
Police Civilian Review Panel

Meeting Agenda

Location: Conducted electronically due to COVID-19 Pandemic

Date: July 1, 2021

Time: 7:00 pm

Agenda details:

I. Call to Order

II. Agenda Items

- a. Motions to Conduct Electronic Meeting
- b. Approval of May 26 Public Forum Summary
- c. Approval of June 3 Meeting Summary
- d. Approval of Subcommittee Initial Review Report for CRP-21-10
- e. Proposal for Codifying the Subcommittee Process
- f. Preparation for Public Safety Committee Meeting
- g. Preparation for Next Quarterly Meeting
- h. Discussion: Transition Back to In-person Meetings
- i. Outreach Updates

III. New Business

IV. Adjournment

Panel Meeting Schedule:

- August 12, 2021 at 7:00 pm
- September 2, 2021 at 7:00 pm

Police Civilian Review Panel

May 26, 2021

Conducted Electronically due to COVID-19 Pandemic

Public Forum Summary

Panel Members Present:¹

Cheri Belkowitz

Todd Cranford

Jimmy Bierman, Acting Chair

Frank Gallagher

Dirck Hargraves

Doug Kay

Shirley Norman-Taylor

William Ware

Others Present:

Col. Kevin Davis, Chief of Police

Anthony Guglielmi, Public Affairs Director

Peter Flynn, Assistant Director, Office of the Chief

Major Dean Lay, Internal Affairs Bureau

Anita McFadden, Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

Lieutenant Camille Stewart, Internal Affairs Bureau

NOTE: The Panel's May 26 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. Mr. Bierman welcomed everyone to the Panel's May 26, 2021, Public Forum and noted a few housekeeping rules.

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

Ms. Belkowitz was present and participated from Fairfax Station, Virginia.

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

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

Mr. Gallagher was present and participated from Bethany Beach, Delaware.

¹ One Panel seat was vacant for this meeting.

Mr. Hargraves was present and participated from Kingstown, Virginia.

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

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

Mr. Ware was present and participated from Alexandria, Virginia.

Mr. Bierman moved that each member's voice may be adequately heard by each other member of this Panel. Mr. Hargraves seconded the motion and it carried unanimously.

Mr. Bierman 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. He 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 173 551 3209 as noted in the Public Meeting Notice. The motion was seconded by Mr. Hargraves, and it carried by unanimous vote.

Mr. Bierman 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. Cranford seconded the motion and it carried by unanimous vote.

Public Forum Purpose and Structure

Mr. Bierman introduced the Police Civilian Review Panel and its purpose and authority. He said that the Panel, the Fairfax County Police Department (FCPD), and community members are aligned in their goals of improving public safety and carrying out public safety in a just and equitable manner. He reviewed the authority of the Panel and the scope of its jurisdiction. He emphasized that the Panel reviews investigations conducted by the FCPD's Internal Affairs Bureau (IAB) and that the Panel does not have investigative authority, subpoena power, nor disciplinary power. Mr. Bierman said the Panel makes recommendations on police department policies, practices, and training, and he referenced the Panel's Recommendation Matrix available on the website. Mr. Bierman then introduced new FCPD Chief Kevin Davis who began in Fairfax County on May 10 and previously served as Chief of Police in Baltimore and Anne Arundel County, Maryland.

Introductory Remarks by Police Chief Kevin Davis

Chief Davis thanked Mr. Bierman, the Panel, and those in attendance. The other representatives from the FCPD in the room with Chief Davis introduced themselves. Chief Davis said he served as Police Commissioner in the city of Baltimore from 2015-2018 and before that he served as Police Chief in Anne Arundel County, Maryland. He spent most of his career in Prince George's County, Maryland, where he started as a Patrol Officer and retired as Assistant

Police Chief. In Prince George's County he worked with the Citizen Complaint Oversight Panel (CCOP), a similar body to the Fairfax County Panel. He worked with a similar body in Baltimore, the Civilian Review Board. He said more eyes on the police are a good thing. Chief Davis said that the police, as a profession, deserve and merit scrutiny because they can do things others cannot do in this country, up to and including the use of deadly force, charging someone with a crime, and taking away their freedom. He said it was a solemn responsibility and he is open to community input, oversight, and recommendations. He agreed with Mr. Bierman's remarks that we are all aligned. He said he wants there to be courageous conversations internally in the department. He said his personal and professional growth was accelerated due to being a part of consent decrees in Baltimore. He said he looks forward to relationships with the Panel and everyone in attendance.

Panel Member Questions and Discussion with Chief Davis

Mr. Bierman said that the Panel has requested that it be fully staffed, including an executive director position who would have investigatory experience, would have monitoring authority into certain investigations, and who could draft reports and oversee administrative staff.

