

Summary Public Safety Subcommittee Committee Meeting

September 13, 2016

Committee Members Present:

Sharon Bulova, Chairman
Penelope Gross, Mason District (Vice Chairman)
John Cook, Braddock District (Committee Chair)
John Foust, Dranesville District
Pat Herrity, 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 (July 19, 2016):

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/minutes-summary-public-safety-sub-meeting-7-19-16-v6.pdf>

September 13, 2016 Meeting Agenda:

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

September 13, 2016 Meeting Materials:

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/sept13-materials-public-safety-ind-police-auditor.pdf>

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/draft-job-ad-police-auditor.pdf>

The meeting was called to order at 3:15 p.m.

After a brief introduction and overview, a discussion on the proposed establishment of the Office of the Independent Police Auditor ensued. Supervisor Cook noted that this topic would take the majority of the meeting, with a focus on the draft Board Action Item prepared for the September 20, 2016, Board meeting (included in the above link for meeting materials).

- Supervisor Cook did a brief review of issues discussed at the last Public Safety Committee meeting on July 19, 2016. One significant issue raised previously was how the Auditor would be involved in Police Department internal investigations as they are

occurring. It was stressed the Auditor would not be conducting any investigation, but could recommend witnesses to be interviewed, questions to be asked, etc. It is expected and desired that the Police Department and the Auditor work collaboratively during investigations, with a mutual goal of fair, comprehensive, and timely investigations. The Auditor will also review completed investigations and the findings, issue reports and make recommendations.

- Supervisor Foust asked a question about Recommendation 8.d) of the draft Action item, and Auditor access to criminal investigative files and internal investigation files. Julia Judkins, the independent outside counsel retained by the County for work on this topic, provided the reasoning for the recommended wording. The Auditor can consult with Commonwealth's Attorney, but cannot require release of any documents from the criminal investigation from that office. It was noted that the Police Auditor is to be more focused on the Police Department internal investigation and reviewing their findings and processes, but would be able to review closed criminal investigative files through Internal Affairs. Discussion centered around the sharing and protection of investigative files and personnel matters, FOIA concerns, and the ability to redact protected information. Responding to an inquiry by Supervisor Cook, Ms. Judkins provided examples of some of the things that would be likely to be redacted. Supervisor Foust noted his concerns for the need for the Auditor have access, and called for more specificity regarding what the Auditor can and cannot review.
- Jack Johnson, Chair of the Independent Oversight and Investigations Subcommittee also added some thoughts and perspective on the intent and discussions of the subcommittee, and, in particular, he again reiterated the intent that there would be a collaborative side-by-side relationship between the Auditor and Police Department with mutual goals.
- Supervisor Gross asked about Recommendation 8.b) pertaining to the hiring criteria for the Office of the Independent Police Auditor, specifically if the requirement that the Auditor cannot have been previously employed by Fairfax County would apply to all auditor positions. Supervisor Cook clarified that this is a draft document and amendments can be made, but the general consensus was that the requirement would apply to all positions.
- Supervisor McKay asked about Recommendation 8.c)(ii), specifically about the defined scope of a use-of-force complaint. Following discussion, staff was directed to refine the scope to ensure clarity that the intended scope was more than just minor uses of force and edit the draft document.
- Chairman Bulova requested clarification on Recommendation 14 and the process if there was disagreement between the Police Department and Auditor. She also requested clarification on the revised Recommendation 8.f), and Supervisor Cook noted the change for the Auditor to serve at the pleasure of the Board instead of a defined term was at the direction of the Board.
- Supervisor Hudgins asked for clarification on Recommendation 8.d) and Auditor access to a completed criminal investigation file if needed. It was stressed this would be done collaboratively through the Police Department's Internal Affairs, as the Board cannot

compel the Commonwealth's Attorney to provide any materials, particularly during an ongoing investigation.

- Supervisor Hudgins also asked that Recommendation 15 be made clear that the Board, not only the Chairman, receive copies of any Auditor reports and that these be public documents.
- Supervisor Herrity asked about other jurisdictions that have both a police auditor and citizen review panel, but there was no clear answer as to how many localities have both.
- Supervisor Herrity also noted that he is concerned about the Board approving the Office of the Independent Police Auditor prior to discussing the proposed Civilian Review Panel and how they would interface. Supervisor Cook responded that as the two functions are being discussed and approved separately, it could not be presupposed that the Civilian Review Panel would be established.
- Supervisor Herrity is also concerned that the creation of the Office of the Independent Police Auditor will generate additional work for the Police Department (PD) and the draft Fiscal Impact should be revised to include consideration for additional PD staff resources to address the new workload. Chief Roessler stated that there are IA-related investigative positions in the FY16-20 Public Safety Staffing Plan and those could be moved forward if directed. Supervisor Cook asked staff to consider additional language for the Fiscal Impact in a revised Action Item.
- Supervisor Herrity also noted a correction required regarding no prior County employment for the draft job ad.
- Supervisor Kathy Smith asked why 3 auditor positions were being recommended. Chief Roessler responded that it is based on best practices and workload predictions. Supervisor Smith also warned that the restrictions as written for no prior County employment might preclude succession planning with the Office. That was not the Board's intent, just for initial hire. Staff will revise the language. Questions were also raised then by others as to civil service protections for Auditor staff. Cathy Spage, Director of the Department of Human Resources, was requested to follow up with information on these issues and other HR-related issues to the Board as soon as possible.
- Supervisor Smith also has a longer-term concern about how the Board will review the performance of the auditor as it reports to the Board. Supervisor Cook acknowledged that need, but stated that will be addressed in the future.

Following that discussion, a brief discussion on agenda item, "Preparatory Discussion on the Independent Oversight and Investigations Subcommittee Recommendations for the Establishment of a Civilian Review Panel" ensued. Initial comments were made by Ms. Judkins, who raised two main points for consideration prior to the next Public Safety Subcommittee meeting:

- To what materials will citizen members of a review panel be given access and how will it remain confidential?

- To what extent will civilian review panel members be allowed to see IA reports or redacted IA reports?
- To what extent will civilian review panel members be allowed to see personnel records or redacted personnel records?
- Public hearing component. Where is the statutory authority for empowering this group to conduct public hearings? What authority does the review panel have to compel an employee appearance? Problems with County grievance procedures. More discussion on this topic is needed.

Mr. Johnson discussed the intent of the commission. He stated the Civilian Review Panel was not intended to be investigative, it is intended to be a review panel. Not intended to take statements, become evidentiary, etc.

Supervisor Cook says a dialogue will continue on this topic at the next Public Safety Committee meeting in October; however, he hoped this brief introductory discussion will allow for significant dialogue prior to the meeting and he invited Board members and others to ask questions or submit thoughts in the interim. He also noted that after the Public Safety Committee meeting in October, he is hopeful the establishment of a Civilian Review Panel might be ready for a full Board vote possibly in December.

The meeting adjourned at 4:15 p.m.