

Board Agenda Item
July 19, 2022

CONSIDERATION - 1

Approval of an Amendment to the Bylaws of the Police Civilian Review Panel to Codify a Subcommittee Review Process for Initial Review of Complaints

ISSUE:

Approval of an amendment to the bylaws for the Police Civilian Review Panel (Panel) to codify a subcommittee review process for initial review of complaints.

RECOMMENDATION:

Staff recommends approval of the requested amendment to the Panel's bylaws.

TIMING:

Board action is requested on July 19, 2022.

BACKGROUND:

The Board of Supervisors approved the establishment of the Panel on December 6, 2016. The Board established the Panel for the purposes of building and maintaining public trust between the Fairfax County Police Department, the Board, and the public, and to enhance police legitimacy.

The Panel prepared an Annual Report for 2021, published it on March 1, 2022, and discussed the report's findings at the Board's Public Safety Committee meeting on May 17, 2022. The Panel noted that it created a subcommittee process in 2019 to assist in processing a growing volume of complaints received each year. As the Panel further explained in its Report,

The purpose of the subcommittee process was not to short-change any complainants, but to allow the Panel to avoid unnecessary expenditures of resources where complaints simply fall outside of the jurisdiction of the Panel or wholly lack merit. Rather than having every single complaint reviewed in full by all members of the Panel, which involves at the moment each Panel member reviewing investigation files one-by-one at FCPD headquarters, a subcommittee of three Panel members reviews the files first to determine whether the allegations of the complaint rise to the level of 'serious misconduct' or 'abuse of authority' as defined by the Panel's Bylaws and considers whether, to put it bluntly, if there is any there.

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See Attachment 2, page 5. In accordance with the recommendations of the Panel's Four-Year Review, in September 2021, the Panel codified in its bylaws this "summary judgment"-like process for disposing of wholly unfounded complaints. This process is codified in a new Article VI.D., as noted in the redlined version of the attached bylaws.

Under the new Article VI.D of the proposed bylaws and as detailed at the Board's Public Safety Meeting on May 17, 2022, if the three-member Subcommittee unanimously determines that a complaint is unfounded, then a member of the Subcommittee will provide a summary of its deliberations and recommendations to the full Panel when it takes up the complaint. The full Panel will ultimately vote to determine whether it accepts a particular Review Request or complaint. The Complainant will be given the opportunity to address the full Panel before any complaint is disposed of under this process.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Amendment to the Panel's Bylaws

Attachment 2: Fairfax County Police Civilian Review Panel Annual Report 2021

STAFF:

Thomas G. Arnold, Deputy County Executive

ASSIGNED COUNSEL:

Elizabeth D. Teare, County Attorney

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, December 1, 2020, February 23, 2021, ~~and July 27, 2021,~~ and [DATE]

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
 - 1. The Board of Supervisors shall appoint each Panel Member.
 - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
 - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

¹ Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three-year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
 - (a) Preside over Panel meetings in the absence of the Chair; and
 - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
 - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES**A. Scope of Panel Review Authority.**

1. The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of “abuse of authority” or “serious misconduct” by a FCPD officer, and (2) a Review Request is filed. The Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

~~2. Initial Disposition Notice.~~

- ~~(a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.~~
- ~~(b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.~~
- ~~(c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:

 - ~~(i) is timely filed; or~~
 - ~~(ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.~~~~
- ~~(d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.~~
- ~~(e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.~~
- ~~(f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.~~

D. Initial Review and Disposition.

1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:

 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees ("Initial Review Subcommittee") comprised of Panel Members to conduct initial reviews of Review Requests filed by

community members with the Panel.

(b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).

(c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.

(d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

3. Initial Review Subcommittee Process and Report to the Panel

(a) The Subcommittee shall review a Complaint to determine whether:

(i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and

(ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.

(b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.

(c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.

(d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

4. Initial Disposition Notice

(a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.

(b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.

(c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.

(d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D.E. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E.F. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.

- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
 - (e) The Panel shall not take testimony or receive evidence.
 - (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
 - (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
 - (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
 - (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.
2. Closed Sessions, and Confidential Matters During Panel Review Meetings.
- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
 - (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
 - (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
 - (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims,

or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.

- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F.G. Disposition of Review Requests.

1. Timely Completion.
 - (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
 - (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.
2. Panel Findings.
 - (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
 - (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
 - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
 - (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
 - (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
 - (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.



Fairfax County Police Civilian Review Panel Annual Report 2021

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2021



A Fairfax County, VA Publication

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PANEL MEMBERS

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Cheri Belkowitz, Fairfax Station
Todd Cranford, Fairfax
Janell Wolfe, Fairfax
Frank Gallagher, Burke
Bryon Garner, Alexandria
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INTRODUCTION

The fifth year of the Fairfax Police Civilian Review Panel (Panel) was one marked by change and transition. In May 2021, Kevin Davis took over as Chief of the Fairfax County Police Department, the County's first new police chief in eight years. In August of 2021, the Fairfax County Board of Supervisors approved funding for the Panel's first Executive Director, who will be of great assistance to the Panel. Over the course of the year, six new members joined the Panel, and at the conclusion of this term, only one member will remain from the Panel's previous 2020-2021 term.¹

Furthermore, throughout the year, the Panel took important steps to systematize and streamline its processes without sacrificing respect for and attention to complainants. These included clarifying the subcommittee process, adopting new rules surrounding complainant comments at meetings, and implementing new communication templates for interactions with complainants. The Panel did its best to implement recommendations from the prior year's Four-Year Review into practice. While it was a year of change and transition, the Panel never strayed from its mission to "to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors and the Fairfax County Police Department (FCPD)."

Unfortunately, the year did not prove wholly transitional with respect to the many challenges facing our community due to the COVID-19 pandemic. The Panel, like the country, did its best to weather the storm but had fits and starts with respect to in-person meetings due to the rise of new variants and changing public health circumstances. These challenges only further confirmed the Panel's longstanding position that it would be tremendously beneficial to allow for review of investigation files electronically.

¹ Bob Cluck and Sris Sriskandarajah left the Panel before the end of the 2020-2021 term. Holly Doane, Rhonda Van Lowe, and Hansel Aguilar left the Panel at the conclusion of the 2020-2021 term. Doug Kay left the Panel in August of 2021. Frank Gallagher and Shirley Norman-Taylor will be leaving the Panel at the conclusion of the 2021-2022 term. During the 2021-2022 term, Dirck Hargraves, Cheri Belkowitz, Todd Cranford, William Ware, Bryon Garner, and Janell Wolfe joined the Panel. Jimmy Bierman was reappointed to the Panel at the end of the 2021-2022 term.

Finally, the Panel’s everyday work taking complaints and reviewing investigations never slowed. Over the course of the year, the Panel received 14 Initial Complaints and 14 Requests for Review. See Appendix A: Complaints and Requests for Review Received by the Panel, 2017-2021. The Panel met 14 times as a full Panel, conducted 9 additional subcommittee meetings, and hosted a public forum. In the end, the Panel handled 13 complaints to conclusion,² producing two full review reports³. The Panel continued its ongoing dialogue with the FCPD and the Internal Affairs Bureau (IAB), and continued to see strong work in IAB investigations.

What follows is a general summary of the Panel’s year along with additional recommendations for the Panel and the FCPD going forward. The Panel is pleased with the progress that the year has brought, but remains dedicated to improvement and evolution going forward.

WORKING WITH NEW POLICE CHIEF KEVIN DAVIS

On May 3, 2021, Kevin Davis took the reins as Chief of the Fairfax County Police Department. The Panel sought to establish a strong working relationship with Chief Davis, while still maintaining and confirming its independence. On May 26, 2021, the Panel held a public forum attended by nearly 100 people with Chief Davis allowing members of the Panel and the Community to address concerns about Chief Davis’s past experiences and to discuss and look toward the future of the FCPD. Chief Davis affirmed his support for civilian oversight bodies and committed to ensuring that the Panel can continue its work independently and without interference. At that Forum, Chief Davis also provided his assurance that he would find ways to work with whatever iteration of the Panel continued in the future and would not block reforms to the Panel including the creation of an Executive Director position.

² Note, not all investigations into Initial Complaints have yet been completed and several completed investigations into Initial Complaints to the Panel have not resulted in requests for Panel review. See Appendix B: Status of FCPD Investigations into Initial Complaints Received in 2021. Further, two Complaints handled to completion were initiated before this term, and the number of Complaints handled to completion includes several Complaints that were determined to be time-barred.

³ The Review Reports from CRP-20-20 and CRP-20-21, and from CRP-20-24 are provided as Appendix C and D respectively.

On June 9, 2021, Chief Davis invited the Chair of the Panel, Jimmy Bierman, to address the Administrative Staff meeting of the FCPD, which included all Deputy Chiefs, Majors, and high level civilian staff of the FCPD. This was the first time in the Panel's history that such a meeting, including a dialogue between Chair Bierman and high-ranking officers, had ever taken place.

At the request of the Panel, Chief Davis attended the Panel's November 16, 2021, meeting along with trainer Scott Meadows to discuss the FCPD's implicit bias training. Chief Davis and Mr. Meadows took questions from Panel members and the public during that meeting.

On a practical level, although Chief Davis has not implemented a plan to allow for Panel members to review investigation files electronically, *see Recommendations supra*, but at Chief Davis's direction, the IAB has expanded hours that investigation files are available, allowing Panel members to conduct their reviews outside of normal working hours, which has been an important improvement.

The Panel is pleased to report that it believes that its current working relationship is strong (and it would say so if it did not). However, the year was not without its challenges and it is important to move past the limitations of this past year. While the Panel intended to fully continue its quarterly meeting practices and host additional public forums, the Panel's intended schedule was interrupted by Delta, Omicron, and constraints on the time of its all-volunteer members. Further, while the Panel intended to hold additional meetings with the rank-and-file of the FCPD and take part in additional trainings, the Panel did not achieve its goals beyond taking the opportunity to address and answer questions from a class of Criminal Justice Academy recruits in June of 2021. The Panel hopes and believes that it can and will improve upon these shortcomings in the upcoming year with the arrival of the Panel's first Executive Director.

THE EXECUTIVE DIRECTOR POSITION

The Panel's appreciation of the Board of Supervisors' decision to provide the Panel with funding for and authorize the creation of an Executive Director position cannot be overstated. Nor can the influence that an Executive Director will have in professionalizing and improving the Panel's work and impact going forward. The advocacy efforts of Panel leadership did not fall on deaf ears before the Board of Supervisors and the Panel is grateful for the opportunities it had to work with the Board.

The Panel would be remiss not to recognize that it has benefited from excellent administrative support in the past from the Office of the Independent Police Auditor and specifically from Management Analyst Rachele Ramirez, who has been doing double-duty supporting both the OIPA and the Panel. Simply put, without Ms. Ramirez, the Panel would not have been able to function at a high-level—or perhaps at any level—during the past year.

The Panel's workload and the limitations of an all-volunteer enterprise were highlighted during this year of transition, especially with significant turnover in the Panel's membership. An Executive Director will provide additional stability for the Panel and will be able to greatly expand upon the Panel's necessary outreach efforts. Many duties that have in the past fallen largely to the Chair, a volunteer, especially in a time of turnover, will now be professionalized. The new Executive Director will be empowered to organize more public outreach events, to set up more opportunities for the Panel to interface with the rank-and-file of the FCPD, and to liaise with Chief Davis and leaders of the Internal Affairs Bureau (IAB) on a more regular basis. The Panel is well aware that many members of the community are not even aware of its existence and that many members of the rank-and-file of the FCPD are uninformed as to the practices and procedures of the Panel, and insofar as that is the case, the Panel's mission falters. A dedicated, full-time Executive Director who can develop and execute a comprehensive outreach strategy will offer the Panel a tremendous opportunity to enhance its

ability to improve trust between the community and the FCPD, which will benefit community members and FCPD officers alike.⁴

The Board of Supervisors appointed the Panel's first Executive Director, Steven Richardson, on February 22, 2022. The Panel thanks the County's Human Resources leaders and the Board of Supervisors for being invited to play a role in the selection process, with two Panel members sitting on the interview committee. The Panel looks forward to what is to come.

