

Police Civilian Review Panel

August 11, 2022

Fairfax County Government Center, Conference Room 11

Meeting Summary

Panel Members Present:

Jimmy Bierman

Todd Cranford, Vice-Chair

Celeste Peterson

Dirck Hargraves, Chair

William Ware

Janell Wolfe

Panel Members Absent:

Cheri Belkowitz

Bryon Garner

Others Present:

Kenneth Bynum, Counsel

Madison Gibbs, Counsel

2nd Lt. Tim Forrest, Internal Affairs Bureau

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

Dre'Ana Whitfield, OIPA

The Panel's business meeting was called to order at 7:24 p.m. Mr. Hargraves, Chairman, welcomed everyone to the Panel's August 11, 2022, meeting. Mr. Hargraves took a roll call to verify a quorum of the Panel was present. Everyone that was present in Conference Room 232 stated their name and their position.

Approval of Agenda: Mr. Bierman moved approval of the meeting agenda. Ms. Wolfe seconded the motion, and it carried with a vote of six, with Ms. Belkowitz and Mr. Garner being absent.

Introduction of Counsel (and FOIA discussion): Mr. Hargraves introduced new counsel to the Panel. Mr. Bynum provided a brief introduction to the full Panel. He explained that Bynum & Jenkins Law is an Alexandria-based general practice law firm. Mr. Bynum said that they are here to serve the Panel and expressed his excitement about serving as independent counsel for the Panel.

Ms. Gibbs introduced herself to the Panel and provided a brief Virginia Freedom of Information Act (VFOIA) overview. She explained that the main point of FOIA that will be important to the Panel is that there is always a degree of transparency with the public. She explained that all records and all meetings are presumed to be open unless there is a specific exception that is properly invoked by the statute. Ms. Gibbs further referenced and explained §2.2-3701 which defines open and closed meetings. She explained meetings can be held physically or

electronically as a body, or as an informal assemblage of Panel members. She explained that the code specifies that there must be either three members, or a quorum if there are less than three on the Panel.

Mr. Bynum provided examples of some challenges to the exceptions to the rules. Mr. Bynum voiced that if three or more Panel members find themselves at a similar location, do not discuss public business. Ms. Gibbs defined public records. She further explained that they encompass all writing and recordings regardless of form or characteristics, prepared or owned by, or in the possession of the Panel, or its officers, employees, or agents and if it is in the transaction of public business. Discussion further ensued on the VFOIA.

Mr. Hargraves thanked counsel for their overview of the VFOIA. Mr. Hargraves asked counsel about email interactions between Panel members. Ms. Gibbs stated that the Panel should be cautious as it could be considered a public record. Mr. Ware asked how the Panel should manage their notes on case files to ensure they are compliant with VFOIA. The Counsel recommended that the Panel write work product on their documents. Mr. Bynum agreed with Ms. Gibbs.

Approval of June 2, 2022, Draft Meeting Summary: Mr. Bierman moved the approval of the Panel's June 2, 2022, meeting summary. Mr. Cranford seconded the motion and it carried with a vote of six, with Ms. Belkowitz and Mr. Garner being absent.

Approval of Subcommittee Initial Review Report for CRP-22-08: Mr. Cranford provided a summary of the complaint. The complainant rented a unit from a storage facility in Herndon, Virginia. On August 20, 2021, a fire broke out in the complainant's storage unit. The Fairfax County Fire and Rescue Department (FCFRD) and the Fairfax County Police Department (FCPD) responded to the scene to assist in extinguishing the fire. The storage facility contacted the complainant and other renters of the fire and informed them that they could examine their units the next day. On August 21, 2021, a fire reignited in the complainant's unit, and the FCFRD and FCPD were called again to extinguish the fire. Due to the second fire, the FCFRD believed that it was too dangerous to leave the items in the unit. The FCFRD recommended that everything be removed from the unit immediately and discarded. The storage facility agreed and removed all items and discarded them. The complainant did not have the opportunity to examine her unit. When the complainant arrived later that day, the complainant found that all her belongings in the unit had been removed. The complainant claimed that there was a jewelry box containing several valuable pieces that were missing. The complainant believed that the jewelry box was not damaged by the fire due to its location being at the back of the storage unit. A complaint was filed at the Fair Oaks Police Station on February 28, 2022, after seeing what the complainant believed to be several of her missing pieces of jewelry being sold on eBay. The complainant alleged that the FCPD, FCFRD, and the storage facility colluded to steal her jewelry. The Internal Affairs Division of Fairfax County Police Department investigated the matter and interviewed the complainant, the FCPD officers who responded to both fires, the FCFRD personnel that were on the scene of both fires, and the storage facility personnel.

The Internal Affairs Division of Fairfax County Police Department's investigation also included a review of the body-worn camera videos taken by responding FCPD officers on the days of the fire. The investigation concluded that no FCPD officer was near the storage unit at any time and that their role was limited to traffic control. The Internal Affairs Division found no evidence to support any claim of misconduct or inappropriate behavior by any FCPD officer.

Mr. Cranford stated that the subcommittee did not see the substance of information that justified recommending it to the full Panel.

Mr. Hargraves reminded the Panel and the public that the subcommittee undertakes a review of the full case to determine whether the actual complaint alleges something that falls within the jurisdiction of the Panel.

