

Police Civilian Review Panel

July 23, 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:

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

NOTE: The Panel's July 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 7:00 p.m. and all Panel Members were present.

Ms. Doane welcomed everyone to the Panel's July 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 Fairfax, Virginia in the Braddock District.

Mr. Bierman was present and participated from 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 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 jointly seconded by Ms. VanLowe and Mr. Bierman 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 129 852 5828 as noted in the Public Meeting Notice. Mr. Bierman seconded the motion and it carried by unanimous vote.

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

Introduction of Interim Independent Legal Counsel: Ms. Doane announced that Anita McFadden was appointed as the Panel's interim legal counsel. Ms. McFadden introduced herself to the Panel. She has practiced law in the Fairfax area since 2000 primarily in civil litigation, family law, and some criminal defense cases. She expressed that she is looking forward to working with the Panel.

Transition of IAB Command and Introduction of Major Kim: Ms. Doane informed the Panel that Major Tonny Kim is the new commander of the Fairfax County Police Department's (FCPD) Internal Affairs Bureau (IAB). She thanked Major Owens for working with the Panel and wished him well as he transitions into his new position. Major Owens thanked the Panel and noted that he is now working in the FCPD's Administrative Support Bureau. Major Kim introduced himself and stated that he is looking forward to working with the Panel. He previously held positions as the police liaison commander at the public safety communications center, commander for the Fair Oaks District Station, and commander of the Planning and Research Bureau. Major Owens added that he appreciates the work of the Panel and the Panel Members' dedication and time to the Panel's mission.

Approval of June 23 Meeting Summary: Mr. Kay moved approval of the summary of the Panel's June 23 meeting. Mr. Bierman seconded the motion and it carried by unanimous vote.

Approval of Subcommittee Initial Review Report for CRP-20-15: Ms. Doane recognized Mr. Sriskandarajah to introduce the Panel to the subcommittee's initial review report for CRP-20-15. Mr. Sriskandarajah reminded the Panel that a subcommittee met on July 20 to review the allegations in complaint CRP-20-15. The subcommittee determined that the complaint included an allegation of serious misconduct and abuse of authority related to officer rudeness and the subcommittee voted to recommend that the Panel undertake a review of the complaint.

Mr. Kay moved that the Panel approve the subcommittee's initial review report and undertake a review of CRP-20-15. Ms. VanLowe 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 complainant of the review meeting.

Ms. Doane informed the Panel that the complainant alleged that the subcommittee violated the Panel's code of ethics. She added that it is the first time the Panel received a complaint of this kind and that there is currently not a process in place to consider such a complaint. Ms. Doane suggested that consideration of this specific matter be deferred so that the Panel can work with independent legal counsel to develop a process. The Panel agreed. Ms. Doane assured the complainant that because the Panel approved the subcommittee's initial review report, all nine members of the Panel will review the FCPD investigation file to determine whether the investigation was complete, thorough, accurate, objective and impartial. She added that the complainant will have the opportunity to appear before the Panel and the Panel will fully address his concerns about the subcommittee process.

Approval of Amended Panel Procedure: Intake and Processing of Review Requests: Ms. Doane reminded the Panel that Mr. Cluck previously raised concern with how the Panel refers to and reports on race in Panel documents. She informed the Panel that Ms. VanLowe and Ms. Anderson worked together to research the issue and drafted an amendment to the procedure. Ms. Anderson reported that the research she and Ms. VanLowe reviewed stressed the importance of consistently reporting race throughout documents. She added that in past Panel Review Reports, references to race were designated as a proper noun. Ms. VanLowe said that while research showed that there is not a definite answer related to this issue, there is a current movement to capitalize the race of an individual as it is a part of someone's identity and recognizes the importance of an individual's race and ethnicity .

Mr. Cluck submitted alternative language to the Panel during the meeting which read:

“When writing Review Reports or other Panel documents, and it is necessary or appropriate to note a person by color, culture, ancestry or similar factor, the Panel shall use the demographic identities preferred by the complainant or other parties to the case. Wherever possible, those parties will be asked, if they have not already used their preferred identity in materials they

submitted, whether they would like to have a race or ethnicity or other description included for them and whether the words used will be capitalized or lower case. Their choice will be respected, and used throughout documents, notwithstanding various style guide preferences.”

Panel discussion ensued regarding Mr. Cluck’s proposed language. Mr. Cluck stated that all Panel Members agree that self-identification is extremely important but that the Panel should allow the complainant the choice regarding capitalization of the term. He also added that the language he submitted covers gender identity in addition to race. Mr. Kay thanked Mr. Cluck for submitting alternative language but believes that the Panel should maintain control over how it writes its reports.