REFORM OF THE SUBCOMMITTEE PROCESS

In 2019, the Panel created a subcommittee process to help handle the growing number of complaints being received by the Panel. The purpose of the subcommittee process was not to short-change any complainants, but to allow the Panel to avoid unnecessary expenditures of resources where complaints simply fall outside of the jurisdiction of the Panel or wholly lack merit. Rather than having every single complaint reviewed in full by all members of the Panel, which involves at the moment each Panel member reviewing investigation files one-by-one at FCPD headquarters, a subcommittee of three Panel members reviews the files first to determine whether the allegations of the complaint rise to the level of "serious misconduct" or "abuse of authority" as defined by the Panel's Bylaws and considers whether, to put it bluntly, is there is any there there.

The Panel's Four-Year Review recommended that the Panel "codify in its bylaws a 'summary judgment'-like process for disposing of wholly unfounded complaints at the Subcommittee level." The Panel did so in September of 2021.⁵ Vice Chair Dirck Hargraves and

⁴ Appendix E details the Panel's outreach efforts this term. There are areas for improvement in the Panel's outreach strategy in the coming year, especially given the circumstances of this past year. Turnover on the Panel led in part to perhaps more outreach responsibilities falling squarely on the Chair than in past years, while the Chair was also focused on advocating for structural change, including the creation of the Executive Director position, and implementing recommendations from the Panel's Four-Year Review. If anything, though, this only reinforces and highlights past recommendations and the need for an Executive Director: the Panel's workload is no longer an all-volunteer proposition.

⁵ With this report, the Panel is sharing these proposed Bylaw changes in hopes that the changes will be wholly adopted by the Board of Supervisors. The Panel will formally submit the proposed Bylaws changes and the necessary action item to the Board at a later date.

Panel Member Todd Cranford drafted new language to clarify past practices. Specifically, the Panel decided to add to its Bylaws a provision detailing the following in a new Article VI.D.⁶:

- (a) The Subcommittee shall review a Complaint to determine whether:
 - (i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and
 - (ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.
- (b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.
- (c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.
- (d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

See Appendix F (Proposed Bylaw Changes on Subcommittee Process). While in truth this addition does not represent a radical departure from past practice, the Panel now has a clear command and method for handling complaints at the Subcommittee level.

Perhaps most importantly, in adopting the Bylaws change, the Panel retained two critical checks on any potential for a lack of uniformity among subcommittee outcomes. First, the Panel decided that in order for a Subcommittee to recommend that the full Panel not review an investigation, the Subcommittee must be unanimous in its decision. Second, the Panel made sure to retain power for the full Panel to reject any such Subcommittee recommendation. Indeed, in practice, every full Panel meeting considering a Subcommittee's

⁶ The new proposed Bylaws language, if approved by the Board, will replace Article VI.C.2.

recommendation includes an opportunity to question the Subcommittee members and probe the question of whether or not a full Panel review is necessary.

Following the adoption of the Bylaws change, the Panel took an additional step to protect the interests of complainants. Subcommittee meetings have never offered an opportunity for the complainant to address the Subcommittee. Rather, Complainants were only customarily invited to address the full Panel at a Review Meeting, which only occurred if the subcommittee recommended to the Panel that it undertake a full review. The Panel decided that, despite the fact that every investigation reviewed includes a full interview of the Complainant by the IAB, this created a potentially problematic situation where a Complainant would not be able to have their voice heard by the entire Panel before the Panel dispensed with their complaint. Therefore, the Panel adopted a new practice whereby a Complainant is entitled to and invited to address the full Panel in the event of a Subcommittee recommendation that the Panel not undertake a full review.

The Panel believes that the Subcommittee process has been working well, but acknowledges that at the moment, a majority of complaints are not being reviewed by the full Panel. The Panel has no reason, however, to believe that the outcomes would be any different with the benefit of full Panel reviews. Indeed, the Panel procedure requires the Subcommittee to consider whether a full Panel review might turn out differently, and the Subcommittee always explains its recommendation to the full Panel. Rather, the Subcommittee process has allowed the Panel to handle wholly unfounded complaints in a more expeditious manner. For instance, in 2021 the Panel avoided conducting a full review of a complaint where in-store cameras and body-cameras demonstrated that the Complainant's arrest for shoplifting had been wholly justified and was effectuated in an appropriate manner; a complaint where body-camera footage demonstrated that police officers had responded to a 9-11 call by-the-book; and a complaint where extensive records and investigation by multiple detectives and victims' services agents wholly contradicted a Complainant's account.

IMPROVING PANEL COMMUNICATIONS WITH COMPLAINANTS

The Panel does not possess unlimited jurisdiction. For instance, under the terms of the Panel's Action Item and Bylaws, the Panel may not review any complaints concerning allegations of conduct occurring before December 6, 2016. Further, for a complaint to fall within the Panel's purview, it generally must be brought either directly to the FCPD or as an Initial Complaint to the Panel within one year of the incident. (Notably, the IAB does not operate with such a time bar and will and frequently does review complaints made beyond the one-year limitation.) And for the Panel to accept a Review Request, it generally must be made within 60 days of the issuance of the FCPD's disposition letter providing the outcome of the investigation.

The one-year and 60-day time bars are not absolute, however. If a Complainant is able to show "good cause" as to why the deadline was missed, the Panel can decide to accept a complaint for review. In one particular case from this past year where the Panel found good cause, the Complainant had not requested review within 60 days of the FCPD's disposition letter resolving the investigation into the complaint. But the Complainant explained that he had never received the letter and it was confirmed that the disposition letter had been sent to an old address for the Complainant. Upon receiving a copy of the disposition letter, the Complainant promptly requested a review and the Panel ultimately decided good cause demonstrated reason for the otherwise unacceptable delay.

This, however, has been the exception. In 2019, the Panel adopted a policy whereby the Chair would respond to out-of-time filings by asking the Complainant if there was "good cause" to waive the time limitation. Understandably, this had frequently not resulted in a satisfying outcome for either party because the somewhat amorphous legalese of "good cause" did not do enough to inform Complainants of the kind of information they were to provide. Rather, what typically happened was that Complainants would respond simply by reiterating the allegations of the Complainant and would provide no justification for delay.

Thus, the Panel adopted a new template for the typical “good cause” letter where the letter explains in more simple and direct detail what could constitute “good cause.”

Specifically, now the letter explains “good cause” as follows:

Your request for review is late. Panel rules say that you must make your request less than 60 days after the police department completes its investigation. The Panel must now decide if there is good cause for your late request. Good cause means that you have a good reason for being late. If you believe you have a good reason for the late request, please provide your reasons in writing. You must submit the reasons why you believe there is good cause to review your request . . .

The Panel hopes that this change will allow the Panel to receive adequate information in the future to allow it to make good cause determinations.

ISSUES FOR CONSIDERATION, RECOMMENDATIONS, AND COMMENTS

One of the stated purposes of the Panel in its Bylaws is to “make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.” In 2019, the Panel released the first version of its Recommendations Matrix, in which the Panel makes recommendations to the FCPD and the FCPD has the opportunity to respond to such recommendations. The latest version of that Recommendations Matrix, including the FCPD’s response, and the Panel’s counter-responses where necessary, is attached as Appendix G. The Panel notes that at the time of its last Annual Report, the FCPD had not yet responded to some of the Panel’s recommendations. It has since done so and, as reflected in the Matrix, the Panel and the FCPD have come to agreement on a number of reforms. For instance, following a Panel review in which the Panel learned that the FCPD did not have an always-record policy with respect to station interviews, the FCPD has updated its practices to include a rule that all interviews are to be recorded as practicably possible.

In February of 2021, in publishing a Four-Year Review report, the Panel also provided recommendations directly to the Board of Supervisors regarding the Panel, many of which have

been implemented either by Board or the Panel itself. Further, the Panel has been given the opportunity to discuss such recommendations with the Board and where the Board has not yet implemented certain recommendations, *i.e.*, a request for limited investigatory power, changes to the Panel's conclusion options, they have nevertheless remained open for further consideration down the line, especially in light of the development of the Panel now that an Executive Director is being hired. The Panel hereby reaffirms those specific recommendations to the extent they are still operable. The Specific Recommendations from the Four-Year Review are attached as Appendix H.

The Panel further wishes to provide the following issues for consideration, recommendations, and comments:

Inappropriate 9-1-1 Calls and Their Aftermath

Two complaints reviewed this term concerned police procedures when responding to 9-11 calls. In both instances, it was clear that the 9-1-1 call had been erroneously placed, possibly deliberately.

In the first instance, described in Review Report CRP-20-20 and CRP-20-21, attached as Appendix C, a man purporting to be a downstairs neighbor provided the address of a second-floor apartment in two separate 9-1-1 calls claiming to be hearing a loud domestic disturbance—a shouting match—at roughly 4:00am in the morning. The Complainants were two sisters who were awoken at 4:00 am by police officers banging on their front door who complained of the officers' conduct and communication during the service call, especially where it was clear that no such domestic disturbance was, in fact, occurring at the residence. The Panel, after requesting additional investigation of the complaint, ultimately concurred with the findings of the investigation that cleared the officers of misconduct under the circumstances, which included the officers' positioning on a narrow, second floor landing at the apartment's front door, but made recommendations regarding the importance of clarifying service call procedures in the future and recommendations regarding correspondence with complainants. The Panel was surprised to learn in that instance, however, that there had been no follow up with the individual whose two 9-1-1 calls were either outright fabrications or a

curious case of mistaken location. The Panel was informed that such follow up normally does not occur due to privacy concerns and a desire to avoid any potential deterrence to making 9-1-1 calls. The Panel understands these concerns, but where the situation is as clear cut as it was here, the Panel believes it would be in the interest of all parties involved to get to the bottom of what happened and why, especially if it was the case of intentional “swatting,” a term that literally describes trying to generate a false alarm that leads to a SWAT team being wrongfully dispatched to an inappropriate location.

A second complaint involved a more egregious, more clearcut example wholly in line with the term. There, the 9-1-1 call actually referenced fired shots and a SWAT team was dispatched to the scene. Very fortunately for the Complainant, the situation was handled competently and by-the-book as was caught on body-worn cameras. While the Subcommittee reviewing the complaint expressed sympathy for the Complainant’s plight and conceded that the experience of having a full swat team show up at one’s house in the middle of the night was traumatic and problematic, the Subcommittee nevertheless did not recommend review by the full Panel where the investigation benefited from extensive video and audio confirming that police were responding to what sounded like a serious threat—gunshots during a likely domestic disturbance—followed General Orders, and diffused the situation as expeditiously as possible. Still, the Panel was concerned that such a situation could have had a very different and very tragic outcome.

There, the Panel was told that the FCPD *does* investigate such serious incidents, and the potential criminal nature of such calls that are essentially akin to filing a false police report. But that begs the question whether certain investigatory steps can or should be taken in the event of the former scenario, which still resulted in terrified residents and police officers in a potentially precarious situation. While the Panel is aware that certain rules concerning 9-1-1 procedures are set at the Commonwealth-wide level, it is our hope that the FCPD and the County can work together to make sure that procedures and laws are in place such that the frequency of such dangerous incidents is greatly minimized.

Electronic Access to Investigation Files

The Panel still does not have electronic access to the FCPD investigation files that it reviews. The Panel is fully cognizant of the importance of confidentiality in reviewing administrative investigations and takes its work very seriously. The Panel understands that one way to protect such confidentiality is to keep such files centrally located and limit access. But the Panel simply does not believe these concerns override the importance of Panel access to such documents and the very real efficiency losses under the current review regime.

With six new members joining the Panel in the past term, a consistent surprise from new members was that we do not have electronic file access and that, in order to review investigation files per our mandate, Panel members need to go to FCPD Headquarters and take turns reviewing a paper file book and audio and video on CDs. This is a significant burden on volunteers with other jobs. Indeed, in the past year, two Panel members started new jobs, making conducting in-person file reviews during work hours even more difficult.