Mr. Bierman motioned approval to accept the recommendation of the subcommittee that the Panel does not undertake the full review of CRP-22-08. Ms. Wolfe seconded the motion and it carried with a vote of six, with Ms. Belkowitz and Mr. Garner being absent.

Proposed PCR Training with FCPD: Mr. Bierman suggested two useful trainings for the Panel: training with NACOLE and a half-day training with the FCPD. He expressed that this training would help Panel members learn the structure of the FCPD and the actions of the department. Mr. Bierman suggested that the Panel attend the half-day training with the FCPD. Mr. Hargraves agreed. He stated that it will also help FCPD get to know the Panel.

Mr. Hargraves stated that there is a NACOLE training on August 16, 2022, on Police, Regulation, and Oversight. Ms. Ramirez informed the Panel to reach out to her or Mr. Richardson if they would like to attend the NACOLE training. Mr. Hargraves encouraged Panel members to participate in the next NACOLE event.

Executive Director's Report: Mr. Bierman requested that the Executive Director provide a written report to the Panel given his absence from the meeting. He expressed that he would like his report to specifically cover outreach efforts to date. Mr. Hargraves voiced that the Executive Director will be sending his report to the full Panel.

OIPA Update: Mr. Schott provided an overview of FCPD-involved shootings over the last five years. He explained to the Panel that there has been a spike in FCPD officer-involved shootings as of 2022, with a total of five. Mr. Schott provided insight into the criminal and administrative investigation process. He further explained delays that can occur after an FCPD-involved shooting. Further discussion ensued on ways to keep the public and families of victims informed during the criminal investigation process.

Mr. Bierman noted that the Panel can make recommendations on law enforcement policies, practices, and procedures per Article II. C. of the Bylaws.

Mr. Ware asked if the FCPD investigates officer-involved shootings involving an FCPD officer. Mr. Schott said yes. Mr. Ware asked who proffers the details to the Commonwealth Attorney.

2nd Lt. Forrest stated that the cold case detective provides the details to the Commonwealth Attorney.

PCR Matter: Ms. Peterson asked if the word can be said before using acronym during meetings. She voiced concern that the public may not know what the acronym means. Mr. Hargraves agreed.

Ms. Wolfe suggested that the meeting agenda be more detailed for Panel members so that they can be prepared. She stated that she believed the Panel was going to discuss the FCPD brandishing video tonight and that was the reason for the Panel's rescheduling of the August meeting. Mr. Hargraves stated the delay was due to rescheduling of a subcommittee meeting and his expected absence from the meeting.

Mr. Hargraves stated the latest version of the Bylaws were approved by the Board of Supervisors.

Mr. Bierman stated that a huge reason for hiring an Executive Director was for him to summarize the investigative case file and prepare a report for the Panel members in advance of a Review Meeting. He said it is important that the Executive Director's report not influence the thoughts of the Panel members but help them to organize their own reviews. He recommends that the Executive Director create a table of contents of all the documents and videos in the investigative file. He further suggested that the Executive Director prepare a summary of important and key facts for Panel members before they review an investigative file. He stated that he believes it would be useful for the Panel to get the Executive Director's perspective and eye on an investigation. He said a list of factual predicates would be helpful.

Mr. Cranford agreed that a prepared document that highlights key aspects of all investigative files would be helpful. He suggested that the full Panel collectively come up with a template. Mr. Cranford suggested that the Panel members think about what is important to them when reviewing a file and prepare to discuss their ideas at the next meeting. Mr. Hargraves agreed.

Ms. Peterson agreed with the Executive Director creating an index of the investigative file and potentially highlight key documents the Panel members be sure to review. She voiced concerns about the Executive Director providing more information, which could potentially lead Panel members and result in group think. She said she wants to be sure the Panel is truly independent. Further discussion ensued on what constitutes the types of facts that could be outlined by the Executive Director.

Mr. Cranford said the Panel should think about whether they want a summary of all facts or a listing of key facts. Mr. Hargraves reiterated the importance of the Panel developing a template. Mr. Bynum reminded the Panel that it is a deliberative body.

Mr. Bierman stated that it would be useful for the Executive Director to provide the Panel with weekly or bi-weekly local and national news articles for members to stay informed of current trends.

New Business: Mr. Hargraves said that the FCPD responded to the Panel's requests for additional investigation regarding the file it reviewed in June. He said the Panel will continue its review of CRP-22-06 in September. He informed the Panel that they should review the file before the September 1, 2022, meeting. Ms. Ramirez reminded the Panel of the required two-week public notice for Review Meetings.

Adjournment: Mr. Cranford moved to adjourn the meeting. Mr. Bierman seconded the motion, and it carried with a vote of six, with Ms. Belkowitz and Mr. Garner being absent.

The meeting adjourned at 8:48 p.m.

Next Meeting: The Panel's next business meeting will be held on September 1, 2022, at 7:00 p.m.

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Meeting Summary Addendum

The following clarification was made to the Panel's August 11, 2022 meeting summary during the Panel's September 1, 2022 meeting:

Mr. Cranford clarified that the basis on which the subcommittee made its recommendations to the Panel in CRP-22-08. He referenced the Panel's Bylaws Article VI. D.3.(a). He said that after the subcommittee reviewed the investigative file, they concluded that, although the complaint contained allegations that if proven would constitute Serious Misconduct or Abuse of Authority, a reasonable Panel would not conclude that there was sufficient evidence to support the allegations.