

## Summary – Public Safety Committee Meeting

October 10, 2017

### Committee Members Present:

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 of Previous Public Safety Committee Meeting (June 13, 2017):

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/june13-public-safety-summary.pdf>

October 10, 2017 Meeting Agenda:

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/oct10-public-safety-agenda.pdf>

October 10, 2017 link to video of the Public Safety Committee Meeting:

[http://video.fairfaxcounty.gov/MediaPlayer.php?view\\_id=6&clip\\_id=833](http://video.fairfaxcounty.gov/MediaPlayer.php?view_id=6&clip_id=833)

October 10, 2017 Meeting Materials:

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/june13-public-safety-summary.pdf>

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/oct10-public-safety-automated-license-plate-readers.pdf>

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/oct10-public-safety-license-plate-reader-handout.pdf>

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/oct10-public-safety-body-worn-cameras-draft-policy.pdf>

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/oct10-public-safety-body-worn-cameras-presentation.pdf>

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/oct10-public-safety-seized-vehicle-processing-fee.pdf>

<https://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2017/oct10-public-safety-volunteer-fire-commission.pdf>

Today's meeting was called to order at 10:05 A.M.

After a brief introduction from Committee Chairman Cook, the minutes from June 13, 2017 meeting were approved.

The first topic on the agenda was a brief update on the Excess Federal Property 1033 Program.

- Colonel Edwin C. Roessler Jr., Chief of Police, reported the Police Department has made no purchases through the 1033 program since 2008. The purchases made in 2008 were for additional patrol rifles. Equipment used by the Department is usually customized and not from military surplus. Chief Roessler provided an example of the new exterior ballistic vest worn by officers designed to match the uniform shirt color and to not convey a military image.

The second topic on the agenda was police technology use and data retention updates pertaining to mobile phones and license plate readers.

- County Attorney Beth Teare briefly outlined a case pending in the Va. Supreme Court regarding license plate readers. There is currently a lawsuit against Chief Roessler and the Police Department alleging violation of data collection retention through Automatic License Plate readers (ALPRs). The lawsuit alleges that a license plate number is personal information, and that the retention of this data for 364 days violates the Government Data Collection and Dissemination Practices Act in the Code of Virginia.
- Fairfax County Circuit Court found in an opinion letter dated 11/18/16 that a license plate number is not personal information covered by the Act.
- An appeal has been filed to the Virginia Supreme Court with the case having been fully briefed and is now set for oral argument set sometime in November with exact date not yet confirmed. The County Attorney's Office will provide an update on the case once a disposition is known, and based on the status of the case there was no further discussion or questions.
- Claudia Arko then provided a brief legislative history and background on bills and an advisory opinion by former AG Cuccinelli related to law enforcement data collection and retention, including through ALPRs, particularly since 2013. No legislation has yet been passed related to retention periods.
- Kim Baucom of the County Attorney's office then made a brief presentation regarding the retrieval of cell phone data and addressed the question of whether or not law enforcement needs a search warrant to obtain historical data from a cell phones.
- United States v. Graham, a current U.S. Supreme Court case, challenges obtaining historic cell phone data from a cell phone service provider without a search warrant.
- Virginia State Code section 19.2-70.3 pertains to cell phone data restrictions.
- There are three categories of cell phone data governed in the statute:
  - Historical information – requires search warrant, grand jury subpoena, or court order to obtain.

- Real time location – may be obtained with a search warrant or administrative subpoena, except in certain exigent circumstances.
- Content (text messages) – requires search warrant to obtain.
- Consent and exigent circumstances are exceptions.
- Claudia Arko then provided a brief update on legislative efforts related to cell phone data.
- Chief Roessler advised the Department has policy requiring members to comply with code requirements and court rulings.
- Kim Baucom concurred Dept. policies aligned with current statutes and court rulings, but that depending on the U.S. Supreme Court ruling policies may have to be revisited and amended.
- Kim Baucom explained, in regards to FOIA, that data can be exempt from requests depending upon the purpose of the request, and that data used for criminal investigations are typically exempted.
- Supervisor Cook requested a future closed session briefing on FOIA exemptions related to cell phone data.
- He further inquired of Chief Roessler as to whether the FCPD retrieves data on otherwise law-abiding citizens that others could potentially FOIA, to which the Chief responded that we only request data for criminal investigations and law enforcement purposes only.
- Based on a question from Supervisor Storck Lieutenant Rex Pagerie then provided a brief explanation on Virginia State Police's (VSP) stationary LPR camera program and information and access sharing. He explained the FCPD is currently working with VSP to get access to the cameras for sharing purposes, but that when "hits" occur on the camera that they are broadcast via VSP police radio, which our dispatchers routinely monitor. In practice, the cameras have triggered various "hot list" activations, Amber alerts, Silver alerts, stolen vehicles, and various wanted persons, including a recent high profile arrest of a subject wanted for murder in another state. Access sharing should be accomplished in a few months.
- Supervisor McKay concurred with Supv. Storck's question and comments, but also asked more deeply about Maryland State Police (MSP) technology, practices, and access to monitor VSP cameras for subjects fleeing Fairfax County into Maryland. Lt. Pagerie stated that he did not fully know MSP policy and equipment, but that they communicate through radio and our dispatchers monitor through PMARS.
- Supervisor McKay pointed out that crossing state lines in Fairfax creates opportunity for evasion, and that the technology, to be beneficial should help with capture.
- Supervisor McKay asked to re-visit this issue in the Spring for questions, particularly related to shared technology and legislation, and Supv. Cook concurred.
- Supervisor Gross voiced concern that the technology not only account for other states, but also for persons fleeing into the jurisdictions within the county, such as City of Falls Church City, City of Alexandria, and Fairfax City.
- Supervisor Hudgins also asked that COG be consulted and engaged.

