the passage of time (over one year), the investigator was also able to review the Computer Aided Dispatch ("CAD") history of the patrol cars involved, which documents when officers leave and reenter their cars. The investigator further reviewed the evidence logs from the time of the incident in question and the history of the prosecution of the case—or in this instance the lack thereof.

On April 4, 2019, the FCPD informed the Complainant that it had concluded "a comprehensive examination of the facts and circumstances surrounding the allegations" and found that the Subject Officer's initial stop "was not based upon bias, but instead, on a clear violation of law for parking in a handicapped parking spot without the proper placard displayed." Further, addressing the other allegations, the letter to the Complainant explained:

A review of all relevant information, in addition to witness interviews, indicated that [Subject Officer] acted in accordance with policy and procedures. [Subject Officer] detained you for the plain smell of marijuana in the vehicle and gave

you lawful commands to remain in the vehicle. When you attempted to exit the vehicle, he sought to contain you by closing the door. When he subsequently searched the vehicle, evidence of marijuana was located as well as an illegal gun. All evidence recovered was entered into the Police Department Property Room. As soon as it was practical to do so, [Subject Officer] ensured your children were attended to. Finally, it is permissible by Department Policy, for an officer to conduct a cross gender search or pat down.

The letter further informed the Complainant that he could request that this Panel review the investigation of his complaint.

On May 21, 2019, the Complainant requested review by the Panel and provided his complaint to the police as well as those of his wife and his family friend. He requested the Panel review all three police complaints. The Panel assigned them all the same intake number and the investigation addressed all three complaints.

Because the complaint contained an allegation of bias-based policing, and specifically racial profiling, the Internal Affairs Bureau (“IAB”) chose to reopen the investigation and notified the Panel of its intent to do so on June 4, 2019. A Second Lieutenant conducted a second investigation along the same lines as the first, also entailing witness interviews, including with the Complainant, and a comprehensive record review. This second investigation occurred because the initial complaint had been reviewed by the Franconia District Station and not the IAB. On August 30, 2019, the FCPD informed the Complainant that:

During this review, [IAB] completed additional investigative steps into the allegation of bias based policing. [IAB] observed that this specific allegation was investigated [by the Franconia District Station], however, not to the standards of the Internal Affairs Bureau. Additional investigative steps that were taken regarding your bias based policing allegation included seeking clarification from you regarding what occurred during the event, further interviews with the involved officers, and discussing your experiences, and related options, regarding your concerns with other agencies that were involved. The additional factfinding measures were completed and documented. At the conclusion of this supplemental investigation and review, the outcome and analysis came to the same conclusion: [Subject Officer’s] actions were within Department policy.

The letter was sent to the Panel in addition to the Complainant.

On Monday, October 7, 2019, a subcommittee of the Panel met to discuss the Investigation. Having reviewed the Investigation and the complaint, the Panel determined that the Investigation concerned matters within the purview of the Panel because complaint was timely submitted and concerned allegations that rose “to the Panel’s standard of abuse of authority and serious misconduct.”

At the Panel meeting on November 19, 2019, the subcommittee recommended the Panel review the Investigation. In light of the claim of assault, the subcommittee asked the Independent Police Auditor whether the allegations rose to the definition of use of force set forth by FCPD General Order 540 and thus was within his purview. The Independent Police Auditor and the Panel agreed that the allegations were not sufficient to require that the Auditor, not the Panel, review the allegations. By a vote of 8-0, the Panel Members present² accepted the recommendation of the subcommittee, determined that the Panel had the authority to review the Investigation, and issued an initial disposition notice.

IV. Panel Meeting

All Panel Members present for the Panel Review Meeting reviewed the Investigation Report prior to the Meeting on December 17, 2019. The Complainant and his family friend were present at the Panel Review Meeting. The Complainant made a statement and answered questions of the Panel. Major Matt Owens appeared on behalf of the FCPD and answered questions from the Panel.

Based on the Complainant's statement and responses to questions, Major Owens's statement and responses to questions, and the Panel's review of the Investigation file, the Panel made the following findings:

The Investigation interviewed the Complainant and his wife and family friend, also complaining witnesses; the Subject Officer; and two other officers. The Investigation also examined the available records of the patrol cars in question. The Investigation further reviewed contemporaneous files concerning the incident, including police reports and evidence logs concerning the handgun and the alleged marijuana found in the car.

The lengthy passage of time between the incident and the Complaint created challenges for investigators and, unfortunately, meant that certain potentially important evidence simply was not available. For instance, under state law, police departments are required to retain video evidence for one year, but there was no in car video or similar evidence that had not been purged after a year had passed.

That said, FCPD vehicles are equipped with CAD systems. Based on the CAD information, the Subject Officer exited his vehicle and the event started at 6:34pm.³ According to CAD information from the other patrol cars involved, officer backup arrived on the scene within seven and a half minutes of the Subject Officer's request. While there were discrepancies between the perspectives of the complaining witnesses, who claimed the incident had lasted forty-five minutes, and the police officers, who asserted a much shorter timeline

² Panel Member Hansel Aguilar was not present.

³ Officers are trained to press a button in their vehicle connected to the CAD system to signify when they leave and enter their vehicles. This system helps track the location of police officers.

(and who claimed that the children were attended to after backup arrived on the scene), the Investigation found that the evidence did not as a whole suggest the lengthy detention asserted, nor that the safety of the Complainant's children was compromised. While the Panel expressed concern that there was not a clear policy in place to deal with a situation where children were left unattended by a then-detained individual, the Panel concurred with the Investigation's finding that it was reasonable for a solo officer dealing with an illegally parked car smelling of marijuana who received backup within seven and one half minutes to continue to detain the individuals in question and deal with the children upon the arrival of backup.

Further, the Complainant's claim that neither a firearm nor marijuana were found in the car was simply unsupported by the evidence uncovered in the Investigation. The officers involved contended that they found marijuana and the handgun in the vehicle. The Subject Officer submitted the contraband to the evidence custodian contemporaneously with the incident. The Complainant argues, more or less, that the fact that the police never obtained a gun charge or pursued the simple marijuana possession charge suggest that said contraband was not really seized. But this position is mere unfounded speculation; charging discretion simply does not prove that evidence obtained and logged never existed. Moreover, the Investigation revealed, for example, that the FCPD tested the firearm for fingerprint and DNA evidence in the hopes of connecting it to the Complainant or another person. Said testing was unsuccessful.

The Panel also considered the claims that the Complainant had been assaulted. The Complainant admitted that he was unhurt when the Subject Officer closed the door that struck his leg. The parties were all in agreement that the Subject Officer was preventing the Complainant from leaving the vehicle during the stop. Nothing in the Investigation suggested anything more than an inadvertent striking of the Complainant, rather than a use of force (as explained by the Independent Police Auditor). The Panel's lone dissenter disagreed with this finding and suggested that a use of force investigation should have been conducted. However, the Panel found that the incident had been properly investigated.

With respect to the two females who complained of invasive pat downs conducted by a male officer, the Panel found that the Investigation took these allegations seriously but was reasonable in clearing the Subject Officer. While the department has expressed a preference for same-gender pat downs, opposite gender pat downs are permissible, and the evidence did not support the assertion that the pat downs had been excessively invasive. Nevertheless, the Panel discussed making a comment or recommendation regarding future cross-gender pat downs. *See Part V supra.*

Lastly, the Panel considered the allegations of racial profiling. The Complainant offered that he was a target and asserted that Subject Officer had no basis to stop him expressing his belief that he was stopped because he is Black, and his wife is White. Complainant claimed that Subject Officer initiated racially motivated contact with him before he parked illegally in a handicap spot.

The Investigation did not support the Complainant's claims. The Subject Officer claimed that he stopped the Complainant only after the car was illegally parked, at which point the Complainant had exited the vehicle. The Complainant admitted that he had parked illegally and was trying to get away from the Subject Officer because he was driving without a license and did not want to get a ticket. The written complaint provided by the Complainant's wife, contradicted the Complainant's position, as did the interview with Complainant's wife: she asserted that the police car had been driving behind the car and Subject Officer made contact with Complainant only *after* Complainant had parked in a handicap space. The interview with Complainant's wife further contradicted claims of the husband that he did not use marijuana and asserted her belief that Complainant had pulled into the handicapped space because he did not have a license. Complainant also could not explain his belief that he alone was targeted because of his race, whereas his front seat passenger of the same race was not charged with any crime.

Moreover, the IAB made the deliberate choice to reopen and review the case in light of the complaint of racial bias. The IAB conducted additional interviews and pulled arrest statistics for the Subject Officer and similarly situated officers, namely those in the Franconia District Station. The statistics revealed that the Subject Officer arrested fewer Black suspects than the average police officer of the Franconia District Station.

While one Panel Member expressed concern that the initial district station Investigation had not been as comprehensive with respect to the racial bias complaint in particular, the IAB reopened the Investigation on its own volition to ensure that the matter was handled in accordance with IAB practices. In light of the actions taken by the IAB and the investigative choices made in considering the complaint, the Panel found by a vote of 6 to 1 that the Investigation is complete, thorough, and accurate, and concurred with the conclusions of the Investigation.

At the same time, the Panel felt that room for improvement in the Investigation exist, and decided to make certain Comments and Recommendations seen below.

First, while the Investigation included interviews with the Complainant, his wife, and his family friend, the Police failed to interview with the passenger in the front seat of the car. Major Owens did not know why the front seat passenger had not been interviewed. While a number of innocent hypothetical reasons may exist for why the front seat passenger was not interviewed, including, given the passage of time, a difficulty finding said witness, the Panel criticized the Investigation for failing to provide any explanation for why a known and obvious witness had not been interviewed.

Second, while the Investigation interviewed several responding officers, the ride-a-long civilian who arrived at the scene and apparently played a role in securing the children was also never interviewed. The Investigation determined that the officer described in complaining witness statements as a "female officer," a "rookie cop in training," and an "officer in training" was, in fact, a police ride-a-long civilian, an employee of the Department of Public Safety Communications, but the Investigation Report admitted that investigators could not determine

who that individual was. The Panel did not have reason to believe that the investigator had never tried to identify the ride-a-long individual, but it did fault the Investigation, and the record keeping related to ride-a-longs, for being unable to obtain a statement from a potentially unbiased observer to the incident, given that she was neither a member of the Police Department nor an individual detained by the Subject Officer. Indeed, such a witness could have been just as helpful in clearing the actions of the Subject Officer as she could have been supporting the allegations of the complaint.

Third, while the Panel concurred with the Investigation Report finding that the Subject Officer had not acted improperly when waiting for backup before addressing the issue of unsupervised children, the Panel expressed concern that there was not clarity with respect to how an officer should make such decisions.

An audio recording of the December 17, 2019, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019>.

On January 9, 2020, the Panel discussed the Finding Summary; an audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-jan-9-2020>

V. Recommendations

- a. With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.
- b. FCPD civilian ride-a-long individuals should be tracked and recorded in all instances. A police ride-a-long individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.
- c. The FCPD should implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

MEMORANDUM

To: The Fairfax County Police Civilian Review Panel

From: Hansel Aguilar, Panelist

Date: January 9, 2020

Re: CRP-19-11 Complaint Dissent

I. Introduction

After a careful consideration of the case file, the review meeting deliberation, and the Majority report of the CRP-19-11 matter, I find that I am not able to support the conclusion stated in the report that the "...Investigation is complete, thorough, and accurate..." At best, the investigation is inconclusive on various areas of concern brought forth by the complainant.

II. The Investigation concerning the allegation of assault by a police officer was not completely, thoroughly and accurately investigated and is inconclusive

Determining whether the officer exhibited an excessive use of force on the complainant is likely a question that cannot be answered at this point. That said, neither can a definitive conclusion be made based on the information reported in the investigation.

The complainant reported that he was struck by the door of the vehicle when the subject officer pushed the door shut to contain him in the backseat of the vehicle. During the investigation of the allegations lodged by the complainant, the subject officer did not deny that he closed the door of the vehicle and informed the Department that it appeared the complainant was attempting to exit the vehicle at the time when he instructed him to remain in the vehicle. In his complaint to the Department, the complainant classified this event as an "assault by a police officer."

While the FCPD investigators did question the subject officer regarding this allegation of force, the Department did not classify the event as a "use of force" incident even though FCPD General Order 540 describes this event as force:

"G. Force: Any physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual's movement."

Based on the review of the file, there is sufficient reason to believe that there was instrumental contact (i.e. the door) with the complainant caused by an action taken by the officer. The inquiry should then have moved to attempt to identify why the event was not classified as a use-of-force incident and whether the force was justified. The majority asserts in its report that in the November 19, 2019¹ Panel meeting the IPA explained that the event appeared to be an "inadvertent striking." While this is accurate, the IPA also

¹ Panelist Aguilar was not present for this Panel review meeting; however, he was able to review the recording of the meeting.

indicated in that same meeting, “that could certainly be reviewed by the Panel as well.”[07:30-07:39]² As such, I maintain that the FCPD failed to properly document and investigate that allegation as a use of force incident.

A thorough and complete investigation of the incident would have required a questioning of the witnesses regarding this allegation and attempting to review available footage (i.e. surveillance footage of the hotel cameras; other public cameras, and or in-car-video). As noted in the Majority’s report, due to the passage of time from when the police encounter occurred and when it was investigated, some evidence appeared to be unavailable. The case file, however, did not indicate whether the investigators attempted to review the footage or just assumed it was no longer available due to the lapse of time. Specifically, in the December 18, 2019 Panel meeting, I asked Major Owens whether he had knowledge of whether the subject officer had an in-car-video activated on the day in question, to which he replied, “it would be impossible to tell if he had an in-car-video, if it was working that night, or anything because of the time frame of the initial incident to the time of the complaint prohibits us from finding that.” [41:25-41:40]³ Furthermore, Major Owens explained to the Panel that even if there was an in-car-video system installed in the subject officer’s patrol cruiser on the day of the incident in question, there would be no way for the FCPD to determine whether it was activated on the day of the incident and whether it collected any footage because of the lapse of time from when the incident occurred and when it was investigated.

III. Witnesses were not completely, thoroughly and or accurately identified or interviewed

As noted in the Majority’s report and recommendations, the Investigation Report indicated that the investigators did not identify and or interview all known witnesses.

IV. Cross-gender pat down/searches

While the FCPD (via the Investigation Report and Major Owens affirmation at the Panel meeting) indicated that the Department permits cross-gender pat downs and searches, in my opinion, it failed to completely and thoroughly investigate whether (in this particular instance) it would have been “practical” to avoid it as instructed in FCPD General Order 203, “*Whenever practical, cross sexual search should be avoided.*”

V. Conclusion

While I understand and share the Chair’s sentiments about the “futility of additional investigation” [56:45]⁴ by returning this case to the FCPD for information that individuals would be unlikely to remember, based on the unknown (and unknowable) aspects of this case I must dissent from the conclusion that this investigation is complete, thorough, and accurate.

² A transcript of the meeting is not available, however as it is practice of the Panel, a link to the SoundCloud audio recording of the public meeting can be accessed via <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-nov-19-2019> . Time stamps of selected statements from the session are provided in brackets.

³ A link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019> . Time stamps of selected statements from the session are provided in brackets.

⁴ A link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019> . Time stamps of selected statements from the session are provided in brackets.

APPENDIX G.9

(CRP-19-19)



County of Fairfax, Virginia

MEMORANDUM

DATE: 11/17/2020

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-19

I. Introduction

The Fairfax County Police Civilian Review Panel (Panel) held a public meeting on October 8, 2020, to review a complaint submitted to the Panel on April 18, 2019.¹ The Complainant alleged that several incidents of serious misconduct and abuse of authority by Fairfax County police officers occurred from October 2015 to December 2018. The complaint was investigated by the Fairfax County Police Department (FCPD). Following the investigation, the Complainant was notified that the officers' actions were in compliance with FCPD policies and regulations. The Complainant requested that the Panel review the investigation.

The Panel determined that the investigation relating to several allegations in the complaint could not be reviewed by the Panel because they were not timely filed by the Complainant. However, the Panel also found that two allegations in the complaint were timely filed, and the Panel reviewed the investigation pertaining to those allegations. Seven Panel members voted that the investigation was complete, thorough, accurate, objective and impartial. One Panel member dissented, and one Panel member abstained.

¹ As explained later in this report, the delay in the Panel's review process was due to pending litigation that concerned matters in the Complaint.

II. Background Facts

On June 27, 2018, a community member reported to the Mount Vernon District Police Station that there had been a physical fight between several people in a neighborhood earlier that day. A FCPD officer was assigned to investigate the altercation. The officer interviewed witnesses and viewed a video of the altercation that had been sent to him.

The Complainant said the fight occurred in front of the house of her daughter. It involved several family and community members, some of whom were minors. A portion of the incident was recorded on cell phone video by a witness at the scene. Another witness observed the Complainant at the fight holding what appeared to be a metal rod over her shoulders. The witness alleged that the Complainant struck multiple people who were involved in the fight or who were attempting to break up the fight. One witness reported that the Complainant struck him on the head, and that he had suffered headaches as a result of the assault. The video reportedly did not show that the Complainant hit anyone with the rod, but it did indicate that the Complainant was armed with a weapon and was attempting to prevent others from stopping the fight.

Based on witness interviews and the cell phone video, the officer sought warrants for the Complainant's arrest for malicious wounding and contributing to the delinquency of a minor. The officer presented probable cause testimony to a local magistrate, who issued the warrants, and the Complainant was arrested.

III. Procedural Background, Allegations and Investigation Findings

The Complainant filed a complaint with the Panel on April 18, 2019. She alleged that the FCPD officer falsely charged her with malicious wounding and contributing to the delinquency of a minor and that he harassed her. The Panel referred the complaint to the Internal Affairs Bureau (IAB) for investigation.

IAB investigators interviewed the Complainant and reviewed the video. The Complainant admitted to holding what she said was a "slim pole," but denied hitting anyone with it. She said no one was hurt and that she was attempting to protect her daughter, who was involved in the fight. "I was like, okay, okay, let them fight, but I was making sure nobody jumped in," she told the FCPD investigator.

IAB investigators also interviewed the officer and reviewed the witness statements and the video. The investigation found that the officer's decision to seek warrants was based entirely on statements from the involved parties, as well as the video. Also, members of the community, not the officer, initiated the investigation of the Complainant's actions that led to the issuance of the warrants. The officer supplied his probable cause testimony to the Magistrate who issued the warrants, and there was no indication that the charges were excessive. The investigators noted that

magistrates are independent third parties who exist as checks to prevent reckless, excessive and unethical actions by police officers. In this case, the Magistrate found that the charges were based on probable cause.

As for the harassment charge, the investigators found that the officer had never met the Complainant prior to the incident. Therefore, he did not single out the Complainant for harassment. The investigation found that there was no evidence to support the Complainant's allegations. It also found that the officer was in compliance with all FCPD policies and regulations. A disposition letter was sent to the Complainant on June 20, 2019, informing her of the findings of the investigation and notifying her that she could request a review from the Panel.

On August 7, 2019, the Complainant requested that the Panel review the investigation. A week later, on August 14, 2019, the Panel received notice from the Office of the County Attorney that the Complainant had commenced litigation associated with allegations in the complaint. A subcommittee of the Panel met on September 16, 2019 and voted to recommend to the full Panel that it defer consideration of the review until resolution of the litigation. The Panel voted to accept the recommendation of the subcommittee on October 7, 2019, and deferred its review in accordance with Article VI, Section D (1) of its Bylaws.²

The Complainant informed the Panel in June 2020 that litigation associated with the complaint was no longer pending. The Office of the County Attorney confirmed that the litigation had concluded. A subcommittee of the Panel met virtually on August 20, 2020 to consider whether the panel had authority to review the complaint.

As stated earlier, some of the allegations in the complaint involved incidents that had occurred prior to December 6, 2016. The Panel's Bylaws prohibit the Panel from reviewing any investigation relating to an incident that occurred before that date.³ The subcommittee determined that four specific allegations fell into this category and could not be reviewed by the Panel. These allegations were as follows: (1) FCPD officers falsely accused the Complainant of robbery at gunpoint; (2) FCPD officers improperly searched the Complainant's car; (3) FCPD officers issued a defective search warrant pertaining to the Complainant; and (4) FCPD officers falsely accused the Complainant of distributing cocaine and marijuana.

² Article VI, Section D (1) of the Panel's Bylaws provides: "If at any point in the review process the Panel learns that the matters of a Review Request are the 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, 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."

³ Article VI, Section A (1) (b) states that the Panel shall not review any complaint related to an incident that occurred before December 6, 2016.

Six other allegations in the complaint were submitted to the Panel more than one year after the date of the incident. In such cases, the Panel may review the investigation of allegations if the Complainant provides the Panel with good cause.⁴ Good cause was not shown. The subcommittee noted that the Complainant had not provided reasons for missing the filing deadline. These allegations were as follows: (1) a FCPD officer intimidated the Complainant in a text message; (2) a FCPD officer extorted the Complainant by charging her with felony distribution of marijuana; (3) a FCPD officer lied to the housing authority that the Complainant was selling drugs from her home; (4) FCPD officers unlawfully searched the Complainant's car; (5) a FCPD officer lied under oath during the Complainant's trial; and (6) The Complainant was falsely incarcerated and harassed while in jail.

As discussed previously, two allegations in the complaint were timely filed. The complainant alleged that she was falsely accused and arrested on charges of malicious wounding and contributing to the delinquency of minors by an FCPD officer and that she was harassed and charged with serious crimes by the officer.

One member of the subcommittee expressed her belief that the Panel did not have authority to review the investigation because the allegations were not substantiated with evidence in the investigation file. She also expressed concern that the allegations involving charges of malicious wounding and contributing to the delinquency of minors had been previously adjudicated and considered by a magistrate and a judge. She said that it is not the Panel's job to second guess a court's decision. The other two members disagreed, stating that the Panel's Bylaws specifically allow the Panel to review an investigation where prior litigation concerning the matter had concluded. One subcommittee member commented that legal determinations of probable cause by a court are different from the Panel's review standards for abuse of authority and serious misconduct of a police officer. The subcommittee agreed that the issue was worthy of further discussion by the Panel.

The Panel subcommittee voted 2-1 to recommend that the full Panel review the allegations that had been timely filed. They suggested that the Panel send a letter to the Complainant requesting an explanation as to why the filing deadline was not met for those allegations where the complaint was filed more than one year after the date of the incidents. The Panel sent the letter, but the Complainant did not provide a response showing good cause for missing the deadline.

On August 27, 2020, the Panel considered the subcommittee's recommendations and voted not to review the allegations where the incidents occurred prior to December 6, 2016. The Panel also voted that there was not good cause to extend the filing deadline for those allegations where the complaint was filed more than

⁴ Article VI, Section A (1) (c) provides that the Panel shall not review an Initial Complaint that is filed more than one 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).

one year after the date of the incidents.⁵ However, the Panel voted to review the two remaining allegations that had been timely filed.⁶ The Panel discussed whether prior litigation on the criminal charge of malicious wounding should preclude review by the Panel. A majority of the Panel agreed that the Bylaws do not prohibit Panel reviews of a police investigation where a court has previously addressed issues associated with allegations in a complaint. The Panel majority also agreed that the Panel's role in reviewing a police investigation is distinct from a court's role in adjudicating criminal proceedings.

IV. Panel Meeting

The Panel Review Meeting was held virtually on October 8, 2020. All Panel members had reviewed the investigation file prior to the meeting, and the Complainant was present at the meeting. In her statement to the Panel, the Complainant stressed that no one was hurt, and that everyone had willingly participated. "I could not stop it," she said. "It was out of my control, but I was there to protect my daughter who was in the fight, and I told her that it wasn't a good idea, but that's what they chose to do." She said parents of children who participated in the fight lied when they said she struck others with the pole. She said that the charge of malicious wounding was excessive, reckless and false, and that it was later dropped. She added that she lost her job and her housing as a result of the charges, and she had experienced financial pain, loss and distress. She said that she felt like she was a "target" of the police.

The Complainant was asked during questioning whether she thought all the witnesses were interviewed by the IAB. She indicated that everyone was interviewed and that she was certain that the investigators had seen the video.

The FCPD presented their investigation findings to the Panel and concluded by saying that the officer practiced "evidenced-based policing" in this case and adhered to all FCPD policies and regulations. It was also revealed that one witness sought and obtained a protective order against the Complainant independent of the FCPD and its investigation.