He asked would you support fully staffing the Panel and hiring an executive director who would be involved in such investigations? Chief Davis said that ultimately the Board of Supervisors is the entity that makes staffing decisions but that he is an advocate for having adequate resources and staff to do important work. The Commonwealth recently passed legislation to allow local jurisdictions to make decisions about police oversight. He said he knows the Board of Supervisors takes it seriously and will support the Board's decision.

Mr. Bierman said the Panel has asked for limited subpoena power to interview certain witnesses in certain investigations when they believe it is important to take independent investigatory action. He asked do you support giving the Panel some sort of investigatory authority? Chief Davis mentioned that Chicago has such a structure where their oversight body has subpoena power. He said that whichever direction the Board takes, he will support their decision wholeheartedly. He said there are existing models across the country that work.

Mr. Bierman mentioned that the Panel has a strong relationship with the IAB. He said the IAB investigations are strong, and the Panel continues to work with the IAB to improve. He said to the degree that the Panel can show its independence, the stronger and more effective its oversight can be.

Mr. Bierman said that the Panel can concur whether the investigation was complete, thorough, accurate, impartial, and objective. However, the Panel struggles with situations when it comes to a conclusion about the actual complaint. The Panel has requested the Board to empower it to make another finding: whether the investigation came to the correct conclusion. He asked do you support giving the Panel additional ability to come to conclusions about how investigations were conducted or make conclusions about the heart of complaints? Chief Davis said that the better the partnership, the more comprehensive and thorough your review, the

better you will be postured to impact change within the police department. He said he knows the Board wants to be a leader in this and he is confident that the Board will want to go in the direction that the community wants to go. He said he will embrace the changes and the FCPD will figure out a way forward with the Panel. Mr. Bierman thanked Chief Davis for his participation in the Forum and noted for the record that Chief Davis did not express clear opposition to the reforms proposed.

Ms. Belkowitz mentioned School Resource Officers (SROs) as a contentious issue and that Virginia is near number one in the school to prison pipeline. What proposals do you have to address this issue? What are your thoughts about additional trainings regarding dealing with people with autism or those with mental health issues? Chief Davis said he has had lots of experiences with SROs and remembers when they were first introduced in early 1990s. He said that over time, questions have been raised about whether having SROs in schools is consistent with what the community wants in an educational environment. He said the school to prison pipeline, and any data that supports it, is a concern of his. He said the FCPD is not interested in contributing to it and will take a cue from the community. If it is decided that SROs are inconsistent with our values, then the FCPD will follow the lead of the community.

Ms. Belkowitz asked what are your goals for training officers to deal with people with disabilities and implicit bias training? Chief Davis said that a few weeks ago the FCPD started procedural justice and implicit bias training, provided by a subject matter expert from the Center for Policing Equity. Commanders and select rank and file are attending the training and providing feedback to the trainer. He said that only the best officers should be placed in educational environments, those who have skills in community relationships, trust, de-escalation, and diffusion. He said SROs are not there to be in an enforcement role. Ms. Belkowitz said she was concerned some schools allow SROs to access Individualized Education Programs (IEP). Chief Davis said he will have a follow up conversation with Ms. Belkowitz on this topic. Major Lay said the Panel is welcome to attend the FCPD's implicit bias training.

Mr. Hargraves asked how do you balance supporting your officers with the tension of the community having different perceptions? If there was a young officer accused of misconduct how would you navigate that process in investigating that case and working with oversight? What can be done to weed out officer misconduct before cases have to be thrown out? Would you work with the National Organization of Black Law Enforcement Executives (NOBLE) for resources, recruitment, and outreach?

Chief Davis said he served as the keynote at NOBLE's conference when it was held in Baltimore and has had a longstanding relationship with individuals in the organization. He said they cannot wait for it but must take intentional actions for diversity to occur. He said that diversity does not exist as it should in the organization.

Chief Davis has talked to young officers at roll calls over his first three weeks. He said that they love the profession and the communities they serve, but have concerns about procedural

justice, due process, and fairness. He said that he tells officers that this is also what the community wants. He said the criminal justice system operates best when it has a redemptive mindset, which allows people to grow from missteps and mistakes. He said he will not hesitate to fire an officer that dishonors the profession and the badge. He said there are bright lines in terms of performance and conduct that do not belong in this profession. Chief Davis said that when officers enter the profession, there is no clear picture of who they are as a person. He mentioned the January 6 attack on the U.S. Capitol and said it has taught the profession. He said police departments need to do a better job at examining social media sites, and not just conduct background investigations. He said that departments need to be more proactive and seek information about employees. Chief Davis said that officers in Fairfax County do not want to be associated with an officer who is a racist, sexist, or mistreats someone in the community. He said that he will be meeting with a professor from Georgetown who has developed a police officer peer intervention training to consider whether the training could be used in Fairfax County. He said that the subtle and daily occurrences of indifference require intervention having to do with attitude, demeanor, language, and respect.

