

Police Civilian Review Panel

November 12, 2020

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:

Hansel Aguilar

Jimmy Bierman

Bob Cluck

Hollye Doane, Panel Chair

Frank Gallagher<sup>1</sup>

Doug Kay

Shirley Norman-Taylor

Sris Sriskandarajah, Panel Vice-Chair<sup>2</sup>

Panel Members Absent:

Rhonda VanLowe

Others Present:

Gentry Anderson, OIPA

Captain Hanson, FCPD

Major Lay, FCPD

Anita McFadden, Interim Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel's November 12 meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Panel's business meeting was called to order at 7:00 p.m. and eight Panel Members were present. Ms. VanLowe was absent from the meeting.

Ms. Doane welcomed everyone to the Panel's November 12 meeting and noted a few housekeeping rules.

Motions to Conduct Electronic Meeting: Ms. Doane took roll call to verify a quorum of the Panel was present and to ensure each Panel Member's voice could be heard clearly. She asked each Panel Member to state their name and the location from which they were participating.

Mr. Aguilar was present and participated from Arlington, Virginia.

Mr. Bierman was present and participated from McLean, Virginia.

Mr. Cluck was present and participated from Reston, Virginia.

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<sup>1</sup> Mr. Gallagher exited the meeting around 8:20 p.m.

<sup>2</sup> Mr. Sriskandarajah exited the meeting at 7:33 p.m.

Ms. Doane was present and participated from Oakton, Virginia.

Mr. Gallagher was present and participated from Burke, Virginia.

Mr. Kay was present and participated from Fairfax, Virginia.

Ms. Norman-Taylor was present and participated from Lorton, Virginia.

Mr. Sriskandarajah was present and participated from Fairfax, Virginia.

Ms. Doane moved that each member's voice may be adequately heard by each other member of this Panel. The motion was seconded by Mr. Sriskandarajah and it carried by unanimous vote, with Ms. VanLowe being absent.

Ms. Doane moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. She further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 173 021 8538 as noted in the Public Meeting Notice. Mr. Sriskandarajah seconded the motion and it carried by unanimous vote, with Ms. VanLowe being absent.

Ms. Doane moved that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Bierman seconded the motion and it carried by unanimous vote, with Ms. VanLowe being absent.

Approval of October 22 Meeting Summary: Ms. Doane moved approval of the Panel's October 22 meeting summary. Mr. Bierman seconded the motion and it carried by unanimous vote, with Ms. VanLowe being absent.

Approval of Subcommittee Initial Review Report for CRP-20-29: Ms. Doane reviewed the events that led to the submission of a complaint to the Panel on March 10, 2020 alleging malicious prosecution by an FCPD officer, and specifically that an officer provided false testimony to a magistrate, failed to document an investigation, and failed to fully investigate a felonious assault with a knife (CRP-20-29). The FCPD Internal Affairs Bureau (IAB) investigation found there was no conspiracy between the officer and the complainant's ex-girlfriend. The complainant also submitted a separate complaint to the Panel on May 13, 2020 about how the warrant for his arrest was executed. This complaint was also investigated by IAB, which determined that the officers' actions were appropriate during the incident. IAB found that FCPD regulations were violated in that the complainant should have been contacted before the warrant was executed and he should have been given the opportunity to surrender at a police facility. Ms. Doane informed the Panel that, while the subcommittee determined that these

were serious allegations, there was nothing in the record to suggest that the officers acted improperly. She said that the subcommittee recommends that the complaint not be reviewed by the Panel given that there was no evidence in the investigative file to support the complainant's allegations.

Ms. Doane also noted that since the subcommittee met, the complainant sent a letter indicating his dissatisfaction with the subcommittee's recommendation and making a FOIA request for Panel documents.

Mr. Bierman stated that the subcommittee believes that an officer providing false testimony and the conspiracy claim rise to the level of serious misconduct. However, they found no substantiation of malfeasance when reviewing the investigative file. The IAB appeared to conduct a complete, thorough, and accurate investigation and found that the officer was in compliance with policy.

Mr. Sriskandarajah said that the processing of this complaint provides a good example to consider during the revision of Panel procedures that he is working on with Ms. VanLowe.

Mr. Kay moved that the Panel approve the findings and recommendations of the subcommittee regarding complaint CRP-20-29. Mr. Sriskandarajah seconded the motion and it carried by a vote of 7, with Mr. Aguilar unable to cast his vote due to technical difficulties<sup>3</sup> and with Ms. VanLowe being absent.

Approval of Review Report for CRP-19-19: Ms. Doane asked Panel members for feedback on the draft Review Report for CRP-19-19. There were no comments. Mr. Sriskandarajah moved that the Panel adopt the Review Report for CRP-19-19. Mr. Kay seconded the motion and it carried by a vote of 7, with Mr. Aguilar unable to cast his vote due to technical difficulties<sup>4</sup> and Ms. VanLowe being absent.

Panel Consideration of Good Cause for CRP-20-31: Ms. Doane stated that the Panel must determine whether there is good cause to review a complaint that an FCPD officer was racially biased in assigning fault to a Black driver in a traffic accident report. The incident occurred prior to November 16, 2018 and a complaint was made to the FCPD on February 2, 2019. The complainant requested a review on October 27, 2020, more than 60 days after the FCPD provided notice to the complainant on July 29, 2019 that the investigation was complete. Discussion ensued on how the complaint is time-barred unless good cause is found. Ms. Norman-Taylor and Mr. Aguilar asked when the Panel reached out to the complainant to request information for the Panel to consider while determining good cause. Ms. Anderson

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<sup>3</sup> When Mr. Aguilar later joined the meeting, he indicated that he would have voted Nay on the motion. He believed that the allegations fell within the jurisdiction of the Panel and the full Panel should have reviewed it, even if they ultimately agreed with the conclusions of IAB.

