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# Police Civilian Review Panel

## Meeting Agenda

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Location: Fairfax County Government Center – Room 9  
12000 Government Center Parkway  
Fairfax, VA 22035

Date: November 2, 2023

Time: 7:00 pm

Website: [www.fairfaxcounty.gov/policecivilianreviewpanel/](http://www.fairfaxcounty.gov/policecivilianreviewpanel/)

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### Agenda details:

#### I. Call to Order

#### II. Agenda Items

- a. Approval of Agenda
- b. Approval of September 7, 2023 Draft Meeting Summary
- c. Subcommittee Report on CRP-22-15
- d. Subcommittee Presentation on Procedures Review

#### III. Office of the Independent Police Auditor (OIPA) Update

#### IV. New Business

#### V. Adjournment

Panel Meeting Schedule:

- December 7, 2023, at 7:00 p.m.

Police Civilian Review Panel

September 7, 2023

Fairfax County Government Center

12000 Government Center Pkwy Fairfax, VA 22035

Meeting Summary

Panel Members Present:

Cheri Belkowitz, Vice Chair  
Todd Cranford, Chair  
Fazia Deen  
Dirck Hargraves  
Michael Lau  
William Ware  
Janell Wolfe

Others Present:

Madison Gibbs, Counsel  
Kenneth Bynum, Counsel  
Sanjida Lisa, PCR  
Rachelle Ramirez, OIPA  
Richard Schott, OIPA  
Lt. Matt Lane, Internal Affairs Bureau

Chair Cranford called the Police Civilian Review Panel's (PCR) business meeting to order at 7:08 p.m., and after taking attendance, noted the presence of a quorum. He welcomed everyone to the Panel's September 7, 2023, meeting.

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

Approval of June 1, 2023 Draft Meeting Summary : Mr. Hargraves moved approval of the June 1, 2023 draft meeting agenda. Mr. Ware seconded the motion and it carried unanimously.

Approval of July 6, 2023 Draft Meeting Summary: Mr. Hargraves moved approval of the July 6, 2023 draft meeting summary. Ms. Wolfe seconded the motion and it carried, with Mr. Cranford abstaining.

Approval of August 3, 2023 Draft Meeting Summary: Ms. Wolfe moved approval of the August 3, 2023 draft meeting summary. Mr. Hargraves seconded the motion and it carried unanimously.

Subcommittee Report on CRP-23-07: Ms. Belkowitz presented the purpose of the subcommittee and the considerations made by Panel members when reviewing the complaint. She further provided a brief overview of the complaint, the allegations made by the complainant, and the incident that led to the allegations. Ms. Belkowitz confirmed that the subcommittee members voted to not recommend the complaint be reviewed by the full Panel. Mr. Lau did not have anything further to add.

Ms. Belkowitz provided that she had an idea of proposing that the Fairfax County Police Department's (FCPD) Internal Affairs Bureau (IAB) draft a supplemental report for the complainant. Ms. Wolfe stated

that she did not think the Panel had the authority to make that kind of recommendation. Mr. Lau agreed.

Ms. Belkowitz explained that personal opinions should not be included in official reports and found the language used in the police report, the term “scatter-brained” and claims of mental illness, to be inappropriate. Mr. Lau agreed that personal opinions should not be included in official police reports. Mr. Cranford stated that nobody should be able to allege mental illness for another, but they might be able to say “might have” signs of mental illness. Mr. Cranford ultimately was not sure if the responding FCPD officers were trained to make those kinds of assessments.

Mr. Hargraves moved to accept the subcommittee’s recommendation. Ms. Wolfe seconded the motion and it carried unanimously.

Subcommittee Report on CRP-23-08: Mr. Hargraves provided a brief summary of the incident, the call to FCPD, and the allegations provided in the complaint. Mr. Hargraves stated that FCPD did not conduct a full administrative investigation of the complaint, as the complaint did not allege serious misconduct or abuse of authority. The complaint was treated as a dissatisfaction of service.

Ms. Wolfe provided that her observations of the body worn camera footage indicated that the complainant seemed to have a good rapport with her husband and Ms. Wolfe did not observe any tension between them. She further shared that the complainant may have assumed that calling the police would automatically lead to an arrest. Ms. Deen recalled that the complainant, when asked if a physical altercation had taken place, responded by saying she was not going to wait for that to happen, indicating that she was acting preemptively.