Mr. Hargraves said he was a former NAACP Branch President of Alexandria and was involved in ride alongs. He said he also has had an experience in Philadelphia when he was thrown to the ground by police. He said people of color do not want to grow up in fear.

Mr. Ware asked how do you understand sources of mistrust and contempt toward police by communities of color? Where do you think the authority of Panel can be expanded to mitigate those concerns? Can you share the amount of money budgeted to law enforcement priorities in the department versus budget for equity, training, and diversity efforts?

Chief Davis said that he is not a person of color, but he has served in the majority African-American jurisdictions of Prince George's County and Baltimore. He said he is aware that there are trust and legitimacy issues that have not yet been resolved, as he grew professionally under significant reform efforts. The two departments were under consent decrees because historically they engaged in unconstitutional policing practices in Black and Brown communities. He recognized that over half of arrests would never result in prosecutions, but those arrests still negatively impact the community. He referenced the Law Enforcement Assisted Diversion (LEAD) program that was implemented in Baltimore, which gave officers immediate discretion to not arrest someone who was in possession of a misdemeanor amount of narcotics and instead offer them wraparound services. He said he does not think we should incarcerate individuals with substance abuse issues or mental illness. He said the county will begin using a co-responding model, in which a mental health specialist responds with police officers and will ensure that dispatchers have diversion options before sending police.

Mr. Kay referenced his participation in the County's Ad Hoc Commission on Police Practices and the lack of transparency in the Geer shooting. He said many FOIA requests received by the department are refused on a discretionary basis. The Chief exercises his authority to withhold information he does not have to withhold. What is your position on the freedom of

information – will you withhold information on the same basis as before or take a fresh look into this?

Chief Davis said he will take a fresh look at FOIA. He offered to talk further about any previous requests in which the Panel thought discretion was inappropriately applied. He said he has experience previously with FOIA. He said there are times when investigatory integrity is important like with ongoing investigations but does not want to withhold something just because the Chief can. He said an explanation for withholding is important.

Ms. Norman-Taylor noted the lack of diversity in the room where the Chief was participating. She described herself as a parent of a young African-American man who is afraid when he is driving around the county. She said there are plenty of people in the county, specifically African-Americans, who are concerned about how the Chief will police in Fairfax County and how you will ensure officers do not make the same mistakes that you acknowledge making. She referred to a case reviewed by the Panel when a young African-American man was stopped by the police and suspected of doing something wrong, when he had not. She asked how do you go about reassuring a segment of the community?

Chief Davis said that he intends to enhance diversity in both the rank and file and within the command structure. He said that previously he had a cabinet, which reflected the community and was diverse in race, gender, and thought. He referenced his experience working with the group Mothers of Murdered Sons (MOMS). He said he makes sure to be grounded in others' experiences even though he does not have them himself. He has listened and served in Black and Brown communities for many years. He said when his record is examined in its entirety, he is proud to have contributed significantly to reform efforts in the jurisdictions he has served and to efforts emulated by other jurisdictions across the country. He said he wants to be a police chief that the community can be proud of and will continue to reach out and make himself available because he knows the criticisms come from a good place.

Mr. Gallagher stated that in the two years he has been on the Panel he has reviewed a number of cases investigated by the IAB. He said the reports are improving in thoroughness and completeness. He said the Panel appreciates the good work the IAB is doing.

Public Comment

Questions and comments were taken from the audience regarding civilian oversight in policing. A summary of questions, comments, and responses is provided below.

1. What is going to be different in regard to School Resource Officers (SROs) in schools? There are concerns about Black and Brown children being overpoliced and disproportionately disciplined. What about accountability?

Chief Davis said that as the County considers SROs and whether they transition away from them, the police department will take direction from the community. He said he

wants to hear personal experiences and review data in relation to the performance of SROs in schools. He said the FCPD is in the process of hiring a FCPD data manager.

2. The caller stated she was troubled by what happened in 2017 when Chief Davis, as Commissioner in Baltimore, locked down the Harlem Park neighborhood for six days in response to the killing of a police officer. What will happen here if there is a serious event like the shooting of an officer or an officer using deadly force? Will you turn over the investigation to an independent agency at the outset like the Virginia Attorney General or the Virginia Critical Response Team?