The third topic of the meeting was an update on the Civil Asset Forfeiture program.

- Chief Roessler introduced Major Shawn Bennett and Captain Jack Hardin to explain the program and definitions.

- Captain Hardin stated there are two primary types of forfeitures, state and federal. The majority of forfeited assets that are processed are those of the state, and often involve proceeds of drug transactions. Typically, once a criminal case is initiated it is resolved long before the civil process is completed. Usually the assets to be seized are either money or vehicles, and the legal standard for forfeiture has recently been changed from the preponderance of the evidence standard to clear and convincing.
- Major Bennett explained that seized funds can be used to supplement, not supplant budgets. Furthermore, funds cannot be transferred to non-law enforcement agencies or for non-law enforcement purposes. Many of the funds have been used to provide for Ad Hoc/PERF recommendations. The strict approval process requires the approval of all three Deputy Chiefs, the Chief, and then Deputy Co. Exec. Rohrer. Finally, the seizure program has been audited several times, including by the Board Auditor, Internal Audit, and DOJ.
- Supervisor Cook inquired as to whether the Department returns property to persons who are acquitted of their criminal charges. Captain Hardin replied that generally, yes, the property is returned to the person. Supervisor Cook then asked if the same is true for persons who have their charges dropped, and he replied yes.
- Supervisor Cook asked how much money is currently in the seized asset fund. Major Bennett estimated around \$2.1 million with an average of \$1.2-1.4 million seized yearly.

The fourth topic of the meeting pertained to the proposed Body-Worn Camera (BWC) program.

- Chief Roessler updated the Board on the current proposed BWC program costs, specifically that to fund the entire department program would cost an estimated \$8 million with \$4 million in recurring costs. As to the pilot program, he identified Mason and Mt. Vernon as the two stations who would take part, and further elaborated on the RFP process and a draft policy that had been created with input from various community stakeholders.
- Captain Chantel Cochrane was introduced and outlined the policy in its current format. Specifically she mentioned it was based upon the DCJS recommended policy, and had been vetted through community stakeholders and sought to incorporate IACP recommendations. An emphasis was placed on the balancing of personal privacy rights, civil liberties, and officer safety concerns. Captain Cochrane lauded specific appreciation on Kofi Annan of the NAACP for his hard work and collaboration on the policy and reiterated that the policy is a living document that can be modified, if needed, as the pilot program progresses and feedback is given.
- Major Christian Quinn then spoke of the cost analysis and timeline developments. Specifically, the pilot is projected to cost approximately \$676,000. After the conclusion of the pilot program, the vendor will provide up to 3 years of data retention storage which brings most police interactions into compliance with the Va. retention requirements. Annual costs of the program will fluctuate and the Department is currently negotiating a cap to avoid “sticker shock” for unanticipated rises in data retention costs. He further stated that the workforce training on BWC should mirror that of the recent Alternative Accountability Program roll-out which only resulted in minor overtime costs for certain personnel.

