

# Panel Establishment, Historical Context, and Current Bylaws

Fairfax County Police Civilian Review Panel  
February 18, 2023

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## Precipitating Incident

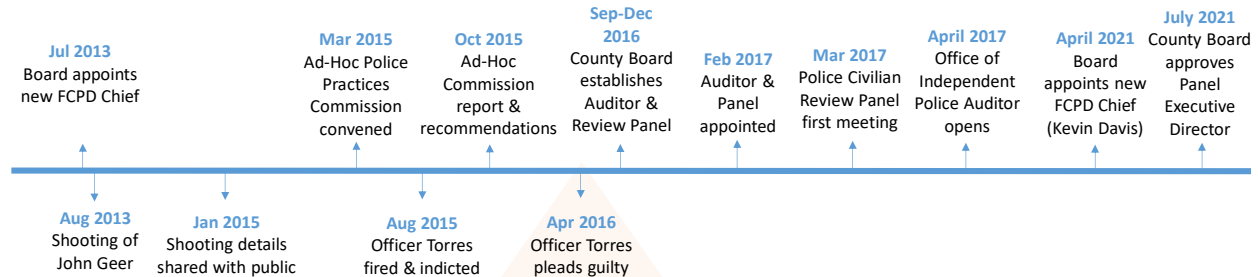
Police shooting of John Geer, August 2013



<https://www.youtube.com/watch?v=M-BZgtCXXc>

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## Establishing Police Oversight in Fairfax County



Board of Supervisors Chairman Bulova Statement, June 2016.

"The death of John Geer was a tragic event and a painful chapter in Fairfax County history... Although Adam Torres' act cannot be undone, there are many things Fairfax County can do to ensure future tragedies such as this never happen again.

The Board of Supervisors and the Fairfax County Police Department have worked together to implement policy changes recommended by the [Ad Hoc Police Practices Review Commission](#). These changes are reengineering the way officers are [trained to respond to critical incidents](#) and the way the Police Department and the County [communicate information to the public](#). We are committed to [promoting community trust](#) and making our Police Department a national model moving forward."

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## Ad Hoc Police Practices Commission

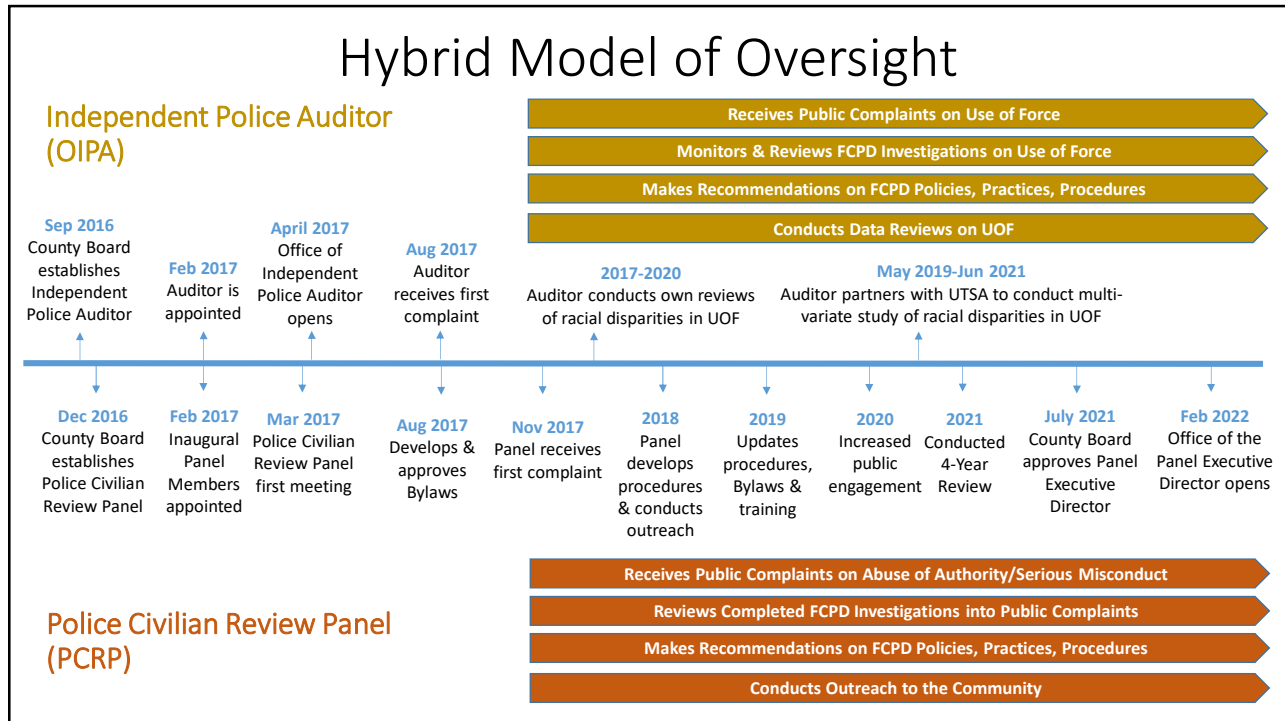
- Convened in March, 2015
- Issued its Final Report (with 202 recommendations) in October, 2015