Chief Davis responded that leaders confronted with any unique or controversial situation should be willing to ask for outside help. In Baltimore he asked the director of the FBI to assume responsibility for the homicide investigation. He said that there was a double murder in the County today and he will be addressing the community in a press conference. He said he takes any loss of life seriously. Chief Davis said if there are facts and circumstances that convince him that he needs to ask another investigative entity to assist or take over, he will consider that and has demonstrated that.

3. The Panel has recommended that with bias investigations the police should analyze data of the officer's community contacts, stops, searches, and arrests. The Panel was informed that the department's data system needed to be upgraded to accomplish this. Do you support analyzing an officer's past community contacts in a thorough way for evidence of bias and racial bias complaints and implementing fully the Panel's recommendations? What kinds of evidence-based strategies could be implemented to prevent community contacts that result from the implicit bias of officers?

Chief Davis said the department has a request for proposals for a new records management system (RMS). He said the RMS affords us the opportunity to examine that type of data and IAB is already examining officers' previous encounters with the community, such as discretionary traffic and pedestrian stops. He said that direction was recently given to the IAB by the Panel to do that with a particular investigation. He said he wants to be able to identify misconduct proactively, and not just look back retrospectively at bad acts. With the new RMS, new hiring of a data manager, the department will analyze data daily and ensure discretionary encounters are not disproportionate in our community. He said diversity is underway and better in 2021 than in the past.

Chief Davis departed the meeting to attend a press conference. Mr. Bierman stated that participants could still make comments or ask questions of the Panel.

4. People Power Fairfax submitted data to Chief Davis showing a lack of meaningful discipline imposed by Internal Affairs when the issue is use of force, bias-based policing and prisoner safety. By contrast violations of equipment use is heavily disciplined. The Virginia General Assembly has given civilian review boards the authority to investigate

serious misconduct and make findings in these cases. While it is a Board of Supervisors decision, do you support giving the Panel disciplinary authority according to Virginia law and do you agree to abide by these decisions regardless of whether you agree with them?

Mr. Bierman stated that the legislation gives to option to the Board of Supervisors to allow oversight panels to engage in discipline. He said the critical issue is that the Panel has a lack of staffing and is a board of volunteers, which is not conducive to exercising full disciplinary authority. He said the question will be flagged for Chief Davis to respond in the future.

Mr. Ware stated his agreement that it is important to have staffing and resources to go along with expanded authority. He stated that it is important that the police department has external accountability.

5. What will Chief Davis do when civilian oversight is telling him one thing, but the union is demanding something else?

Mr. Bierman said this question will go on record for future discussions with the Chief.

6. The caller stated that he had previous law enforcement experience and that community policing is not new. He said that what is missing is the focus on the victims of crimes, who includes Blacks. He said that victims are often family members, and this is true for all races. He said that his experience with SROs is that they are outstanding and that they are often mentors to children. He said he has not heard of a problem with an SRO, except from other jurisdictions.

Mr. Bierman stated that no one has stated that they do not care about the victims of crimes. He said the Panel's focus is on reviewing complaints against the police. He said that a member of the Panel said there are instances when SROs can be helpful.

7. The caller, from ACLU People Power, said that getting disciplinary authority was a hard-fought victory by advocacy groups working on police reform. She is concerned that Fairfax County is focusing right now on getting limited investigatory authority. She does not understand what the Panel will do with investigatory authority if they cannot impose discipline. She stated they will support the Panel in getting resources. If the Board of Supervisors gives the Panel authority for either investigations or discipline, they have the fiduciary duty to provide the resources needed. She is concerned that the county is falling behind Alexandria.

What kind of input did you seek in making the recommendations in the Four-Year Review? She said that there could have been a public forum to get public support. She said that fundamentally it does nothing to have investigative authority and then issue an advisory opinion.

Mr. Bierman said that the Four-Year Review was conducted by the Panel. It was not developed with public input. He said they have already addressed the need for disciplinary authority, but the Panel can seek disciplinary options in future. He said there are plenty of oversight bodies that do not ultimately mete out discipline or consequences.

Mr. Hargraves stated the Panel takes input very seriously and that they are here to listen to areas where the Panel could do better.

8. The caller recommended that the Panel add their biographies to the webpage. He said there should be one Panel Member who has been arrested or with a similar perspective. Is there a form or a way that information can be given to individuals when they are arrested or charged on the process for making a complaint to the Panel? This form could be bilingual. He would also like to see metrics on complaints.

Mr. Bierman stated that the purpose of the Panel is to provide an independent avenue to make a complaint about an officer. Individuals can file directly with the Panel. They can find information on the website, or they can call the Independent Police Auditor's office and staff will take oral complaints. He said that the Panel's goal is to do more outreach to inform the community and stated that there was an action item change last year that allows the Panel to conduct more public forums like this one.

