

Police Civilian Review Panel

February 7, 2019

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:

Hansel Aguilar

Bob Cluck

Hollye Doane

Doug Kay, Panel Vice-Chair

Anna Northcutt

Shirley Norman-Taylor

Adrian Steel

Rhonda VanLowe, Panel Chair

Panel Members Absent:

Colonel Gregory Gadson

Others Present:

Gentry Anderson, OIPA

Gerarda Culipher, Chief Deputy Clerk to the Circuit Court

Julia Judkins, Counsel

Rachelle Ramirez, OIPA

Major Gervais Reed, FCPD

Richard Schott, Independent Police Auditor

The Panel's business meeting was called to order at 7:00 p.m.

Welcoming of New Panel Member: Ms. VanLowe welcomed, on behalf of all Panel Members, Ms. Shirley Norman-Taylor, who was recently appointed by the Board of Supervisors to fill a vacant seat, to her first meeting. Ms. VanLowe thanked Ms. Norman-Taylor for her willingness to serve on the Panel. Ms. Gerarda Culipher, Chief Deputy Clerk of the Fairfax County Circuit Court, administered the Oath of Office to Ms. Norman-Taylor.

Meeting Summary Approval: Mr. Steel moved approval of the Meeting Summary from the Panel's January 3rd meeting. Ms. Northcutt seconded the motion and it carried by a vote of eight, Col. Gadson being absent.

Initial Review Report for CRP-18-27 Approval: Mr. Kay reminded the Panel that a Subcommittee met on January 3, 2019, to conduct an initial review of complaint CRP-18-27. The Subcommittee issued a report and determined that the Panel had authority to undertake a review of the Fairfax County Police Department's (FCPD) investigation into the complaint. It was also noted that this was the first instance of joint jurisdiction between the Panel and the Independent Police Auditor. The Panel has authority to review the allegations that rise to abuse of authority and serious misconduct and the Auditor has authority to review the allegation of excessive use of force. Mr. Steel moved adoption of the Initial Review Report for complaint CRP-18-27. Ms. Northcutt and Ms. Doane jointly seconded the motion and it carried by a vote of eight, Col. Gadson being absent.

Review Report for CRP-18-26 Approval: Ms. VanLowe asked Ms. Northcutt and Mr. Aguilar, the authors, to review the edits that were made to the final draft of the Review Report. Mr. Cluck raised concern regarding the recommendations listed under Section VI of the report and stated a desire to hear from the FCPD whether the recommendations were practical. Additionally, Mr. Cluck recommended deleting Recommendation D under Section VI of the report.

Mr. Steel noted that at the Panel's January meeting, the Panel discussed whether to include a more detailed summary of the incident and the resulting FCPD internal investigation within future Review Reports. Mr. Steel handed out a document titled "Proposed Insert to Robinson Review Report" to the Panel and copies were made available to the audience. He asked that the insertion be included after the second paragraph of Section IV of the Review Report. Discussion ensued regarding Mr. Steel's proposed insertion and transparency and confidentiality concerns. Ms. Doane agreed with the inclusion of the insert proposed by Mr. Steel. Mr. Kay asked Ms. Judkins, counsel for the Panel, if the insertion would violate the Panel's Bylaws or the Action Item. Ms. Judkins replied that the insertion would not be in violation.

Further discussion ensued regarding Section VI of the report. Mr. Kay offered an amendment to Recommendation D under Section VI of the Review Report so that it would read, "During FCPD administrative investigations, where statistical evidence is used, we recommend the Crime Analyst Unit be consulted in the gathering, preparation and reporting of the statistical data." This was accepted.

Next, the Panel made the following motions regarding the proposed recommendations in Section VI of the Review Report.

- Mr. Steel moved adoption of Recommendation A, with the "s" removed from "recommends." Mr. Kay seconded the motion and it carried by a vote of eight, Col. Gadson being absent.
- Mr. Steel moved adoption of Recommendation B. Mr. Kay seconded the motion and it carried by a vote of eight, Col. Gadson being absent.
- Mr. Steel moved adoption of Recommendation C. Mr. Kay seconded the motion and it carried by a vote of eight, Col. Gadson being absent.
- Mr. Kay moved adoption of Recommendation D, as amended. Mr. Steel seconded the motion and it carried by a vote of seven, Mr. Cluck voting "Nay," and Col. Gadson being absent.

Mr. Steel moved that the document he circulated titled "Proposed Insert to Robinson Review Report" be incorporated into the Review Report after the second paragraph of Section IV. Mr. Cluck and Ms. Doane jointly seconded the motion and it carried by a vote of eight, Col. Gadson being absent.

Mr. Aguilar and Ms. Northcutt are to edit the Review Report and circulate it among Panel Members.