Panel members were concerned that during their review of the investigation file, the video was not in the file. One Panel member said that this was a vital piece of evidence that made his review of the investigation incomplete. Captain Alan Hanson, who represented the FCPD at the meeting, said that the video should have been in the file and offered to provide it to any Panel member who wanted to view it. Several Panel members pointed out that while the video should have been in the file, other evidence in the file suggested that it did not show the Complainant hitting anyone. Further, the video corroborated other accounts from witnesses that the

⁵ One Panel member abstained from voting on the motion to not review the allegations.

⁶ Six members of the Panel voted to review the two timely filed allegations, and two Panel members voted not to undertake the review. One Panel member did not vote because of technical difficulties during the virtual meeting.

Complainant was armed and was threatening others. Several members commented that although the video was important, it was not the determinant factor in the officer's decision to seek warrants.

Members of the Panel pointed out that the officer was thorough in his interviews of witnesses and that he considered all the evidence provided to him from community members. Also, he could not have harassed the Complainant because he did not know her previously. Finally, a magistrate also considered the evidence, concurred with the testimony of the officer, and issued the warrants.

The Panel voted that the investigation was thorough, complete, accurate, objective and impartial, with one Panel member voting nay and another abstaining.

An audio recording of the October 8, 2020 Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-october-8-2020>

On November 12, 2020, the Panel discussed the Review Report. An audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-november-12-2020>

CC: Complainant

APPENDIX G.10

(CRP-19-29)



County of Fairfax, Virginia

MEMORANDUM

DATE: 10/22/2020

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-29

Executive Summary

This report concerns a citizen complaint related to an interaction between the citizen (Complainant) and a Fairfax County police officer in a parking lot. The incident began when the officer, while driving his patrol car, observed the Complainant as the officer drove past him. The officer followed the Complainant into the parking lot of the Complainant's apartment building and questioned the Complainant. The officer's questions focused on whether the Complainant lived in the apartment complex. The complaint alleges that racial profiling was the impetus for this conversation, and that the Complainant had done nothing wrong. The Complainant maintained that he should have never been approached by the officer.

The Fairfax County Police Department (FCPD) investigated the incident and ultimately agreed with the Complainant that the officer had no reasonable suspicion to suspect that the Complainant had violated a law or was in the process of committing a crime. The FCPD concluded that the Complainant had every right to not answer the officer's questions. Further, the FCPD found that the officer acted improperly and was in violation of FCPD regulations. However, with regard to the Complainant's allegation of racial profiling, the FCPD concluded that the investigation did not find any evidence that racial bias played a role in the incident. The Complainant asked the Police Civilian Review Panel (Panel) to review the police investigation. While the Panel agreed with the FCPD in its assessment that the officer's behavior had been improper, the Panel was not satisfied that the investigation had adequately examined the question of whether racial profiling played a role in the incident. The Panel sent the complaint back to the FCPD for additional investigation. In response, the FCPD took some, but not all, of the Panel's investigatory recommendations. After a review of the FCPD's secondary investigation, the Panel determined again that the FCPD's investigation did not adequately investigate the allegation of racial profiling involved in the incident.

I. Introduction

On May 23, 2019, the Panel received a citizen complaint alleging racial profiling by a FCPD officer during an incident that occurred on May 17, 2019, where the officer followed the Complainant into the parking lot of the Complainant's apartment complex and repeatedly questioned whether the Complainant lived there. The FCPD investigated the complaint and sent a disposition letter to the Complainant notifying him of its findings on December 19, 2019. The FCPD investigation concluded that the evidence did not support the Complainant's allegation of bias-based policing, but it also found that some of the officer's actions were improper and in violation of FCPD regulations. The Complainant requested a review of the investigation by the Panel on December 20, 2019.

The Panel held a Review Meeting on March 9, 2020. By a vote of 6-3, it determined that with regard to the racial profiling allegation, the FCPD investigation was not complete, thorough, accurate, objective and impartial. The Panel requested further investigation by the FCPD and specifically requested four additional investigative actions relating to the racial profiling allegation.

The Panel received a letter from FCPD Chief Edwin Roessler on June 10, 2020, that responded to some, but not all, of the Panel's requests and further explained that the FCPD would not complete the investigation as requested. An additional response was provided to the Panel in a letter dated August 17, 2020. At a public meeting on September 10, 2020, the Panel considered the additional FCPD investigation findings and voted by 7-2 to advise the Board of Supervisors that, in the Panel's judgement, the investigation is incomplete and additional investigation is recommended.

II. Background Facts

On May 17, 2019, the Complainant, a young adult Black man, stopped his vehicle at a red traffic light in the Herndon area of Fairfax County. While he was stopped, a FCPD officer drove past him in the opposite direction. According to both the officer and the Complainant, the two made eye contact. At the time, the officer had been with the FCPD for approximately six years and was assigned as a detective in the Reston Criminal Investigations section of the FCPD. On the date of the incident, he was working overtime on patrol for the Reston District on the evening shift.

According to the investigation file, the officer was observing other motorists for their reaction to his cruiser when he noticed the Complainant's vehicle. Internal Affairs Bureau (IAB) Investigators stated that the Complainant turned around in his seat, leaned towards the window, and stared at the officer. The officer became suspicious, made a U-turn, and pulled behind the Complainant's vehicle. No other action taken by the Complainant precipitated the incident in question, nor did the Complainant commit any illegal violation. The officer began to run the Complainant's license plate registration, but he did not have time to fully review the returns because the traffic light

turned green. However, the officer did have time to note that the license plate was registered under two names. One of the names was that of a woman who lived in Virginia Beach. IAB investigators noted that the officer was aware that Virginia Beach was a “source city” for illicit substances in Fairfax County, and that he became more suspicious of the Complainant.

The Complainant stated that when the officer began to follow him, he became fearful, “because I knew I did not do anything wrong, but yet was followed.” After the light turned green, the Complainant turned, drove a short distance to his apartment complex, turned right into his parking lot, and parked his car.

The officer followed the Complainant into the apartment complex parking lot. According to investigators, the officer became increasingly concerned when the Complainant turned into the first available parking lot, because his experience and training as an officer suggested that individuals who behave suspiciously often park their vehicles quickly after being spotted by police, and they often abandon them to run away from police.

The officer parked his cruiser in the parking lot and approached the Complainant, who was still sitting in his parked vehicle. As the officer walked to the vehicle, he noticed that the Complainant was moving toward the floorboard of the vehicle and seemed to be reaching for something. After approaching the Complainant, the officer observed that the Complainant was holding a backpack to his chest, and this caused the officer to suspect that drugs, contraband or weapons could be in the backpack. The officer also observed that the Complainant was nervous and that there was a strong odor of air freshener coming from the vehicle, indicating to the officer that the Complainant might be trying to conceal incriminating odors. (Notably, there was an air freshener hung on the rearview mirror). The Complainant remained in his vehicle as the officer approached, so the officer determined that the Complainant was willing to engage him in conversation.

The Complainant stated that as he saw the officer approach his vehicle, he leaned down to get his cell phone, and he quickly set it to record, as shown in the video provided by the Complainant. He positioned the phone so that the video could capture half of the driver’s door opening, which would reveal part of the officer’s body but not his face. The Complainant admitted that he was extremely frightened and nervous.

A conversation between the Complainant and the Officer was recorded as follows and posted later on YouTube:

Complainant: Hey

Officer: Hey sir, how you doing?

Complainant: Doing well, how are you?

Officer: Hey good. Hey, do you live here?

Complainant: I do, yes.

Officer: Okay, where do you live at?

Complainant: In this apartment, right here.
Officer: Oh, okay. You got ID on you?
Complainant: No, I don't.
Officer: You don't have an ID?
Complainant: Well, I do have an ID, but do I have to show it to you?
Officer: You don't have an ID on you?
Complainant: I do have an ID.
Officer: Okay.
Complainant: Do I have to show it to you?
Officer: You don't have to. Is this your car?
Complainant: Yes, it is.
Officer: Okay.
Complainant: Is there a problem?
Officer: What building do you live in?
Complainant: This building right here.
Officer: What's the address?
Complainant: I don't have to tell. I don't have to tell, I don't have to tell you the address.
Officer: What's that?
Complainant: Do I need to tell you the address?
Officer: Yeah, what's the address?
Complainant: Why do I need to tell you my address?
Officer: I'm asking you what the address is.
Complainant: But why do I need to tell you that?
Officer: 'Cause I'm asking you.
Complainant: But is there a reason why you're asking me?
Officer: Because I want to know if you live here. Because if you don't live here...
Complainant: But I just told you, I do live here.
Officer: Right, but if you don't know the address, it doesn't look like, to me, like you live here, okay?
Complainant: But I do, and why is that?
Officer: To be honest with you...
Complainant: Why is that?
Officer: Whose vehicle is this?
Complainant: This is my vehicle.
Officer: Is it in your name?
Complainant: It's in my Mom's name, and it's in my name also.
Officer: Okay. How long have you lived in this area?
Complainant: Do I have to tell you that?
Officer: I'm just asking you the question.
Complainant: Okay, but why are you asking me these questions?
Officer: Do you live here or not, sir?
Complainant: I already told you. I live here.
Officer: Okay, 'cause if you don't live here, you're trespassing.
Complainant: I know that, and I told you. I live here.

Officer: Okay, what's the address that you live at?
Complainant: Why do I have to tell you that?
Officer: 'Cause I don't believe you live here, sir.
Complainant: And why don't you believe me? Why don't you believe I live here?
Officer: 'Cause you don't know the address.
Complainant: I already told you, I do know the address.
Officer: Okay, what's the address that you live?
Complainant: I don't have to tell you that. I live here. Why are you harassing me?
Officer: Okay, I'm not harassing you.
Complainant: You're in my neighborhood, coming up to me asking me what my address is, 'cause you say I don't live here. Why don't you believe I live here?
Officer: Sir, I'm not harassing you.
Complainant: Can I have your name and badge number?
Officer: You can. Ah [redacted] and my badge number is [redacted]
Complainant: Okay, thank you.
Officer: So do you have an ID on you or not?
Complainant: I do. I already told you. I do have an ID.
Officer: Okay, what's your name?
Complainant: I don't have to tell you that. Am I being detained or am I free to go?
Officer: You're free to go, sir.
Complainant: Thank you, you have a good day.
Officer: You, too.
Complainant: Thank you.

The conversation between the Complainant and the officer lasted two minutes and 21 seconds. As is clear from the transcript, the officer waited until the end of the conversation to tell the Complainant that he was free to leave, and he did so in response to the Complainant's specific question. After the officer stepped away, the Complainant exited his vehicle and continued to record the officer and his cruiser. The Complainant stopped recording after a few minutes and went back to his car. He stated that he did not go to his apartment because he knew the officer was watching him, and he did not want the officer to follow him. He also said he wanted to remain in a public space where other individuals could see him. The Complainant considered driving away, but he did not because he thought the officer would follow him and pull him over for a minor traffic violation. The Complainant said he was shaken by the encounter.

The officer remained in the parking lot for several more minutes. During that time, he observed the Complainant and finished reviewing the entire Department of Motor Vehicles return on the license plate check. The officer verified the Complainant's identity using a photograph provided by the DMV and also determined that the Complainant lived at the apartment complex. He then left the area.

III. Procedural Background, Allegations, and Investigation Findings

As noted above, the Panel received the complaint on May 23, 2019, six days after the incident. The Complainant alleged, “The detective could not tell me why he followed me and why he believed I did not live there, so one can only assume that this is a result of racial profiling.” Further, the Complainant stated that, “If the detective would have done his due diligence, he would have saw [sic] that I had the same parking permit in my window as every other car there.” The complaint included this link to his video: <https://www.youtube.com/watch?v=GI9S6H-ilww&feature=youtu.be>

A. The Internal Affairs Bureau Investigation and Findings

The Panel referred the complaint to the FCPD for investigation. Investigators at the IAB reviewed the video sent to them by the Complainant. The officer had not activated his in-car video during the encounter. No explanation was provided in the investigation file for why the car video was not activated during the encounter. However, it was activated after the encounter, and it recorded approximately sixteen minutes of video following their interaction. The Complainant could be seen walking around the area where his vehicle was parked while talking on his cell phone. At one point, the officer zoomed the camera on the Complainant. The video ended as the officer drove away.

IAB Investigators used email to contact the Complainant, who preferred to remain anonymous.¹ They were able to determine his name but did not reveal to the Complainant that they had that knowledge. The Complainant answered several questions by email but refused to meet with investigators. The Complainant told investigators that he felt he had been targeted and suspected of trespassing “for no reason at all.” He said that the fact that the officer did not believe he lived in the apartment complex indicated that the encounter was racially motivated. The Complainant also stated that the officer stood in a manner that inhibited his ability to get out of the car. He confirmed, however, that the officer did not use force to detain him. Further, the officer did not make any racial slurs or use inflammatory language. The Complainant never had any prior or subsequent interactions with the officer.

Investigators found that the video was grainy and difficult to see, but it appeared that the officer stood to the rear of the driver’s door, which was slightly open. They observed that the officer did not appear to be hindering the Complainant’s ability to get out of the vehicle.

Investigators also interviewed the officer. Investigators revealed that the reason the officer wanted to talk to the Complainant was to determine if there was trespassing, so that he could elevate what was a consensual encounter to an investigative detention.

¹ Although the Complainant initially filed an anonymous complaint, he revealed his name to the Panel after he filed his Request for Review of the investigation.

Additionally, they determined that when the officer approached the Complainant, he did not have reasonable suspicion of a specific crime but did believe the Complainant's behavior was odd. The officer denied race was a factor in his decision to make contact with the Complainant.

The investigation revealed that the officer believed that the apartment complex was posted with signs prohibiting trespassing. However, the apartment complex had no posted signs prohibiting trespassing. The entrance to the complex had a gate, but it was standing open. Investigators spoke to employees in the management office, and they said that the gate had been broken for some time and had been left open to allow residents to leave and enter. The investigation also revealed that the officer did not know whether the complex had a letter on file at the Reston District Station authorizing the FCPD to enforce trespassing laws on the premises. The officer was not familiar with the apartment complex. Moreover, the officer did not notice that the Complainant's vehicle had a parking sticker for the complex on the windshield on the driver's side.

Investigators went back to the complex and knocked on the doors of 48 apartments and made contact with 17 residents. None of those contacted witnessed the interaction between the officer and the Complainant.

Investigators also reviewed the officer's arrests in the Reston District from January 1, 2018, to June 30, 2019. The officer made a total of 36 arrests, of which 23 were white (64%), 12 were Black (33%) and one was Asian. The investigation compared the officer's arrests to that of the Reston District as a whole and found that the arrest statistics were comparable. For the Reston District, white arrests accounted for 67% of the total arrests for the same period, and Black arrests accounted for 30% of the total arrests. The investigation also reviewed the officer's training records and found that he had completed eight courses on criminal patrol, interrogation and interdiction since 2014. The officer had six training hours relating to culture and diversity. Investigators noted that the officer relied on his training in assessing whether the Complainant's behavior could be connected to criminal activity.

The IAB reviewed the evidence and considered: (1) whether the encounter was a voluntary citizen contact under General Order 603.4; (2) whether the Complainant was seized or detained at any point; (3) whether the officer engaged in bias-based or unlawful discrimination under Regulations 201.14 and 201.22; (4) whether the officer violated Regulation 603.4 by not advising the Complainant as to why he was stopped; and (5) whether the officer violated Regulation 201.13 by acting in an unprofessional manner.

The IAB found that the encounter was a legitimate voluntary field contact and that the officer was in compliance with General Order 603.4, which provides procedures for such contacts. Investigators pointed out that voluntary field contacts may be initiated when an officer wants to approach someone to talk or wants to ask a person for identification. Officers do not violate an individual's Fourth Amendment

rights if they merely approach a person and ask if that person is willing to answer some questions. However, during a voluntary field contact, the individual does not have to answer questions and may leave at any time. A contact becomes an investigative stop, and an officer can detain an individual, when there is reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur. The IAB found that the officer was not prohibited from approaching the Complainant for the purpose of conversation,² and that the Complainant was not detained, even though he did not feel comfortable exiting his vehicle. In viewing the video and taking into account all of the circumstances surrounding the incident, a reasonable person would have believed that the Complainant was free to leave.³ Furthermore, even though the officer may have thought the Complainant's behavior was suspicious, at no time did those suspicions become reasonably articulable suspicions of criminal activity as defined by law.

The IAB also found that the officer did not engage in bias-based policing or unlawful discrimination. The investigation found that the officer was able to articulate numerous factors and behaviors that drew his attention, none of which pertained to race. The IAB admitted that, in isolation, the officer's remark, "[It] doesn't look like, to me, that you live here" appears "problematic." However, given the greater context of what the officer had observed, "it's meaning is more apparent." The investigation also reasoned that both the Complainant and the officer viewed the encounter through the lens of their own experiences. The Complainant was offended that the officer did not believe he lived at the complex and felt that he was motivated by racial bias. On the other hand, through his training and experience, the officer had learned to perceive certain behaviors, such as the long look at the officer, entering the first available parking lot, clutching the backpack to his chest during the encounter, using car air freshener, and acting nervously, as potential indicators of criminal activity. Noticing those behaviors of the Complainant had influenced the officer's decisions and actions. Although the IAB found that the officer's questions and statements to the Complainant were not motivated by bias, the IAB acknowledged that they had a negative effect on the Complainant.

The IAB concluded that the officer should have provided an explanation to the Complainant as to why he was making the contact. When appropriate, officers should advise community members why they have been stopped.⁴ "Though [the officer] lacked any intent to offend [the Complainant], the statement he made, absent any explanation of its true meaning, could easily be taken as offensive by an objective and reasonable person." Therefore, the investigators concluded, it was appropriate for the officer to provide the Complainant an explanation of what he had observed that led him to make the contact. The IAB sustained a violation of Regulation 201.3, Obedience to Laws and Regulations, as it pertains to General Order 603.4, Police Citizen Contacts, Section IV, Voluntary Field Contacts, Subsection B, Conducting Voluntary Field Contacts.

² United States v. Mendenhall, 446 US 544 (1980)

³ McGee v. Commonwealth, 219 Va. 560, 248 S.E.2d 808 (1978)

⁴ General Order 603.4(IV)(B)(3)

Finally, the IAB found that even though the officer intended no offense by the words he used in speaking to the Complainant, from an objective viewpoint, the words were offensive. Additionally, the officer's attempt "to provide reasonable suspicion of the crime of trespassing was based on an incorrect assessment of the circumstances surrounding the incident," the IAB found. There were no signs banning trespassing, and the complex had not submitted a letter to the FCPD authorizing police to enforce trespassing on behalf of the management of the complex. The officer did not ask the Complainant if he was visiting anyone living at the complex or had any other lawful purpose being there. Therefore, the IAB concluded that the conduct of the officer was unprofessional and violated Regulation 201.13.⁵

B. The Reston District Commander's Findings

In accordance with FCPD procedures for internal administrative investigations, the IAB findings were reviewed by the Reston District Commander. He disagreed with the IAB and found that the officer was in compliance with all General Orders and Regulations. He stated that the officer could have provided the Complainant with a better explanation of what he had observed and why he was making the contact, but by failing to do that, the officer did not violate FCPD regulations. He also stated that it was reasonable to believe that the Complainant did not live at the apartment complex, because the Complainant did not tell the officer his address. The officer's words must be evaluated objectively, he concluded, and from that standpoint, what he said was clearly not offensive.

C. The Findings of Chief Edwin Roessler

The investigation findings were sent to Chief Roessler for final approval. He determined that the investigation was not thorough, and he conducted an additional review.

In particular, the Chief disagreed with the Commander's finding that the officer was in compliance with Regulation 201.13 Human Relations (professional conduct). He found that the Commander's review was too narrow and focused only on words spoken to the Complainant. The officer's actions must be evaluated from the time of his first glance at the Complainant to the parting of their ways, he stated.

The Chief pointed out that several facts needed to be taken into account: (1) The officer had worked in the Reston District for six years and was a detective; (2) The officer had no knowledge of the apartment complex, did not know whether a trespassing sign was posted at the apartment complex, and was not aware of whether a

⁵ Regulation 201.13 Human Relations, Community Contacts, states in part: "Employees shall conduct themselves professionally at all times when representing the Department. They shall use respectful, courteous forms of address to all persons. Displays of bias towards any person on account of race, sex, ethnicity, religious preferences or sexual orientation shall be considered unbecoming conduct...."

trespassing letter was on file with the Reston District Station; (3) The officer did not know that the apartment complex used an authorized vehicle sticker system; and (4) The officer never fully read the DMV return.

As a detective, the Chief wrote, the officer “is held to a higher standard to know the entire Reston community so that he can police effectively.” He should have been more focused on knowledge of the area and taken into account readily available information. The officer missed critical details that could have enabled him to end the contact earlier or not have had one at all, the Chief said. Moreover, the officer’s justification for getting out of his cruiser “was not based on factual circumstances which required taking the time to fully equip himself with the knowledge to then apply his policing skills properly.” The Chief said that what is most troubling for him is that the officer justified his actions by his training and experience. “Frankly stated, he deals with all community members from a hyper-vigilance standpoint.”

The Chief pointed out that the officer asked the Complainant 11 times about his residency. The Complainant answered the officer at least nine times that he lived in the complex. The officer became discourteous based upon his “substandard knowledge and his demeanor of repeated questioning” about the Complainant’s address. The officer kept pressing the Complainant for answers, “when he was free from any reasonable suspicion of being involved in any sort of crime.”

The Chief noted that when the Complainant asked specifically, “Do I need to tell you the address,” the officer replied, “Yeah, what’s the address?” With that answer, the officer was compelling the Complainant to tell him his address. “This is wrong, as it’s a voluntary field contact,” the Chief stated. “This was not a professional statement,” the Chief wrote, “nor was it accurate, and its utterance poorly reflects upon being respectful and courteous when addressing [the Complainant].” Because the contact was consensual, the Complainant had a right to refuse to answer questions.

In addressing the issue of bias, the Chief asserted that both the Complainant and the officer had implicit biases, because both were lacking in trust for each other based upon their life experiences. However, the Chief found that the officer was held to a higher standard by training, regulations, policies and laws that define how officers are to engage with members of the community. “They are to use professionalism that embodies tact, savvy, and diplomacy,” he said, “and not just proactive training classes as the driver of actions.”

The Chief concluded that the officer did not have ill intent towards the Complainant when he told him, “it does not look like you live here.” However, the Complainant had the right to find the statement offensive, and it would be offensive by any objective and reasonable person. Therefore, the Chief concluded that the officer was in violation of Regulation 201.13, which states that officers must conduct themselves professionally at all times, and that “[d]isplays of bias towards any person on account of race...shall be considered unbecoming conduct.” The Chief further

concluded that the officer was in compliance with all other General Orders and Regulations.

On December 19, 2019, Chief Roessler sent a letter to the Complainant, stating, “As Chief of Police, I am tasked with ensuring that all investigations are thorough and unfortunately, when the investigation arrived for my review, I found that it was not completed to my satisfaction; therefore, additional administrative steps were taken which prolonged the completion of the investigation.”⁶

The Chief further stated, “Based upon my review of the facts discovered during this investigation, I have concluded that evidence does not support your allegation of bias-based policing. However, some of [the officer’s] actions were improper and in violation of departmental regulations, as these were not professional and not within my expectations of all Fairfax County Police officers. Appropriate measures have been imposed to prevent a recurrence of this type of incident.”

On December 20, 2019, the Complainant requested that the Panel review the FCPD investigation. The Complainant stated in his request that the FCPD did not explain why he was followed and why the officer watched him in the parking lot after the encounter. He stated that his allegation was not bias-based policing, but rather racial profiling, which he alleged the police did not investigate.

IV. Panel Meeting

A subcommittee of the Panel was convened on January 9, 2020, to consider whether the Panel had authority to review the investigation. The subcommittee concluded that the complaint had been timely submitted and contained allegations that met the Panel’s standard of “abuse of authority and serious misconduct.” The subcommittee recommended that the Panel review the complaint, and on February 10, 2020, the Panel voted to review the investigation.

On March 9, 2020, the Panel met to review the investigation. All Panel members were present and had reviewed the FCPD investigation file prior to the meeting. The Complainant was present, and Chief Roessler and Major Matt Owens represented the FCPD. The Complainant reiterated that he wanted to know why he was followed by the officer in the first place. He said the investigation only addressed bias-based policing, which he understood typically involves a detention. He said that he would like the Panel to request that the FCPD directly address racial profiling. He also maintained that the investigation was not impartial or objective because it was conducted by the FCPD and not an independent investigator.

