

Police Civilian Review Panel

August 27, 2020

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:

Hansel Aguilar
Jimmy Bierman
Bob Cluck
Hollye Doane, Panel Chair
Doug Kay
Frank Gallagher
Shirley Norman-Taylor
Sris Sriskandarajah, Panel Vice-Chair
Rhonda VanLowe

Others Present:

Complainant
Gentry Anderson, OIPA
Major Kim, FCPD
Anita McFadden, Interim Counsel
Rachelle Ramirez, OIPA
Chief Roessler, FCPD
Richard Schott, Independent Police Auditor

NOTE: The Panel's August business 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 7:02 p.m. and all Panel Members were present.

Ms. Doane welcomed everyone to the Panel's August meeting and noted a few housekeeping rules.

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

Mr. Aguilar was present and participated from the Braddock District.

Mr. Bierman was present and participated from the Dranesville District in McLean, Virginia.

Mr. Cluck was present and participated from Reston, Virginia.

Ms. Doane was present and participated from Oakton, Virginia.

Mr. Gallagher was present and participated from the Braddock District in Burke, Virginia.

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

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

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

Ms. VanLowe was present and participated from Reston, Virginia.

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

Ms. Doane 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. She 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 408-418-9388 and entering access code 129 285 8740 as noted in the Public Meeting Notice. Mr. Bierman seconded the motion and it carried by unanimous vote.

Ms. Doane 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. Sriskandarajah seconded the motion and it carried by unanimous vote.

Panel Review of CRP-20-15: Ms. Doane thanked Chief Roessler and Major Kim for being present and asked if the complainant was present. The complainant was present and was thanked for his attendance.

Complainant Statement: The complainant thanked the Panel for the opportunity to speak and read an anecdote, which he explained is a reminder of his responsibility towards society. The complainant alleged that during the incident subject of his complaint which was investigated by the Fairfax County Police Department (FCPD), his civil rights were violated and that the subject officer violated FCPD General Order 301. He expressed that he felt intimidated and threatened during the interaction and that based on the documentation provided, he believed that the investigation was inaccurate and incomplete. He asked the Panel to exercise their authority of oversight to deliver the real work it takes to maintain a republic. He thanked the Panel for their time and consideration of his complaint.

Ms. Doane thanked the complainant for his remarks and gave Panel Members the opportunity to ask questions.

Complainant Questioning:

Mr. Aguilar thanked the complainant for filing his complaint. He asked the complainant why he requested the Panel's review of the investigation. The complainant replied that the FCPD did not respond to his complaint in the closing of their investigation and referenced materials he submitted to the Panel.

Ms. Doane reminded the complainant that the Panel is unable to investigate and that Panel Members reviewed the FCPD's investigation file to determine if it is complete, thorough, accurate, objective, and impartial, and is unable to consider evidence outside of the FCPD's investigation file.

Mr. Aguilar asked the complainant what was it about the results received from the FCPD that made the complainant request a review. The complainant asked a clarifying question. Mr. Aguilar asked the complainant why he did not believe the complaint was investigated properly. The complainant referred to the disposition letter signed by the FCPD Chief outlining the results of the investigation and noted his disagreement with the outcome. The complainant expressed his belief that the determination is not true, and that the complaint was not properly investigated.

Ms. VanLowe thanked the complainant for participating in the Panel's complaint process. She asked if the complainant provided additional materials to the FCPD during the investigation process. The complainant replied that he submitted three letters to the Panel and received correspondence in response from the Panel Chair. The complainant added that all materials were submitted to the FCPD investigator and to his district supervisor on the Board of Supervisors.

Mr. Bierman asked if the complainant was asked to leave the facility prior to the police arriving on the scene. The complainant replied that he was asked to leave by the facility's safety patrol, and upon asking why, he was not given a reason. The complainant added that he was actively pursuing a question of policy under the declared state of emergency with the deputy director of solid waste and asked for further consideration of his request.

Mr. Bierman asked the complainant how long he was at the facility. The complainant replied that he spoke with multiple representatives at the facility who informed him that they did not have authority to fulfill his request. The complainant explained he had to call his district supervisor's office to get additional information. He estimated that he was on the phone with the deputy director of solid waste for at least twenty minutes.

Mr. Aguilar referenced the complainant's allegation of an unlawful order to vacate the facility and asked the complainant why he considered it an unlawful order. The complainant replied that it is related to him being asked to leave in combination with him not paying a fee. He clarified that he did not refuse to pay the fee but that he requested a waiver. He added that the police cannot demand that he leave public property when he did not break a law.