Mr. Hargraves confirmed that the subcommittee did not recommend that the complaint be forwarded to the full Panel for review as it did not meet the criteria.

Ms. Belkowitz moved to accept the subcommittee’s recommendation. Mr. Lau seconded the motion and it carried unanimously.

FOIA Update from Counsel (Gloss v. Wheeler): Mr. Bynum iterated the facts of the case, the findings and the dissenting opinion. He further provided the definitions of what constitutes a public meeting of the public body, public business, and what Panel members can and cannot do according to VFOIA guidelines, as established by the findings of this case.

County’s Police Reform Matrix Work Group Recommendations Update: Mr. Hargraves provided a summary of the Matrix Work Group initiative, how the group was implemented post the George Floyd case, and its purpose. Mr. Schott provided additional information about the working group and his role as a non-voting member. Mr. Hargraves briefly summarized the recommendations made by the work group, including providing the Panel either monitoring or investigative authority. He provided that the FCPD would provide their responses to the recommendations at the October 3, 2023 Board of Supervisors meeting.

Mr. Cranford agreed that requesting investigative authority for the Panel would be best to do now as the process may require time and further discussion. Mr. Cranford also provided that monitoring authority is important and further training would be necessary as well.

New Business: Ms. Belkowitz provided updates from her meeting with Chairman Jeff McKay. She provided that they spoke regarding the timeline of the hiring process for the vacant Executive Director role for the Panel. Mr. Cranford provided that the role description changes were almost complete and the position would be posted soon.

Ms. Belkowitz asked Chairman McKay about getting additional access to FCPD case files for Panel members outside of police headquarters and stations. She provided that Chairman McKay would consider that request and discuss it further with FCPD. Ms. Belkowitz shared with Chairman McKay her concerns of safety when conducting Panel meetings and Chairman McKay advised that the best place to hold the meetings would be at the Government Center and other government facilities for best safety practices. Mr. Cranford agreed and provided that he would still like the Panel to be out in the community periodically and not always be limited to government buildings.

Ms. Belkowitz shared that she would like to have trainings on active shooters and safety measures. Mr. Hargraves and Ms. Deen both suggested that the Panel table this discussion for the next Panel business meeting on October 5, 2023.

Adjournment: Mr. Hargraves motioned to adjourn the meeting. Ms. Wolfe seconded the motion and it carried unanimously. The meeting adjourned at 9:20 p.m.

# Procedures Subcommittee: Process and Recommendations Overview

Cheri Belkowitz and Janell Wolfe

Nov. 2, 2023

Police Civilian Review Panel Meeting

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## Our Process

- Focused on *Initial Review Process* and *Public Comment Process*
- Reviewed the Bylaws language related to these 2 processes
- Revised the procedure on *Intake and Processing of Review Requests O-2*. The revised procedure will replace:
  - O-2 Procedure last revised/adopted by the Panel July 23, 2020  
AND
  - O-3 Procedure on *Duties of Panel Review Liaisons* (Dec. 6, 2018)
- Revised the Initial Review Report Template
- Created a new procedure on Public Comment (O-5)

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## Bylaws Changes

- Focused on marking up proposed changes to the Bylaws related to Initial Review Process and Public Comment only
- Goal was to make minimal changes to the Bylaws (and develop more detailed procedures to support the Bylaws)
- Next Steps
  - The Panel will discuss and vote on any language changes it would like to make to the Bylaws
  - The Panel submits proposed changes to the Bylaws to the Board of Supervisors for their consideration and approval

## Procedures Changes

- The Panel can vote on and approve its own procedures

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## Bylaws Changes – Review Process

- Propose removing language from Article VI.B. on 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.

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## Bylaws Changes – Review Process (cont.)

- Adds an (e) to Article VI.D.3. that the Complainant may speak during the Initial Review Process – at the subcommittee and/or at the full Panel meeting when it hears the subcommittee’s recommendation.

