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# Police Civilian Review Panel

## Meeting Agenda

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Location: Conducted electronically due to COVID-19 Pandemic

Date: May 6, 2021

Time: 7:00 pm

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### Agenda details:

#### I. Call to Order

#### II. Agenda Items

- a. Motions to Conduct Electronic Meeting
- b. Introduction of Chief Kevin Davis
- c. Approval of April 1 Meeting Summary
- d. Review of CRP-20-24
- e. Approval of Subcommittee Initial Review Report for CRP-21-02
- f. Consideration of Good Cause in CRP-21-04
- g. Consideration of Pending Litigation in CRP-21-05
- h. Approval of Review Report for CRP-20-20 and 20-21

#### III. New Business

#### IV. Adjournment

#### Panel Meeting Schedule (Tentative):

- June 3, 2021 at 7:00 pm
- July 1, 2021 at 7:00 pm
- August 5, 2021 at 7:00 pm

Police Civilian Review Panel

April 1, 2021

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:<sup>1</sup>

Cheri Belkowitz

Todd Cranford

Jimmy Bierman, Acting Chair

Frank Gallagher

Dirck Hargraves

Doug Kay

Shirley Norman-Taylor

William Ware

Others Present:

Capt. Todd Billeb

Lt. Matthew Dehler

Anita McFadden, Interim Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

Lt. Camille Stewart, FCPD

NOTE: The Panel's April 1 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 except for Mr. Todd Cranford, who joined at 7:04 p.m. Mr. Bierman welcomed everyone to the Panel's April 1, 2021 meeting and noted a few housekeeping rules.

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

Ms. Belkowitz was present and participated from Fairfax Station, Virginia.

Mr. Bierman was present and participated from McLean, Virginia.

Mr. Cranford was present and participated from Charleston, South Carolina.

Mr. Gallagher was present and participated from Burke, Virginia.

Mr. Hargraves was present and participated from Kingstown, Virginia.

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<sup>1</sup> One Panel seat was vacant for this meeting.

Mr. Kay was present and participated from Aspen, Colorado.

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

Mr. Ware was present and participated from Alexandria, Virginia.

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

Mr. Bierman 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. He 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 1-844-621-3956 and entering access code 129 943 3799 as noted in the Public Meeting Notice. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Mr. Bierman 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. Kay seconded the motion and it carried by unanimous vote.

Introductions of New and Current Panel Members: Mr. Bierman announced that there were two new members of the Panel appointed by the Board of Supervisors. The two new members, Ms. Belkowitz and Mr. Hargraves, introduced themselves and described their backgrounds. Mr. Bierman noted that the new Panel Members should listen to the audio from the last Panel meeting, which reviewed Panel processes, and that they should also review the Panel's foundational documents. He outlined the training resources available to Panel Members and noted that the Panel will be seeking out more training in the future.

Approval of February 25 Meeting Summary: Mr. Kay moved approval of the Panel's February 25 meeting summary. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Approval of March 4 Meeting Summary: Mr. Gallagher moved approval of the Panel's March 4 meeting summary. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Review of CRP-20-20 and CRP-20-21:

Mr. Bierman provided an overview of the incident subject of the complaint, which was originally reviewed by the Panel in September 2020. The complaint involved two officers responding to the home of the two Complainants, who are sisters, at about 4:00 a.m. The address of the Complainants' home was provided in two calls to 911, which described a domestic dispute that was waking up neighbors. The Complainants were awakened by banging

at their door. The Complainants alleged there was no explanation for the banging at the door, nor did the individuals identify themselves as police. One of the Complainants called 911 and the dispatcher informed her that the individuals at the door were FCPD officers and the dispatcher sent the officers back to the home. According to the complaint, the officers did not identify themselves.

Mr. Bierman stated that at its first Review Meeting on this complaint, the Panel sent the investigation back to the FCPD with four directives. The investigation needed to explain the gulf between the General Order (G.O.) and the results of the investigation. He said that G.O. 604.1 states, in the portion on Responding to Domestic Disputes, that responding officers shall identify themselves as police officers, explain the reason for their presence and request entry into the home. The Panel sent it back because it appeared undisputed that the officers did not identify themselves when first approaching the home. The Panel also said that the FCPD should interview additional witnesses including a neighbor listed in the Complainant's statement, survey the scene, and conduct additional investigation as needed.

The FCPD completed its additional investigation and provided the Panel with a new report outlining its determination and a copy was provided to the Complainants.

*Complainant Statement:*

One of the Complainants said she will be making remarks on behalf of her and her sister. She said that, during the last Review Meeting, the police explained that they investigated and did nothing wrong. However, the majority of Panel Members did not agree and requested additional investigation. She said that once again the police investigated themselves and found that they did nothing wrong. She said that she wanted clarification as to why Section A as noted in the supplemental report refers to the responsibilities of the DPSC and not the police department.

She said that the officers that banged on their door never verbally identified themselves. During the first Review Meeting, the FCPD said that normal procedure in responding to a domestic violence call was to not immediately identify themselves. Then they said they did identify themselves in their March report. The Complainant asked why there are inconsistencies.