### Subcommittees:

- Communications
- Recruitment, Diversity and Vetting
- Mental Health and CIT
- Use of Force
- **Independent Oversight and Investigations**

"[For the purpose of] building and maintaining public trust in FCPD and its officers in a period of general loss of public confidence in many institutions, our Subcommittee also recommends the creation of an Office of Independent Police Auditor, and a Civilian Review Panel, appointed by the Board of Supervisors. The Independent Police Auditor would report directly to the Board of Supervisors and would provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings. The Civilian Review Panel would respond to community concerns or complaints about alleged incidents of abuse of authority by FCPD." – *Independent Oversight and Investigations Subcommittee Report*

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## Panel Governing Documents: Board of Supervisors Items

Date	Board of Supervisors Item	Topic	Revisions Apply to:
Dec. 6, 2016	Action Item 17	Establishment of the Panel	Authorizing Action Item
Feb. 28, 2017	Action Item 8	Panel Appointments and Terms	Dec. 6, 2016 Action Item
July 11, 2017	Consideration Item 1	Submission of Bylaws for approval	Bylaws
October 16, 2018	Consideration Item 1	Chair Appointment of Review Liaisons, Convening a Review Meeting, Hearing from a Complainant at a Review Meeting	Bylaws
Sep. 24, 2019	Action Item 17	Allow for greater transparency in reports; cannot review employee grievance	Dec. 6, 2016 Action Item
Nov. 19, 2019	Consideration Item 1	Removal of matters subject to County Personnel Regulations or General Orders from scope of authority; Clarification of limitations on disclosure of certain personnel records and portions of investigative case files; Explicit restrictions on disclosure of certain law enforcement records	Bylaws
Dec. 1, 2020	Action Item 9	Authorize Panel to participate in public meetings where public comment is received about law enforcement policies, practices, and procedures	Dec. 6, 2016 Action Item & Bylaws
Feb. 23, 2021	Consideration Item 2	Allow a Chair to serve more than one, one-year term, as long as such terms are not successive.	Bylaws
July 27, 2021	Action Item 14	Authorize appointment of Executive Director	Dec. 6, 2016 Action Item & Bylaws
July 19, 2022	Consideration Item 1	Codify a subcommittee review process for initial review of complaints	Bylaws

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## Why Review the Current Bylaws?

- Understand the current authorities (and limitations) of the Panel as bestowed on it by the Board of Supervisors
- Clarify what is current practice and how it came to be
- Identify new ways to operate now that the Executive Director, and the Office of the Panel, is in place
- Codify changes in procedures for the future
- Flag areas for further discussion and deliberation

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## Some Bylaws Revisions to Note

Nov. 19, 2019:

- Clarify that the Panel cannot review an employee grievance or complaint made by a Fairfax County employee arising out of an incident or conduct occurring during the course and scope of that employee's employment, and
- Clarify the restrictions on the release of Personnel Records, investigative case files, and certain law enforcement agency records.

Dec. 1, 2020:

- Authorizes the Panel, up to six times annually, to solicit and receive public comment and respond to questions in public meetings, sponsored by the Panel or others, where the public is invited to comment on law enforcement policies, practices, and procedures

Feb. 23, 2021:

- Allow a Chair to serve more than one, one-year term, as long as such terms are not successive

July 27, 2021:

- The Board of Supervisors will select and appoint an Executive Director for the Police Civilian Review Panel. The Executive Director will report directly to the Board of Supervisors. Among other duties as assigned, the Executive Director will review and summarize Police Department investigations before the Panel commences its review. Further, the Executive Director will provide administrative support for the Panel's work.