⁶ The FCPD requested four extensions to complete its investigation. (July 24, 2019, September 23, 2019, November 13, 2019, and November 27, 2019.) The Board of Supervisors was informed of these extension requests.

A. Presentation and Questioning of the Complainant

Responding to questions from Panel members, the Complainant explained why he was fearful and nervous when he was followed and questioned. He said that he didn't want to tell the officer where he lived, because he was aware of an incident in Texas where an officer went into an apartment and fatally shot an individual. He said he also did not go to his apartment after the encounter because he didn't want the officer to follow him. He further explained that he had two other encounters with Fairfax County police that were not positive. He recalled one incident where he was pulled for a broken taillight. He said that the officer introduced himself and told him why he was being stopped. The Complainant was given a warning. The second incident occurred at a bar in Reston, where he was approached by a FCPD officer because the officer said he smelled marijuana in the area. The officer asked him for his ID, and he felt harassed. The Complainant said his friends have also had negative encounters with the FCPD.

One Panel member asked the Complainant if he had previous training on his rights. The Complainant responded that in his first encounter with the FCPD he had not known his rights, so he educated himself and learned the importance of recording encounters with police.

When asked whether this incident would have been different if the officer had explained why he had wanted to talk to him, the Complainant answered that it would have been different, because he would have known why the officer followed him. However, he still might not have answered any questions, because he had not done anything wrong. He emphasized that he had not committed a crime and did not think he would have been followed if he were not Black.

When asked what remedy he was seeking from the Panel, the Complainant responded that he would like the Panel to recommend that FCPD officers receive additional education and training on implicit bias. He said that he knew that officer discipline could not be disclosed publicly, but he would also like to know which FCPD regulations were violated.

B. Presentation and Questioning of Chief Roessler

In his presentation to the Panel, the Chief stated that the officer had made a series of poor, cascading assumptions and judgments that were wrongly based on his training. However, in his view, there was no evidence that race was a factor in the incident. He recognized that issues concerning racial bias are a concern in the community. He said that he has formed a human relations committee to address the racial and procedural justice policing issues in the county, and he is also reviewing officer training. Admitting that the FCPD has work to do, he said, "This is something we have to train-away. We can't just keep going to proactive patrol training." He concluded his presentation by telling the Complainant, "I pray that you understand that as your Chief I don't want this to happen to anyone else."

During questioning of the Chief, one Panel member asked why there was minimal information and analysis in the investigative file on the allegation of racial bias. The Chief replied that he thoroughly reviewed the investigation, reviewed the officer's training history, and spoke at length with the officer. He said that the officer had not indicated to him that any of his actions were based on race. Rather, he reiterated that the officer's actions were based on several assumptions and poor decisions that started with a glance and ended with "badgering" the Complainant with questions. The Chief added that there was no reason to believe that the officer was not telling the truth when he denied that race was a factor in his decisions.

The Chief was asked whether he had explored how implicit bias may have played a role in the officer's decision to follow the Complainant. He was asked whether the incident would have happened had the Complainant been a white older man. The Chief said that "everyone has implicit bias," but added that he did not want to engage in hypotheticals. "This case is a problem without regard to race," he said. He concluded by saying, "This young man was treated wrong." He said that the complaint was "going to create a lot of change, I assure you."

C. Panel Discussion and Vote

Several members of the Panel were concerned that IAB does not have a standard for investigating allegations of racial bias and racial profiling in complaints, which can differ in unique ways from other types of investigations. Panel members appreciated the work the Chief had done on the complaint, and they agreed with the finding that the officer had not performed in a professional manner and violated Regulation 201.13. However, they were concerned that the issue of racial profiling was not adequately analyzed using objective criteria. One Panel member acknowledged that racial profiling is difficult to prove, but investigators should do more than just ask the officer whether he was racially motivated. It was pointed out that the only evidence in the investigative record that related to the racial profiling allegation was the officer's denial and his arrest statistics.

Further, the Panel had recommended in its 2019 Annual Report that "where the evidence gathered during an investigation into a complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer's conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer's social media accounts and/or interviewing witnesses." While the FCPD did sustain a violation for unprofessional conduct which was race-neutral, this violation focused primarily on the officer's conduct after his first glance at the Complainant. The investigative record was virtually silent as to why the officer decided to follow the Complainant in the first place, and Panel members questioned whether a similarly situated white driver would ever have been followed in such a manner. One Panel member asserted that the officer's decision to follow the

Complainant based on a mere “glance” hardly constituted a justification so clearly race-neutral as to vitiate the need for additional investigation. Moreover, investigation into whether the officer had demonstrated any bias in conversations with co-workers or on social media would have helped to corroborate the race-neutral explanation in the FCPD’s findings.

Moreover, the Complainant had expressly asked the Panel to review whether the investigation was thorough, complete, accurate, and objective specifically with regard to his racial profiling allegation. Panel members concluded that based on their reviews of the file, the investigation as it related to the racial profiling allegation was not complete. In accordance with Article VI(E)(1)(h) of the Panel’s Bylaws, the Panel voted by 6-3 to request further investigation by the FCPD and provide a supplemental report that details the findings of the additional investigation. Specifically, the Panel requested further investigation into the allegation of racial profiling by:

1. conducting a search of the officer’s publicly available social media profiles to ensure an absence of racial bias;
2. interviewing the officer’s coworkers for evidence of racial bias;
3. reviewing data related to the officer’s community contacts and stops in the same manner the FCPD viewed arrest statistics, and
4. comparing the circumstances and claims of the current complaint to any prior complaints against this officer.

V. Additional Investigation by FCPD

The Panel sent a letter to the Chief requesting further investigation on March 11, 2020. The letter stated that the suggested investigative steps should in no way limit the FCPD from conducting further investigation into the racial profiling allegation.

On June 10, 2020, the Chief responded to the Panel with a letter updating the Panel on the additional investigation. The letter stated that the IAB investigated the officer’s social media profiles by completing an open source review of publicly available information. It also stated that IAB had not completed its additional investigation relating to the community contacts of the officer.

The Chief informed the Panel that the FCPD would not interview the coworkers of the officer for evidence of racial bias. “The mere curiosity seeking, through interviews of random employees, absent any reasonable suspicion and/or probable cause, would violate the procedural rights of employees as established by prevailing laws and personnel regulations,” he said. Furthermore, conducting such interviews would “significantly hinder the operations” of the FCPD. The Chief added, “Any officer who is aware of racial bias exhibited by a coworker not only has a duty to report such bias, but is required by policy to report it.”⁷

⁷ See General Order, Regulation 201.5 (regarding reporting obligations for conduct unbecoming); Regulation 201.13 (explaining that “while in the performance of their duties, or while otherwise representing the Department,

With regard to the Panel's request to compare the circumstances and claims of the current complaint to any prior complaints against the officer, the Chief wrote that the reviewing commander considers prior complaints and allegations when determining appropriate discipline. Disciplinary matters are a part of an employee's personnel record and cannot be publicly shared, he said. The reviewing commanders found no nexus to apply any progressive discipline. In summary, the Chief reported that the investigation did not reveal any evidence to support the allegation of bias-based policing.

On August 17, 2020, the Chief reported to the Panel that the additional investigation was complete. Investigators had reviewed data relating to the officer's community contacts and stops between January 1, 2018, and May 17, 2019, in the Reston District. The report indicated that, with the exception of the encounter with the Complainant, the officer had no consensual encounters that "were not based on reasonable suspicion or probable cause, where no reasonable suspicion or probable cause was ever developed, and where the involved community member was never detained."

All Panel members reviewed the investigation file. The additional investigation found that the officer had no social media presence.

A manual search and analysis of the officer's field contacts and stops was conducted, but it was unsuccessful. Investigators conducted a narrow search of consensual encounters that matched the exact circumstances of the complaint – i.e., a consensual encounter not based on reasonable suspicion or probable cause, where no reasonable suspicion or probable cause was ever developed and where the community member was never detained. Based on that criteria, the officer had no other similar contacts.

The investigation noted that there were three instances with four individuals (including the Complainant) where it was unclear if the officer made a consensual contact without reasonable suspicion or probable cause and where none was ever generated. "Due to lack of clear information," the investigation concluded, "these stops were not included in this analysis."

The investigation did not analyze the officer's traffic stops by breaking them down by race and ethnicity. Investigators also did not analyze by race and ethnicity the officer's non-consensual contacts, that began as voluntary contacts, but eventually led to a detention based upon reasonable suspicion or probable cause. Investigators attempted to compare the officer's consensual contacts with those of all officers in the Reston District. However, the data for consensual contacts in the Reston District was incomplete and inconsistent. The investigation revealed that documentation of

officers shall refrain from using offensive words and language. At times it may be appropriate to use raised voices to issue commands and to gain compliance, however, the use of cursing, obscenities and/or racial, ethnic, sexual, religious or sexual orientation slurs will not be tolerated.)"

community contacts is insufficient to identify the true nature of the contact. The FCPD is taking steps to address this.

VI. Panel Meeting and Findings

The Panel met virtually on September 10, 2020, to review the additional investigation. The Complainant was present, and the Chief and Major Tonny Kim represented the FCPD. Several Panel members disagreed with the FCPD's decision to not interview the officer's coworkers. One Panel member said he disagreed with the conclusion that there was no probable cause related to the allegation of racial bias. He was also dissatisfied with the FCPD's explanation that there was no need to interview coworkers because officers had an affirmative duty to report bias of coworkers if they observe it. He noted, for instance, that coworkers have an affirmative duty to report biases based on sex, but that any investigation into alleged sexual harassment in the workplace would certainly involve interviewing other coworkers.

Another Panel member asked the Chief whether criminal investigative detectives are organized into squads. The Chief responded that the criminal investigative units report to a Police Second Lieutenant. When asked how many officers comprise the criminal investigative section of the Reston Police District station, the Chief replied that he did not know exactly but there would be at least five officers.

The Chief defended the decision not to interview the officer's coworkers. He explained that the investigation looked at all the evidence, and there was "not a nexus" between the officer's actions and racial bias. Absent any evidence, the FCPD would not interview coworkers.

The Panel also was concerned about the lack of statistical analysis in the additional investigation. Major Kim explained that the FCPD's records management system is not designed to produce reports with the requested information. He said that an intensive manual search of the officer's contacts was conducted, but investigators could not reliably recreate past events, since some information was not captured into the system.⁸

One member asked why the additional investigation did not break down community contact and stop statistics by race and ethnicity. The Chief said the file should have included traffic stop data for the officer. He was also asked why the statistical analysis for arrests, stops and community contacts covered only one year. The Chief offered to expand the data analysis to more than one year. He also invited the Panel to review the different systems and modules used by the FCPD to better understand what information is collected and captured.

⁸ Notably, while a large spreadsheet was provided with incident summaries related to community contacts, the printing of the Microsoft Excel file did not create a paper record containing full incident summaries for the Panel members to review.

One Panel member asked whether the FCPD had established a threshold that would prompt additional review if the data indicated an officer's arrests, stops or community contacts were excessive for a particular racial or ethnic group. For example, if an officer's arrest record for a certain group was overrepresented by 20%, would that trigger additional review? The Chief answered that investigators review each officer's record as it is related to complaints. He said the current study commissioned by the county to evaluate use of force incidents will help in the development of an early identification system.

The Chief was also asked why the officer had not been found in violation of General Order 603.4. It was pointed out that the Chief had admitted that when the officer asked the Complainant to provide his address, the encounter stopped being a consensual encounter. At the March meeting, the Chief stated that once the officer said, 'Yeah,' in response to the Complainant's question as to whether he must tell the officer his address, the officer "violated our policy." However, the Chief found that the officer was in compliance with General Order 603.4.⁹ Major Kim confirmed that the only violation that was sustained against the officer was for a violation of Regulation 201.13.

During its deliberation, a majority of the Panel was not satisfied with the FCPD's response to the request for additional investigation. They did not think that the Panel's request for investigators to interview the officer's squad was unreasonable, since a squad is comprised of at most five officers. Passive reliance on officers to come forward with evidence of an officer's racial bias in response to a complaint does not meet best practice standards for investigations. Interviewing possible witnesses is standard procedure for any investigation, regardless of the reporting obligations of potential witnesses. Additionally, the statement that there was no "probable cause" to engage in such further investigation was met with skepticism by some members of the Panel, who pointed out that the "probable cause" included a witness alleging racial bias – the Complainant himself – and there was evidence that encounter was based on a "glance" that had not been adequately demonstrated by investigators to be wholly unbiased.

A majority of the Panel also concluded that the data analysis provided was incomplete. While the Panel understood that the current records management system needs updating, the data analysis that was carried out was incomplete. All traffic stop data should have been analyzed, as well as consensual contacts and stops (where there was reasonable suspicion and probable cause before, during or after the encounter). Even if, for instance, the statistics had shown that a high percentage of the officer's consensual contacts had turned into non-consensual stops due to reasonable suspicion or probable cause, a high disparity in the race of the subjects could have been indicative of treating potential suspects of one race differently from potential suspects of another. Although the Panel did not ask for it, the FCPD should have broadened the data analysis to include the officer's contacts and stops for the past five years. The data

⁹ General Order 603.4 is titled Police Citizen Contacts, Section IV, Voluntary Field Contacts, Subsection B, Conducting Voluntary Field Contacts.

analysis also should have been broken down by race and ethnicity. The FCPD should not wait for the results of the commissioned study to analyze use-of-force incidents, which may not be available until mid-2021. The FCPD must expedite its update of the data management system and change how it analyzes data so that it can improve early warning systems and investigations of complaints.

During the Panel's deliberation, several Panel members pointed out that the FCPD is in the best position to evaluate and improve its investigative processes. Panel members are not experts on police practices and procedures. However, the Panel has now reviewed several complaints alleging racial bias and racial profiling. In those reviews, the Panel has noted repeatedly that the investigation files did not have a process for adequately investigating racial bias and profiling. In this case, the Panel made four specific requests for additional investigation. The FCPD complied fully with only one, which related to a search of the officer's social media profiles.

Several members also stated that they did not want the Panel to focus merely on the specifics of how the investigation was conducted. They thought it was important not to lose sight of the broader issue of implicit bias and how it impacts policing. The Report on 21st Century Policing states that the unconscious nature of implicit bias demands that police departments look for new evidence-based strategies to mitigate the impact of implicit bias in policing. The FCPD should consider implementing new, objective, evidence-based procedural justice practices that could prevent an officer from making decisions based upon his implicit bias. For example, what if, before making community contacts, officers were required to ask themselves whether they had prior information that tied a particular person to a specific crime? Would that have prevented the questioning of the Complainant in this case? After the first glance, would the officer have checked himself before making assumptions based on how the Complainant looked? Would he have completed the license plate check, noted that there was no posted trespassing sign, and checked to see if the Complainant had a parking sticker on his car? Other police departments have required officers to go through a short checklist before making community contacts, and this practice has been demonstrated to significantly reduce unnecessary questioning of community members by police. The FCPD should consider doing the same.¹⁰

In conclusion, a majority of the Panel agreed with the Chief that the incident in this complaint reflected a "cascade" of mistakes and wrong assumptions made by the officer and supported his finding that the officer violated Regulation 201.13. However, with respect to the Complainant's allegation of racial profiling, the Panel voted by 7-2 that the investigation was not thorough and complete. As such, according to Article VI(F)(2)(iii), the Panel advises the Board of Supervisors that, in the Panel's judgment, the investigation is incomplete and recommends additional investigation into the allegation of racial profiling by interviewing the officer's coworkers at the Reston criminal investigation section for evidence of racial bias and reviewing data related to

¹⁰ The Oakland, California Police Department implemented a checkbox requirement for stops in 2018. In 2017, Oakland officers made approximately 32,000 stops. After implementing the checkbox, officers made about 19,000 stops in 2018.

the officer's community contacts and stops in the same manner the FCPD reviewed arrest statistics.

An audio recording of the March 9, 2020 Panel meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-march-9-2020>

An audio recording of the September 10, 2020 Panel meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-sept-10-2020>

An audio recording of the October 22, 2020 Panel meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-october-22-2020>

VII. Recommendations

1. The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer's public social media profiles; (2) interviewing coworkers in the officer's unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints. Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer's actions under each of the criteria listed above.
2. All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer's community contacts, stops, searches and arrests should be broken down by the race and ethnicity of community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention.
3. Data analysis of an officer's community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district station where

the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.

4. For the purposes of investigations into allegations of bias or profiling, data analysis of the officer's community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has worked in different districts within the county, the review and analysis of the officer's community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period.
5. Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer's community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group.
6. The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing.
7. Officers should receive implicit bias training on an annual basis.

CC: Complainant

APPENDIX G.11

(CRP-20-15)



County of Fairfax, Virginia

MEMORANDUM

DATE: October 8, 2020

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-20-15

I. Introduction

The Fairfax County Police Civilian Review Panel (Panel) held a public meeting on August 27, 2020, to review the investigation resulting from a citizen complaint submitted to the Fairfax County Police Department (FCPD) at the Fair Oaks District Station on March 27, 2020. After the investigation was completed, the FCPD sent a disposition letter to the Complainant on April 4, 2020. The letter concluded that no police misconduct had occurred. On June 12, 2020, the Complainant requested a review of the investigation by the Panel.

After reviewing the investigation file, the Panel members voted by 8-1 that the investigation was complete, thorough, accurate, objective, and impartial, and they concurred with the findings of the FCPD documented in the Investigation Report.

II. Background Facts

On March 23, 2020, the Complainant drove a truck loaded with trash to Fairfax County's I-66 Transfer Station. At the entrance, he told employees that he wanted to be allowed to dump the trash without paying the standard fee of \$13.00. He requested a waiver of the fee because of the state of emergency declared by Fairfax County and the Commonwealth of Virginia in response to the Covid-19 epidemic.

The Complainant was informed by site employees that free dumping had not been authorized. When he continued to refuse to pay the fee, an assistant manager offered him the options of receiving a bill, using a payment plan, or paying a reduced

fee. The Complainant declined these offers. During the conversation, he was told several times by the assistant manager that if he did not want to pay, he would have to leave the property.

A call was made to the FCPD after the Complainant refused to comply with the requests to leave. Two uniformed officers arrived at the scene. They talked initially with the facility employees, who described the failed negotiations with the Complainant. The officers initiated a discussion with the Complainant, who remained in his truck during the conversation that followed. Both officers told him several times that he would have to pay or leave. He asked the officers for their names, which they provided. According to the officers, on multiple occasions he rolled up his truck window when one of the officers attempted to talk with him.

While the officers continued their effort to persuade him to comply with their request, the Complainant talked by cell phone to an official at the Department of Public Works and Environmental Services. He described the situation to the official and repeated his demand for a waiver of the dumping fee. The official advised him to leave the property and offered to meet with him at a nearby gasoline station. The discussions with the police officers ended when the Complainant drove his truck to the meeting place. He met with the official and agreed to pay a reduced fee.

III. Procedural Background, Allegations and Findings

As noted above, the complaint was communicated directly to the FCPD on March 27, 2020, when the Complainant contacted a supervisor at the Fair Oaks District Station. The Complainant alleged the following: (1) The officers issued an unlawful order by demanding that the Complainant immediately leave the Transfer Station because of a civil dispute; (2) The Complainant's First Amendment right to peacefully assemble and petition the government for a redress of grievances was violated; (3) The number of officers on the scene was excessive because it was not proportionate to the nature of the incident; (4) The names of the officers printed on their badges were not visible to the Complainant and had been covered up; (5) The officers yelled at the Complainant and were "talking over him;" and (6) The police record of the incident was not sufficient, because inaccurate and incomplete comments were recorded on the CAD system by one of the officers, and a written report of the incident should have been submitted.

A supervisor at the Fair Oaks District Station investigated the incident. He interviewed the Complainant and also questioned the officers who were involved in the

incident. The assistant manager of the transfer station, who had attempted to resolve the dispute with the Complainant, was also interviewed. In addition, the investigator reviewed the comments that had been recorded into the CAD system by one of the officers at the scene.

Responding to each of these allegations, the investigator found: (1) The officers' actions were not unlawful; (2) It was appropriate for the FCPD to send two officers to the scene and not just one. The normal practice under the dispatching procedures is to send two officers in response to civil disputes that are "in progress." (3) At the scene, the Complainant was given the names of the two officers. (4) According to the officers and the witnesses who were interviewed, the officers did not yell, were not threatening, and were not rude to the Complainant. (4) One of the officers at the scene provided an adequate and detailed description of the incident that was recorded on the CAD system. Also, as explained to the Complainant, the officer correctly determined that the incident was a civil matter. Since written reports on civil matters are not routinely submitted when the CAD system is used, the officer properly concluded that a written report was not necessary.

Based on these findings, the investigator concluded that the two officers met the standards of conduct that applied to the situation, and they complied with all Department rules and regulations. On April 4, 2020, the FCPD sent a letter to the Complainant informing him that it had completed a comprehensive examination of the facts and circumstances surrounding the Complainant's allegations and that the officer's actions "were lawful and in compliance with Department Regulations regarding community member contacts."

On June 12, 2020, the Complainant requested a review by the Panel. A subcommittee of the Panel was convened on July 20, 2020, to review the complaint and the investigation file and then determine whether the Panel had authority to review the investigation. The subcommittee concluded that the investigation concerned matters within the purview of the Panel. It found that the complaint had been timely submitted and contained allegations that met the Panel's standard of "abuse of authority and serious misconduct."

IV. Panel Meeting

The Panel Review Meeting was held virtually on August 27, 2020. All Panel members had reviewed the Investigation Report prior to the meeting. The Complainant was present at the meeting. In his statement to the Panel, the Complainant said that his

civil rights were violated and that the officers violated FCPD General Order 301, which governs internal investigations. Also, the Complainant stated that he never refused to pay the fee. Rather, he wanted a waiver and was questioning the policy when the police arrived. He also expressed his view that the FCPD cannot demand that he leave public property when he is not breaking the law. He reiterated that he felt intimidated and threatened during the interaction with the FCPD, and that he believed the investigation was inaccurate and incomplete.

Chief Edwin Roessler and Major Tonny Kim represented the FCPD at the Review Meeting. Several Panel members were concerned that one witness at the transfer site was not interviewed during the investigation. They noted that the witness could have provided information on the demeanor of the officers during the encounter with the Complainant. It was also noted that the Panel had made a recommendation to the FCPD, published on January 9, 2019, stating, “The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.” Similarly, in a recommendation to the FCPD published on January, 15, 2020, the Panel stated, “With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.”

Two Panel members noted that the disposition letter, which was sent to the Complainant by the FCPD after the investigation was completed, did not provide the reasons for the findings. The two Panel members further noted that the Panel had recommended on March 21, 2019, that FCPD disposition letters to a Complainant upon conclusion of a FCPD investigation, “must contain sufficient, specific detail to provide Complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.”

Some Panel members were also concerned that the investigator did not follow a standardized investigative plan that is based on best practices, policy or practice.¹ One Panel member observed that he has seen a disparity in the quality of investigations, particularly between those conducted at the district level and those at the Internal Affairs Bureau (IAB). Chief Roessler and Major Kim responded that investigators are trained throughout their careers, beginning at the Academy and continuing with advanced training and supervision by field training officers. Investigators are tenured and seasoned professionals, they said. Although each investigation is unique, they

¹ Following the Review Meeting, the FCPD informed the Panel that senior staff are planning to add a bureau commander review requirement for certain district and division cases to be implemented before the conclusion of the investigation. This will add an additional layer of scrutiny to cases that are not investigated by the IAB.

stated, investigators both at the district level and at IAB adhere to the guidelines in an internal administrative manual, and all investigations follow a general structure.

A few Panel members asked the FCPD about how police are trained in potential trespass situations, where a community member is asked to leave or “move along” from a public place. Police receive extensive training on how to handle trespass cases, Major Kim responded. He said police also attempt to de-escalate conflict situations and work to resolve matters without making an arrest. He said that in this incident, the officers asked the Complainant a number of times to move along before demanding that he leave the site. He said the officers used due diligence to resolve the matter and ultimately there was a positive outcome. The parties agreed to settle the matter themselves.

During their deliberation, most Panel members agreed that while the FCPD should have interviewed the witness who observed the encounter, the additional evidence would not likely change the outcome of the investigation.² The weight of the evidence and the substantial completeness of the investigation were important considerations for the Panel in making its finding. Further, the Complainant was asked by Transfer Station managers and FCPD officers to either leave or pay the fee several times before a demand was made for him to leave. To prevent traffic congestion at the site, it was reasonable and lawful for the FCPD to demand the Complainant leave. The Panel voted by 8-1 to concur with the findings in the FCPD investigation.