As already mentioned, this year the IAB started opening up after normal business hours, which was extremely helpful. However, for the sake of Panel members *and* the IAB, the Panel believes that it should be granted access to such files electronically and Panel members should be able to review such files on their own time. To the credit of the officers in the IAB, no one has ever complained about or failed to accommodate Panel member requests for review (though, notably, only one Panel member can review at a time). But when, for instance, a Panel member's schedule dictated that he review an investigation file the Wednesday evening before Thanksgiving, it seems like all parties could have benefited from electronic file review. In addition, at one point during this past year a combination of snow days and illness prevented a full file review and led to multiple subcommittee delays that could have been avoided by electronic file review. The Panel respectfully requests again that it be granted the ability to review files electronically.

Training

The Panel's training regimen was again impacted by the COVID-19 pandemic, and the Panel is aware that it needs to remedy the situation. The Panel has continued to rely on

extensive training recordings from 2019 provided by the National Association of Civilian Oversight of Law Enforcement (NACOLE) and the FCPD, but is well in need of a refresh. In December, 2021 incoming Chair Dirck Hargraves, Independent Police Auditor Richard Schott, and Ms. Ramirez were able to attend the annual NACOLE conference, which provided ideas about further training and Panel development. The Panel fully intends to task its new Executive Director with working with the FCPD to organize training for the full Panel, especially given the Panel's recent turnover.

WITH APPRECIATION

The Panel offers thanks to the Fairfax County Board of Supervisors for its continued commitment to meaningful civilian oversight. In particular, the Panel thanks Chairman Jeff McKay and Supervisor Rodney Lusk, Chair of the Public Safety Committee, for their work in securing funding for, and approval of, an Executive Director. The Panel further thanks Supervisor Penny Gross for her role in leading the hiring search for the Executive Director.

The Panel offers thanks to Shirley Norman-Taylor, Frank Gallagher, and Doug Kay for their service to the Panel that came to an end in 2022. Mr. Kay was an inaugural member of the Panel, a past Chair, and a member of the Ad Hoc Police Practices Commission that led to the creation of the Panel. The Panel thanks him for his many years of service to the County and dedication to the work of civilian oversight. Ms. Norman-Taylor and Mr. Gallagher both joined the Panel in 2019 and are leaving after productive and meaningful terms. The Panel thanks them both for the perspectives that they brought to the Panel and their commitment to the work. Further, the Panel thanks them for their ongoing mentorship and assistance to members of the Panel who joined this term: Dirck Hargraves, Cheri Belkowitz, Todd Cranston, William Ware, Janelle Wolf, and Bryon Garner.

The Panel thanks Anita McFadden, who served as Counsel to the Panel from July, 2020 to November, 2021 before she moved to the West Coast. Ms. McFadden offered consistent, reliable advice and assistance to the Panel that has been missed.⁷

The Panel also wishes to thank those who have led the IAB during this past term. The Panel is very appreciative of the efforts of Major Dean Lay, Captain Alan Hanson, Captain Camille Stewart, Captain Dana Robinson, Major Todd Billeb, Lieutenant Eric Ivancic, Lieutenant Derek Gray, and Second Lieutenant Timothy Forrest, all of whom have played prominent and important roles at the IAB in this past term, and all of whom have worked with the Panel. The Panel recognizes the hard work of the IAB and the seriousness with which it approaches its work.

The Panel wishes to thank Chief Davis and his team for their work with the Panel throughout the year, and wishes to thank Major Darrell Nichols for joining the Panel for an informative presentation on the FCPD's implicit bias training.

Finally, the Panel thanks Independent Police Auditor Richard Schott and Management Analyst Rachelle Ramirez for their ongoing support of the Panel, and Dre'Ana Whitfield, who joined the OIPA as a temporary Administrative Assistant in late 2021. The Panel's work parallels Mr. Schott's and he has always showed a willingness to assist the Panel. And really, last but not least, the Panel thanks Ms. Ramirez, who has provided immeasurable support to the Panel throughout the year and who, no doubt, is looking forward to the arrival of the Panel's first Executive Director.

⁷ The Panel hopes to hire new counsel in the coming term.

APPENDICES

Appendix A: Complaints and Requests for Review Received by the Panel, 2017-2021

Appendix B: Status of FCPD Investigations into Initial Complaints Received in 2021

Appendix C: Review Report CRP-20-20 and CRP-20-21

Appendix D: Review Report CRP-20-24

Appendix E: Panel Outreach in 2021

Appendix F: Proposed Bylaws Changes on Subcommittee Process

Appendix G: Panel Recommendation Matrix

Appendix H: Specific Recommendations from the Panel's Four-Year Review

Appendix I: Police Civilian Review Panel Member Biographies

APPENDIX A: Complaints and Requests for Review Received by the Panel, 2017 - 2021

	2017	2018 ^{&}	2019	2020	2021 ^{&}	All Years
Number of All Complaints filed against the FCPD (Panel Authority)	2	31	29	35	28	125
Number of Initial Complaints brought to the Panel	1	24	20	21	14	80
Number of Initial Complaints filed with the Panel but for which there is no ultimate review request	1	18	14	10	2	45
Number of Initial Complaints that are later requested to be reviewed by the Panel	0	2	5	11	8	26
Number of Initial Complaints in process (investigation ongoing as of 12/31/2021)	0	0	0	0	4	4
Number of Review Requests Brought to the Panel	1	7	9	14	14	45
Number of Review Requests Accepted for Full Panel Review	1	4	5	5	0	15
Number of Review Requests Reviewed by a Subcommittee	0	1	8	9	9	27
Number of Review Requests Rejected by the Panel (No full Panel Review)	0	2	4	9	11 [^]	26
Number of Review Requests in process (as of 12/31/2021)	0	0	0	0	4	4
Number of FCPD Investigations still pending (as of 12/31/2021)	0	0	0	0	3	3
Allegations[#]	2017	2018	2019	2020	2021	All Years
Bias - race/ethnicity		7	6	4	6	23
Bias - other discrimination		2	1			3
False arrest/Malicious prosecution	1	4	3	4	2	14
FCPD communication issue		1	1	4		6
Harassment		6	3	4	2	15
Hostile/threatening manner		4	2	3	2	11
Illegal search		3	1	1	1	6
Illegal stop		1				1
Failed to Investigate or Incomplete investigation			1		4	5
Law/FCPD policy violation	1	5	6	9	7	28
Misconduct		4				4
Negligence		6	4			10
Officer did not identify				1	1	2
Officer had unprofessional manner		1	1	9		11
Officer was untruthful		2	4	5		11
Other		3	4	1	2	10
Use of Force		2	1	3		6
Grand Total	2	51	38	48	27	166

Notes:

& In 2021, 1 Review Request was unclear so no action was taken. In 2018, 3 Initial Complaints and 1 Review Request were withdrawn.

[^] In 2021, 3 Review Requests were denied due to late submission.

[#] There may be multiple allegations associated with a single complaint.

APPENDIX B: Status of FCPD Investigations into Initial Complaints Received in 2021

CRP Case Number	Date Forwarded to FCPD	Date Findings Due	Number of Extensions	Date Findings Received	Number of Days Past Due #
CRP-21-01	1/25/2021	3/26/2021	0	3/2/2021	On time
CRP-21-03	1/28/2021	3/29/2021	1	4/29/2021	31
CRP-21-07	4/15/2021	6/14/2021	1	6/29/2021	15
CRP-21-08	4/19/2021	6/18/2021	1	6/25/2021	7
CRP-21-09	5/4/2021	7/3/2021	0	6/8/2021	On time
CRP-21-12	7/8/2021	9/6/2021	0	8/12/2021	On time
CRP-21-16	8/6/2021	10/5/2021	0	10/5/2021	On time
CRP-21-18	8/19/2021	10/18/2021	1	11/12/2021	25
CRP-21-19	8/20/2021	10/19/2021	0	10/4/2021	On time
CRP-21-23	11/15/2021	1/14/2022	1	1/26/2022	12
CRP-21-25	11/12/2021	1/11/2022	0	12/30/2021	On time
CRP-21-26	12/6/2021	2/4/2022	0	2/1/2022	On time
CRP-21-27	12/22/2021	2/20/2022	^	^	^
CRP-21-28	12/22/2021	2/20/2022	0	1/4/2022	On time

^ Outstanding as of February 4, 2022

When past due, average days overdue is 18 days, down from 85 in 2020.



County of Fairfax, Virginia

MEMORANDUM

DATE: 5/6/2021

TO: Fairfax County Board of Supervisors
Chief Kevin Davis, Fairfax County Police Department
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of Complaint No. CRP-20-20 and CPR-20-21

I. Introduction

The Panel held a Panel Review Meeting on September 24, 2020, to review the Investigation concerning the events of March 8, 2020 which resulted in a complaint directly submitted to the Panel on March 16, 2020. The FCPD completed its investigation on May 21, 2020 and issued its disposition letter dated May 29, 2020. The Complainants¹ requested a review of the Investigation on July 28, 2020.

At the September 24, 2020 Panel Review Meeting, the Panel voted in favor of requesting that the FCPD conduct an additional investigation. The FCPD completed its additional investigation and notified the Panel by a letter dated March 22, 2021. The Panel held a second Panel Review Meeting on April 1, 2021 to consider the additional investigation. The Panel decided to not request additional review and concur with the ultimate findings of the FCPD documented in the Investigation Report as supplemented, but made clear that it would be presenting several comments and recommendations for future reports and police procedures based on unique aspects of the file.

II. Background Facts and Review Request

At 4:00 a.m. on March 8, 2020, an anonymous caller (the “Caller”) reported to a 911 dispatcher with the Department of Public Safety Communications (“DPSC”), that he could hear domestic violence in progress. The Caller claimed his neighbors were yelling and

¹ The Complainants are sisters. Their complaints are substantially the same.

fighting and that there was pounding on the walls of a townhome he shared with his neighbors. He asked that the FCPD dispatch an officer to investigate. The Caller insisted that the dispatcher keep the Caller out of it since he claimed knew the mother of those involved. The Caller directed the FCPD to an address located on Logsdon Drive in Annandale (the "Address").

Two FCPD officers (Officer R and Officer M) (sometimes collectively the "Subject Officers") arrived at the Address within five minutes in uniform displaying their badges. The porchlight to the Address was not illuminated. The front door was one story above street level, with a spiraling staircase to an elevated landing in front of the door. Officer R approached the front door; Officer M was standing nearby as backup. Officer R commenced pounding on the front door with sufficient force that his knocking could be heard throughout the Address. The investigation revealed that Officer R was relatively new to the FCPD, and that he believed that his training and experience dictated that he not announce himself at that time given that the call for service had been for a domestic dispute, so he did not announce himself. After three to four minutes of hard knocking on the door and receiving no response, the Subject Officers departed the scene at 4:14 a.m.

At 4:22 a.m. the Caller contacted 911 dispatch a second time. He insisted he still could hear people fighting and he could hear yelling and banging. The Caller insisted on anonymity and claimed his neighbors (who were fighting) were now knocking on his door. The dispatcher again directed the Subject Officers to the Address who promptly arrived and resumed knocking on the front door.

At 4:23 a.m., one of the Complainants (YB) called 911 to report loud banging at her front door and that someone was shining a flashlight into her home. YB explained that she resides at the Address with her sister. The dispatcher informed YB that the Subject Officers were the ones doing the knocking at her door and instructed YB to open the door and let the officers inside. YB was reluctant to do so under the circumstances. She reported that she had no way of knowing that the people at the front door were, in fact, police officers, but she did note that it appeared that one of the men was wearing a "dark uniform." Eventually, at approximately 4:32, YB opened the door and she claimed that, with some difficulty, she thinks she was able to identify the Subject Officers as FCPD. According to YB, the Subject Officers never identified themselves. In a contemporaneous radio transmission, the Subject Officers informed the dispatcher that they had identified themselves. YB informed the dispatcher and the Subject Officers that there was no emergency and police are not needed.

The Complainants called 911 dispatch again at 5:15 a.m. to complain about the events of the morning.