Mr. Bierman moved that the Panel adopt the amended language as written in the updated Panel procedure for Intake and Processing of Review Requests dated July 23, 2020. Mr. Sriskandarajah seconded the motion and it carried unanimously.

Ms. Anderson will circulate the updated procedure to Panel Members in final form. Ms. Doane informed the Panel that the Panel’s procedures are up for review in December 2020 and she has asked Ms. Anderson to conduct an initial review of the procedures. She asked if a Panel Member would be interested in volunteering to assist with this process. Ms. Doane added that this process would dovetail nicely with the four-year review process.

Approval of One Fairfax Statement for Panel Website: Ms. Doane reminded the Panel that at the last meeting, the Panel approved a staff memo regarding the Panel’s role in promoting One Fairfax. Ms. Anderson worked with Mr. Sriskandarajah to draft language to be published on the Panel’s website related to this topic. Ms. Anderson informed the Panel that most of the draft language was pulled from the memo that was previously approved by the Panel in June and described the layout of the draft webpage. Mr. Bierman proposed an edit to remove an extra comma under the “Access” section and the edit was accepted.

Ms. VanLowe moved approval of the draft One Fairfax language to be published to the Panel’s website. Mr. Kay and Mr. Sriskandarajah jointly seconded the motion and it carried unanimously.

Ms. Anderson will publish the finalized language to the Panel’s website.

July 21 Board of Supervisors Public Safety Committee Debrief: Mr. Kay updated the Panel on his presentation of the Panel’s 2019 Annual to the Board of Supervisors’ Public Safety Committee meeting on July 21, 2020. Mr. Kay noted that the meeting was in person and that he wore a mask while presenting. The agenda included his presentation of the Panel’s 2019 Annual Report, Mr. Schott’s presentation of the Independent Police Auditor’s 2019 Annual Report, and a progress update by the research team from University of Texas San Antonio who were selected to conduct a study into the racial disparity in use of force incidents in the county. Ms. Doane was available via conference call during the meeting to answer questions about current Panel operations. He said that he conveyed to the Board that the Panel is ready and

able to fulfill the important role the Board of Supervisors entrusted the Panel with to enhance transparency and promote accountability.

Panel Discussion on Recommendations and Comments Submitted to Supervisor Lusk: Ms. Doane reminded the Panel that Supervisor Lusk asked the Panel to submit comments and recommendations on police reform efforts as he is requesting input from a wide variety of stakeholders and creating a matrix and website. Panel Members individually submitted their comments and recommendations to Ms. Doane who then compiled them for submission to Supervisor Lusk. Ms. Doane made clear that the recommendations are not an official document of the Panel as it has not been formally approved. Ms. Doane opened the floor for discussion on the items and whether the Panel would like to adopt the recommendations or formally consider them during the Panel's Four-Year Review.

Mr. Kay noted his preference to roll the recommendations in with the Four-Year Review. Mr. Gallagher agreed with Mr. Kay and proposed that a Panel discussion be held prior to the Panel formally making the recommendations. Mr. Bierman also agreed and noted that the Virginia General Assembly will be meeting in special session in August and that some of the topics subject of the recommendations could be discussed and the landscape could change. Ms. Doane asked that Mr. Bierman and Mr. Aguilar take into consideration the listed recommendations and comments and consider them during the Four-Year Review process.

Panel Discussion on Memorandum Submitted by Mr. Cluck: Mr. Cluck pointed the Panel's attention to the memo he submitted to the Panel for their review which was included in the meeting materials packet.

Mr. Bierman noted his appreciation that the FCPD releases certain statistics such as use of force and arrest data and said that the Panel supports the sharing of additional information and data. Mr. Aguilar summarized Mr. Cluck's memo in stating that Mr. Cluck finds it problematic how the FCPD portrays individuals who commit criminal violations and that it seems that through the release of photos, it provides for a perception that minorities are committing the majority of crimes. Mr. Aguilar expressed his appreciation to Mr. Cluck for submitting his memo to the Panel and believed that the Panel should discuss how the FCPD communicates with and polices the community. Mr. Bierman agreed that circulating pictures of individuals who commit criminal violations is troubling.

Ms. Doane thanked Mr. Cluck for submitting his memo and for his participation on the Panel.

Panel Discussion on Complaint CRP-20-10: Ms. Doane informed the Panel that IAB does not regard the subject complaint as a new complaint since the complainant submitted an identical complaint to the FCPD prior to December 6, 2016. IAB informed the Panel that it does not intend to re-investigate the complaint. Therefore, the Panel would be unable to review CRP-20-10 if a review request is submitted. Ms. Doane suggested that the Panel inform the Board of Supervisors of this matter as the Panel has proceeded in this way in the past.

