

**Ad Hoc Police Practices Review Commission
Independent Oversight and Investigations Subcommittee
June 30, 2015, 7:30PM (Full Subcommittee)
Room 232, Fairfax County Government Center**

WORKING GROUP 1

Meeting began at 5:05PM

Members Present:

Adrian Steel

Bob Callahan

Mary Kimm

David Stover

Sally Determan

Others Present:

Chris Flanagan, FCPD

Mike Kline, FCPD

Mr. Flanagan briefly laid out the process for the criminal investigation of an officer-involved shooting. When asked, he said there is nothing he cannot share with Internal Affairs Bureau (IAB), but some things like videos of interviews are prioritized and given earlier than other records. Mr. Flanagan said throughout the criminal investigation, his division is sharing information with IAB.

Mr. Steel asked if investigators' conclusions are included in report to Office of the Commonwealth's Attorney's (OCA). Mr. Flanagan said he couldn't say definitively he's never included one, but his role is to investigate and collect information and the OCA's role to determine whether the law was broken.

Mr. Flanagan said 60-90 days for autopsy was previously the longest single step but with technology (cell phones, computers, etc.) investigations take longer. He said six months to complete an officer-involved shooting investigation is what is expected.

Mr. Callahan talked about analysis of video. Sometimes multiple cameras are rotating and piecing that together takes significant time. Mr. Flanagan said he works off forensic copies, not directly off the evidence. He added that even when there is three minutes of relevant tape, he must review the length of tape provided.

Ms. Determan said it would be helpful if FCPD or the Board of Supervisors would educate the public on the length of time, rights of the officers and generally the investigative process.

Mr. Flanagan agreed.

Ms. Kimm said she suspects fundamental investigative process in Fairfax County is the same in Montgomery County. But there is a big difference in the communication. Montgomery County will release the name of the officer and draw a diagram of what happened within 24 hours.

Mr. Flanagan said he believes releasing information that quickly would negatively impact the integrity of the investigation.

Mr. Becerra asked if there is a way to decrease the amount of time it takes to investigate.

Mr. Flanagan said more manpower would help gathering initial investigations, but the value would be diminished if too many people with not enough case knowledge are questioning witnesses. Mr. Flanagan said he could not be any faster without risking error.

Working group had a discussion on compelled statements, the practice of not interviewing officer for 48 hours, administrative process following prosecutorial decision, IAB's focus on whether department policies are violated.

Ms. Determan asked whether IAB looks through officer's entire record. Mr. Kline said much of that is not germane unless previous, similar violations of policy exist. IAB does have access to full record.

Mr. Kline said recommendation of disciplinary action is the responsibility of officer's immediate supervisor.

Mr. Steel moved discussion to the topic of oversight and a task force.

Mr. Flanagan does not believe a multi-jurisdictional task force would be beneficial to the investigation. People come from places with different policies, practices and procedures and that makes investigation challenging. Difference in styles of interviewing can even complicate the investigation. He has seen this problem in lower profile cases.

Mr. Becerra asked if whether these problems could be overcome with enough time.

Mr. Callahan said the issue is full time dedication to the task force – such as with the sniper. The working group had further discussion on the task force.

Mr. Steel asked about the potential recommendation to fund two investigators for the Office of the Commonwealth's Attorney. Mr. Flanagan said that would be helpful. During an investigation, he meets with Commonwealth's Attorney Ray Morrogh or his deputy every other day.

Mr. Becerra asked about resource allocation in regards to adding staff.

Ms. Determan said some recommendations may be focused on improving communications and transparency of the current process.

Ms. Kimm discussed the presentation from Prince George's PD to the Communications Subcommittee and how they changed their public information process.

Mr. Steel asked about the interviewing of the officer involved and the 48 hour waiting period.

Mr. Flanagan – Directly involved officer – 48 hours – could be officer that pulled the trigger or supervisor who gave the order. He said there are volumes of research that show two sleep cycles produces a better statement from anyone. With a non-officer, there is a far greater risk that the police may not get any statement. Therefore, the police risk some inaccuracies in a statement given the night of the incident in order to get any statement. Ms. Kimm asked

doesn't that call into question all witness statements? Mr. Flanagan said as a trained investigator, you take that effect into account.

