

Police Civilian Review Panel

October 12, 2021

Fairfax County Government Center, Conference Room 9/10

Meeting Summary

Panel Members Present:

Cheri Belkowitz

Jimmy Bierman, Chair

Todd Cranford

Frank Gallagher

Dirck Hargraves, Vice-Chair

Shirley Norman-Taylor

William Ware

Others Present:

Rachelle Ramirez, OPIA

Richard Schott, Independent Police Auditor

Dre'Ana Whitfield, OIPA

2<sup>nd</sup> Lt. Tim Forrest, Internal Affairs Bureau

Lt. Derek Gray, Internal Affairs Bureau

Others Present Joined Remotely

Anita McFadden, Counsel

The Panel's business meeting was called to order at 7:01 p.m. Mr. Bierman welcomed everyone to the Panel's October 12, 2021, meeting. Mr. Bierman took roll call to verify a quorum of the Panel was present. Everyone that was present in Conference Room 9/10 stated their name and their position.

Approval of Meeting Agenda: Mr. Gallagher moved approval of the meeting agenda. Mr. Hargraves seconded the motion and it carried unanimously.

Remote Participation Approval: Mr. Bierman stated that because all the Panel members were present, remote participation did not have to be approved. He noted that Ms. McFadden, the Panel's Counsel, was participating remotely.

Approval of September 2 Meeting Summary: Mr. Gallagher moved the approval of the Panel's September 2 meeting summary. Mr. Hargraves seconded the motion, and it carried unanimously.

Approval of Subcommittee Initial Review Report for CRP-21-11: Mr. Gallagher presented a summary of the complaint: The complainant was riding a motorcycle down Beulah Road. While parked at a church, the police officer observed the complainant traveling at a high rate of speed. When the complainant stopped at a traffic light, the police officer pulled alongside the motorcyclist and asked the complainant to pull over. The complainant pulled over and the police officer further communicated as to why the stop was being made. Mr. Gallagher outlined the three allegations made by the complainant: that the police officer was not wearing a mask, no emergency lights were used while conducting the traffic stop, and that the police officer was racially biased.

Mr. Gallagher stated that the subcommittee reviewed the investigative file, including the audiotapes and video. He noted that the evidence displayed the police officer was not wearing a mask while being

less than 6 feet away from the complainant. He further stated that from reviewing the file, the FCPD was aware of the violation and took corrective action regarding the misconduct. Mr. Gallagher said it is not a requirement that police officers use emergency lights. He stated that between the three subcommittee members, they saw no evidence to support the allegation of racial bias. Discussion ensued on the complainant allegations and FCPD procedure on the use of emergency lights.

Mr. Hargraves voiced that the Panel takes each complaint seriously. He suggested that moving forward, it may help the public if the subcommittee goes through the rubric first before going through the fact patterns. Mr. Hargraves stated the recommendation by the subcommittee. He said that that the case lacked sufficient evidence for the subcommittee to recommend that it be pursued at the Panel level.

Mr. Bierman referenced the proposed new language in the Panel's draft Bylaws, and specifically the new Article VI.D.3.

Mr. Cranford motioned approval to accept the recommendations of the subcommittee and that the Panel does not undertake the full review of CRP-21-11. Ms. Norman-Taylor seconded the motion and it carried unanimously.

Consideration of Good Cause to Review CRP-21-14: Mr. Bierman issued an apology regarding the vote at the September 2, 2021, meeting, during which the Panel found no evidence of "good cause" to extend the deadline for the CRP-21-14 review. He stated that he was not able to read his e-mail the day of the Panel meeting and he missed an email from the complainant that he did not receive the disposition letter from the FCPD. Mr. Bierman reviewed the complaint before the Panel: There were several allegations made by the complainant from May 2017 through March 2019. The FCPD informed the Panel that they completed two administrative investigations into the complaints and sent a letter to the complainant on November 8, 2018, and on January 29, 2021. The Panel sent the complainant a letter, confirming receipt of the complainant's review request and requesting information for the Panel to consider whether there is "good cause" to extend the filing deadline. The complainant's request for review was submitted to the Panel on August 4, 2021, which was more than 60 days following the date of the FCPD disposition letter of January 29, 2021. The complainant responded with emails on August 9, 2021, and on August 13, 2021. Mr. Bierman explained that the complainant was asked if a disposition letter was ever received. He said that the information from the complainant came in on the day of the Panel meeting. He referred to the complainant's email which stated homelessness was the cause for the delay. He referenced the vote of the Panel at its September 2 meeting, during which, it was believed that the complainant had received both disposition letters. Mr. Bierman stated that was clearly not the case anymore. He said that the complainant sent an email to the Panel on September 16, 2021, that said a recent investigative report was never received. He told the complainant that since the Panel was operating under faulty assumptions at the last meeting, it will be discussed again at tonight's meeting.

