

Annual Report of
the Fairfax County
Independent Police Auditor

2018



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Independent Police Auditor

2018 Annual Report of the Fairfax County Independent Police Auditor

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SECTION I: OVERVIEW

The Office of the Independent Police Auditor (“OIPA”) was established by the Fairfax County Board of Supervisors (“BOS”) on September 20, 2016,¹ in response to recommendations from the Ad Hoc Police Practices Review Commission² and became operational on April 17, 2017. OIPA’s mission is to bolster trust between the citizens of Fairfax County and the Fairfax County Police Department (“FCPD”) by providing accountability, fairness, transparency, and trust in the complaint system and investigative process.

The Independent Police Auditor (“Auditor”) is mandated by the BOS to review:

1. All investigations of death or serious injury cases conducted by the Internal Affairs Bureau (“IAB”) of the FCPD; and
2. Use of Force (“UOF”) investigations which are subject of a public complaint made to the FCPD or the Auditor and which meet the definition of police use of force as incorporated in Police Department General Orders (“G.O.”) as of the date of the UOF or alleged misconduct.

The Auditor reviews FCPD internal/administrative investigations of all relevant use of force cases and in custody-deaths (that occurred on or after January 1, 2017) for thoroughness, completeness, accuracy, objectivity, and impartiality, and issues a public report of his findings. The OIPA also produces an annual report,³ as well as additional reports on FCPD policy recommendations or data reviews. Through its reports, the OIPA makes public recommendations concerning revisions of FCPD policies, training, and practices.

The OIPA provides administrative support to the BOS-mandated Fairfax County Police Civilian Review Panel (“Panel”). The Panel, which is made up of nine volunteer County residents,

¹ <https://www.fairfaxcounty.gov/boardofsupervisors/sept-20-2016-meeting>

² <https://www.fairfaxcounty.gov/policecommission/>

³ Independent Police Auditor Richard G. Schott presented the 2017 Annual Report to the BOS during the June 26, 2018 Public Safety Committee meeting. He presented the major policy recommendations made to the FCPD in 2017, and answered BOS questions regarding the Annual Report. This 2018 Annual Report will be presented to the BOS during a 2019 Public Safety Committee meeting.

receives complaints and reviews police investigations involving serious police misconduct or abuse of authority allegations.

Another core function of the OIPA is to serve as an accessible, safe, impartial, and responsive intake venue for complaints against the FCPD. The OIPA processes citizen complaints concerning various issues including use of force, and those under the purview of the Panel. Citizens may submit complaints to the OIPA in lieu of submitting them directly to the FCPD. Citizens may request that the Auditor or the Panel review an already completed FCPD investigation if they remain unsatisfied with the results.

This Annual Report provides a description of key OIPA activities that occurred during 2018 with an emphasis on individual case reviews conducted, recommendations made by the Auditor, complaint intake, and support provided to the Panel. As the OIPA is a relatively new agency, substantial effort was made in 2018 to continue the development of office policies and procedures and to hire an additional staff person. Also, significant OIPA staff time was devoted to coordinating efforts between the OIPA and the Panel, and providing support to the Panel as it developed its own processes and procedures.

SECTION II: INDIVIDUAL CASE REVIEWS

The OIPA monitored or reviewed a total of eighteen FCPD investigations during 2018. The types of incidents reviewed included claims of excessive use of force (13), officer-involved shootings (3), one in-custody death, and one use of the Precision Immobilization Technique (“PIT”). Five investigations reviewed were the subject of a public complaint made to the OIPA, eight were the subject of complaints received by the FCPD, and five incident investigations were automatically monitored/reviewed because the incident was an officer-involved shooting or use of force which resulted in death or serious injury. All thirteen complaints received in 2018 included a claim of excessive use of force. The types of force used by FCPD officers in these allegations included uses of force to cuff (6), takedowns (6), uses of a Ripp hobble device (2), use of an ECW (1), and being choked (1).