Mr. Aguilar asked the complainant if the officer should have allowed the complainant more time or did the officer act within reasonable timing? The complainant replied that if the officer could have identified that he was breaking a law, the officer could have asked him to leave without charging him as a courtesy. The complainant explained that he had pulled over to a median and was not blocking traffic while he was on the phone with the deputy director of solid waste to resolve the issue.

FCPD Statement:

Ms. Doane recognized the Chief to provide an overview of the FCPD's investigation and findings. Chief Roessler introduced himself and deferred to Major Kim to provide a summary of the investigation. Major Kim summarized the FCPD's investigation into the subject complaint. The FCPD's investigation revealed that the officer's actions complied with FCPD policy.

Ms. Doane thanked the Chief and Major Kim for attending and participating.

FCPD Questioning:

Mr. Aguilar welcomed Major Kim to his first official Panel Review meeting. He asked Major Kim to speak to the level of training that is provided to any investigator at the FCPD. Major Kim replied that before officers are promoted, they conduct investigations at the patrol level which translate into administrative investigations. When promoted, officers receive supervisory and field training with a tenured supervisor, and review requirements to ensure investigative steps are properly documented. Officers gain more knowledge and experience in conducting investigations as they move forward in the career. Major Kim also explained that there is an internal commander review process in place to review investigations and coaching is provided to officers by commanders.

Mr. Aguilar asked if investigators are required to produce an investigative plan once a complaint is received. Major Kim replied that he cannot speak for everyone, however, each investigation follows a typical structure and process flow. The Chief added that whenever a complaint is received, regardless of which division or entity it was submitted to, the first step is to notify the chain of command and enter the complaint into a software system where an IA number is assigned. He reiterated that a sergeant is supervised by a second lieutenant, who provides guidance related to the structure of the investigation and ensures compliance with investigative procedures outlined in General Orders. When the investigation is complete, it is routed up the chain of command for review. Specific to the Internal Affairs Bureau (IAB), the Chief selects investigators to join IAB based on their resume, training, and interviews. The Chief added that training is nationally accredited and that sergeants receive coaching from their supervisors and commanders. Mr. Aguilar replied that in his opinion, there appeared to be discretion at different levels related to how investigators are executing investigations. The Chief replied that the FCPD has an internal administrative manual which outlines the tenets of how to develop a strategic investigative plan. Major Kim added that the FCPD's supervisor manual incorporates direction related to investigations among other required responsibilities

for supervisors. He explained that investigations conducted by IAB have a specific structure as they are higher level investigations, which require additional scrutiny and analysis. Mr. Aguilar noted that in his review, he did not see a thorough investigative plan of how the investigator planned to investigate this matter.

Mr. Aguilar asked if there are any general orders or guidance provided to officers on how to investigate or appropriately handle a trespassing situation and when to offer move along orders. Major Kim replied that training on these topics are provided to recruits during initial training academy, to officers during field training, and throughout an officer's career. He added that officers receive advanced investigation training for various incidents and that there is a basic investigative structure and documentation, but each investigation is unique and tailored to the specific incident. The Chief replied that the Office of the County Attorney provides legal training to officers on laws such as trespassing and the mechanics of enforcement. He added that training occurs not only at the academy level for recruits but throughout an officer's career.

Mr. Aguilar asked if all witnesses were interviewed. Major Kim replied that all individuals relevant to the situation were interviewed. Mr. Aguilar asked a follow up question as to why one individual at the scene was not interviewed. Major Kim replied that according to the investigation, that individual was not interviewed, and it was not noted in the file if there was an attempt to interview the witness.

Mr. Kay asked under what circumstances would an officer ask a citizen to move along versus being told to leave the property, as he was unable to find a General Order related to this issue. Major Kim replied that the foundation of the FCPD's model in a civil issue is to de-escalate the situation. The intention of the officer upon arriving on scene is to ultimately resolve the conflict and make an assessment based on all facts and circumstances present. Through training, FCPD officers are told to give individuals the opportunity to resolve the issue at hand. Major Kim explained that in the incident subject of the complaint, the manager, staff, and deputy director were involved in resolving the issue by asking the complainant to pay the fee or leave the premises. He added that after a quantifiable amount of time passes, the officer must make a judgement call; and, based on the evidence from the investigation, the officer acted reasonably to resolve the issue without escalating the event. The Chief referenced trespass law and explained that the staff of the facility asked the complainant to leave. He added that the investigation revealed witness statements that the officers acted compassionately without escalating the event to an arrest. The Chief acknowledged while the incident may have been uncomfortable for the community member, the investigation found no evidence that the officer acted in a rude or discourteous manner.