Mr. Bierman stated that if the disposition letter did not make it to the complainant until almost September 16, 2021, and the complainant received a previous disposition letter in the past, that this could be considered "good cause" for the Panel to extend the deadline of the review request. He explained that the review request will still have to go through the subcommittee process. Mr. Bierman said that based on the error and the Panel not having correct information at the September 2, 2021, meeting, he believed that it was worthy to reconsider the request. Discussion ensued on FCPD disposition letters and that they are typically sent to complainants by postal mail. Panel staff stated that

in this case, they requested that IAB resend the disposition letter by email to ensure the complainant received it.

Mr. Gallagher motioned that the Panel reconsider and accept “good cause” to review CRP-21-14. Mr. Ware seconded the motion and it carried unanimously.

Review of Proposed Remote Participation Procedure: Mr. Bierman referred to the draft remote participation procedure document in the meeting materials and stated that a new remote participation procedure was drafted by Panel Counsel. He said that the Panel’s previous remote participation procedure, which was adopted in December 2018, was outdated.

Mr. Bierman stated that the new Virginia Freedom of Information Act (VFOIA) outlines guidance for remote participation and distinguishes between a personal matter and a medical reason, which is reflected in the draft procedure before the Panel. He said that also included is the procedure for operating under a State of Emergency, which reflects how the Panel operated during the COVID pandemic. He noted that when the Panel holds a meeting there is a rule under VFOIA that for the meeting to occur, a quorum of members must be physically present at the meeting location.

Mr. Hargraves moved that the Panel adopt the draft procedure as the Panel’s remote participation policy. Ms. Norman-Taylor seconded the motion and discussion followed.

Mr. Cranford referenced I.B.1. of the new proposed language. He suggested that the term “shall” should be changed to “may” since there can be disapproval. Mr. Bierman agreed to the amendment. Mr. Hargraves motioned to accept the friendly amendment.

Mr. Ware expressed some misunderstanding on section I.A.2.b. of the new proposed language. Mr. Bierman suggested adding “and” after “personal matter” in I.A.2.a. Discussion ensued on the new proposed language. Ms. McFadden stated that the new proposed language was drafted directly from the Virginia statute.

Ms. Belkowitz referenced language in Virginia statute § 2.2-3708.2 and suggested revisions to I.2.a. - c. of the new proposed language. Mr. Bierman and Ms. Belkowitz recommended a period punctuation after “personal matter” in I.A.2.a. Ms. Belkowitz recommended that the language in I.A.2.b. and c. be replaced with: “participation by a member pursuant to this subdivision is limited each calendar year to two meetings or 25 percent.” Discussion ensued on the language of identifying with specificity the nature of the personal matter.

Mr. Bierman called the question that the Panel accept the new language proposed by Ms. Belkowitz under I.A.2.b. and c. and to combine the sections into one so that it tracks with the Virginia statute. Mr. Hargraves motioned to accept the friendly amendment.

Mr. Bierman expressed concerns about the new proposed language regarding the language “with specificity” in I.A.2.a. Ms. Belkowitz stated that the Virginia statute does use the language “with specificity.” Ms. Belkowitz proposed that I.A. read: “subject to the authorization conditions of subsection b, any meeting where public business is discussed or transacted...”

Mr. Bierman called to question acceptance of the new language proposed by Ms. Belkowitz under I.A. Mr. Hargraves motioned to accept the friendly amendment.

Mr. Bierman said that the language “with specificity” will not be removed from the Panel’s procedure because it is stated in the Virginia Code § 2.2-3708.2.

Mr. Hargraves called the question that the Panel vote on adopting the remote participation procedure as amended. The motion carried by unanimous vote.

Mr. Bierman clarified that in section I.B. the term “shall” will remain in the new proposed language as it is in the Virginia Code. Mr. Bierman called the question the motion by Mr. Hargraves to adopt as friendly amended the Policy for Participation in Meeting by Electronic Communication for the Police Civilian Review Panel. The motion carried by unanimous vote.

Ms. Belkowitz noted that the language in the procedure may be confusing as it seems to be about whether the Panel can meet electronically, not whether one member can participate electronically.

New Business: Mr. Bierman updated the Panel that they have made multiple requests for the next one-hundred-day public meeting with the Chief of Police. He said that the meeting will focus on questions from the public. He voiced that there is no date scheduled yet and that he will put in another request with the Chief’s scheduler.

