

Police Civilian Review Panel

February 1, 2022

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-21-24

Members Present:

James Bierman, Subcommittee Chair

Dirck Hargraves, Review Liaison

Frank Gallagher, Review Liaison

Others Present:

Rachelle Ramirez, OIPA

Dre-Ana Whitfield, OIPA

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 5:33 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.

Mr. Bierman was present and participated from Mclean, Virginia

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

Mr. Hargraves was present and participated from Kingstowne, 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 Mr. Hargraves 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 2333 220 5838 as noted in the Public Meeting Notice. Mr. Gallagher 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. Mr. Gallagher seconded the motion and it carried by unanimous vote.

Completion of Initial Review Report for CRP-21-24:

Mr. Bierman outlined three dates in the complaint. On September 1, 2020, the FCPD was called to the house of the complainant and her former husband due to a dispute. The police officers spoke with the complainant and former husband. The police officer wrote a report on the incident and left without any further action taken. The complainant alleged that she suffered a serious head injury that should have been recognized by the police officer. He stated that the complainant submitted medical documentation and alleged that the FCPD was ignoring and improperly responding to the incident. On September 24, 2020, the complainant alleged another incident of abuse by her former husband. Mr. Bierman noted that the September 24, 2020, incident was investigated by the police and the former husband was interviewed. On December 2, 2020, the FCPD was called where the complainant was found unconscious. Having overdosed on narcotics, the police took pictures, and the complainant was taken to the hospital where she suffered serious injuries.

Mr. Bierman went through the Panel Bylaws Abuse of Authority and Serious Misconduct Checklist listed in the meeting materials for the public. He expressed to the subcommittee that some of the allegations could fall into the violation of laws or ordinances, or a serious violation of Fairfax County or FCPD policies or procedures category.

Mr. Bierman explained to the public what the subcommittee does. He further explained that the subcommittee's purpose is to find out if the complaint meets the criteria of abuse of authority and or serious misconduct as defined by the Panel Bylaws.

Mr. Gallagher stated that the FCPD conducted their investigation of the allegations that occurred on the dates in the complaint. He said that when the investigation was complete, it was reviewed by two different detectives and two supervisors from the victim services division. He noted that the victim services specialist, domestic violence detective, and the police department commander reviewed the file and found no issues with how the police department handled the case. Mr. Gallagher expressed that while he has sympathy for the complainant, he does not think that any of the allegations made rise to the level that the Panel would normally be involved in.

Mr. Hargraves explained that the issue is whether the police engaged in serious misconduct or abuse of authority in the way they handled the complainant's allegations. He further explained that he tried to find areas where the FCPD did not do what they were supposed to, or where the FCPD investigation was not complete, thorough, accurate, impartial or objective. Mr.

Hargraves questioned if there should have been further review into the allegations from the September 24 incident.

Mr. Bierman stated that two of the allegations related to the police not pressing charges. He said the police department's decision to charge or not charge someone is outside the Panel's purview. He said that in the September 2 incident, the allegation is that the police officer misrepresented the scene and did not document the complainant's injuries. He said that there is no evidence that the injuries occurred prior to the police responding to the scene.

Mr. Hargraves said that the complainant sent pictures of her injuries to a person who went out on date with her husband and that a wellness visit was made. He said he was unsure if the police interviewed that person and whether there were discrepancies in what was in the photos and what the police saw when they arrived. Mr. Gallagher clarified that the police did make a welfare check on September 2 and found the complainant with no signs of injury. He said the department documented what they found in a report and therefore interviews of the responding officers was unnecessary. He also said the complainant's son also did not report any injuries.

Mr. Bierman said that the Panel can't review allegations that a police officer investigated and came to a different conclusion. There must be active misrepresentation. He said that based on the totality of the circumstances, the FCPD was not wrong or incomplete in not finding misconduct.

Mr. Hargraves agreed and said that it would be different if the police asked if there was abuse in the home, the complainant said yes, and then the police declined to do anything about it. He noted that in the incidences when the police were called out, the complainant and her husband were asked whether there was abuse or need for their services, and both parties declined.

Mr. Gallagher said that everything presented to the police department was investigated. He stated that he listened to the whole interview of the complainant conducted by the Internal Affairs Bureau, and he did not find any serious violation of FCPD policies or procedures.

Mr. Gallagher moved that after having reviewed and discussed the complaint, CRP-21-24 should not be referred to the full Panel for review. Mr. Hargraves seconded the motion and further discussion ensued.

Mr. Hargraves expressed that the Panel is very sympathetic to those who allege abuse and may not first report it due to embarrassment or fear. He stated that based on the totality of the complaint, the FCPD, and the interviewing of witnesses, there did not appear to be negligence or serious misconduct by the FCPD.

Mr. Bierman expressed his agreement that they take abuse very seriously and that by not reporting it does not mean abuse is not happening or that it cannot be reported later. He said he earlier provided an example of what did not occur in this case: misrepresentation of the facts.

Mr. Bierman called the question and it carried by unanimous vote.

Mr. Bierman noted that the complainant will have the opportunity to address the Panel.

The meeting adjourned at 6:13 p.m.

Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

Request for Review – Basic Information

CRP Complaint Number: CRP-21-24

Subcommittee Meeting Date: February 1, 2022

Subcommittee Members:

- James Bierman, Subcommittee Chair
- Frank Gallagher, Subcommittee Member
- Dirck Hargraves, Subcommittee Member

Complaint Submission Date: Review Request received on 11/18/2021. Initial Complaint (CRP-21-18) received on 8/18/2021.

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

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.”

The subject matter of this investigation concerns allegations by the complainant that the FCPD failed to properly investigate the crimes against her that occurred on or about 9/1/2020, 9/24/2020, and 12/2/2020.

The Subcommittee finds that the subject matter of the investigation **does not meet** the threshold requirement for “abuse of authority” and “serious misconduct.”

Recommendation

The Subcommittee recommends that the Panel **not undertake** a review of CRP-21-24 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.**