Mr. Kay noted that the Review Report is due no later than April 3, 2019. Ms. VanLowe asked that in the future, extensive drafting of reports should occur prior to the meeting.

Review of CRP-18-27

Overview of the Review Process: Ms. VanLowe provided an overview of the review process and summarized the incident described in the complaint (CRP-18-27). The complaint was submitted by Ms.

Utley, who was not a witness to the incident, but later viewed video footage and media coverage of it. She submitted her complaint on behalf of the individual involved in the incident. Ms. VanLowe also noted that this complaint triggered a joint review by the Panel and the Auditor due to allegations of abuse of authority and serious misconduct along with an allegation of excessive use of force. Ms. VanLowe reminded Panel Members of Review Meeting procedures and closed session procedures.

FCPD Representative Statement: Major Reed outlined the investigative steps taken which included: conducting interviews of the involved officers, the subject, and a witness located through social media; and reviewing all available videos, dispatch records, radio traffic, and the incident reports filed by the officers. Major Reed described what the officer witnessed that led him to believe that the subject may have conducted a drug transaction, and which resulted in: (1) the officer conducting a subject stop in front of the ALDI Supermarket, and (2) arresting the subject for possession of marijuana. The investigation found the officer was in compliance with department procedures and applicable laws.

Complainant Statement: The complainant, Ms. Utley, provided a summary of the incident that is the subject of her complaint and explained that she submitted a Review Request to the Panel because she was concerned that the individual was a target of police abuse of authority and racial profiling. Additionally, she noted that it was her belief that the involved individual was surveilled by the FCPD due to the location of the incident being designated as a “high-crime” area and because he was an African American male. Ms. Utley also requested that the Panel go beyond reviewing individual incidents and look more broadly at the outcomes of police interactions and patterns of discrimination, particularly in the Mt. Vernon District.

Complainant Questioning: Next, each Panel Member was given the opportunity to ask the complainant questions regarding her complaint.

Ms. Doane: During your statement, you mentioned an allegation of racial profiling. However, when I reviewed the complaint form you submitted, there was no specific allegation of racial profiling listed. Ms. Utley replied that she was unaware each allegation needed to be explicitly stated and that she believed the racial profiling allegation could be implied since the person involved in the incident is a young African American male.

Ms. Doane: The FCPD did not specifically focus on racial profiling during their investigation. Is this an allegation you would like them to investigate further? Ms. Utley replied in the affirmative.

Mr. Aguilar: Did you receive the disposition letter from the FCPD? Ms. Utley replied she has received no correspondence from the FCPD and that she has only received communication from the Panel.

Ms. VanLowe clarified that the FCPD self-initiated an investigation after the incident occurred and that a disposition letter was issued and sent to the individual involved in the incident.

Ms. Utley asked Mr. Schott if his review of the incident was automatic due to the use of force.

Mr. Schott replied that because the incident did not involve an officer involved shooting, death, or serious injury, his review was not initiated until the complaint was received.

Mr. Aguilar: Do you have personal knowledge of the person involved in the incident? Ms. Utley replied that her organization provided court support and fundraised legal fees for the individual involved in the incident. She also noted that she has been in contact with him and his family and they are aware that she submitted a complaint on his behalf.

Mr. Aguilar: Were you aware of the incident through the media or through your organization? Ms. Utley replied that she was made aware of the incident through the media and was concerned with the FCPD's narrative.

Ms. Doane: Would you like to amend your complaint to include an allegation of racial profiling? Ms. Utley replied that she would like to amend her complaint to include the allegation of racial profiling.

FCPD Representative Questioning: Next, each Panel member was given the opportunity to ask Major Reed questions regarding the Investigation into the complaint under review.

Mr. Kay: Did the Internal Affairs Bureau (IAB) investigate any allegation of racial profiling and was there any concern of racial bias with the involved officer when the investigation was conducted? Major Reed replied that there was no evidence to indicate that race was a factor in the incident.

Ms. Doane: The Investigation relied heavily on opinions from Supreme Court cases and Federal Circuit Court cases. Did the investigator ask an attorney for their opinion about the applicability of the cases? Did IAB ask for legal advice on the interpretation of the opinions? Major Reed did not provide an answer to the question because it was not addressed in the investigation report.

Ms. Doane: Is there a department policy that dictates when investigators ask for legal advice from attorneys? Major Reed replied in the negative.

Mr. Aguilar: To your knowledge, were all witnesses interviewed? Major Reed replied that anyone who may have witnessed the incident was contacted and information was solicited from them.

