

ACTION - 15

Approval of the Recommendation of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to Establish an Office of Independent Police Auditor

ISSUE:

Board of Supervisors approval of the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish the Office of Independent Police Auditor, appointed by and reporting to the Board of Supervisors, for the purpose of building and maintaining public trust and police legitimacy. The Office of Independent Police Auditor will review police use of force investigations involving serious injury or death, including officer involved shootings, and administrative investigations of public complaints of use of force, as defined in Police Department General Orders, to ensure the investigations are comprehensive, accurate, objective, and impartial, and perform analyses and issue reports on police use of force topics.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish an Office of Independent Police Auditor with proposed revisions.

TIMING:

Board action is requested on September 20, 2016.

BACKGROUND:

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Board on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes to help the Board and the Police Department achieve the goals of maintaining a safe community, ensuring a culture of public trust, providing for the fair and timely resolution of police-involved incidents and information release, and reviewing Crisis Intervention Training (CIT) and police responses for cases involving mental health.

On October 20, 2015, the Ad Hoc Police Practices Review Commission submitted its final report and recommendations to the Board of Supervisors. On November 17,

2015, the Board of Supervisors approved a process for assigning, prioritizing, reviewing, tracking, and considering the 202 Commission recommendations.

On November 17, 2015, the Board also directed an annual report and a final summary report on the status and implementation of all of the Commission's recommendations. The first annual report shall be presented to the Board by December 13, 2016.

This Action Item is specifically related to the implementation and furtherance of the recommendations of the Independent Oversight and Investigations Subcommittee for the establishment and scope of an Office of Independent Police Auditor, consistent with the presentations and discussions at the July 19, 2016, Public Safety Committee meeting. Included in this committee meeting for presentations and discussion were the Chief of Police, the Chair of the Commission's Independent Oversight and Investigations Subcommittee, sworn police officer representatives and, via teleconference, the Independent Auditor for the City and County of Denver, Colorado, representing the National Association for Civilian Oversight of Law Enforcement (NACOLE). The Board further discussed the proposed Office of Independent Auditor at its September 13, 2016, Public Safety Committee meeting.

Fundamental to the recommendations of the Independent Oversight and Investigations Subcommittee is that the Board adopt recommended changes, consistent with the Code of the Commonwealth of Virginia and County policies, that will help the County achieve its goals of maintaining a safe community, enhancing a culture of public trust, and ensuring that policies provide for the fair and timely resolution of police-involved incidents. These recommendations are aimed at building and maintaining public trust in the Police Department and its officers by the establishment of an Office of Independent Police Auditor, a function in line with the recommendations of the Final Report of the President's Task Force on 21st Century Policing, May 2015. Recommendation 2.8 of that report states, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

In its final report, the Commission's Independent Oversight and Investigations Subcommittee made 24 overall recommendations. Ten of those recommendations, numbers 8-17 as in their report, were specific to the establishment of an Office of Independent Auditor and its scope and are listed below as presented in the report:

- 8) The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor ("Auditor").
  - a) The Auditor shall be appointed by and report directly to the Board of Supervisors.
  - b) The Auditor shall have experience in, inter alia, public safety, public program auditing, the investigation of police operations

and use of force incidents. In order to ensure the Independent Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County.

c) The Auditor shall review (i) all investigations of Death or Serious Injury Cases conducted by the IAB (Internal Affairs Bureau); and (ii) all UOF (Use of Force) investigations by IAB which are the subject of a public complaint made to the FCPD (Fairfax County Police Department) or the Auditor.

d) The Auditor shall have full access to the MCD (Major Crimes Division) criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files.

e) The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality.

f) The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause.

9) The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities.

a) The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments.

10) If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation.

11) Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file.

12) The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor

may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner.

13) An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a Death or Serious Injury Case, the use of force, or the death of an individual with the FCPD for investigation.

a) The citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, which will report on the disposition of the complaint within 30 days.

14) If the Auditor disagrees with the results or conclusions of an IAB investigation, the Auditor shall advise the FCPD Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.

15) The Auditor shall make public recommendations to the FCPD Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.

16) The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.

17) Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.

These recommendations are also listed on the *Ad Hoc Police Practices Review Commission Report Recommendations Assignment and Tracking Spreadsheet* (Attachment 4) as IOV&I (Independent Oversight & Investigations) 8 through 17, inclusive.

It is recommended that the Board adopt Recommendations 8.a., 8.e., 11, 12, 16, and 17 as written, establishing an Office of Independent Police Auditor.

Based on staff review, discussion at Public Safety Committee meetings, and a legal review, revised language for Board adoption is proposed for Recommendations 8.b., 8.c., 8.d, 8.f, 9, 9.a, 10, 13, 14, and 15. The proposed revised language for each is as follows:

Recommendation 8.b) The Auditor shall have experience in, inter alia, public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Office of Independent Auditor is perceived as truly independent, the Auditor and staff, at initial hire, shall have never been employed by Fairfax County.