An audio recording of the August 27, 2020, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-august-27-2020>.

On October 8, 2020, the Panel discussed the Review Report and Recommendations. An audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-october-8-2020>

CC: Complainant

² Following the Review Meeting, Major Kim informed the Panel that Chief Roessler directed his staff to interview the witness who might have observed the incident. On October 3, 2020, the FCPD informed the Panel that investigators had identified the witness and interviewed him. The witness statement was included in the investigative case file, and it supported the FCPD investigation finding.

MEMORANDUM

To: The Fairfax County Police Civilian Review Panel

From: Hansel Aguilar, Panelist

Date: October 8, 2020

Re: CRP-20-15 Complaint Dissent

I. Introduction

After a careful and holistic consideration of the case file, the review meeting deliberation, and the Majority report of CRP-20-15, I find that I am not able to support the conclusion stated in the report that the "...Investigation is complete, thorough, and accurate..." Specifically, I dissent from the Majority report because: (1) at the time of the review and Panel deliberation, the FCPD had not interviewed nor attempted to interview a key witnessⁱ; nor had (2) the FCPD accurately investigated the appropriateness of issuing a "move along order" to the Complainant in the interaction in question.

II. The Investigation concerning the allegation of the officers' demeanors was not completely, thoroughly, and accurately investigated and is inconclusive

Without the use of an objective investigative tool like body-worn camera (BWC) or a comparable video recording of the incident, determining whether the officers exhibited demeanor consistent with FCPD General Order 201.13, which states that,

"Employees shall conduct themselves professionally at all times when representing the Department. They shall use respectful, courteous forms of address to all persons"

was a difficult task for the assigned investigators in this case. Fortuitously, there were several witnesses to the event in question. Perplexingly and without reason or justification, the FCPD failed to interview all the available and present

witnesses that could have corroborated or refuted the claims made in this complaint.

This omission of a key witness is not an event in isolation. In fact, this Panel has already made public comments and recommendations to the FCPD regarding the thoroughness and completeness of their investigatory process. As reiteration of a previously provided Panel recommendationⁱⁱ, I would like to emphasize that the FCPD needs to ensure that “With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.”

Additionally, as previously recommended by this author, the FCPD should strongly consider implementing and standardizing the use of investigation plans for all misconduct investigations to ensure a systematic approach to reviewing and investigating each allegation in the complaint.

III. Appropriateness of a *move along order* in a public space while engaging in constitutionally protected activity

One of the expressed concerns in the complaint was the appropriateness of the FCPD officers’ instructions to the complainant to leave the premises while he was attempting to resolve a dispute with the solid waste facility operators. Specifically, the complainant alleged that the instruction by the officers to leave the waste facility was “unlawful” and violated his “1st amendment right to peaceably assemble and petition the government for a redress of grievances.”

Based on the statements from the complainant, the FCPD, and the witnesses, I disagree with the assertion that the complainant’s first amendment rights to assemble and petition the government were violated. The complainant’s actions in this matter were guided by his interpretation of local and state emergency declarations. It was his understanding that he should have been offered or allowed a waiver considering the global public health emergency. According to the case file, the complainant acknowledged that there were no specific statements or provisions in the emergency declarations regarding the waiver he was seeking.

Objectively speaking, his hardship waiver request was reasonable. Notwithstanding, I do not believe it was reasonable nor consistent for the complainant to physically present himself at the waste station and demand that

the waiver be provided to him. Yes, the waste station is a County facility thus it is a public space which provides certain constitutional protections, however, there were other mechanisms the complainant could have and should have exhausted prior to showing up at the facility. Specifically, the complainant could have exercised his first amendment rights by contacting the waste facility, his local representative, his state representative, etc. via phone, email, or regular mail prior to attempting to speak to someone in person at the waste facility. Additionally, the police appeared to have provided the complainant considerable time before asking him to leave.

My concern with this element of the investigation concerns the lack of clear guidance and instructions provided to FCPD officers regarding issues of trespassing in public spaces. Currently, the FCPD does not have a general order addressing these interactions and allows for officers to utilize their discretion to determine the appropriateness of issuing a move along order or trespassing order to a community member. As I noted in the deliberation of this case, the DC Office of Police Complaints (OPC)- our neighboring civilian oversight agency, which oversees the Metropolitan Police Department- has made similar observations with the misapplication of move along orders by their jurisdiction's law enforcement officers. I believe it would be beneficial for the FCPD to consider analyzing this issue in the County further and explore how to enact clear guidance for FCPD officers. In this review, the FCPD should consider some of the recommendations in OPC's Policy Report #17-3: Blocking Passageⁱⁱⁱ:

"To help improve and facilitate better relations and increase trust between MPD officers and community members, the PCB recommends that:

- 1. MPD require its officers to document any incident where a move along order and/or a blocking passage citation was issued, and the incident reports must detail how specifically the person was blocking passage.*
- 2. MPD should provide additional training on the correct application of the statute as well as cultural and sensitivity training on the proper way to issue move along orders in a manner that promotes cooperation and decreases animosity."*

IV. Conclusion

Based on the unknown aspects of this case (at the time of review) and the accuracy of the *move along order* allegation, I must dissent from the conclusion that this investigation is complete, thorough, and accurate.

ⁱ On Monday, October 5th, 2020 the Panel received a memorandum from the FCPD (dated October 2nd, 2020) certifying that on the FCPD identified the witness in question and conducted an interview. It was reported by the FCPD that the statements from the witness supported the conclusions of the FCPD investigation.

ⁱⁱ CRP-19-11: Published January 9, 2020

ⁱⁱⁱ The complete report can be accessed via:

https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Blocking%20Passage%20Report.FINAL_.pdf

APPENDIX H

(Complaint Form)



Fairfax County Police Civilian Review Panel Complaint Form

SUBMISSION OPTIONS

Hand Deliver or Mail to:	Office of the Independent Police Auditor 12000 Government Center Parkway, Suite 233A Fairfax, VA 22035
Call:	703-324-3459, TTY 711
Email:	PoliceCivilianReviewPanel@fairfaxcounty.gov

This form and information on the complaint process may be accessed at www.fairfaxcounty.gov/policecivilianreviewpanel. Brochures with complaint forms in English, Korean, Spanish, and Vietnamese are also available.

CONTACT INFORMATION

The identity of a juvenile or a victim of sexual assault will remain confidential consistent with the Board Agenda Item dated February 28, 2017, ACTION-17 at p. 275, and to the extent allowed under the Virginia Freedom of Information Act, Virginia Code Sections 2.2-3700, et seq.

Name:	
Telephone Number:	Email:
Address:	
City:	State & Zip Code:
Were you a participant in the incident?	YES NO
Were you a witness to the incident?	YES NO
Are you submitting this form on behalf of someone else? YES NO	<i>If yes, please provide his or her contact information.</i>
If yes, does the person know you are filing this complaint? YES NO	

DEMOGRAPHIC INFORMATION

Gender:	Age:	Race/Ethnicity:
----------------	-------------	------------------------

Who Were the Fairfax County Police Department (FCPD) OFFICER(s) Involved?

Describe the officer(s). *Provide any known information about the FCPD officer(s)/employee(s) involved in the misconduct. Helpful information includes: Name, Badge Number, Police District, Physical Description (Age, Race, Gender, Height, Weight, Hair/Eye Color, Clothing), Vehicle Number/Description (Color, Make, Model). Attach additional information if necessary.*

--

Did Anyone Witness/See What Happened?

Who? *Provide contact information (name, phone, email, address) for witnesses to the misconduct, if known. Indicate if the witness(es) are aware that you are submitting this complaint. Attach additional information if necessary.*

--

What Happened?

Provide the incident date, time, location, and details. If the misconduct occurred on multiple days, times, or locations, list each to your best recollection. Attach additional information if necessary. **If you want the Panel to review a completed FCPD Investigation, please state the reasons for your request.**

Incident Date:

Incident Time:

Incident Location:

Incident Details:

Is the incident described above the subject of a court proceeding?

If yes, please attach a description of the proceedings.

YES

NO

Has the FCPD been asked to investigate this incident in the past? *If yes, please attach any correspondence you received from the FCPD. If no, the FCPD may contact you as a part of the investigation process.*

YES

NO

Please Note: The Panel is required to forward all complaints to the FCPD upon receipt

By signing this form, I certify that the statements made herein, and on any attached documentation, are true and complete to the best of my knowledge, information, and belief.

Signature:

Date:

APPENDIX I

(Panel Brochure)

Complaint Form

Name: _____

First

Last

Address: _____

Street _____ City, State _____

Email: _____

Date of Birth: _____ M F

Circle One

Date of Incident: _____

Time of Incident: _____ A.M. P.M.

Circle One

Incident Location: _____

Name/Badge # of Officer(s) Involved:

Briefly Describe the Incident:

(Use add'l paper if necessary. Include descriptive details.)

Witnesses to Incident:

Signature

Date

Attend A Meeting

The Panel generally meets in open session on the first Thursday of every month at 7 p.m. The public is welcome to attend.



Meeting locations vary and dates may change. Please check www.fairfaxcounty.gov/calendar/ShowCalendar.aspx

Fairfax County Police Civilian Review



Building Community Trust

Through Accountability



November 2017

A Fairfax County, Va., Publication

To request this information in an alternate format,
call 703 324-3459, TTY 711.

What Is Civilian Review?

The Fairfax County Civilian Review Panel and the Independent Police Auditor were established to review police investigations resulting from public complaints against officers of the Fairfax County Police Department.

The Panel has nine members who are Fairfax County residents. The Panel and the Auditor are independent from the Police Department and report directly to the Fairfax County Board of Supervisors.

What We Do

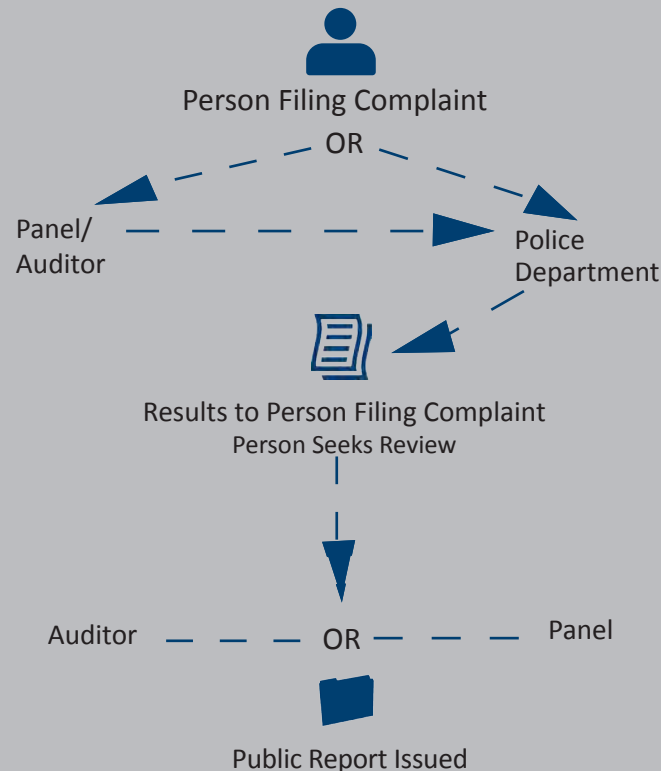
The Panel reviews police investigations involving police misconduct. Examples of police misconduct are:

- Rudeness
- Threats
- Verbal Abuse
- Harassment
- Racial Profiling
- Discrimination

The Auditor reviews police investigations involving the use of force. Both the Panel and the Auditor determine whether the police investigation was thorough, accurate and impartial.

How We Work

- When a complaint is received, it is sent to the Police Department for investigation.
- Investigators interview the person who filed the complaint and witnesses.
- Police examine the evidence and write a report outlining the findings.
- The person who filed the complaint receives a letter summarizing findings of the investigation.
- If the person does not agree with the outcome of the investigation, he or she may ask for a review.
- If a review is requested, either the Panel or the Auditor reviews the investigation and issues a public report.



How to File A Complaint

If you have experienced or observed misconduct by a Fairfax County police officer, you are encouraged to file a complaint. You will not be penalized by the police or any county official for filing a complaint.

Fill Out a Complaint Form

- You may use the complaint form in this brochure or a printed copy of the online form.
- You may also complete a complaint form online. Go to www.fairfaxcounty.gov/policeauditor

To File a Complaint

- You may file your completed form by mailing it to:

Office of the Independent Police Auditor
12000 Government Ctr. Parkway, Ste. 233A
Fairfax, VA 22035
- You may file online. Instructions are provided at the above website.
- You may deliver a completed complaint form to the Auditor's Office at the above address or to any Fairfax County Police Station.

If you need help completing the form, please call (703) 324-3459 or email PoliceCivilianReviewPanel@fairfaxcounty.gov

Formulario de quejas

Nombre: _____
Primer nombre Apellido

Dirección: _____
Número y calle Ciudad, estado

Correo electrónico: _____

Fecha de nacimiento: _____ M F
Encierre una opción en un círculo

Fecha del incidente: _____

Hora del incidente: _____ A.M. P.M.
Encierre una opción en un círculo

Lugar del incidente: _____

Nombre/N.º de placa del (de los)
oficial(es) involucrado(s):

Describa brevemente el incidente:
(Use papel adicional si es necesario. Incluya detalles descriptivos).

Testigos del incidente:

Firma Fecha

Venga a una reunión

Por lo general el Panel se reúne en una sesión abierta el primer jueves de cada mes a las 7:00 p. m. El público está invitado a asistir.



Los lugares y fechas de reunión pueden cambiar. Consulte la página web www.fairfaxcounty.gov/calendar/ShowCalendar.aspx

Fairfax County Revisión civil de la policía



Creando
confianza en la
comunidad



Noviembre de 2017

Una publicación de Fairfax County, Virginia
Para solicitar esta información en un formato alternativo,
llame al 703 324-3459, TTY 711.

A través de la
responsabilidad

¿Qué es la revisión civil?

El Panel de Revisión Civil de Fairfax County y el Auditor Independiente de la Policía se establecieron para revisar las investigaciones policíacas resultantes en quejas públicas contra los agentes del Departamento de Policía de Fairfax County.

El Panel está formado por nueve miembros que son residentes de Fairfax County. El Panel y el Auditor son independientes del Departamento de Policía y se reportan directamente a la Junta de Supervisores de Fairfax County.

Lo que hacemos

El Panel revisa las investigaciones de la policía en relación con la conducta incorrecta. Ejemplos de conductas incorrectas de la policía:

- grosería
- amenazas
- abuso verbal
- acoso
- perfil racial
- discriminación

El Auditor revisa las investigaciones policíacas relacionadas con el uso de la fuerza. Tanto el Panel como el Auditor determinan si la investigación de la policía fue minuciosa, exacta e imparcial.

Cómo trabajamos

- Cuando se recibe una queja, se envía al Departamento de Policía para ser investigada.
- Los investigadores entrevistan a la persona que presentó la queja y a los testigos.
- La Policía examina las pruebas y elabora un informe con el detalle de los hallazgos.
- La persona que presentó la queja recibe una carta con el resumen de los hallazgos de la investigación.
- Si la persona no está de acuerdo con el resultado de la investigación, puede pedir una revisión.
- Si se solicita una revisión, el Panel o el Auditor revisa la investigación y emite un informe público.



Cómo presentar una queja

Si experimentó u observó una conducta incorrecta de un agente de la Policía de Fairfax County, siéntase en la libertad de presentar una queja. Ni la Policía ni ningún funcionario del condado lo sancionarán por presentar una queja.

Llenar un formulario de queja

- Puede usar el formulario de queja que se incluye en este folleto o una copia impresa del formulario que se encuentra en línea.
- También puede llenar un formulario de queja en línea. Consulte la página web a www.fairfaxcounty.gov/policeauditor

Presentar una queja

- Puede presentar su formulario completado enviándolo por correo a:

Office of the Independent Police Auditor
12000 Government Ctr. Parkway, Ste. 233A
Fairfax, VA 22035
- Puede presentar la queja en línea. En el sitio web que se menciona anteriormente se encuentran las instrucciones.
- Puede enviar un formulario de queja completado a la Oficina del Auditor a la dirección anterior o a cualquier Estación de Policía de Fairfax County.

Si necesita ayuda para llenar el formulario, llame al (703) 324-3459 o envíe un correo electrónico a PoliceCivilianReviewPanel@fairfaxcounty.gov

항의신고 양식

이름: _____

이름 성

주소: _____

이메일: _____

생년월일: _____ **남성 여성**

동그라미 하세요

사건 일자: _____

사건 시각: _____ **오전 오후**

동그라미 하세요

사건 장소: _____

관련된 경관의 이름/배지 번호:

사건을 간단하게 기술하십시오:

(필요한 경우 종이를 추가로 사용하십시오. 자세히 서술해 주십시오.)

사건 목격자:

서명

날짜

회의 참석

패널은 일반적으로 매달 첫 번째 목요일 저녁 7시에 공개 세션에서 소집됩니다. 대중 여러분들의 참석을 환영합니다.



회의 장소 및 날짜는 변경될 수 있습니다.

www.fairfaxcounty.gov/calendar/

[ShowCalendar.aspx](http://www.fairfaxcounty.gov/calendar/ShowCalendar.aspx)에서 확인하십시오.



2017년 11월

Fairfax County, Va., 출판

본 정보를 대체 형식으로 요청하려면

703 324-3459, TTY 711로 전화하십시오.

Fairfax County 경찰 시민 심사



커뮤니티 신뢰 쌓기

책임 기반

시민 심사란 무엇입니까?

Fairfax County 시민 심사 패널과 독립 경찰 감사기구가 설립되어 Fairfax County 경찰국 경관에 대한 공적인 항의에서 비롯된 경찰 조사를 심사합니다.

패널은 Fairfax County 주민 9명으로 이루어집니다. 패널 및 감사기구는 경찰국과 독립적으로 존재하며 Fairfax County 감독 위원회에 직접 보고합니다.

패널 및 감사기구가 하는 일

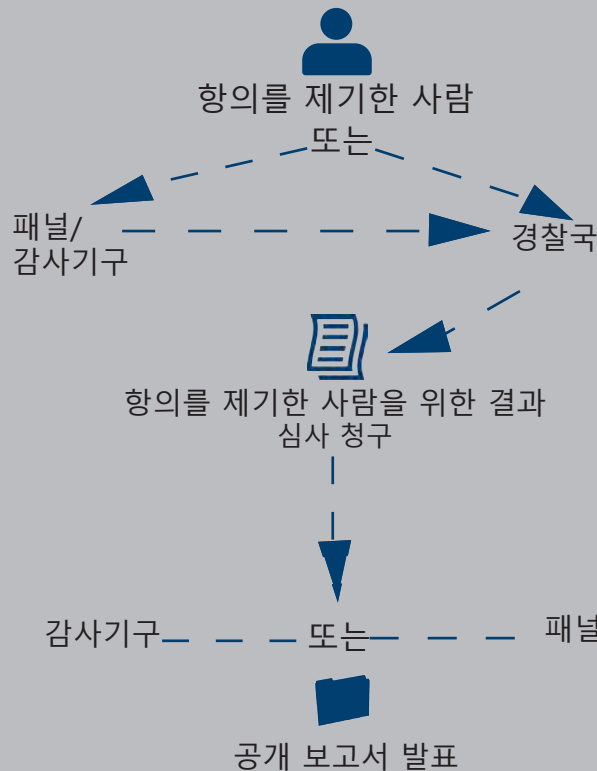
패널은 경찰의 부정행위에 관련된 경찰 조사를 심사합니다. 경찰 부정행위의 예:

- 무례
- 위협
- 폭언
- 희롱
- 인종 프로파일링
- 차별

감사기구는 무력 행사와 관련된 경찰 조사를 심사합니다. 패널 및 감사기구는 경찰 조사가 철저했는지, 정확했는지, 그리고 공평했는지 여부를 결정합니다.

진행 방식

- 항의가 접수되면, 항의는 조사를 위해 경찰국으로 전송됩니다.
- 조사관은 항의를 제기한 사람 및 목격자와 면담합니다.
- 경찰은 증거를 조사하고 결과를 기술하는 보고서를 작성합니다.
- 항의를 제기한 사람은 조사 결과를 요약한 서한을 받게 됩니다.
- 조사 결과에 동의하지 않는 경우, 심사를 청구할 수 있습니다.
- 심사가 청구되면, 패널 또는 감사기구가 조사를 심사하고 공개 보고서를 발표합니다.



항의를 제기하는 방법

Fairfax County 경찰관의 부정 행위를 목격하거나 경험한 경우, 항의를 제기해 주시길 권장합니다. 항의를 제기한 것에 대해 경찰이나 공무원에 의해 난처한 입장에 처하지 않습니다.

항의신고 양식 작성

- 이 브로셔에 있는 항의신고 양식 또는 온라인 양식의 인쇄본을 사용하시면 됩니다.
- 항의신고 양식을 온라인으로 작성하셔도 됩니다. www.fairfaxcounty.gov/policeauditor로 이동하십시오.

항의를 제기하는 방법

- 작성한 양식을 다음 주소로 보내 제기하시면 됩니다.

Office of the Independent Police Auditor
12000 Government Ctr. Parkway, Ste. 233A
Fairfax, VA 22035

- 온라인으로 제기하셔도 됩니다. 상기 웹사이트에 지침이 제공되어 있습니다.
- 작성한 항의신고 양식을 상기 주소의 감사기구 사무실로 보내거나 모든 Fairfax County 경찰서로 보낼 수 있습니다.

양식 작성에 대해 도움이 필요하신 경우, (703) 324-3459번으로 전화주시거나 PoliceCivilianReviewPanel@fairfaxcounty.gov로 메일을 보내 주십시오.

Mẫu đơn khiếu nại

Tên: _____

Tên

Họ

Địa chỉ: _____

Đường _____ Thành phố, Bang _____

Email: _____

Ngày sinh: _____ **Nam Nữ**

Khoanh tròn Một

Ngày xảy ra sự cố: _____

Thời gian xảy ra sự cố: _____ **Sáng Chiều**

Khoanh tròn Một

Địa điểm xảy ra sự cố: _____

Tên/Số ký danh # của vị Cảnh sát có liên quan:

Mô tả ngắn gọn sự cố:

(Sử dụng giấy bỏ sung nếu cần. Bao gồm thông tin chi tiết mô tả.)

Nhân chứng của sự cố:

Chữ ký

Ngày

Dự Họp

Hội đồng thẩm duyệt thường mở ra buổi gặp mặt vào mỗi thứ năm đầu tháng vào lúc 7:00 tối. Công chúng đều được đón chào tới dự.

Các địa điểm và ngày họp có thể thay đổi. Xin vui lòng vào website dưới đây: www.fairfaxcounty.gov/calendar/ShowCalendar.aspx



Cảnh sát Fairfax County Được dân cư Thẩm định



Xây dựng niềm tin
qua trách nhiệm
cộng đồng



Tháng 11 năm 2017
Một ấn phẩm của Fairfax County, Va.,
Để yêu cầu thông tin này dưới hình thức khác,
gọi 703 324-3459, TTY 711.

Thông qua Trách
nhiệm giải trình

Sự thẩm duyệt của dân chúng là gì?

Ban thẩm duyệt của dân cư cùng cơ quan độc lập kiểm soát cảnh sát được thành lập để thẩm duyệt các cuộc điều tra của cảnh sát do những khiếu nại của công chúng với các viên chức của sở cảnh sát Fairfax County.

Ban hội thẩm gồm có chín thành viên dân cư Fairfax County. Ban thẩm duyệt và Kiểm soát viên độc lập với Sở cảnh sát và báo cáo trực tiếp cho Hội đồng giám sát của Fairfax County.