(e) At the request of the Panel, or if the Complainant attends and requests an opportunity to be heard during the Initial Review process, the Complainant may speak to the Panel, or a subcommittee thereof, during any meeting where their Complaint is on the agenda. The Complainant, or their representative, shall have the opportunity to state the reasons for filing the Review Request, and the Panel, or a subcommittee thereof, may ask questions of the Complainant regarding those reasons.


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## Revised Procedures – Review Process

- Allows complainants to speak at any of the 3 meetings where the Panel, or a subcommittee thereof, considers their complaint.
- Specifies **CRITERIA** the Initial Review Subcommittee considers: (Article VI.D.3.(a))
  - The Subcommittee reviews Complaints to determine whether:
    - The Complaint alleges **Serious Misconduct or Abuse of Authority** as defined in its Bylaws; and
    - The evidence contained in the investigative file **could lead a reasonable Panel to conclude** that there is **sufficient evidence to support the allegations**.
  - The Subcommittee does not determine whether the Investigation is thorough, complete, accurate, objective and impartial. This is determined at the time of full Panel Review Meeting.

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## Initial Review Process and Review Process – 3 Meetings

	#1 Initial Review Subcommittee Meeting	#2 Initial Review Disposition Meeting	#3 Panel Review Meeting (Full Panel Review)
Definition	A meeting when a subcommittee of the Panel considers whether the full Panel should review the subject Investigation based on the allegations made and whether there is substantiation in the file to support the allegations.  <i>Subcommittee completes an Initial Review Report</i>	A meeting of the full Panel when it considers the recommendation from the Initial Review Subcommittee and votes to determine whether it accepts a Review Request.  <i>If it accepts a Review Request, a Panel Review Meeting is scheduled.</i> 	A meeting where a Review Request is reviewed by the full Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.
Current Procedure	Complainant may attend but does not speak.	Complainant may attend and may speak <i>only</i> if the subcommittee is NOT recommending full Panel Review.	Complainant may attend and may speak. An FCPD representative also speaks.
Proposed Procedure	Complainant may attend and may speak for up to 15 minutes.	Complainant may attend and may speak for up to 15 minutes.  The Complainant is questioned only by Initial Review Subcommittee Members.	Complainant may attend and may speak for up to 15 minutes.

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## Revised Procedures – Review Process (cont.)

- Revised the Initial Review Report Template:
  - New rubric for considering the complainant’s allegations against the criteria (allegations of Abuse of Authority/Serious Misconduct and substantiation in file)
  - Allows space for noting potential missing information
- Specifies that meetings may be rescheduled upon request by a Complainant (at discretion of Panel Chair)
- Specifies that a Representative may speak on behalf of a Complainant
- Guidelines for questioning the Complainant at Initial Review Disposition Meetings:
  - Panel members who did not serve on the Initial Review Subcommittee shall not direct questions to the Complainant(s). Any follow-up questions directed to the Complainant shall be made only by the Initial Review Subcommittee members who have reviewed the investigative file.
- Provides guidelines for handling confidential information during meetings and in reports

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## Bylaws Changes – Public Comment

Article	Current Language	Proposed Language
Article V.C.11 (page 5)	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.	The Panel may <b>conduct up to six Public Comment Meetings annually, sponsored by the Panel or by others, where the public is invited to comment.</b>
Article VII.A.2. (page 13)	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.	The Panel may conduct up to six <b>Public Comment Meetings</b> annually, where it solicits and receives public comment <b>or</b> answers questions <b>about any matter</b> 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.
Exhibit A: Defined Terms (page 18)	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.	Public <b>Comment</b> 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.

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## New Procedures – Public Comment

- Goal was to develop procedures for the Panel to **receive comments or hear from the public** about any matter relating to law enforcement policies, practices, and procedures
- The Bylaws limit the Panel to 6 per year and these meetings may be sponsored *by the Panel or by others*
- Public Comment is different from hearing from a Complainant

### Proposed Procedures:

- Public Comment will be on the agenda at 4 Panel Business Meetings per year, in community centers if possible
- 2 Public Comment Meetings will occur outside of Panel Business Meetings
- Events with public comment sponsored by “Others” count towards the 6 meetings if three or more Panel members attend
- Guides how to respond to questions from the public during/after the meeting