9. The caller, a resident and member of NAACP, suggested that the Panel include a representative of the NAACP or someone from a community that is underserved and underrepresented. She said this will provide the Panel with insight into interactions Black people have with the police department. She said that sometimes police are so well spoken that we forget that someone has a viable complaint. There are police officers who conduct themselves with dignity and respect, but there are some who learn the language and are able to skate by and get promoted.

Mr. Cranford stated that Panel does not select its own members and encouraged the caller to reach out to the Chairman of the Board of Supervisors, who makes appointments. He said that he agrees that the perspective of the Black community is important and that at least two of the Panel members are NAACP members.

10. The caller said she understands the need for outside auditing, but officers fear they cannot do their jobs or will make a mistake. She is concerned that there will be a mass exodus and the community will be in disarray. She said the County is investing money in auditing but is not investing money in officers, making them better at their jobs. She said that crime is growing and that new initiatives will drive crime higher.

Mr. Bierman stated that the Panel has concurred with the findings of the IAB in the vast majority of cases. He said that the Panel has been extremely fair and has commended officers who acted appropriately and when complaints were unfounded. He said there is

a process to weed out frivolous complaints, and to look at what was alleged and whether there is any evidence of wrongdoing. He said the Panel has the same goal as every police officer, which is a community that trusts the police. He said this will make things better for police officers in the county and lead to better outcomes.

The Public Forum adjourned at 8:51 p.m.

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Police Civilian Review Panel

June 3, 2021

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:¹

Cheri Belkowitz

Todd Cranford

Jimmy Bierman, Acting Chair

Frank Gallagher

Dirck Hargraves

Doug Kay

Shirley Norman-Taylor

William Ware

Others Present:

Anita McFadden, Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel's June 3 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 except for Mr. Hargraves, who joined at 7:03 p.m. Mr. Bierman welcomed everyone to the Panel's June 3, 2021 meeting and noted a few housekeeping rules.

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

Ms. Belkowitz was present and participated from Fairfax Station, Virginia.

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

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

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

Mr. Hargraves was present and participated from Kingstown, Virginia.

¹ One Panel seat was vacant for this meeting.

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

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

Mr. Ware was present and participated from Alexandria, Virginia.

Mr. Bierman moved that each member's voice may be adequately heard by each other member of this Panel. Mr. Gallagher seconded the motion and it carried unanimously.

Mr. Bierman 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. He 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 129 039 2790 as noted in the Public Meeting Notice. The motion was seconded by Mr. Hargraves and it carried by unanimous vote.

Mr. Bierman 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. Cranford seconded the motion and it carried by unanimous vote.

Mr. Bierman expressed his thanks to Chief Davis, Major Lay, Lt. Stewart and others who participated in the Panel's Public Forum on May 26.

Approval of May 6 Meeting Summary

Mr. Gallagher moved approval of the Panel's May 6 meeting summary. Mr. Hargraves asked whether the race of the officer was typically mentioned in the meeting summary. Mr. Bierman said that the summary should reflect accurately what was discussed in the meeting. He said that Panel members should send corrections to the Chair or staff in advance of the meeting, if possible. Mr. Ware asked to change the title of Ms. McFadden to Counsel, instead of Interim Counsel. Mr. Bierman asked Mr. Gallagher if he accepted the friendly amendment to remove Interim from Counsel in the meeting summary. Mr. Gallagher made the motion, it was seconded by Mr. Cranford, and it carried by unanimous vote.

Approval of Subcommittee Initial Review Report for CRP-21-05

Mr. Ware provided a summary of the complaint. He said the incident occurred on September 4, 2020, when two individuals went to the Mason District station to lodge a complaint of misconduct. One individual was the alleged victim, who remained silent, but recorded the interaction on video. The second was the individual lodging the complaint (the Complainant to the FCPD) with the Second Lieutenant present at the station, accompanied by a PFC. The Complainant to the FCPD reported four instances of misconduct, which included two allegations of force. The Second Lieutenant engaged the Complainant and took notes during

the incident. The Complainant refused to answer follow up questions. The Complainant to the FCPD requested information on a third-party officer (whom he claimed engaged in misconduct) but who was not present at the Mason District station at the time the complaint was being lodged. The Second Lieutenant said she smelled alcohol on the person of the Complainant and asked him to leave the station after 14 minutes of engagement.

The Complainant to the Panel was someone who viewed this interaction on YouTube. The subcommittee discussed and considered three allegations made by the Complainant: that the Second Lieutenant failed to provide a complaint form in violation of a G.O., terminated the citizen police contact early, and failed to provide the name and identifying information of a third-party officer, who was not present at the station but involved in the alleged misconduct.