During 2018, the OIPA released public reports on six incidents that occurred in 2017:⁴

BRIEF DESCRIPTION OF INCIDENT	DATE OF INCIDENT
1. Officer Involved Shooting	January 16, 2017
2. Alleged excessive UOF (choke)*	April 16, 2017
3. Precision Immobilization Technique (“PIT”)	June 22, 2017
4. OIS of domesticated animal	October 24, 2017
5. Alleged excessive UOF (takedown)*	October 28, 2017
6. Alleged excessive UOF (takedown)*	June 23, 2017

*Review initiated by a public complaint made to the OIPA

In addition to the six reviews initiated during the previous year, the OIPA began monitoring or reviewing FCPD investigations into an additional twelve incidents that occurred in 2018:

BRIEF DESCRIPTION OF INCIDENT	DATE OF INCIDENT
1. Officer Involved Shooting	March 15, 2018
2. In-Custody Death	June 26, 2018
3. Alleged excessive UOF (force to cuff)^	January 30, 2018
4. Alleged excessive UOF (force to cuff)^	April 20, 2018
5. Alleged excessive UOF (Ripp hobble)^	May 4, 2018
6. Alleged excessive UOF (force to cuff)^	May 26, 2018
7. Alleged excessive UOF (ECW, Ripp hobble)*	June 2, 2018
8. Alleged excessive UOF (force to cuff)^	June 3, 2018
9. Alleged excessive UOF (takedown, force to cuff)*	July 6, 2018
10. Alleged excessive UOF (takedown)^	July 25, 2018
11. Alleged excessive UOF (takedown, force to cuff)^	July 28, 2018
12. Alleged excessive UOF (takedown)^	September 27, 2018

^Review initiated by a public complaint made to the FCPD

*Review initiated by a public complaint made to the OIPA

⁴ Links to all reports published in 2018, and their publication dates, are provided in the Appendix.

These OIPA reviews will continue into 2019 and public reports will be issued as they are completed.

SECTION III: POLICY REVIEW & RECOMMENDATIONS

In addition to conducting individual incident reviews, the BOS authorized the Auditor to make public recommendations to the Chief of Police concerning the revision of FCPD policies, training, and practices. The BOS is notified when the Auditor issues recommendations. In 2018, the Auditor examined FCPD policies, practices, and training, both in the context of individual incident reviews and independent of these reviews. The resulting recommendations provided by the OIPA in its public reports in 2018 are summarized below.

Less-Lethal Force

The Auditor reviewed an incident during which an individual barricaded himself inside his residence with a hostage, and the FCPD responded with the use of both lethal and less-lethal force. While the Auditor concurred with the FCPD that there were no legal or policy violations by officers involved in the incident, recommendations included:⁵

- More “less lethal” options in the form of Kinetic Energy Impact Systems and PepperBall systems should be made available to each patrol shift.
- 100% of full-time SWAT members and at least 50% of supplemental SWAT members should be equipped with either a multilaunch Kinetic Energy Impact System and/or a PepperBall system.

Vehicle Stopping Techniques

After reviewing an incident where FCPD officers attempted a Precision Immobilization Technique (“PIT”) to end the pursuit of a stolen vehicle, and following his review of FCPD DRAFT

⁵ Jan. 16, 2017: Officer Involved Shooting; Deployment of Electronic Control Weapon; Use of .40mm Impact Projectile Weapon

policies on “Vehicle Stopping Techniques” and “Vehicle Pursuits,” the Auditor recommended that the FCPD:⁶

- Include language in the FCPD's DRAFT “Vehicle Stopping Techniques” policy that encourages officers to provide prior notification, when feasible, that they intend to use the PIT. While providing prior notification will not be a safe option in all potential PIT situations, this policy change will make PIT practice more consistent with the use of other vehicle stopping techniques outlined in the FCPD’s G.O.s.

Crisis Intervention

The Auditor reviewed an incident in response to a public complaint of excessive use of force. The use of force occurred when the FCPD was taking a man who had made suicide threats into custody under the authority of an Emergency Custody Order. The Auditor recommended:⁷

- When possible, officers should request a Crisis Intervention Trained (CIT) officer or the Mobile Crisis Unit to engage a person in crisis and possibly assist with obtaining a voluntary commitment from the individual.
- As time permits, responding and investigating officers should seek additional information from family members and other witnesses about past behavior when dealing with a person in crisis.

Search Warrant Procedures

In response to policy review, the Auditor recommended the following changes to G.O. 610.3. Search Warrant Procedures:⁸

- Clarifying in G.O. 610.3 III. C. that warrants *must* be served within 15 days after being obtained and removing the possibility of an exception to this timeline, thus ensuring adherence to VA code § 19.2-56.