Mr. Kay reminded the Panel of a complaint that was received in 2019 which involved an FCPD animal control warden lodging a complaint against his supervisor. In that instance, the FCPD informed the Panel that it would not investigate the complaint as it follows the internal employee grievance procedure. Therefore, the Panel informed the Board of Supervisors and followed up on this issue during a quarterly meeting. He expressed his agreement with Ms. Doane's plan of action.

Mr. Kay moved that the Panel inform the Board of Supervisors that the Panel is at an impasse and does not have anything to review related to CRP-20-10. Mr. Bierman seconded the motion and it carried unanimously.

Ms. Doane asked Ms. Anderson to draft a letter to the Chairman of the Board of Supervisors on this matter.

Supervisor Lusk and Panel Listening Session: The Panel was invited to participate in a virtual listening session hosted by Supervisor Lusk, who is chair of the Board of Supervisors' Public Safety Committee. Ms. Doane informed the Panel that the event will be held virtually on the Crowd Cast platform and is scheduled for Wednesday, July 29 at 6:30 p.m. Ms. Anderson provided the Panel with logistical information about the event and the opportunity for Panel Members to schedule test runs prior to the event to gain familiarity with the platform. Ms. Doane added that she hopes the Panel can participate in at least one more event like this. Mr. Bierman asked if the event has been noticed to the public. Ms. Anderson replied that the event has been posted on the county's public meetings calendar, on the Panel's and Independent Police Auditor's websites, and in hard copy outside of the Office of the Independent Police Auditor. She added that the event will be advertised on Supervisor Lusk's social media platforms, and to individuals and community organizations. Ms. Norman-Taylor asked about the Crowd Cast Platform. Ms. Anderson replied that Supervisor Lusk's office likes to use the platform as it is very interactive and great for hosting town hall meetings. She added that to join the meeting, there is a meeting link.

Ms. Doane asked that during the event, Panel Members keep in mind that the Panel is gathering information for its four year review and the Panel should be actively listening to the public so that the Panel can make recommendations based on the community's input. *Ms. Doane asked that Panel Members submit contact information for groups or individuals that they would like to notify about the event.*

Mr. Aguilar requested that the Panel respond compassionately to the public. He added that there may be comments that entice Panel Members to defend and justify the Panel's work but that it is most important during this time to actively listen. Ms. Doane agreed and asked the Panel to guard against being defensive.

New Business:

Mr. Bierman asked if Major Kim could clarify the FCPD's current procedure to allow for Panel Members to review FCPD investigation files during the COVID-19 pandemic. Major Kim replied that the FCPD is operating on modified staffing within the headquarters building and that they are being very cautious and sensitive to the needs of the populations most vulnerable to the virus. He added that he is continuing to work through logistics and that safety is his number one priority as Panel Members review investigation files. Ms. Doane added that she and other Panel Members would identify as vulnerable and said that any accommodations to make Panel Members feel more secure would be great. Major Kim replied that prior to his position in IAB, he worked on the FCPD's COVID response plan and safety officer program to enhance department wide safety measures and safety during encounters with the public. Major Owens added that FCPD safety officers conducted a walkthrough of the IAB suite to implement safety measures such as a plastic shield barrier to physically separate the assigned investigator from Panel Members and sanitizing heavy traffic areas in between uses.

Mr. Aguilar asked if the FCPD would reconsider giving Panel Members electronic access to the investigation files so that they would not need to leave their homes. Ms. Norman-Taylor added that she has reviewed an FCPD investigation file during the COVID-19 pandemic and confirmed the safety precautions described by Major Owens and she felt comfortable while reviewing the file, but it would be great if the FCPD could further explore providing electronic access to Panel Members. Ms. Doane added her concern is checking in and using the elevator.

Ms. VanLowe recognized the passing of Mr. Aguilar's father from COVID-19 a few weeks prior to the Panel's meeting. On behalf of the Panel, Ms. VanLowe extended condolences to Mr. Aguilar for his loss. Mr. Aguilar thanked the Panel for their support during this time and that he is choosing to be integrated in certain activities to honor his legacy.

Mr. Aguilar reminded the Panel and the public about responding to the census and explained it is the basis for accurate data, reporting, and statistics which directly impact the work of the Panel. The response period was extended until October 31.

Mr. Sriskandarajah moved to adjourn the meeting. Mr. Gallagher seconded the motion and it carried unanimously. The meeting adjourned at 8:23 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, August 27 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.