Recommendation 8.c) The Auditor shall review (i) all investigations of death or serious injury cases conducted by the IAB; and (ii) UOF investigations which are the subject of a public complaint made to the FCPD or the Auditor and which meet the definition of police use of force as incorporated in Police Department General Orders as of the date of the use of force or alleged misconduct.<sup>1</sup>

Recommendation 8.d) Upon the completion of a criminal case or upon the Commonwealth's Attorney announcement of declination of prosecution, the Auditor may request a copy of the Police Department criminal investigation file regarding those cases under the purview of the Office of the Auditor. The request should be made through the Chief of Police. At that time, the Auditor is entitled to receive copies of any portion of such Police Department criminal investigation files, subject to redactions of legally privileged information, confidential information, or information which may reveal any protected personal information such as medical history protected by the Health Insurance Portability and Accountability Act (HIPAA), or any other privileged information (collectively, "redactions"), not already a public record. The Auditor will monitor and review, from the onset, the associated IAB investigations and have access to IAB files, including any administrative action taken, for each investigation reviewed. The Auditor shall communicate any investigative concerns to the Chief of Police in a collaborative manner to ensure all administrative investigations are thoroughly completed. The Auditor will be responsible for maintaining these files in accordance with federal, state and local laws governing the confidentiality of such.

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<sup>1</sup> General Order 540.1, the current Police Department use of force policy, defines use of force as "Any physical contact above the level of a "guiding" or "escort" hold between an officer and another person, or the use of lethal or non-lethal weapons, which further the officer's intent to establish or maintain control or custody or to defend themselves or another person."

Recommendation 8.f) The Auditor shall be appointed by the Board of Supervisors, as an exempt, at-will department head to oversee, direct, and manage the Office of Independent Police Auditor.

Recommendation 9) The Auditor shall monitor IAB investigations within its scope of responsibilities.

Recommendation 9.a) The role of the Auditor is not to conduct IAB investigations, but to review IAB investigations within the scope of its responsibilities to determine the thoroughness, completeness, accuracy, objectivity and impartiality of such investigations. If, based on that review, the Auditor determines that Police Department employees or other persons should be interviewed or re-interviewed by IAB or other Police Department investigating authority the Auditor should collaborate with the Chief of Police to bring forward his/her concerns, questions, and/or recommendations in that regard. The Chief of Police and Police Department shall work collaboratively with the Auditor and provide appropriate contemporaneous briefings on IAB investigations within the Auditor's scope and shall, absent good cause, provide, subject to redactions, information and materials requested by the Auditor for review.

Recommendation 10) If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may recommend further investigation by IAB or other Police Department investigating authority through the Chief of Police, which investigation shall, absent good cause be conducted by IAB or other Police Department investigating authority.

Recommendation 13) An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer in any case involving a death or serious injury or any use of force with either the FCPD or the Auditor. The Auditor shall immediately forward any complaint received to the FCPD for investigation. The FCPD will report on the status or disposition of any such complaint within the scope of the Office of Independent Auditor to the Auditor every 30 days until closed.

Recommendation 14) If the Auditor disagrees with the results or conclusions of an IAB investigation, the Auditor shall advise the Chief of Police who shall resolve the disagreement and make the final decision. The Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.

Recommendation 15) The Auditor shall make public recommendations to the Chief of Police, with copies to the Board of Supervisors, concerning the revision of FCPD

policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.

Staff recommends that the Board adopt additional language to the scope of the Independent Police Auditor. The proposed language is as follows:

The Auditor may be directed by the Board, County Executive or his designee, at their discretion, to review and report on policy and/or procedural matters.

The Independent Oversight and Investigations Subcommittee made additional recommendations, to include the creation of a Civilian Review Panel, which will be discussed and considered by the Board at upcoming scheduled Public Safety Committee meetings. If a Civilian Review Panel were approved, it is proposed the Office of Independent Police Auditor would interact with the Panel and also provide any required staff support within the duties and responsibilities of 3/3.0 FTE positions.

FISCAL IMPACT:

If approved, the estimated full-year annual fiscal impact of creating the Office of Independent Police Auditor is \$433,249, including \$305,992 in salary/operating costs and \$127,257 in fringe benefits. This funding supports 3/3.0 FTE positions, including 1/1.0 FTE Independent Police Auditor, 1/1.0 FTE Independent Police Auditor, Analyst II and 1/1.0 FTE Independent Police Auditor, Analyst I, as well as associated Operating Expenses. Funds to support the creation of this function are available in the FY 2017 Adopted Budget Plan funded reserve of \$2,407,036 earmarked to support recommendations from the Ad Hoc Police Practices Review Commission. After this action, the reserve will still have \$1,973,787 remaining for additional Ad Hoc related priorities to be determined by the Board in the future. Formal reallocation of the funds from the Ad Hoc Reserve to the new agency will be included as part of the *FY 2017 Third Quarter Review*; however this will not preclude spending of these funds prior to the approval of Third Quarter if necessary.

With the establishment of an Office of Independent Police Auditor, if approved by the Board, and the previously adopted recommendations of the Ad Hoc Police Practices Review Commission's Use of Force Subcommittee, there will be an increased workload on the Police Department's Internal Affairs Bureau (IAB). Supplementing their investigative work, the detective supervisors assigned will be tasked with ensuring timely completion of administrative investigations, increased public reporting requirements, supporting the Office of Independent Police Auditor by gathering and reviewing documentation, conducting redactions, providing data points, and potentially, if approved in the future, supporting the Civilian Review Panel with similar workload requests. The Police Department anticipated this increased

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workload and noted the need for an additional 2/2.0 FTE detective supervisory positions within the Police Department's Internal Affairs Bureau (IAB) in the *FY 2016 – FY 2020 Public Safety Staffing Plan*. The County Executive will include funding for these two positions in the FY 2018 Advertised Budget Plan.

ENCLOSED:

Attachment 1: Ad Hoc Police Practices Review Commission Report  
Recommendations Assignment and Tracking Spreadsheet

STAFF:

David M. Rohrer, Deputy County Executive  
Colonel Edwin C. Roessler Jr., Chief of Police