The subcommittee recommends to the Panel that the complaint does not meet the criteria for abuse of authority or serious misconduct. The Second Lieutenant was a supervisor and supervisors are not required to provide a complaint form according to the FCPD G.O. Regarding the early termination of the contact, the Second Lieutenant disengaged from the Complainant after fourteen minutes of contact and had gathered four complaints on her notepad. While she did terminate the contact, it was not until she gathered information and provided her business card to the Complainant. Regarding the failure to identify a third-party officer, the investigative file reported that officers are required to identify themselves, but not third-party officers. One rationale is the possibility of misidentification. The complaint did not meet the Panel's criteria for review, and therefore the subcommittee recommends that the full Panel not review this complaint.

Mr. Hargraves asked was there anything on the YouTube video that rose to the level of violating abuse of power? Mr. Ware stated that the YouTube video correlated with the body worn camera and neither showed anything that would be an abuse of authority or serious misconduct.

Mr. Gallagher stated that the alleged victim at the Mason District Station was represented by a journalist who videotaped the encounter and uploaded it to YouTube. He said the Complainant to the Panel was another person identifying as a journalist from Texas.

Mr. Kay said that the Panel accepts complaints from anyone, including in this case someone from Texas who believed he viewed misconduct in Fairfax County. The subcommittee looked at the investigative file carefully and thought it was well documented. He said the Panel's jurisdictional limit is that there has to be serious misconduct or abuse of authority and it did not cross the line. He said the subcommittee does not refuse cases lightly and that is what they did with this complaint.

Mr. Kay moved that the Panel not review the investigation into CRP-21-05. The motion was seconded by Ms. Norman-Taylor and it carried unanimously.

Mr. Bierman stated that this is what the subcommittee process is supposed to do. He said that the IAB will always investigate complaints, but it is up to the Panel to determine if they have jurisdiction to review any investigation.

Approval of Review Report for CRP-20-24

Mr. Bierman thanked Ms. Norman-Taylor for drafting the report. Mr. Cranford moved that the Panel adopt the Review Report. The motion was seconded by Mr. Gallagher, and it carried unanimously.

Discussion: Transition Back to In-Person Meetings

Mr. Bierman said he asked the Panel's Counsel to review the rules on FOIA to consider when the Panel can return to in-person meetings. He said the reason the Panel can hold virtual meetings is due to the emergency order due to COVID and, when it is lifted, the Panel will have to go back to in-person meetings. Discussion ensued on Panel members' preferences for continuing to meet virtually or in-person. The convenience of virtual meetings was noted and that they are more accessible to the public. Ms. Belkowitz expressed concern with meeting in person, if there is a large turnout from the public. Mr. Bierman summarized that the situation with the pandemic is fluid and that the Panel will consider at its July meeting the start date for moving to in-person meetings. He said the Panel will consider in-person meetings again when the Panel schedules a review meeting and when the situation is deemed safe, most likely in the fall.

Mr. Bierman asked if the Panel can move its August meeting from August 5 to August 12, 2021, and it was so scheduled.

Panel Leadership Elections

Ms. Norman-Taylor nominated Mr. Bierman for the position of Chair. Ms. Belkowitz seconded the motion. Mr. Cranford asked if there were any other nominations to which there were none. The motion carried unanimously.

Ms. Norman-Taylor nominated Mr. Hargraves to serve as Vice-Chair of the Panel. Mr. Cranford seconded the motion. Mr. Bierman stated that he thought that Mr. Hargraves would be a great Vice-Chair. Mr. Cranford asked if there were any other nominations to which there were none. Mr. Gallagher asked when Mr. Bierman's term as Chair expires and Mr. Bierman said that it expires on March 1, 2022, when Mr. Hargraves would be nominated to take over as Chair. Ms. Belkowitz asked if Mr. Bierman was eligible to serve as Chair for a second term and Mr. Bierman said that the Bylaws allowed for it. Mr. Gallagher said that the Bylaws state that the Chair cannot serve two successive terms. Mr. Bierman called the question, and the motion was adopted unanimously.

Outreach Update

Mr. Bierman stated that the Panel should try to have Chief Davis back around the 100-day mark. He said the Panel could potentially have another public forum with the Chief.

Mr. Bierman said he and Ms. Belkowitz will address the new class of FCPD recruits with the Independent Police Auditor this month. Mr. Bierman will also attend an admin meeting with the Deputy Chiefs and Majors from across the department.

Mr. Hargraves asked if the County has a master list of community organizations so that the Panel members can reach out to them. Mr. Bierman said that the Panel generated a list in 2018 and said staff will circulate the list to the Panel members. He said Panel members can let him know if they want to individually reach out to any organizations. Mr. Kay said he will be presenting on the Panel to a retirement community.