Panel Deliberations:

Ms. Doane invited the Panel to discuss whether the FCPD investigation was accurate, complete, thorough, objective, and impartial. The Panel openly deliberated. Mr. Aguilar noted his

observation that investigations seem to vary in quality when completed at the district station level versus at IAB. He would like for the department to standardize investigations, regardless of which division of FCPD is investigating. Mr. Kay found that the disposition letter the FCPD provided to the complainant did not provide the usual facts and analysis as directed by the template that the Panel helped develop with FCPD. Ms. Doane agreed with Mr. Kay's assessment and replied that the FCPD is still implementing the new format of the disposition letter.

Panel Findings:

Mr. Kay moved that the Panel concur with the findings and determinations as detailed in the FCPD investigation report. Mr. Gallagher seconded the motion and it carried by a vote of eight with Mr. Aguilar voting "Nay."

Ms. Doane asked that Mr. Sriskandarajah draft the Panel's Review Report for CRP-20-15 and present it to the Panel at its meeting on September 24. She asked for Panel Members to provide comments or recommendations to Mr. Sriskandarajah.

Approval of Subcommittee Initial Review Report for CRP-19-19: Ms. Doane presented the Initial Review Report for CRP-19-19. She explained that the complaint included several allegations stemming from incidents which occurred between October 2015 and December 2018. She referred to the Panel's Bylaws that prohibit the Panel from reviewing any incident which occurred prior to December 6, 2016 and noted that the subcommittee recommended that the Panel does not have authority to consider allegations that meet this criterion. She again referred to the Panel's Bylaws which prohibit the Panel from reviewing initial complaints filed more than one year after the date of an incident unless the Panel finds good cause to extend the filing deadline. She informed the Panel that good cause must be found by the Panel for it to review allegations that meet this criterion. She informed the Panel that a letter was sent to the complainant asking for reasons to help the Panel determine good cause, but that a response was not received related to this request. Ms. Doane pointed out that two allegations listed in the complaint were considered timely filed. The Panel discussed the allegations listed in complaint CRP-19-19.

Mr. Kay moved that the Panel should not consider allegations listed in the complaint that occurred prior to December 6, 2016. Ms. VanLowe seconded the motion and it carried by a vote of eight, with Mr. Aguilar abstaining.

Ms. VanLowe asked Ms. Doane about the complainant's response to the Panel's inquiry for reasons of good cause in the delay of filing some of the allegations listed in the complaint. Ms. Doane replied that the complainant's response was related to the delay in the complaint process due to pending litigation associated with the complaint but did not address reasons for why the allegations were untimely filed.

Mr. Kay moved that the Panel should not consider allegations listed in the complaint that were filed more than one year after the incident occurred. Mr. Gallagher and Mr. Sriskandarajah jointly seconded the motion and it carried by a vote of eight, with Mr. Aguilar abstaining.

Ms. Doane explained that the two allegations considered timely filed were subject to litigation and noted the subcommittee's discussion on how the Panel should handle the review of complaints that were previously litigated. The Panel discussed processing review requests of complaints that have been previously litigated.

Mr. Kay moved that the Panel review the two allegations considered timely filed. Mr. Sriskandarajah seconded the motion. A vote was not called on this motion.

Mr. Aguilar asked if the motion was specific to the two allegations listed in the complaint and the Panel responded affirmatively. Mr. Gallagher asked if the two allegations listed in the complaint were heard in court. Ms. Doane replied that the case was dismissed with prejudice at the district court and an appeal was denied in federal appellate court.

Mr. Aguilar moved that the Panel undertake a review of the two allegations listed in the complaint that are considered timely filed. The second to the motion was inaudible and it carried by a vote of six with Mr. Gallagher and Ms. VanLowe voting "Nay." Mr. Kay was absent when this vote was called due to technical difficulties.

Ms. Anderson will notify IAB that Panel Members will be scheduling their review of the investigation file and notify the complainant of the review meeting.