- Dr. Richard Bennett of American University then introduced himself and explained the study he intended to conduct in regards to the BWC pilot program should it be approved. He stated the point of the study was to see if the system works and assess whether or not the outcome benefits the residents and officers by leading to a reduction in complaints and use of force cases. Ideally the program should lead to an increase in community stakeholder satisfaction, an increase in legitimacy and cooperation, and co-production designed to increase trust.
- Dr. Bennett then introduced his colleague, Brad Bartholomew, who stated he was assisting on the BWC study to ensure the BWCs work as intended, and whether or not the policies are set up to facilitate the end goals. This is accomplished by reviewing, as examples, defining when cameras are to be turned on, how officers communicate to the public when they turn on a camera, and how FOIA requests are handled.
- Supervisor Cook then noted that the start-up costs for the study originate from the Ad Hoc budget reserve, and Joe Mondoro, DMB, explained the reserves in more detail.
- Supervisor Herrity requested clarification on the implementation timeline.
- In response to a question by a Supervisor Herrity, Dr. Bennett explained he plans to use crime rates and citizen surveys to formulate his report.
- Supervisor Herrity also noted that the BWC program should seek to measure officer needs and the impact on them too.
- Supervisor Smith inquired how long it would take Dr. Bennett to finalize his report, an evaluation she appreciated.
- Dr. Bennett explained some methodology and stated he believed it could be completed by September or October of 2018. Supervisor Cook asked later for further clarification on the study timeline.
- Supervisor Gross inquired as to how many officers would be issued BWC during the pilot phase, and their operational assignments.
- Chief Roessler responded that he could not comment due to the ongoing procurement process, but that it be patrol officer centric and hopefully bike teams as well.
- Supervisor McKay expressed concern over the 90-day time frame for the BWC pilot project, and the ability to do a worthwhile assessment, generating further discussion.
- Chief Roessler briefly explained the rationale for 90 days, and the extensive RFP process and preparation. Dr. Bennett noted that he too was not sure 90 days would be enough for a comprehensive report, but was limited to that as a testing phase. The Chief explained the potential for extending the pilot if needed.
- Supervisor Cook asked if others were comfortable with only 90 days following the discussion of a testing phase. Chief Roessler responded that the proposed estimate before the Board was for 90 days, and that if they wished to extend it, it would require additional funding.
- Supervisor Storck expressed concerns too about the study time, and then about the number of cameras deployed in the field. Chief Roessler stated the goal was to issue BWC to patrol officers and supervisors first.
- Supervisor Storck wanted to ensure enough BWCs were provided so that we have no potential incident occurring involving an officer(s) who did not have cameras issued to them vs. officers at the same station who did.
- He further asked if the BWC policy was finalized.

- Captain Cochrane stated the draft policy for the pilot was finalized.
- Supervisor Storck then questioned Dr. Bennett regarding diversity concerns in the assessment process among surveyed members of the public, and how results could be compared to demographics of the areas surveyed and those most likely based on data to interact with police.
- Dr. Bennett explained the questioning would be done by random telephone surveys, and that if the sample was large enough, it would accurately reflect diversity. He also said oversampling could be done.
- Supervisor Herrity encouraged police bike team officers be equipped with BWCs during the pilot phase as they have frequent contact with the community and the equipment may also impact them in their operations, and they should be part of the pilot upfront.
- He also inquired as to why and how Dr. Bennett was chosen to conduct the study of BWC. Chief Roessler responded that he selected Dr. Bennett to conduct the study at no cost to the County.
- Supervisor Cook then set the November 21<sup>st</sup> date for the Pilot BWC Program Action Item for the Board.

The final agenda for the meeting concerned the Volunteer Fire Commission

- Volunteer Fire Chief Timothy Fleming made a presentation to the Board concerning the Volunteer Fire Service and the role it plays in the community.
- The Volunteer Fire Service was started in the 1900s and has a diverse membership.
- The separate volunteer fire companies are private corporations that own and maintain eight fire stations.
- Volunteers dedicate over 200,000 volunteer hours/year that is worth \$6 million in benefits to the county.
- There are 87 pieces of apparatus at 15 stations worth over \$30 million.
- The volunteer system trains new members monthly and generates revenue through EMS billing.
- The county contributes \$25,000/year/station to put toward apparatus loans.
- The county pays for vehicle maintenance, fuel costs, insurance, personal protective gear, etc.
- Volunteer Companies pay mortgage payments and facilities maintenance in volunteer-owned stations, apparatus, company uniforms, liability insurance, etc.
- The Commission's primary concerns at this time are retention, leadership, finances, cost of apparatus, LOSAP, and succession planning.
- Supervisor Cook lauded the Commission and the Volunteer Companies as a great example of volunteerism in the community.
- Supervisor McKay expressed a need to DMB for budget info and how funding for LOSAP might be considered and utilized. He too lauded the volunteers, and is looking for ways for the Board to further recognize the volunteers.
- Supervisor Gross noted that apparatus costs nationwide are high and it seems that there is a monopoly for service vendors, and challenges for localities or Volunteer stations to negotiate sustainable costs. She suggested a regional or national discussion on apparatus costs.

- She asked and was told the annual LOSAP costs are approximately \$80,000. Ms. Gross stated that this was a significant sum, and maybe the Board should consider using some of the EMS billing funds for this purpose.
- Supervisor Herrity also expressed the sense of community the volunteers bring, and echoed the discussion on LOSAP.
- He then inquired about a potential policy change for the Fire and Rescue Department algorithm which would change all dispatched call to ALS calls. This could adversely affect the volunteer system.
- Assistant Chief Chuck Ryan stated the FRD is trying to refine the call-taking process to better determine ALS vs. BLS runs. Typically the closest unit is dispatched, which can include volunteers.
- There was significant discussion on the issue, and both the Volunteer Commission and the Public Safety Committee will, as requested, be advised prior to any implementation of any proposed changes in call taking and dispatching regarding EMS calls for service.

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