III. Procedural Background and Panel Meetings

As explained above, on March 16, 2020, the Complainants filed a complaint with the Panel alleging the Subject Officers banged on their door excessively, did not identify themselves and were not wearing clothing from which they could be identified as police officers. On March 20, 2021, the Internal Affairs Bureau ("IAB") assigned an investigator (the "Investigator") to determine facts and circumstances surrounding the Complainants' claims. The Investigator (1) gathered relevant Computer Aided Dispatch ("CAD") messages and radio traffic, (2) collected

and reviewed dispatch recordings of the DPSC, and (3) interviewed the Complainants and the Subject Officers.

The Investigator concluded that the Subject Officers were duty-bound to make a reasonable attempt to speak to the parties at the Address. He found that the Subject Officers knocked loudly several times, and the occupants at the Address did not respond. The Subject Officers began to depart when a second call to DPSC requested officers return. This time the Subject Officers, with the aid of DPSC, persuaded the Complainants to open the door and demonstrate they were not in danger. The Investigator concluded that the repeated attempts of the Subject Officers to get the residents at the Address to answer the door was necessary for them to perform their duty. The station commander and Chief Roessler concurred with the Investigator's conclusions.

On May 29, 2020, Chief Roessler issued a disposition letter to the Complainants informing them that the investigation did not support their allegations and that Subject Officers' actions were lawful and in compliance with FCPD Regulations. Thereafter, the Complainants timely filed a review request to the Panel.

On September 24, 2020, the Panel conducted a Panel Review Meeting (the "First Meeting"). The Complainants both appeared by telephone. YB explained the events in question in detail and she answered questions of the Panel. The FCPD also appeared. The Investigator offered a summary and several IAB officers and the Investigator answered questions. At the conclusion of the First Review Meeting, a majority of the Panel voted to request additional investigation to include:

1. Investigate and analyze the gulf between the plain language of General Order 601.4 ("GO 601.4") and the actions taken during the incident;
2. Interview additional relevant witnesses named in the complaint;
3. Analyze the scene of the events in question;
4. Conduct other such investigation as warranted.

The Investigator performed some additional investigation as requested by the Panel. He reported his conclusions in the order the of the Panel's request:

Recommendation One: General Order 601.4(C) (the "Order") states in relevant part as follows:

The responding officers [to a domestic violence incident] *shall identify themselves as police officers*, explain the reason for their presence, and request entry into the home.

The Investigator noted three times in his supplemental report that the Subject Officers "could not definitively recall if they announced their presence during their first attempt to contact [the Complainants]." (In fact, the investigation file otherwise makes indisputably clear that the Subject Officers did not announce themselves at the time of the first attempt to make contact.) Moreover, the Investigator referenced a court case² he asserted stood for the proposition "that officers of the law who are in full uniform have identified themselves by their very presence."

² See Beckman v. Hamilton, No. 17-12407, 2018 WL 1907151 (11th Cir. Apr. 23, 2018).

The Investigator noted further that “it is not tactically prudent for a police officer to knock on a door and simultaneously announce that they are the police while still standing in the fatal funnel.” Further, he asserted a distinction between “announce” and identify. He wrote that “[t]actical approaches to police calls for service must be considered and weighed against the need for immediate announcements. Identification takes place once contact with a community member occurs.”

Recommendation Two: The Investigator (1) canvassed the neighbors; (2) left business cards on the doors asking for return calls and (3) called and left a voicemail for the witness identified by Complainants. None of these steps resulted in any additional information.

Recommendation Three: The Investigator went to the Address and took photographs of the scene. He concluded that the elevated front door at the Address presented limited officer safety options and supported the Subject Officers’ approach and positioning during the calls for service.

Recommendation Four: The Investigator determined no additional investigation was warranted.

The FCPD concluded that the Subject Officers did not violate any Department policy or procedure.

IV. Second Panel Meeting and Conclusions

On April 1, 2021, the Panel conducted a second Panel Review Meeting (the “Second Meeting”). The Complainants both appeared by telephone. YB explained her continued dissatisfaction with the events in question, with the two investigations and she answered questions of the Panel.

The thrust of the Complainants continued dissatisfaction centered around their fright caused by their inability to recognize the police in the darkness and their fear that the police may be intruders. Even after the dispatchers provided specific instructions to the Complainants to open the door and let the police inside, the YB indicated she was reluctant to do so. At bottom, YB maintained the Complainants would not have complained and persisted in their request for review if the police had identified themselves when they knocked.

YB indicated the Complainants had received the findings letter in May 2020 and a second letter following the First Meeting. However, the FCPD did not contact the Complainants to offer any further explanation.

The FCPD also appeared, and the Investigator summarized the additional investigation and several IAB officers and the Investigator and answered questions. The Investigator explained how the officers could have been reasonably identified and concluded that community members can identify officers by their uniforms, sounds of the radio, and the police car outside. The Investigator asserted that his investigation established that the Subject Officers eventually verbally identified themselves; however, he admitted it was unclear when they did so, and he acknowledged that the Subject Officers do not have appeared to have announced themselves the first time they knocked on the door. Further, he stated that the FCPD concluded that the Subject Officers’ actions were in compliance with General Order 601.4.

The Panel questioned the FCPD extensively about these conclusions. The Investigator stated that it may not always be tactically safe for an officer to announce his presence in the type of situation presented, including here where the door was on an elevated landing and there was little ground for immediate retreat. He noted that the FCPD probably needs to evaluate General Order 601.4 and more clearly define the difference between identify and announce so that expectations of responding officers responding and the public are clear. The Investigator stated that it is a common understanding in law enforcement that officers identify themselves when a community member answers the door. He contrasted this understanding with a knock and announce. He said that the FCPD needs to revise General Order 601.4 to ensure it reflects best practice and the intent of the policy is clear to officers. Another IAB officer stated that the FCPD would have preferred that the Subject Officers knocked and announced on the first approach.

The Investigator acknowledged that, in the darkness, it may be difficult for a community member to identify a police officer.

The Panel noted that the information the Subject Officers received from the dispatcher was not as described by the caller. An IAB officer noted that it is not uncommon for officers to encounter a scene that does not match the dispatcher's description. Under those circumstances, an officer should take steps to clarify. In this instance, the Subject Officers did so by verifying the address and confirming that the Caller did not want to be identified. Nevertheless, the Subject Officers knocked on the door to investigate the Caller's complaint.

The Panel noted that General Order 601.4 proscribes that officers shall identify themselves, explain the reason for their presence, and request entry into the home. The Panel asked if the language could be reworked to disentangle the three clauses.³ An IAB officer answered affirmatively and said that they will review and reconsider the language in General Order 601.4.

The Panel asked if the FCPD is considering how to best address "swatting" incidents (where false police reports are made to harass innocent community members). The Panel asked whether the FCPD can trace such false reports. The IAB officer explained protocol at the call-taking center on swatting events. However, in this case the Caller used a local phone number (that was apparently noted in dispatch records). The Panel inquired if the FCPD called the number back to investigate the Caller. The IAB officer said the policy is that if someone wants to remain anonymous, the FCPD will not contact the caller again.

The Panel deliberated extensively.

Some Panel Members were critical of the FCPD's assertion in the investigation file that it was unclear if the Subject Officers announced themselves the first time they went to the Address. These Panel Members found this assertion to be inaccurate as substantial evidence in the file suggested that they did not announce and identify themselves as FCPD officers upon approaching the residence.

However, this inaccuracy was insufficiently material for the Panel to request further analysis by the FCPD. Rather, the three options available in the Bylaws – to concur with the

³ The Panel also noted that the court case referenced did not, in fact, create a clear distinction between "identify" and "announce" and was not precedential.

investigation, to request additional investigation, or to inform the Board of Supervisors that the investigation was incomplete/in need of further review – were disappointing to some in the context of this investigation review and lend further support for the need to amend the Bylaws to give the Panel more options consistent with those outlined in the Panel’s Four-Year Review. To these Panel Members, it matters little under the options afforded to the Panel that the Subject Officers did not announce themselves immediately upon arrival since the FCPD takes the position that the officers must have tactical discretion to *not* announce themselves. It is this discretion – which is inconsistent with the dictates of General Order 601.4 – that is the critical issue, but the Panel is not currently empowered to simply say that the investigation contained a conclusion regarding the General Order that is “incorrect,” and in light of the FCPD’s repeated acknowledgments that the General Order may be ripe for clarification, even skeptical Panel members questioned the utility of requesting further action on this Complaint. The Panel expects that the FCPD will make good on its promise to take a close look at General Order 601.4 and revise it as necessary.

The Panel was also critical of the FCPD’s handling of the Complainants. The Panel urged the FCPD to have more robust communications with complainants. With respect to this Complaint in particular, it appears that better communication between the FCPD and the Complainants, and a better explanation of why the officers did not immediately identify themselves or what could have been done better in the future, could have vitiated the need for requesting a Review entirely.

In addition, the Panel urged the FCPD to take a critical look at how it handles swatting incidents. Here, the only crime committed may have been a false police report by the Caller. That potential crime was never investigated.

In the end, the Panel voted unanimously to concur with the findings of the Investigations.⁴

An audio recording of the September 24, 2020, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-september-24-2020>.

An audio recording of the April 1, 2021, Panel Review Meeting may be reviewed here:

On May 6, 2021, the Panel discussed this Finding Summary; an audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-april-1-2021>.

V. Comments:

1. The three finding options available in the Bylaws are inadequate to address all potential conclusions that may arise in a Panel Review. The Bylaws should be amended to give the Panel more options for conclusions consistent with those outlined in the Panel’s Four-Year Review.

⁴ Panel Member Cheri Belkowitz, who joined the Panel too late to take part in a review of the investigation, abstained and took no part in the decision.

VI. Recommendations:

1. The FCPD should consider how officers respond to swatting incidents where the scene does not match the description in a 911 call, provide the necessary training to officers on these situations, and whether they can investigate calls as potential false police reports.
2. The FCPD should review and revise General Order 601.4 regarding how officers identify and announce themselves when responding to domestic service calls, clarify the situations when they are permitted to delay in announcing or otherwise identifying themselves, and ensure that officers are properly trained in implementing a revised general order.
3. The FCPD should consider how it can better communicate with Complainants the outcomes of its investigations, including whether such communication should go beyond standard disposition letters.

CC: Complainant



County of Fairfax, Virginia

MEMORANDUM

DATE: 6/3/2021

TO: Fairfax County Board of Supervisors
Chief Kevin Davis, Fairfax County Police Department
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of Complaint No. CRP-20-24

I. Introduction

The Panel held a Review Meeting on May 6, 2021, to review the Investigation resulting from a complaint of Racial Profiling and excessive Use of Force submitted concurrently to the Panel and the Independent Police Auditor on May 7, 2020. The Community Member (hereinafter referred to as the “Complainant”) had just received the results from a completed FCPD investigation in an April 28, 2020, Disposition Letter into his allegations of excessive Use of Force.¹ The FCPD conducted an investigation into the Racial Bias allegation and issued a second letter to the Complainant on August 19, 2020, and he requested a review by the Panel on August 24, 2020. The Panel reviewed the investigation into the Racial Profiling allegation.²

After reviewing the Investigation file, speaking with members of FCPD along with the Investigating Officers, and speaking with the Complainant, the Panel members (PCRCP) voted unanimously that the Investigation was complete, thorough, accurate, objective, and impartial, and concurred with the findings of the FCPD.

¹ The Police Civilian Review Panel (PCRCP) does not have jurisdiction to review the Use of Force allegation. This allegation falls within the purview of the Fairfax County Independent Police Auditor, Richard Schott, who did review and provide a report on the results of his finding on this allegation.

² After the Panel conducted its initial review of the request (during a subcommittee meeting on September 14, 2020, and a Panel meeting on September 24, 2020), the FCPD notified the Panel that it was reopening the investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021. The FCPD notified the Complainant of the additional findings in third Disposition Letter dated April 1, 2021.

II. Background Facts

The following facts are central to the Complainant's allegation that he was the subject of racial profiling:

On October 25, 2019, the Complainant, an immigrant of African descent, with his girlfriend in the vehicle, was driving behind an unmarked vehicle driven by a Black FCPD Officer (hereinafter "the Subject Officer") eastbound on Lee Hwy near the Fair Oaks Mall. It was approximately 6:15 a.m., and it is undisputed that the Complainant flashed his headlights at the vehicle because the Complainant said the vehicle was drifting in the lane. After overtaking the unmarked vehicle by passing on right, the Subject Officer clocked the Complainant on radar traveling at a speed of 73 mile per hour in a 45 mile per hour speed zone.