Approval of Subcommittee Initial Review Report for CRP-20-20 and CRP-20-21: Ms. Doane recognized Mr. Sriskandarajah to introduce the subcommittee's initial review report for CRP-20-20 and CRP-20-21 to the Panel. Mr. Sriskandarajah said that the subcommittee recommends that the Panel undertake a review of these complaints because the subcommittee found that the allegations met the Panel's threshold of abuse of authority or serious misconduct. He provided a summary of the incident subject of the complaints.

Mr. Kay informed the Panel he experienced a technical difficulty during the final discussion of the initial review report for CRP-19-19 and the vote. He expressed his agreement with the Panel undertaking a review of the two timely filed allegations and that he would have voted "Aye," if he were present for the vote.

Mr. Kay moved that the Panel approve the subcommittee's Initial Review Report and undertake a review of CRP-20-20 and CRP-20-21. Mr. Bierman seconded the motion and it carried unanimously.

Ms. Anderson will notify IAB that Panel Members will be scheduling their review of the investigation file and notify the complainants of the review meeting.

Approval of July 23 Meeting Summary: Mr. Gallagher moved approval of the summary of the Panel's July 23 meeting. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Debrief of Supervisor Lusk's Listening Session:

Ms. Doane recognized Mr. Bierman to brief the Panel on the listening session hosted by Supervisor Lusk on July 29. Mr. Bierman informed the Panel that the listening session lasted approximately two hours and that attendees were able to submit questions during the event in a chat function that was monitored by Supervisor Lusk's Chief of Staff. Most questions asked were related to the Panel's authority. Mr. Bierman explained that he and Ms. Doane made clear that their responses were their own personal opinions. He added that many questions were related to the potential for investigatory power and the ability of the Panel to comment on use of force investigations. Mr. Bierman said that during the listening session, he noted his disappointment that the county attorney prohibited all nine members of the Panel from participating in the event and disagreed with the county attorney's interpretation of the Panel's action item and Bylaws related to holding public meetings and taking public comment.

Ms. Doane informed the Panel that the county attorney, under direction from the Board of Supervisors, is working on an amendment to the Panel's Bylaws to allow for all members of the Panel to be able to participate in open forum meetings and it is her understanding that the Board of Supervisors will consider the amendment during one of their meetings in September. Mr. Bierman provided the Panel with information related to the special session of the General Assembly related to civilian oversight boards.

Mr. Aguilar thanked Ms. Doane and Mr. Bierman for their leadership and for representing the Panel during the listening session. He asked if the Panel's legal counsel was included during these discussions. Ms. Doane replied affirmatively. She added that the Board of Supervisors is very supportive of the amendment and that Supervisor Lusk acknowledged the important role of the Panel in listening to the concerns of the community. Mr. Bierman and Ms. Doane thanked Ms. McFadden for her active role in representing the Panel during this process.

Ms. VanLowe thanked Ms. Doane and Mr. Bierman. She asked if there was a sense of the scope of the revised language and if there would be any restrictions. Ms. Doane replied that it is her understanding that there would be no restrictions to the Panel's ability to hold these types of meetings and that she will share the proposed language with the Panel when it is received.

Panel Discussion on Review of Panel Procedures:

Ms. Doane thanked Ms. VanLowe for her work in 2018 in forming the Panel's procedures. She acknowledged that some procedures have been amended and that she would like for Panel procedures to be reviewed holistically with a particular focus on the Panel's subcommittee process such as the role of litigation in complaints, and how to define abuse of authority and serious misconduct. She asked Ms. VanLowe and Mr. Sriskandarajah to undertake a review of

the Panel's procedures and report back to the Panel at the end of the year with revisions and recommendations for Panel consideration. Ms. Doane hopes to host a training in January or February for the Panel to review the procedures so that all Panel Members have a good understanding of the revised procedures.

Ms. VanLowe moved that the Panel form a two-person subcommittee to review Panel procedures. Mr. Gallagher seconded the motion and it carried unanimously.

Ms. Doane asked for Panel Members to submit comments to Ms. VanLowe or Mr. Sriskandarajah.

Panel Discussion on Receiving Regular Briefings from the Independent Police Auditor:

Ms. Doane informed the Panel that under Article VII.B of the Panel's Bylaws, the Panel can meet periodically with the Auditor concerning his findings and recommendations related to reviews of use of force cases so that the Panel can provide their view to the Board of Supervisors and the Chief. She asked Panel Members their thoughts on receiving regular briefings from the Independent Police Auditor. She added that the Ad Hoc Police Practices Review Commission made this recommendation so that Panel Members, as representatives of the community, could provide community input to the Independent Police Auditor and the Chief. Ms. Doane recognized Mr. Schott to provide input.