Những việc chúng tôi làm

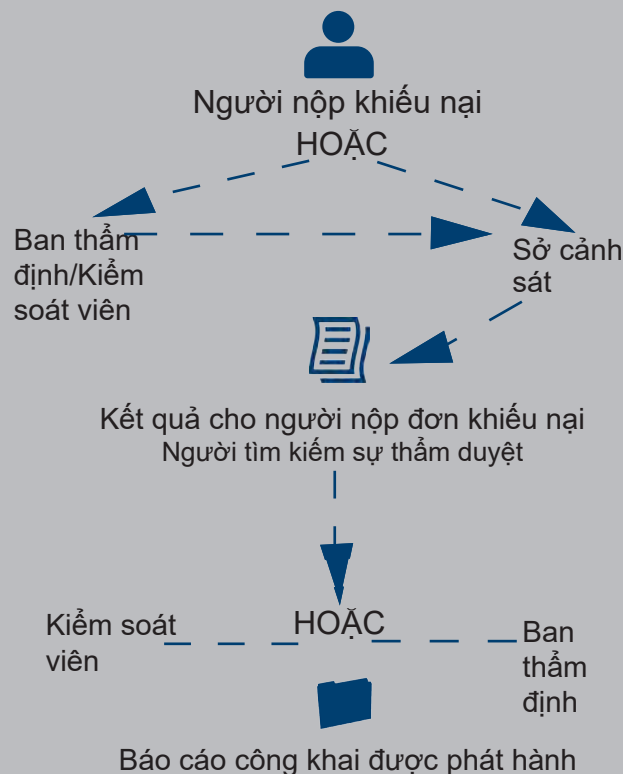
Ban thẩm duyệt xem xét các cuộc điều tra của cảnh sát liên quan tới việc làm sai trái của cảnh sát. Ví dụ về việc làm sai trái của cảnh sát gồm:

- Vô lễ
- Đe dọa
- Lạm dụng lời nói
- Quấy rối
- Có dấu hiệu phân biệt chủng tộc
- Phân biệt đối xử

Kiểm soát viên xem xét các cuộc điều tra của cảnh sát liên quan tới việc sử dụng bạo lực. Hai ban thẩm định và kiểm soát viên xác định xem coi cuộc điều tra của cảnh sát có kỹ lưỡng, chính xác và công bằng không.

Cách thức làm việc của chúng tôi

- Khi nhận được khiếu nại thì nó sẽ được gửi tới Sở cảnh sát để điều tra.
- Các điều tra viên phỏng vấn người đã nộp khiếu nại và các nhân chứng.
- Cảnh sát xem xét chứng cứ và ghi báo cáo liệt kê các phát hiện.
- Người nộp khiếu nại nhận thư tóm lược các phát hiện của cuộc điều tra.
- Nếu người đó không đồng ý với kết luận của cuộc điều tra thì có thể đề nghị xem xét.
- Nếu có yêu cầu để được xem xét thì Ban thẩm định hoặc Kiểm soát viên sẽ xem xét cuộc điều tra và phát hành báo cáo công khai.



Cách nộp khiếu nại

Nếu quý vị đã gặp phải hoặc quan sát thấy sự sai trái của nhân viên cảnh sát Fairfax County thì quý vị nên nộp khiếu nại. Quý vị sẽ không bị cảnh sát hoặc bất kỳ nhân viên nào của quận phạt vì đã nộp khiếu nại.

Điền mẫu đơn khiếu nại

- Quý vị có thể dùng mẫu đơn khiếu nại trong quyển giới thiệu này hoặc dùng bản in ra từ mẫu trực tuyến.
- Quý vị còn có thể hoàn tất mẫu đơn khiếu nại trực tuyến. Vào www.fairfaxcounty.gov/policeauditor

Đề đệ nộp khiếu nại

- Quý vị có thể nộp mẫu đơn đã điền qua bưu điện tới:

Auditor
12000 Government Ctr. Parkway, Ste. 233A
Fairfax, VA 22035
- Quý vị có thể nộp đơn trực tuyến. Hướng dẫn có trên trang mạng ở trên.
- Quý vị có thể nộp mẫu đơn khiếu nại hoàn chỉnh tới Văn phòng Kiểm toán viên theo địa chỉ nêu trên hoặc tới bất kỳ Đồn cảnh sát Fairfax County nào.

Nếu quý vị cần sự trợ giúp để hoàn tất mẫu đơn này, vui lòng gọi (703) 324-3459 hoặc gửi email tới PoliceCivilianReviewPanel@fairfaxcounty.gov

APPENDIX J

(Panelist Biographies)

Panel Member Biographies

Hansel Aguilar, Fairfax (2017–Present)

Mr. Aguilar, originally from Honduras, investigates allegations of police misconduct at the D.C. Office of Police Complaints. Mr. Aguilar is a former police officer for the George Mason University Police Department and previously worked as a case manager and internal investigator for Youth for Tomorrow. He has served with the Vinson Hall Retirement Community in McLean and with the Fairfax County Office for Women & Domestic and Sexual Violence Services. Mr. Aguilar is bilingual in Spanish and English and believes that oversight is an important tenet of maintaining justice and equality in a democratic society.

James Bierman, McLean (2019–Present)

Mr. Bierman is a resident of McLean, where he grew up, and is a litigator who represents clients in complex litigation such as antitrust, securities, pharmaceutical defense, false advertising, trade secrets, copyright infringement, trademark infringement, commercial paper, and domestic matters in federal and state courts across the country as well as before federal administrative agencies. Mr. Bierman also maintains a large pro bono practice in which he has represented undocumented immigrants in wage disputes against predatory employers, disabled individuals in Social Security benefit matters, and criminal defendants in state court at both the trial and appellate levels. Further, he advises nonprofits and community organizations in disputes with state and local governments. Mr. Bierman previously served as a law clerk to the Honorable Beverly B. Martin of the U.S. Court of Appeals for the Eleventh Circuit. Aside from his practice, Mr. Bierman is a leader in the Washington legal community and beyond where he serves as an Associate Trustee of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and serves on the Board of the Washington, D.C. Chapter of the American Constitution Society.

Robert Cluck, Reston (2018–Present)

Mr. Cluck has resided in Fairfax County for 40 years. He was on the Fairfax County Ad Hoc Polices Practices Commission. He served in the US Army and worked for the federal government for over 30 years in finance and administration. Since retirement, he has been active with the National Alliance on Mental Illness (NAMI), including as a member and officer of the Board of the State level organization and as a volunteer in many capacities for the Northern Virginia affiliate. Over period of six years, he gave family member presentations to Fairfax and Arlington County police officers as part of their Crisis Intervention Team training. He is strongly committed to helping enhance public trust between the public and the Police Department.

Kathleen Davis-Siudut, Springfield (2017–2018)

Ms. Davis-Siudut has spent the past 15 years providing training as well policy development and implementation in the areas of sexual violence, human trafficking, and cultural diversity. Ms. Davis-Siudut is of Korean descent and has previously worked for the National Underground Railroad Freedom Center, Polaris Project, and the US Marine Corps. She currently works with the Air Force as a sexual assault prevention and response subject matter expert.

Steve Descano, Burke (2017–2018)

Mr. Descano served as a federal prosecutor for six years in various positions: Special Assistant United States Attorney in the Eastern District of Virginia, Trial Attorney in the Criminal Tax Division, and Trial Attorney in the Consumer Protection Branch. He focused on prosecuting complex frauds and crimes targeting vulnerable victims. While at the Department of Justice, he was awarded Tax Division Outstanding Attorney Awards in 2012, 2013, and 2014. Mr. Descano currently works as the Chief Operating Officer and General Counsel for Paragon Autism Services, a provider of behavioral therapy to children with Autism Spectrum Disorder. Mr. Descano serves on the Fairfax County NAACP's Criminal Justice Committee and was nominated by the Fairfax County NAACP to serve on the Civilian Review Panel.

Hollye Doane, Oakton (2017–Present, Panel Chair 2020, Panel Vice Chair 2019)

A Fairfax County resident for more than 30 years, Ms. Doane spent most of her career as an attorney in Washington D.C. representing an array of clients, including the National Down Syndrome Society and Down Syndrome Research and Treatment Foundation. Ms. Doane has been an advocate for the disability community for more than 20 years and understands the importance of building positive relationships between law enforcement officers and people with disabilities. Her experience as a journalist prior to attending law school gave her an appreciation for clear, timely and transparent communication between government officials and the community. After her retirement, Ms. Doane trained as a mediator and facilitator and currently serves as a lay pastoral minister in her church.

Frank Gallagher, Burke (2019–Present)

Mr. Gallagher is a U.S. Army veteran and a retired FBI Agent with over 32 years of service. He first moved to Fairfax County in 1977 and was transferred out of the area several times. During his time in the FBI, Mr. Gallagher served as the Deputy Assistant Director of the Criminal Division, Special Agent in Charge of a Field Office and as the Chief Inspector for the FBI. He has lived continuously in Fairfax County for the past 19 years. After his retirement from the FBI, he worked for a major global management and information technology consulting firm for 11 years. Subsequent to that he served for two years as the Chairman of the DC Chapter of the Society of Former Special Agents of the FBI. He is a graduate of FBI's National Executive Institute (NEI) and was on the Board of Directors of the NEI Associates for five years. For the past four years he has been the Braddock District representative on the Fairfax County Criminal Justice Advisory Board

Colonel Gregory Gadson, Alexandria (2018–2019)

Colonel Gadson served our nation in the United States Army for more than 26 years. He served in every major conflict of the past two decades and served in various assignments throughout the world. His service culminated as the Garrison Commander of Fort Belvoir, where he oversaw the daily operations of the post, a strategic sustaining base where more than 50,000 military personnel and employees provide logistical intelligence, medical and administrative support, and command control for a mix of more than 140 commands and agencies for the Department of Defense. He is a passionate advocate for wounded warriors, veterans, and those with disabilities; on several occasions, testified before congress on issues related to these groups. Colonel Gadson continues to serve his nation as an entrepreneur and managing partner of Patriot Strategies, LLC, a government services company.

Douglas Kay, Fairfax (2017–Present, Panel Chair 2019, Panel Vice Chair 2018)

Mr. Kay is a trial lawyer who has handled civil litigation, criminal defense and personal injury cases for over 20 years. He currently focuses his practice on commercial litigation matters. As a criminal defense attorney, he has represented individuals charged with everything from simple traffic matters to the most serious felony offenses in state and federal courts. Mr. Kay previously served as a judge advocate in the U.S. Navy and Assistant Commonwealth's Attorney for Fairfax County. A lifelong Fairfax County resident, Mr. Kay attended Fairfax County Public Schools, coaches his son's youth basketball team, and served on Fairfax County's Ad Hoc Police Practices Review Commission. Mr. Kay was nominated to serve on the Civilian Review Panel by the South Fairfax Chamber of Commerce and the Fairfax Bar Association.

Shirley Norman-Taylor, Lorton (2019–Present)

Ms. Norman-Taylor has resided in Fairfax County for the past 21 years. She is licensed to practice as an attorney in Virginia and Washington D.C. The focus of her practice includes Domestic Relations and Criminal and Traffic Defense, however, her greatest joy comes from representing children who are in the Abuse and Neglect system as their Guardian ad litem (GAL). Ms. Norman-Taylor also serves on the Fairfax County School Board's Minority Student Achievement Oversight Committee (MSAOC). Ms. Norman-Taylor is a former military officer and served as a Commander during Operations Desert Shield/Desert Storm.

Anna Northcutt, Reston (2018–2019)

Mrs. Northcutt has lived in Reston over ten years and is involved in the issue of mental health and the resources available within our community to assist individuals and families. For the past several years, she facilitated a family support group for the families and friends of individuals with a mental illness and remains an active supporter of the National Alliance on Mental Illness, NAMI. Ms. Northcutt served in the US Army as a Captain in the Military Police Corps and as a Special Agent in the Federal Bureau of Investigation. She has a Master of Divinity degree and brings both law enforcement experience and the concerns of individuals who often have challenging encounters with law enforcement to the Panel.

Randy Sayles, Oak Hill (2017–2018)

Mr. Sayles had over 35 years of law enforcement and criminal investigations experience. He worked as a Federal Agent for the U.S. Drug Enforcement Administration (DEA), U.S. Department of Justice (DOJ), and served as a police officer for the Denver, Colorado Police Department. Mr. Sayles enjoyed giving back to the community by volunteering for the Clean Fairfax Council and Creekside Homeowners Association, and was the recipient of a Fairfax County 2016 Environmental Excellence Award for removing 800 bags of trash and over 1200 illegal signs along nine miles of Centreville Road. Mr. Sayles served as a member of Fairfax County’s Ad Hoc Police Practices Review Commission and has continued to work with the Board of Supervisors and Fairfax County Police to implement the Commission’s recommendations.

Jean Senseman, Lorton (2017–2018)

Ms. Senseman is a licensed clinical social worker who has spent many years working with clients who experience mental illness, PTSD and substance use disorders. Ms. Senseman has worked in private practice providing treatment and therapy for individuals young and old who experience a wide variety of mental health disorders. Ms. Senseman taught at George Washington University Medical School and volunteers for her Condo Association Finance Committee. Previously, Ms. Senseman worked at the Woodburn Community Mental Health Center and at the Bailey’s Crossroads Community Shelter helping residents of all socio-economic backgrounds receive mental health treatment.

Sris Sriskandarajah, Fairfax (2019–Present, 2020 Vice Chair)

Mr. Sriskandarajah is a resident of Fairfax, Virginia. Everybody calls him “Sris”. He has lived in Fairfax since 2006 and has his law firm in the City of Fairfax. He assists clients with criminal defense and family law cases. He is licensed to practice before the state and federal court of Virginia & Maryland. He is also licensed to practice in DC. Mr. Sris is the legal advisor to the Valluvan Tamil Academy on a pro bono basis. He is also on the panel of listed attorneys for ASHA – a pro bono organization that helps South Asian women in Virginia who are victims of domestic violence or sexual violence. Aside from his practice, Mr. Sris is the father of two children who attend school in Fairfax County. Mr. Sris is a native Tamil speaker and is an active member of the Indian community in Virginia & Maryland.

Adrian L. Steel, Jr., McLean (2017–2018, Inaugural Chair)

Mr. Steel served on Fairfax County’s Ad Hoc Police Practices Review Commission and has continued to work with the Board of Supervisors to implement the Commission’s recommendations. Mr. Steel has been appointed by the Board of Supervisors to serve as the first chair of the Police Civilian Review Panel. Mr. Steel has extensive knowledge and a strong commitment regarding 21st Century police policies and best practices, including civilian oversight. Mr. Steel currently works as a senior counsel at Mayer Brown LLP where he has practiced law for over 35 years, and previously served as a Special Assistant to FBI Director, William H. Webster, handling criminal and counterintelligence intelligence matters.

Rhonda VanLowe, Reston (2017–Present, 2018 Chair, 2017 Vice-Chair)

Ms. VanLowe was appointed to the Governor’s Taskforce for Improving Mental Health Services and

Crisis Response and served on the Public Safety workgroup. She has devoted much of her community service work to serving those with unique physical, mental, emotional, intellectual or cognitive backgrounds. Ms. VanLowe practiced law in law firm and corporate settings, served as Board Chair of The Northern Virginia Therapeutic Riding Program, Inc., and received the National Women of Color Special Recognition Award at the 2008 STEM Conference. Ms. VanLowe is a 36-year resident of Fairfax County and looks forward to working together with members of the Panel to develop procedures that will set the foundational tone and tenor for the work of the Panel.

APPENDIX K

(One Fairfax Memo)



County of Fairfax, Virginia

MEMORANDUM

DATE: June 25, 2020

TO: Members of the Police Civilian Review Panel

FROM: Gentry Anderson
Management Analyst I, Office of the Independent Police Auditor

SUBJECT: The One Fairfax Policy and How the Police Civilian Review Panel Promotes It

The purpose of this memo is to inform the Police Civilian Review Panel (Panel) of the One Fairfax policy and how the Panel promotes the policy through its work. Additionally, there are three recommendations for the Panel's consideration to further promote One Fairfax.

One Fairfax:

One Fairfax is a social and racial equity policy jointly implemented by the Fairfax County Board of Supervisors and the Fairfax County School Board in 2017. The policy provides a framework based on equity for all decision-making in the county, ranging from transportation and land use to recreation and education. The goal of the policy is to ensure equitable access to opportunities and success regardless of an individual's race, gender, ability, or income.¹ The implementation of the policy has helped identify gaps and opportunities to enhance social and racial equity within the county.

The History

Efforts that eventually lead to the implementation of the One Fairfax policy started in the 1990's and focused on identifying inequities that could be addressed at the agency level. As time progressed, the issue was reviewed in broad scope with an institutional and structural focus to effectively target and confront racial and social inequalities.²

A report detailing an institutional analysis of the Fairfax County Juvenile Justice System was published in 2012 to address growing concerns of disproportionate minority contact in the juvenile justice system.³ The analysis showed that the issue of disproportionate minority

¹ Fairfax County Government, [Fairfax County Government]. (2017, November 21). *One Fairfax: Social and Racial Equity Policy* [Video] YouTube. https://www.youtube.com/watch?v=7TaqbUgpvcU&feature=emb_title

² One Fairfax. (N.D.) *Mileposts In the Fairfax Journey to Achieve Equity*. <https://www.fairfaxcounty.gov/topics/sites/topics/files/Assets/images/one%20fairfax/mileposts-to-one-fairfax-graphic.jpg>

³ Center for the Study of Social Policy. (2012). *Disproportionate Minority Contact for African American and Hispanic Youth: The Story Behind the Numbers and the Path to Action*. <https://www.fairfaxcounty.gov/topics/sites/topics/files/assets/documents/pdf/institutional-analysis-disporportionality-criminal-justice.pdf>

contact was a systemic issue that needed to be addressed and corrected by multiple agencies. At this time, there was also a shift in focus from the issue of disproportionality to the solutions of equity and opportunity.

The One Fairfax resolution was approved by the Board of Supervisors in July 2016, and it affirmed the county's commitment to racial and social equity and directed the implementation of a policy. In November 2017, the One Fairfax policy was approved by the Board of Supervisors. It requires that equity be considered in the planning and decision-making process at all levels of county government for the delivery of county services and programs. This includes equity in operations, delivery of services, implementation of programs, and engagement opportunities.

The Policy

The policy outlines 17 focus areas where equity can be promoted. These focus areas encompass all services delivered by the county such as economic and work force development, transportation, education, health, public safety, and criminal justice.

The policy highlights five strategies to achieve equity within the focus areas:

- Community Engagement: foster an open dialogue, promote inclusive participation, and break down barriers that limit participation
- Training: build skills to promote social and racial equity with a focus on implicit bias and institutional and structural racism
- Applying Equity Tools: authorize equity impact analyses and disparity studies to ensure the measure the county's progress in furthering social and racial equity
- Racial and Social Equity Action Plan: set goals and make plans and take action to promote one Fairfax
- Accountability Framework: publish data and performance measure to evaluate goal achievement

Fairfax County Government and Fairfax County Public Schools will work together to lead and coordinate the county's effort in equitable planning and decision-making. The policy specifically calls for county volunteer Boards, Authorities, and Commissions, such as the Panel, to "promote stakeholder engagement and input in support of equity informed planning and decision-making."⁴

The Policy in Practice

Upon the implementation of the One Fairfax Policy, the Board of Supervisors appointed Karla Bruce as Chief Equity Officer to lead the county's effort towards achieving the goals of One Fairfax. To ensure that the One Fairfax policy is being operationalized, multiple studies have

⁴ One Fairfax Policy.(2017, November 21)
<https://wcmtrain.fairfaxcounty.gov/topics/sites/topics/files/assets/documents/pdf/one-fairfax-policy.pdf>

been conducted to address inequities in opportunity, wellness, and health. A study facilitated by the Office of the Independent Police Auditor and conducted by the University of Texas at San Antonio is currently underway to examine the racial disparity in use of force incidents that occur within the county. The One Fairfax theme was integrated into the proposed countywide strategic plan which sets unified goals and vision for the future of Fairfax County.

How the Panel Promotes One Fairfax:

The Panel's mission as stated in its Bylaws is to enhance police legitimacy and to build and maintain trust between the community, the Board of Supervisors, and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity, and impartiality of the investigation. The Panel's mission and work promotes the One Fairfax policy specifically related to Focus Area 6 of the One Fairfax Policy and embodies the themes of access, accountability, and engagement.

Focus Area 6: A focus area documented in the One Fairfax policy that is directly related to the Panel's work is documented in Focus Area 6, which is defined in the policy as follows:

*“Community and **public safety** that includes services such as fire, emergency medical services, **police**, health, emergency management and code enforcement **that are responsive to all residents so everyone feels safe to live, work, learn, and play in any neighborhood of Fairfax County.**”*

The Panel builds trust between the community and the FCPD through its review process. When the Panel conducts a review of a completed FCPD investigation, the Panel provides an independent assessment of the investigation to determine whether the investigation was accurate, complete, thorough, objective, and impartial. Through this process, the Panel can assure the complainant and the public that the FCPD's investigation into the complaint was conducted properly, or the Panel can request the FCPD conduct additional investigation. As an oversight body for the FCPD, the Panel helps to build the community's trust and confidence in the FCPD. The Panel's work specifically promotes the One Fairfax policy as encompassed by focus area 6.

Access: The Panel's work is conducted in public meetings, which assures access by all members of the community to the complaint process and transparency of the review process. The Panel is an intake venue for complaints independent of the FCPD and Panel members follow the complaint's progress through the investigation process to ensure timely completion of the investigation. In order to provide further access, the Panel distributes brochures to the community, which provide information about the Panel, the complaint process, and include a complaint form. Brochures are available in English, Spanish, Korean, and Vietnamese allowing all members of the community, regardless of their native language, can understand the Panel's role in oversight of the FCPD. Through the Panel's public meetings and public reports, the community can observe the Panel's work and see the results of reviews of investigations and inquiries to the FCPD.

Accountability: The Panel holds the FCPD accountable by assessing whether investigations into complaints are accurate, complete, thorough, objective, and impartial. If the Panel finds

that an FCPD investigation does not meet these standards, the Panel can recommend additional investigation into the matter. Upon completing a review of an FCPD investigation, the Panel can make public recommendations for the FCPD's consideration. The Panel tracks the FCPD's response to the recommendations and status of their implementation to hold the FCPD accountable and keep the community informed of the Panel's progress on a matrix publicly available on the Panel's website. In addition, the Panel tracks the timeliness of completion of FCPD investigations into complaints and notifies the Board of Supervisors and complainant if there is a delay.

Engagement: The Panel regularly interacts with complainants and the community. The Panel engages with complainants throughout complaint process so that they understand each step and informs them of the status of their complaint. The Panel also engages with the Fairfax community to inform them of the Panel's mission and service. The Panel conducts outreach events to community groups, faith-based organizations, civic associations, and other stakeholder groups.

Recommendations on How the Panel Can Further Promote One Fairfax:

Enhanced Community Outreach: The Panel should consider bolstering community outreach efforts to provide information about the Panel's oversight responsibilities and work to enhance transparency and accountability within the FCPD. When conducting outreach, the Panel should consider partnering with entities with similar missions, such as the Communities of Trust and the Independent Police Auditor, to promote unity. The Panel should utilize well established networks and partnerships to reach different organizations and communities within the county, such as the Neighborhood and Community Service's Interfaith community. This could allow the Panel to tap into different communities where outreach has not yet been conducted.

Outreach amid the COVID-19 pandemic may look different than typical in-person outreach events. The Panel could host conference calls or WebEx meetings with different groups to hold virtual outreach events. This could be a more effective and efficient way to conduct outreach. Virtual outreach events could reach a broader audience, as attendees would not need to travel, find transportation, make childcare plans, or make other arrangements to attend outreach events. Conducting virtual outreach events could also be beneficial to Panel Members in the same ways. This recommendation coincides with the One Fairfax policy specific to eliminating barriers to participation and promoting access.

Panel Membership and Representation: Panel Members should advocate for the Board of Supervisors to appoint diverse members of the community to the Panel. Encouraging the appointment of individuals who reflect the great diversity in the county, would allow for more enriched and informed Panel discussions and better representation of the community. In addition, Panel Members could advocate for the Board of Supervisors to appoint individuals to the Panel who represent different regions of the county to promote equal geographical representation. Currently, the Panel does not have any members who reside in the Lee, Mason, Mount Vernon, or Sully magisterial districts.

Training: The Panel should continue to participate in training opportunities to learn best practices in the field of oversight and network with other oversight practitioners. In the past, Panel Members have attended trainings, webinars, and national conferences hosted by the National Association for Civilian Oversight of Law Enforcement (NACOLE). In addition, Panel Members should continue to receive training from the FCPD to understand current policies and procedures and regularly participate in “ride-alongs” with FCPD officers. In the past, the Panel has received presentations from FCPD representatives on topics such as implicit bias, recruiting and retention, and an overview of the investigation process. Panel Members have also participated in ride-alongs with FCPD officers to get a better understanding of the duties of front-line officers. Maintaining knowledge of current best practices within the field of civilian oversight and staying apprised of FCPD operations, policies, and training curriculum will benefit Panel Members when crafting recommendations to the FCPD.