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## **BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL**

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, December 1, 2020, February 23, 2021, July 27, 2021, ~~and July 19, 2022,~~ and

New Date, 2024

### **ARTICLE I. NAME<sup>1</sup>**

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

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<sup>1</sup> 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. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1<sup>st</sup> of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
  - (a) Preside over all Panel meetings at which the Chair is present;
  - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
  - (c) Serve as the Panel's official spokesperson;
  - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
  - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
  - (a) Preside over Panel meetings in the absence of the Chair; and
  - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
  - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

#### **ARTICLE V. QUORUM, VOTING AND MEETINGS**

##### **A. Quorum.**

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

##### **B. Voting.**

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

##### **C. Meetings.**

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
  - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
  - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
  - (a) places that are accessible to persons with disabilities,
  - (b) public buildings whenever practical; and
  - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
  - (a) the date, time, and location of each meeting;
  - (b) the Panel Members present and absent;
  - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
  - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may ~~conduct up to six Public Comment Meetings annually, sponsored by the Panel or by others, where the public is invited to comment. 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~~

**Commented [RR1]:** Suggested New Language here related to Public Comment Meetings. Suggest deleting language that is duplicative with Article VII.A.2.

See also Article VII.A.2. (page 13).

Also see definition for Public Comment Meeting (page 18).

~~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.

**Commented [RR2]:** Suggest deleting the language "but is not limited to..." as category 6 is broad.

If the Panel keeps this language, may need to incorporate an "Other" category into the Initial Review Report.



D. Initial Review and Disposition.

1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:
  - (i) is timely filed; or
  - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an ~~Initial~~ ~~Review~~ of each Review Request and may conduct the ~~Initial~~ ~~Review~~ as a committee of the whole or by subcommittee.

2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees ("Initial Review Subcommittee") comprised of Panel Members to conduct ~~Initial~~ ~~Reviews~~ of Review Requests filed by community members with the Panel.
- (b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).
- (c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.
- (d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

3. Initial Review Subcommittee Process and Report to the Panel

- (a) The Subcommittee shall review a Complaint to determine whether:
  - (i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and
  - (ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.
- (b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.
- (c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.

(d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request and conducts a full Panel

Review Meeting.

~~(d)~~(e) At the request of the Panel, or if the Complainant attends and requests an opportunity to be heard during the Initial Review process, the Complainant may speak to the Panel, or a subcommittee thereof, during any meeting where their Complaint is on the agenda. The Complainant, or their representative, shall have the opportunity to state the reasons for filing the Review Request, and the Panel, or a subcommittee thereof, may ask questions of the Complainant regarding those reasons.

**Commented [RR3]:** This language was added to be consistent with language in Article VI.F.1.(f) where it talks about the complainant participating in the Review Meeting (full Panel review). (page 10)

Also see new definition for Initial Review in the definitions section. (page 17)

4. Initial Disposition Notice

- (a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

E. Pending Proceedings.

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

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

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

F. Panel Review 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.4.7 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/Panel.
  - (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, or their representative, shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the Complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
  - (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
  - (h) At the Panel's discretion, it may request further investigation by the FCPD, and the

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

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

G. Disposition of Review Requests.

1. Timely Completion.

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

2. Panel Findings.

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

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

### A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six Public Comment Meetings annually, where it solicits and receives public comment ~~and or~~ answers questions about any matter relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

### B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

## ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

### A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

### B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

### C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, *et seq.* A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

**Commented [RR4]:** Public Comment language added to Bylaws in 2020.

See also Article V.C.11. on page 5.

Also see new definition for Public Comment Meeting (page 18).

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-Panel~~ 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 and Security~~ 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 1<sup>st</sup> of each year.

**ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY;  
PANEL IMMUNITY**

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

**ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS**

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.



