

**Review of Information Release  
Policies and Procedures  
of the Fairfax County Police Department**

**Findings and Recommendations**

**April 2016**

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## INTRODUCTION

Around the country, police agencies are finding that transparency and open communication are critical for strengthening the public's trust in the police. To this end, many agencies that are striving to improve police-community relationships are re-examining their policies and practices regarding the public disclosure of information, especially in the wake of an officer-involved shooting or other serious incident.

These incidents raise many difficult questions with respect to public disclosure. For example, should police agencies publicly release the name of the officer who was involved in the event? If so, how soon after the incident should this information be disclosed? What other information about an officer-involved incident should be released? Who should make these decisions? And, perhaps most importantly, how can police agencies balance the need for transparency with other valid interests, such as the need to protect the officer's safety and the integrity of an investigation?

The Fairfax County Police Department (FCPD) and other Fairfax County officials faced many of these questions following the August 2013 shooting death of John Geer involving an FCPD officer. For more than a year after the incident occurred, and despite repeated requests by the public and news media, the FCPD declined to disclose information regarding the case – including the name of the officer involved.

This perceived lack of transparency, as also expressed by some in the public and the news media with respect to past FCPD officer-involved critical incidents, raised many concerns within the Fairfax community. On December 22, 2014, Fairfax County received a court order as part of a wrongful death lawsuit filed by Mr. Geer's partner, Maura Harrington, on behalf of their daughters. The court order compelled Fairfax County to turn over to Ms. Harrington certain documents and investigative files related to the case.<sup>1</sup> The FCPD complied with the court order. On January 5, 2015, the FCPD and Fairfax County released to the community the name of the officer involved in the shooting, along with additional information about the case.<sup>2</sup> On January 30, 2015, the Fairfax County Board of Supervisors released and posted for the public a

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1 Nineteenth Judicial Circuit of Virginia (December 22, 2014),

<http://www.fairfaxcounty.gov/courts/circuit/pdf/opinions/cl-2014-11477-harrington-v-roessler-jr.pdf>.

2 Fairfax County Releases Update on John Geer Case, <http://www.fairfaxcounty.gov/news/2015/geer-case-information.htm>.

significant amount of investigative files and documents from the case.<sup>3</sup> In response to community concerns, in March 2015 the Fairfax County Board of Supervisors formed an Ad Hoc Police Practices Review Commission to evaluate the FCPD's policies and practices with respect to, among other things, police use of force, communications, and oversight.

The Board of Supervisors also directed a separate and independent review of the FCPD's policies and practices regarding public disclosure, particularly with respect to releasing information following an officer-involved shooting or other serious incident. Fairfax County contracted with the Police Executive Research Forum (PERF) to conduct this review, which resulted in this report.

(Prior to this current study, the FCPD contracted with PERF in June 2014 to conduct a policy and practice review of the FCPD's policies, procedures, directives, and training materials and curricula related to police use of force. That review resulted in a report containing 71 recommendations in various topic areas, which the FCPD has begun to address.)<sup>4</sup>

This report shares PERF's findings regarding FCPD's existing public disclosure process. It also examines the current legal and policy landscape with respect to public disclosure, and explores how other law enforcement agencies across the region and around the country address these issues. This report also provides recommendations, based on this review of best practices and lessons learned, for how the FCPD can improve its disclosure policies and practices in the future.

## Scope of Services

The scope of services provided to the FCPD consisted of three key tasks:

1. Review and analysis of current county policies, procedures, orders and practices related to the public disclosure of information regarding officer-involved shootings and other significant incidents. The following General Orders, Standard Operating Procedures and other documents were reviewed:
  - FCPD General Orders:
    - General Order 401: Public Information

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3 Documents Published in John Geer Case, <http://www.fairfaxcounty.gov/news/2015/geer-case-materials.htm>.

4 Police Executive Research Forum, Use-of-Force Policy and Practice Review of the Fairfax County Police Department, Final Report (June 2015), <http://www.fairfaxcounty.gov/policecommission/materials/fairfax-county-police-dept-final-report-june19.pdf>.

- General Order 401.1: Release of Information
  - General Order 430.8: Mobile In-Vehicle Video Program
  - FCPD Standard Operating Procedures:
    - SOP 12-045: Investigation of Deadly Force Deployment
  - Relevant County and State statutes
  - Fairfax County Commonwealth's Attorney's Office policies for the release of information relevant to use-of-force cases and other significant law enforcement incidents
  - Other relevant documents as identified by County officials.
2. Review and analysis of policies, procedures and practices of other local governments' law enforcement organizations, to identify best practices to be considered by Fairfax County.

To accomplish this task, PERF reviewed the relevant policies, procedures and practices of the following agencies in the Washington, DC/Baltimore region:

- Arlington, VA Police Department
  - Alexandria, VA Police Department
  - Prince William County, VA Police Department
  - Loudoun County, VA Sheriff's Office
  - Metropolitan (DC) Police Department
  - Montgomery County, MD Police Department
  - Prince George's County, MD Police Department
  - Anne Arundel County, MD Police Department
  - Howard County, MD Police Department
  - Baltimore, MD Police Department
3. Engage stakeholders (elected officials, news media, members of the public and/or public organizations, law enforcement officials, etc.) to obtain various perspectives on the issues.

Members of PERF's project team interviewed the following individuals:

- Fairfax County Executive and senior staff
- Fairfax County Board of Supervisors
- Fairfax County Chief of Police and Department staff
- Members of the Ad Hoc Police Practices Review Commission
- Fairfax County Attorney and relevant staff

- Fairfax County Commonwealth's Attorney.

PERF then conducted a community focus group meeting. Approximately 25 to 30 community members were present and included officials of the following organizations<sup>5</sup>:

- American Civil Liberties Union
- Fairfax Communities of Trust
- FCPD Chief's Diversity Recruitment Council
- Asian-American Law Enforcement Society
- FCPD Police District Citizen Advisory Committees
- Prior graduates of the FCPD's Citizen Police Academy.

PERF also conducted a focus group with approximately one dozen members of the local and national news media. Participants represented a mix of print, television, radio, and online news organizations.

## Methodology

PERF used several methodologies for the collection of information, including: personal interviews with County and FCPD officials and community stakeholders; the collection, review, and analysis of available data such as Department policies and applicable federal and state laws; personal on-site observations; and review of internal operating procedures.

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<sup>5</sup> The President of the Fairfax Chapter of the NAACP was invited but was unable to attend. Discussion with the chapter president was later conducted via a telephone interview.

## SUMMARY OF RECOMMENDATIONS TO FCPD

The purpose of these recommendations is to guide the FCPD as it develops policies and practices for publicly disclosing information relating to officer-involved shootings and other law enforcement incidents. These recommendations, which are based on Virginia law, PERF's interviews with key stakeholders, and a review of law enforcement public disclosure policies and practices in the Washington, DC Metropolitan area and throughout the country, are intended to promote transparency and community trust while protecting the safety of FCPD officers and the people of Fairfax County. The language below, which was taken from FCPD's *Standard Operating Procedure 12-045: Investigation of Deadly Force Deployment*, should serve as a guiding principle for the agency. It states:

*“Public trust is paramount to the Department's mission and to the ongoing support and respect of the community. Police officers are entrusted with unique powers and authorities, to include the power of arrest and the authority to use deadly force to protect themselves or others from death or serious injury, and the Department, in turn, has a responsibility and duty to be as transparent as possible.”*

**Given these unique powers and authorities, the FCPD should adopt a policy of transparency and openness with the news media and the public, releasing all relevant information on officer-involved shootings and other critical police incidents—including the officer's name—so long as it is safe to do so.**

**PERF recommends that the FCPD should have a presumption that it will release the officer's name within two to five days following an incident, after a thorough risk assessment is conducted to determine whether a credible threat exists against the officer or the officer's family. If the FCPD determines that a credible threat does exist, the officer's name may be withheld as long as the threat remains, and the FCPD should communicate this to the public as the reason for withholding the officer's name. Once the threat has passed, the Department should promptly release the officer's name.**

Regardless of when the officer's name is released, immediately following the incident (within the first 24-48 hours), the FCPD should release other important information about the officer involved, such as his or her rank, number of years on the force, and past history of other officer-involved shootings. **This type of information can represent an initial step towards demonstrating transparency and informing the public, without putting the officer at risk.**

**In the wake of an officer-involved shooting or other critical incident, police agencies should continue to re-evaluate the situation and consider whether they can release additional information as conditions change.**

**And the Department should continually explain to the news media and the public *why* it is releasing certain information or not releasing other information. The public has a right to know what the police are doing, and if the Department withholds information without explanation, it damages relationships between police and the community.**

The recommendations that have resulted from this review are provided in greater detail below.

***Recommendation: General Department-Wide Policy, Practice and Philosophy***

The FCPD should modify current policies to reflect a culture of transparency. The next section of this report contains specific language that the FCPD should use to modify its written policies. A culture of transparency includes consistently disclosing timely and detailed information about officer-involved critical incidents or other serious events. When the Department is unable to release information, the media and public should be provided with information about why that information should not be released at that time. The Virginia Freedom of Information Act<sup>6</sup> (FOIA) affords law enforcement agencies broad discretion to withhold information from public release. **However, the FCPD should adopt a policy that favors disclosure, even when it is not necessarily required by Virginia's FOIA law.**

**The FCPD's decisions about whether to publicly disclose information should be based on what is in the best interests of the community as a whole.**

- **Decisions should take into account the impact that disclosure has on public safety, agency transparency and accountability, and police-community relationships.**
- **Decisions should *not* be based solely on fears that disclosure would lead to litigation or unfavorable media coverage.**

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<sup>6</sup> Va. Code Ann. § 2.2-3706.

***Recommendation: Enhancement to FCPD Public Affairs Bureau Staffing and Organization***

The position of Director of the Public Affairs Bureau should be staffed by a civilian employee with extensive media-related education and experience, not a sworn officer. The director must possess crisis communication skills and have the ability to work collaboratively with the community, the media, and county personnel. The Public Affairs Bureau director should preferably be an at-will position and should report directly to the Chief of Police.