APPENDIX L

(Preliminary Recommendations Memo)

Recommendations of Individual Members of the Fairfax County Police Civilian Review Panel

Support Body Worn Cameras

Fully fund and implement body-worn cameras throughout the entire police department, including SWAT teams.

Provide the means to review all body-worn camera video on a regular basis by the Commonwealth Attorney's Office or other county office that is independent of the FCPD. Add technology, as required, to facilitate review of video, like tagging footage by incident number. This would allow reviewers to associate each stop in the databases with the relevant BWC footage from that stop.

Provide and fund automatic turn-on technology for all body-worn cameras.

Use body-worn camera footage to train officers and evaluate policies.

Improve Civilian Police Oversight

Support state legislation to allow local jurisdictions in Virginia to choose the model of civilian oversight that best meets the needs of their communities. Local jurisdictions should be allowed to implement civilian oversight that authorizes panels and/or independent auditors to investigate, interview witnesses, hear and receive sworn testimony and evidence, and issue subpoenas.

Support state legislation that would eliminate legal impediments to the direct hiring of independent legal counsel by a civilian review panel and/or independent auditor. The County Attorney, who represents police departments, should not hire or supervise the independent legal counsel of a civilian review panel or independent auditor.

Authorize the Police Civilian Review Panel to hire an experienced criminal investigative staff person to assist with the fulfillment of the panel's responsibilities, including reviewing the police investigative file, questioning the complainant and the representative of the police department at review meetings, and drafting review reports. (See Recommendation 18(d) of the Ad Hoc Police Practices Commission).

Expressly authorize the Police Civilian Review Panel to review anonymous complaints.

Allow members of the Police Civilian Review Panel, the Independent Police Auditor and the investigative staff person electronic access to police investigatory records in a

properly monitored setting, such as the Office of the Independent Police Auditor or a district police station.

Expressly authorize the Police Civilian Review Panel to hold regular public forums to obtain information on community views regarding law enforcement policies and practices.

Authorize the Independent Police Auditor to monitor and review all use of force incidents, regardless of whether they involve serious bodily injury or death.

Authorize the Police Civilian Review Panel and the Independent Police Auditor to hire consultants to administer community surveys biennially to obtain feedback from community members on police practices and the effectiveness of civilian oversight.

Authorize the Police Civilian Review Panel and the Independent Police Auditor to publish a detailed analysis of complaints filed with the Panel, the Independent Police Auditor or police department (whether or not the Panel or Auditor reviewed a complaint) that identifies what people are complaining about, when they are complaining, who is complaining, and how the complaint was resolved. This analysis would help identify patterns across complaints and help the department understand what types of interactions lead people to feel aggrieved.

Better Police Training and Recruitment Reform

Hire an outside expert on implicit racial bias to conduct an analysis of all training for new recruits and police officers to determine whether training in some areas undermines implicit racial bias training in other areas.

Require that implicit bias training be conducted in person by experienced professionals and not on-line. Make such training more frequent and shorter (i.e. once every six months for 2-3 hours).

Measure the effects of all training by evaluating outcomes for officers who have already undergone training compared to those who have not received it.

Screen the public social media accounts of new recruits to detect whether there is evidence of explicit bias.

Suspend Officer Pay During Investigations

The Police Chief should have the authority to immediately suspend officers, with pay or without pay, pending an internal investigation.

Implement Social Media Policy and Inspections

The Police Civilian Review Panel supports the recommendation of the Independent Police Auditor that the FCPD develop a social media usage policy and mandate that all public social media accounts and postings by members of the police department are subject to inspection by the department, whether or not it is done in relation to any specific allegation or investigation.

Better Transparency

The FCPD should publish quarterly statistics covering all FCPD field stops, all stops where the officer has a reasonable suspicion or knowledge of a violation of law (including traffic violations), all arrests, searches and consents to search (including waivers of consent), and all use of force incidents by magisterial district. The race, gender and ethnicity of each individual questioned, stopped or arrested should be reported.

The FCPD should implement the Police Civilian Review Panel's recommendation of January 9, 2019, that the FCPD periodically summarize and publish all FCPD disciplinary actions across the entire FCPD without specifically identifying the disciplined officer by name.

In all police investigations concerning allegations of racial bias or racial profiling, the FCPD should implement specific guidelines and processes to follow in order to address the unique issues in such cases. For example, the FCPD should do a thorough analysis by race, gender and ethnicity of the officer's stops (including field stops) in the past year, as well as the officer's arrests and involvement in use of force incidents. Such investigations should also include an investigation of the officer's public social media posts and interviews of witnesses. The FCPD should also confidentially disclose to panel members all previous complaints against the officer and the discipline rendered, if any, in response to each of the complaints.

The FCPD should consider conducting customer-service audits after routine stops. This would be a valuable tool in tracking police-community interactions and identifying both positive and negative experiences with police. Findings should be published annually.

The Board of Supervisors should consider hiring an outside expert on implicit racial bias to conduct a thorough review of all police department training, practices and investigation techniques to identify areas for improvement. A report with recommendations should be published following such review.


Discipline of Officers

The FCPD should make oral reprimands a part of the permanent personnel record of police officers who received such discipline, and oral reprimands should be taken into account when considering promotions. (See General Orders 310.1 and 310.2).


Note: This document has not been voted on by the Fairfax County Police Civilian Review Panel and does not represent official positions of the Panel. This list is a composite of views shared by a majority of the panel's members. The Panel is in the process of undergoing a four-year review and will vote on a comprehensive list of recommendations at the conclusion of that review later this year.


APPENDIX M

(Fairfax County Ad Hoc Police Practices Commission)



Final Report on Fairfax County Police Reform
Ad Hoc Police Practices Review Commission
Implementation Group
Fairfax County, Virginia
October 10, 2018





October 10, 2018

The Honorable Sharon Bulova, Chairman
Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, Virginia 22035

Dear Chairman Bulova:

We write to convey to you our independent assessment of the progress achieved by the County after evaluating over two hundred recommendations of the *Ad Hoc Police Practices Review Commission* (Commission) which were conveyed to the Board of Supervisors in October 2015.

In all, 179 of the 202 recommended actions (or 88 percent) are approved as recommended or as modified and are either in process of being implemented or are implemented. For example, full deployment of body-worn cameras (BWC) is approved in concept, but implementation is measured, as a pilot study is completed and funds for BWC acquisition are identified. Another example is the, as of yet, incomplete assignment of electronic control weapons or “Tasers” to each patrol officer, as is the case with guns. Compliance with the Police Department’s “all carry” policy will need Command’s continued attention.

Five recommendations (or 3 percent) are still under review, and 18 (or 9 percent) will not be implemented. The most notable recommendations not implemented involve information-sharing and transparency. Also notable, civilian oversight will be supported by Fairfax police internal affairs investigators, as the County believes independent civilian investigators are not allowed by state statute.

While not endorsing all the changes advocated by the Commission, Fairfax County embraced both the spirit and intent of the Commission’s recommendations. Significant Fairfax County Police Department (FCPD) reforms are underway that will increase police accountability, divert those who suffer from mental illness into treatment rather than incarceration, reduce use of force injuries and death, open public access to incident information, and engender renewed public confidence.

Regarding open access, the County’s Freedom of Information (FOIA) regulations and FCPD’s General Order need to be closely aligned and the circumstances where information is withheld must be carefully prescribed. While Virginia FOIA exempts certain law enforcement information from being released, the

County can limit the use of these exemptions. Not to do so risks a loss of the public's trust regained through these police reform initiatives.

Additional topics came to light subsequent to the Commission's October 2015 Final Report. We believe the following warrant County consideration, all of which are addressed further herein:

1. The Fairfax County Police Department (FCPD) should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel.
2. The public should be provided with an opportunity to comment and be heard on Auditor and Panel findings and recommendations.
3. The FCPD vehicle *Pursuit Review Committee* should be expanded to include civilian representation.
4. The Auditor's responsibilities should be expanded to include:
 - monitoring and reviewing investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any use of force (UOF) incident resulting in death or serious injury;
 - auditing the FCPD's use of BWCs and providing an annual report to the Board and the public setting forth the Police Auditor's findings and recommendations; and
 - participation on the FCPD UOF Technical Review and the Vehicle Pursuit Review Committees
5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF and other data now being collected in response to the Commission's recommendations.
6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident.

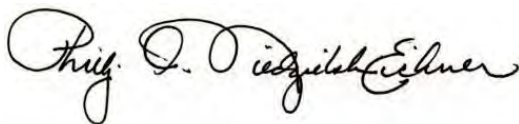
The report contributors are all former members of the Commission who, at your behest, continued our involvement as an informal "implementation group." We worked closely over the last three years with your Office, the Board of Supervisor's Public Safety Committee and the Police Department.

We acknowledge the work of the Policy & Directives Change Team charged by Police Chief Edwin Roessler to assess and implement the Ad Hoc Commission recommendations. The Change Team was commanded by Major Richard J. Perez and, later, by Captain Tonny Kim. The Change Team members are to be commended for their diligent and effective efforts.

We spent many hours working with this group of professionals and have only praise to offer for their competence, the seriousness with which they undertook their charge, their openness to the change promoted by the Commission and their embrace of a significant number of our ideas as we worked together on implementation. Chief Roessler coined the phrase "co-production," and we concur with this characterization of many of the changes incorporated into FCPD directives, with the *Use of Force General Order* being particularly notable.

Should you or the Board of Supervisors have any questions concerning the content of this report, please do not hesitate to let us know. We are honored to work so closely with the Board and FCPD on police reform and are proud to represent our community in the process.

Very truly yours,



/on behalf of...

PREFACE

This assessment was undertaken by former members of the *Ad Hoc Police Practices Review Commission* who have continued their involvement as an informal “implementation group” formed by Fairfax County Board Chairman Sharon Bulova. The collaborators in the production of this report are Phillip Niedzielski-Eichner, who Chaired the Use of Force Subcommittee; Mary Kimm, of the Use of Force, Communication, and Independent Oversight and Investigations Subcommittees; Randy Sayles, of the Use of Force Subcommittee; Dave Statter, of the Communication Subcommittee; Adrian Steel, of the Use of Force and Independent Oversight and Investigations Subcommittees; Shirley Ginwright, Chair of the Recruitment, Diversity and Vetting Subcommittee; and Marcus Simon, Chair of the Mental Health and Crisis Intervention Subcommittee. In addition to the overall monitoring of Fairfax County’s implementation of the Commission’s recommendation, we have individually or collectively been active in the review of and commenting on (a) the Police Department’s revisions to the Use of Force General Order; (b) the Department’s Release of Information, Records and Documents General Order; (c) the Department’s body worn camera pilot project design and policy; (d) the establishment of the Independent Police Auditor (IAB); and (e) the formation of the Citizen Review Panel (CRP) of which Randy Sayles and Adrian Steel are currently charter members; with Steel being the CRP’s inaugural chairman. Full professional biographies are provided in the Appendix.

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OVERVIEW

Fairfax County maintains an excellent police department, and we are fortunate to have high-caliber police personnel protecting us day-in and day-out. However, even the best organizations require renewal and reform to sustain high performance levels.

Often it is a use of force incident, with attendant widespread community concern, that will be a catalyst for action and generate calls for a review of a police department's policies and practices. Such an incident led the Chairman Sharon Bulova of the Fairfax County Board of Supervisors to form the *Ad Hoc Police Practices Review Commission* (Commission) in March 2015.¹

The Commission was tasked to assess the Fairfax County Police Department's overall performance against national best practices and offer recommendations for how a well-functioning department could achieve even higher performance levels. As it executed against this charge, the Commission indeed found areas where Fairfax County police practices and performance could be improved. The Commission also advocated for urgent action to strengthen public trust and confidence in the Department.

Forming a commission is a time-honored tool by public officials to delay action -- or avoid it altogether -- since there are always significant barriers to achieving change to deep-rooted organizational practices, traditions and culture. The Public Safety Committee of the Fairfax County Board of Supervisors, Chaired by Supervisor John Cook, and the Police Department, particularly Chief Edwin Roessler and his command leadership, are to be commended for ensuring that the Commission's work did not sit on the shelf gathering dust. Indeed, the County and Police Department have many policing reforms of which to be proud.

The Commission's work was augmented by a June 2015 Report Chartered by Police Chief Roessler and issued by the Police Executive Research Forum (PERF) entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*. Chief Roessler also committed to seek -- and then received -- accreditation for the Department by the Commission on Accreditation for Law Enforcement Agencies, Inc. (aka CALEA).

This *Final Implementation Report* provides an independent assessment of the progress achieved by the County after evaluating more than two hundred Commission recommendations over the past three years. While not endorsing all the changes advocated by the Commission, information-sharing and transparency being the most notable, Fairfax County policymakers and Police Department (FCPD) leadership embraced the spirit and intent of the Commission's recommendations.²

¹ The August 2013 shooting death of Mr. John Geer by a Fairfax County police officer was the catalyst for the Commission's formation. Mr. Geer was unarmed and standing in his doorway with arms raised when he was shot. The officer who shot Mr. Geer was successfully prosecuted. The investigation of the incident, however, took months to conduct with little information available to the public throughout.

² In summary, 179 of the 202 recommended actions (or 88%) are approved as recommended or as modified and are either in process of being implemented or are implemented; 5 (or 3%) are still under review; and 18 (or 9%) will not be implemented.

Significant reforms are underway that will increase police accountability, divert those who suffer from mental illness into treatment rather than incarceration, reduce use of force injuries and death, open public access to incident information, and engender renewed public confidence.

The numerous major reforms include the following:

1. **“Diversion First,”** which offers alternatives to incarceration for people with mental illness or developmental disabilities.
2. Revisions to FCPD’s ***Use of Force General Order*** to enshrine sanctity of human life as an organizing principle, with de-escalation as the strategy of first resort when confronted with a threat rather than the use of force. Also, a use of force lessons-learned committee, known as the *Use of Force Technical Review Committee*, is chartered and has been convened under the direction of the Police **Training** Academy Commander.
3. An **Independent Police Auditor** who reviews the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of death or serious injury cases.
4. A **Civilian Review Panel** that reviews the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of civilian complaints regarding “abuse of authority” or “serious misconduct” by a police officer.
5. An office of **Media Relations Bureau**, with civilian leadership and reporting directly to the Police Chief.
6. Revisions to the ***Release of Information, Records and Documents General Order*** providing for increased public visibility into the Department’s daily activities and performance, with a pre-disposition to disclose information, regardless of incident controversy. The revisions also establish that the names of officers involved in critical incidents, including officer involved shootings, will be disclosed within 10 days, with extension as needed to investigate if a credible threat to the officer exists.
7. Revisions to the policies governing **vehicle pursuit and the precision immobilization technique**, a method for stopping fleeing vehicles, that constrain their use and strengthen supervisory oversight; and
8. Recruitment of **high-caliber personnel that better reflect Fairfax County’s population diversity.**

A number of recommendations are approved but are still in process of being implemented. Of particular note are recommendations calling for deployment of body-worn cameras (BWC) and electronic control weapons (ECW) or “tasers.”

BWC deployment requires careful study and diligent attention to complex legal, privacy, operational and cost details. We commend the County for taking an appropriately measured response to meeting this recommendation by implementing a pilot BWC project. Video and audio data that captures in “real-time” police officer engagement with the public has the potential for profoundly changing law enforcement. The expectation is for this change to be positive. But the risks to individual privacy and,

perhaps paradoxically, to the loss of confidence in FCPD must be mitigated. Additionally, BWC technology and the associated data storage needs will have a substantial price tag that, if full deployment is approved by the Board, will require a few budget cycles to fully implement.

The Commission recommended full BWC deployment. We fully expect the pilot project to provide substantive insights that will strengthen the technology's effectiveness and privacy protections. We also note that, as was stated in a recent Independent Police Auditor public report that "...body-worn cameras may prove to be a valuable tool in identifying problematic behavior (based on race or otherwise) in the years ahead."³ We urge the Board, after due consideration of the results of the pilot project and with the opportunity for public participation, to implement the Commission's recommendation.

Furthermore, in order to ensure transparency and compliance with FCPD policy and directives, we recommend that the Independent Police Auditor be instructed by the Board of Supervisors to audit the FCPD's use of BWCs (including random review of BWC footage as PERF has recommended) and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.

Regarding ECWs, the Commission recommended that all uniformed officers in enforcement units be mandated to "...carry an ECW on their duty belt (or elsewhere on their person) while on patrol." The rationale for this recommendation is that ECWs are a less-lethal use of force and can be an effective alternative to a firearm. FCPD instituted an ECW "all carry" policy, but relies on shared use of ECWs across three shifts. Further, anecdotal observation suggests the "all carry" policy is not yet fully adhered to by patrol officers.

As shared use can lead to equipment reliability and maintenance issues, FCPD plans to equip each officer with his or her own ECW. Like BWCs, this will be an additional significant expenditure that will need to be implemented over several budget cycles. In the interim, Commanders are still expected to ensure that all officers are trained in ECW use and that substations maintain sufficient operational ECWs to equip each police officer during every shift.

Vehicle pursuit policy is now more restrictive, but does not – as the Commission recommended -- limit officer discretion to pursue only fleeing vehicles where reasonable suspicion exists that a violent felony has been committed. A significant refinement is that supervisors are more explicitly required to assume supervisory control of any vehicle pursuit as soon as he/she can do so safely and to independently confirm that the need for immediate apprehension outweighs the risks of potential harm arising from the pursuit.

Importantly, the Police Training Academy's Emergency Vehicle Operations Center has reviewed every pursuit on a monthly basis since October of 2017. Also, per a new Pursuit General Order, the Academy held its first in-depth pursuit review with a newly chartered *Pursuit Review Committee*. The Committee recently reviewed seven randomly selected pursuits for lessons that can be learned and translated into improved training and tactical operations.

³ *A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015* (p. 15), Fairfax County Independent Police Auditor, July 25, 2018 [see: <https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/oipa%20disparity%20uof%202015.pdf>]

However, consistent with openness challenges we believe remain for FCPD overall, we are concerned that the Department is not providing robust public reporting on vehicle pursuits. Transparency and accountability will be of paramount importance once the new Pursuit General Order becomes effective in 2019. Under this Order, a pursuit can be justified only if the “immediate need” for apprehension outweighs the danger the pursuit poses to the public, officers, and offender, including passengers. Detailed data on pursuits will help validate that this FCPD policy is being followed and is working as expected.

All Commission recommendations do not need to be implemented for police reform to be a success. Indeed, we value the extent to which the County leadership thoughtfully and methodically considered the Commission’s recommendations and have worked to implement the vast majority of them.

Acknowledging this success, we believe, that more is required by FCPD to achieve the level of transparency and information sharing to meet the “predisposition to release information” standard the Police Chief sets in revisions to the *Release of Information, Records and Documents General Order*.

While FCPD has valid reasons for withholding information that might undermine an active investigation or for public safety reasons, it also has an obligation in a free society to be predisposed toward releasing information; *i.e.*, the default is release and withholding must be justified. There is no more significant lesson to be learned from Mr. Geer’s shooting and the subsequent months of County silence on the status of the investigation.

In our view, the County’s FOIA regulations and FCPD’s General Order need to be closely aligned and the circumstances where information is withheld from the public must be carefully prescribed. Virginia FOIA broadly exempts certain law enforcement information from being released. The County can, however, limit the use of these exemptions and, when applying them, do so consistently. The County risks losing the public’s trust, which it has so diligently and effectively sought to regain through implementing the Commission’s recommendations, without more clearly delineating when and why information can be withheld.

On one hand, as an example of its commitment to openness, Fairfax County police released -- after three months -- dashboard camera digital footage of a November 2017 shooting by the U.S. Park Police of McLean resident Bijan Ghaisar following a pursuit on the George Washington Memorial Parkway. While not an FCPD investigation, Police Chief Roessler noted that the video “does not provide all the answers,” but indicated he released the video in an effort at transparency.

On the other hand, as a contrary example, significant information – including dashboard camera digital footage – is being withheld from public release because of litigation regarding the December 2017 vehicle pursuit by Fairfax County Police on Centreville Road that resulted in , which ended in an accident that injured six family members. As noted earlier, the litigation rationale was used to withhold information for months following the shooting of Mr. Geer, a key error that greatly impacted the image of the County and FCPD.

With regard to the Commonwealth Attorney’s Office (CWA), the Board should specifically request that the CWA formally evaluate the Commission’s recommendation that two independent investigators be hired to support criminal investigations within the scope of the Independent Police Auditor. The Commission believed that the two independent CWA investigator positions would further promote

impartiality and objectivity in Major Crimes Bureau investigations. The matter has not received Board consideration, as these positions were not requested by the CWA.

Additional topics came to light as the Commission's recommendations were evaluated and implemented. We believe the following warrant County consideration:

1. FCPD should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel. The Commission assumed, but did not explicitly recommend, this expectation. We understand that FCPD does not believe it is obligated to respond. Only the Board can clarify this difference of understanding and should do so if it expects the Independent Police Auditor and the Civilian Review Panel to establish and have credibility within the community.
2. The Board should establish a process that provides the public with an opportunity to comment and be heard on Auditor and Panel findings and recommendations, including the FCPD's responses to the findings and recommendations. Public participation in the process is critical to building and ensuring community trust in the FCPD and the independent oversight established by the Board.
3. The Auditor should be authorized to monitor and review investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any UOF incident resulting in death or serious injury.
4. In order to ensure transparency and compliance with FCPD policy and directives, the Auditor should be instructed by the Board to audit the FCPD's use of BWCs and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.
5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF and other data now being collected in response to the Commission's recommendations. The data should be updated on a more regular basis than annually. As important, the data should be subjected to analysis and a process put in place that engages the public to address any issues the analysis may bring to light. Finally, the monitoring program should fully leverage the capacities of the Auditor and Civilian Review Panel.
6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident. Rather than be perceived as prematurely justifying a police response, a public-trust building response would be to indicate that the incident will be thoroughly investigated and related information will be released as soon as possible.⁴ Also, because suspects are innocent until proven guilty, neutral language is also the best policy when discussing the basis for a suspect's arrest.

⁴ An August 10, 2018 Report by the Independent Police Auditor addressed this issue of a neutral public posture. The Report stated: "The chief's quick defense of his officers' actions certainly could have made it difficult for an IAB investigator to conclude that those same officers acted inappropriately....While it is understandable that Chief Roessler wanted to defend his officers following this controversial situation, concern that his bold statements defending those officers would prohibit a thorough review is also understandable." See <https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/oipa%20public%20report%2010-28-17.pdf>.

7. The newly chartered FCPD vehicle *Pursuit Review Committee*, directed to be established under a new *Pursuit General Order* to review case examples for lessons learned, should be expanded to include civilian representation, as is the case for the UOF Technical Review Committee. Both Committees should include the Auditor as a member.

In closing, sustained high performance by organizations requires a commitment to continuous improvement and to ensuring that policies and practices evolve to meet the ever-changing world in which we live. The challenges to sustained reform are both daunting and are not to be underestimated. Sustaining and “institutionalizing” the changes in the County’s police practices of the magnitude underway requires continued rigorous commitment to reform by the Police Chief, Commanders and Supervisors. As important will be the continued buy-in by rank-and-file police personnel and continued community participation, monitoring and oversight.

INTRODUCTION

This Final Implementation Report supplements the County’s final progress report on implementing the Commission’s recommendations⁵ and represents an independent assessment of where Fairfax County police reform stands today, nearly three years since the October 2015 delivery of the Commission’s Final Report to the County.

The authors are all former members of the Commission who, at the request of Chairman Bulova, have continued their involvement as an informal “implementation committee.” Each member contributed to the recommendation implementation process.⁶ The authors’ involvement ranged from “co-producing” FCPD’s revised Use of Force policy⁷ to advising the FCPD on the deployment of BWCs as a pilot project.

The history section provides background on the Commission’s formation and discusses the progress made to date implementing its recommendations. The implementation section provides a high-level summary of progress and closes with observations, both about the barriers to achieving full implementation and lessons learned that might help sustain the significant progress made since 2015.

This Final Implementation Report is a supplement to the Commission’s 2015 Final Report and will only broadly reference its discussion, findings and recommendations. While the implementation progress report maintained by the County will also be referenced, its level of detail is also not captured in this Report.

In short, the Commission’s original report and the County’s implementation progress report will be required reading by those who desire a more granular background understanding of the Commission’s work and the subsequent 30-month implementation period.

