

Police Civilian Review Panel

September 10, 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:

Complainants  
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 September 10<sup>th</sup> 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 7:01 p.m. and all Panel Members were present.

Ms. Doane welcomed everyone to the Panel's September 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 County, behind the Government Center.

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; however, she experienced technical difficulties and was unable to provide her location during this time.

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 a vote of eight with Ms. Norman-Taylor unable to cast her vote due to technical difficulties.

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 129 112 6776 as noted in the Public Meeting Notice. Mr. Sriskandarajah seconded the motion and it carried by a vote of eight with Ms. Norman-Taylor unable to cast her vote due to technical difficulties.

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. Ms. VanLowe seconded the motion and it carried by a vote of eight with Ms. Norman-Taylor unable to cast her vote due to technical difficulties.

Panel Review of CRP-19-29: Ms. Doane provided an overview of the subject complaint and noted that the Panel conducted its first review of the complaint at its meeting in March 2020. At the conclusion of the review meeting, the Panel requested the FCPD conduct further investigation into the complaint by conducting a search of the officer's publicly available social media profiles to ensure an absence of racial bias, interviewing the officer's coworkers for evidence of racial bias, reviewing data related to the officer's community contacts and stops in the same manner that the FCPD reviewed arrest statistics, and comparing the circumstances and claims of the current complaint to any prior complaints against the officer. Ms. Doane referenced the FCPD's public supplemental report consisting of two letters dated June 10, 2020 and August 17, 2020 responding to the Panel's request for additional investigation.

### Complainant Statement:

Ms. Doane asked the complainant if he read the correspondence from the FCPD related to the additional investigation, which were included in the meeting materials. The complainant responded that he has not had time to review the materials. The complainant thanked the Panel for its commitment to the process and for reviewing the investigation into his complaint regardless of the outcome. Ms. Doane thanked the complainant for his remarks and gave Panel Members the opportunity to ask questions.

### Complainant Questioning:

Panel Members did not have questions for the complainant.

### FCPD Statement:

Major Kim referred to the FCPD's letters dated June 10, 2020 and August 17, 2020, which summarized the FCPD's findings regarding the Panel's request for additional investigation. He stated he did not have additional comments.

### FCPD Questioning:

Mr. Bierman asked who would be interviewed if the FCPD was investigating a sexual harassment complaint against an officer. Chief Roessler replied that, by policy, the complaint would be referred to the County's Office of Human Rights and Equity Programs (OHREP) for an initial investigation and that the officer in question would be compelled to participate in an interview with OHREP. He added that after the investigation process, OHREP would determine whether there was a violation and the FCPD would then begin their own investigation. The Chief explained that the investigation process follows what the facts provide.

Mr. Bierman explained that he disagreed with the FCPD's conclusion that there is no probable cause related to the allegation of bias, which is needed to interview other employees. Mr. Bierman said the Panel did not believe that the allegation of racial bias was sufficiently investigated so it requested additional investigation. He was dissatisfied that the FCPD chose not to interview the officer's colleagues and instead pointed to the fact that no other officers, who have a duty to report bias, had come forward. The Chief replied that he respected Mr. Bierman's comments but that the premise is to look at other cases and contacts involving the subject officer as a foundation and the investigation did not reveal a nexus. He referred to the Law Enforcement Procedural Guarantees Act. The Chief explained that during the additional investigation, no evidence was revealed to lead to suspicion that the officer was biased. Mr. Bierman appreciated the work the FCPD did in conducting the additional investigation but explained that it was not the right framework to lead to the conclusion that racial bias did or did not play a role in this incident.

Major Kim provided information on the investigative methodology specific to the investigation into complaint CRP-19-29. He explained that there were challenges due to the fact that the

FCPD's current records management system is not designed to produce reports with the requested information. Major Kim informed the Panel that an intensive manual search of the officer's contacts was conducted. However, they could not reliably recreate past events since some information was not captured in the system. The investigation revealed that there was a single case that matched exactly what the Panel requested, and it was the incident involving the complainant. Major Kim reminded the Panel that the involved officer was a detective in the property crimes division from January 2018 through May 2019 and the only time he was on patrol was during overtime assignments.

Mr. Kay asked if the criminal investigation detectives are broken up into squads. The Chief replied that the criminal investigation section is primarily administrative in nature and reports to a Police Second Lieutenant. Members of that unit are generally reconstructing cases with collected evidence to build probable cause to be able to obtain and execute a warrant. Mr. Kay asked how many individuals comprise the criminal investigation section of the Reston district station. The Chief replied that he did not have the roster to refer to but at least five individuals make up the squad.