July 19, 2022

- Approve an amendment to the bylaws for the Panel to codify a subcommittee review process for initial review of complaints.

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## ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;**
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and**
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.**

The Panel shall report directly to the Board of Supervisors.

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## ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
  1. The Board of Supervisors shall appoint each Panel Member.
  2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
  3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.
  4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

Also see B. Terms of Service and C. Resignations, Removals and Vacancies

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#### ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

- B. Succession; Annual Election of Officers; Vacancies.
1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
  2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
  3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
  4. No Panel Member may serve successive terms as Chair.
  5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
  6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
  7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

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#### ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

- C. Duties of the Chair and Vice-Chair.
1. The Chair shall:
    - (a) Preside over all Panel meetings at which the Chair is present;
    - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
    - (c) Serve as the Panel's official spokesperson;
    - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
    - (e) Perform any other duties as the Panel may delegate; and
    - (f) Delegate any of these duties to other Panel Members.
  2. The Vice-Chair shall:
    - (a) Preside over Panel meetings in the absence of the Chair; and
    - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
  3. Panel Committees.
    - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

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# Panel Meetings

Quorums, Voting and Public Meetings

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## ARTICLE V. QUORUM, VOTING AND MEETINGS

### A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

### B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

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#### ARTICLE V. QUORUM, VOTING AND MEETINGS

##### C. Meetings.

1. The Panel shall meet as often as necessary to conduct Panel business.
2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.
4. Panel Meeting Notices shall be:
  - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
  - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
  - (a) places that are accessible to persons with disabilities,
  - (b) public buildings whenever practical; and
  - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.

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#### ARTICLE V. QUORUM, VOTING AND MEETINGS

7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
  - (a) the date, time, and location of each meeting;
  - (b) the Panel Members present and absent;
  - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
  - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.

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#### ARTICLE V. QUORUM, VOTING AND MEETINGS

**11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually.** As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

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## Public Comment and Public Forums

- Panel Public Forums 2017 and 2018
- *Four-Year Review* Recommendations:

9) The Panel should invite rank-and-file FCPD officers to a forum (or to multiple forums) where FCPD officers can ask Panel Members questions and make comments. The Panel should commit to increasing its interactions with the FCPD rank-and-file and should make itself available for meetings with officers present to ask questions and make comments at least once a year.

10) The Panel should commit to twice-a-year public forums (or more) where members of the public can ask Panel Members questions and make comments. The Panel should commit to increasing its community outreach opportunities and conducting at least two public forums each year. The Panel should make an effort to have at least one of these public forums covered by the press.

- *Four-Year Review*, pg. 86:

“Fifth, the Panel fought to make sure that meetings for public comment will be a part of the Panel’s future. In the first two years of the Panel’s existence, the Panel held three meetings for public comment to introduce the community to the Panel, to explain its work and to receive public input into the Panel’s work. The Panel was subsequently advised of concerns that the Panel lacked the authority to conduct more public meetings for comment. Moreover, the public meetings were lightly attended, and the Panel pursued other priorities. Thus, no more such meetings were held, but several Panel Members continued to point out the need for public input regarding policy recommendations. Community outreach by the Panel became increasingly important following the homicide of George Floyd and local demonstrations supporting criminal justice reform. These circumstances spurred changes in the Action Item and Bylaws to permit public meetings for comment by the Panel up to six times annually.”

- Soliciting input from the community (potential for more formal process)

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# Panel Review Authority

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### A. Scope of Panel Review Authority.

1. 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.

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#### ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

##### A. Scope of Panel Review Authority. **CONTINUED**

##### 1. The Panel shall not review:

(a) alleged misconduct that is subject to the exclusive review by the Auditor;

3. Where a Complaint alleges misconduct within both the Panel's scope of authority and the Auditor's scope of authority, **the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority.** The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.

