

Summary Public Safety Subcommittee Committee Meeting

October 25, 2016

Committee Members Present:

Sharon Bulova, Chairman
Penelope Gross, Mason District (Vice Chairman)
John Cook, Braddock District (Committee Chair)
John Foust, Dranesville District
Pat Herry, Springfield District
Catherine Hudgins, Hunter Mill District
Jeff McKay, Lee District
Kathy Smith, Sully District
Linda Smyth, Providence District
Daniel Storck, Mount Vernon District

Summary Minutes of Previous Public Safety Committee Meeting (September 13, 2016):

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/sept13-minutes-public-safety.pdf>

October 25, 2016 Meeting Agenda:

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/oct25-agenda-public-safety.pdf>

October 25, 2016 Meeting Materials:

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/oct25-materials-public-safety-police-review.pdf>

Today's meeting was called to order at 1:02 P.M.

Supervisor Cook, Committee Chair, began with a brief introduction and overview, which noted that today's meeting would largely focus on the proposed establishment of a Police Civilian Review Panel (PCRP). Topics discussed during this introduction included:

- An overview of the Ad Hoc process, and the subsequent review and actions taken on their findings by the Board's Public Safety Committee leading up to today's meeting.
- The PCRP is intended to be independent of staff, which puts a greater onus on the Board of Supervisors in the initial creation and establishment phase.
- Members of the Ad Hoc Commission in attendance were thanked for their continued participation and were asked to rise so they could be recognized.

Supervisor Cook then outlined several of the legal issues associated with establishment of the PCRP. After discussion among several key stakeholders, a determination has been made that the panel should be constituted similar to the recently-approved Office of the Independent Police Auditor, i.e., the PCRP's

focus should be on review of Fairfax County Police Department investigations instead of conducting their own investigations. A couple of scenarios/examples were given to describe how the PCRCP would review investigations, with a key goal being determining if the investigation was completed properly. If the PCRCP has questions or feels that additional investigation or interviews need to be conducted, they can ask for that additional investigation/review. The PCRCP should always be able to get its questions answered.

Discussion ensued on the Code of Virginia and why the Panel could not conduct investigations/take evidence, etc.

- Julia Judkins, outside independent legal counsel, noted the absence of enabling legislation.
- If the PCRCP was conducting its own investigation, it could take testimony from a complainant but not from the officer. The Panel therefore would only be getting one side. The officer could testify; however, he/she would have to relinquish their rights as outlined under the Garrity ruling.
- Deputy County Executive Dave Rohrer noted the challenge being undertaken - trying to strike a balance where a complainant can be heard and their concerns taken seriously, but not having a one-sided hearing. Under the proposed setup, the PCRCP can state why they feel an investigation may have been inadequate, and ask for additional follow up from the Police Department on the internal administrative investigation.

Supervisor Cook noted there are several issues that need to be brought before the Board for discussion with the first being access to confidential information. A lengthy discussion on the roles and responsibilities of panel members ensued, including FOIA-related implications on materials brought before the PCRCP.

- Ms. Judkins stated that the PCRCP will be a public body and that has to be considered, as do the terms public hearings vs. public meetings.
- One option would be for the PCRCP to review documents but not copy or keep them.
- Supervisor McKay offered that if a complainant believes there is an investigative omission, then the complainant will need to explain it to the Panel. Would this explanation constitute then the giving and taking of evidence? Supervisor McKay added that the complainant could be a family member, an organization, etc.
- Redaction of sensitive information involving sexual assaults, juveniles, etc. is suggested. Officers express concern that PCRCP members will have access to all that is included in case files with no ramifications for disclosures that violate confidentiality for victims, witnesses and informants.

The next question pertained to the scope of work subject to PCRCP review. The two major proposed categories were *Abuse of Authority* and *Serious Misconduct*. The definitions of these terms are to be defined by the PCRCP at the onset of their work and approved by the Board, not on a case-by-case basis.

The next question discussed was selection of PCRCP members.

- The consensus was that they should be Board appointed. The Board will invite and encourage public nominations for PCRCP membership. The Board can reach out to community members, individuals, and organizations to obtain nominations.