Mr. Aguilar referenced arrest statistics for the subject officer. He said that African Americans made up 33% of the officer's arrests in the given period, while they made up 30% of arrests in the entire Reston District station. Mr. Aguilar also cited that the population of African Americans within the patrol area of the Reston district station is 6%. He asked whether there is a certain statistical threshold the FCPD uses to look for racial bias or patterns in arrest statistics. Major Kim cautioned against comparing arrest statistics to the population as it does not take into account individuals that do not live within the boundaries of Fairfax County and does not translate into a fair assessment. The Chief informed the Panel that the FCPD is in process of selecting a new RMS vendor.

Mr. Aguilar asked what is the threshold that the FCPD looks at for arrest statistics. For example, if an officer's arrest statistics for a certain group is overrepresented by 20%, is there a threshold that would warrant additional review or does this not exist in the department at this time? The Chief replied that the FCPD reviews each officer's record specifically related to these types of complaints, and per the Panel's recommendation, a crime analyst provides an analysis of the relevant data. The Chief referenced the study that is being conducted by the University of Texas San Antonio (UTSA) and hopes that the study will provide recommendations on how to better leverage the early identification system.

Ms. Doane recognized Ms. Norman-Taylor and asked her to identify herself and state the location from which she was participating. Ms. Norman-Taylor introduced herself as a Panel Member and stated she was participating from Lorton, Virginia.

Ms. Norman-Taylor expressed her concern regarding the FCPD's inability to accurately retrieve the data requested by the Panel due to the current RMS system but is glad to know that the FCPD is working to address the issue and put a new system in place. The Chief replied that as of

July 1, information and data captured in the “summons module” of the RMS is now collected from all law enforcement entities by the state.

Ms. Doane referenced the FCPD investigation file and noted that the investigation reviewed data related to the subject officer’s community contacts and stops on a narrow basis to match a similar type of contact as the complainant alleged in his complaint. There were three instances listed in the file involving four individuals and it was unclear whether those were consensual encounters with or without reasonable suspicion or probable cause. She asked why those instances were not included in the analysis. The Chief discussed different modules used by FCPD officers during stops and field contacts. Ms. Doane referenced the Panel’s request for additional investigation to examine the officer’s community contact and stop data by race and it would have been helpful to see stop data when reasonable suspicion or probable cause was present in a stop. She recalled only seeing consensual stops included in the investigation file. Major Kim referenced the three instances and it was unclear whether the officer made consensual contact without probable cause or reasonable suspicion due to the lack of information related to these events in the specific module.

Ms. Doane referred to the FCPD’s original investigation into the complaint and recalled it only reviewed data related to the officer’s arrests. The Chief said the file should have included traffic stop data for the subject officer as well. Ms. Doane acknowledged that the arrest data included in the file was broken down by race and ethnicity but that the Panel did not feel that it was conclusive and requested analysis of data related to stops and community contacts. She asked why the three consensual stops, even though unclear whether reasonable suspicion or probable cause existed, were not broken down by race? Major Kim replied that information should be available. Ms. Doane explained that it would have been helpful to have statistical analysis broken down by race for stops that did not precisely match the incident subject of the complaint to give the Panel a broader view. The Chief invited the Panel to review the different systems and modules used by FCPD officers.

Ms. Doane asked why the analysis was for a one-year period of time when the subject officer has been with the department for approximately six years? The Chief replied that if the Panel would like for the analysis to cover a larger time period, the FCPD would do so.

Ms. VanLowe asked what would have been the next steps if there was a nexus found between the review of data and the officer’s actions, what would have been the next steps? The Chief said that if a nexus was determined, and if there is reasonable suspicion or probable cause that illegal activity occurred, the officer would be relieved of law enforcement duties and placed on administrative leave while the investigation takes place.

Ms. VanLowe asked if the Chief can see that the way information was presented challenges the community member’s trust of the FCPD. The Chief replied that the articulation related to the data and information captured by FCPD modules was not clear and he invited Panel Members

to review modules in the RMS and other documentation to better understand what information is collected and captured.

Mr. Sriskandarajah explained that the complainant videotaped the encounter on his cellphone. Without video of the encounter and only relying on data and statistics provided in the investigation, the record would be very sterile. He asked how the FCPD intends to address this issue in a global way. The Chief replied that the FCPD uses footage captured on in-car video systems as evidence and that the body-worn camera program is currently being implemented. The Chief replied that this evidence and documentation can be used to measure officer performance and that they are enhanced accountability tools.