She said that in the first report, the FCPD explained that the officers returned to the residence due to a second call from a community member reporting sounds of a domestic dispute. In the latest report, the FCPD said they returned in response to the Complainant's 911 call to ensure the Complainants were aware that they were police officers at the door.

The Complainant said that she asked the man in front of her three times if he was a police officer without a response. She said he was wearing dark clothing, a beanie, glasses, and did not display a badge of authority. She said that the FCPD claimed in its May 2020 report that identifiable witnesses were interviewed but then at the first Panel meeting, and in its March 2021 report, the police claimed they were unable to speak with any witnesses. She said this negligent approach has compromised the finding.

She said the scene at their residence did not match the description of the scene by the community member. She said the Complainants do not understand what is described in the report as a small, elevated landing, and how that limits the officers' safety as they approached. The Complainants would like to see the pictures of the landing that were added to the investigative file.

The Complainant said that the FCPD has not provided an answer to their question about policy. They are asking what protocol the police should have followed upon arriving at someone's residence after 4:00 a.m. without, at any point, announcing themselves, or providing credentials establishing their identity.

The Complainant said that she was scared to call the police when she was involved in a car accident following this incident. She said she and her sister are traumatized because they have not been presented with truthful accounts of how the officers acted that night.

*Complainant Questioning:*

Ms. Norman-Taylor asked are you saying that the officers were not, in fact, in police uniform, or were not from what you could see from your vantage point? The Complainant stated that she was only able to see one individual and he was not clearly visible. The second individual was positioned behind the glass door and so she was not able to see him.

Ms. Norman-Taylor asked when you did open the door, could you see the uniform? The Complainant stated that they never fully opened the door. She said it was dark and that there was no indication that he was a police officer. The FCPD reports claim he had an identifiable badge and clothing on.

Mr. Gallagher asked did you respond when the officers first knocked at door? The Complainant stated that she did not hear them the first time, but her sister heard them banging. No one said anything from inside or outside of the door.

Mr. Gallagher asked if anyone turned on the light? The Complainant stated that the peep hole and cameras were installed after the incident. At the time, the Complainants did not turn on the light.

Mr. Ware asked how could you have designed the situation to reduce the trauma that you and your sister experienced and give you a sense of safety and security? The Complainant answered that the officers would have identified themselves immediately and clearly.

Mr. Hargraves asked if the police had responded and banged on the door during day, rather than in the early morning, would that have been less traumatic? The Complainant answered that they were asleep and did not expect violent banging at the door at 4:00 a.m. He asked was it accurate that you could not clearly see the individuals at the door but were still able to describe their approximate age and ethnic background, and that they had a dark uniform? The

Complainant answered that she tried to take in as much information as possible and described what she paid attention to in a moment of distress.

Mr. Hargraves asked was there reason to doubt the individuals were police officers after the dispatcher had confirmed who they were? The Complainant said that the individuals were outside the door while she was on speaker phone with the 911 dispatcher, and they still did not say anything to identify themselves.

Mr. Cranford asked if any of the neighbors heard or witnessed what happened and if the police tried to contact them? The Complainant responded that she gave the neighbor's information to the police immediately after the event. She said the neighbor told her that she did hear things and was frightened. No one had contacted the neighbor, which is the opposite of what the FCPD said. She has not spoken with the neighbor in a long time. Other neighbors have since moved away.

Mr. Cranford asked is it your understanding that the FCPD actually contacted and spoke with witnesses or that they attempted to contact witnesses? The Complainant responded that in last year's report the FCPD said they had interviewed identifiable witnesses, but this year, they said that their efforts have failed and are unable to reach neighbors.

Mr. Kay asked, after you made a complaint, did you speak with investigators? The Complainant said that on the day of event she called the FCPD and the person she spoke with was confrontational and aggressive and did not provide information on how the police were supposed to act. The FCPD contacted the Complainants as part of their initial investigation, and they provided their statement. This year, the FCPD contacted them one time about their neighbor.

Mr. Kay asked if the Complainants received two letters from the FCPD? The Complainant responded that they received the findings letter in May 2020 and the second letter was shared by the Panel. Mr. Kay asked did anyone call you to explain what the letters meant or to answer your questions? The Complainant said that no one has contacted them about the letters.

Mr. Hargraves asked how many times did the officers knock on the door? The Complainant said that there was continued banging. He asked when the banging stopped, did it start up again? The Complainant said they banged on the door and then departed. She called 911 and they returned when she was on the speaker phone with dispatcher.

Mr. Hargraves asked, when you noticed your sister was in distress and thought you might have to call an ambulance, did any of the officers offer to call an ambulance for you? The Complainant recalled saying "what have you done to my sister, now I will have to call for help." She heard the person's voice from behind the door say, "Oh, they need help." She said she was frightened that more individuals would arrive and so she told them that she wanted them to go away. He asked is it accurate that the person offered to call for assistance, but you declined? The Complainant said that they were echoing what she said.

Mr. Bierman asked would we be here if the first time they approached your door they banged on it and said “open up, it is the police”? The Complainant said they would not be here if the police had identified themselves properly. She said they have wasted resources trying to understand why the police acted this way and why they portray a false narrative about what happened that night.

