

Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

Request for Review – Basic Information

CRP Complaint Number: CRP-23-07

Subcommittee Meeting Date: August 24, 2023

Subcommittee Members:

- Cheri Belkowitz, Subcommittee Chair (Panel Member)
- Bryon Garner, Subcommittee Member
- Michael Lau, Subcommittee Member

Complaint Submission Date: Review Request received on 3/29/2023. Other Key Dates: Complaint to FCPD: 11/04/2022; FCPD Disposition letter: 2/28/2023

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 of slander, defamation, abuse of power and misconduct, a FCPD officer acting as a licensed psychologist, HIPAA law violation, and intent to harm. The complainant alleged that FCPD officer falsified a police report.

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-23-07 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.**

Police Civilian Review Panel

August 24, 2023

Fairfax County Government Center, Conference Room 232

Subcommittee Meeting Summary (CRP-23-07)

Panel Members Present:

Bryon Garner, Subcommittee Chair

Cheri Belkowitz

Michael Lau

Others Present:

Sanjida Lisa, PCRCP

Rachelle Ramirez, OIPA

Richard Schott, OIPA

2nd Lt. Doug Lingenfelter, Internal Affairs Bureau

The Police Civilian Review Panel (PCRCP)'s business meeting was called to order at 5:57 p.m.. Mr. Garner welcomed everyone to the Panel's August 24, 2023 Subcommittee meeting. Everyone who was present in Conference Room 232 stated their name and their position.

Motions to Subcommittee Meeting: Ms. Belkowitz moved to approve the agenda. Mr. Lau seconded and it carried unanimously.

Initial Review of CRP-23-07: Mr. Garner read aloud the purpose of the Initial Review Report and opened the floor for discussion. Ms. Belkowitz provided a brief summary of the events that led to the complaint and the reason for the request for a review by the Panel. Ms. Belkowitz also summarized the five allegations made by the Complainant and suggested that the committee go over each of the allegations with the checklist. Mr. Lau provided additional details of the incident involving the complainant and his perspective from his review of the Fairfax County Police Department (FCPD) Internal Affairs Bureau (IAB) investigative file.

Panel members considered the first allegation of violation of privacy by FCPD.

Mr. Garner read aloud the first criterion on the Panel Bylaws Abuse of Authority and Serious Misconduct Checklist. Panel members agreed the first criterion was not alleged and was not met.

Mr. Garner read aloud the second criterion on the checklist. Panel members agreed the second criterion was not alleged and was not met.

Mr. Garner read aloud the third criterion on the checklist. Panel members agreed the third criterion was not alleged and was not met.

Mr. Garner read aloud the fourth criterion on the checklist. Panel members agreed the fourth criterion was not alleged and was not met.

Mr. Garner read aloud the fifth criterion on the checklist. Ms. Belkowitz stated that this was alleged, but did not believe it was met. All Panel members agreed.

Mr. Garner read aloud the sixth criterion on the checklist. Mr. Garner stated that this was alleged, but does not believe it was met. All Panel members agreed.

Panel members considered the second allegation of the FCPD officer failing to follow up with the Complainant for over three months. Mr. Lau stated that there could have been follow ups by FCPD. Mr. Garner agreed and stated that it was an opportunity for FCPD to close the gap in communication, but he did not think it rose to the level of serious misconduct. Ms. Belkowitz agreed that there was an inconsistency in communication.

Mr. Garner began going over the checklist for the second allegation of the FCPD officer failing to follow up with the Complainant for over three months.

Mr. Garner read aloud the first criterion on the Panel Bylaws Abuse of Authority and Serious Misconduct Checklist. Panel members agreed the first criterion was not alleged and was not met.

Mr. Garner read aloud the second criterion on the checklist. Panel members agreed the second criterion was not alleged and was not met.

Mr. Garner read aloud the third criterion on the checklist. Panel members agreed the third criterion was not alleged and was not met.

Mr. Garner read aloud the fourth criterion on the checklist. Panel members agreed the fourth criterion was not alleged and was not met.

Mr. Garner read aloud the fifth criterion on the checklist. Panel members agreed the fifth criterion was not alleged and was not met.

Mr. Garner read aloud the sixth criterion on the checklist. Ms. Belkowitz provided that the issue of an officer failing to follow up with someone in a timely manner had arisen in an earlier case as well and this could perhaps be a recommendation to FCPD to not let miscommunication and gaps in communication occur. Mr. Garner agreed with Ms. Belkowitz's recommendation.

Panel members considered the third allegation of slander, defamation, abuse of power and falsification of a police report by the responding officer. Mr. Garner provided that the officer had alleged that the complainant had a mental health issue and seemed "scatter-brained." Mr. Garner provided that he did not observe those descriptions from his review of the body-worn camera footage. Mr. Garner recalled that the complainant seemed lucid and compliant in the video. Ms. Belkowitz provided that she did not think it was appropriate for the officer to provide his opinion and jump to misdiagnosing someone. Mr. Garner did not think this ultimately rose to the level of serious misconduct but did view the officer insinuating something incorrectly in the police report as problematic.

Mr. Lau did not think the term "scatter-brained" was a medical term and likely would not be used in the medical field, therefore deeming that the officer did not comport himself to be a medical provider in that situation. Ms. Belkowitz recalled that the incident report alleged that the complainant had a "mental health condition," which she did not find to be malicious but rather an issue in training.