Mr. Schott reported that he is willing and able to brief the Panel and entertain questions regarding the public reports he issues concerning his reviews of use of force incidents.

Mr. Gallagher suggested that the Panel hear from Mr. Schott on a quarterly basis to understand what he has reviewed and the recommendations he has made to the FCPD. Panel Members agreed. Ms. Doane suggested that this suggestion should be considered during the four-year review process. *She instructed Mr. Bierman and Mr. Aguilar to include this process in the four-year review report for Panel consideration.*

Update on Panel Outreach:

Ms. Doane referred to a meeting material which outlines all Panel outreach activities that occurred since June 9. She thanked Panel Members for engaging with the community through outreach events and asked that they continue to think of other community groups with whom to meet.

Update on Next Quarterly Meeting:

Ms. Doane informed the Panel that the next quarterly meeting is set for September 25. She expects the group to discuss the Special Session of the General Assembly and updates to the Panel's recommendations matrix.

Panel Members should contact Ms. Doane or Mr. Sriskandarajah if they would like for additional topics to be discussed.

Meeting Dates for the Remainder of 2020:

Ms. Doane asked that the Panel set meeting dates for the remainder of 2020. The Panel had traditionally met on the first Thursday of each month, but the meeting schedule was altered due to the COVID-19 Pandemic. She reminded Panel Members that the Panel has already scheduled meetings on September 10 and September 24. Panel Members discussed preferred meeting dates for the remainder of the year. *Ms. Doane instructed Panel Members to send their availability for Panel Meetings to Ms. Anderson and that she will confirm final meeting dates.*

New Business:

Ms. Doane reminded the Panel of the ethics complaint that was submitted to the Panel by a complainant. She would like for the Panel to consider and adopt a process to consider ethics complaints as the Panel does not address this in its Code of Ethics. After consulting with Supervisor Lusk, Ms. Doane decided that the Panel should form a subcommittee to formulate a process to consider ethics complaints that will ultimately be included in the Panel's Code of Ethics or Bylaws. Once the process is established, the Board of Supervisors will be informed.

Mr. Aguilar suggested that since Fairfax County has a hybrid system of oversight, ethics complaints could be reviewed by the Independent Police Auditor so that Panel Members would not be obligated to review the conduct of their colleagues. Ms. Doane asked that Mr. Kay and Mr. Gallagher provide a recommended process for the Panel to entertain ethics complaints.

Ms. VanLowe moved that the Panel form a two-person subcommittee, consisting of Mr. Kay and Mr. Gallagher, to develop a process for the Panel to consider ethics complaints.

Mr. Bierman seconded the motion and it carried unanimously.

Mr. Aguilar asked if there was an update from the FCPD on the Panel's request for electronic access to FCPD investigation files. Ms. Doane replied that when she discussed the issue with Major Owens, she was told that Panel Members would have to appear in person at IAB to review files and that all precautions would be taken. The Chief added that he would provide the Panel with written justification related to this matter. He explained that he received legal advice related to the safeguard of personnel records and that they cannot be protected when they are outside of his control. Mr. Aguilar thanked the Chief for agreeing to provide the Panel with the update. Mr. Kay suggested that in addition to receiving the justification from the FCPD, the topic should be discussed during the upcoming quarterly meeting. Panel discussion ensued regarding reviewing FCPD files at remote locations. The Chief informed the Panel that he would work with Major Kim to determine an offsite location to allow for Panel Members to review FCPD investigation files at other physical locations instead of FCPD headquarters.

Update on Complaint CRP-19-29:

Ms. Doane reminded the Panel that the FCPD completed the additional investigation into complaint CRP-19-29 which was requested by the Panel. She informed the Panel that the

second review meeting for this complaint will take place on September 10 and that the complainant has been invited to attend and address the Panel. She added that it may be helpful for Panel Members to review the meeting summary from the Panel's meeting on March 9, 2020, when the Panel conducted a review of the complaint.

Adjournment:

Mr. Gallagher moved to adjourn the meeting. Mr. Sriskandarajah seconded the motion and it carried unanimously.

The meeting adjourned at 9:35 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, September 10 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.