Mr. Bierman asked are you aware that in your call with the dispatcher that the man you saw was in a dark uniform? The Complainant stated that she did not recall and that she was trying to describe that they were wearing dark clothing.

Mr. Bierman asked if the door opens inward or outward? The Complainant stated that the glass door opens outward but the main door opens inward. Mr. Bierman asked if someone was standing on the landing and they were to the left and the door was opened slightly, would they be hidden? The Complainant said that the individual behind the glass door was in the far corner of landing and the individual closer to the door opening, could have stepped down on one of the stairs to be more visible.

Mr. Bierman said that he heard on the police radio that the dispatcher told the officers to identify themselves but did not hear this on the 911 phone call. He asked did you hear the officer make a statement to the dispatcher that they did identify themselves? The Complainant said she did not hear the individuals say anything, nor did she hear any radio static.

Mr. Gallagher asked did you have a chain lock on your door? The Complainant answered affirmatively. He asked did you take off the chain after the dispatcher said it was officers at your door? The Complainant said they did not.

Mr. Gallagher asked do you think it is unreasonable to think you could identify them with the chain on and when it is dark? The Complainant stated that the only time he identified himself is after she asked him several times. He did not readily provide it and the clothing she could see did not indicate who he was.

Mr. Bierman thanked the Complainants for participating in the review process.

*FCPD Statement:*

Captain Billeb from the FCPD introduced Lieutenant Dehler who conducted the initial investigation and the additional investigative steps. Lt. Dehler provided a summary of the facts of the case and the investigation.

Lt. Dehler reported that the on the day of the incident, the Department of Public Safety and Communications (DPSC) received a call at approximately 4:00 a.m. reporting possible domestic violence and loud noises coming from an address in Annandale. The caller did not identify himself but said that there were sounds of people physically fighting. The DPSC created the event at 4:04 a.m. and officers were dispatched at 4:14 a.m. When the officers arrived, they knocked loudly and left when no one came to the door. DPSC received a second call at 4:22

a.m. As they were returning to the residence, the Complainant called 911 at 4:26 a.m. The Complainant was advised that the people at the door were the police. The Complainant asked why they did not identify themselves verbally and the dispatcher answered that, if no one comes to door, they might not. The second officer told the dispatcher that they had knocked and identified themselves. Officers asked if they should call rescue and that request was declined. It was established that both officers were in uniform with badges of authority displayed.

Lt. Dehler summarized the requests made by the Panel and the steps taken by the FCPD in the additional investigation. He said they photographed the scene and attempts were made to contact the immediate neighbors. The FCPD left business cards for neighbors with no call back. He also called the identified witness and left a voicemail but did not receive a call back.

The FCPD analyzed how the officers could have been reasonably identified and concluded that community members can identify officers by their uniforms, sounds of the radio, and the police car outside (which was not in view of the door during this incident). The investigation established that the officers verbally identified themselves, however, it is unclear when, and it is possible that they did not do so the first time they knocked on the door. The officers' actions were compared to the G.O. and were found to be in compliance.

*FCPD Questioning:*

Mr. Kay asked are any of the police tactics described in the investigation were confidential and can tactics be discussed in public tonight? Capt. Billeb said as a general rule they do not discuss tactics but can discuss general approaches.

Mr. Kay asked do you agree that the policy says that officers shall identify themselves when responding to a domestic violence situation? Capt. Billeb said he agrees that is exactly what it says.

Mr. Kay asked if it was true that when the officers got there and pounded on the door that they did not verbally announce themselves? Capt. Billeb said that they did not establish whether a verbal announcement happened. He said the FCPD needs to look at the G.O. and more clearly define the difference between identify and announce so that the expectations are clear.

Mr. Kay asked do you agree it might not be tactically safe to announce in this type of situation? Capt. Billeb replied affirmatively. Mr. Kay asked if the FCPD discussed safe police tactics alongside the language in the G.O. that officers "shall identify"? Capt. Billeb said we did discuss how they approached the door and agreed that, had someone come to the door, the officers would be in clear violation. Under the circumstances, we could not definitely determine if they announced.

Mr. Hargraves asked is the badge on left side and, if the officer is standing in front of a cracked doorway, it is possible that the badge could not be seen? Capt. Billeb answered affirmatively.



Mr. Hargraves asked if it is dark, can it be difficult to determine if it is a police uniform, or specifically an FCPD uniform? Capt. Billeb stated that he thinks that is a reasonable assessment.

Ms. Norman-Taylor mentioned the G.O. plain language that officers “shall identify” and asked if it was true that if officers knock on a door and no one answers, they do not have to identify themselves? Capt. Billeb said they discussed the language of the G.O. He said that common understanding in law enforcement is that you identify when someone is there, as opposed to knock and announce, which you do even if no one is there to hear you. He said that the FCPD needs to revise the G.O. to ensure it reflects best practice and the intent of the policy is clear to officers. Capt. Billeb said that the FCPD would have preferred that the officers in this situation knocked and announced on the first approach.