⁵ See: <https://www.fairfaxcounty.gov/policecommission/progress-report>. The final progress report is posted and will not be updated further.

⁶ See Appendix A for a listing of this Final Implementation Report’s authors and their respective backgrounds.

⁷ “Co-production” is a term coined by FCPD’s Chief Roessler to characterize the active and detailed citizen involvement in, for example, drafting the revised General Order 540 on Use of Force.

HISTORY

The Commission was chartered in March 2015. Commissioners were selected based on their law enforcement, legal, academic, media, and community service experiences. In addition to the 40 appointed Commission members, 30 other County residents volunteered to augment -- as non-voting members -- the Commissioners on five subcommittees.

These subcommittees were (1) Communications; (2) Recruitment, Diversity and Vetting; (3) Mental Health and Crisis Intervention; (4) Use of Force; and (5) Independent Oversight and Investigations.

The Commission was tasked with engaging in an open and transparent process to review existing policies, practices and programs regarding police-involved incidents, with emphasis on the use of force; police-community relations; and public release of information. The Commission was expected to recommend changes that would further the goals of maintaining a safe community, ensuring a culture of public trust, and ensuring that County policies provide for the fair and timely resolution of police-involved incidents. As the Commission executed against this charge, it identified both areas for improvement and mechanisms the Commissioners believed would strengthen the public's trust and confidence in the Department.

The August 2013 shooting death of John Geer by a Fairfax County police officer was the catalyst for the Commission's formation. Mr. Geer was unarmed and standing in his doorway with arms raised when he was shot. The officer who shot Mr. Geer was prosecuted and pleaded guilty to manslaughter. The investigation of the incident, however, took months to conduct with little information available to the public throughout.

Also informing consideration and discussion of law enforcement reform at the time was the February 8, 2015 death of an inmate, Ms. Natasha McKenna, while in the Fairfax County Adult Detention Center in the custody of the Sheriff's Department. Ms. McKenna, a woman who had experienced serious mental illness for much of her life, died several days after being subjected to four ECW cycles as Sheriff's Deputies attempted to transport her to Alexandria. However, since the Commission's review was limited specifically to FCPD's use of force policies and practices, the Commission did not address the incident in its Final Report.

More broadly, the Commission did not address practices of the Fairfax County Sheriff's Office or those of the Commonwealth's Attorney (CWA), as both are stand-alone constitutional offices that are not directly accountable to the Board of Supervisors.

While the factors in Ms. McKenna's death were not addressed in the Commission's findings or recommendations, the circumstances of her death did inform the Commission's work, particularly with regard to the use of ECWs. The Commission believed that the Sheriff's Office should consider any recommendations relevant to the Office's responsibilities and authorities in a timely and public manner. The Sheriff's Office did embrace recommendations leading to the implementation of Diversion First.

Regarding the CWA, the Commission expressed the position that County law enforcement would benefit from a review of the respective roles of -- and inter-relationships among -- FCPD, the Office of the County Attorney, and the Office of the CWA regarding the management of -- and communication about -- use of force incidents.

The Commission and its subcommittees held 40 meetings over six months, all of which were open to the public. Additionally, the Commission held two public hearings in May and September 2015 at which dozens of individuals offered testimony and shared their perceptions of law enforcement in Fairfax County, which included concerns about the Police Department's use of deadly force and lack of transparency and accountability.

In addition to the multitude of reports, documents and policies reviewed and a number of presentations of policies and practices by FCPD officials, the Commission and its subcommittees solicited presentations from outside experts on topics such as use of force, crisis intervention training, the psychology of an officer-involved shooting, civilian oversight of police departments, and other relevant topics.

The Commission heard, for example, from the Executive Director of the Police Executive Research Forum (PERF), a former FBI agent and behavioral science consultant, and a National Association for Civilian Oversight of Law Enforcement board member.

County staff from multiple departments supported the Commission's work, including the Police Department, the Sheriff's Office, the Office of Public Affairs, the Office of the County Executive, and the Office of the Board Chairman. The Commission also heard from the CWA.

The Commission delivered its Final Report to the Board of Supervisors on October 8, 2015, setting forth 202 recommendations that the Commission believed would bring needed reform to Fairfax County and the Fairfax County Police Department and would mitigate the then-existing crisis of public confidence.⁸

The Commission recommendations are summarized as follows:

- **Communications:** The Commission made 52 communications recommendations, finding that Fairfax County should improve and update policies, procedures, personnel and tools to state-of-the-art best practices and effect a change to the FCPD culture to embrace a predisposition to disclose information.
- **Recruitment, Diversity and Vetting:** The Commission made 14 recruitment, diversity and vetting recommendations, finding that FCPD should expand current recruitment efforts with the goal of increasing diversity, establish diversity goals for command staff and train recruits on effects of implicit bias, and reduce the length of time needed to conduct background investigations. The Commission also recommended that the Board of Supervisors should ensure FCPD pay is competitive.
- **Mental Health and Crisis Intervention:** The Commission made 26 mental health and crisis intervention recommendations, finding that Fairfax County should fully implement the Memphis

⁸ The Final Report can be found at:

<https://www.fairfaxcounty.gov/policecommission/sites/policecommission/files/assets/documents/pdf/adhoc-final-10.8.15.pdf>.

Model for Crisis Intervention Teams (CIT) which includes two main goals: improving the safety of officers and persons with mental illnesses and redirecting individuals with mental illnesses from the judicial system into the health care system. Full implementation would require, at a minimum, the opening of strategically located crisis assessment sites, mobile crisis units, and the creation of a mental health court docket by the judiciary.

- **Use of Force:** The Commission made 68 use of force recommendations, finding that FCPD policies and practices must continue to reinforce the values of policing in a democratic society, such as the sanctity of human life and the need for robust and transparent reporting of information and collection and analysis of data, particularly as it relates to use of force by police. A more unified, clearer and more concise use of force policy is warranted, as is constant attention to FCPD's policing culture, limits on the use of SWAT, and introduction of police-worn technologies.
- **Independent Oversight and Investigations:** The Commission made 42 independent oversight and investigation recommendations, finding that Fairfax County should establish an Office of Independent Police Auditor and a Civilian Review Panel. The Auditor would determine the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of Death or Serious Injury Cases conducted by the Internal Affairs Bureau and all Use of Force investigations by IAB which are the subject of a public complaint made to the Police Department or the Auditor. The Civilian Review Panel would review the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of civilian complaints regarding "abuse of authority" or "serious misconduct" by a Fairfax County police officer.

The Commission's review was augmented by the June 2015 Report issued by PERF entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*. PERF found that "...FCPD is doing a commendable job and meeting or exceeding national best practices," but also offered a number of recommendations for improvements, all but one of which were endorsed by the Commission, Police Chief and Board. The exception pertained to the termination of the use of the precision immobilization technique (PIT) for terminating a vehicular pursuit.

As noted in the Introduction, the County has periodically updated a progress report that lists each of the Commission's recommendations in a tabular format. The most recent posting will not be updated again and is the last progress report the County will generate.

IMPLEMENTATION

This section describes the process by which the County has considered and implemented the Commission recommendations. A high-level summary of progress is also offered by topical area. The implementation section closes with observations about the barriers to achieving full implementation.

A. Process

Upon receipt of the Commission’s Final Report in October 2015, the Board of Supervisors’ Public Safety Committee (PSC) assumed responsibility for reviewing the Report and assessing the Commission’s recommendations. The PSC, which is chaired by Supervisor John Cook and is composed of all Board members, held a series of meetings for these purposes. Members of the Commission subcommittees as well as various stakeholders participated in this policy review.

The PSC generated draft items for Board deliberation and action. With few exceptions, which will be detailed, the recommendations were approved by the Board. The Board assigned FCPD responsibility for implementing the majority of the approved recommendations, with oversight provided by the Deputy County Executive for Public Safety.

As noted earlier, various members of the Commission participated in a policy “co-production” process⁹ – particularly with respect to the recommendations on communications, diversion first, use of force and independent oversight. Other co-production initiatives focused on body worn cameras, pursuit and vehicle stopping techniques, and police recruitment and training (under the aegis of the Communities of Trust).¹⁰

B. Progress

This progress summary is organized according to the topical areas addressed by the Commission. Each discussion includes a table conveying the total number of recommendations for the topical area and how the recommendations are dispositioned according to the decisions and actions taken by the County, as follows:

1. Adopted and implemented; or adopted, with implementation still underway (“implemented”)
2. Modified before being implemented (“implemented, with modifications”)
3. Assessment of recommendation is still underway
4. Not adopted (“not implemented”)

⁹ Co-production is a term coined by the Chief of Police to describe a joint effort by FCPD and community representatives to craft revisions to FCPD policies.

¹⁰ In January 2015, Chairman Bulova created the *Communities of Trust Committee* to advance collaboration, partnerships, and outreach between public safety agencies and the communities they serve. The Committee consists of a diverse citizen group focused on strengthening and building positive relationships. [See: <https://www.fairfaxcounty.gov/police/chief/messages/communitiesoftrustcommittee>]

COMMUNICATIONS

The Commission advocated in strong terms for building and sustaining public trust and confidence in FCPD by instituting information-sharing reforms to include timeliness, completeness and transparency.

Table 1 reflects that the County adopted many Commission recommendations regarding communications, but also rejected others, some of which we believe to be significant.

Table 1. Communications Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
52	36	7	4	1	4

Implemented

- The majority of the communication-related recommendations are approved by the Board and are either already officially implemented or in process of being implemented.
- The most significant change to date on communications is the hiring a civilian and highly qualified public affairs professional to serve as the Media Relations Bureau (MRB) director, who reports directly to the Police Chief.
- The policy is now established that the names of officers involved in critical incidents, including officer involved shootings, will be disclosed within 10 days, allowing for extension of that time as needed to investigate a credible threat to the officer involved.
- FCPD's *Release of Information, Records and Documents General Order* is completed, approved and operational and should engender agency-wide culture changes, including the continuous declassification of information; shortening the time it takes to release information about officer-involved shootings; and public dissemination of demographically organized crime statistics.
- We are encouraged by the Police Chief's approval of recommendations to create a culture of transparency at FCPD by applying law enforcement best practices and adopting a culture that is predisposed to disclose information rather than withhold it. If implemented as envisioned by the Commission, information-sharing policies and processes will result in more transparent, timely and culturally sensitive information releases.

Under Review

- The Board of Supervisors is still considering as part of its annual legislative review whether to revisit FOIA laws with an eye toward expanding instead of limiting the public release of information related to police-involved shootings and other police practices and procedures.

Not Implemented

Several recommendations will not be implemented, at least at the scale and scope advocated by the Commission.

- The Commission called upon the Board of Supervisors and County Executive to revisit the County’s implementation of the Virginia FOIA provisions with an eye toward eliminating the blanket use of exemptions for public release of information related to police-involved shootings and other official police activities. To our knowledge, FCPD intends to continue to apply the allowed for exemptions at the discretion of the Police Chief, without further clarifying the circumstances that warrant the withholding of such information.
- The Commission recommended releasing actual police reports, with redactions as may be required. FCPD will only provide report summaries of felonies.
- The called for release of information about all incidents was not implemented due to technology and practical considerations. As such, the MRB releases information about a small percentage of incidents. FCPD declined to clarify criteria on what information would be released, *e.g.*, reportable uses of force and pursuits. As a result, the public will not know what information will be released and will not be informed about most police activity.
- FCPD has declined to make closed case files available or to provide criteria for possible declassification.
- 24-7 information staffing will not be implemented, although the MRB has reorganized itself and assigned specially trained officers to allow for 24-7 coverage as incidents require.

RECRUITMENT, DIVERSITY AND VETTING

The Commission believed that police officer recruitment and selection are two keys to building and sustaining community trust in FCPD by ensuring that its workforce is reflective of the diversity of the Fairfax County population, including race, gender, language, life experience, and cultural background. The Commission therefore encouraged FCPD to expand its recruitment efforts to grow diversity to match the County population; establish diversity goals for Command staff; train recruits on effects of implicit bias; reduce the length of time needed to conduct background investigations; and ensure that FCPD pay is competitive. As Table 2 captures, the County adopted all but one of the Commission recruitment, diversity and vetting recommendations.

Table 2. Recruitment, Diversity and Vetting Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
14	12	1	0	0	1

Implemented

The Commission recruitment and diversity-related recommendations are approved by the Board. These include building recruitment-oriented partnerships with key segments of the Fairfax County community, such as interfaith organizations and School Career Centers; expanding the Explorer and Cadet programs to include a more diverse pool of participants; developing referral incentives for current employees; training recruitment and selection officers about implicit bias; creating a diverse Selection Review Committee that includes community leaders; and increasing resources to reduce length of time required to conduct background investigations and polygraphs. The officer selection process should be more rigorously attentive to transparency, fairness and equity. Finally, the Board is expected to continue to ensure the competitive salaries and benefits needed to secure and maintain a diverse workforce.

Not Approved or Implemented

The County will not seek to enter into recruitment agreements with Cadets.

MENTAL HEALTH AND CRISIS INTERVENTION

The County has adopted numerous Commission recommendations with regard to mental health and crisis intervention. Police officers have increasingly become the first responders when a citizen is experiencing a mental health crisis. Because of the historical interrelationship of such emergencies and use of force incidents, the Commission recommended de-escalation techniques and the diversion of individuals who are experiencing such crises into treatment rather than incarceration and prosecution.

As Table 3 reflects, the County adopted the Commission the preponderance of the recommendations regarding mental health and crisis intervention.

Table 3. Mental Health and Crisis Intervention Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
26	8	2	13	2	1

Implemented

- Fairfax County is fully implementing the “Memphis Model” for mental health crisis intervention. Known as "Diversion First," the initiative has two main goals: improving the safety of officers and persons with mental illnesses, and redirecting individuals with mental illnesses from the judicial system into the health care system.
- Instead of incarceration, the Fairfax-Falls Church Community Services Board now operates the Merrifield Crisis Response Center (MCRC) where police are able to transfer custody of nonviolent offenders who may need mental health services to a police officer or deputy sheriff who are trained in crisis intervention (CIT). In less than a year, Fairfax County went from having a limited diversion process to launching MCRC, mostly by leveraging existing resources.

- A team of law enforcement officers are based in the MCRC 24 hours a day, seven days a week to accept custody of a person experiencing a crisis so that the patrol officer can get back on the street quickly. Co-locating Fairfax County Police Officers and Fairfax County Deputy Sheriffs in this setting has set a countywide precedent of collaboration.
- Though not yet fully implemented, hundreds of people experiencing a mental health crisis have been transported to the Merrifield Crisis Response Center where police are able to transfer custody of nonviolent offenders needing mental health services rather than incarcerate them.
- CIT training is aimed at changing the way law enforcement and the judicial system interact with people who have intellectual or developmental disabilities. Fairfax County police officers and deputy sheriffs receiving 40 hours of state-certified training to learn about the challenges of living with a mental illness and how to de-escalate crisis situations, both in the community and in the jail. 100% of all dispatchers receive at least eight hours of CIT training.
- CIT trained public safety personnel are empowered to work proactively to help mentally ill persons obtain treatment and take other steps to manage their illness, diverting them from the criminal justice system and the courts.
- The County is deploying the Fairfax-Falls Church Community Services Board (CSB) Mobile Crisis Unit (MCU) to strategic locations in Fairfax County. The MCU provides emergency mental health programming and on-scene evaluation, treatment, and crisis intervention. One MCU is deployed and a second will soon be added to further the county's capacity in the field to provide emergency mental health services.
- The BOS, CSB, Judiciary, General Assembly, and Sheriff's Office are collaborating to implement a community-wide system of care overhaul using the national initiative known as "Stepping Up." FCPD maintains a public outreach program and materials to increase public awareness.
- A mechanism has been devised for oversight of mental health/substance use/justice services — *i.e.*, metrics for success are being devised and pertinent supporting data are being collected to effectively measure the progress and impact of CIT programs.

Under Review

- Fairfax County is still evaluating the recommendation to increase language cultural competency to better serve non-English speaking justice-involved individuals.
- While approved for partial funding, full implementation of the opening of strategically located crisis assessment sites, mobile crisis units, and the creation by the judiciary of mental health adult and juvenile court dockets will require future budgetary considerations.

Not Implemented

- Mental Health Unit officers will not wear civilian clothing and use unmarked during the course of their duties to avoid unintentionally escalating a mental health crisis.

USE OF FORCE

The Commission found that FCPD use of force policies should be consolidated, clearer and more concise, and reinforce the sanctity of human life and constitutional limits of policing in a democratic society. Further, the Commission called for reforms related to equipment, practices and culture and increased accountability in the use of SWAT.

As Table 4 reflects, the County adopted a significant majority of the Commission recommendations regarding UOF policies, programs and practices, but also rejected several of them.

Table 4. Use of Force Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
68	49	6	5	1	7

Implemented

- Specific changes to FCPD UOF policies and practices are now incorporated, and officers are being trained and evaluated against these updated standards and expectations. The revised policy raises the bar on the permissible use of force by requiring that it not only be “reasonable” but “objectively reasonable.” “Objectively reasonable” means that another police officer, if standing in the shoes of the officer applying force, would also reasonably perceive the need to apply a comparable level of force in the same circumstance. The revised policy also reinforces a measured use of force by resorting, where feasible, to first use of less-lethal and non-lethal weapons, such as the ECW.
- Other approved changes to FCPD practices address the training of officers in the use of firearms; incorporate into police officer basic and in-service skill development the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force, as well as crisis-intervention; direct the design of threat assessment checklists for planning of SWAT and other high-risk operations; require the conduct of post-incident reporting and lessons-learned analysis; direct the collection and analysis of incident data; specify when medical treatment is to be provided; strengthen community policing; direct how to work with vulnerable populations (such as children and the elderly); promote a “duty-to-intervene” organizational culture; and maintain “hire-to-retain” assessments of officers’ fitness to serve.
- One of the most far-reaching Commission UOF recommendation is to deploy BWCs for use by all police officers and SWAT members. These cameras are to complement the dashboard cameras now mounted in each Fairfax County police patrol vehicle. While a potential aid to criminal prosecution, a BWC’s equally important contribution is to foster greater transparency and the accountability of all parties during the interactions of the police with the public. The County is methodically evaluating the potential use of body worn camera technology, including conducting a pilot project that deployed cameras in three of the County’s nine magisterial districts. Key considerations are legal and operational protocols, privacy, data security and cost.

- We urge the Board, after due consideration of the results of the pilot project and with the opportunity for public participation, to implement the Commission's recommendation.
- Furthermore, in order to ensure transparency and compliance with FCPD policy and directives, we recommend that the Independent Police Auditor be instructed by the Board of Supervisors to audit the FCPD's use of BWCs (including random review of BWC footage as PERF has recommended) and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.
- Vehicle pursuit policy is now more restrictive, but does not – as the Commission recommended -- limit officer discretion to pursue only fleeing vehicles where reasonable suspicion exists that a violent felony has been committed. A significant refinement is that supervisors are more explicitly required to assume oversight of any vehicle pursuit as soon as he/she can do so safely and to independently confirm that the need for immediate apprehension outweighs the risks of potential harm arising from the pursuit. Further, the Police Training Academy's Emergency Vehicle Operations Center has reviewed every pursuit on a monthly basis since October of 2017. Also, per a new *Pursuit General Order*, the Academy held its first in-depth pursuit review with a newly chartered *Pursuit Review Committee*. The Committee recently reviewed seven randomly selected pursuits for lessons that can be learned and translated into improved training and tactical operations. However, we are concerned about continued lack of public transparency regarding the vehicle pursuits undertaken by police officers.
- After a Departmental study and review by the Board, the precision immobilization technique, which uses a police vehicle to end a pursuit, will continue to be a permitted use, but only by officers who have been trained and achieved a demonstrated competency in its use.
- The demographic data about the suspects in all use of force incidents and in-custody deaths will be collected and publicly reported for each incident: race, gender, age; any indicators of homelessness and of mental illness and CIT response; any previous involvement with FCPD; the type of weapon, if any, in the suspect's possession; police use of force; and resulting death/injury.
- Data will be collected and publicly reported online for all uses of force that result in death specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior instances of use of force by the officer(s) involved and determination of appropriateness; and (c) opportunities for training.
- Timely and consistent information will be reported for all officer involved shootings and lethal incidents, to include a narrative of the incidents and aftermath, updated in real time, including all UOF events that result in death or serious injury, not just shootings.
- Data will be collected and an annual statistical report will be published that covers all stops, frisks, citations, arrests, and use of force by district station and magisterial district -- including the race, gender, and ethnicity of the individual involved and note whether the suspect is homeless and/or if a mental health crisis is a factor. The data will include the race, gender and ethnicity of the FCPD officer involved and whether the interaction was initiated by FCPD or by the suspect. The outcome of each incident will be documented and regularly reported to the Board and the public, with the data posted online.

- The FCPD UOF Technical Review Committee, which includes civilian representation, is reconstituted to review selective use of force events, to include the decision to employ UOF, use of de-escalation and alternatives, compliance with law and regulations, as well as administrative, training, supervisory and tactical issues.

Under Review

- FCPD and the CWA are still evaluating whether drug and steroid testing should be required for police officers involved in incidents that result in death or serious injury. The tests should be conducted as soon as possible after the incident but not longer than the time after the incident that drugs or steroids can be detected.

Not Implemented

- Because of privacy concerns, the County will not, on a blanket basis, release disciplinary action information regarding a violation of the UOF policy in a police officer-involved shooting.
- Out of operational concern, the County will not mandate that all detectives and plainclothes officers carry an ECW in their vehicles when on duty.
- The term "excited delirium" has been cleared by the County’s medical officer as a medically and physiologically descriptive term and therefore continues to be maintained in the Use of Force General Order 540.
- Testing officers involved in serious use of force incidents for drugs and steroids will not be mandatory.
- A legal advisor position within FCPD will not be established.
- Finally, the Board of Supervisors will not review the Police Chief's determination in lethal UOF cases and go on record with approval or disapproval of the action.

INDEPENDENT OVERSIGHT AND INVESTIGATIONS

The Commission found that civilian oversight promotes public trust and confidence in FCPD, particularly when the use of force by a Fairfax County police officer leads to death or serious injury or with regard to complaints regarding “abuse of authority” or “serious misconduct.”

Table 5 reflects that the County adopted the key set of the independent oversight and investigations recommendations, but also rejected a few of them.

Table 5. Independent Oversight and Investigations Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
42	22	14	0	1	5

Implemented

- The County approved and implemented Commission recommendations to establish an Independent Police Auditor and a Civilian Review Panel.
- The Board established the position of Independent Police Auditor on September 20, 2016. After an extensive search process, the Board appointed the Auditor in April 2017.
- The Civilian Review Panel was established by the Board on December 6, 2016. The nine members of the Panel were appointed by the Board on February 28, 2017, after a selection process which provided all interested persons and organizations with the opportunity to nominate individuals for the Panel. The Panel drafted bylaws which were approved by the Board, with modifications, on July 11, 2017, and accepted by the Panel on August 3, 2017.
- The Commission assumed that FCPD would formally respond to recommendations from the Auditor and Civilian Review Panel. We understand that FCPD does not believe it has an obligation to do so.
- The Auditor and Panel both have websites with links to complaint forms for use by the public.

Under Review

- The recommendation that the CWA's Office be funded to hire two independent investigators to support criminal investigations within the scope of the Independent Police Auditor has not yet been acted upon. These positions will not receive Board consideration unless requested by the CWA.

Not Implemented

- The Board did not appoint the Auditor to a fixed term of 2 to 5 years. Virginia Code requires that appointments to positions such as that of the Auditor be at will, *i.e.*, the appointment can be terminated with or without cause.
- Further, it is not clear under the Virginia Code whether the Board has the discretion to delegate authority to non-police personnel to conduct criminal investigations. The Auditor will, however, have full access to completed criminal investigations conducted by the Major Crimes Bureau (MCB) for the CWA's Office. The Auditor will also monitor and review IAB investigations within its scope and can request that FCPD provide additional information and materials as may be needed to ensure the thorough completion of administrative investigations.
- Because of similar concerns regarding delegation of authority, the Civilian Review Panel will not investigate complaints, but will instead hold public meetings (rather than public hearings) to review FCPD investigations and will not accept evidence or receive testimony at those public meetings held to review an investigation. The complainant can appear at such meetings to state the reasons for the request for review and can answer the Panel's questions, and representatives of FCPD will appear to review and answer questions about their investigation. The FCPD will conduct any further investigation that the Panel deems necessary.
- Finally, the Board did not approve the Commission's recommendation that an Ad Hoc Police Practices Review Commission be established every five years.