<sup>4</sup> When Mr. Aguilar later joined the meeting, he indicated that his vote on the motion was Nay, but he did not plan on filing a written dissent.

stated that the Panel sent a letter to the complainant on October 28, 2020, the response was requested by November 11, 2020, and there was no response from the complainant.

Mr. Kay moved that the Panel not entertain CRP-20-31. Mr. Sriskandarajah seconded the motion and it carried unanimously, with Ms. VanLowe being absent.

Presentation by the Independent Police Auditor: Richard Schott presented to the Panel a review of the first three and a half years of his work as the Independent Police Auditor. He began with a review of the legal and policy provisions that he considers while reviewing FCPD investigations into uses of force. He then summarized the number and types of force incidents that he has monitored and reviewed to date and the reports published by his office. Finally, Mr. Schott talked about how he envisions the future of the office and answered questions from Panel members:

- Mr. Aguilar asked Mr. Schott what areas of training he recommends the Panel members receive. Mr. Schott recommended training on the 4<sup>th</sup> Amendment, particularly for new Panel members without law enforcement experience, and training on the 14<sup>th</sup> Amendment because of its relevance to racial profiling and bias investigations.
- Mr. Kay asked about the recommendation to the Board of Supervisors on the FCPD's social media usage policy. Mr. Schott stated that the FCPD has not yet adopted an individualized social media policy for its employees but should adopt one unique to their mission.
- Mr. Bierman noted that three incidents reviewed by the Police Auditor involved choking and asked if the new legislation in Virginia that bans chokeholds would change the consideration of objective reasonableness of officers' actions in the future. Mr. Schott clarified that two of the three incidents he reviewed included allegations of choking, but there was no contact made with the individual's neck. He stated that under current FCPD policy, the use of a chokehold would be a violation, however, it could still be considered reasonable under *Graham v. Connor*.
- Ms. Norman-Taylor commented that the general public may not know that there is no requirement that officers use the "least intrusive alternative" and referred to the common question of why officers do not aim to shoot a suspect in the leg, rather they aim for the heart. Mr. Schott expressed his agreement and stated that officers can use a less intrusive force alternative but are not required to.
- Ms. Doane referred to the Auditor's recommendation that the Chief should have the authority to immediately suspend officers, with or without pay, pending an internal investigation. She asked about the rationale for that recommendation and where it stood in the process. Mr. Schott replied that it is included in Supervisor Lusk's matrix and may be considered in a future Public Safety Committee meeting or by the Personnel

Committee. He said that it can be troubling to see an officer suspended with pay when later that officer is terminated.

- Ms. Doane stated that she remains concerned about the use of force on individuals with disabilities, specifically when officers place a person on their stomach. People with Down's Syndrome may be at risk for asphyxiation and death when this maneuver is used. Mr. Schott said that he was not aware of a policy specifically addressing this population, but he has recommended that with use of the Ripp Hobble officers should place the person in an upright and seated position as soon as possible. Ms. Doane stated that she wants to ensure that officers are trained on how to safely interact with individuals with Down's Syndrome.

Four Year Review Action Plan: Mr. Bierman stated that he is working with Mr. Aguilar to conduct a review of the Panel's activities to date and he referred to the Four Year Review Action Plan in the meeting materials packet. He outlined the goals of the review and the sources that will be consulted. Mr. Aguilar will develop a set of questions that they will use to interview current and previous Panel members. Mr. Bierman presented the anticipated outline for the report, which includes an analysis of changes that have occurred over the years, challenges faced by the Panel, and the outcomes produced. The report will also include recommendations for making the Panel more successful in improving police accountability and the relationship between the police and the public.

Mr. Bierman noted that they will also consider in their review the implications of the bill passed by the Virginia legislature that gives the Board of Supervisors the opportunity to expand the reach of the Panel, the potential for the Panel to have an Executive Director position, and the ability of the Panel to conduct listening sessions.

Mr. Aguilar and Mr. Bierman recognized Ms. Anderson's contribution to the Panel in keeping detailed and organized Panel records. Mr. Kay recommends conducting an interview of Ms. Anderson for her insight on improvements to Panel operations. Mr. Bierman said that he anticipates a document for the Panel to review by the December or January meeting.

Ms. Doane stated that the review will serve as a useful roadmap for the Board of Supervisors to consider when making changes to the Panel in the future.

New Business: Ms. Doane informed the Panel members that there is an Action Item under consideration by the Board of Supervisors to allow the Panel to conduct or participate in six meetings per year with the public on FCPD policies, practices, and regulations.

Ms. Doane thanked Ms. Anderson, who will be leaving her position in OIPA, for going above and beyond in her support of the Panel's work since its inception.

Ms. Doane welcomed Major Dean Lay who is the new Commander of IAB. Major Lay said he looks forward to working with the Panel.

Adjournment: Mr. Kay moved to adjourn the meeting. Mr. Bierman seconded the motion and it carried by a vote of 6, with Mr. Sriskandarajah, Mr. Gallagher, and Ms. VanLowe being absent.

The meeting adjourned at 8:29 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, December 10 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.