4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

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#### ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

##### A. Scope of Panel Review Authority. **CONTINUED**

##### 1. The Panel shall not review:

(b) any Complaint related to an incident that occurred before December 6, 2016;

(c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);

(d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD's investigation of the complainant's Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or

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#### ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

##### A. Scope of Panel Review Authority. **CONTINUED**

##### 1. The Panel shall not review:

(e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County's Personnel Regulations or that are subject to the Police Department's General Orders 310.1, 310.2, or 310.3.

2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

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#### ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

For purposes of determining the Panel's authority to review an Investigation, **"abuse of authority" or "serious misconduct"** by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Cannon of Ethics, that occur both on or off duty.

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## Handling of Racial Bias Complaints

### Four-Year Review Recommendation 2

2) The Panel's Executive Director should be authorized to monitor FCPD investigations of racial bias or profiling from the onset of the investigation, whether or not an initial complaint has been filed with the Panel. During such monitoring, the ED may observe interviews and have access to evidence. The ED may suggest that the FCPD conduct additional interviews or further inquiries and data analysis during the investigation. Such monitoring would be consistent with that afforded by the Board of Supervisor to the IPA.

### Four-Year Review Recommendation 5

5) The Panel should be authorized, at its discretion, to conduct a review of a completed FCPD investigation of an initial complaint concerning racial bias or profiling without first receiving a Request for Review from the Complainant. Complaints concerning racial bias seemingly are of particular importance to county residents and thus should all be treated as ripe for independent oversight.

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## Complaint Process

Initial Complaints and Review Requests

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### C. The Complaint.

#### 1. Content and Filing of a Complaint.

(a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.

(b) A Complaint shall contain:

- (i) identifying information for the person filing the Complaint;
- (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
- (iii) the specific police behavior of concern;
- (iv) a description of the incident in which the behavior occurred; and
- (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.

(c) The Panel shall **immediately forward** an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

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## Process and Procedures: Complaints

- Complaints are made in two ways
  - A Complaint is filed directly with the FCPD
  - A Complaint is filed directly with the Panel ("Initial Complaint")
- Panel immediately sends to the FCPD for investigation
- FCPD Investigates the Initial Complaint
- Once the Investigation is complete:
  - FCPD sends the Complainant a disposition letter and copies the Panel
  - Panel sends a letter to Complainant to inform them of ability to request a review (**Initial Complaint Process is completed**)
- Review Requests come to the Panel in two ways
  - Complainant can "Request a Review" by the Panel after receiving the FCPD disposition letter & Panel letter.
  - Anyone who complains to the FCPD receives a FCPD disposition letter informing them about the Panel and Auditor
- Upon receipt of a Review Request
  - Request is forwarded to the FCPD to prepare its investigative file for Panel review.
  - Complaint gets assigned to a Subcommittee for "Initial Review"

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# Subcommittee Process

## Initial Review Process

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### ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

#### D. Initial Review and Disposition.

##### 1. Initial Review

(a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:

(i) is timely filed; or

(ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.

(b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

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**ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES**

**2. Initial Review Subcommittee Authority and Composition**

- (a) The Panel Chair may designate subcommittees (“Initial Review Subcommittee”) comprised of Panel Members to conduct initial reviews of Review Requests filed by community members with the Panel.
- (b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).
- (c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.
- (d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine **whether the Complaint meets the minimum criteria for review and consideration by the full Panel.**

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**ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES**

**3. Initial Review Subcommittee Process and Report to the Panel**

- (a) The Subcommittee shall review a Complaint to determine whether:**
  - (i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and**
  - (ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.**
- (b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.
- (c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee’s deliberations and recommendation at such time as the Panel considers the subject Complaint.
- (d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### 4. Initial Disposition Notice

(a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.

(b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.

(c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.

(d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

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## Revision of Initial Review and Disposition:

(Subcommittee Process described in BOS Consideration Item July 19, 2022)

The Panel created a subcommittee process in 2019 for disposing of "wholly unfounded complaints" and assist in processing a growing volume of complaints received each year.

The purpose of the subcommittee process was not to short-change any complainants, but to allow the Panel to avoid unnecessary expenditures of resources where complaints simply fall outside of the jurisdiction of the Panel or wholly lack merit.

Rather than having every single complaint reviewed in full by all members of the Panel, a subcommittee of three Panel members reviews the files first to determine whether the allegations of the complaint rise to the level of 'serious misconduct' or 'abuse of authority' as defined by the Panel's Bylaws and considers whether, to put it bluntly, if there is any there.