⁶ June 22, 2017: *Use of Precision Immobilization Technique*

⁷ June 23, 2017: *Use of Force Complaint*

⁸ Memorandum: *OIPA Policy Change Recommendations G.O. 610.3*

- Specifying within G.O. 610.3 IV. B. that the presence of domesticated animals should be presented at the briefing prior to executing a search warrant to make it consistent with G.O. 540.10 I. B.
- Clarifying in G.O. 610.3 V. B. that a member of the search team should “document” the execution of a search warrant, not “record” it, which could be construed as audio or video recording.
- Adding language to G.O. 610.3 VI. to specify that the knock and announce requirements prior to entry still apply when a search site is known or thought to be vacant.
- Clarifying in G.O. 610.3 VII. C. that no frisk can occur unless the officer conducting the frisk can articulate reasonable suspicion that the individual frisked is armed and poses a danger.
- Replacing language in G.O. 610.3 IX. B. to make clear the location in which a search warrant return statement should be filed when no items are seized in a search.

Body-Worn Camera Pilot Program and Policy

Previously, the Auditor reviewed the FCPD procedure drafted for the implementation of a body-worn camera pilot program in three police district stations, and provided input during its finalization.⁹ During 2018, the Auditor participated in ongoing working group meetings to monitor the progress of the body-worn camera pilot program.

Racial Disparity in Use of Force Statistics

Review of 2015 Statistics: At the request of the BOS,¹⁰ OIPA conducted a review of all FCPD use of force incidents that occurred in 2015. The goal of the review was to identify factors contributing to a disparity between the percentage of African-Americans involved in UOF

⁹ Standard Operating Procedure 18-056, which can be accessed at:

https://www.fairfaxcounty.gov/police/sites/police/files/assets/images/chief/generalorders/sop18_056.pdf, accessed on January 10, 2019.

¹⁰ During the Fairfax County Board of Supervisors meeting on April 4, 2017, Supervisor, and Public Safety Committee Chairman, John C. Cook recognized a statistical disparity between the percentage of African-American use of force incidents in 2015 and the percentage of African-Americans in the County. The Board voted to direct the Independent Police Auditor to review the data and to report on his findings and any necessary recommendations.

incidents in 2015 (41%)¹¹ and their relative population within the County (approximately 9%) as compared to the percentage of Whites involved in a UOF incident (52%)¹² and their relative population within the County (approximately 62%). OIPA conducted a content analysis to identify significant characteristics present in the 2015 UOF incidents. In addition to the race of the subject, other factors examined were the type of resistance posed by the subject; the presence of weapons; the type of force used by officers; the presence of drugs and/or alcohol; and whether the subject was characterized as an Emotionally Disturbed Person.

On July 25, 2018, the OIPA published *A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015*.¹³ OIPA found no discernable difference in the level of force deployed against African-Americans versus that deployed against Whites when engaged in similar conduct. However, there was some variation in the type of conduct engaged in by African-Americans and Whites, as well as in the force techniques employed by FCPD officers between these two groups.

Firm conclusions about the impact of race on the decision of FCPD officers to use force could not be reached due to several limitations with this review. The two most notable included the lack of data on incidents when it would have been objectively reasonable for an officer to have used force but the officer chose not to, and missing information about the subjects' ethnicity (i.e., there was no Hispanic/Latino classification in the 2015 data). Another critical concern with the review was the expectation to unpack the racial disparity as it relates to African-American and White population estimates, whereas national experts caution against benchmarking the number of interactions of a racial group against their representation in the population.

In addition to recommending that FCPD continue to collect and analyze situational data on UOF incidents over a longer period of time, the OIPA also recommended the collection and analysis of data on race and traffic stops/citations/warnings, as well as requests for consent to search vehicles involved in traffic stops.

¹¹ In 2015, 222 of the 539 individuals involved in uses of force were African-American.

¹² In 2015, 282 of the 539 individuals involved in uses of force were White.

¹³ See the Appendix for a link to this report.

Review of 2016 Statistics: Superficially there was little change in the percentage of UOF incidents involving African-Americans between 2015 and 2016 (i.e., 41% versus 39%, respectively).¹⁴ The OIPA has committed to examining UOF incidents that occurred in 2016 to identify common factors present in 2015 and 2016 UOF incidents that could have contributed to the high percentage of African-Americans involved in these events compared to the overall percentage of African-Americans in the county's population.