***Recommendation: Response to Freedom of Information Act Requests***

Responses to requests for information under FOIA should be handled by a centralized records custodian who is located outside of the Internal Affairs Bureau, where FOIA requests are currently processed. The custodian should be provided proper training and guidelines for responding to FOIA requests.

***Recommendation: Disclosing Information Following Officer-Involved Shootings and Other Critical Incidents***

**The Chief of Police should make the final decisions about whether and when to publicly release information following an officer-involved incident.** When making these decisions, the Chief of Police can seek input from various county and FCPD leaders, but the Chief of Police is ultimately responsible for releasing critical incident information. In addition, the Chief of Police should personally conduct initial media briefings with assistance from the Department's Director of the Public Affairs Bureau.

**During the first 24-48 hours immediately following an officer-involved shooting or other serious incident, the FCPD should publicly disclose, as soon as possible, the following information:**

- Preliminary facts about the incident (e.g., where and when the incident occurred, the outcome of the incident).
- Preliminary information about the officer(s) involved, such as the length of time the officer has been with the FCPD, the officer's rank, where the officer is assigned, the officer's past history of any other officer-involved shootings, and the officer's current status (officer on paid leave pending the investigation, etc.).
- An estimated time frame for how and when further information will be released. The FCPD should make clear to the public that, although it needs time to conduct a full threat

assessment to determine whether there are any credible threats to the involved officer's safety, the Department's goal is towards eventual full disclosure—including the officer's name—at a time when it is appropriate.

**Within two to five days following an officer-involved shooting or other serious incident, the FCPD should publicly disclose the name of the involved officer unless there are extenuating circumstances, such as credible threats to the officer's safety.**

- This two-to-five-day period is recommended to give the Department time to conduct a full threat assessment to determine whether publicly releasing the officer's name would put the officer at risk of harm. It also gives officers time to notify family members and friends about the incident and to take appropriate safety precautions.
- If the officer's name is not released, that decision should be re-evaluated on a daily basis as threats or other conditions may change.
- The performance of a formal threat assessment should continue to occur as stated in Standard Operating Procedure 12-045: Investigation of Deadly Force Deployment.

**If the FCPD decides that a credible threat against the officer precludes releasing the officer's name at that time, it should promptly release a statement that clearly explains the basis for this decision. And it should consider promptly releasing information about the officer's history, including any prior involvement in an officer-involved shooting, without naming the officer. Releasing this information can help to maintain the community's trust at a critical time, while protecting the officer's safety by not releasing his or her name. However, once the threat against the officer has passed, the Department should promptly release the officer's name.**

**The FCPD should continue to provide timely updates about the incident throughout the duration of the investigation.**

- Policies should outline a clear process for releasing regular updates (e.g., who will authorize the release, the timing of the updates, what information to release).
- Policies should also outline a variety of methods for providing the updates (e.g., on Twitter or other social media, through written media statements, on an official Department blog).
- The Public Affairs Bureau director should make himself or herself available to answer questions throughout the duration of the investigation.

**At the *conclusion* of an investigation into an officer-involved incident (i.e., after all court proceedings have concluded, or, if there are no legal actions taken in the case, after the FCPD's investigation is closed):**

- The FCPD should publicly release the police reports and supplemental police reports from the criminal investigation, after redacting information as necessary to address privacy concerns.
- The FCPD should release the findings from administrative or Internal Affairs investigations, but it should not release the full administrative or Internal Affairs investigative files or reports. As explained in more detail later in this report, these records should be protected because maintaining their confidentiality is critical for ensuring the effectiveness of the internal investigation process.<sup>7</sup> Without the promise of confidentiality, officers may be reluctant to cooperate with internal investigations or to speak freely about potential wrongdoing by fellow officers.<sup>8</sup>

***Recommendation: Disclosing Information about Other Types of Incidents***

The FCPD should continue taking steps to proactively release timely information regarding matters of public interest, including criminal activity, traffic alerts, weather events, etc.

When criminal activity or other public safety threats occur, the FCPD should provide timely information to the public as soon as possible following the event. The goal of releasing this information is to keep the public as informed as possible about the incident, so the information should include basic facts about the event, the extent of the public threat, the FCPD's immediate next steps, and whether a public information officer (PIO) is on the scene or otherwise available to brief reporters. The FCPD should continue to provide ongoing updates as more details are known.

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<sup>7</sup> *United States v. Under Seal (In re Grand Jury)*, 478 F.3d 581 (4th Cir. 2007); Virginia Police Chiefs Foundation, Internal Affairs Manual (2010), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj1-eWY2eDJAhVELyYKH9CaIQFggdMAA&url=http%3A%2F%2Fwww.vapolicefoundation.org%2Fdocuments%2FIAManualDraft2010.docx&usq=AFQjCNEyowq7xHv-LqoX1YcPEdR6nkk0uA&sig2=kQBEjuh9K63HG\\_C4GhMIQA&cad=rja](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj1-eWY2eDJAhVELyYKH9CaIQFggdMAA&url=http%3A%2F%2Fwww.vapolicefoundation.org%2Fdocuments%2FIAManualDraft2010.docx&usq=AFQjCNEyowq7xHv-LqoX1YcPEdR6nkk0uA&sig2=kQBEjuh9K63HG_C4GhMIQA&cad=rja) .

<sup>8</sup> Ibid.

The FCPD should utilize a wide variety of platforms for releasing information, including social media (e.g., Twitter and Facebook), the Department's website, and written statements to the news media.

## REVIEW OF RELEVANT LAWS AND POLICIES

PERF reviewed relevant federal, state and local statutes as well as FCPD's General Orders and Standard Operating Procedures (SOPs) to determine whether FCPD's public release policies comply with relevant legal standards and best practices. Although FCPD's policies comply with these laws and contain many useful directives, PERF made recommendations for change in a few key areas.

### Compliance with Relevant County, State, and Federal Statutes

The following describes the legal standards regarding public disclosure set forth by Virginia's Freedom of Information Act (VFOIA) and Virginia's Law Enforcement Officers Procedural Guarantee Act.

#### *Virginia's Freedom of Information Act*

Public requests for information in Fairfax County, including requests for FCPD files and records, are governed by VFOIA.<sup>9</sup> Under VFOIA:

- Law enforcement agencies are **required** to disclose the following basic incident information about a criminal felony offense: a general description of the criminal activity; the date and location of the alleged offense; the identity of the investigating officer; and a general description of any injuries suffered or property damaged. **However, agencies do not have to release this information in certain limited circumstances, for example, if doing so is likely to jeopardize the safety of an individual, or to compromise an ongoing investigation or prosecution.**
- Law enforcement agencies have **discretion** about releasing **criminal investigative files, personnel records, and records of administrative investigations** relating to allegations of wrongdoing by agency employees.

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<sup>9</sup> "Virginia Freedom of Information Act." Fairfax County, Virginia website.  
<http://www.fairfaxcounty.gov/opa/foia.htm>.

Under VFOIA, criminal and administrative investigative files are treated similarly – both can be disclosed at the discretion of the police department. Therefore, because this section of PERF’s report is examining only whether the FCPD’s disclosure policies comply with VFOIA, criminal and administrative investigative files are discussed interchangeably unless otherwise noted. This does not suggest that FCPD officials should always treat criminal and administrative investigations the same when determining when to disclose information, as factors other than compliance with VFOIA (e.g., the public interest in obtaining information, protecting the officer’s safety, etc.) will play a role in those decisions.

### **Releasing Information During an Ongoing Criminal or Administrative Investigation**

The FCPD General Orders and SOPs that PERF reviewed are in compliance with VFOIA. Under this law, FCPD is legally allowed to withhold files relating to a criminal or administrative investigation into an officer-involved shooting or other critical incident.

However, VFOIA does not provide an automatic exemption for investigative records. **In other words, the law does not *prohibit* FCPD from releasing information regarding an officer-involved shooting or other critical incident, even if a criminal or administrative investigation is ongoing.**

In addition to reviewing VFOIA, PERF reviewed the federal FOIA law<sup>10</sup> and disclosure laws from neighboring jurisdictions (Maryland and the District of Columbia). These jurisdictions all express a common public policy goal behind their public disclosure laws: to promote transparency regarding the affairs of government by giving the public access to information.<sup>11</sup> However, the laws in these jurisdictions also recognize that there may be times when protecting other interests—such as privacy rights, an individual’s safety, or the integrity of an ongoing investigation—outweighs the public’s right to know. This is why each of the disclosure laws that PERF reviewed include exemptions for items such as personnel records,<sup>12</sup> disclosures that would constitute an unwarranted invasion of privacy, and investigatory files, particularly where such files would interfere with enforcement proceedings or endanger the safety of an individual.

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10 5 U.S.C. § 552, <https://www.law.cornell.edu/uscode/text/5/552>.

11 See VA Code Ann. §2.2-3700; MD Annotated Code §4-103; D.C. Code §2-531. The federal website, [www.foia.gov](http://www.foia.gov), describes the Freedom of Information Act as the law that keeps citizens “in the know” about their government.

12 However, the District of Columbia’s freedom of information laws does not list personnel records as an exception as explicitly as do the federal law and the laws of Maryland and Virginia.

In places like Virginia, where the public disclosure law gives discretion to release investigative files, law enforcement agencies must balance these various interests when making decisions about what information to release. When a criminal or administrative investigation or prosecution is ongoing, it may be true in some cases that protecting the integrity of the investigation or an individual's safety outweighs the public's right to know.

**However, this does not mean that agencies should enact a blanket exemption against releasing information about ongoing investigations. Instead, they should weigh these interests and make decisions on a case-by-case basis. Even for ongoing cases, it is important to release as many facts as possible, and as soon as possible, so the public feels it is being kept informed.**

Some of the factors that the FCPD should consider when deciding whether to release information during an ongoing criminal or administrative investigation include: the public's interest in obtaining the information; the need to promote agency transparency and accountability; and the impact that releasing or withholding information will have on the department's relationship with the community, on the safety of the individuals involved, and on the integrity of the ongoing investigation.