Mr. Garner began going over the checklist for the third allegation.

Mr. Garner read aloud the first criterion on the Panel Bylaws Abuse of Authority and Serious Misconduct Checklist. Panel members agreed the first criterion was not alleged and was not met.

Mr. Garner read aloud the second criterion on the checklist. Panel members agreed the second criterion was not alleged and was not met.

Mr. Garner read aloud the third criterion on the checklist. Ms. Belkowitz stated that this was alleged, but did not believe it was met. All Panel members agreed.

Mr. Garner read aloud the fourth criterion on the checklist. Panel members agreed the fourth criterion was not alleged and was not met.

Mr. Garner read aloud the fifth criterion on the checklist. Panel members agreed the fifth criterion was not alleged and was not met.

Mr. Garner read aloud the sixth criterion on the checklist. Ms. Belkowitz stated that this was alleged, but did not believe it was met. All Panel members agreed.

Panel members considered the fourth allegation of HIPAA violation by the responding officer. Ms. Belkowitz stated that FCPD officers were not bound by HIPAA guidelines. Mr. Garner believed that the officer did not make a medical diagnosis and it may have been a misunderstanding from the complainant's perspective regarding HIPAA laws.

Mr. Garner began going over the checklist for the fourth allegation.

Mr. Garner read aloud the first criterion on the Panel Bylaws Abuse of Authority and Serious Misconduct Checklist. Panel members agreed the first criterion was not alleged and was not met.

Mr. Garner read aloud the second criterion on the checklist. Panel members agreed the second criterion was not alleged and was not met.

Mr. Garner read aloud the third criterion on the checklist. Panel members agreed the third criterion was not alleged and was not met.

Mr. Garner read aloud the fourth criterion on the checklist. Panel members agreed the fourth criterion was not alleged and was not met.

Mr. Garner read aloud the fifth criterion on the checklist. Panel members agreed that while this was alleged, they did not believe it was met.

Mr. Garner read aloud the sixth criterion on the checklist. Panel members agreed the sixth criterion was not alleged and was not met.

Panel members considered the fifth allegation of the FCPD officer acting as a medical professional. Ms. Belkowitz opined that the officer did not provide a medical diagnosis, but rather provided an opinion. Mr. Lau agreed with the opinion that the officer was not acting as a medical professional. Mr. Garner also agreed, but did wish that the officer had displayed more sensitivity and diplomacy with the observations made in the police report. Mr. Lau did not think the terminology used necessarily indicated a mental health condition. Mr. Garner provided that he did not appreciate the language used as it would bother him personally, but did not think it rose to the level of serious misconduct.

Mr. Garner began going over the checklist for the fifth allegation.

Mr. Garner read aloud the first criterion on the Panel Bylaws Abuse of Authority and Serious Misconduct Checklist. Panel members agreed the first criterion was not alleged and was not met.

Mr. Garner read aloud the second criterion on the checklist. Panel members agreed the second criterion was not alleged and was not met.

Mr. Garner read aloud the third criterion on the checklist. Panel members agreed the third criterion was not alleged and was not met.

Mr. Garner read aloud the fourth criterion on the checklist. Panel members agreed the fourth criterion was not alleged and was not met.

Mr. Garner read aloud the fifth criterion on the checklist. Panel members agreed that while this was alleged, they did not believe it was met.

Mr. Garner read aloud the sixth criterion on the checklist. Panel members agreed the sixth criterion was not alleged and was not met.

Mr. Lau stated that the complainant requested reimbursement of a lump sum due to damages, even though he had acknowledged there was no loss of property or money from the incident. Ms. Belkowitz provided that the complainant was offered the opportunity to write an addendum to the police report, but no steps were taken to accomplish that.

Mr. Garner concluded that the complaint did not fall within the Panel's purview of jurisdiction for a review due to the allegations not fitting the criteria on the checklist. All Panel members agreed.

Mr. Garner moved that the Subcommittee Panel not recommend that the full Panel undertake this matter. Ms. Belkowitz wanted to recommend that FCPD draft a supplemental report to rectify the language used in the original police report, to try to assuage the complainant. Mr. Lau provided that FCPD had offered to write a supplement to the complainant and the complainant had denied it the first time. Mr. Garner stated that the Panel could make a recommendation but it would be up to FCPD to consider it. Ms. Belkowitz moved to make a recommendation to IAB to provide a supplement to the police report in an attempt to expeditiously resolve the situation. Mr. Lau did not agree with the recommendation. Mr. Garner provided that the purpose of the Panel was not resolve or settle the complainant's request for damages from FCPD.

Ms. Belkowitz amended her motion to have a discussion with the full Panel about recommending proactive solutions including a proposed supplemental report. Mr. Lau did not want to second the motion because he did not believe it would be a fair request to the full Panel as the full Panel had not reviewed the investigative file and would lack context and knowledge of the case. Ms. Belkowitz withdrew her amended motion and stated that she might consider making the motion at the next full Panel meeting.

Ms. Belkowitz moved to adjourn the meeting. Mr. Lau seconded the motion and it was unanimously approved. Meeting adjourned at 7:05 p.m.

Next Meeting: The Panel's next business meeting will be held on September 7, 2023, at 7:00 p.m.