The Subject Officer initiated a traffic stop, approached the vehicle, identified himself as a FCPD Officer and informed the Complainant of the reason for the stop. The Subject Officer asked and was provided Complainant's driver's license and vehicle registration. The Complainant was ultimately issued three traffic citations via Summonses for Reckless Driving, Aggressive Driving, and Failure to Dim Headlights. The Subject Officer requested the Complainant sign the Summonses, which were not admissions of guilt, rather an acknowledgment of notice of the future court date.

The Complainant refused to sign the Summonses and was told by the Subject Officer that his failure to sign would result in his arrest pursuant to Virginia law. The Complainant acknowledged knowing he would be arrested for refusing to sign the Summonses after which he informed the Subject Officer that he would not answer any questions and took out his phone to record the interaction.

The Subject Officer asked the Complainant three times to sign to avoid an arrest, but he was ultimately arrested and taken to the Magistrate for his failure to sign.

III. Procedural Background and Investigative Findings

The Complainant, upon his release by the Magistrate, later that morning, contacted the FCPD to make a complaint about the Subject Officer and his treatment while being placed in the back of the police cruiser for transport to the Fairfax County Adult Detention Center. In his initial complaint, the Complainant alleged excessive Use of Force, which was investigated by the FCPD, and a disposition letter was sent to the Complainant on April 28, 2020. The Panel was not involved as the matter was solely within the purview of the Fairfax County Independent Police Auditor, and therefore, the content of that Disposition Letter will not be addressed.

The Complainant upon receiving the Disposition Letter from the FCPD, requested a review by both the Independent Police Auditor and the Police Civilian Review Panel. In his request for the review, the Complainant in addition to the allegation of excessive Use of Force included for the first time the allegation of Racial Profiling.

The FCPD did not initially investigate the racial profiling claim because it was not included in the original complaint. Thereafter, the FCPD notified the PCRCP that it was reopening the investigation to investigate the claim of Racial Profiling.

On August 19, 2020, the FCPD informed “the Complainant” that it had “completed its investigation into the allegations of your complaint, dated October 25, 2019.” The Disposition Letter indicated that the IAB had conducted a “comprehensive examination of the facts and circumstances surrounding the incident and the actions taken by [the Subject Officer] which occurred on October 25, 2019.”

The letter outlines the following:

Your initial complaint alleged that [the Subject Officer] ‘choked’ you when he fastened your seatbelt while in the police vehicle before the prisoner transport to the Fairfax County Adult Detention Center. . . . Upon receiving a letter from the Chief of Police, you later alleged that [the Subject Officer] was racially bias toward you. . . . The Internal Affairs Bureau completed an additional examination of the facts and circumstances surrounding the incident to include the bias allegation.” During the investigation, we interviewed you, the officers, who responded to the incident in question and identifiable witnesses to the incident.” We examined all the relevant evidence, including In-Car Video recordings, statements, and documents.

The investigation revealed the following facts: [The Subject Officer] stopped you for speeding and aggressive driving. Due to the traffic stop being during the hours of darkness, [the Subject Officer] was not able to determine your race, gender, place of birth, or actual identity prior to the stop. After your refusal to sign the traffic summonses, you were arrested, searched, and asked to take a seat in the police cruiser.

The letters contain additional information related to the Use of Force allegation, and therefore, not relevant to the racial profiling portion. However, the Chief of Police ultimately, informed the Complainant, “based on my review of the facts discovered during the investigation and a recommendation from the Commander of the Patrol Bureau, I have concluded that evidence does not support your allegations. . . . [The Subject Officer’s] actions were lawful and in compliance with FCPD Regulations.”

The Complainant was further advised that he could seek a review of the investigation from the Police Civilian Review Panel. The Complainant did make a formal request for review by the Panel on August 24, 2020.

It should be noted that the Complainant videoed his encounter and during the investigation was asked by the IAB Investigator, on at least two occasions, to provide a copy of the video to assist in the investigation. The Complainant initially said he would provide a copy. Upon being asked again for a copy he said he could not find the video and was therefore, not able to provide a copy to the Investigator.

A subcommittee of the Panel met on September 14, 2020, to discuss the request for a review of CRP 20-24. On the date of the meeting, each Panel members had reviewed the Investigation File. After discussions, each agreed that the allegations entailed abuse of authority and serious misconduct. In particular, the allegation of Racial Profiling would be in violation of FCPD General Order 201.13.³ Also, the request was timely filed, and therefore, the Panel had jurisdiction to review the investigation. The full nine-member Panel met on September 24, 2020, and the subcommittee recommended the Panel review the Investigation.

IV. Panel Meeting and Finding

The Complainant was present for the Panel Review on May 6, 2021.⁴ Also, both IAB Investigators were present along with other members of the FCPD. Major Lay was the primary spokesperson for the IAB who introduced 2nd Lt. Spooner to present the Investigation.

The Complainant was given an opportunity to share with the Panel his version of the events and why he filed the complaint. In his recitation to the Panel, the Complainant said he was driving to work and saw an unmarked Chevy Impala driving in the middle lane, but on the white line. He said he shared with his girlfriend that was a cop car. He said he flashed his lights to alert the driver, passed the vehicle and after passing he saw the police car lights flashing. The Complainant said he didn't know why he was being stopped but thought perhaps he has a break light out. He said he asked why he was being stopped and the Subject Officer told him he was going 73 miles per hour in a 45 mile per hour zone, and was therefore, driving reckless. He said he was given a citation to sign, but he refused. He said the Subject Officer appeared angry by his facial expression, so he began filming the encounter and handed the phone to his girlfriend. He said the Subject Officer asked him to step out of the vehicle, but while doing so the Subject Officer asked his girlfriend her name. The Complainant told the girlfriend she didn't have to give any information because she was a passenger.

The Complainant began to discuss the Use of Force allegations and was reminded by Acting Chair Bierman that the Panel could only review the allegations of racial profiling. The Complainant said he was driving alongside four or five other cars and believed he was singled out because he flashed his lights.

The Complainant was responsive to the questions asked by the various Panel members. Most Panel questions centered around race and the belief on the part of the Complainant that race played a role in his stop. He answered in the affirmative on most questions relating to his belief that he was stopped because of his race. However, he did acknowledge that if a white driver had flashed his lights and passed on the right, at the same rate of speed, that person would have been stopped as well.

The Complainant was asked by one Panel member if his driving speed could have been the reason for the stop. His response was that he passed the officer, so they were not going the same speed. Also, he said he would not drive recklessly when he knew it was a police officer.

³ FCPD 201.13 Human Relations subsection (A) Community Contacts.

⁴ The review by the Panel was delayed due to the FCPD reopening its investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021.

He was also asked about the Subject Officer ability to know his race based on it being dark when the stop occurred.

The Complainant was asked to explain how hierarchical bias manifested itself in this incident since he accused the Subject Officer of that offense. "The Complainant" said that just because someone is African American does not mean they cannot be biased against another African American, and he asserted that such biases were often present with immigrants of African descent, like the Complainant. He further asserted that African Americans often get stopped for minor offenses.

Acting Chair Bierman thanked the Complainant for bringing the matter to the Panel.

Acting Chair Bierman then introduced FCPD's Major Lay who introduced 2nd LT. Spooner who conducted both the initial Use of Force and later the Racial Profiling investigation.

2nd LT. Spooner provided a summary of the facts of the case, the investigation and the finding. Each Panel member reviewed the investigation and so his summary will not be detailed here. However, one update given by 2nd LT. Spooner to the Panel was the fact that police cruisers assigned to the Fair Oaks Station Traffic Enforcement Team did not have ICV in the rear of the cruisers. However, this situation necessitated that that team be equipped and since this incident the police cruisers for the Traffic Enforcement Team now have ICV in the rear.

The Panel had the opportunity to ask questions of 2nd LT. Spooner. One question dealt with the appropriate action to take when a community member observes a police cruiser allegedly drifting over the line. 2nd LT. Spooner said that would depend on the circumstances, but if approaching at a high rate of speed the community member would need to slow down as a defensive tactic. Another question dealt with cars traveling behind a police cruiser at the same rate of speed whether officers can pinpoint one car with radar. 2nd LT. Spooner said that in this case, the Subject Officer was able to single out the vehicle because of the high rate of speed it was traveling when he looked in his rearview mirror.

A Panel member asked about the requirement that motorists sign summonses and whether it was State law or a county policy. 2nd LT. Spooner pointed to Virginia Code 46.2-940.

Another Panel member commented on this case being a good example of why it is beneficial to video. Major Lay agreed and said that body-worn cameras are now fully implemented in the FCPD, so that is in addition to having ICV.

A Panel member had questions about the training procedures for officers and whether there was an inconsistency in what the training says should occur and what happened in this case. In particular, the Panel member referred to an academy training slide, included with the investigation, that talks about differences in the placement of an arrestee in a vehicle with a cage as opposed to the placement without a cage. 2nd LT. Spooner said he would check and get back with the Panel.

A Panel member asked about the stop and arrest history of the Subject Officer that was included in the file by race. He wanted to know how the FDPC categorized the Subject Officer's

arrest patterns. 2nd LT. Spooner said that there was a higher percentage when looking at the arrest patterns, but he noted that the Subject Officer was a traffic officer, so many of his arrests came with traffic stops, such as refusing to sign summonses, driving on suspended licenses and driving without licenses, in a manner where the Subject Officer lacked discretion to avoid an arrest. In fact, the officer's citation statistics were consistent with the Department, though the arrest statistics showed a disparity.

Act Chair Bierman thanked the FCPD representatives for their participation.

The Panel heard from the "Complainant" and from FCPD. Based on each Panel members review of the file, statements and responses from both Complainant and FCPD, the Panel made the following finding:

The Panel voted unanimously that the Investigation was accurate, complete, thorough, objective, and impartial after open deliberation. Specifically, the Panel found no evidence suggesting that racial profiling occurred where the Complainant's undisputed and documented actions – flashing his lights and passing a police officer while speeding in the early morning hours in the dark – would have resulted in the Complainant being pulled over regardless of his race. Further, the Panel found that the IAB had followed all available lines of inquiry, including interviewing all pertinent witnesses (including the Complainant's girlfriend), viewing all available video evidence, and conducting a thorough analysis of the Subject Officer's arrest and citation statistics to determine whether there was any evidence of a history of bias.

An audio recording of the May 6, 2021, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-may-6-2021>

On June 3, 2021, the Panel discussed this Finding Summary; an audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-subcommittee-meeting-june-3-2021>

CC: Complainant

APPENDIX E: Panel Outreach in 2021

Faith and Community Organizations and Events

- ❖ Communities of Trust
- ❖ McLean Citizen's Association
- ❖ National Night Out (Kingstowne)

Public Forums

- ❖ Panel Public Forum with New FCPD Chief
- ❖ Public Safety Forum Panel on Criminal Justice Reform, hosted by Fairfax County Federation of Citizens Associations

Fairfax County Police Department

- ❖ FCPD Admin Staff Meeting
- ❖ FCPD Recruit Class

Other Outreach

- ❖ Inside Scoop (Fairfax Public Access Channel 10)
- ❖ Richmond (VA) Review Board
- ❖ Virginia Beach City Council

APPENDIX F: Proposed Bylaws Changes on Subcommittee Process

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, December 1, 2020, February 23, 2021, ~~and~~ July 27, 2021, and [DATE]

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
 1. The Board of Supervisors shall appoint each Panel Member.
 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
 3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

¹Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three-year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
 - (a) Preside over Panel meetings in the absence of the Chair; and
 - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
 - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel’s duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of “abuse of authority” or “serious misconduct” by a FCPD officer, and (2) a Review Request is filed. The Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

~~2. Initial Disposition Notice.~~

- ~~(a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.~~
- ~~(b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.~~
- ~~(c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - ~~(i) is timely filed; or~~
 - ~~(ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.~~~~
- ~~(d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.~~
- ~~(e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.~~
- ~~(f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.~~

D. Initial Review and Disposition.

1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees ("Initial Review Subcommittee") comprised of Panel Members to conduct initial reviews of Review Requests filed by

community members with the Panel.