IMPACT OF RECOMMENDATIONS NOT APPROVED

All Commission recommendations do not need to be implemented for the County to be able to declare police reform a success. Indeed, we value the extent to which the County leadership thoughtfully and methodically considered the Commission's recommendations.

We do believe, however, that more is required of FCPD to achieve the level of transparency and information sharing required to meet consistently the "predisposition to release information" standard the Police Chief sets in revisions to the Release of Information, Records and Documents General Order.

On one hand, as an example of its commitment to openness, Fairfax County police released -- after three months -- dashboard camera digital footage of a November 2017 shooting by the U.S. Park Police of McLean resident Bijan Ghaisar following a pursuit on the George Washington Memorial Parkway. While not an FCPD investigation, Police Chief Roessler noted that the video "does not provide all the answers," but indicated he released the video in an effort at transparency.

On the other hand, as a contrary example, significant information -- including dashboard camera digital footage -- is being withheld from public release because of litigation regarding the December 2017 vehicle pursuit by Fairfax County Police on Centreville Road, which ended in an accident that injured six family members.

FOIA provides the County and FCPD overly broad and categorical discretion to withhold police use of force and police-involved shooting incident-related digital data from cameras, documents and other information. FCPD will have valid reasons for withholding information that might undermine an active investigation or for public safety reasons. But FCPD also has an obligation in a free society to be predisposed toward releasing information; *i.e.*, the default must be to release information, while justification is required to withhold it. There is no more significant lesson to be learned from the Mr. Geer's shooting and the subsequent months of County silence on the status of the investigation.

In our view, the County's FOIA regulations and FCPD's General Order need to be closely aligned and the circumstances where information is withheld from the public must be carefully prescribed. Virginia FOIA broadly exempts certain law enforcement information from being released. The County can, however, limit the use of these exemptions and, when applying them, do so consistently. The County risks losing the public's trust, which it has so diligently and effectively sought to regain through implementing the Commission's recommendations, without more clearly delineating when and why information can be withheld.

Finally, the Board of Supervisors should request that the CWA's Office formally evaluate the Commission's recommendation that two independent investigators be hired to support criminal investigations within the scope of the Independent Police Auditor, including participation in MCB criminal investigations. Because these positions were not requested by the CWA, the matter has not received Board of Supervisor consideration. The Commission believed that the two independent CWA investigator positions would further promote impartiality and objectivity in MCB investigations.

FINAL THOUGHTS & CONCLUSION

The following additional topics warrant County consideration:

1. FCPD should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel. The Commission assumed, but did not explicitly recommend, this expectation. We understand that FCPD does not believe it is obligated to respond. Only the Board can clarify this difference of understanding and should do so if it expects the Independent Police Auditor and the Civilian Review Panel to establish and have credibility within the community.
2. The Board should establish a process that provides the public with an opportunity to comment and be heard on Auditor and Panel findings and recommendations, including the FCPD's responses to the findings and recommendations. Public participation in the process is critical to building and ensuring community trust in the FCPD and the independent oversight established by the Board.
3. The Independent Police Auditor should be authorized to monitor and review investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any UOF incident resulting in death or serious injury.
4. In order to ensure transparency and compliance with FCPD policy and directives, the Independent Police Auditor should be instructed by the Board to audit the FCPD's use of BWCs and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.
5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF data now being collected in response to the Commission's recommendations. The data should be updated on a more regular basis than annually. As important, the data should be subjected to analysis and a process put in place that engages the public to address any issues the analysis may bring to light. Finally, the monitoring program should fully leverage the capacities of the Independent Police Auditor and Civilian Review Panel.
6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident. An incident occurred in the past year, for example, that a bystander captured on video that appeared to involve a number of officers violently subduing an individual at a parade. The video had wide-distribution, as did the Police Chief's press conference in which he asserted that the officers' use of force had followed policy and was justified. A more public-trust building response would be to indicate that the incident would be thoroughly investigated and related information would be released as soon as possible. Because suspects are innocent until proven guilty, neutral language is also the best policy when discussing the basis for a suspect's arrest.

7. The recently chartered internal *Pursuit Review Committee*, directed to be established under a new *Pursuit General Order*, should be expanded to include civilian representation, as is the case for the UOF Technical Review Committee. The *Pursuit Review Committee* will review case examples for lessons learned to inform training and tactical operations. Both Committees should include the Auditor as a member.

With our seven-month Commission experience and two years' focus on implementation, we can state that, while not endorsing all the changes advocated by the Commission, both the letter and spirit of the Commission's recommendations have been embraced by Fairfax County.

Sustained high performance by organizations requires a commitment to continuous improvement and to ensuring that policies and practices evolve to meet the ever-changing world in which we live. The challenges to sustained reform are both daunting and are not to be underestimated. Sustaining and "institutionalizing" the changes in the County's police practices of the magnitude underway requires continued rigorous commitment to reform by the Police Chief, Commanders and Supervisors. As important will be the continued buy-in by rank-and-file police personnel and continued community participation, monitoring and oversight.

APPENDIX

Ad Hoc Commission Implementation Group Biographies

- Shirley A. Ginwright – Ms. Ginwright retired from the Federal government as a senior manager in information technology and cyber security and became a substitute teacher for Fairfax County Public Schools. She served four years as President of the *Fairfax County NAACP* and is a member of the *Fairfax County Chief of Police Diversity Council for Recruitment*. Ms. Ginwright served on the *Fairfax County Ad Hoc Police Practices Review Commission* and chaired its Subcommittee for Recruitment, Diversity, Vetting and Retention. She has subsequently contributed to an *Implementation Group* arranged by the Chair of the Board of Supervisors. She is a member of the *Fairfax County Criminal Justice Advisory Board*; Chair of the *Fairfax County Communities of Trust Committee*; former Chair of the *Virginia State Conference NAACP Criminal Justice Committee*; and past member of the Board of Directors for the *Virginia National Organization for the Reform of Marijuana Laws (NORML)*. She was recently appointed by the Governor of Virginia to the *Commonwealth Commission for Diversity, Equality and Inclusion*. She has received the 2015 Martha Pennino Community Service Award, 2016 Citizen of the Year Certificate of Merit, 2016 Lady Fairfax award, and the 2016 FBI Director’s Community Leadership Award. Ms. Ginwright is a native of Montgomery, Alabama and holds a Bachelors in Legal Studies and completed work on a Master’s Degree in Criminal Justice.
- Mary Kimm – Ms. Mary Kimm is Editor and Publisher of the *Connection Newspapers*, a chain of 15 weekly newspapers and related websites, including 12 hyper-local print editions in Fairfax County, where she has worked in various roles since 1989. Ms. Kimm served on the *Fairfax County Ad Hoc Police Practices Review Commission*, and on three of its five subcommittees, Use of Force, Communications and Independent Oversight and Investigations. She has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. Her papers won the 2016 Virginia Press Association Award for Journalistic Integrity and Community Service, VPA's top award, for reporting and editorials on police reform. The judges noted, “The [papers] covered the complex issue of police reform from February through December 2016, sparked by the shooting of an unarmed man by a Fairfax County police officer. ... The papers focused community attention on the case, particularly on the efforts of citizens and representatives of law enforcement agencies working together on reforming police practice....” Ms. Kimm’s editorials have been cited in local efforts to end homelessness, support for nonprofits in the community and increase government transparency on many levels. She also serves on the Governing Board of the *Fairfax County Office to Prevent and End Homelessness*.

- Phillip A. Niedzielski-Eichner – Mr. Niedzielski-Eichner is an energy and national security executive with over 40 years of public sector and corporate leadership experience. He held senior executive service appointments in the U.S. Department of Energy, National Nuclear Security Administration and Nuclear Regulatory Commission and is President of Governmental Dynamics, a benefit corporation. Mr. Niedzielski-Eichner served on the Fairfax County *Ad Hoc Police Practices Review Commission* and chaired its Subcommittee on Use of Force; he has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. He currently serves on the *Fairfax County Planning Commission* and was twice-elected to the *Fairfax County School Board*. He also served on the *Fairfax County Park Authority Board* and the *Environmental Quality Advisory Council*. He was designated a Fairfax County “Lord Fairfax” in 2017 for his community service. Mr. Niedzielski-Eichner is a 30-year resident of Fairfax County. Originally from Columbus, he received his Masters of Public Administration from Ohio State University.
- Randy K. Sayles -- Mr. Sayles is a retired Denver uniformed police officer and detective and a federal agent. He served as Deputy Assistant Administrator for the US Drug Enforcement Administration. He has over 35 years of cumulative experiences in use of force, both domestically and internationally. As a law enforcement officer, he has both fired his weapon and has been fired upon. He is experienced with the use of all authorized use of force equipment in use by today’s police forces, except electronic control weapons or “tasers.” He is an active member of the *Fairfax County NAACP*. Mr. Sayles served on the Fairfax County *Ad Hoc Police Practices Review Commission*, including on the Use of Force and Independent Oversight and Investigations Subcommittees, and has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. He is a member of the *Fairfax County Civilian Review Panel* established by the Board of Supervisors. Mr. Sayles was a recipient of the Fairfax County 2016 Environmental Excellence Award and was honored at *Fairfax County NAACP’s* 100th anniversary celebration for his lifetime of service.
- Marcus Simon -- Delegate Simon is a lifelong resident of Fairfax County. Early in his public service career, Delegate Simon served as an officer in the U.S. Army Judge Advocate General's Corps, earning the rank of Army Captain and serving as a prosecutor and also as a part time Special Assistance United States Attorney. He is a co-founder the Law Firm of Leggett, Simon, Freemyers & Lyon and EKKO Title, a real estate settlement, title, and escrow company. First elected to the House of Delegates in 2013, Delegate Simon won re-election last year for another two-year term. He currently serves on the *House Committee on Courts of Justice, the House Committee on Militia, Police, & Public Safety, and the House Committee on Science & Technology*. The 53rd House District, which he represents, includes the entire City of Falls Church and parts of Fairfax County. Delegate Simon served on the *Fairfax County Ad Hoc Police Practices Review Commission* and chaired its Subcommittee on Mental Health and Crisis Intervention; he has subsequently been a contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors.
- David Statter – Mr. Statter runs STATter911 Communications, LLC. STATter911 Communications focuses on strategies for handling reputation issues and crisis communications. He was a reporter for 25 years at WUSA-TV in Washington, D.C. Mr. Statter is also a principal at EventC2, LLC, a Delaware based emergency planning and event management consulting group and is also a partner in First Arriving Emergency Services Network. Mr. Statter served on the *Fairfax County Ad Hoc Police Practices Review Commission* and its Communication Subcommittee and has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors

- Adrian L. Steel, Jr. – Mr. Steel is a Senior Counsel with the law firm Mayer Brown LLP in Washington DC. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters, including the ABSCAM investigation. Mr. Steel recently served as a member of a commission led by Judge Webster which reviewed the FBI's actions in connection with the 2009 shootings by Major Nidal Hasan at Fort Hood, Texas. The commission made recommendations to then-FBI Director Robert Mueller for enhancements to the FBI's policies and practices in countering international and domestic terrorism consistent with the public's Constitutional and individual privacy rights. Mr. Steel served on the *Fairfax County Ad Hoc Police Practices Review Commission* and on two of its five subcommittees, Use of Force and Independent Oversight and Investigations; he has subsequently been an active contributor to an Implementation Group arranged by the Chair of the Board of Supervisors. As its first chairman, he led the effort to stand-up the newly established *Fairfax County Civilian Review Panel* authorized by the Board of Supervisors. Mr. Steel is a 40-year resident of Fairfax County. Originally from St. Louis, he is a graduate of the University of Missouri and the University of Michigan Law School.

APPENDIX N

(The Connection Newspapers)

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Sunday, January 10, 2021

Communities ▼

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Three Years Later: No Police Oversight Board

Beltrante continues to lobby for citizens panel.

[Thursday, April 11, 2013](#)

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Next Meeting

Citizens Coalition for Police Accountability holds its next monthly meeting on April 16 at the Martha Washington Library. The invited speaker is the mother of late Taft Sellers, victim of Alexandria City Police shooting in February.

Details

Citizens Coalition for Police Accountability

P.O. Box 7800

Alexandria, VA 22307-9998

Website: www.virginiaccpa.org

E-mail: virginiaccpa@aol.com

Three years after forming the Citizens Coalition for Police Accountability, retired D.C. homicide detective Nicholas Beltrante and his organization have not realized their goal of getting the Fairfax County Board of Supervisors to establish a citizen police oversight panel.

The genesis of Beltrante's effort was triggered In 2009 when David Masters, a Vietnam veteran, alleged to have stolen flowers from a Route 1 nursery, was shot and killed by Fairfax police after a car chase. Masters was unarmed and sitting in his car while stopped on a service road at the corner of Fort Hunt Road and Route 1.

This incident, and the secrecy surrounding the county investigation led Beltrante to form the CCPA to lobby for the creation of a police citizen oversight board appointed by the Fairfax County Board of Supervisors. Nationally, 150 citizen police oversight panels exist, including one in the District of Columbia and another in Prince Georges County, Md. Eventually, after studying the proposal to establish a citizen police oversight panel, former Police Chief David Rohrer and former County Executive Robert Griffin recommended that the Board of Supervisors designate the independent auditor to review and comment on citizen complaints of alleged police misconduct. Three years later the Board of Supervisors has not changed its position. Mount Vernon Supervisor Gerald Hyland, chair of the Board's Public Safety Committee, reaffirmed that the Board of Supervisors continues to prefer the independent auditor function to review alleged police misconduct complaints. "There is no support on the Board to create a police citizen oversight board," Hyland said.

Despite what Beltrante characterizes as "Board of Supervisors stonewalling," he and his organization have kept pressing for the police accountability panel, supporting changes in the Virginia Freedom of Information Act to amend the blanket exemption for police from releasing police incident reports, and serving as an active voice for citizens complaining about alleged police misconduct.

"There were 110 police citizen oversight boards in the U.S. when I formed our group; there are now 150 such organizations in the U.S.," Beltrante said. He argues that there is virtually no oversight, no accountability, and no transparency over police actions.

Asked to describe his organizations' accomplishments over the past three years Beltrante listed the following:

- 250 members statewide.
- Serve as a focal point and voice for citizen complaints of alleged police misconduct. He said he now regularly gets letters from all over the state about alleged police misconduct. Upon receipt of complaints his organization does the best it can to review the facts and circumstances, and comment to the appropriate jurisdiction about alleged misconduct. For example, the recent shooting fatality in the City of Alexandria will be on the CCPA's monthly public meeting agenda on April 16 at the Martha Washington Library.
- Identified, through the use of the federal FOIA, a list of 61 civil rights complaints sent by Fairfax County citizens to the U.S. Department of Justice Civil Rights Division. In addition, the Justice Department listed 27 complaints from the City of Alexandria, and 19 complaints from Arlington County. Disposition of the complaints was not made available. Beltrante said that if there was an oversight panel many of these complaints would have likely been resolved by a citizens group working with the police.
- Developed an oversight board proposal and submitted it to the Board of Supervisors.
- Gained visibility and public attention on the benefits and opportunities of a police citizen oversight board to the media. Editorials in support of a police citizen oversight panel have been published by several local and national news media.
- Provided support to state-wide organizations seeking a more open and flexible Virginia Freedom of Information Act. Police incident reports in Virginia are withheld even in closed investigations.
- Gained the support of local, state, and national organizations supporting the CCPA's effort to establish police citizen oversight in Fairfax County.

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APPENDIX O

(The Washington Post)

The Post's View

Fairfax County appears poised to move from opacity to openness

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July 25, 2016

FAIRFAX COUNTY caught flak last week when its police department [released a report](#) showing that more than 40 percent of its use-of-force cases involved black residents. That's troubling. But the report would not exist at all if not for the county's increased commitment to police transparency in the wake of an unarmed man's [unwarranted death](#) in 2013. It seems even bigger changes are soon to come.

Last fall, a little more than two years after a Fairfax County police officer shot and killed John Geer on the doorstep of his home in Springfield, a commission [recommended](#) 202 revisions to police procedures that would increase accountability. Many gained approval from the Board of Supervisors early on, but the most essential seemed to stick in the board's collective craw: the creation of a civilian panel, approved by the board and appointed by its chairman, to review allegations of abuse. Now, it looks as though most critics have switched course. The board [signaled](#) its support for the panel in a meeting last week, and the policy could see a vote in September.

Geer's death sparked enough outrage to shock the county out of complacency. Even then, it took [public protests](#), a [lawsuit](#) and [letters](#) from a U.S. senator for the police department and prosecutors to take action. The civilian review panel would forward citizen complaints to the police for investigation and, if needed, hold public hearings on the outcomes. That would ensure that the next time the community had questions — on subjects such as, perhaps, those recently released statistics — it would get answers. So would the hiring of an independent auditor to investigate encounters involving serious injury or death, which the board also appears to back.

The review panel was the most crucial and the most controversial proposal from the committee, and it met the most opposition, both from board members and from police unions. Some union representatives still have concerns, but [Police Chief Edwin C. Roessler Jr. has thrown his support](#) behind the measure. Board of Supervisors Chairman Sharon Bulova, in particular, deserves credit for shepherding through the changes and turning the tide.

The details are not set in stone. In the coming months, the board will need to agree on an appointment process to ensure a panel that is at once informed and independent. It will also have to approve bylaws that

establish fair, effective proceedings that can exist parallel to any concurrent criminal cases. But the signs so far point to progress. If all goes well, a department that once offered a model for obstinacy and opacity may soon set a standard for just the opposite.

Read more on this topic:

[The Post’s View: The unaccountable death of John Geer](#)

[The Post’s View: Will Fairfax police be reformed?](#)

[The Post’s View: In the death of John Geer, a guilty plea is not enough](#)

 **6 Comments**

APPENDIX P

(The Fairfax Times)

http://www.fairfaxtimes.com/articles/board-of-supervisors-approves-police-review-panel/article_cf96b0c6-be4e-11e6-9cc1-e7907cc8743f.html

EDITOR'S PICK

Board of Supervisors approves police review panel

By Angela Woolsey/ Fairfax County Times
Dec 9, 2016



From left, Deputy County Executive David Rohrer, independent counsel Julia Judkins, and Fairfax County Police Chief Edwin C. Roessler Jr. watch as the Fairfax County Board of Supervisors discusses instituting a police civilian review panel.

ANGELA WOOLSEY/FAIRFAX COUNTY TIMES

At its Dec. 6 meeting, the Fairfax County Board of Supervisors approved the establishment of a civilian-led panel that will be responsible for responding to complaints and reviewing police investigations. After a lengthy discussion about how such a panel might work and the potential challenges it could face, the board passed the proposal by a 9-1 vote, with Springfield District Supervisor Pat Herry the only member opposing the measure.

Among the most notable recommendations to come out of the Ad Hoc Police Practices Review Commission assembled by board chairman Sharon Bulova in 2015, the police civilian review panel will consist of nine members selected by the Board of Supervisors and is charged with reviewing complaints alleging an abuse of authority or misconduct by Fairfax County Police Department (FCPD) officers.

“Establishing a police civilian review panel is a historic step in the right direction toward increasing trust and transparency between police and residents,” Bulova said. “I’m proud of how far we’ve come in implementing the recommendations made by the ad hoc commission, and establishing this panel represents a significant milestone.”

Bulova created the ad hoc commission, which was endorsed by the board as a whole on Mar. 3, 2015, in response to concerns about the lack of information that had been made public regarding the August 2013 fatal shooting of Springfield resident John Geer by then-FCPD Officer Adam Torres.

Chaired by Fairfax Group president and CEO Michael Hershman, the ad hoc commission analyzed FCPD policies in areas such as the use of force, diversity and recruitment, mental health and crisis intervention team (CIT) training, and independent oversight. The commission submitted its findings and 202 recommendations to the Board of Supervisors in a public report on Oct. 20, 2015.

In addition to the creation of a civilian review panel, the commission recommended that the county establish an office of independent police auditor to review use of force cases and police-involved incidents that resulted in serious injury or death.

The Board of Supervisors approved the independent auditor position at its Sept. 13 meeting.

Since the commission’s report was released, Fairfax County has also established a Diversion First program for people experiencing mental health challenges, altered its training methods to emphasize de-escalation, and developed a policy requiring that the names of officers involved in critical incidents are released within 10 days.

“I’m very proud of Fairfax County today,” FCPD Chief Edwin C. Roessler Jr. said regarding the approval of the civilian review panel. “What we have is the community, political leaders and highly engaged police department...working together to accomplish a great effort to create more transparency and accountability to the community we serve. This was the right move.”

Individuals can submit complaints directly to the panel, which would then have the police look into the situation, or they can request that the panel review an already-completed internal police investigation.

Because they will be addressed by the office of the independent auditor, the panel won't handle use of force allegations or police-involved shootings. The kinds of complaints it can review include the use of abusive language, harassment or discrimination, the endangerment of a person in custody, and serious violations of county or FCPD procedures.

According to the measure passed by the Board of Supervisors, which can be found on the Fairfax County website, the panel won't review complaints if the incident in question occurred more than a year ago, and requests for review must be filed within 60 days of when the individual was notified of the completion of the FCPD investigation.

When dealing with requests for review, the panel can convene a public meeting within 45 days of receipt of the complete police department internal administrative investigation to ask questions of the complainant and department representatives familiar with the investigation.

This process has raised some concerns about the amount of information that the panel will be able to access, since it is prohibited from taking testimony or receiving "factual evidence" during these public meetings.

Hunter Mill District Supervisor Catherine Hudgins suggested that the proposal be amended to allow the panel to take testimony and hear witnesses that may not have been included in the police investigation.

"The absence of receptivity to the concerns of the community has been the biggest burden that we've had," Hudgins said. "I think we have opened this up, but I still find a void...If we are going to empower the civilian review panel, my last concern here is, will we take information in freely, and will we investigate that?"

Braddock District Supervisor John Cook, who chairs the board's public safety committee, says that permitting the civilian review panel to conduct its own investigation of an incident, as opposed to reviewing an investigation done by the police, would raise administrative, practical and legal issues.

"The problem is the General Assembly establishes what power the Board of Supervisors has to create advisory commissions or other committees," independent counsel Julia Judkins said.

According to Judkins, state law doesn't give advisory bodies like the civilian review panel the authority to swear witnesses, take testimony or compel people to appear, and if they did any of these things, panel members could open themselves up to legal action.

The Board of Supervisors will be responsible for appointing panel members according to a range of factors, including community involvement, diversity, and law enforcement or criminal investigation experience.

Fairfax County employees, current or former members of FCPD or the Fairfax County Sheriff's Office, anyone with a relative working for either of those agencies, and public officeholders or candidates are excluded from consideration, though the panel must have at least one member with prior law enforcement experience.

After the panel members are appointed, they will develop bylaws that provide more detailed directions and guidelines for the panel. The panel will also be responsible for submitting an annual report to the Board of Supervisors, which will then review the panel's progress to determine whether it's working properly.

The main voice of opposition to the panel came from Herrity, who argued that the board should take more time to consider how it will affect the county budget and that it's redundant to have both a panel and an independent auditor.

The Springfield District supervisor also expressed concerns over how the panel will affect police morale.

"Perhaps the biggest reason I oppose the creation of the citizens' review panel is I believe it's being done for political correctness, largely in response to mistakes made by this board and the police chief in the handling of the Geer shooting," Herrity said. "Exacerbated by the unknown fiscal impact and the terrible impact on the morale of our great police department, I think that makes this something that's going to be unacceptable to me."

Roessler said after the board's vote that he doesn't have any "grave concerns" about how the panel will affect the department financially or in terms of employee morale.

For the volunteers who made up the ad hoc commission, the board's approval of the civilian review panel was yet another sign that their work on the commission had made a difference.

“This is what the public wanted,” Adrian Steel, a McLean resident who worked on the commission’s independent oversight and investigations subcommittee, said. “I think in a very real way, it’s supportive of the police, because it confirms the job that they’ve done. Chief Roessler very much wants to employ best practices and is willing to listen to suggestions for improvements.”

Herrity, the lone dissenting supervisor, later said of the panel: “I have a number of serious issues with the Police Civilian Review Panel proposal including the following: it has an unknown fiscal impact in a very difficult budget year, it adds to multiple levels of review that police complaints already go through, it makes us the only jurisdiction in Virginia with two independent review boards for police complaints, it has a number of legal issues with the implementation, and it negatively impacts the morale in our police department.”