For example, **immediately** following an officer-involved shooting or other critical incident (e.g., **within the first 24-48 hours**), a police agency is often balancing many goals that can include: launching an initial investigation into the incident; assessing whether there are any safety risks to the involved officer, witnesses, or others; and responding to inquiries from the public and news media. During this period when there are still so many unknowns, the police agency might find that it is better to release as many preliminary facts as possible in order to keep the public informed, but may choose to delay releasing other information until the initial fact-finding and threat-assessment processes have been completed.

**After the initial fact-finding and threat-assessment processes have been completed (e.g., two to five days following the incident), the agency should have learned enough facts about the event and any potential safety risks to release additional information -- including the officer's name, unless there are credible threats to the officer or the officer's family.** This case-by-case approach is allowed under VFOIA and represents a reasonable way to balance the public's right to know with protecting the integrity of the investigation and the safety of those involved.

### **Releasing Information after an Investigation Is Concluded**

The legal parameters may be less clear when it comes to disclosing information about criminal and administrative cases *after* the investigation and court proceedings have both concluded. There is not much statutory guidance as to whether the disclosure exemptions apply to closed cases. The District of Columbia's disclosure law specifically states that information can be withheld only to the extent that production interferes with **ongoing** investigations conducted by the Office of Police Complaints. (However, the Office of Police Complaints is independent of the Metropolitan Police Department). Similarly, guidance provided by Maryland Office of Attorney General suggests that once an investigation closes, the records may need to be produced.<sup>13</sup> In the absence of clear legal directives, when determining whether to release information after a case is closed, law enforcement agencies should again look at the facts of each case and attempt to balance the various interests involved.

For closed criminal cases (i.e., after all court proceedings have concluded, or, if there are no legal actions taken in the case, then after the FCPD's investigation is closed), the interest of transparency may be more likely to outweigh the need to protect a person's safety or the integrity of an investigation/prosecution than it would be for ongoing cases. Additionally, public dissatisfaction tends to increase when little information is disclosed even after a case is over. **Therefore, the best approach for closed criminal cases may be to release the police reports and supplemental police reports from the criminal investigation, but to redact information that must continue to be protected for the sake of privacy, safety, or some other legitimate reason (e.g., identification information, information regarding juveniles, etc.).** This release should be in consultation with the Commonwealth's Attorney's Office to ensure no adverse impact on potential future proceedings.

When determining what information to release regarding a closed administrative or Internal Affairs investigation, there is an additional interest that the FCPD must consider – the role that confidentiality plays in ensuring the effectiveness of the internal investigation process. In holding that a police department did not have to turn over files from an internal investigation to a federal grand jury, the United States Court of Appeals for the Fourth Circuit (which governs Virginia) discussed the importance of keeping these records confidential.<sup>14</sup> The court stated:

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13 Maryland Public Information Act Manual (14<sup>th</sup> ed., October 2015) at p. 3-34.

14 *United States v. Under Seal (In re Grand Jury)*, 478 F.3d 581 (4th Cir. 2007).

The internal investigation mechanism serves the same purpose of a criminal investigation by the United States Attorney's Office or Department of Justice: to uncover, and ultimately to deter, civil rights violations and other abuses . . . Yet such investigations face an uphill battle due to the so-called 'blue wall,' the tendency of law enforcement officers to place solidarity above all else and to be less than fully cooperative with investigations of fellow officers. . . **In such a setting, the confidentiality of internal investigations may be not only desirable but essential.**<sup>15</sup> (*Emphasis added.*)

As the court explained, officers are often reluctant to cooperate with internal investigations out of fear that they will be harassed, ostracized, or threatened for speaking openly about a fellow officer's misconduct.<sup>16</sup> If officers know that the statements they make during an internal investigation could be made public, they might be even more hesitant to cooperate.<sup>17</sup> The Virginia Police Chiefs Foundation (VPCF), which is the educational and training arm of the Virginia Association of Chiefs of Police, also favors keeping internal investigative files confidential. In its model policy regarding internal affairs investigations, VPCF states: "It is of the utmost importance that all internal investigations conducted by the [police department] be handled in a confidential manner both internally and externally. . . External confidentiality is critical to the effectiveness of the Department's internal affairs function."<sup>18</sup>

**Recommendation:** *PERF recommends that at the conclusion of a criminal investigation into an officer-involved incident (i.e., after all court proceedings have concluded, or, if there are no legal actions taken in the case, then after the FCPD's investigation is closed), the FCPD should publicly release the police reports and supplemental police reports from the investigation, after they have been redacted to address confidentiality concerns (as identified above). The FCPD should release the findings from Administrative or Internal Affairs investigations, but it should not release*

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15 Ibid.

16 Ibid.

17 Ibid.

18 Virginia Police Chiefs Foundation, Internal Affairs Manual (2010),

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj1-eWY2eDJAhVELyYKH9M9CaIQFggdMAA&url=http%3A%2F%2Fwww.vapolicyfoundation.org%2Fdocuments%2FIAManualDraft2010.docx&usq=AFQjCNEyowq7xHv-LqoX1YcPEdR6nkk0uA&sig2=kQBEjuh9K63HG\\_C4GhMIQA&cad=rja](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj1-eWY2eDJAhVELyYKH9M9CaIQFggdMAA&url=http%3A%2F%2Fwww.vapolicyfoundation.org%2Fdocuments%2FIAManualDraft2010.docx&usq=AFQjCNEyowq7xHv-LqoX1YcPEdR6nkk0uA&sig2=kQBEjuh9K63HG_C4GhMIQA&cad=rja) .

*the full investigative files or reports. It is important to keep the full files or reports from Administrative or Internal Affairs investigations confidential, as officers may be more hesitant to cooperate with internal investigations if they knew that their statements would eventually be made public.*

### **Virginia's Law Enforcement Officers Procedural Guarantee Act**

PERF reviewed Virginia's Law Enforcement Officers Procedural Guarantee Act to ensure that our recommendations complied with this legislation. There is nothing in the act that conflicts with PERF's recommendations.

## **Applicable FCPD General Orders and Standard Operating Procedures**

The FCPD's General Orders and Standard Operating Procedures relevant to the release of information are described below.

### **FCPD General Order 401: Public Information**

This General Order broadly addresses the policy of the FCPD in releasing information to the public, and the Department's relationship with the media. It also addresses the roles of key personnel within FCPD and the process for releasing information.

**PERF does not recommend any changes to General Order 401: Public Information.**

### **FCPD General Order 401.1: Release of Information**

This General Order outlines the policies and processes for releasing police records, disclosing information about a criminal matter, and responding to requests for information under Virginia's Freedom of Information Act (VFOIA).<sup>19</sup> Thus, this is the FCPD General Order that governs disclosure of information about officer-involved shootings and critical incidents.

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<sup>19</sup> Va. Code Ann. § 2.2-3706

Section II.A provides a list of basic information regarding criminal matters that **must** be made available to the public, including the arrestee's name and biographical information and the circumstances surrounding the arrest.

Section II.B provides list of information about criminal matters that is **prohibited** by policy from being publicly disclosed, including "information which may jeopardize the successful conclusion of an investigation."

Section II.C provides a list of information that **may** be released, including:

- The age, years of service, and current duty assignment of an FCPD employee involved in a critical incident (stating that this information "shall" be released as soon as practical following a critical incident, unless release may jeopardize the employee's safety).
- The name of an officer involved in the deployment of deadly force, but only after all the steps outlined in SOP 12-045 have been taken. These steps, which are detailed in the description of SOP 12-045 below, include items such as conducting a threat assessment and ensuring the officer's safety.

Section IV states that all requests for the release of police investigative reports under VFOIA must be submitted to the Internal Affairs Bureau for processing. It notes that the public documents that are exempt from release under VFOIA include confidential administrative investigations, case files, and evidence.

**Recommendation:** *PERF recommends that General Order 401.1 be updated to reflect a strong commitment to transparency and open disclosure. Specifically, PERF recommends changing the language in the following sections:*

- **Section I - Purpose:** Add a philosophy statement that describes FCPD's approach to releasing information and that emphasizes the importance of promoting a culture of transparency.
- **Section II.B - Release of Information:** Change the language in the opening sentence from "The following information will not be released to the public in criminal matters" to "FCPD will review each case individually to determine what information should be released, and when it should be released. To promote transparency, there should be a general presumption of disclosure even in ongoing criminal matters. However, there may be some situations in which other interests, such as protecting the integrity of an investigation or the safety of an individual, outweigh the interest of transparency. In these situations, the following information may be withheld." This change avoids taking a blanket approach to withholding information and emphasizes that the decision to release must be made on a case-by-case basis.

- **Section II.C.5 - Release of Information:** See recommended changes to SOP 12-045 below.
- **Section IV- FOIA Requests:** PERF recommends that requests made under VFOIA be handled by a dedicated custodial of records manager, not the Internal Affairs Bureau.

### ***FCPD General Order 430.8: Mobile In-Vehicle Video Program***

This General Order simply makes reference to VFOIA, stating that a tape from the In-Vehicle Video Program may be released pursuant to VFOIA.

**PERF does not recommend any changes to General Order 430.8.**

### ***FCPD Standard Operating Procedure 12-045: Investigation of Deadly Force Deployment***

SOP 12-045, Section IV.G outlines the procedures that must be followed after an officer-involved deadly force incident, including the protocols for releasing information to the public. The SOP states: “Public trust is paramount to the Department’s mission and to the ongoing support and respect of the community. Police officers are entrusted with unique powers and authorities, to include, the power of arrest and the authority to use deadly force to protect themselves or others from death or serious injury, and *the Department, in turn, has a responsibility and duty to be as transparent as possible.*” (Emphasis added.)

The SOP states that it is the responsibility of the Public Affairs Bureau (formerly known as the Public Information Office), in coordination with the Chief of Police, to provide information to the media about the incident at the scene of the event and as the investigation progresses.

When it comes to releasing the name of the involved officer, the SOP currently states that:

- The Chief of Police will conduct an initial review of each case to determine whether or not an officer’s name will be released to the media.
- The review must include an assessment of all relevant facts and circumstances, including any “known, potential, or suspected articulable, serious, or imminent threats to the safety

of the officer, and/or the officer's family." The threat assessment will be conducted by the Criminal Investigations Bureau (CIB).