In September 2018, the FCPD provided OIPA with electronic data on UOF incidents occurring from July – December, 2016, and copies of officer narrative reports and UOF supplements from January – June, 2016. OIPA began extracting data in key fields from the first half of 2016 in order to build a complete, full-year data set for its review. The data elements under review for each use of force incident include: whether the call was initiated by a citizen or officer; contact reason for the event; citizen actions and whether weapons were present; whether the individual was characterized as an Emotionally Disturbed Person; whether drugs and/or alcohol were present; level of citizen resistance; force type(s) used; and what, if any, criminal charges were brought.

FCPD Responses to Recommendations

Through the publication of reports, the OIPA makes public recommendations on revisions to FCPD policies, training, and practices. While it takes time and resources for a department to memorialize policy changes, it is anticipated that eventually all OIPA recommendations will be considered, and a number will be formally adopted by the FCPD in 2019. The OIPA is tracking FCPD actions taken in response to its recommendations and will report on those actions in future reports.

¹⁴ During 2016, 198 (39%) of the 507 individuals involved in uses of force were African-American, whereas African-Americans comprised 9.6% of Fairfax County's population. By contrast, an identical 198 (39%) of the 507 individuals involved in uses of force were White, while Whites comprised 61.4% of the county's population in 2016.

SECTION IV: ADMINISTRATIVE SUPPORT & COMMUNITY OUTREACH

Support to the Police Civilian Review Panel

The OIPA provides ongoing administrative support to the Panel and delivers its annual reports to the BOS. Administrative support includes the provision of logistical support for Panel business meetings, outreach and community events, and producing meeting summaries and audio recordings of all public meetings. During 2018, OIPA staff attended and provided administrative support at each of the Panel's ten business meetings. Additionally, OIPA staff reviewed and edited the compilation of the Panel's foundational processes and documents, and assisted with the revision of the Panel's website.

The OIPA serves as an independent intake venue for complaints against the FCPD, including allegations of serious police misconduct or abuse of authority, which fall under the review authority of the Panel. In 2018, OIPA staff received twenty-three complaints and four requests for review on behalf of the Panel. OIPA staff supported the Panel by corresponding with complainants on the Panel's behalf, disseminating complaints to the FCPD for investigation, and assisting with Panel review reports.

OIPA staff and a member of the Panel attended the annual conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE) in 2018, helping to solidify Fairfax County's reputation as being at the forefront of the emerging trend toward civilian oversight of law enforcement throughout the nation.

Community Outreach

During 2018, the OIPA staff made televised appearances, and participated in several community meetings and public forums to inform the community about the Auditor, the Panel, and their respective functions. Among those appearances and events were the following:

- February, 2018 – Presented to the Fairfax County Criminal Justice Advisory Board with a Panel member.
- February, 2018 – Presented to the McLean Citizens Advisory Committee.

- March, 2018 – Presented to the Mount Vernon Citizens Advisory Committee with representatives of the Panel.
- April, 2018 – Coordinated with Fairfax County Department of Cable and Consumer Services-Channel 16 to produce a video introduction of the Auditor and the Panel.¹⁵
- May, 2018 – appeared on Channel 16’s “Supervisor John Cook Show” with Panel Chair Rhonda VanLowe.
- September, 2018 – Appeared on the “Reston Impact” cable broadcast.¹⁶
- September, 2018 – Presented to the International Visitor Leadership Program contingent from Ukraine (coordinated by the U.S. Department of State) with the Panel’s Vice-chair on the topic of “Citizen Participation in Transparent and Accountable Government.”
- December, 2018 – Participated in the Panel’s 2018 Public Forum in Mt. Vernon.
- December, 2018 – Presented to the Fairfax County Federation of Citizens Association during its Public Safety Program.

SECTION V: CITIZEN COMPLAINTS TO THE FCPD

As noted above, the Auditor is reviewing investigations into eight uses of force during 2018 that were subject of a public complaint made to the FCPD. He will continue to review investigations into use of force complaints made to the FCPD in 2019.

As mandated by the BOS,¹⁷ the FCPD provides a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD so that the Auditor can ensure the FCPD is “properly responding to” and investigating these complaints in a “timely manner.” The following chart depicts the status of all citizen complaints lodged against the FCPD during 2018:

¹⁵ Available at <https://www.fairfaxcounty.gov/cableconsumer/channel-16/ad-hoc-police-practices-review-commission>.

¹⁶ Available at <https://www.youtube.com/watch?v=yJvIROPcFok&t=0s&list=PLrje5o6qHpBEiLcRaLkkB4qy2kmH2VKmH&index=9>.

¹⁷ See [September 20, 2016, BOS Action Item](#) establishing the OIPA.