B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

**ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS**

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

**DEFINED TERMS**

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

**Abuse of Authority** has the meaning assigned to the term in Article VI.B.

**Annual Report** means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

**Auditor** means the Fairfax County Independent Police Auditor.

**Board of Supervisors** means the Board of Supervisors of Fairfax County.

**Bylaws** means the Bylaws of the Fairfax County Police Civilian Review Panel

**Chief** means the FCPD Chief of Police.

**Complaint** means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

**Counsel** means the legal counsel that the Board of Supervisors designates to support the Panel.

**FCPD** means the Fairfax County Police Department.

**FCSO** means the Fairfax County Sheriff's Office.

**Initial Complaint** means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

**Initial Disposition Notice** means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the ~~Initial~~ ~~Review~~ described in Article VI.~~C.2D~~.

**Initial Review** means the process by which the full Panel determines if it has authority to review the subject Investigation. The Initial Review process may include a subcommittee of the Panel reviewing a Review Request and making its recommendation to the full Panel.

**Investigation(s)** means an 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 full 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 Comment 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.

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: <b>O-5</b>	Subject: <b>Public Comment</b>
Approval Date: <b>XXX</b>	Review Date: <b>XXX</b>
Signed by Todd Cranford, Chair	

- **Purpose:** To provide procedures for the Fairfax County Police Civilian Review Panel (the “Panel”) to receive comments or hear from the public about any matter relating to law enforcement policies, practices, and procedures.

### **Defining Public Comment Meetings**

- “The Panel may conduct up to six Public Comment Meetings annually, where it solicits and receives public comment or answers questions about any matter relating to law enforcement policies, practices, and procedures.” (Panel Bylaws Article VII.A.2.)
- Public Comment Meetings “may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.” (Panel Bylaws Article VII.A.2)

### *Public Comment Meetings Sponsored by the Panel*

- Public Comments Meetings are distinct from other Panel meetings, where Complainants can speak to the Panel regarding their Complaint.
- Public Comment may be taken at regular Panel business meetings when the Panel opens up the meeting for members of the audience to speak and other Panel meetings organized specifically to hear from the public (i.e., a public forum on topics of interest). Both types of meetings will counted as part of the 6 Public Comment Meetings allowed annually.
  - The Panel will put Public Comment on the agenda at four (4) Panel Business Meetings per year, as its workload allows. Best efforts will be made to hold these meetings in community centers throughout the County.
  - Two (2) Public Comment Meetings will occur outside of Panel Business Meetings, sponsored by the Panel or others.
- Meet and greet or social events sponsored by the Panel in which members of the public are not provided an opportunity to speak will not count as a Public Comment meeting.

*Public Comment Meetings Sponsored by Others*

- When three (3) or more Panel members attend an event sponsored by another entity, where the public is invited to comment on issues within the Panel’s jurisdiction, it will be counted as part of the 6 Public Comment Meetings allowed annually.

**Conducting Public Comment Meetings**

- Staff will ensure that all VFOIA requirements are followed when the Panel holds Public Comment Meetings.
- Staff, in consultation with the Chair, will follow consistent procedures for publicizing the opportunity for the Public to make comments to the Panel and managing the speakers (i.e., providing a sign up for speakers and determining the length of time for each speaker).
- During Public Comment Meetings, Panel members should limit their oral responses to questions from the public to general information when appropriate. In the event an additional response is necessary, Staff in consultation with the Panel Chair, will draft a written response.
- Staff will audio record all Public Comment Meetings sponsored by the Panel.
- Staff will develop a written summary of all Public Comment Meetings.

<b>Fairfax County Police Civilian Review Panel Procedural Memorandum</b>	
No: <b>O-2</b>	Subject: <b>Intake and Processing of Review Requests</b>
Approval Date: <b>XXX</b>	Review Date: <b>XXX</b>
Signed by Todd Cranford, 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. Staff may request assistance from legal Counsel, the Auditor, the Chief, or the County Attorney to determine whether pending litigation exists.
    - If pending litigation is associated with the allegations made within the Complaint, staff will inform the Chair, and the Panel will defer action on the Review Request until the litigation is concluded in conformance with the Bylaws. If pending litigation is not associated with the allegations made within the Complaint, the review process will continue as detailed below.
  - Staff will forward the Review Request to the FCPD 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 explaining the Panel’s process for review.

