



County of Fairfax, Virginia

MEMORANDUM

DATE: 8/1/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-19-05

On behalf of the members of the Fairfax County Civilian Review Panel, I submit to you Panel Findings for Complaint CRP-19-05 (“Complaint”). As explained below, the Panel found the Investigation met the criteria of accuracy, completeness, thoroughness, objectivity, and impartiality.

I. Introductionⁱ

The Panel held a Panel Review Meeting on June 20, 2018, to review the Investigation resulting from a complaint submitted to the Panel for review on November 26, 2018. After discussion, the Panel voted unanimously that the FCPD’s Investigation Report met the criteria expected of them. All Panel members, except Colonel Gregory Gadson, attended the Panel Review Meeting.

II. Background Facts and Review Request

On April 17, 2019, an undercover narcotics detective with the FCPD placed an advertisement on the Internet and broadcast it throughout the local District of Columbia, Maryland and Virginia region. In the advertisement, an undercover FCPD detective masqueraded as a couple looking for a third person to engage in a sexual fantasy relationship. The advertisement also subtly solicited drugs. The Complainant responded to the advertisement using electronic communications. Review of these communications reveals early and frequent discussion of the Complainant’s procurement of cocaine and marijuana during several weeks of communications between the detective and the Complainant. On May 24, 2017, the Complainant arrived at an appointed meeting place where the FCPD arrested him for possession with intent to distribute cocaine and marijuana and with possession of a firearm while in possession of narcotics. The FCPD also seized the vehicle Complainant used to meet with the undercover detective.

Thereafter, the Complainant became a confidential informant (“CI”) with the expectation that it would help his case. During Complainant’s efforts as a CI, he asked for guidance about how to engage in drug sales, and a detective responded via text message, “Look Retard.....don’t actually buy drugs or get drugs from them. Simply get them to agree to sell to you. This is why you should not be doing this. U don’t have any idea about what you are doing. And I am not teaching a class.” After the Complainant’s work as a CI concluded, his criminal prosecution ensued. The Complainant was represented by counsel who negotiated a plea bargain that resolved all criminal charges finally on August 24, 2018.

Shortly after Complainant’s arrest, the Commonwealth of Virginia filed a separate civil forfeiture proceeding concerning the Complainant’s vehicle. But the Commonwealth’s Attorney concluded that the outstanding liens on Complainant’s vehicle made inappropriate further pursuit of forfeiture proceedings. On instructions from the Commonwealth’s Attorney, the FCPD returned the vehicle to the lienholder. Neither the Commonwealth’s Attorney nor the FCPD gave Complainant notice of the disposition of his vehicle.

On September 10, 2018, filed the Complaint which asserts a multitude of claims principally including that the FCPD engaged entrapment, that he was subjected to offensive language in violation of the FCPD General Orders, and that his vehicle had been illegally forfeited.

III. Procedural Background

Pursuant to the Bylaws, the Complaint was forwarded to the FCPD for Investigation. After the Investigation was completed, Chief Roessler sent a letter to the Complainant notifying him of the outcome of the FCPD’s review. The Complainant timely filed a Review Request.

On May 23, 2019, the Panel conducted an initial review of the Review Request in which it addressed: 1) whether the request was timely and 2) whether the complaint met the seriousness standards of the Panel’s by-laws. The Complaint was filed more than one (1) year after the date of the incident, and a month after the close of Complainant’s criminal case. The Bylaws permit the Panel to review an untimely Complaint if the Panel finds good cause for the delay. The Panel concluded good cause existed since it was reasonable for the Complainant to wait until after conclusion of his (1) efforts as a CI and (2) criminal prosecution since Complainant probably believed filing a complaint against the FCPD would cause the FCPD to be prejudiced against him during the pendency of either of the two circumstances. The Panel also concluded that the Complainant’s allegations were sufficiently serious to warrant review.

IV. Panel Review Meeting

The Panel Review meeting for CRP-19-05 was held on June 20, 2019.¹ Prior to the Panel review meeting, all Panel members had reviewed the voluminous Investigation Report created in response to the Complaint.

Second Lieutenant Low attended the Panel Meeting and provided an overview of the case, the investigation of the Complaint, and a summary of the FCPD response to each item in the Complaint:

Entrapment. The Office of the Commonwealth’s Attorney and the Office of the County Attorney each reviewed the incidents and determined that the tactics used by the FCPD were within the law and entrapment did not occur. To overcome the defense of entrapment, the government must prove that the defendant was disposed to commit the criminal act prior to first being approached by government agents. The Complainant claimed he could provide “party favors” without prompting from the detective and within minutes of their first communications. Throughout the lengthy written exchange available to the Panel for inspection, the Complainant exhibited knowledge of the drug trade and a lack of hesitation to procure drugs for use during the offered sexual encounter. The Panel was satisfied that the FCPD consulted with and obtained legal opinions that were included in the Investigation Report.

Use of Offensive Language. The FCPD’s investigation found that the Officer’s use of offensive language was in violation of General Orders. (The violation was addressed, but personnel actions are subject to privacy restrictions and will not be described herein.) The Panel was satisfied with the FCPD’s handling of this violation.

Vehicle Seizure. The actions taken in this case were consistent with FCPD policies and procedures in existence at the time of the seizure. The Panel expressed concerns about the failure to notify the Complainant that his vehicle was returned to the lienholder. However, the FCPD has since implemented improved procedures that address the concern. Moreover, several on the Panel expressed concern over future seizure of vehicles by the FCPD may constitute an excessive fine under recent U.S. Supreme Court precedent.

After discussion of the adequacy and appropriateness of the FCPD’s actions and Investigation of the Complaint, the Panel voted unanimously to concur with the findings and determination detailed in the Investigation Report.

¹ Audio of the June 20, 2019 Panel meeting is at <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-june-20-2019>. A summary of the June 20, 2019 meeting is at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/sites/policecivilianreviewpanel/files/assets/6-20-19%20summary.pdf>

V. Comments

- A. The Panel commends the FCPD for their prompt issuance of an updated policy on the seizure of vehicles.
- B. The FCPD investigation properly found that the Officer's use of the word, "retard" was offensive and was in violation of its General Orders. The Panel agrees that use of such abusive and repugnant language is unacceptable and unbecoming of a police officer in any circumstance. The word, "retard" debases one's human dignity and worth. Individuals with intellectual disabilities and their families are hurt and injured when the word is used to describe themselves, their loved ones, or anyone. Further, use of the word serves to divide our community, instead of uniting, including and recognizing that all residents bring value in diverse ways. Police officers should be the role models in our community, and they and should never engage in name-calling.

VI. Recommendations

No recommendations.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.