

Police Civilian Review Panel

January 28, 2021

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:<sup>1</sup>

Hansel Aguilar

Jimmy Bierman

Hollye Doane, Panel Chair

Frank Gallagher

Doug Kay

Shirley Norman-Taylor

Sris Sriskandarajah, Panel Vice-Chair

Panel Members Absent:

Rhonda VanLowe

Others Present:

Chief Edwin Roessler

Major Lay, FCPD

Anita McFadden, Interim Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel's January 28 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 all Panel Members were present. Ms. Doane welcomed everyone to the Panel's January 28, 2021 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 the Centreville, Virginia.

Mr. Bierman was present and participated from McLean, 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.

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

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<sup>1</sup> The Panel seat formerly occupied by Mr. Cluck was vacant for this meeting.

Ms. Doane was present and participated from Oakton, 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 179 968 5171 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. Gallagher seconded the motion and it carried by unanimous vote, with Ms. VanLowe being absent.

Recognition of Chief Roessler: The Panel members each took a few minutes to recognize Chief Roessler, who is retiring, and thank him for his service to the County. The Chief's efforts to increase transparency, commitment to a police force that is just and good, support of the Panel and its mission, ability to navigate multiple stakeholders, and implement a sanctity of life policy were highlighted. Ms. Doane commended Chief Roessler on how he handled the challenges facing policing this summer and said he leaves a legacy of reform of the police department.

A letter from Adrian Steel, the Panel's inaugural Chair, was read.

Chief Roessler made remarks about his appreciation of the Panel and its role in the co-production of policing model.

Administrative Announcements: Ms. Doane announced that Deputy County Executive Dave Rohrer will serve as interim Chief of Police.

Ms. Sriskandarajah announced his resignation from the Panel due to changes in his work duties and he thanked the Panel for their continued work.

Ms. Doane announced that Bob Cluck had resigned from the Panel since the last meeting and she thanked him for his service.

Discussion on Four-Year Review: Ms. Doane recognized Mr. Bierman to frame the discussion. Mr. Bierman explained his process of reviewing Panel documents and his conclusions. He said the Panel meetings cover varied content and so he engaged in a comprehensive history. He said the Panel might consider providing a link to the full document, then a link to each piece.

Mr. Bierman reviewed the different contributions of each Panel member to the document. He reviewed his decision process in drafting the recommendations and highlighted key themes.

*History and Analysis:*

Discussion ensued on the History and Analysis sections. The length of the document was discussed and how to best format the document to ensure that various audiences will read it.

Mr. Kay moved to adopt the History and Analysis sections of the report. The motion was seconded by Ms. Norman-Taylor and it carried unanimously, with Ms. VanLowe being absent.

Mr. Bierman noted that he will take out mention of investigative authority in the Analysis section if the Panel does not adopt the related recommendation.

*Recommendations:*

The Panel discussed Recommendation 1: “The Panel should be empowered to hire a full-time Executive Director (ED) with some investigatory experience...”

Discussion on this recommendation included the desired job duties and authority of an Executive Director (ED). Mr. Gallagher stated his desire that the Executive Director not assume authority above the Panel Chair. Ms. Doane stated that she would like the ED to be a parallel position to the Independent Police Auditor, reporting back to the Board of Supervisors. She stated the ED would have authority to look at investigative files, write reports for the Panel, and make recommendations to the Panel. She would like the ED to work with the Chair and the rest of the Panel to make day-to-day decisions. Mr. Kay said the ED should be there to help the Panel, made up of community members, to do their job. Mr. Bierman stated that the position would be considered staff to the Panel, regardless of the reporting structure within the County.

Mr. Kay moved that the Panel accept Recommendation 1. The motion was seconded by Mr. Gallagher and it carried unanimously, with Ms. VanLowe being absent.

The Panel discussed Recommendation 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...”

Discussion ensued on whether the Executive Director having monitoring authority like the Independent Police Auditor for these cases would impede or make the investigation more difficult for the FCPD. Mr. Gallagher pointed out that it may be difficult to schedule interviews to have the ED involved. Ms. Doane noted that the language is permissive and that a benefit might be that the Panel sends back fewer investigations to the FCPD. Mr. Aguilar stated that the intent is not to impede the police, but to provide a tool for oversight.

Mr. Kay moved that the Panel adopt Recommendation 2. The second to the motion was inaudible and it carried with a vote of five, with Mr. Gallagher and Mr. Sriskandarajah voting Nay and Ms. VanLowe being absent.

The Panel discussed Recommendation 3: “The Panel should be given electronic access to redacted Investigation Reports...”