Ms. Belkowitz inquired about dates when Panel members could attend the FCPD's implicit bias training, as noted by the Chief during the public forum. Mr. Bierman will raise this question at the admin meeting next week. Mr. Kay asked for a point of contact to schedule ride-alongs with the FCPD and said that Panel members should try to participate in a ride-along one to two times per year. Mr. Bierman said that he would like the FCPD to conduct another training for the Panel in the fall.

New Business

Mr. Bierman said that the discussion earlier provided a great example of the subcommittee process working as it was designed, which involves the disposition of complaints not within the Panel's jurisdiction. The subcommittee process focuses on the complaint itself and whether it rises to the level of serious misconduct or abuse of authority. Even though the formal mandate is to consider if the Panel has jurisdiction, the subcommittee looks beyond the four corners of the complaint and whether there is any substantiation in the record.

Mr. Bierman said that in its Four-Year Review, the Panel recommended that it formalize the subcommittee process and how it looks beyond the four corners of the complaint and determines if a complaint is wholly unfounded. He said the Panel has to change its Initial Review Report form and consider a Bylaws change. Mr. Bierman asked for two volunteers to form a subcommittee to look into this issue and present to the Panel with options at the July meeting. Mr. Hargraves and Mr. Cranford volunteered to serve on the subcommittee. Mr. Bierman said that Ms. Ramirez has drafted a new Initial Review Report form for the subcommittee to consider and that he will send them relevant information from the Four-Year Review.

Mr. Ware said that during the last subcommittee meeting, Mr. Kay was helpful in suggesting that the subcommittee consider whether other Panel Members would be inclined to consider the complaint. He said it is helpful to consider other perspectives and how the full Panel would deliberate on the complaint.

Mr. Ware said that he wanted to share additional observations about CRP-21-05. He said one issue raised was that the Second Lieutenant did not provide a copy of the complaint form. He said that while it is not required that supervisors do so, he believes they should be required to provide a complaint form, as it could be beneficial for everyone. The complainants can still express themselves verbally if they chose not to complete the form. The form would provide additional documentation for IAB or the station to begin their investigation.

Mr. Ware said that during the interaction between the Second Lieutenant and the Complainant to the FCPD, she explained that there are certain criteria that the IAB uses to initiate an investigation, rather than having it investigated at the station level. Mr. Ware said there was not a clear articulation about which entity investigates which complaints. He said it is explicitly written in the G.O. and it would be better if FCPD officers understood the different criteria and conveyed them to the public.

Mr. Bierman said it is within the Panel's authority to make recommendations on policy and practice. He said Mr. Ware may want to formulate a recommendation for the Panel to consider at its next meeting. The Chair can bring it up at the next Quarterly Meeting with FCPD leadership, IAB, and the Board of Supervisor's Chiefs of Staff. Mr. Bierman asked Mr. Ware to send the relevant G.O. to staff to be circulated to the Panel.

Mr. Kay asked when the next Quarterly Meeting will occur and Mr. Bierman said he would like to schedule one in July. Mr. Kay said that the Panel receives updates from the FCPD at Quarterly Meetings on its Recommendations Matrix, which includes recommendations made in Review Reports and Annual Reports. He said that other issues or recommendations not included in Panel reports can be discussed at Quarterly Meetings. The FCPD may be able to further explain or provide a reason why they do something a certain way and sometimes they implement recommendations made during the meetings. Mr. Bierman reassured the Panel they will have the opportunity to discuss topics for him to address at the next Quarterly Meeting before it occurs.

Adjournment: Mr. Cranford moved to adjourn the meeting. Ms. Norman-Taylor seconded the motion and it carried unanimously.

The meeting adjourned at 8:11 p.m.

Next Meeting: The Panel's next business meeting will be held on Thursday, July 1 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.

Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

Request for Review – Basic Information
CRP Complaint Number: CRP-21-10
Subcommittee Meeting Date: June 16, 2021
Subcommittee Members: <ul style="list-style-type: none">• Jimmy Bierman, Subcommittee Chair (Panel Chair)• Cheri Belkowitz, Subcommittee Member
Complaint Submission Date: Review Request received on 5/20/2021. Other Key Dates: Incident Date: 12/31/2020; Initial Complaint to Panel (CRP-21-03): 1/27/2021; FCPD Disposition letter: 4/29/2021

This report is subject to Federal and Virginia Freedom of Information Acts. Panel members will maintain to the greatest extent possible under the law and in accordance with the Bylaws all sensitive and confidential information not intended for a public release.

Purpose
The Subcommittee Initial Review Report sets forth the Subcommittee’s recommendation on whether the Complainant’s allegation(s) meet the standard for review provided in the Panel’s Bylaws. The Panel may accept or not accept the Subcommittee’s recommendation on whether to review a complaint.