Mr. Ware said that the officers received information from the dispatcher and then encountered a scene that was not described by the caller. He asked what should officers do in this scenario? Capt. Billeb said it is not uncommon for officers to encounter a scene that does not match the dispatcher’s description. Officers should take steps to clarify it and, in this case, the officers did so by verifying the address and confirming that the complaint did not want to be seen. They knocked on the door to confirm or dispel the call.

Mr. Ware asked if there were other lessons learned? Capt. Billeb said that communication is important during the complaint process and that an explanation, in addition to the letter, would have been helpful.

Mr. Ware expressed his concerns that the primary officer stated in the investigative report that he could not definitively recall if he knocked and announced but then the officer later says during the interview that he did not announce.

Ms. Norman-Taylor mentioned the practice of prank phone calls that get police response when nothing is going on. Based on what we know now in hindsight about this incident, this was the wrong home and yet the police received two different calls that there was activity at this home. She asked when you have cases like this do you try to figure out who did this and why? Capt. Billeb said that the practice is called swatting and that many characteristics of this call, including the community member calling twice, was not consistent with swatting calls.

Mr. Bierman said that the G.O.’s language is that officers shall identify themselves, explain the reason for their presence, and request entry into the home. He asked if the language could be reworked to disentangle the three clauses? Capt. Billeb answered affirmatively and said that they will review and reconsider the language.

Mr. Bierman asked why Beckman v. Hamilton from the 11<sup>th</sup> Circuit was cited? Lt. Dehler said that he included it to provide context of what officers face when arriving at a scene and to give perspective on what the courts have held in terms of identifying versus announcing. Mr. Bierman said the case is not precedential and that he disagreed that it supported the FCPD’s position in this case.

Mr. Kay said he hopes the FCPD is taking a look at swatting incidents and how to address them. He asked if the FCPD can trace the calls made? Capt. Billeb said that there is a protocol at the call-taking center on swatting events. In this case there was a local phone number, while in swatting calls there is usually no return phone number. Mr. Kay asked if the FCPD called the number back to ask what he was doing? Capt. Billeb said the policy is that if someone wants to be anonymous, the FCPD will not contact the caller again. Mr. Kay recommended that the FCPD reconsider that policy as the Complainants were harmed in this case.

Mr. Bierman asked if there was anything to prevent the FCPD from contacting Complainants with respect to the investigation, or providing additional context and explanation in the disposition letter? Capt. Billeb said they can look at the content of the letter and make it more personable and they will consider contacting the Complainants.

Mr. Bierman asked if the G.O. said “announce” rather than “identify,” and it was a clear violation, what would be the kind of discipline if a G.O. was not followed properly? Capt. Billeb said that he could not guess what it would be for a specific infraction, but it could include anything from oral counseling to a written reprimand to suspension or termination.

Mr. Bierman thanked the FCPD representatives for their participation.

*Panel Deliberations:*

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

Mr. Bierman reiterated that Panel Members are not independent investigators, and the Panel has authority to consider if the investigation is complete, thorough, impartial, accurate, and objective. He also clarified for the Complainants that in the FCPD’s supplemental investigation findings letter, the reference to Section A pertaining to the DPSC only is accurate, but that the entire G.O. applies to the police department.

*Panel Findings:*

Mr. Bierman reviewed the finding options available to the Panel as outlined in its Bylaws. He also summarized the recommendations discussed by Panel Members:

- that the FCPD reviews and revises its G.O. 601.4 regarding how officers identify and announce themselves, clarify the situations when they should not announce or identify themselves and ensure that officers are trained on and implementing the policy.
- that the FCPD considers how they respond to incidents where the scene does not match the description in a 911 call, provide the necessary training to officers on these situations, and whether they can investigate calls as potential false police reports in swatting incidents.
- that the FCPD considers how it communicates the outcomes of an investigation with Complainants, both in disposition letters and in phone calls.

Mr. Hargraves moved that the Panel concur with the disposition of the case as outlined by police with the understanding that the Panel will provide recommendations as outlined by the Acting Chair with input from Panel Members. The motion was seconded by Ms. Norman-Taylor and it carried by a vote of seven, with Ms. Belkowitz abstaining.

Mr. Kay volunteered to write the draft of the report as a Review Liaison for the complaint. Mr. Bierman described the role of the Review Liaisons for the benefit of the new members.

Preparation for Review of CRP-20-24: Mr. Bierman said the Panel has another Review Meeting on May 6, 2021 on CRP-20-24. He stated that the case involved a Complainant who alleges being choked while being placed in a police car and having his seatbelt fastened. The Independent Police Auditor is reviewing the choking allegation, while the Panel will review the allegation of racial bias. Mr. Bierman instructed the Panel Members to set up a time to review the file on CRP-20-24.

New Business: Mr. Bierman informed the Panel that they may need to schedule an additional meeting in May to clear the backlog of Review Requests. Two subcommittees will meet in April on CRP-21-02 and CRP-21-05. If it is determined that both requests will move forward into a full review, the Panel will need to hold an additional meeting during the last week of May.

Mr. Bierman said that the Panel will also consider good cause for the delay in the submission of CRP-21-04 at its May 6 meeting.

He said that he expects the Panel to hold elections for a new Chair at its June 3 meeting when the ninth seat on the Panel is filled.

