



County of Fairfax, Virginia

MEMORANDUM

DATE: 8/26/2022

TO: Fairfax County Board of Supervisors
Colonel Kevin Davis
Chief of Police
Major Todd Billeb
Commander - Internal Affairs Bureau

FROM: Richard G. Schott
Independent Police Auditor

SUBJECT: Non-Use of Force Incident Review (IPA-20-09)

A complaint was submitted to the Office of the Independent Police Auditor (“OIPA”) alleging an improper use of force by a Fairfax County Police Department (“FCPD”) officer. The FCPD investigated and determined that no force had been used during the incident. However, based on the initial allegation to the OIPA, I reviewed the investigation. Because I agree that no force was used during the incident, I am submitting this Memorandum (rather than a formal report) to document my review of the internal investigation.

INCIDENT

On November 10, 2020, the OIPA received an e-mail from a complainant bearing the initials L.F. (“LF”). The complaint included allegations that earlier on November 10, 2020, individuals “grabbed [her] arms, pushed [her], [and] did not allow [her] to go back to [her] car.” The incident occurred at 6601 S. Van Dorn Street in the Alexandria section of Fairfax County. LF’s e-mail indicated that she wanted to determine whether the individuals were Fairfax County Police Department (“FCPD”) officers or private security personnel. LF’s complaint was provided to the FCPD’s Internal Affairs Bureau (“IAB”) for investigation.

Because other aspects of LF's complaint alleged misconduct (but not force) by people who may be FCPD officers, the complaint was also provided to the Fairfax County Police Civilian Review Panel ("CRP").ⁱ

An investigator assigned to IAB interviewed LF on November 23, 2020. He identified and interviewed four FCPD officers assigned to the Franconia District Station who were on the scene of the incident involving LF on November 10, 2020. The investigator determined that the incident began at 10:21 p.m. when Sergeant #1 ("SGT#1") proactively approached a car in a parking lot shared by a Ruby Tuesday restaurant and a Top Golf location, both of which were out of business. The car was fully covered by a vehicle cover, causing SGT#1 to be concerned it may have been stolen. When he partially removed the covering, he discovered LF in the vehicle, "attending" a virtual meeting on her cell phone. SGT#1 asked why LF was in the parking lot of shut-down businesses, but she did not give a coherent response. She began yelling and did not answer his questions; and, she activated the car's panic alarm multiple times. She did, however, provide a driver's license to SGT#1. SGT#1 quickly surmised that he could not force LF to leave the parking lot because the owner had not made a request to enforce trespassing against LF.

When Police Officer First Class ("PFC#1") removed a little more of the vehicle covering, LF got out of her car. She walked to the front (hood) of the car and then turned to get back into the car. PFC#1 momentarily reached for and touch her elbow/triceps area, but SGT#1 immediately advised him not to stop her and that she was free to get back into her car. PFC#1 advised that his actions did not stop her motion of returning to the car. She got back into the driver's seat. With her door still open, SGT#1 returned her license to her by "flipping it into" the front seat area. SGT#1 explained that he resorted to flipping the license back to her for three reasons: 1) LF refused to take it back from his hand; 2) he did not want to leave it outside of the car for her to retrieve later; 3) he did not want to reach into the car to place it somewhere on the inside. Before leaving, SGT#1 offered county services to LF so that she did not have to remain in the empty parking lot overnight, but she refused all services. SGT#1 advised PFC#1 (and two additional officers who had arrived) to clear the location. SGT#1's vehicle was the last to leave the lot—at 10:47 p.m.ⁱⁱ

When being interviewed by IAB, LF indicated that she had been harassed by the individuals (she remained unconvinced that the four individuals were FCPD officers even after her interview)ⁱⁱⁱ for one hour. She also said that she was grabbed and pushed against her car, not allowed back into the car, and that her license was thrown at her face. She indicated that she had video of the incident, but she provided only screen shots from the video. Despite several requests, she did not provide the video to the IAB interviewer because she did not trust him and because she did not believe the men involved in the incident were FCPD officers.^{iv}

LF advised the IAB interviewer that before the November 10, 2020 incident, she had been living in her car in the Tyson's Corner area, but had been told to leave there. She moved to the parking lot of a 24-hour fitness facility before ending up in the parking lot of the vacated Ruby Tuesday restaurant and Top Golf establishment.

INTERNAL ADMINISTRATIVE INVESTIGATION

Based on the complaint, the FCPD conducted an internal administrative investigation. The investigation determined that no force—as defined by FCPD policy—was used during the incident.^v Based on my review of this investigation, I believe it was complete, thorough, objective, impartial, and accurate.

CONCLUSIONS

Because no force was used during this incident, the FCPD analyzed the officers' actions based on its policy addressing "Police Community Member Contacts."^{vi} I agree with the department's conclusion that the contact with LF was legal and in accord with its policy on such contacts.

ⁱ At the conclusion of its internal investigation into all of LF’s allegations, the FCPD provided a letter to her explaining the results of its investigation, and it provided a detailed explanation on how to request a review of the investigation by the CRP. She did not request a review by the CRP.

ⁱⁱ The times for the beginning and conclusion of the encounter were established by the IAB investigation—which included examining the Global Positioning System information for each of the police vehicles at the location of the incident.

ⁱⁱⁱ The IAB investigation determined that the four officers were all in standard FCPD police uniforms with badges displayed, and two of the four police vehicles there were marked police cruisers.

^{iv} There was no in-car video footage of the incident and it pre-dated body-worn camera usage in the Franconia District Station.

^v FCPD General Order 540.1 I. G. defines Force as “[a]ny physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual’s movement.”

^{vi} FCPD General Order 603.4. General Order 603.4 is now included in General Order 002 HUMAN RELATIONS (effective July 9, 2021).