Mr. Steel: How do IAB investigators decide if a stop is conducted properly? Major Reed replied that the FCPD trains officers in criminal and traffic law. He also explained that officers receive legal updates as laws are changed and that information related to stops are codified in FCPD policies and procedures.

Mr. Steel: When IAB receives a complaint, do investigators judge conduct based on department policies and procedures? Is there any requirement to consult with legal entities? Major Reed replied that investigators judge conduct based on department policies and procedures and that there is no requirement to consult with legal entities.

Ms. Doane: Did investigators consult with the Office of the Commonwealth's Attorney for Fairfax County as to why the drug charge was dropped? Major Reed answered that he was unaware of consultation with the Office of the Commonwealth's Attorney.

Ms. Northcutt: While the investigation was conducted, was the apartment management company contacted as to what the criteria was for stopping someone for trespassing? Major Reed replied that the apartment management company was not consulted because there is an agreement between the management company and the FCPD to enforce trespassing laws. Ms. Northcutt noted that the complainant was let in to the secured access area by a resident.

Mr. Aguilar: In response to an earlier question, you said there was nothing in the investigation to indicate an allegation of racial profiling. Is this correct? Major Reed replied that the stop was conducted due to the behavior of the individual involved in the incident.

Mr. Steel began to ask a question about FCPD policy on stops, but later withdrew his question.

Ms. VanLowe thanked Major Reed for his participation.

Review Deliberations: Ms. VanLowe asked for the Panel to begin deliberation. Mr. Kay referenced Section VI.E.(H) of the Bylaws which allows the Panel to request further investigation by the FCPD. Mr. Kay moved that the FCPD conduct further investigation into the allegation of racial bias and obtain an opinion from an attorney on the constitutional issues. The motion was seconded by Ms. Doane and Mr. Steel. Panel discussion ensued related to the motion and alternative options the Panel could choose that would require further investigation by the FCPD. A vote was not called on Mr. Kay's motion.

At 8:44 p.m., Ms. VanLowe requested a five-minute break before continuing further deliberation.

The Panel returned from the break at 8:50 p.m.

Mr. Steel indicated he was unaware that the audio recording device was left on during the five-minute break and made a motion to remove the portion of the audio recording that captured the five-minute break. Ms. Judkins noted that the Panel did not take a formal recess and the meeting was still in session. The motion failed to get a second.

Discussion ensued on how the Panel should recommend the FCPD conduct further investigation. Ms. Northcutt raised concern that the investigation did not address in depth what initiated the stop. Mr. Kay moved that the Panel request the FCPD to conduct further investigation into racial bias and profiling and the legality of the stop and provide the Panel with a supplemental report. Mr. Steel seconded the motion. Discussion ensued related to the motion and Panel Members expressed interest in the FCPD asking for outside legal advice in the matter. Ms. VanLowe raised that the Panel has the option of including the request for further investigation by the FCPD in a report that is submitted to the Board of Supervisors. Ms. Northcutt expressed that reviewing arrest statistics for the officer and the station compared to the demographic makeup of the residents within the district station would have been helpful. A vote was not called on Mr. Kay's motion.

Mr. Kay moved that the FCPD conduct further investigation and provide the Panel with a supplemental report that details the findings of additional investigation into racial bias and racial profiling. Secondly, that the FCPD investigate the legality of the stop and, that as part of that investigation into the legality of the stop, they seek and obtain advice from an attorney. Ms. Doane seconded the motion and it carried by a vote of seven, Ms. VanLowe voting "Nay," and Col. Gadson being absent. Ms. VanLowe explained that while she agreed that further investigation is necessary, she would have preferred that the request be reported through the Board of Supervisors.

New Business: Mr. Kay announced that his tenure as chair is effective in March. He noted his enjoyment working with Ms. VanLowe as her Vice-Chair during the past year and reminisced drafting the Panel's Bylaws with her in 2017. He thanked Ms. VanLowe for her leadership and her service to the Panel.

Ms. VanLowe told Panel Members she is in the process of drafting the Annual Report and Panel Members will receive a draft of the report. The Panel will vote to adopt the report at the March Meeting.

Mr. Kay volunteered to draft a letter to the FCPD relaying the action the Panel took during the review meeting deliberation.

Ms. VanLowe asked Mr. Kay to consider including an item on the Panel's March Meeting agenda for discussion related to additional Panel Procedures.

Mr. Steel referred to instances of the FCPD requesting extensions while investigating complaints processed by the Panel and asked if the Board of Supervisors has been made aware of the extension requests. Ms. VanLowe replied that the number of extension requests will be included in the Annual Report.

Next Meeting: The Panel's next business meeting is Thursday, March 7th, 2018, at 7:00 p.m. in the Government Center, Conference Room 232.

The meeting was adjourned at 9:16 p.m.