The working group continued its discussion on the public perception of the 48 hour waiting period.

On release of information, Ms. Kimm said the FCPD should be leading in release of information, not withholding. That would help negative perception.

Subcommittee held discussion on potential recommendation to hire an independent auditor, models of independent oversight, focus of Ad Hoc Commission, psychological assessment of officers both in regular course of duty and in uses of force, release of information, holding public forums to educate public on process.

Meeting concluded at 7:12

FULL SUBCOMMITTEE

Meeting began at 7:30PM

Members Present:

Jack Johnson
Michael Kwon
Adrian Steel
George Becerra
John Wallace
Bob Callahan
David Stover
Bob Horan
Jeff Stewart
Ben Getto
Robert Sarvis
Sal Culosi
John Lovaas
Marc Harrold
Sally Determan

Members Absent:

Nicholas Beltrante
James Stewart
Amy Dillard

Others Present:

Gordon Dean

Anita Culosi

Katie Boyle

Clayton Medford

Peter Andreoli

Meeting minutes approved without objection

Mr. Johnson introduced Mr. Andreoli, Deputy County Attorney.

RECORDING STARTED

Mr. Andreoli described the role of the office of the County Attorney vs. the Commonwealth's Attorney and the structure of the County Attorney's office. The Personnel and Administrative Law Section, of which Mr. Andreoli is the chief, deals with grievances, workers compensation, retirement, discrimination.

On use of force, Mr. Andreoli said the County Attorney does not prosecute nor defend criminal cases; there is little interaction between County and Commonwealth's Attorney because of this separation. Serious child abuse cases are criminal but also have a civil side – one example of an exception.

On disciplinary action re: use of force – investigated by FCPD, depending on nature usually by station the officer is assigned to and moved up the chain of command or directly to IAB.

Generally, County Attorney does not get involved until end of internal investigation and the chain of command is considering whether disciplinary action is warranted. Employees can grieve discipline before civil service commission (binding decision). Mr. Andreoli described it as a trial-like process that tracks the process of a civil court.

If employee is represented by counsel in grievance process, County Attorney represents department (FCPD or other).

County Attorney may be asked for legal advice as to whether discipline is warranted under the county regulations, question on whether the county has legal justification. Police officers have another option and make this election when discipline is proposed – the Law Enforcement Officers Procedural Guarantees Act – trial board (3 superior officers – 1 by chief, 1 by officer, 1 by those 2). Decision by trial board is advisory.

On civil liability, generally does not arise until end of criminal investigation and disciplinary action. If disciplinary action has been taken, outside counsel is hired for the officer due to previous adversarial relationship with County Attorney. FCPD is no different than other departments re: civil liability. Mr. Andreoli discussed self-insurance vs. insurance and previous arrangements at Fairfax County.

Generally plaintiffs do not file case until statute of limitations is close to running out.

On whether release of information relates to civil liability. Once suit is filed, both sides conduct discovery – not voluntary. If there is information out there, it will come out in discovery. It is the practice of the County Attorney’s office to not comment on pending litigation.

County Attorney represents the County, Board of Supervisors, county’s agencies and departments, and employees (if the issue arises in course of duty).

Mr. Johnson opened to questions. He asked about oversight bodies.

On limitations on oversight bodies, whatever the General Assembly has acted on can be done. On police oversight, oversight must fit into LEOPGA and grievance procedure. Civil Service Commission (CSC) has duties beyond grievances – all personnel regulations, before or after Board of Supervisors’ adoption, go before commission for hearing and comment. CSC prepares reports on civil service system for Board of Supervisors. Grievance panels do not have authority to issue subpoenas. Under LEOPGA, trial boards can go to district court to get subpoena. For compulsory statements, requires General Assembly. If it goes beyond advisory, almost certainly require amendments to LEOPGA and grievance procedures.

Mr. Sarvis asked if Board of Supervisors has compulsory powers. Mr. Andreoli said no.