Mr. Hargraves asked whether Panel Members could have business cards made and Mr. Bierman stated that he will consider it.

Mr. Ware stated that it is important that the Panel be given digital access to investigative records or, at least, evening or weekend access. Mr. Bierman expressed his agreement and stated that this is a recommendation in the Four-Year Review.

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

The meeting adjourned at 9:24 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, May 6 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.

Police Civilian Review Panel

April 29, 2021

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-21-02

Members Present:

Jimmy Bierman, Subcommittee Chair

Todd Cranford, Review Liaison

Shirley Norman-Taylor, Review Liaison

Others Present:

Rachelle Ramirez, OIPA

NOTE: The Panel's subcommittee 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 Initial Disposition Subcommittee was called to order at 6:37 p.m.

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

Mr. Bierman was present and participated from Mclean, Virginia.

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

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

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

Mr. Bierman moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the subcommittee 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. He further moved that the subcommittee 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 1-844-621-3956 and entering access code 129 390 7374 as noted in the Public Meeting Notice. Mr. Cranford seconded the motion and it carried by unanimous vote.

Mr. Bierman 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. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Completion of Initial Review Report for CRP-21-02:

Mr. Bierman described the incident subject of the complaint. He stated that it appeared to be a swatting incident. An individual called 911 and told the dispatcher that someone had been shot in the shoulder and someone inside the house was still wielding a gun. FCPD officers dispatched to the address and engaged in a tactical assessment on how to approach the house given that someone was believed to be inside the house with a gun. The officers knocked hard on window and yelled that they were FCPD, according to the body-worn camera footage. Since it was 2:00 am, the resident prepared to defend himself not knowing it was the police outside and eventually came outside with his hands up, without his shirt. He later complained that the FCPD officers did not go inside and do a sweep of the house. The police said that it became clear they were at the wrong address.

Mr. Bierman reviewed the Panel's authority and the Panel's checklist that outlines the criteria for abuse of authority and serious misconduct. He said the subcommittee looks at the allegations contained in the complaint. The subcommittee also, having reviewed the FCPD investigation file, considers whether there is a scintilla of evidence that the investigation was not complete, thorough, accurate, objective, or impartial. Ms. Norman-Taylor asked clarifying questions and discussion ensued regarding the goal of the subcommittee.

The subcommittee reviewed each of the criteria in the Initial Review Report checklist. Panel members discussed specifically whether the word "careless" in the third criteria might apply. Ms. Norman-Taylor noted that the complainant said that the officers did not do a good enough job of keeping him safe. Mr. Bierman stated that the Panel may consider the criteria about "reckless endangerment". Further discussion ensued and the subcommittee members agreed that the evidence in the record simply did not support the criteria for abuse of authority or serious misconduct.

Mr. Bierman noted that this is the second swatting case before the Panel and it seems the FCPD does not have a plan to deal with these incidents. He said the caller did not face any consequences for placing the call. Mr. Cranford stated that the officers cannot be faulted for responding to an incident in an appropriate manner, despite the complainant being shaken. He also said that the FCPD may be limited in what they can do after a swatting incident based on current statutes. Ms. Norman-Taylor stated that the Panel should consider making a recommendation in regard to swatting incidents. Mr. Bierman stated that he would like to raise the issue with the Panel so that it can consider making a comment or recommendation, even though the Panel is not doing a full review in this case.

Mr. Cranford moved that the subcommittee recommend to the full Panel that it not review the Complaint filed by the complainant because it does not meet the criteria of abuse of authority

or serious misconduct. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Mr. Cranford moved to adjourn the meeting. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

The meeting adjourned at 7:12 p.m.

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# Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

## Request for Review – Basic Information

**CRP Complaint Number:** CRP-21-02

**Subcommittee Meeting Date:** April 29, 2021

### Subcommittee Members:

- Jimmy Bierman, Subcommittee Chair (Panel Vice Chair)
- Todd Cranford, Subcommittee Member
- Shirley Norman-Taylor, Subcommittee Member

**Complaint Submission Date:** Review Request received on 1/25/2021. Other Key Dates: Incident Date: 11/12/2020; Complaint to FCPD: 11/12/2020; FCPD Disposition letter: 1/18/2021

This report is subject to Federal and Virginia Freedom of Information Acts. Panel members will maintain to the greatest extent possible under the law and in accordance with the Bylaws all sensitive and confidential information not intended for a public release.

## Purpose

The Subcommittee Initial Review Report sets forth the Subcommittee's recommendation on whether the Complainant's allegation(s) meet the standard for review provided in the Panel's Bylaws. The Panel may accept or not accept the Subcommittee's recommendation on whether to review a complaint.

## Findings

The Panel's review authority states in Article VI (A)(1) of its Bylaws: "The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity and impartiality where (1) the subject matter of an Investigation is an allegation of 'abuse of authority' or 'serious misconduct' by a FCPD officer, and (2) a Review Request is filed."

The subject matter of this investigation concerns allegations by the Complainant that officers of the Fairfax County Police Department (FCPD) violated policy/procedure when responding to his home, officers did not identify themselves, and were untruthful in claiming he disobeyed commands.