- The officer's name will not be released immediately following the incident. Prior to releasing the officer's name, the FCPD's Incident Support Services unit (ISS) will ensure that "appropriate measures" have been taken to provide for the welfare of the involved officer and their family.
- The officer's name will not be released until after the criminal investigation has been concluded and the Commonwealth's Attorney's Office has made its prosecutorial decision.
- Officers must be notified prior to their names being released, and when possible they should be allowed to review the media release.
- Consideration of the welfare of the officer and his or her family is paramount. The Public Information Office will provide the officer with guidance and support, as well as with assistance with any media inquiries.

**Recommendation:** *PERF recommends that SOP 12-045 Section IV.G be updated to reflect a strong commitment to transparency and open disclosure.* On the whole, the information release procedures in SOP 12-045 Section IV.G align with many of PERF's recommendations included in this report. For example, the SOP states that the Chief of Police should make decisions about whether to release the involved officer's name; the decision to release an officer's name should be made on a case-by-case basis; prior to releasing the officer's name, there should be a threat assessment to evaluate potential threats against the officer or the officer's family; and the officer's name should not be released until appropriate measures have been taken to provide for the officer's safety and welfare.

**However, PERF recommends removing the provision in SOP 12-045 that states: "[A]n officer's name will not be released until the criminal investigation and has been concluded and the Commonwealth's Attorney's Office has made their prosecutorial decision." A blanket policy against releasing information during ongoing criminal investigations is not supported by VFOIA, other disclosure statutes, or best practices. In the interest of transparency, the FCPD should change its SOP to state that the officer's name should be released within two to five days following the incident, unless the threat assessment uncovers a credible threat against the officer or the officer's family.**

## **STAKEHOLDER PERSPECTIVES ON THE RELEASE OF INFORMATION**

PERF interviewed a wide variety of stakeholders to obtain their views about releasing officer information following a shooting or other critical incident. Local government officials, Police Department employees, and news media representatives were among the groups who provided their perspectives.

In part, these interviews were designed to demonstrate transparency by FCPD in the process of revising policies and practices on sensitive issues. There is a growing recognition in the policing profession of the importance of “procedural justice.” One of the key aspects of procedural justice is giving people an opportunity to be heard and to “tell their side of the story.” And just as it is important for police to solicit the views of community members, it is also important that police chiefs create a sense of procedural justice *within* the police department, by providing officers with opportunities to share their views.

The following sections summarize the views that were expressed by a wide range of stakeholders on the extent to which FCPD should share information with the news media and the public following a critical incident.

### **County Officials**

Over the course of the project, PERF staff members interviewed several senior Fairfax County officials. Discussions focused on prior practices, laws and policies affecting the release of information, and guidance for improvement moving forward. The sections below highlight key points taken from various leaders and their senior staff members.

#### ***County Executive’s Office***

Senior officials from the County Executive’s Office recognized the importance of improving transparency and communication with the communities they serve. They further indicated that, for many senior county officials and leaders, additional training is an important step to recognize mistakes of the past and define improvements into the future. Officials from the County Executive’s office further stressed the importance of obtaining input from everyone involved.

### ***Human Resources***

The Fairfax County Department of Human Resources (HR) has a limited role in the day-to-day actions of the FCPD and release of information. Decisions to release information regarding police personnel records are left to the police department. HR has historically taken a conservative stance releasing personnel records for all county employees. Interviews with HR personnel indicate there is currently no county-wide policy that restricts the release of information following a Freedom of Information Act (FOIA) request. HR's staff relies on Virginia FOIA laws to govern release of information decisions.

### ***Office of the County Attorney***

The Fairfax Office of the County Attorney provides advice to county officials and agencies, including the Board of Supervisors, the County Executive's Office, and FCPD. It is not involved in any FCPD criminal investigations, but assists the FCPD in adjudicating administrative hearings. The County Attorney's office does not become involved in use-of-force incidents or other critical police incidents unless a legal claim is brought against the county. Discussions with senior County Attorney officials indicated that Virginia FOIA laws, and to a lesser extent Virginia privacy laws, provide the legal framework for the office's advice and guidance to county officials regarding the release of information. County Attorney officials said that most records can be released, but it is at the discretion of the Fairfax County agency involved and their custodian of records. Those interviewed also felt that the public must have a realistic expectation of what should and should not be released.

### ***Fairfax County Office of Public Affairs***

The Fairfax County Director of Public Affairs stated that the county and the FCPD should be more aggressive with regard to providing transparency and accountability.

The Director of Public Affairs stated that while the county's Ad Hoc Police Commission recently recommended that the FCPD release an officer's name within seven days of a critical police incident, including officer involved shootings, he believes that it should generally occur within 24 to 48 hours, and that while he is respectful of security and trauma-related issues, it is crucial to be as forthcoming as possible. He also expressed concerns that delays in releasing information could be interpreted by some as an effort to hide information from the media and the public.

The Office of Public Affairs also assists the County Executive and County Attorney with FOIA requests that initially come to them. In Fairfax, FOIA requests may come to the individual county agency and be handled at the agency level.

The director believes the relationship between the FCPD and his office is strong. Meetings are held regularly on Wednesdays with the FCPD, the Fire and Rescue Department, and the Office of Public Affairs to keep members of these agencies abreast of current affairs and to strengthen their relationships with one another.

Today, if there is an officer-involved shooting, the FCPD would take the lead on the case, and the County Office of Public Affairs would assist as a support function, would move quickly to announce information on social media, and would defer to the Chief of Police to discuss the incident.

## **Board of Supervisors**

Fairfax County is governed by a Board of Supervisors comprised of nine Supervisors who are elected by district, as well as a chairperson who is elected at large. To understand the perspective of Fairfax County's elected officials, PERF conducted separate interviews with all nine Supervisors and with Chairwoman Sharon Bulova.

### ***General Perspectives***

The Supervisors generally agreed that, although there has been some improvement, the FCPD's current public disclosure policies and practices tend to be too restrictive. They said that broader disclosure is necessary to promote trust between the police and the community, and that while the FCPD has historically enjoyed a good relationship with the public, withholding information can damage that trust and harm the Department. Several supervisors said that if the FCPD does not proactively release information about incidents, the media will "fill in the holes" and portray the Department as having something to hide, even when it does not.

The Supervisors have experienced various types of feedback from their constituents regarding the FCPD's public disclosure practices. Following the 2013 officer-involved shooting that prompted the reviews undertaken by the Ad Hoc Commission and PERF, some Fairfax County

residents expressed to their Supervisor's office that they were unhappy with the FCPD's disclosure practices and demanded that the Department release more information. Some Supervisors suggested that the lengthy investigation surrounding the 2013 shooting – and the FCPD's failure to disclose any information during that investigation – made it a special case that prompted a stronger reaction from the public than did most cases.

### ***Supervisors' Views on Disclosure of Information Regarding an Officer-Involved Incident***

When it comes to what information should be released following an officer-involved shooting or other critical police incident, most Supervisors agreed that, at minimum, the FCPD should immediately release a detailed statement that outlines the facts and context of the case. **Nearly all of the Supervisors also agreed that the FCPD should release the name of the officer involved at some point during the investigation, unless there was a compelling reason – such as a credible threat against the safety of the officer or the officer's family – to withhold this information. Although there was no consensus on the exact timeline for releasing the officer's name, the Supervisors agreed that there should be some brief waiting period in order to conduct a threat assessment and ensure that releasing the information will not jeopardize the officer's safety or the integrity of the investigation.**

However, a small minority of Supervisors were hesitant to release the officer's name before the investigation was concluded, citing safety concerns as a reason to exercise caution. Some Supervisors also noted that their constituents were more interested in learning background information about the officer (e.g., history of officer-involved shootings) than in learning the officer's name. (A number of leading police chiefs nationwide have made similar comments, leading to PERF's recommendations for such a practice, detailed elsewhere in this report.)

There was also some disagreement regarding who should make the decision about whether to release information following an officer-involved shooting or other incident. Several Supervisors said that the decision should be the sole responsibility of the Chief of Police, though some said that the Board of Supervisors should also be consulted, especially in high-profile incidents. One Supervisor would prefer that the Board of Supervisors develop the overall information release policy, and then the Chief of Police be responsible for implementing the policy in individual cases.

Many of the Supervisors agreed, however, that the decision about whether to release information should *not* be made primarily by the Fairfax County Attorney's Office. They believe that the County Attorney's advice was based on the sole interest of protecting the county from civil liability and failed to take into consideration what was in the public's best interest. Many Supervisors also felt that they were given misleading and conflicting advice about what information could be released under Virginia's Freedom of Information Act (VFOIA), and that they did not understand that the FCPD legally had the discretion to release more than it did. One Supervisor said that the County Attorney's job "should be to advise on options, not dictate what happens."

### ***Supervisors' Views on Disclosure of Information After an Investigation Is Concluded***

With respect to what information should be released *after* a criminal investigation is concluded, most Supervisors agreed that the FCPD should err on the side of disclosure. **They recommended releasing as much information as possible while still protecting privacy rights, such as the identity of juveniles or other confidential information.** Some Supervisors said that personnel records should continue to be withheld even after an investigation is concluded, though one Supervisor suggested that information about an officer's performance – but not personal information contained in the officer's file – should be released.

On the whole, the Supervisors were satisfied with the steps the FCPD has taken regarding the use of social media to disseminate information. One Supervisor recommended that officers receive more training on communicating with the public, and another Supervisor recommended hiring a civilian Public Affairs Bureau Director to improve the flow of information.

## **Ad Hoc Police Practices Review Commission**

Following the officer-involved shooting in August 2013, the FCPD was criticized for failing to disclose details about the incident, including the name of the officer involved. In response to the controversy, in March 2015 the Fairfax County Board of Supervisors formed an Ad Hoc Police Practices Review Commission to evaluate the FCPD's policies and practices with respect to, among other things, police use of force, communications, and oversight. The Ad Hoc Commission's 70 members included journalists, community members, representatives from civil rights organizations, and FCPD and Fairfax County officials. In October 2015, the Ad Hoc Commission released a report that detailed its findings and recommendations. As of the time of

PERF's report, the Ad Hoc Commission's findings were under consideration by the Board of Supervisors.