Quarterly Case Status by Received Date
Fairfax County Police Department
Internal Affairs Bureau

Citizen Complaint Status	2018 Quarter 1 Jan/March	2018 Quarter 2 April/June	2018 Quarter 3 July/Sept	2018 Quarter 4 Oct/Dec	Total
Active	3	5	21	48	77
In Compliance	42	42	35	16	135
Not Sustained	2	0	0	0	2
Sustained	3	5	1	1	10
Unfounded	14	13	8	2	37
Total	64	65	65	67	261

Last Updated: January 23, 2019
To be updated quarterly
Source: IAPro RMS System

At the end of December, 2018, only 10% of active investigations were initiated by complaints received during January – June, 2018. Conversely, 90% of the active investigations at the end of 2018 were initiated by complaints received during July – December, 2018. Only 5% of cases opened between January – March, 2018, remained active at the end of 2018; and only 8% of cases opened between April – June, 2018, remained active at the end of 2018. This demonstrates that the FCPD is investigating complaints in a “timely manner.”

In 2019, the Auditor will review a sampling of letters sent to complainants from the FCPD upon the completion of its investigations, as well as all FCPD letters to complainants who submit a request for review to the Panel. This review of FCPD correspondence to complainants will enable the Auditor to assess whether the FCPD is “properly responding to” complainants (e.g., providing sufficient information), in addition to investigating their complaints in a “timely manner.”

SECTION VI: ANTICIPATED 2019 ACTIVITIES

During 2019, the OIPA will continue to monitor and review FCPD internal investigations, recommend changes in FCPD policies, training, and practices, and provide administrative support to the Panel. It is anticipated that OIPA activities in 2019 will include the following:

Individual Case Reviews

During the first half of 2019, the Auditor expects to complete the review of the twelve investigations of incidents underway at the end of 2018. New incident reviews in 2019 will include those that are monitored at the inception of the FCPD investigation because of the nature of the incident, and those that are initiated by a citizen complaint to the FCPD or to the OIPA during or after the FCPD investigation has concluded.

Policy Review

Body-Worn Camera Pilot: In 2018, the FCPD entered an agreement with American University (“AU”) to study the effects of the body-worn camera pilot project on officer and community member behavior. The results, which are expected in 2019, will inform County stakeholders in deciding whether a permanent body-worn camera program should be implemented by the FCPD. It is anticipated that the Auditor will continue to monitor the progress of the pilot program and the AU study, and will provide input into policy review and adoption for any permanent body-worn camera program.

Racial Disparity in Use of Force Statistics: During the next year, the OIPA will continue its review of use of force incidents that occurred in 2016 to try to identify whether there are common factors for the racially disparate statistics for uses of force during 2015-2016. Despite continued concerns about the usefulness of benchmarking rates of UOF to population rates, it is expected that the 2016 data review will improve our understanding of the situational factors leading up to FCPD officers’ decisions to use force. OIPA will also seek to determine whether the differences between the type of conduct engaged in by African-Americans and Whites, and whether the differences in force techniques deployed by FCPD officers against African-

Americans and Whites, both of which were observed in the 2015 data, hold true in the 2016 data. A report on the analysis of 2016 UOF data will be published by the OIPA in 2019.

Police Civilian Review Panel

OIPA staff will continue to support the work of the Panel by continuing in its role as an independent intake venue for complaints against the FCPD, and by attending all Panel business meetings, training sessions, and public forums that take place in 2019. The OIPA will provide ongoing administrative support required by the Panel in 2019, to include the preparation of meeting summaries, the handling of all meeting logistics, and the receipt and dissemination of all complaints, requests for review, and Panel correspondence.

APPENDIX

Links to 2018 OIPA Public Reports

Jan. 16, 2017: Officer Involved Shooting; Deployment of Electronic Control Weapon; Use of .40mm Impact Projectile Weapon (Published 1-26-18)

June 22, 2017 Use of Precision Immobilization Technique (Published 3-2-18)

April 16, 2017 Use of Force (Choke) Complaint (Published 4-17-18)

June 23, 2017 Use of Force Complaint (Published 6-19-18)

A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015 (Published 7-25-18)

Oct. 28, 2017 Use of Force - Takedown (Published 8-10-18)

Oct. 24, 2017 Officer Involved Shooting - Domesticated Animal (Published 9-7-18)

Memorandum: OIPA Policy Change Recommendations G.O. 610.3 (Published 12-11-18)