The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, **does not meet** the threshold requirement for "abuse of authority" and "serious misconduct."

## Recommendation

The Subcommittee recommends that the Panel **not undertake** a review of CRP-21-02 because the complaint **does not meet** the scope of review criteria set forth in its Bylaws.

## Panel Bylaws Abuse of Authority and Serious Misconduct Checklist

Criteria Met?	Abuse of Authority and/or Serious Misconduct	Complainant Details*
No	Use of abusive racial, ethnic or sexual language or gestures.	
No	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	
No	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	
No	Reckless endangerment of detainee or person in custody.	
No	Violation of laws or ordinances.	
No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.	

**\*Confidential and sensitive information shall not be disclosed in this document. Contact the Chair or Panel Legal Counsel for questions and/or additional information.**





# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** 5/6/2021

**TO:** Fairfax County Board of Supervisors  
Chief Kevin Davis, Fairfax County Police Department  
Mr. Richard G. Schott, Independent Police Auditor

**FROM:** Fairfax County Police Civilian Review Panel

**SUBJECT:** Report of Panel Findings in case of Complaint No. CRP-20-20 and CPR-20-21

### I. Introduction

The Panel held a Panel Review Meeting on September 24, 2020, to review the Investigation concerning the events of March 8, 2020 which resulted in a complaint directly submitted to the Panel on March 16, 2020. The FCPD completed its investigation on May 21, 2020 and issued its disposition letter dated May 29, 2020. The Complainants<sup>1</sup> requested a review of the Investigation on July 28, 2020.

At the September 24, 2020 Panel Review Meeting, the Panel voted in favor of requesting that the FCPD conduct an additional investigation. The FCPD completed its additional investigation and notified the Panel by a letter dated March 22, 2021. The Panel held a second Panel Review Meeting on April 1, 2021 to consider the additional investigation. The Panel decided to not request additional review and concur with the ultimate findings of the FCPD documented in the Investigation Report as supplemented, but made clear that it would be presenting several comments and recommendations for future reports and police procedures based on unique aspects of the file.

### II. Background Facts and Review Request

At 4:00 a.m. on March 8, 2020, an anonymous caller (the “Caller”) reported to a 911 dispatcher with the Department of Public Safety Communications (“DPSC”), that he could hear domestic violence in progress. The Caller claimed his neighbors were yelling and

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<sup>1</sup> The Complainants are sisters. Their complaints are substantially the same.

fighting and that there was pounding on the walls of a townhome he shared with his neighbors. He asked that the FCPD dispatch an officer to investigate. The Caller insisted that the dispatcher keep the Caller out of it since he claimed knew the mother of those involved. The Caller directed the FCPD to an address located on Logsdon Drive in Annandale (the "Address").

Two FCPD officers (Officer R and Officer M) (sometimes collectively the "Subject Officers") arrived at the Address within five minutes in uniform displaying their badges. The porchlight to the Address was not illuminated. The front door was one story above street level, with a spiraling staircase to an elevated landing in front of the door. Officer R approached the front door; Officer M was standing nearby as backup. Officer R commenced pounding on the front door with sufficient force that his knocking could be heard throughout the Address. The investigation revealed that Officer R was relatively new to the FCPD, and that he believed that his training and experience dictated that he not announce himself at that time given that the call for service had been for a domestic dispute, so he did not announce himself. After three to four minutes of hard knocking on the door and receiving no response, the Subject Officers departed the scene at 4:14 a.m.

At 4:22 a.m. the Caller contacted 911 dispatch a second time. He insisted he still could hear people fighting and he could hear yelling and banging. The Caller insisted on anonymity and claimed his neighbors (who were fighting) were now knocking on his door. The dispatcher again directed the Subject Officers to the Address who promptly arrived and resumed knocking on the front door.

At 4:23 a.m., one of the Complainants (YB) called 911 to report loud banging at her front door and that someone was shining a flashlight into her home. YB explained that she resides at the Address with her sister. The dispatcher informed YB that the Subject Officers were the ones doing the knocking at her door and instructed YB to open the door and let the officers inside. YB was reluctant to do so under the circumstances. She reported that she had no way of knowing that the people at the front door were, in fact, police officers, but she did note that it appeared that one of the men was wearing a "dark uniform." Eventually, at approximately 4:32, YB opened the door and she claimed that, with some difficulty, she thinks she was able to identify the Subject Officers as FCPD. According to YB, the Subject Officers never identified themselves. In a contemporaneous radio transmission, the Subject Officers informed the dispatcher that they had identified themselves. YB informed the dispatcher and the Subject Officers that there was no emergency and police are not needed.

The Complainants called 911 dispatch again at 5:15 a.m. to complain about the events of the morning.

### III. Procedural Background and Panel Meetings

As explained above, on March 16, 2020, the Complainants filed a complaint with the Panel alleging the Subject Officers banged on their door excessively, did not identify themselves and were not wearing clothing from which they could be identified as police officers. On March 20, 2021, the Internal Affairs Bureau ("IAB") assigned an investigator (the "Investigator") to determine facts and circumstances surrounding the Complainants' claims. The Investigator (1) gathered relevant Computer Aided Dispatch ("CAD") messages and radio traffic, (2) collected

and reviewed dispatch recordings of the DPSC, and (3) interviewed the Complainants and the Subject Officers.