Although PERF's review was conducted independently from the Ad Hoc Commission review, PERF interviewed members of the Ad Hoc Commission and took its findings into account when developing its own recommendations. The Ad Hoc Commission's Communications Subcommittee appears to have conducted a thorough examination of the issues related to FCPD's public disclosure policies and practices. The Subcommittee's work included evaluating the parameters set by Virginia's Freedom of Information Act (VFOIA) and hearing from police departments in neighboring jurisdictions about their disclosure policies.

Many of the Subcommittee's recommendations are aligned with PERF's findings. First and foremost among these is the recommendation that the FCPD adopt a culture of transparency that includes a presumption towards disclosure. Like the Subcommittee, PERF also concluded that VFOIA does not support a blanket approach to withholding information, even during an ongoing investigation. PERF also agrees that the FCPD needs to take a more proactive approach to releasing timely and accurate information about not just officer-involved use-of-force incidents, but also crimes and other incidents that occur within Fairfax County.

When it comes to releasing the name of the officer involved in a use-of-force incident, PERF agrees with the Subcommittee's recommendation that the FCPD promptly release the officer's name unless there is a credible and demonstrated threat to the safety of the officer or the officer's family. The Subcommittee recommended that the FCPD provide the officer's name "as soon as possible but preferably within a week," which is a bit broader than PERF's recommendation that the Department release the name within two to five days after the incident unless there is a credible threat. PERF agrees with the Subcommittee's recommendation that, if the FCPD decides to withhold the officer's name, the reason for doing so should be clearly articulated to the public, and PERF further recommends that FCPD release background information about the officer, such as the officer's prior involvement in officer-involved shootings.

## **Fairfax County Commonwealth's Attorney's Views**

The Commonwealth's Attorney said that it is his preference to be alerted to an officer-involved shooting as soon as possible. He said that in his experience the officer's association is typically

contacted first following a shooting through informal officer communication, and his office gets notice of the incident later.<sup>20</sup>

With regard to the release of an officer's name, the Commonwealth's Attorney indicated that while he is very reluctant to release information such as the officer's name if there are possible threats to the officer's safety (in which case he believes information should generally be withheld), he does not have a problem with releasing it if there is no known danger to the officer. In any event, he stated that he would not put out such information without hearing from the Chief of Police, as it is not his role to release such information.

Over the course of the interview, the Commonwealth's Attorney stated that his office does not have a public information officer (PIO) and does not put out media releases. Implementing a PIO function would be of great value to the Commonwealth's Attorney, as it would promote transparency and allow the office to establish a proactive relationship with the news media and the public. It would also help the Commonwealth's Attorney and the FCPD to work collaboratively in the aftermath of an officer-involved shooting or critical incident to provide as much information as possible.

## **Fairfax County Police Department Personnel Focus Groups**

This section of the report contains information obtained through interviews and focus groups with FCPD personnel, including sworn officers of various ranks, civilian personnel, and leaders of employee associations. The groups were asked to provide input and recommendations on the Department's policies and practices regarding the FCPD's internal and external communications process, including the release of information to the public following police-involved shootings and other critical police incidents.

Several similar themes were developed within each group as a result of the interviews. The themes are not all-inclusive, but were found to be the issues most discussed by the group members.

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20 The FCPD has no official policy stating that the officer's association should be contacted before the Commonwealth's Attorney following an officer-involved shooting. The officer's association is at times contacted first because the officers will reach out to the association on their own.

### ***Deputy Chief and Majors' Views***

The current Director of the Public Affairs Bureau, a police captain, reports directly to a deputy chief. Currently there are plans to change the reporting relationship by civilianizing this position and having the Public Affairs Bureau director report directly to the Chief of Police. The Department plans to search for a new director with extensive media experience.

The Department is considering moving this responsibility of handling all Freedom of Information Act (FOIA) requests filed with FCPD from the Internal Affairs Office, where it is currently located, to the Public Affairs Bureau.

PERF conducted focus group/interviews of majors and the deputy chief. Their comments included the following:

- FCPD effectively uses social media to communicate with the public, but the Department could do better with internal communications, including being more timely at providing officers and civilian staff members with information about actions and changes within the Department.
- Some members of the group believe that the Public Affairs Bureau needs additional staff. Examples were provided of critical police incidents where Bureau had limited capability to respond and assist.
- The majors recognize the media and public's interest in being told an officer's name, but not all were in favor. They offered the following recommendations when releasing an officer's name and noted it may take more than 48 hours to complete:
  1. Conduct a threat assessment.
  2. Provide the family with guidance (e.g., deleting social media accounts).
  3. Brief the officer involved on safety issues regarding social media.
  4. Provide the officer with counseling prior to releasing his or her name.
- The Public Affairs Bureau needs a civilian director who provides strong leadership. The director should have crisis management training, crisis communication training, and a good working relationship with news media representatives.
- The Public Affairs Bureau staff should have expertise in different areas of social media.
- The Chief of Police should provide statements to the media following a critical police incident, but the Public Affairs Bureau director should be experienced to advise and consult with the Chief on what to say. The director should be trained and skilled to handle crisis events.

### ***Captains' Views***

A separate focus group was also held with several captains from the FCPD. Many of the members of this group did not advocate releasing the name of an officer involved in a deadly force incident. They said that the current environment nationwide is not favorable to law enforcement and that releasing the name would cause safety concerns for the officer. Other comments included the following:

- Currently, the officer's name is released only after the Department receives a letter from the Commonwealth's Attorney declining to prosecute the officer.
- The Department currently does a threat assessment that looks for potential threats posed against the officer, including threats found on social media.
- Captains said that the Public Affairs Bureau director and other FCPD leaders should be sure to notify the officer before publicly releasing his or her name.
- Captains made the following recommendations for releasing the name of an officer involved in a deadly force incident:
  1. The facts of the incident need to be released immediately. The Department's message needs to decisively articulate the Department's actions.
  2. In the view of captains, information that is released should include the officer's age, gender, assignment, and time in the Department, along with the facts of the case that can be released.
  3. If there are problematic issues about the shooting, the Department needs to admit it.
  4. If the officer's name is released, the Department should release only the last name and the officer's badge number, a number of captains said.
- Internally, officers are currently telling their captains that they do not feel supported by the Department.
- The focus group members believe that the FCPD generally has the trust of the community.
- The focus group said they would like to see the Chief's vision communicated to the entire Department, so all commanders can be on the same page.

### ***Lieutenants' Views***

Two focus groups of 2<sup>nd</sup> lieutenants were interviewed. Some were assigned to patrol and others were assigned to specialty units, such as Internal Affairs or the Public Affairs Bureau. The

members of these focus groups believed it was important to get the facts out about a deadly force incident as soon as possible, including information about mistakes that may have been made. There were concerns that releasing the name of an officer involved in a deadly force situation could present a safety hazard for the officer. Below is a compilation of suggestions by the lieutenant focus groups:

- Many of the lieutenants said that releasing the name of an officer who is involved in a deadly force incident presents an officer safety issue. At a minimum, they said, the Department should give the officer time to make plans to protect his or her family.
- Some of the lieutenants preferred that only information about a deadly force incident should be released, but not the officer's name. Others said the officer's name should be released.
- Lieutenants said that the Department should implement a formal threat assessment policy and should provide security for the officer if a threat exists. They noted that if the officer lives outside of Fairfax County, the Department should determine if it has the capability to put a security detail on the officer's house.
- Several of the lieutenants said that the Department should put out information about the shooting regardless of whether initial reports suggest it was justified or not. They also said that in the current post-Ferguson environment, "departments will have to release the names of officers who are involved in a deadly force situation.
- The lieutenant focus groups also discussed internal communications. They stated that the public often learns about what is going on in the Department before the employees find out. They would like to see better internal notifications and updates on Department issues. One focus group mentioned that they want the Department to send out command staff meeting notes, as was done in previous years.

### ***Sergeants' Views***

Patrol sergeants and sergeants from various specialty units spoke in two focus groups. Below is a list of comments made by the sergeants' focus groups:

- Sergeants said that releasing the name of an officer involved in a deadly force incident creates a danger to the officer.
- Some members of the focus groups said that when an officer's name must be released, only the officer's name, years of service, and a synopsis of the case should be released.
- The sergeants would like the Chief of Police to start communicating more with members of the Department.

### ***Detective Lieutenants' and Sergeants' Views***

Sergeants and 2<sup>nd</sup> lieutenants from various investigative units formed another focus group. Following is a summary of their comments:

- The majority did not want the name of an officer involved in a deadly force incident released, because they believe it presents a safety issue for the officer and the officer's family. Many said that the only information that should be released is the officer's gender, race, and how long the officer has been in the department.
- Members of the group think that officers should have a formal list of officer rights described in policy. The focus group does not want personnel or internal affairs files released.
- The group made the following recommendations:
  1. Educate employees and the public before implementing a new policy.
  2. Train and educate the public information officers (PIOs).
  3. The Public Affairs Bureau should carefully vet information for accuracy before releasing it. The Public Affairs Bureau should receive briefings on major crime scenes or homicides from higher-ranking commanders, so the on-scene supervisors are not being pulled away from the investigation.
  4. If an officer's name must be released, the Department should wait at least three days to a week to give the officer time to prepare his or her family. The Chief should personally talk to the officer before releasing the officer's name.

### ***Patrol and Specialty Unit Officers' Views***

Several focus groups were comprised of patrol officers and officers assigned to specialty units, such as Traffic Division and Operations Support. Their comments are summarized below:

- **The majority of officer focus group members preferred that the name of an officer in a deadly force incident not be released, but that pertinent facts about the incident be released promptly to keep the media and the public informed.**
- The officers believed that the public is more interested in getting the investigation done in a timely manner than they are about getting the officer's name. They want to see investigations conducted quickly.