Mr. Bierman asked whether it could be the case that an officer has good instincts when it comes to proactive policing and often gets it right, but only with individuals who are black. Major Kim replied that each complaint is reviewed individually and that this is a valid concern. The Chief added that the investigation revealed a sustained violation and that the incident began with a glance and resulted in a cascading set of events on the part of the officer. Mr. Bierman agreed with the cascading problems but asked if this event would have occurred if the complainant was white. The Chief replied that this case demonstrates that the officer was in violation of departmental policy and was disciplined accordingly.

Mr. Kay asked if the Chief would be willing to further investigate the third bullet item requested by the Panel. The Chief replied affirmatively and asked for a Panel Member to review the data captured in the file related to the modules and how the investigation considered narratives and other items. Mr. Kay asked if the FCPD would seek additional data or present the current data in a more compelling fashion. The Chief replied that if the Panel is not satisfied with the time frame of the data, the time frame could be expanded.

Ms. Doane referenced the FCPD's supplemental public report detailing the findings of the additional investigation, specifically the finding that the officer complied with General Order 603.4. She asked whether the officer complied with General Order 603.4 even though the officer insisted the complainant provide his address during a consensual encounter and the Chief characterized that action as being "wrong." Major Kim reviewed the sustained violation. Ms. Doane noted it was her recollection that the only sustained violation was related to General Order 201.13 on human relations. Major Kim confirmed that the officer was found to be in violation of General Order 201.13 and in compliance with General Order 603.4.

Ms. Doane thanked Chief Roessler, Major Kim, and the complainant for attending and participating in the review meeting.

#### Panel Deliberations:

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

### Panel Findings:

Mr. Kay moved that the Panel advise the Board of Supervisors that it is the Panel's judgement that the investigation is incomplete and recommend additional investigation into the allegation of racial profiling by interviewing the officer's coworkers at the Reston criminal investigation section for evidence of racial bias and reviewing data related to the officer's community contacts and stops in the same manner the FCPD reviewed arrest statistics. Mr. Sriskandarajah seconded the motion and it carried by a vote of seven with Mr. Cluck and Mr. Gallagher voting "Nay."

Mr. Kay suggested that the Panel include a recommendation in its report that data be collected on community contacts and stops in a meaningful way that can be better analyzed in these instances.

*Ms. Doane and Mr. Bierman will draft the initial report for Panel consideration at the October meeting so that there is ample time for Panel Members to provide input and recommendations. She added that the recommendations will not be communicated to the Board of Supervisors until the report is approved.*

Ms. VanLowe suggested the Panel include a recommendation in its report for the FCPD to develop an evidence based process for examining racial bias and profiling issues and seek outside assistance to develop the process based on current best practices. Ms. Doane replied that all Panel Members are encouraged to submit recommendation to be included in the review report and that the Panel will vote on each recommendation individually.

Panel Review of CRP-19-19: Panel Members discussed deferring the review of CRP-19-19 to a different meeting. Ms. Doane asked to hear from the complainant prior to Panel deciding to defer the review. The complainant was present and indicated she would like to postpone the review meeting and reschedule for a different date. She explained she wants to be heard by the Panel.

### Motion to Defer Panel Review of Complaint CRP-19-19:

Mr. Kay moved to defer Panel consideration of complaint CRP-19-19 for a meeting date to be determined. Mr. Sriskandarajah seconded the motion and it carried by unanimous vote.

*Ms. Doane instructed Ms. Anderson to reach out to Panel Members regarding rescheduling the review meeting for CRP-19-19.*

Approval of August 27 Meeting Summary: Ms. VanLowe moved approval of the summary of the Panel's August 27 meeting. Mr. Gallagher seconded the motion and it carried by unanimous vote.

### New Business:

Ms. Doane referenced a draft Action Item and Panel Bylaws she distributed to Panel Members and asked for Panel Members to send comments and concerns to her as soon as possible since the Board of Supervisors will be considering the item in the near future.

Ms. Doane announced that the Panel's meeting schedule for the remainder of the year is: September 24, October 22, November 12, and December 10.

*Mr. Kay asked Ms. Anderson to send an email with a reminder of the meeting dates.*

**Adjournment:**

Mr. Kay moved to adjourn the meeting. Ms. Norman-Taylor seconded the motion and it carried unanimously.

The meeting adjourned at 9:09 p.m.

**Next Meeting:** The Panel's next meeting will be held on Thursday, September 24 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.