(b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).

(c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.

(d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

3. Initial Review Subcommittee Process and Report to the Panel

(a) The Subcommittee shall review a Complaint to determine whether:

(i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and

(ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.

(b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.

(c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.

(d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

4. Initial Disposition Notice

(a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.

(b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.

(c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.

(d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D.E. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E.F. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.

- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
 - (e) The Panel shall not take testimony or receive evidence.
 - (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
 - (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
 - (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
 - (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.
2. Closed Sessions, and Confidential Matters During Panel Review Meetings.
- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
 - (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
 - (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
 - (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims,

or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.

- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

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- (f) If information subject to the Panel’s review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney’s Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F.G. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
 - (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
 - (iii) Advise the Board of Supervisors that, in the Panel’s judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel’s final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.

APPENDIX G: Panel Recommendations Matrix

Updated 2/28/2022

<u>Report</u>	<u>Panel Recommendation</u>	<u>FCPD Action</u>	<u>Status (as determined by the Panel)</u>
CRP-20-20 and CRP-20-21 (Published May 10, 2021)	The FCPD should consider how officers respond to incidents where the scene does not match the description in a 911 call, provide the necessary training to officers on these situations, and whether they can investigate calls as potential false police reports.	FCPD has taken this recommendation under consideration and will research best practices to ensure General Order 520.3 (Hostage/Barricaded Persons) reflects these suggestions in future revisions.	Under Review by FCPD
CRP-20-20 and CRP-20-21 (Published May 10, 2021)	The FCPD should review and revise General Order 601.4 regarding how officers identify and announce themselves when responding to domestic service calls, clarify the situations when they are permitted to delay in announcing or otherwise identifying themselves, and ensure that officers are properly trained in implementing a revised general order.	Current version of 601.4 Section IV, Subsection C, states officers <i>“shall identify themselves as police officers, explain the reason for their presence, and request entry into the home.”</i> Officers are also expected to use proper discretion when circumstances indicate or suggest there are potential weapons involved in an event, or a potential subject could be looking to ambush an officer arriving at a domestic event, as domestic events constitute highly unpredictable and dangerous events for responding officers. All officers are required to acknowledge General Order revisions via Power DMS. Supervisors are required to ensure officers under their guise are up to date on new policies and procedures and schedule squad	Implemented by FCPD Panel requests that the FCPD consider adding the explanatory sentence highlighted to the next version of the General Order.

		training initiatives as necessary to ensure compliance.	
CRP-20-20 and CRP-20-21 (Published May 10, 2021)	The FCPD should consider how it can better communicate with Complainants the outcomes of its investigations, including whether such communication should go beyond standard disposition letters.	Complaints in all formats are accepted by the FCPD and proper acknowledgment is provided at the time of receipt that the complaint will be investigated and followed-up on. Investigating supervisors are expected to inform complainants that their cases will be investigated thoroughly and as expeditiously as possible depending upon the nature and complexity of the specific allegation(s). Once an investigation has concluded, supervisors are expected to notify complainants as such and note the case is under a review and action process at the command level. Disposition letters are sent once the investigation has resolved, with a thorough recitation of the facts and circumstances of the allegation, as well as a recitation of FCPD investigative findings. These letters also include contact information for appeals to both CRP and the Office of the Independent Police Auditor. Any inquiry regarding case status during the investigative process from a complainant is required to be responded to in a timely manner.	FCPD explanation is not wholly responsive Panel recognizes the FCPD's efforts to improve the disposition letters but requests the FCPD to consider specific circumstances when letters can be followed up with an alternative method of communication, like a phone call to complainants.

<p><u>CRP-20-19 and CRP-20-27</u> (Published February 9, 2021)</p>	<p>The FCPD should create a policy requiring all district station interviews be recorded.</p>	<p>FCPD General Order 501.2 covers Investigative Responsibilities but makes no reference to recording of interviews. Since the last revision (04-01-13), all district station interview rooms have been equipped with audio/video technology. In-progress revisions to this General Order will note that all investigating officers/detectives ensure interviews are recorded unless unusual/unforeseen circumstances (ex: technology failures, interviews in outdoor environments) exist. Also, it should be noted that officers equipped with body-worn cameras are required to activate them during any rendering of police service unless unusual circumstances exist (ex: hospital, schools, bathrooms) or whenever interviewing victims of sexual assault for their privacy concerns.</p>	<p>Implemented by FCPD</p>
<p><u>CRP-20-19 and CRP-20-27</u> (Published February 9, 2021)</p>	<p>The FCPD should ensure that all FCPD Officers are informed of its policy 501.2 Investigative Responsibilities.</p>	<p>All officers are required to acknowledge via PowerDMS signature any revisions to Department policy, to include General Orders, SOPs, and Department-wide Command Staff Memorandums. These signatures are audited and any officer failing to acknowledge is notified via their direct supervisor. As</p>	<p>Implemented by FCPD</p>

		mentioned above, General Order 501.2 is under revision and once completed will necessitate officer acknowledgement.	
CRP-20-19 and CRP-20-27 (Published February 9, 2021)	The FCPD should encourage the Fairfax County Sheriff to record and preserve video taken from inside the Fairfax County Adult Detention Center.	As the FCSO constitutes a separate agency run via an elected official (Sheriff Stacey Kincaid), it would be inappropriate for FCPD to make best practices recommendations to her agency. CRP recommendations on FCSO policies and practices should be made directly to the FCSO by the Panel.	Not Implemented by FCPD. The Panel understands that the Sheriff is an elected official, but given the degree to which the FCPD does ultimately interact with and work with the Sherriff's office, we think such encouragement is entirely appropriate.
CRP-19-29 (Published October 23, 2020)	"The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer's public social media profiles; (2) interviewing coworkers in the officer's unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints.	<ol style="list-style-type: none"> 1) All Internal Affairs investigations receive an open-source social media inquiry as of April 1, 2020. 2) General Order 301, Internal Investigations, states that witnesses shall be interviewed if they would assist in an investigation. Regulation 201.3, Obedience to Laws, Regulations, and Training, as it pertains to Regulation 201.5, Reporting Violation, states any employee shall immediately report any 	<ol style="list-style-type: none"> 1) Implemented by FCPD. 2) Not Implemented by FCPD. Presently being reviewed by the FCPD following the January 26, 2021 decision by the Board of Supervisors in CRP-29-19 directing the FCPD to take further action,

	<p>Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer's actions under each of the criteria listed above."</p>	<p>violation, including bias-based policing.</p> <p>3) Arrests and traffic statistics are publicly shared on the FCPD website. IAB is in the process of procuring a Management Analyst to perform quantitative and qualitative analysis of public safety data.</p> <p>4) To ensure qualitative analysis, consistency and thoroughness, the administrative due process includes several levels of review up to the Chief of Police in each administrative investigation. These levels of review include prior consideration of sustained allegations against the subject employee, and appropriate action to be taken for further sustained violations of patterns of conduct. Use of criterion of "circumstances and claims of the current</p>	<p>including conducting interviews with the officer's co-workers.</p> <p>3) Pending further analysis by the FCPD. Data analysis conducted for investigations must include quantitative and qualitative analysis of community contacts and stops by officers, as well an analysis of publicly shared data on arrests and traffic statistics.</p> <p>4) FCPD explanation is responsive.</p>
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		complaint to any prior complaints” is subjectively vague and non-definitive as it pertains to whether or not an officer engaged in either unlawful or procedurally violative conduct.	
CRP-19-29 (Published October 23, 2020)	“All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer’s community contacts, stops, searches and arrests should be broken down by the race and ethnicity of community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention.”	General Order 603.4, Police Community Member Contacts, and General Order 601, Arrest Procedures, requires specific documentation regarding all community member contacts, including voluntary contacts. FCPD is currently in the process of upgrading agency record management systems which will further enhance tracking.	Pending upgrade to FCPD’s data management system.
CRP-19-29 (Published October 23, 2020)	“Data analysis of an officer’s community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district	For all bias allegations, the Internal Affairs Bureau conducts an 18-month examination of the officer’s arrests and citations. This data is compared	Pending upgrade to FCPD’s data management system.

	<p>station where the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.”</p>	<p>to pertinent station demographics. The demographics of each district station and the County are publicly available in the IAB annual report.</p> <p>FCPD is assessing capabilities of reviewing officer field contacts and searches in future RMS programs. Currently searches of these descriptions are limited to technological limitations inherent in I/LEADS RMS. With implementation of a new RMS in the future, the hope is that tracking of contacts and searches, the two recommended data points, will be more feasible, changing policy on how the Department tracks field contacts and searches.</p>	
<p>CRP-19-29 (Published October 23, 2020)</p>	<p>“For the purposes of investigations into allegations of bias or profiling, data analysis of the officer’s community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has worked in different districts within the county, the review and analysis of the officer’s community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period.”</p>	<p>Bias investigations include an 18-month statistical analysis of the officer’s arrests and citations, comparing them with other officers at the same station. Historic database software is only capable of tracking certain data. System replacement and procurement will permit advances to add tracking fields and information categories.</p>	<p>Pending upgrade to FCPD’s data management system.</p>

<p>CRP-19-29 (Published October 23, 2020)</p>	<p>“Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer’s community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group.”</p>	<p>Since November 2012, per policy, the FCPD has utilized an Early Identification System.</p> <p>Monitored incidents include administrative investigations (including cruiser crashes), initial inquiries, forced entries, de-arrests, off-duty traffic citations, off-duty civil and criminal court actions, use of force, and pursuits. Community contacts, stops, searches, and/or arrests are non-dispositive of whether or not an officer has potentially engaged in bias-based policing which FCPD has an absolute prohibition against its employees engaging in. These actions are based upon legally defined standards of probable cause and reasonable suspicion, regardless of race or ethnicity. Where these legally defined standards are non-existent, searches, stops, and arrests would be improper and ultimately unlawful. Where a complaint is made that any officer engaged in disproportionate policing, that complaint would automatically initiate an administrative investigation, which would account as stated above as a qualifying EIS event. This also includes supervisor audits and reviews of officer BWC and ICV</p>	<p>FCPD explanation is responsive.</p>
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		footage to ensure stops, arrest, and searches are within FCPD policy.	
CRP-19-29 (Published October 23, 2020)	“The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing.”	<p>In addition to mandatory County and/or agency training on bias, the Fairfax County Police Department is currently engaging an outside independent expert to train implicit bias, the understanding of implicit bias; procedural justice; “<i>trust building</i>,” and detecting and addressing institutional and structural racism.</p> <p>Independent subject matter experts on bias have lectured to Command Staff.</p> <p>Bias and culture-based training has been offered to employees through academy and other venture partnerships.</p>	Training implemented. Further explanation is required as to the examination of all law enforcement policies and practices.
CRP-19-29 (Published October 23, 2020)	“Officers should receive implicit bias training on an annual basis.”	The FCPD Equity Team and its Ambassadors will receive specialized independent bias-based training. This education will provide a unique, cutting-edge platform for organizations to build a foundational capacity to address or discuss equity gaps, race, equality, cultures, and unity. The independent expert will also train-the-trainer for annual	Implemented by FCPD.

		refresher courses on implicit bias, procedural justice, and <i>trust building</i> .	
2019 Annual Report (Published February 28, 2020)	“Where the evidence gathered during an Investigation into a Complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer’s conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer’s social media accounts and/or interviewing witnesses.”	This recommendation is counter intuitive. Where there is no “race-neutral explanation,” to explain officer conduct, then by default the conduct would fall within the purview of bias-based or discriminatory conduct and appropriate action would be taken swiftly by the Department. Where conduct falls within these parameters, all available investigatory measures will be taken to ascertain the root of why the action took place. The Fairfax County Police Department Internal Affairs Bureau conducts investigations into all complaints involving any allegation of perceived bias. Bias-based complaints will include obtaining all available evidence; such as, but not limited to, witness statements, videos, publicly available social media, statistics, reports, etc. Consistent with all investigations completed by the police department; any available evidence is thoroughly examined for appropriate response and lawful action.	FCPD explanation is responsive. The Panel’s recommendation is that the FCPD proactively continue to investigate to find corroborating evidence, if the available evidence does not offer a “race-neutral explanation” (including times when there simply is no explanation) for the conduct of the officer. The Panel recommends (see recommendation in CRP-19-29) that the FCPD develop objective criteria and processes to evaluate allegations of bias or profiling separate from its normal investigation processes.
CRP-19-11 (Published			Implemented by FCPD.