- These focus groups recommended that the media should be educated on how officers are trained and their job requirements. They believe it would help to invite reporters to experience “shoot/no shoot”<sup>21</sup> training.
- Some focus group members recognized the need to release an officer’s name, but said that waiting a period of time to release the name may help calm emotions. They requested that prior to releasing the name, the Department should do the following:
  1. Conduct a threat assessment.
  2. Allow the officer time to talk to his or her family.
  3. Notify the officer prior to releasing his or her name.
  4. Provide the officer with an option for reassignment.
- Focus group members said that when releasing an officer’s name and/or the details of an officer-involved shooting, a credible sworn officer should hold a media briefing. The details should not merely be released in a statement.
- The officers recommended that police officials announce a follow-up media briefing when they are unable to release details of an investigation at the first briefing. This will let the media and public know that the Department intends to release additional information.

### ***Detectives’ Views***

One focus group was comprised of several detectives from the Criminal Investigation Bureau. Below are some of the comments made by this group:

- Detectives do not want the Department to release the names of officers in deadly force incidents unless the officer is charged with a crime, but recommended that the Department proactively release all other pertinent information about the investigation. They said that the **Department should quickly get out in front of investigations of officers involved in a deadly force incident.**
- The group said that typically when officers use deadly force, it is because they believed that the suspect posed an immediate deadly threat against the officer or another person. They believe that the suspect’s actions in these cases constitute an assault against the officer or the other person.

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<sup>21</sup> Training that involves judgment on when to use deadly force, such as Firearms Training Simulator (FATS) training.

- Members of the group want to see the Department have its own attorney (Office of County Attorney represents the FCPD in addition to other county agencies) to look out for the best interests of the Department.
- Detectives said that Department officials should meet with news media reporters and civil rights and civil liberties leaders to talk about what information is released by FCPD and why, and why other information may not be released.
- **Detectives said that if the Department provides as much information as possible, such as information about an officer's previous use-of-force incidents and complaint history, that could help diminish the media's frustration with not being provided the name of the officer.**

### ***Views of Officers Who Have Used Deadly Force***

A group of officers who had been involved in a deadly force incident were interviewed in order to gain insight into what an officer experiences in this situation. These officers reiterated that most officers only use deadly force in situations when a suspect assaults or poses a deadly threat against the officer. The officers in this focus group talked about the high stress they experienced when their names were released to the media. Below are some of the comments made by the focus group members:

- Some members of the group experienced serious emotional and financial strain as a result of being involved in a deadly force situation and having their names released to the media. For example, some officers said they had to move from their homes because of threats to their safety. In one example, an officer's home was vandalized.
- Several group members said the Department needs to be out in front of these cases. It cannot remain quiet.
- The members did not believe that releasing the name of the officer involved in a deadly force situation serves a strong enough purpose to outweigh the potential harm that could come to the officer or the officer's family if the name is released. The focus group made the following recommendations for the Department to help officers when releasing their names to the media:
  1. Provide identity theft protection services to involved officers.
  2. Conduct a threat assessment that is legitimate; continue the threat assessment throughout the duration of the case.
  3. Provide alarm systems for involved officers' homes.

### ***Civilian Support Staff Members' Views***

The civilian support staff focus group included station aides, background investigators, property clerks, Information and Technology staff members, clerical staff members, and retired police officers. Below is a summary of their comments:

- A large portion of the group feel it is appropriate to release an officer's name, but that it should not be released for at least 24 hours to give the officer time to tell his or her family. Other members of the group thought that releasing the officer's name will instigate threats against an officer and the officer's family. These group members preferred that nothing be released until the incident is fully investigated.
- Members of this group do not believe any Internal Affairs reports should be released. They cited the recent release of an Internal Affairs report which resulted in witness officers' testimony being released to the public.
- Additionally, some of the group were concerned that officer applicant background investigations will become a target for release, since Internal Affairs investigators make notes about background investigations in their reports. They believe that an officer's background investigation is a personnel document that should remain confidential.

### ***Employee Association Leaders' Views***

Although Virginia is a "right to work" state,<sup>22</sup> FCPD recognizes employee groups within the Department that represent the interests of groups' members. PERF interviewed a focus group of representatives from the Fairfax Coalition of Police, the Fairfax County Police Association, the Fraternal Order of Police, the Fairfax Black Law Enforcement Association, and the Southern States Police Benevolent Association. The overwhelming theme developed as a result of interviewing this focus group was the belief that most officers who are involved in a deadly force situation should be viewed as having had an assault committed against them, and that it is the responsibility of the Department to provide these officers with the necessary support that anyone who experiences this kind of trauma faces, such as mental health counseling, information on how to minimize potential safety risks, and protection if a threat exists. Below is a list of issues brought forward:

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22 The "right to work" statute prohibits unions and employers from requiring employees to be a member of a union or pay union fees as a condition of employment.

- Employee association leaders said that the first thing that needs to happen when an officer is involved in a deadly force incident is to determine if the suspect committed an assault against the officer that led to the incident. If so, the Department should protect the officer. They would like to see legislation enacted that further recognizes the offense against the officer in these cases, and ensure that they are not treated like a suspect.
- **The majority of the group believed it was an officer safety issue to release an officer's name. Some members of the focus group said that releasing information about a deadly force situation could prejudice the justice system (for example, biasing potential jurors).**
- The focus group members said that threats have been made against officers who had been in a deadly force situation, which prompted a call for security details to protect them.
- **Some of the focus group members stated that if the Chief must release the officer's name, it should not be released for at least 72 hours. They requested a constant "boots on the ground" threat assessment that involves gathering intelligence on the streets and not just by monitoring social media.**
- The focus group did not believe there is a true public outcry for the officer's name in deadly force incidents. They said only a small percentage of the population wants to know the officer's name.
- Internal communications were also discussed with this focus group. They requested the Chief deliver messages about departmental issues without using catch phrases. They would like to see the Chief deliver messages himself or use his staff to help put out messages, rather than having officers learn about changes in the Department when they are announced to the public.
- The focus group said that officers will do a better job if they understand changes in policy or practices that are announced, so they would like to receive more complete explanations when they are asked to do their jobs in certain ways. They suggested that the Chief can use videos to explain things to them, and said that personnel will respond better if the messages are personable.

### ***Summary of Police Focus Groups' Comments and Suggestions***

The views of the FCPD focus group participants varied with respect to whether an officer's name should be publicly released following an officer-involved shooting or other critical incident. Some participants, such as members of the Command Staff and some senior management staff, said that releasing the officer's name might be necessary in order to promote transparency and meet the demands of the public and news media. Other focus group participants, particularly officers below the command staff level, were more circumspect about releasing an officer's name to the public. In these officers' view, the value of releasing the name was not worth the

safety risk to officers or their families. The concerns about threats to officers' safety were supported by information provided by officers who have been involved in deadly force events, who said they experienced threats, vandalism to their homes, and other problems once their identities became known to the public.

Regardless of their views on whether the officer's name should be released, participants in all the focus groups largely agreed on several points. First, there was agreement that an officer's name should never be released until the Department can conduct a thorough risk assessment to determine whether there is a credible threat against the officer's safety. Second, participants agreed that the FCPD should provide support to officers who are involved in shootings or other serious incidents, especially if the officer's name will be publicly released. They said this support should include clear communication about any decisions to release the officer's name, as well as counseling, information on how the officer can minimize potential safety risks (e.g., by removing personal information from social media), and protection for the officer if a threat exists. Finally, focus group participants agreed that immediately following an incident, it is important for the Department to provide the media with as much detail about the event as possible, and as quickly as possible. This information includes the basic facts of the case, the Department's next steps, and non-identifying information about the officer such as rank and number of years on the force.

## **Community and Media Focus Groups**

PERF held a community focus group as well as a focus group for the news media.

### ***Community Focus Group Discussion***

Senior officials in the County Executive's office and the FCPD recognized the importance of listening to the community's concerns regarding the release of information about deadly force incidents and other critical incidents. On October 12, 2015, the FCPD arranged a community focus group discussion facilitated by PERF's Executive Director, Chuck Wexler. The meeting was held between 7:00 and 9:00 pm at the Fairfax County Government Center. Approximately 25 to 30 community members were present and included the following organizations<sup>23</sup>:

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23 Fairfax NAACP President Shirley Ginwright was invited but was unable to attend. PERF interviewed Ms. Ginwright later by telephone.

- American Civil Liberties Union
- Fairfax Communities of Trust
- FCPD Chief's Diversity Recruitment Council
- Asian-American Law Enforcement Society
- FCPD Police District Citizen Advisory Committees
- Graduates of the FCPD's Citizen Police Academy

Through a facilitated discussion, community members were asked for their thoughts and recommendations regarding FCPD's practices on releasing information following a critical police incident such as an officer-involved shooting. Community member perspectives varied widely, but several common themes were brought forward and are highlighted below:

- Community members said that Fairfax County and the FCPD mishandled the release of information following the 2013 shooting of John Geer by an FCPD officer, which created many of the concerns being discussed today. Community members felt the lack of initial information, the negative media coverage, and the delay in providing information (that eventually included the indictment of the officer) created a sense of mistrust between some community members and county leaders.
- One focus group participant said that the FCPD has a culture of "secrecy" and is too restrictive in releasing information.
- Some participants said the FCPD has an opportunity to become a leader in the state of Virginia on policing issues.
- Community members said that the Department must improve its performance providing information to the public following critical police events. When information is withheld, officials must provide reasonable explanations of why that information cannot be shared.
- The focus group was split between participants who felt the Department has recently improved its disclosure practices to release information in a timelier manner, and others who faulted the Department for not quickly and thoroughly releasing key information.
- Community leaders urged FCPD to examine ways to improve access to the Department's information for non-English speaking community members.
- Many expressed frustration that internal investigations and criminal investigations of officers' uses of force take as long as they do. Community members felt the investigations needed to be timelier, with updates provided if delays occur in the process.

- Some members of the focus group said the Department should hire and retain more officers with language skills that represent the various ethnic communities within the county. They said that having officers who can speak in the community's native language would improve communication and trust.
- Many members said the Department provides adequate information on day-to-day activities taken by officers, but it is sometimes difficult to find out where to look for the information.
- Community members said the county should publicize current information and resources the public can use, including crime maps, media releases and Citizen Advisory Committee meetings.

### ***News Media Focus Group Discussion***

To understand news media perspectives regarding FCPD's information release policies, PERF conducted a focus group of a dozen journalists representing local, regional, and national news organizations. The journalists were from a mix of print, television, radio, and online media outlets.