### **Initial Review Process**

- Staff, in consultation with the Chair, will designate membership of the Initial Review Subcommittee, unless it is determined that the Initial Review should be completed by a committee of the whole.
  - The Initial Review Subcommittees shall be comprised of at least three Panel members, with rotating membership, and one subcommittee member will be appointed as the Chair of the subcommittee.
- Staff will coordinate with the FCPD the dates and times for the Initial Review Subcommittee to review the Investigation File. Subcommittee members should be scheduled to review the file no sooner than the month preceding the full Panel meeting during which the subcommittee will make its recommendation.
- Staff will schedule the meeting date for the Initial Review Subcommittee Meeting and develop the agenda. Staff will post public meeting notice and meeting materials in accordance with VFOIA.
- Staff will notify the Complainant of the date of the Initial Review Subcommittee meeting and the date of the full Panel meeting at which the subcommittee intends to make its recommendation. Correspondence to the Complainant will include instructions on how they can address the Panel regarding their Review Request at upcoming meetings. The Subcommittee meeting may be rescheduled upon request by the Complainant, at the discretion of the Panel Chair.
- After the review of the Investigation File, the Subcommittee will meet at an Initial Review Meeting to (i) determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel, and (ii) complete the Initial Review Report Template (Attachment 1), which will note the Subcommittee's findings and recommendation.
- The Subcommittee reviews Complaints to determine whether: (Article VI.D.3.(a))
  - The Complaint alleges Serious Misconduct or Abuse of Authority as defined in its Bylaws; and
  - The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.
- The Subcommittee does not determine whether the Investigation is thorough, complete, accurate, objective and impartial. This is determined at the time of full Panel Review Meeting.

- At the Initial Review Subcommittee Meeting, the Subcommittee will vote on whether to recommend or not recommend the full Panel conduct a Review of the Complaint. A unanimous vote is required for the Subcommittee to recommend a Complaint not be considered by the full Panel.
- At the Initial Review Subcommittee Meeting, the Complainant, or their Representative, is given their first opportunity to speak to the Panel. The Complainant will have up to 15 minutes to explain why they requested a review. Additional time to address the Subcommittee will be allowed at the discretion of the Subcommittee Chair. Subcommittee members may ask questions of the Complainant to complete their Initial Review and develop a recommendation.
  - With advanced request, translation services will be provided for Complainants that need assistance to present to the Panel or respond to questions from Panel members.
- If there is indication there is information missing from the Investigative file:
  - The Subcommittee should describe the type of missing information in the Initial Review Report.
  - The Subcommittee should submit to the FCPD contact information for any persons who were not interviewed with a request for further investigation of the matters under review.
- Staff will complete the Initial Review Report and prepare a summary of the Initial Review Subcommittee meeting. Both documents will be provided to the Panel in the meeting materials for the full Panel meeting during which the subcommittee will make its recommendation.
- After the Initial Review Subcommittee meeting, Staff will send correspondence to the Complainant informing them of the Subcommittee's recommendation, the date of the meeting when the Subcommittee will make its recommendation to the full Panel, and when the Complainant has the opportunity to speak to the Panel.



### **Initial Review Disposition**

- The Initial Review Subcommittee will make its recommendation to the full Panel at the next meeting of the Panel following the Subcommittee meeting.
- As part of its report to the full Panel, the Subcommittee will summarize the Complaint, the FCPD investigation, and any information presented by the Complainant. The Subcommittee will present its recommendation whether the full Panel takes up Review of the Complaint.
- The Complainant, or their Representative, will have the opportunity to speak at this meeting before the Panel votes. This is the second opportunity the Complainant, or their representative, has to speak to the Panel. The Complainant will have up to 15 minutes to explain why they requested a review.
  - With advanced request, translation services will be provided for Complainants that need assistance to present to the Panel or respond to questions from Panel members.
- Additional time for the Complainant to address the Panel will be allowed at the discretion of the Panel Chair.
- Panel members who did not serve on the Initial Review Subcommittee shall address any questions to the Subcommittee members who have reviewed the investigative file.
- Panel members who did not serve on the Initial Review Subcommittee shall not direct questions to the Complainant(s). Any follow-up questions directed to the Complainant shall be made only by the Initial Review Subcommittee members who have reviewed the investigative file.
- The full Panel will consider the recommendation from the Subcommittee and any statements made by the Complainant, and vote to determine whether it accepts a Review Request and will conduct a full Panel Review of the Complaint.
- Staff will draft and send the Initial Disposition Notice to the Complainant notifying the Complainant of the Panel's vote to undertake a full Panel Review of the subject Investigation.
  - Staff will send the Initial Disposition Notice to the Complainant within 30 days of receipt of the Investigation Report.