Mr. Steel said the structure of an independent auditor reviewing IAB investigations to determine if complete, adequate and sufficient – could that auditor have subpoena power? Mr. Andreoli said no. If it were an advisory panel that heard complaints and made recommendations, but had not investigative power, that could be done under current legislation. Mr. Andreoli said likely yes. Is investigation itself a power that needs to be granted by General Assembly? Mr. Andreoli said if compulsory, yes. You’d need to look at LEOPGA which does not speak to any independent investigation – predicated on fact that the PD does the investigation. As part of IAB process, commanders review for completeness.

Mr. Andreoli said there are two auditors at Fairfax County. Internal Auditor under the County Executive – performs regular and assigned audits. Board of Supervisors has its own independent auditor.

Mr. Steel asked if on a case IAB felt it wanted another jurisdiction to look at it, would that require more than an agreement? Mr. Andreoli said probably just an agreement. There are so-called assessment centers with multiple jurisdictions represented.

Mr. Culosi asked about how close the two auditors can get to the Internal Affairs investigations. Mr. Andreoli said the Internal Auditor reviewed the IAB. As far as specific cases, that’s more of a factual question than a legal one. Mr. Andreoli said it might depend on their area of competence but ultimately it is up to the County Executive. Every department is responsible for its department. Mr. Culosi asked how close auditors get to criminal investigations? Mr. Andreoli said none.

Ms. Determan asked if Board of Supervisors has subpoena power over county agencies? Mr. Andreoli said no but they are able to gather whatever information they want from county

agencies. Ms. Determan repeated Mr. Steel's question regarding subpoena power of an independent oversight body and whether it requires legislative action.

Mr. Andreoli discussed the Human Rights Commission, which has statutory right to petition the court for subpoenas.

Mr. Andreoli discussed the process of an independent auditor and the interaction between those being audited and the auditor.

Mr. Callahan clarified whether the LEOPGA would need to get amended for the county to have an independent look at the IAB process. Mr. Andreoli said he expects any change to the disciplinary process to be challenged by employee organizations.

Mr. Callahan confirmed that at any time the Board of Supervisors can hire an outside contractor and give them unfettered access to county records. Mr. Andreoli said yes.

Mr. Stewart asked whether the county attorney determines what information is released to court or the Justice Department. Mr. Andreoli said it is their role to determine what is called for by the subpoena.

Mr. Steel asked what constraints are there on others to seeing full, unredacted files on closed cases. Mr. Andreoli said without knowing what's in the files, he can't make that determination. Juveniles, witnesses, pending criminal cases – all have statutory protections. Mr. Andreoli said it would be a case-by-case determination.

Mr. Andreoli said disclosing information to the outside consultant typically doesn't allow them to then disclose that information to another party.

Questions concluded and Mr. Andreoli left at 8:27pm.

The subcommittee received brief updates from the working groups.

Working Group #1

Mr. Steel said the meeting with CIB and IAB were helpful and gave a recap of the meeting captured in the minutes above.

Mr. Johnson said retaining a case-by-case auditor, similar to how PERF was hired, could be a recommendation. Mr. Callahan concurred and if a more in depth look at a case is need, that could be worked out.

Working Group #2

Working on overlap with Group #1; has not met

Working Group #3

Mr. Becerra said waiting on NACOLE presentation to Ad Hoc Commission in July; has not met

Mr. Johnson asked if an additional 2 working group sessions sufficient. Discussion was held on the schedule.

The subcommittee held a general discussion on other models of oversight bodies and potential bodies for the county.

Mr. Stewart said auditor model might be too limiting and that a civilian body that reviewed case materials would be lower cost. Mr. Lovaas said if the Board of Supervisors sees a single position as cost-prohibitive, that is a problem.

Mr. Callahan said the information the subcommittee has before it is thorough and wide-ranging.

Mr. Becerra cautioned about the time it might take to get General Assembly approval.

Mr. Horan said the Commonwealth's Attorney can always request outside investigative resources, such as the state police, if he or she feels there is a conflict.

The meeting concluded at 9:04pm.

Minutes prepared by Clayton Medford, Office of Chairman Sharon Bulova
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