- Applications would be known to the public. Needs to be some sort of equitable distribution/balance on the panel (geographic, diverse). National benchmark comparisons discussed.
- Supervisor Herrity remarks that, within the Commonwealth of Virginia, only Virginia Beach has a review panel like the Board is contemplating for Fairfax. Whereas he supported establishment of the Independent Police Auditor position, he believes the PCRCP is being done for reasons of political correctness when the County already faces a significant budget shortfall. The PCRCP's fiscal impact includes unknown costs.
- Support was expressed for having a pool of acceptable nominees for PCRCP membership that would come to the Board for approval.
- Supervisor Cook noted the 12-6-16 Board action item on this issue did not have to be the vehicle to set qualifications on who can serve. That can be done during the vetting process. The Board will have to decide what criteria and standards will be used and when they are established.
- The Board will also have to determine what conflict of interest parameters to consider.
- There was significant discussion on whether someone with a prior felony conviction should be eligible to serve on the PCRCP.
- Second Lieutenant Tim Burgess expressed that there is a difference between a convicted felon regaining voting privileges versus serving as a PCRCP member and hearing confidential case information.
- There was general consensus that the overriding goal should be constituting a Panel that is independent and fair.
- Chief Ed Roessler expressed that earnest efforts will be made to assess any biases of prospective PCRCP members.

The next questions discussed were how many members should the PCRCP have, how long should their term-of-office be, and would there be term limits? Consensus emerged that nine panel members made sense, with term limits (staggered three-year terms, with two term maximum).

- The Board will appoint the chair the first time, then the PCRCP will handle going forward. There was general consensus on the suggestion for a two year term as chair.

Other issues touched on briefly included:

- Annual reports – there was general support for the PCRCP to provide an annual written report describing its activities for the year.
- There was also general support for the PCRCP holding a public hearing, or town hall like forum, at least once annually. This would not necessarily be a place to air individual complaints but designed to discuss policy.
- Supervisor Cook noted that his goal was to develop a revised draft of the 12/6/16 action item incorporating the discussion from today's Public Safety Committee meeting and any subsequent follow up discussions, run this by the commission, the BOS, and other interested stakeholders, and have it posted to the public no later than Wednesday 11/30/16.
- There was a brief discussion of the cost implication of establishing the PCRCP. It was noted that there would be additional workload for staff, but it is hard to estimate with many unknowns, i.e., number of reviews, etc.

At this point, the Board, through Supervisor Gross, invited comments from representatives of Sworn Police Officers in attendance.

- Officer Richard Barron noted that the idea behind the creation of the PCRCP is to ensure that fair and thorough investigations are conducted. He noted that, even in the Geer case, an extremely thorough and complete investigation was performed. He believes that establishment of the PCRCP runs the risk of confidential information leaking and it is unnecessary.
- One of the officers in attendance commented that most of the officers in his employee organization believe the PCRCP is being forced upon them. He further noted that some will not be satisfied until they have all of the information related to a case or incident, some of which cannot be released by statutory authority.
- Detective Sean Corcoran, who served on the Ad Hoc Commission, commented that he lost the subcommittee vote regarding the PCRCP, he personally believes the PCRCP is unnecessary, but that this is the process the County has chosen to pursue. When Chairman Bulova sought clarification from Detective Corcoran as to whether he had an opportunity to express his concerns on the Ad Hoc Commission, he responded that he had a vote on this and lost.
- There is concern that this is just another level of review where several levels (internal, Office of Police Independent Auditor) already exist. Supervisor Hudgins expressed confidence in the Department's efforts, but articulated that the community needs to see the fairness in the investigative process to accept that it (fairness) is actually there. Supervisor Hudgins is working to clarify this matter through her engagement.
- Another issue of concern to Sworn Officers is who has access to what, when and why. They want names of witnesses and testimony about egregious acts redacted before the PCRCP accesses case files.
- Officers suggest that it may be in best interest to let the Office of the Independent Auditor get established, an auditor be hired, and let that individual get settled and in place before moving forward on consideration of creating a PCRCP.

Further discussion ensued on the following topics:

- It will be necessary to clearly define what it will mean to serve on the PCRCP for prospective members. Significant training will be needed. Finding the right people will be paramount. Look at other jurisdictions such as Denver, CO.
- Concerns were raised about the timing of the proposed action item on 12/6/16. It was noted that the hiring process for the Police Independent Auditor position has just commenced and applications are still being accepted until 11/11/16.
- There was general support that there would need to be a way to evaluate the PCRCP's performance. This includes setting a realistic time frame for doing that as part of the action item.
- Police Chief Edwin Roessler thanked the committee for their work and respecting the legal and ethical concerns he raised as part of the process.
- The Board noted that it was critical to update the Police Department's Ad Hoc Commission tracking spreadsheet to show the significant work that has already been done. Supervisor Cook noted that is to be completed by December 13, 2016 - the date of the next Public Safety Committee meeting.

The meeting adjourned at 2:55 p.m.