The Investigator concluded that the Subject Officers were duty-bound to make a reasonable attempt to speak to the parties at the Address. He found that the Subject Officers knocked loudly several times, and the occupants at the Address did not respond. The Subject Officers began to depart when a second call to DPSC requested officers return. This time the Subject Officers, with the aid of DPSC, persuaded the Complainants to open the door and demonstrate they were not in danger. The Investigator concluded that the repeated attempts of the Subject Officers to get the residents at the Address to answer the door was necessary for them to perform their duty. The station commander and Chief Roessler concurred with the Investigator's conclusions.

On May 29, 2020, Chief Roessler issued a disposition letter to the Complainants informing them that the investigation did not support their allegations and that Subject Officers' actions were lawful and in compliance with FCPD Regulations. Thereafter, the Complainants timely filed a review request to the Panel.

On September 24, 2020, the Panel conducted a Panel Review Meeting (the "First Meeting"). The Complainants both appeared by telephone. YB explained the events in question in detail and she answered questions of the Panel. The FCPD also appeared. The Investigator offered a summary and several IAB officers and the Investigator and answered questions. At the conclusion of the First Review Meeting, a majority of the Panel voted to request additional investigation to include:

1. Investigate and analyze the gulf between the plain language of General Order 601.4 ("GO 601.4") and the actions taken during the incident;
2. Interview additional relevant witnesses named in the complaint;
3. Analyze the scene of the events in question;
4. Conduct other such investigation as warranted.

The Investigator performed some additional investigation as requested by the Panel. He reported his conclusions in the order the of the Panel's request:

Recommendation One: General Order 601.4(C) (the "Order") states in relevant part as follows:

The responding officers [to a domestic violence incident] *shall identify themselves as police officers*, explain the reason for their presence, and request entry into the home.

The Investigator noted three times in his supplemental report that the Subject Officers "could not definitively recall if they announced their presence during their first attempt to contact [the Complainants]." (In fact, the investigation file otherwise makes indisputably clear that the Subject Officers did not announce themselves at the time of the first attempt to make contact.) Moreover, the Investigator referenced a court case<sup>2</sup> he asserted stood for the proposition "that officers of the law who are in full uniform have identified themselves by their very presence."

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<sup>2</sup> See Beckman v. Hamilton, No. 17-12407, 2018 WL 1907151 (11th Cir. Apr. 23, 2018).

The Investigator noted further that “it is not tactically prudent for a police officer to knock on a door and simultaneously announce that they are the police while still standing in the fatal funnel.” Further, he asserted a distinction between “announce” and identify. He wrote that “[t]actical approaches to police calls for service must be considered and weighed against the need for immediate announcements. Identification takes place once contact with a community member occurs.”

Recommendation Two: The Investigator (1) canvassed the neighbors; (2) left business cards on the doors asking for return calls and (3) called and left a voicemail for the witness identified by Complainants. None of these steps resulted in any additional information.

Recommendation Three: The Investigator went to the Address and took photographs of the scene. He concluded that the elevated front door at the Address presented limited officer safety options and supported the Subject Officers’ approach and positioning during the calls for service.

Recommendation Four: The Investigator determined no additional investigation was warranted.

The FCPD concluded that the Subject Officers did not violated any Department policy or procedure.

#### IV. Second Panel Meeting and Conclusions

On April 1, 2021, the Panel conducted a second Panel Review Meeting (the “Second Meeting”). The Complainants both appeared by telephone. YB explained her continued dissatisfaction with the events in question, with the two investigations and she answered questions of the Panel.

The thrust of the Complainants continued dissatisfaction centered around their fright caused by their inability to recognize the police in the darkness and their fear that the police may be intruders. Even after the dispatchers provided specific instructions to the Complainants to open the door and let the police inside, the YB indicated she was reluctant to do so. At bottom, YB maintained the Complainants would not have complained and persisted in their request for review if the police had identified themselves when they knocked.

YB indicated the Complainants had received the findings letter in May 2020 and a second letter following the First Meeting. However, the FCPD did not contact the Complainants to offer any further explanation.

The FCPD also appeared, and the Investigator summarized the additional investigation and several IAB officers and the Investigator and answered questions. The Investigator explained how the officers could have been reasonably identified and concluded that community members can identify officers by their uniforms, sounds of the radio, and the police car outside. The Investigator asserted that his investigation established that the Subject Officers eventually verbally identified themselves; however, he admitted it was unclear when they did so, and he acknowledged that the Subject Officers do not have appeared to have announced themselves the first time they knocked on the door. Further, he stated that the FCPD concluded that the Subject Officers’ actions were in compliance with General Order 601.4.