**The general consensus among focus group journalists was that the FCPD needs to do a better job of releasing timely, comprehensive, and accurate information about officer-involved shootings, crimes, and other incidents that occur in the community.** Though some participants said that the FCPD has made some progress towards transparency, the primary sentiment is that there is an overall "culture of withholding" that exists within the FCPD, and that the Department only releases information when an outside body (e.g., the media or a court) forces it to do so with FOIA requests or legal challenges.

Above all, the focus group participants want the FCPD to take a more proactive approach to its policies and practices on releasing information. They said that the nature of their jobs requires them to provide factual information to the public as quickly as possible, and so when a police department fails to provide accurate or timely information, it can make the journalists' jobs more difficult and create an adversarial relationship between the department and the media. The focus group participants said that the FCPD should strive to enact disclosure policies and practices that are in line with other local police agencies, such as the Montgomery County (MD) Police Department and the Prince George's County (MD) Police Department, which they believe have made great progress towards transparency. They believe that the FCPD will only achieve greater

transparency if it changes its culture, hires better-trained and more experienced Public Affairs Bureau personnel, and enacts policies that emphasize a culture of disclosure.

### **Journalists' Views on Leadership and Agency Culture**

The media focus group participants said that to improve transparency, it is critical to have buy-in from top FCPD executives. They noted that without strong leadership on this issue from top officials, there will be no incentive for rank-and-file officers to be proactive in releasing information. Participants said that when making decisions about whether to disclose information, FCPD leaders have tended to rely too heavily on advice from the Fairfax County Attorney's office, which generally counsels against disclosure. They said this creates a culture in which the FCPD's main interest appears to be avoiding litigation, rather than providing information that is in the public's interest. A number of police chiefs nationwide have discussed this issue of police chiefs' reliance on legal advisors; see the next section of this report, "National, State, And Regional Practices."

### **Journalists' Views on the FCPD Public Affairs Bureau**

Participants from the media focus group also expressed frustrations with the FCPD's Public Affairs Bureau. They gave examples of times when they have called a public information officer (PIO) to obtain information about a crime or other incident, only to have their calls unreturned or questions unanswered. They wondered whether the PIO's unresponsiveness reflected a staffing issue, a lack of authority on the part of personnel to confirm information, poor policies, or directives from Department leaders to withhold information. **To help address these problems, participants recommended that the FCPD hire a Public Affairs Bureau Director who has experience with media relations, and that all Public Affairs Bureau personnel receive better training on how to work with the media.**

### **Journalists' Views on Disclosing Information about an Officer-Involved Incident**

The journalists also recommended that the FCPD be more forthcoming when it comes to releasing information following an officer-involved shooting or other incident. They said that the pervasiveness of social media means that the public will quickly learn about an incident one way or another, and that withholding information damages the Department by making it appear that it has something to hide. The focus group participants did not give much credence to the idea that releasing the name of the officer involved in an incident poses a safety threat to the officer, saying that there have been no examples of such threats occurring against officers in Fairfax County. They said that the police departments in Montgomery County, Maryland and

Prince George's County, Maryland release the officer's name within 24 hours, and they recommended that FCPD adopt a similar policy. **They also said that they would be comfortable waiting 24 to 48 hours to receive the officer's name, as long as they were immediately given other background information about the officer, including his or her rank, number of years on the force, and history of other officer-involved shootings.**

### **Journalists' Views on Disclosing Information about Crimes and Incidents within the Community**

Journalists said that problems with transparency are not limited to officer-involved shootings or other critical incidents, and that the Department also is slow to release information about crimes in the community. One journalist said that a homicide occurred recently in Fairfax County on a Friday night, but that the FCPD did not release information about the crime or even announce that the incident had occurred. He did not learn about the crime until the following week, when he went to the courthouse and found it mentioned in a search warrant he was researching. He said he called the PIO to ask what had happened, and only then did the FCPD put out a media release announcing that a homicide had taken place. The focus group participants agreed that this situation is typical of the FCPD's failure to proactively release timely information about crimes and other incidents.

### **Journalists' Views on Social Media Use**

During the focus group, the journalists also said that FCPD's use of social media is inadequate. They said that, although the Department was getting better about using Twitter to disseminate information, the information given is often superficial or limited to "feel-good" stories. They cited the Prince George's County, MD Police Department (PGPD) as an example of a police agency that effectively uses social media. The PGPD's PIO Director is a former reporter, and the focus group participants said this has helped improve relationships between the PGPD and the media. They said that the PGPD regularly uses its website and Twitter feed to announce crimes and other incidents, to direct reporters where to meet with the PIO, and to provide timely, continuous information as the scene unfolds.

## **NATIONAL, STATE, AND REGIONAL PRACTICES**

To understand current trends and best practices with respect to public disclosure, PERF reviewed the information release policies and practices in police agencies across the country, in the state of Virginia, and in the Fairfax County region.

### **Nationwide Practices**

In examining the current national landscape with respect to public disclosure, PERF found that many law enforcement agencies are adopting broader disclosure practices in an effort to promote transparency and openness.

#### ***President's Task Force on 21<sup>st</sup> Century Policing***

In its May 2015 final report, President Obama's Task Force on 21<sup>st</sup> Century Policing called for a culture of transparency in which police agencies communicate with citizens and the media "swiftly, openly, and neutrally" when serious incidents of alleged police misconduct occur.<sup>24</sup> The Task Force also recommended that, as soon as possible following a use-of-force incident and within 24 hours of the event, the police agency should release a summary statement regarding the circumstances of the incident that shares "as much information as possible without compromising the integrity of the investigation or anyone's rights."

#### ***Police Departments in California***

Releasing an officer's name is standard practice in California as the result of a 2014 California Supreme Court ruling that held that police agencies are generally required to release the name of officers involved in shootings unless there is specific evidence of a threat to the officer's safety.<sup>25</sup> The court's ruling emphasized that the evidence of a threat must be based on a "particularized showing," and that "vague safety concerns that apply to all officers involved in shootings are insufficient to tip the balance against disclosure of officer names."<sup>26</sup> The Los Angeles Police Department had a policy to release officers' names prior to the court ruling, and names are

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24 Final Report of the President's Task Force on 21<sup>st</sup> Century Policing (May 2015), [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf), p. 13.

25 Court backs disclosure of officers' names in shooting cases (May 29, 2014), *Los Angeles Times*, <http://www.latimes.com/local/lanow/la-me-ln-officer-names-20140529-story.html>.

26 Ibid.

provided to the public following a threat assessment in the majority of cases.<sup>27</sup> In Fresno, the department's internal policy is to release the name of the officer after seven days if it is requested by the media or a member of the public, unless there is a credible threat against the officer.<sup>28</sup>

### ***The Debate in Pennsylvania over Releasing Officers' Names***

In July 2015, then Philadelphia Police Commissioner Charles Ramsey sought to improve transparency in his department by instituting a directive to release the names of officers involved in shootings within 72 hours after the incident, unless an assessment revealed that threats had been made against the officer or the officer's family.<sup>29</sup> However, in November 2015 the Pennsylvania House of Representatives passed a bill that would prohibit police departments from releasing the name of an officer involved in a shooting while the investigation is ongoing (the bill was under consideration by the Pennsylvania Senate as of February 2016).<sup>30</sup>

Though the Fraternal Order of Police supports the bill, Ramsey has come out against it. "I'm against it, I think it's a huge mistake," he said.<sup>31</sup> "Transparency is the right thing to do. We are public officials and an officer cannot expect to shoot somebody and remain anonymous – it's just not realistic."<sup>32</sup>

### ***Disclosure Practices Discussed at a 2014 PERF Conference***

In September 2014, PERF hosted a national conference in Chicago, where 180 police executives discussed the implications that the events in Ferguson, Missouri had on policing.<sup>33</sup> One of the forum topics was the release of information, including an officer's name, following an officer-

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27 Ibid.

24 16 Police Executive Research Forum, *Defining Moments for Police Chiefs* (2015), <http://www.policeforum.org/assets/definingmoments.pdf>.

29 Phila. Police to release names in police shootings (July 3, 2015), [http://articles.philly.com/2015-07-03/news/64042551\\_1\\_police-shootings-police-involved-shootings-police-advisory-commission](http://articles.philly.com/2015-07-03/news/64042551_1_police-shootings-police-involved-shootings-police-advisory-commission).

30 Philly's Top Cop Speaks Out On Bill Aimed At Protecting Identity Of Officers Involved In Shootings (November 24, 2015), <http://philadelphia.cbslocal.com/2015/11/24/phillys-top-cop-speaks-out-on-bill-aimed-at-protecting-identity-of-officers-involved-in-shootings/>. The policy promoted by this bill – to not release the name of an officer while the investigation is ongoing – is the same as the FCPD policy that the department is re-evaluating.

31 Ibid.

32 Ibid.

33 Ibid.

involved shooting.<sup>34</sup> The police executives who discussed the issue spoke of a trend toward greater transparency. Austin, TX Chief Art Acevedo said that regardless of whether a police department releases any information following a critical incident, “information is going to flow immediately” via social media, “so we choose to put out information.” Otherwise, the police department “will lose the narrative right away,” he said.<sup>35</sup>

Similarly, Jeffrey Blackwell, then Chief of Police in Cincinnati, said, “When a major event or crisis happens, you can’t wait days or weeks to tell the news media and the public what you know. If your message isn’t timely, it’s not going to be viewed as authentic. If it’s not authentic, you might as well not say it.”<sup>36</sup>

Dallas Police Chief David Brown said that his agency always releases the officer’s name following a shooting. He said that this has been the department’s practice his entire career, even though it is not written in the department’s policy.