Mr. Bierman reminded the Panel that he testified before the Public Safety Committee on September 28, 2021. He said that the video is available online. He stated that he thanked the Board of Supervisors for helping the Panel with the Executive Director position. He said that he mentioned the administrative issue with the Executive Director and whether there will be additional administrative support needed. Mr. Bierman said that he spoke about drawing conclusions and the Panel’s limited investigatory authority, both of which are recommendations within the Four-Year Review. He noted that the Board of Supervisors expressed gratitude for the Panel members’ service on the Panel.

Mr. Bierman mentioned the subcommittee process and that the proposed Bylaws will go to the Board of Supervisors. He said he accepted the proposed language on the subcommittee process that was voted on from the previous September 2, 2021, meeting and referenced the proposed Bylaws document in the meeting materials.

Mr. Bierman shared a concern that was brought to his attention by a former Chair of the Panel. He said the former Chair was concerned that, currently, the subcommittee only allows complainants to speak during a Review Meeting. Mr. Bierman said that complainants are not allowed to speak at subcommittee meetings. Mr. Bierman expressed that the former Chair member found that problematic because the Panel can dismiss and fail to take up a Review Request without hearing from the complainant. Mr. Bierman said that the purpose of the subcommittee meeting is to determine whether the Panel has jurisdiction.

Mr. Bierman asked the Panel their thoughts on allowing complainants to speak at subcommittee meetings. Mr. Gallagher said he felt that it was not necessary because the investigative file contains the interviews that the FCPD conducted with the complainant and the Panel listens to them. Mr. Bierman said the Panel considers whether the right people were interviewed. Mr. Gallagher said that there are ways to determine whether appropriate steps were not taken during the investigation. Mr. Ware said that the subcommittee is only making a recommendation to the full Panel and suggested the complainant could make remarks during the full Panel meeting when it considers the subcommittee recommendation. Mr. Bierman said that they should be considerate of complainants’ time, and that, if

the Panel decides to take a case and conducts a Review Meeting, then the complainant does not need to address the Panel twice. He asked whether it would be appropriate for the complainant to address the full Panel at the time of the subcommittee's recommendation, if the subcommittee was recommending that the full Panel not take on the review. Ms. Belkowitz raised the concern that complainants might say something to fellow civilians that they would not necessarily say to the police. She said if complainants believe that they have been harmed by the police and distrust the system, that they may not share everything with the police.

Discussion ensued on how complainants learn of the status of the subcommittee's recommendation and the decision of the Panel to conduct a review. Mr. Bierman posed to the Panel this question: Is there any discomfort of us disposing of complaints using the subcommittee process that does not afford the complainant an opportunity to address the Panel in the same way a complainant would, had there been a Review Meeting? Mr. Ware stated that he was uncomfortable with that. Mr. Bierman proposed that the Panel table the topic until the next meeting. The Panel agreed to discuss the subject at the next meeting. Upon a question by Mr. Hargraves, Ms. Ramirez stated that since the subcommittee typically meets the same week as the Panel meeting, the Panel informs the complainant in advance of both meetings at the same time. She said the complainant receives information on whether the Panel will take up a request for review after the meeting when the full Panel votes on the recommendation by the subcommittee.

Mr. Schott provided an update on the status of the Executive Director position for the Panel. He said that the position description has been developed and the job will be advertised as soon as October 23, 2021. Mr. Cranford asked where the County posts job openings. Discussion ensued on the stakeholders with whom the advertisement could be shared. Panel staff will send out the advertisement to NACOLE and to the Panel's outreach mailing list.

Mr. Ware said that he sent the Chair and Vice-Chair proposed new language for the Panel's template letter which requests complainants to send in information for the Panel to consider good cause in extending the deadline for submitting a review request. Mr. Ware summarized the readability statistics for the current letter and proposed letter. Mr. Bierman asked Mr. Ware to develop and circulate a draft and the Panel discuss Mr. Ware's proposal at the next meeting.

Mr. Hargraves reiterated his desire that future subcommittees articulate the rubric when assessing whether they will recommend that a complaint be reviewed by the full Panel and then discuss the facts of the case. He said this will help community members to understand how the subcommittee assesses the complaint. He also informed Panel members that Supervisor Lusk held a meeting on the UTSA use of force study and that they may want to watch the recording.

Adjournment: Mr. Cranford moved to adjourn the meeting. Mr. Hargraves seconded the motion and it carried unanimously.

The meeting adjourned at 8:22 p.m.

Next Meeting: The Panel's next business meeting will be held on November 16, 2021, at 7:00 p.m.