Discussion ensued on the benefits of Panel members having electronic access to investigative files. A noted benefit was that the Panel could produce more accurate reports. Ms. Doane stated that it could be a compromise to have redacted reports made available electronically, but this should not replace the Panel’s access to the unredacted investigative file.

Mr. Kay moved that the Panel accept Recommendation 3. The motion was seconded by Mr. Sriskandarajah and it carried unanimously, with Ms. VanLowe being absent.

The Panel discussed Recommendation 4: “The Panel should codify in its bylaws a “summary judgment”-like process for disposing of frivolous complaints at the Subcommittee level.”

Panel members discussed the use of the term “frivolous” as it is used in legal settings and by other police oversight boards, and whether members prefer to use instead a term like “wholly unfounded.”

Mr. Bierman moved that there be an amendment to Recommendation 4 that reads “...a summary judgement-like process for disposing of wholly unfounded complaints at the Subcommittee level...” and later language to read “This should be an exacting standard and a sufficiently high bar to avoid the early disposition of not wholly unfounded complaints...” and change the word “frivolous” to “wholly unfounded” in the Analysis section on page 88. The motion was seconded by Mr. Gallagher and it carried unanimously, with Ms. VanLowe being absent.

Mr. Kay moved that the Panel adopt Recommendation 4 as amended. The motion was seconded by Mr. Sriskandarajah and it carried unanimously, with Ms. VanLowe being absent.

The Panel discussed Recommendation 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.”

Ms. Doane said this would give the Panel similar authority to the Independent Police Auditor. She does not see the Panel using this often, but there might be a time in which the Panel will want to review a complaint, regardless of whether the person requested a review. Mr. Aguilar expressed his agreement. Mr. Kay advised that the Panel develop specific procedures that identified when this would occur, for e.g., if the complainant does not request a review within 90 days, the subcommittee could make a recommendation to the Panel to move forward with a review.

Mr. Kay moved that the Panel accept Recommendation 5. The motion was seconded by Mr. Gallagher and it carried unanimously, with Ms. VanLowe being absent.

The Panel discussed Recommendation 6: “The Panel should be given limited investigatory power including the ability to interview and subpoena the Complainant and up to three key witnesses.”

Mr. Bierman stated he wanted to create an option that is wholly independent of the police in certain circumstances. He said the perception of the public is that the Panel cannot engage in meaningful oversight because it does not have ability to investigate. He said that having an Executive Director, or professional staff, to conduct an investigation is in line with the legislation recently passed. Mr. Gallagher expressed concerns with the legal liabilities that would come with investigative authority. Mr. Kay suggested that the Panel require that a minimum six-person majority of the Panel approve of exercising limited investigatory power. Ms. Doane expressed concern over having adequate staff to conduct investigations but also noted that this recommendation will be considered by the Board of Supervisors and will inform them of the Panel’s willingness to take this on in a limited capacity.

Mr. Kay moved that Recommendation 6 should be amended to require a minimum of six members of the Panel to vote in favor of exercising its investigatory power as outlined in Recommendation 6. Mr. Kay made a point of clarification that this would not require a super majority but at least six members of the Panel to vote in support of it. Mr. Bierman stated that the language in the new recommendation would read: “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.” The motion was seconded by Mr. Bierman and it carried with a vote of six, with Mr. Gallagher voting Nay and Ms. VanLowe being absent.

Mr. Bierman moved that the Panel accept Recommendation 6 as amended. The motion was seconded by Mr. Kay and it carried with a vote of five, with Mr. Gallagher voting Nay and Mr. Sriskandarajah<sup>2</sup> and Ms. VanLowe being absent.

The Panel discussed Recommendation 7: “The Panel’s Options for its Review Findings should be expanded and modified. The Panel should be given five options...”

Mr. Bierman stated that the Panel is limited in its ability to concur with the FCPD findings based on the current five standards of an investigation being thorough, complete, accurate, objective, and impartial. It is problematic when findings can be construed as accurate (e.g., they did not manipulate statistics) but the findings of the investigation are not correct. He said that additional options would give the Panel more voice about what they think about the investigation and give the Panel an option to conduct its own investigation, as it is described in Recommendation 6. Mr. Bierman also stated that he would like to amend part b. in Recommendation 7 to read “The Panel can require additional investigation...” as opposed to request, as “require” is the language currently in the Bylaws. Ms. Doane referred to language in

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<sup>2</sup> Mr. Sriskandarajah exited the meeting at 8:58 p.m.

the Bylaws Article VI.E.1.(h) where it says the Panel can “request” additional investigation and the FCPD “shall” conduct it.