<p>January 15, 2020)</p>	<p>“With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.”</p>	<p><u>General Order 301</u>, Internal Investigations, states that witnesses shall be interviewed if they would assist in an investigation of a complaint or incident. Commanders were reminded of this policy in a March 2020 Command Staff meeting. Furthermore, Bureau Commanders are responsible for ensuring all investigative tasks have been properly completed as an additional quality control and review oversight protocol.</p>	
<p>CRP-19-11 (Published January 15, 2020)</p>	<p>“FCPD civilian ride-a-long individuals should be tracked and recorded in all instances. A police ride-a-long individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.”</p>	<p><u>General Order 430.3</u> sets policy and procedure for each Ride-Along to include maintenance of the application and required documentation for every Ride-Along. Commanders were reminded of this importance during a Command Staff meeting in March 2020.</p>	<p>Implemented by FCPD.</p>
<p>CRP-19-11 (Published January 15, 2020)</p>	<p>“The FCPD should implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.”</p>	<p>FCPD policy requires officers to “<i>preserve the sanctity of life</i>” and, as community caretakers, officers must attend to the needs of any person who is unable to care for themselves as expeditiously as possible. <u>Regulation 201.6, Preservation of Peace and Protection of Life and Property</u>, states:</p>	<p>Implemented by FCPD.</p>

		<p><i>“It shall be the duty of each sworn officer of the Department to:</i></p> <ul style="list-style-type: none"> • <i>Preserve the public peace;</i> • <i>Protect life and property; and</i> • <i>Enforce and uphold the laws of the Commonwealth of Virginia and the ordinances of the County of Fairfax.”</i> <p>This policy requires officers to attend to children, and any other person who is left alone and unable to care for themselves, under their oath as a sworn officer to protect life. Furthermore, officers are provided guidance from <u>the Fairfax County Family Services Child Supervision Guidelines</u> regarding unattended minors and children.</p>	
<p>CRP-18-27 (Published July 12, 2019)</p>	<p>“[T]he Panel recommends that in the future the Department refrain from publicly releasing [investigatory information pertaining to the Complainant’s social media accounts], because it “discourages individuals from filing future complaints,</p>	<p>Respectfully disagree. Open source information is by definition, available publicly to all individuals and entities. Where an individual posts publicly available information of relevance to an investigation, the Department will</p>	<p>Implemented by FCPD, as the Panel understands the response to be to the Panel’s prior belief that</p>

	and it undermines community trust in the Panel.” If the FCPD believes such information is relevant to the investigation, “that information should be included only in the Department’s investigative file.”	examine this content for relevancy as it pertains to either a criminal or administrative investigation. The Department does not publicly release the findings of administrative investigations, except in the rarest of occasions where, due to public request, the Department would be compelled to disclose whether an accused officer was found in violation of Department policy. The Department does not publicly post administrative investigatory information in any event, and that information is kept confidential within the Department unless subjected to court-ordered discovery or in accordance with the Code of Virginia. All of the information was obtained via public websites from a Google search. The information that was released was already publicly available on the internet.	this was “not implemented” because in fact the FCPD will not be publicly releasing social media information of complaints.
2018 Annual Report (Published March 21, 2019)	FCPD disposition letters to the complainant upon conclusion of FCPD investigations, “must contain sufficient, specific detail to provide complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.”	The FCPD co-produced a disposition letter with members of the community. Commanders who author these letters were then trained on the new form in September. Since that time, the new form has been in use.	New format for more explanatory disposition letters has been adopted by the FCPD and is being implemented.

<p>2018 Annual Report (Published March 21, 2019)</p>	<p>“Action Item 17, dated December 6, 2016 (p. 278), limits the Panel’s ability to include salient facts in public reports. This restriction inhibits “the Panel’s ability to achieve its purpose ‘to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public.”</p>	<p>During Quarterly Meetings, FCPD representatives coordinated with the CRP in preparation of the proposed Action Item that was adopted by the Board of Supervisors on September 24, 2019, giving the Panel the authority to disclose facts of the investigation in the Panel’s Review Reports, with certain restrictions.</p>	<p>Action Item adopted by the Board of Supervisors on September 24, 2019, gives the Panel authority to disclose facts of the investigation in Review Reports with certain limited restrictions.</p>
<p>2018 Annual Report (Published March 21, 2019)</p>	<p>“The Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of the Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same.</p>	<p>The FCPD supports the quarterly meetings and the sharing of information regarding Panel comments and recommendations. These meetings began in June 2019 and are continuing to occur with FCPD staff present for each of them.</p>	<p>Implemented by FCPD</p>
<p>CRP-18-26 (Published March 8, 2019)</p>	<p>“During FCPD administrative investigations, where statistical evidence is used, [the Panel] recommends the Crime Analyst Unit (CAU) be consulted in the gathering, preparation and reporting of the statistical data.”</p>	<p>The compilation of statistical evidence is the responsibility of the Analyst assigned to the Internal Affairs Bureau.</p>	<p>Implemented by FCPD</p>

<p>CRP-18-26 (Published March 8, 2019)</p>	<p>“The FCPD should make BWC and In-Car Video (ICV) footage available for viewing at Panel Review Meetings as requested by the Panel.”</p>	<p>Requests for the Panel to view video and audio footage will be approved on a case-by-case basis.</p>	<p>FCPD explanation noted. The Chief has committed to review any Panel request for footage and determine whether to release of requested footage on a case-by-case basis.</p>
<p>CRP-18-26 (Published March 8, 2019)</p>	<p>“The Panel recommends that the FCPD ensures that individuals involved in incidents with FCPD officers which are subject to a complaint be provided with an opportunity to review the video footage of the incidents.”</p>	<p>It has been the policy of the Police Department to allow complainants to view video footage consistent with <u>Body Worn Camera Pilot Program SOP 18-506, Section VII, Paragraph B</u> and <u>General Order 430.8, In Car Video Program Procedures, Section IV, Paragraph C-5.</u></p>	<p>Implemented by FCPD</p>
<p>CRP-18-12 (Published <u>January 9, 2019</u>)</p>	<p>“The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name.”</p>	<p>In keeping with our commitment to transparency, the FCPD annually publishes an <u>Internal Affairs Bureau Statistical Report</u>, which is made available both within and outside of the Department. IAB is currently researching best practices. Once a template is developed, it will be discussed with the County Attorney for legal review. These reports are posted quarterly, and identify rank of the accused</p>	<p>Under Review by FCPD.</p>

		officer, allegation, disciplinary measures implemented, and disposition.	
<u>CRP-18-12</u> <u>(Published January 9, 2019)</u>	“The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.” (Officer’s demeanor was not explicitly discussed in the Investigation Report, even though it had been an issue in the Complaint).”	Complaints received by the FCPD are thoroughly investigated. As stated in your report, Major Reed assured the Civilian Review Panel (CRP) members that investigators take a holistic approach to ensure that all aspects of a complaint are addressed. Upon completion, all investigations are subject to a multi-layer review. This investigative review may be conducted by Station Commanders, Bureau Commanders, Deputy Chiefs, and the Chief of Police to ensure accuracy and thoroughness.	FCPD explanation noted.
<u>CRP-18-12</u> <u>(Published January 9, 2019)</u>	“The Panel recommends that the FCPD develop an efficient methodology to reintegrate some level of supervision over the submission of [FR300P accident report] forms [by FCPD officers].” The Panel concluded that the consequences for errors could be problematic, as certain insurance claims were initially denied based on erroneous information in the initial FR300P.”	Under the Traffic Records Electronic Data System (<u>TREDS</u>) system, which is a VA State Program, when an officer submits an FR300P, a layered approval process begins. The first layer is the TREDS system itself, which provides a real-time review to ensure all required fields are populated. After the TREDS system review, the report is submitted for internal review by the FCPD Central Records Division. The Central	The Panel accepts explanation of FCPD regarding supervision under TREDS System.

		Records Division has received specialized training on TREDIS and have the delegated authority to accept or reject accident reports if they are not in compliance. In addition, the Central Records Staff distributes error reports to supervisory staff to ensure quality control and accountability.	
<u>CRP-17-10</u> (Published <u>March 26, 2018</u>)	"[T]he Complainant indicated in her statement to the Panel that, other than the Notification, she had not received any further explanation from the FCPD. The Panel recommends that the FCPD contact the complainant and offer her whatever additional explanation that is legally permissible and appropriate under the circumstances."	Letter signed by Station Commander was sent to the complainant indicating the officer's violation was addressed and how to seek additional recourse. Internal Affairs Bureau (IAB) personnel also had a phone conversation with the complainant to address their concerns.	Implemented by FCPD

APPENDIX H: Specific Recommendations from the Panel's Four-Year Review

SPECIFIC RECOMMENDATIONS

- 1) **The Panel should be empowered to hire a full-time Executive Director (ED) with some investigatory experience.** The Panel needs a full-time, dedicated staff member to handle administrative aspects of the Panel and assist the Panel in its reviews, Review Reports, and Annual Reports. The ED ideally should be an individual with some investigatory experience. The ED should also have access to the Investigation Reports and be authorized to draft Review Reports and other reports. The ED should also help organize and assist the Panel in its public outreach opportunities. Like the Independent Police Auditor, the ED should report directly to the Board of Supervisors and supervise administrative staff that assists the Panel.
- 2) **The Panel's Executive Director should be authorized to monitor FCPD investigations of racial bias or profiling from the onset of the investigation, whether or not an initial complaint has been filed with the Panel.** During such monitoring, the ED may observe interviews and have access to evidence. The ED may suggest that the FCPD conduct additional interviews or further inquiries and data analysis during the investigation. Such monitoring would be consistent with that afforded by the Board of Supervisors to the IPA.
- 3) **The Panel should be given electronic access to redacted Investigation Reports.** A new policy should be adopted by the Board of Supervisors, in consultation with the County Attorney and the FCPD, that allows Panel Members to have electronic access to redacted Investigation Reports. The Panel is cognizant that the Chief of Police is the custodian of FCPD records, and that he has rejected similar Panel requests in the past. However, there is no legal impediment barring the Chief from heeding the Panel's reasonable request. Panel Members simply must be able to conveniently review investigative files outside of normal business hours and outside of a police station. A compromise proposal would be to allow the FCPD to redact all personnel information on records provided electronically and require Panel Members to appear in person at police headquarters to review unredacted versions. Panel Members would still be under the obligation not to disclose privileged information. Providing electronic access ensures: (1) greater accessibility and participation of community members who may not have the resources to volunteer on a Board and travel regularly to the FCPD headquarters and (2) ensures the safety of all parties involved by reducing in person encounters during a pandemic and post-pandemic environment.
- 4) **The Panel should codify in its bylaws a "summary judgment"-like process for disposing of wholly unfounded complaints at the Subcommittee level.** At a minimum, the Bylaws should reflect that the Subcommittee must find the Complaint to be objectively qualified for review. Toward that end, the Panel should formally adopt a four-step process for initial reviews of complaints, and this process must be explicitly stated in amendments to the Bylaws. First, the Subcommittee should determine whether the allegations of the complaint constitute allegations of a serious misconduct or an abuse of authority. Second, if yes, the Subcommittee should determine whether the Investigation Report reveals *any* observable substantiation of the allegations of serious misconduct or an abuse of authority in the complaint. This should be an exacting standard and a sufficiently high bar to avoid the early disposition of not wholly unfounded complaints. Further, this should apply only to the allegations that meet the threshold of serious misconduct or an abuse of authority. If there is *any* observable substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should recommend that the full Panel take up review. Third,

if the Subcommittee finds no substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should consider whether there is *any* reason to believe that the Investigation Report is not complete, thorough, accurate, objective, and impartial. Finally, the Subcommittee should present its findings to the entire Panel for a vote as to whether the Panel should review the Complaint. Thus, there is always a failsafe in that the Panel must make the ultimate determination whether or not to undertake a review.¹