- If the Panel concludes that it will conduct a Review, the letter will notify the Complainant of the date and time of the Panel Review Meeting and invite the Complainant(s) to attend the Panel Review Meeting.
- If the Panel will conduct a Review Meeting, Staff, in consultation with the Chair, will set the date for the Panel Review Meeting and notify the Complainant at least fourteen (14) days before the Review Meeting in accordance with Article VI.F.1.(c).
  - A Review Meeting may be rescheduled upon request by the Complainant, at the discretion of the Panel Chair.
- Staff will coordinate with the FCPD the dates and times for the Panel members to review the Investigation File.
- Staff, in consultation with the Chair, will determine whether the FCPD should be asked to appear at the Panel Review Meeting. If so determined, Staff will send official correspondence to the Chief requesting a representative of the FCPD knowledgeable about the subject Investigation to appear at the Panel Review Meeting.

### **Panel Review Meetings**

- The Staff, in consultation with the Chair, will prepare and post the Panel Review Meeting Notice in accordance with Article VI.F.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 Chief, 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 VI.F.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, or their Representative, will have up to 15 minutes to speak to the Panel to state their 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.G.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.

### **The Panel Review Report**

- Staff will draft the Panel Review Report. A Panel member, to be determined, will review the draft report prior to its presentation to the full Panel.
- The Review Report will not contain an officer's personnel record or specific officer discipline, other than what is specifically disclosed by the FCPD in a disposition letter or at a Panel meeting.
- The Review Report will not reveal information that jeopardizes the safety of an individual.
- In writing the Review Report, respect will be given to the language that the Complainant or others involved use to identify or describe themselves. In other words, Review Reports will refer to Complainants and others as they refer to themselves (Black, African American, White, Caucasian, Hispanic, Latinx, Native American and so on). Where the race or ethnicity of the Complainant or others is used in the Review Report, the identifying term will be designated as a proper noun and capitalized. References to a Complainant's (or other's) race or ethnicity will be written in a consistent manner throughout the Review Report. (The source for this policy is the Publication Manual of American Psychological Association, 7<sup>th</sup> Edition).
- If the Complainant does not indicate their race, gender and ethnicity on their Complaint form, the Panel will contact the Complainant to determine their preference.
- If the FCPD notifies the Panel that certain information in the investigative file may reveal specific sensitive investigative techniques or contain information that is likely to jeopardize ongoing or future investigations, and such information is not contained in the Complaint itself, the Panel will address FCPD concerns with the Panel's counsel in a closed meeting to resolve the issues.
- Staff will circulate the draft report for comment with the agenda prior to the meeting during which the Panel Review Report will be discussed.
- The report author(s) 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 author(s) will finalize the Panel Review Report if necessary.
- 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 Independent Police 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.

### **Handling of Confidential Information During Review Process**

- Panel members should not disclose confidential or sensitive information during its meetings or in its reports.
  - Panel members should refrain from stating the names of Complainant(s), officer(s), and other involved individuals during its meetings and should refer to cases by their assigned CRP case number.
  - Panel reports will not contain identifying information for either the police officer(s), the Complainant(s), or witnesses, confidential informants, victims, personal information including names, social security numbers, dates of birth, driver's license numbers, agency issued identification numbers, student identification numbers, criminal or employment records, or residential addresses 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.
  - Staff should not include Complainants' names or officers' names in meeting summaries and should refer to cases by their assigned CRP case number.
- Staff will release information as required by law when in receipt of a Virginia Freedom of Information (VFOIA) request.

### **Definitions**

- ***Initial Review Subcommittee Meeting:*** A meeting when a subcommittee of the Panel considers whether the full Panel should review the subject Investigation based on the allegations made and whether there is substantiation in the file to support the

allegations. The Subcommittee completes an Initial Review Report to submit its recommendation to the full Panel.