Mr. Kay recommended that the Panel continue to use the same language as on page 9 of the Bylaws. Mr. Kay moved that Recommendation 7 Part b. be amended to read that “The Panel can request additional investigation from the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide the Panel a supplemental report that details the findings of the additional investigation.”

The motion was seconded by Mr. Bierman and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Mr. Gallagher recommended that the Recommendation 7 Part e. be amended so that the following language be deleted, “...and recommend that the Board of Supervisors take certain remedial actions.” Mr. Bierman noted his agreement with this change and moved that Mr. Gallagher’s amendment to Recommendation 7 Part e. be accepted. The motion was seconded by Mr. Gallagher and it carried with a vote of five, with Mr. Aguilar voting Nay, and with Mr. Sriskandarajah and Ms. VanLowe being absent.

Mr. Kay moved that the Panel accept Recommendation 7 as amended. The motion was seconded by Mr. Bierman and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Mr. Kay asked as a point of clarification, if the Board of Supervisors accepts Recommendation 6, is Recommendation 7 Part c. an alternative to Recommendation 6? In Recommendation Part c. the Panel would not have to request the opportunity to conduct its own investigation as it would already have that authority from Recommendation 6.

Mr. Bierman stated that Recommendation 7 Part c. is intended to be a mechanism for implementing Recommendation 6. Mr. Kay moved that Recommendation 7 Part c. be amended to state that “The Panel can exercise the opportunity to conduct its own additional investigation...” Ms. Doane restated the motion that the Panel reconsider Recommendation 7 and amend Recommendation 7 Part c. to provide that “The Panel can exercise the opportunity to conduct its own additional investigation.” Mr. Bierman seconded the motion and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

The Panel discussed Recommendation 8: “The Panel should create 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.”

Discussion ensued on past disagreement among Panel members regarding these terms and whether the Panel should more specifically define these terms. Mr. Gallagher stated that Panel members bring different perspectives and that there was no need to define the terms. Mr. Aguilar recommended that the Panel create a tool or checklist of what makes up an acceptable investigation. Panel members noted past examples of when Panel members voted differently

about the completeness of an investigation. Ms. Doane suggested softening the language in the Recommendation to not make mandatory that definitions be developed.

Mr. Bierman moved that the Panel revise the language in Recommendation 8 to replace “create” with “consider” and replace “should be added” with “could be added.” Mr. Kay seconded the motion and it carried with a vote of five, with Mr. Gallagher voting Nay, and with Mr. Sriskandarajah and Ms. VanLowe being absent.

Mr. Kay moved that the Panel accept Recommendation 8 as amended. The motion was seconded by Ms. Norman-Taylor and it carried with a vote of five, with Mr. Gallagher voting Nay, and, with Mr. Sriskandarajah and Ms. VanLowe being absent.

The Panel discussed Recommendation 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.”

There was no discussion on the recommendation.

Mr. Kay moved that the Panel accept Recommendation 9. The motion was seconded by Ms. Norman-Taylor and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

The Panel discussed Recommendation 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.”

Ms. Doane noted that forums can be conducted up to six times annually.

Mr. Bierman moved that the Panel accept Recommendation 10. The motion was seconded by Mr. Gallagher and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

The Panel discussed Recommendation 11: “The Panel should have an annual training session conducted by the FCPD in which the Panel learns about FCPD policies and procedures.”

Mr. Kay moved that the Panel accept Recommendation 11. The motion was seconded by Mr. Gallagher and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

*Executive Summary:*

Mr. Bierman moved that the Panel amend the Executive Summary as follows: In the last paragraph, rather than say “that the Panel create summary review procedures to dispense with frivolous Complaints” it read “that the Panel create summary review procedures to dispense with wholly unfounded Complaints.” The motion was seconded by Mr. Kay and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Mr. Kay moved that the Panel adopt the Executive Summary as amended. The motion was seconded by Ms. Norman-Taylor and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

*Acknowledgements and Appendices:*

Mr. Bierman moved that the Panel accept the Acknowledgements and the Appendices. The motion was seconded by Mr. Kay and it carried unanimously, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Ms. Doane informed the Panel that the Four-Year Review will be transmitted to the Board of Supervisors with the 2020 Annual Report after the Panel's February 25, 2021 meeting. She thanked Mr. Bierman and Mr. Aguilar for their work on the document.

Adjournment: Mr. Bierman moved to adjourn the meeting. Ms. Norman-Taylor seconded the motion and it carried unanimously, with Ms. VanLowe and Mr. Sriskandarajah being absent.

The meeting adjourned at 9:32 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, February 4 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.