- 5) **The Panel should be authorized, at its discretion, to conduct a review of a completed FCPD investigation of an initial complaint concerning racial bias or profiling without first receiving a Request for Review from the Complainant.** Complaints concerning racial bias seemingly are of particular importance to county residents and thus should all be treated as ripe for independent oversight.
- 6) **The Panel should be given limited investigatory power including the ability to interview and subpoena the Complainant and up to three key witnesses upon the request of six Panel members.** Without full professionalization of the Panel, it cannot be a fully investigatory body. But the Panel would be well-served by having some investigatory powers that allow it to take investigative action wholly independently from the IAB. One idea is to grant the Panel through the Executive Director the ability to conduct witness interviews (and by extension to grant the Panel some subpoena power) but limit the number of interviews that the Panel undertakes. Moreover, such interviews would be discretionary – if the Panel is confident that the Investigation Report as compiled meets its standards, it need not go forward with additional investigation. If the Panel is allowed to choose to conduct its own interview of the Complainant and up to three key witnesses free of IAB involvement, the Panel can demonstrate its independence to the community and to the Complainants themselves, many of whom are skeptical that a wholly police-driven investigation can truly be impartial and objective
- 7) **The Panel’s Options for its Review Findings should be expanded and modified.** The Panel should be given five options:
 - a. The Panel can concur with the findings of the FCPD and confirm that the conclusions of the Investigation Report are correct, and that the Investigation was sufficiently thorough, impartial, and objective so as to allow for the conclusion made.
 - b. The Panel can request additional investigation from the FCPD and the FCPD shall within a reasonable time conduct further investigation and provide the Panel with a supplemental report that details the findings of the additional investigation.
 - c. The Panel can exercise the opportunity to conduct its own additional investigation, including interviewing the Complainant and up to three key witnesses using its limited subpoena power.
 - d. The Panel can inform the Board of Supervisors that in the opinion of the Panel, the conclusions of the Investigation Report are incorrect and/or that the investigation is insufficiently thorough, impartial, and objective. so as to allow for an alternative conclusion.

¹ Alternatively, the Board of Supervisors could revisit the Action Item and provide the authority to individual Panelists on a rotating basis to make summary determinations (based on an established criteria). This would allow the Panel as a whole to ensure timeliness in its disposition of complaints.

- e. The Panel can inform the Board of Supervisors about how it would have resolved the investigation.
- 8) The Panel should consider specific definitions for the terms “correct,” “thorough,” “impartial,” and “objective” that are well defined and understood in the same manner by all members of the Panel.** The specific definitions could be added to the Panel’s Bylaws upon approval by the Board of Supervisors.
- 9) The Panel should invite rank-and-file FCPD officers to a forum (or to multiple forums) where FCPD officers can ask Panel Members questions and make comments.** The Panel should commit to increasing its interactions with the FCPD rank-and-file and should make itself available for meetings with officers present to ask questions and make comments at least once a year.
- 10) The Panel should commit to twice-a-year public forums (or more) where members of the public can ask Panel Members questions and make comments.** The Panel should commit to increasing its community outreach opportunities and conducting at least two public forums each year. The Panel should make an effort to have at least one of these public forums covered by the press.
- 11) The Panel should have an annual training session conducted by the FCPD in which the Panel learns about FCPD policies and procedures.** The content of the training should be developed in consultation with the FCPD.

APPENDIX I: Police Civilian Review Panel Member Biographies

Cheri Belkowitz, Fairfax Station

Ms. Belkowitz is an education attorney who practices throughout Virginia and in Washington, D.C. She is a zealous advocate for children with disabilities and their families in all school-related matters. She represents families in special education law matters arising under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Ms. Belkowitz is active in the special needs community, and she served four terms as Chair of the Fairfax County Public Schools Advisory Committee for Students with Disabilities. She also served as a member of the Fairfax Equity Stakeholders Committee and as a Director on the Board of The Arc of Northern Virginia. Ms. Belkowitz also currently serves as a Board Member of the Fairfax Special Education PTA (SEPTA). She was invited by the Secretary of the Air Force as a civic leader to participate in the National Security Forum at Air War College at Maxwell Air Force Base in Montgomery, Alabama, to share perspectives with senior military officers on strategic leadership, national security, and global security. Among other recognitions, Ms. Belkowitz received the JCC of Northern Virginia Finkelstein Award for her service, leadership, and program development in the special needs community and the SEPTA “Community Champion Award” in 2020 for her exceptional commitment to the special needs community in the public schools. She graduated *cum laude* from Brandeis University, and she earned her Juris Doctor, *magna cum laude*, from Syracuse University College of Law. She served as Notes and Comments Editor of *The Syracuse Law Review* and was a member of the Justinian Honorary Law Society.

James Bierman, McLean (Chair)

Mr. Bierman is a resident of McLean, where he grew up, and is an Attorney Advisor in the Office of the General Counsel at the Department of Homeland Security, where he works on administrative law issues across the Department. Before joining the Federal government, Mr. Bierman was a litigator who represented clients in complex litigation such as antitrust, securities, pharmaceutical defense, false advertising, trade secrets, copyright infringement, trademark infringement, commercial paper, and domestic matters in federal and state courts across the country as well as before federal administrative agencies. Mr. Bierman also maintained a large pro bono practice in which he has represented undocumented immigrants in wage disputes against predatory employers, disabled individuals in Social Security benefit matters, and criminal defendants in state court at both the trial and appellate levels. Further, he advised nonprofits and community organizations in disputes with state and local governments. Before entering private practice, Mr. Bierman served as a law clerk to the Honorable Beverly B. Martin of the U.S. Court of Appeals for the Eleventh Circuit.

Todd L. Cranford, Fairfax

Mr. Cranford, a 15-year Fairfax County resident, is Board Counsel to the Public Company Accounting Oversight Board. Previously, he was the Head of Government Affairs & External Relations for the Financial Accounting Foundation. Mr. Cranford has broad experience in both the public and private sectors, including serving in the enforcement division of the U.S. Securities and Exchange Commission, on Capitol Hill with the House Financial Services Committee, and with the international law firm Patton Boggs LLP. Mr. Cranford is committed to giving back to his community. In addition to service on the Panel, he serves on the boards of the National Domestic Violence Hotline and The Commonwealth Institute for Fiscal Analysis. He is also a member of the 2020 class of Leadership Fairfax and 100 Black Men of Greater Washington, D.C.

Frank Gallagher, Burke

Mr. Gallagher is a U.S. Army veteran and a retired FBI Agent with over 32 years of service. He first moved to Fairfax County in 1977 and was transferred out of the area several times. During his time in the FBI, Mr. Gallagher served as the Deputy Assistant Director of the Criminal Division, Special Agent in Charge of a Field Office and as the Chief Inspector for the FBI. He has lived continuously in Fairfax County for the past 21 years. After his retirement from the FBI, Mr. Gallagher worked for a major global management and information technology consulting firm for 11 years. Subsequent to that he served for two years as the Chairman of the DC Chapter of the Society of Former Special Agents of the FBI. He is a graduate of FBI's National Executive Institute (NEI) and was on the Board of Directors of the NEI Associates for five years. Previously, he was a member of the International Association of Chiefs of Police and served on the Narcotics and Dangerous Drugs Committee. Also, he was on the Board of Directors for the National Center for Missing and Exploited Children. Until recently, he served for six years as the Braddock District representative on the Fairfax County Criminal Justice Advisory Board.

Bryon Garner, Alexandria

Mr. Garner recently served as Lee District representative on the Fairfax County Redistricting Advisory Committee and member of the City of Alexandria Commission on HIV/AIDS. From 2012-2015, he served on the City of San Diego Community Review Board on Police Practices, which investigated citizen claims against the San Diego Police Department. A nine-year veteran of the U.S. Navy, Mr. Garner earned his Master of Liberal Arts from Johns Hopkins University and is currently a PhD candidate in Interdisciplinary Studies with a Major in Humanities and a certificate in Philosophy and Ethics at Union Institute & University. With over 20 years of government service, Mr. Garner is currently employed by the Department of State.

Dirck A. Hargraves, Esq., Kingstowne (Vice Chair)

Mr. Hargraves has over 25 years of legal, regulatory and legislative experience and is the founder and principal of a public affairs and strategic communications firm that specializes in creating winning public policy campaigns. Mr. Hargraves has a long-held belief in the rule of law and passion for social justice. At the time, he was the youngest president of a local NAACP

Branch, where he sought transparency regarding the use of lethal force after an unarmed drug suspect was fatally shot by the police while fleeing a bust. A Citizen's Police Academy was formed shortly thereafter with NAACP input so that civilians were given a clearer understanding of how police determine when to use lethal force. Mr. Hargraves, also served as legislative counsel to US Representative Sheila Jackson Lee, where he supported the congresswoman on the House Judiciary Committee and at field hearings, including listening to the testimony of African American and Latino law enforcement at the World Trade Center in the aftermath of the Abner Louima police brutality scandal. That field hearing informed Members as they debated the National Police Training Commission Act of 1999, which presciently defined the seemingly intractable challenge of policing when Act found that:

Respect for law and order is the cornerstone of a free society. The rule of law is predicated upon the consent of people who believe the laws are administered fairly, thus commanding respect and confidence. Unjust or discriminatory administration of law by excessive force tends only to create distrust and contempt for the law and law enforcement agencies.

Shirley Norman-Taylor, Lorton

Ms. Norman-Taylor has resided in Fairfax County for the past 21 years. She is licensed to practice as an attorney in Virginia and Washington D.C. The focus of her practice includes Domestic Relations and Criminal and Traffic Defense, however, her greatest joy comes from representing children who are in the Abuse and Neglect system as their Guardian ad litem (GAL). Ms. Norman-Taylor also serves on the Fairfax County School Board's Minority Student Achievement Oversight Committee (MSAOC). Ms. Norman-Taylor is a former military officer and served as a Commander during Operations Desert Shield/Desert Storm.

William Ware, Alexandria

Mr. Ware is a native Virginian and 20-year resident of Fairfax County. His career includes service across several federal community corrections organizations where he has been laser-focused on reentry and supporting positive outcomes for returning citizens. Mr. Ware started his career as a Community Supervision Officer with the Court Services and Offender Supervision Agency (Washington, DC probation and parole). He transitioned to the Army Clemency and Parole Board serving as a Case Analyst and Hearing Examiner for court-martialed soldiers and, in 2019, Mr. Ware was selected as Deputy Chair for the Air Force Clemency and Parole Board. In that capacity, he presided over clemency and parole hearings for court-martialed Airmen and managed operations for the Air Force clemency and parole program. Mr. Ware joined the Probation and Pretrial Services Office at the Administrative Office of the U.S. Courts in 2021 and assumed responsibility for the reentry and Second Chance Act portfolio for the federal probation system. Beyond his federal experience, Mr. Ware has served in volunteer capacities on the Alexandria Sheriff's Office Advisory Board, Alexandria Reentry Council, and Fairfax County Communities of Trust. He holds a BA in Criminal Justice and MS in Criminology.

Janell Wolfe, Fairfax

Ms. Wolfe has resided in Fairfax County for over 30 years. She obtained her J.D. degree from the Antioch School of Law in Washington, D.C. A member of the Virginia, District of Columbia and Supreme Court of the United States bars, Ms. Wolfe was a criminal defense attorney with a solo practice in Arlington, Virginia. She was appointed as a Commissioner in Chancery for the 17th Judicial District of Virginia and served on the Board of Directors for Northern Virginia Legal Services.

Ms. Wolfe has served as a magistrate for Fairfax County. Currently she represents respondents in mental health hearings for Arlington County and is on the Committee of Admissions for the District of Columbia bar.

Ms. Wolfe was selected as a docent in 2010 for the Supreme Court of the United States. She presents lectures in the courtroom of the Supreme Court to visitors and conducts educational tours for guests at the request of the Justices. She also volunteers at the Fairfax County Animal Shelter.