Findings
<p>The Panel’s review authority states in Article VI (A)(1) of its Bylaws: “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.”</p> <p>The subject matter of this investigation concerns allegations by the Complainant that an FCPD officer harassed her and targeted her because of her race in issuing parking tickets and not responding to her request for assistance.</p> <p>The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, does not meet the threshold requirement for “abuse of authority” and “serious misconduct.”</p>

Recommendation

The Subcommittee recommends that the Panel not undertake a review of CRP-21-10 because the complaint does not meet the scope of review criteria set forth in its Bylaws.

Panel Bylaws Abuse of Authority and Serious Misconduct Checklist

Criteria Met?	Abuse of Authority and/or Serious Misconduct	Complainant Details*
No	Use of abusive racial, ethnic or sexual language or gestures.	
No	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	
No	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	
No	Reckless endangerment of detainee or person in custody.	
No	Violation of laws or ordinances.	
No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Cannon of Ethics, that occur both on or off duty.	

***Confidential and sensitive information shall not be disclosed in this document. Contact the Chair or Panel Legal Counsel for questions and/or additional information.**

Police Civilian Review Panel

June 16, 2021

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-21-10

Members Present:

Cheri Belkowitz, Review Liaison

Jimmy Bierman, Subcommittee Chair

Others Present:

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel’s subcommittee 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 Initial Disposition Subcommittee was called to order at 5:39 p.m.

Motions to Conduct Electronic Meeting: Mr. Bierman took roll call to verify a quorum of the Panel’s subcommittee was present and to ensure each subcommittee member’s voice could be heard clearly. He asked each subcommittee member to state their name and the location from which they were participating.

Ms. Belkowitz was present and participated from Fairfax Station, Virginia.

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

Mr. Bierman moved that each member’s voice may be adequately heard by each other member of this Panel. The motion was seconded by Ms. Belkowitz and it carried by unanimous vote.

Mr. Bierman moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the subcommittee 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. He further moved that the subcommittee 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 173 465 0950 as noted in the Public Meeting Notice. Ms. Belkowitz seconded the motion and it carried by unanimous vote.

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

Completion of Initial Review Report for CRP-21-10:

Mr. Bierman reviewed the Panel's subcommittee practice for determining if it has jurisdiction, specifically whether the complaint alleges serious misconduct or abuse of authority, whether there is any substantiation in the complaint, and whether there is any reason to think the FCPD's investigation was not complete, thorough, accurate, impartial and objective.

Mr. Bierman summarized the event subject of the complaint, CRP-21-10. He said the Complainant claims that her family received four parking tickets on three parked cars, and it was unfair and racially discriminatory. He said allegations of racial profiling fall under serious misconduct or abuse of authority in the Panel's Bylaws and Initial Review Report checklist. Mr. Bierman said after reviewing all of the evidence, it was clear to him that the officer on the scene had no knowledge of the races of the owners of the parked cars in the cul-de-sac. The officer ticketed the cars consistently, including some cars for not parking parallel to the curb and one car for blocking a driveway. He said this was evident on the body-worn camera (BWC) footage. The officer was called to the scene for cars improperly parked in front of a driveway and the individual from the house did not come outside until after the officer placed the tickets on the cars. The Panel has asked the IAB to look into the background of officers for past evidence of racial bias. Mr. Bierman said that in this case, all statistics pulled on the officer showed that she had cited and arrested people of color at lower rates than her colleagues. He said he thinks the investigation was complete, thorough, and accurate, and noted that the file included interviews with the Complainant and officers.

Ms. Belkowitz expressed her agreement that the investigation was thorough, and she said it does not support a claim of racial bias. She said there was discontent among neighbors and appreciated that the FCPD sent an officer to mediate. Ms. Belkowitz said that assuming it is correct that the officer cannot see the race of vehicle owner in a DMV search, there is no reason to believe she was racial profiling when giving the tickets.

Mr. Bierman stated that the officer went by the book and ticketed all four cars in the same way, including one car not owned by the Complainant. He said that the driver's license and car registration does not contain race information. Mr. Bierman said there was also no evidence that the officer dispatched to the location was given any information on the races of the individuals involved. He said there is no evidence to necessitate further investigation by the FCPD.

Mr. Bierman moved that the Panel not undertake a review of CRP-21-10 because the complaint does not meet scope of review criteria set forth in its Bylaws. Ms. Belkowitz seconded the motion and it carried unanimously.

Mr. Bierman said that the Panel is considering the subcommittee process and will formalize it to ensure it is clear. He said that this subcommittee will make a recommendation to the full Panel at its next meeting, and if they disagree, the Panel can overturn it.

The meeting adjourned at 5:55 p.m.

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