- *Initial Review Disposition Meeting*: A meeting of the full Panel when it considers the recommendation from the Initial Review Subcommittee and votes to determine whether it accepts a Review Request. If it accepts a Review Request, a Panel Review Meeting is scheduled.
- *Panel Review Meeting*: A Panel Meeting where a Review Request is reviewed by the full Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.
- *Complainant's Representative*: A person who can speak on behalf of the Complainant at Panel meetings and answer questions on their behalf.

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## Initial Review Report – Subcommittee Recommendation to the Fairfax County Police Civilian Review Panel

### Request for Review – Basic Information

**CRP Complaint Number:** CRP-#-#

**Subcommittee Members:**

- Panel Member Name, Panel Member
- Panel Member Name, Panel Member
- Panel Member Name, Chair of Subcommittee

**Key Dates:** Date of Review Request, Date of Incident, Date of Initial Complaint (to Panel or FCPD), Date of FCPD Disposition Letter

### Subcommittee Authority and Purpose

The Subcommittee conducts an Initial Review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel. (See Panel Bylaws Article VI.D.2.(d))

The Subcommittee reviews complaints to determine whether: (Panel Bylaws Article VI.D.3.(a))

- (1) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in its Bylaws; and
- (2) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.

### Subcommittee's Role in Initial Review Process

The Subcommittee Initial Review Report sets forth the Subcommittee's recommendation. A unanimous Subcommittee vote is required to determine that a Complaint does not meet the criteria set forth in the Bylaws. The full Panel may or may not accept the Subcommittee's recommendation on whether to review a complaint.

The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request. If the full Panel accepts the recommendation, it will conduct a full Panel Review Meeting. (Panel Bylaws Article VI.F.)

### Categories of Abuse of Authority or Serious Misconduct

The Panel determines whether allegations can be categorized as one or more of the following: (Panel Bylaws Article VI(B))

- A. Use of abusive racial, ethnic or sexual language or gestures.
- B. Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.
- C. Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.
- D. Reckless endangerment of detainee or person in custody.
- E. Violation of laws or ordinances.
- F. Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

Complainant Allegations		
<p>The Panel subcommittee considered the following allegation(s) by the Complainant to determine (1) whether each constitutes Serious Misconduct or an Abuse of Authority as defined above, and, if yes, (2) whether the Investigation Report reveals any observable substantiation.</p>		
Allegation(s)	(1) Abuse of Authority or Serious Misconduct Identify Category (A-F)	(2) Substantiated in Investigative File Indicate Yes/No
<p><i>List each allegation below as stated by the Complainant. Indicate in the next two columns whether the two criteria are met for each allegation.</i></p>		

Missing Information
<p>If there is any indication there may be missing information from the investigative file, describe it here.</p>

Subcommittee Findings and Recommendation	
<p>Check the Subcommittee's recommendation to the full Panel and keep one statement below that applies based on criteria met.</p>	
<p><input type="checkbox"/> Subcommittee Does Not Recommend full Panel Review</p>	<p><b>Criterion 1 is not met:</b> The Subcommittee unanimously finds that the allegation(s) made by the Complainant <u>do not</u> meet the threshold of Serious Misconduct or Abuse of Authority and therefore the Panel <u>does not</u> have authority to review the complaint. The Subcommittee <u>does not</u> recommend that the full Panel take up review of this Complaint.</p>
<p><input type="checkbox"/> Subcommittee Recommends full Panel Review</p>	<p><b>Criterion 1 is met, but Criterion 2 is not met:</b> The Subcommittee unanimously finds that the complaint alleges Serious Misconduct or Abuse of Authority, however, the evidence contained in the investigative file <u>could not</u> lead a reasonable Panel to conclude there is sufficient evidence to support allegations. Further, the Subcommittee has no reason to believe there is missing information from the Investigation Report. Therefore, the Subcommittee <u>does not</u> recommend that the full Panel take up review of this Complaint.</p> <p><b>Criteria 1 and 2 are both met:</b> The Subcommittee finds that the allegation(s) made by the Complainant meet the threshold of Serious Misconduct or Abuse of Authority as defined above AND that the evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations. Therefore, the Panel subcommittee recommends that the full Panel take up review of this Complaint.</p>