The Panel questioned the FCPD extensively about these conclusions. The Investigator stated that it may not always be tactically safe for an officer to announce his presence in the type of situation presented, including here where the door was on an elevated landing and there was little ground for immediate retreat. He noted that the FCPD probably needs to evaluate General Order 601.4 and more clearly define the difference between identify and announce so that expectations of responding officers responding and the public are clear. The Investigator stated that it is a common understanding in law enforcement that officers identify themselves when a community member answers the door. He contrasted this understanding with a knock and announce. He said that the FCPD needs to revise General Order 601.4 to ensure it reflects best practice and the intent of the policy is clear to officers. Another IAB officer stated that the FCPD would have preferred that the Subject Officers knocked and announced on the first approach.

The Investigator acknowledged that, in the darkness, it may be difficult for a community member to identify a police officer.

The Panel noted that the information the Subject Officers received from the dispatcher was not as described by the caller. An IAB officer noted that it is not uncommon for officers to encounter a scene that does not match the dispatcher's description. Under those circumstances, an officer should take steps to clarify. In this instance, the Subject Officers did so by verifying the address and confirming that the Caller did not want to be identified. Nevertheless, the Subject Officers knocked on the door to investigate the Caller's complaint.

The Panel noted that General Order 601.4 proscribes that officers shall identify themselves, explain the reason for their presence, and request entry into the home. The Panel asked if the language could be reworked to disentangle the three clauses.<sup>3</sup> An IAB officer answered affirmatively and said that they will review and reconsider the language in General Order 601.4.

The Panel asked if the FCPD is considering how to best address "swatting" incidents (where false police reports are made to harass innocent community members). The Panel asked whether the FCPD can trace such false reports. The IAB officer explained protocol at the call-taking center on swatting events. However, in this case the Caller used a local phone number (that was apparently noted in dispatch records). The Panel inquired if the FCPD called the number back to investigate the Caller. The IAB officer said the policy is that if someone wants to remain anonymous, the FCPD will not contact the caller again.

The Panel deliberated extensively.

Some Panel Members were critical of the FCPD's assertion in the investigation file that it was unclear if the Subject Officers announced themselves the first time they went to the Address. These Panel Members found this assertion to be inaccurate as substantial evidence in the file suggested that they did not announce and identify themselves as FCPD officers upon approaching the residence.

However, this inaccuracy was insufficiently material for the Panel to request further analysis by the FCPD. Rather, the three options available in the Bylaws – to concur with the

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<sup>3</sup> The Panel also noted that the court case referenced did not, in fact, create a clear distinction between "identify" and "announce" and was not precedential.

investigation, to request additional investigation, or to inform the Board of Supervisors that the investigation was incomplete/in need of further review – were disappointing to some in the context of this investigation review and lend further support for the need to amend the Bylaws to give the Panel more options consistent with those outlined in the Panel’s Four-Year Review. To these Panel Members, it matters little under the options afforded to the Panel that the Subject Officers did not announce themselves immediately upon arrival since the FCPD takes the position that the officers must have tactical discretion to *not* announce themselves. It is this discretion – which is inconsistent with the dictates of General Order 601.4 – that is the critical issue, but the Panel is not currently empowered to simply say that the investigation contained a conclusion regarding the General Order that is “incorrect,” and in light of the FCPD’s repeated acknowledgments that the General Order may be ripe for clarification, even skeptical Panel members questioned the utility of requesting further action on this Complaint. The Panel expects that the FCPD will make good on its promise to take a close look at General Order 601.4 and revise it as necessary.

The Panel was also critical of the FCPD’s handling of the Complainants. The Panel urged the FCPD to have more robust communications with complainants. With respect to this Complaint in particular, it appears that better communication between the FCPD and the Complainants, and a better explanation of why the officers did not immediately identify themselves or what could have been done better in the future, could have vitiated the need for requesting a Review entirely.

In addition, the Panel urged the FCPD to take a critical look at how it handles swatting incidents. Here, the only crime committed may have been a false police report by the Caller. That potential crime was never investigated.

In the end, the Panel voted unanimously to concur with the findings of the Investigations.<sup>4</sup>

An audio recording of the September 24, 2020, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-september-24-2020>.

An audio recording of the April 1, 2021, Panel Review Meeting may be reviewed here:

On May 6, 2021, the Panel discussed this Finding Summary; an audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-april-1-2021>.

#### V. Comments:

1. The three finding options available in the Bylaws are inadequate to address all potential conclusions that may arise in a Panel Review. The Bylaws should be amended to give the Panel more options for conclusions consistent with those outlined in the Panel’s Four-Year Review.

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<sup>4</sup> Panel Member Cheri Belkowitz, who joined the Panel too late to take part in a review of the investigation, abstained and took no part in the decision.

VI. Recommendations:

1. The FCPD should review and revise General Order 601.4 regarding how officers identify and announce themselves when responding to domestic service calls, clarify the situations when they are permitted to delay in announcing or otherwise identifying themselves, and ensure that officers are trained on and how the FCPD should best implement a revised general order.
2. The FCPD should consider how officers respond to swatting incidents where the scene does not match the description in a 911 call, provide the necessary training to officers on these situations, and whether they can investigate calls as potential false police reports.
3. The FCPD should consider how it can better communicate with Complainants the outcomes of its investigations, including whether such communication should go beyond standard disposition letters.

CC: Complainant

DRAFT