Chief Brown added that from the community’s point of view, the officer’s name is not as important as the officer’s past performance. “[F]rom the citizen’s perspective, it’s not about the officer’s name; it’s about the officer’s *history*,” Brown said. “Citizens protest if the officer’s name is not released because they think the officer is a bad officer and his history will show that, so that’s what we are protecting when we don’t release the officer’s name.... People want to know, does the officer have use-of-force problems, or complaints of racial profiling? Has he shot anybody else?”<sup>37</sup>

Police chiefs at the PERF conference noted that they take steps to protect officers’ safety when the officer’s name is released. For example, Austin Chief Acevedo said that while his department releases names, usually within 12 hours of the incident, it also monitors social media “to stay aware of any threats or comments.” If a threat is detected, the department conducts close patrol of the officer’s home, and if the officer lives outside of Austin, it contacts the police department where the officer lives.<sup>38</sup>

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34 Ibid., pp. 9-17.

35 Ibid., p. 13.

36 Ibid., p. 14.

37 Ibid., pp. 11-13.

38 Ibid., p. 13.

Minneapolis Police Chief Janeé Harteau said that in some cases, providing transparency to the community means going against the advice that a chief receives from city lawyers. She described an incident in which two off-duty Minneapolis officers were captured on video using racial slurs. “I had attorneys telling me I couldn’t talk about it because it was an open investigation,” Chief Harteau said. “But the whole world could see the video, and it was giving our entire department a black eye. So I told my attorneys, ‘You know what? I can watch this video as a private citizen and hear what they said, and I should be able to make some comments about it.’ ... So I came out very strong and said to my community, ‘This is not who we are. This is who those officers are, but it is not who *we* are as an organization.’ ”<sup>39</sup>

## **Statewide Practices**

To obtain a statewide perspective on the release of information regarding officer-involved shootings and other critical incidents, PERF interviewed top officials with the Virginia Association of Chiefs of Police (VACP).

### ***Virginia Association of Chiefs of Police***

VACP officials noted that because FCPD is the second largest law enforcement agency in the Commonwealth (following the Virginia State Police), its actions often have a “ripple effect” on other agencies in Virginia.

The VACP officials said that as a police agency is able to release information, it should do so, and if certain information cannot be released at a given time, it should articulate why it is unable to do so, as long as doing so does not pose a privacy or safety concern. The officials said that agencies must be able to strike a balance between transparency and putting an officer at risk.

There also needs to be discretion with regard to the release of closed investigations as the result of a FOIA request. There is often information in case files that could damage a witness’s reputation or compromise the safety of victims or the department’s investigative tactics. Agencies should take care to carefully review all case files prior to release, and ensure that

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<sup>39</sup> Ibid., pp. 16-17.

sensitive information is redacted. Once information is released, the potential for damage cannot be undone.

## Regional Practices

In order to provide the Fairfax County Police Department with comparative information at the regional level, PERF reviewed the relevant policies, procedures and practices of the following agencies in the Washington, DC/Baltimore area:

- Arlington, VA Police Department<sup>40</sup>
- Alexandria, VA Police Department
- Prince William County, VA Police Department
- Loudoun County, VA Sheriff's Office
- Metropolitan (DC) Police Department<sup>41</sup>
- Montgomery County, MD Police Department
- Prince George's County, MD Police Department
- Anne Arundel County, MD Police Department
- Howard County, MD Police Department
- Baltimore, MD Police Department

Information governing the release of officer information is contained in the chart below.

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<sup>40</sup> Unable to obtain agency policy.

<sup>41</sup> Unable to obtain agency policy.

Review of Information Release Policies and Procedures of the Fairfax County Police Department  
April 2016

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**Regional Agency Practices on the Release of Officer Information after an Officer-Involved Shooting**

Agency	Timeframe for when information is released	What information is released	Exceptions to when information is released
Alexandria Police Department	Based upon chief's decision to release.  Dept. evaluates community's interest in the case with regard to releasing the officer's name.	Officer's name; age; gender; rank; current assignment; number of years of service; employment status.	Considerations are: officer wellness (was officer injured?); threats against an officer; notification of family; will release of information be detrimental to an investigation?
Anne Arundel County Police Department	Within 24 hours.	Officer's first and last name; rank; tenure; assignment.	Not released if there are concerns of threats to safety of officer or his/her family or if the release of information will jeopardize the investigation.
Baltimore Police Department	48 hours.	Officer's name; assignment; tenure on force.	Not released if there are concerns of threats to safety of officer or his/her family or if the release of information will jeopardize the investigation.
Howard County Police Department	"As quickly as possible."	Officer's name; rank; tenure on force.	Each incident is considered unique, and there is flexibility in when the information is released and what info is released.
Loudoun County Sheriff's Office	Not released until after the initial investigation and presentation to the Commonwealth's Attorney and their decision on prosecution.	Officer's name.	Not released if a threat assessment reveals a credible threat to deputy.
Montgomery County Police Department	Less than 24 hours (sometimes same calendar day).	Officer's name.	None stated in the policy.
Prince George's County Police Department	24 hours.	Officer's name; tenure; assignment.	None stated in the policy.
Prince William County Police Department	3-5 days.	Officer's name; tenure.  Information typically released in response to a media inquiry.	If officer safety issues are present. Will wait longer to release name if officer is wounded as a result of the incident.

Each of the agencies in the region will release information eventually, and most have policies or practices of releasing information “as quickly as possible” or within one to five days. Or at the very least do not have a policy prohibiting the release of the officer’s name and related information.

## CONCLUSION

Around the country, law enforcement agencies have been re-evaluating their current policies and practices in an effort to promote transparency and strengthen the community's trust in police. Particularly in the wake of an officer-involved shooting or other critical incident, police agencies must find ways to promote transparency and keep the public informed, while still protecting the safety of officers and the communities they serve.

This is the challenge facing the FCPD as it re-examines its policies and practices regarding releasing information to the public and news media following an officer-involved shooting or other critical incident. On the one hand, the FCPD must strive to be transparent about these incidents and provide as much information as possible to the public and news media in a timely and accurate way. The public has a right to know what the police are doing, especially when a life is lost. However, releasing certain information about an incident, particularly the name of the officer involved, can potentially pose a threat to the safety of the officer if it is released immediately after the incident. Thus, the FCPD, like other police departments, must find the correct balance to protect officer safety, ensure that any investigation is not jeopardized, provide information to the public and the members of the news media who have a legitimate right to know, and promote trust of the police within the community.

For this review, PERF consulted with members of the FCPD, Fairfax County officials, community members, and members of the news media to review FCPD's information release policies. PERF also examined the FCPD's current written policies and SOPs, reviewed relevant state laws, and explored the public disclosure policies of other police departments around the region, state, and country.

The recommendations that emerged from PERF's review seek to incorporate the varying perspectives and to balance the interest of transparency with the interest of protecting officer safety. **First and foremost, PERF recommends that the FCPD strive to adopt a culture of transparency and operate under a general presumption that accurate and detailed information should be released to the public and news media as soon as possible following events that occur in the community.** This includes information about officer-involved shootings and other critical incidents, as the public has a particularly strong interest in being informed about these incidents.

PERF also recommends that the decision about whether to release information should be made at the highest level of the Department, the Chief of Police. If the FCPD determines not to release information, it should state publicly why it is withholding the information at the present time and whether the public and news media can expect the information to be made available at a later date. Decisions about whether to release information should be made on a case-by-case basis, balancing the interest of transparency with the interest of protecting the safety of officers and the community.

Although most of the people PERF consulted agreed that the FCPD should strive for a culture of transparency, there were strong divides regarding whether the FCPD should release the name of an officer involved in a shooting or other critical incident. Even on this point, however, there was common ground. Those who strongly believe that the public has a right to know the officer's name said they understand the need to protect the officer's safety. For example, members of the media focus group—who perhaps felt the most strongly that the name should be released—recognized that releasing the name within the first few hours following the event might pose a safety risk to the officer. And those who oppose releasing the officer's name, such as many of the rank-and-file officers whom PERF consulted, understood that promoting transparency and accountability is important to building strong relationships within the community.

**PERF recommends that the FCPD should have a presumption that it will release the officer's name within two to five days following an incident, after a thorough risk assessment is conducted to determine whether a credible threat exists against the officer or the officer's family. If the FCPD determines that a credible threat does exist, the officer's name may be withheld as long as the threat remains, and the FCPD should communicate this to the public as the reason for withholding the officer's name. Once the threat has passed, the Department should promptly release the officer's name.** Regardless of when the name is released, the FCPD should release other important information about the officer involved, such as his or her rank, number of years on the force, and past history of any other officer-involved shootings.

To assist the FCPD as it implements new disclosure policies and practices, PERF also recommends that the Department continue moving forward to hire a civilian Director of the Public Affairs Bureau. This is a critical position within the agency and should report directly to the Chief of Police. The best candidate for this position would have the formal education and

experience to work closely with the community and media representatives. This candidate should possess critical thinking skills in crisis communication. The Department should further re-examine how it reviews and responds to Freedom of Information requests, removing the responsibility from the Internal Affairs Bureau and placing it under the direction of a trained and experienced custodian of records.

Although several community members, members of the media, and elected officials said that the FCPD has been moving in the right direction when it comes to transparency, they also believe that much more can be done to ensure that timely and accurate information is released to the public. PERF recommends that the Department continue its efforts to expand its use of social media and other methods for disseminating information as quickly as possible.

In the past, the FCPD has faced many challenges when it comes to releasing information about crimes, officer-involved shootings, and other critical incidents that occur within the community. Too often, a lack of communication on the part of the FCPD has fostered an adversarial relationship between the Department, the news media, and some members of the community. And as the FCPD's recent experiences demonstrate, bad information does not get better with time, and withholding information does not make the underlying problem disappear. Everyone benefits when a police department is transparent and promptly discloses information – not just the public or the news media, but also the police department itself.

The FCPD has recognized the challenges and mistakes from the past, and it is now working to turn the page towards releasing accurate and comprehensive information in a timely manner. The FCPD is also working to improve internal communications; for example, based on the feedback PERF gathered from rank-and-file officers, FCPD leaders have taken steps to strengthen communications to officers following an officer-involved shooting or critical incident. In addition to these initiatives focused on communication, the Department has also been working to strengthen its performance in areas, such as reviewing its use-of-force policies and releasing information on its website regarding the last 10 years of officer-involved shootings. These positive changes represent an opportunity for the FCPD – which is the second-largest police agency in the state – to put its best foot forward and serve as an example not just locally, but throughout Virginia and nationwide.