If the subcommittee unanimously determines that a complaint is unfounded, then the Subcommittee will provide a summary of its deliberations and recommendations to the full Panel when it takes up the complaint.

The full Panel will ultimately vote to determine whether it accepts a particular Review Request or complaint. The Complainant will be given the opportunity to address the full Panel before any complaint is disposed of under this process.

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## Process and Procedures: Subcommittees

- Subcommittee assignments
  - Panel Chair or Vice-Chair take turn chairing the subcommittee
  - 2 other members assigned on rotating basis
- Three members of the Subcommittee review the FCPD investigative file and the Complaint in full.
- The Subcommittee meets to determine jurisdiction.
  - It asks “is anything time-barred?”
  - It asks, more or less, “does the Complaint allege serious misconduct or an abuse of authority?”
  - It also asks whether or not the allegations are wholly unfounded.
- Initial Review Report
  - Template completed by staff based on discussion at subcommittee meeting
  - Shared at next Panel business meeting
- The Subcommittee presents its findings/recommendation to the full Panel and the Panel votes on whether to take up the Review.
- When does the Complainant address the Panel?
  - At full Panel meeting when the subcommittee recommends that the full Panel NOT REVIEW
  - At a Review Meeting when the full Panel conducts a review

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## Initial Review Process (Subcommittee) Considerations

- What if the IAB investigative file is incomplete in some way? Didn't interview a key witness?  
Did not investigate possible bias?
- Member of subcommittee (not staff) reporting back to the Panel
- Do Panel members need to review the IAB file before voting?
- Importance of ensuring:
  - Every complainant has an opportunity to address the full Panel at some point
  - Every complainant is fully informed of the review process and the complainant's right to address the Panel

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## Initial Review Process (Subcommittee) Considerations

- The phrases “reasonable Panel” and “sufficient evidence to support the allegations” may be somewhat ambiguous and may lead to confusion in the public as to the Panel’s processes. As to the former, what is the standard that Panel members are to use in projecting the actions of a “reasonable Panel”? What action of a Panel is “reasonable” in this context? As to the latter, it is stated that Panel members are to evaluate the evidence in the investigative file to determine if the allegations are “sufficiently supported”. It seems the language means that the Subcommittee would be making a substantive judgment as to whether the evidence on the merits supports the allegations.
- What is the role of the IAB/FCPD at a meeting to vote on a denial of jurisdiction recommendation? Are they allowed to reply to the complainant’s presentation?
- Even if the Subcommittee finds no evidence in the investigate file, the complainant might nonetheless have information that the IAB missed. The Ad Hoc Commission was adamant that the complainant had to have an opportunity to address the Panel to raise any such deficiencies, and the Board of Supervisors supported that position. The Panel policy has been changed to allow a complainant to appear before the full Panel if the Subcommittee recommends denial of jurisdiction. This should be codified in the Bylaws.

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## Initial Review Process (Subcommittee) Considerations

- The deliberations and recommendations of the Initial Review Committee to the full Panel (with reasons set forth) should be reflected in writing whether in a Panel approved form or in a report prepared by the Committee. Indeed, the Panel’s adopted and published Procedural Memorandum on Intake and Processing of Review Requests (No. 0-2) calls for the Subcommittee to complete an Initial Review Report Template after it has made its determination as to Panel jurisdiction, noting “the Subcommittee’s reasoning” if the Subcommittee determines that the Panel does not have authority to review.
- It is unclear whether all Panel members are required to review the full IAB investigative file before voting on whether to approve the Subcommittee’s recommendation. It would be helpful to clarify that issue, especially if approval of a recommendation to deny review is being voted on and a substantive decision is being made. In this regard, the Panel’s letters to complainants advise them that the Panel (not the Subcommittee) has determined that it lacks authority to review their complaints because of the lack of substantiation in the FCPD investigation of the complainant’s allegations. The appointment of an Executive Director and the (hopeful) advent of remote Panel access to the investigative files may lighten the administrative and time burdens currently imposed on Panel members.

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### E. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:

- (a) suspend its review;
- (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
- (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
- (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.

2. The Panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.

3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

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# Full Panel Review Process

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### F. Panel Meetings to Review Investigations.

#### 1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### F. Panel Meetings to Review Investigations.

#### 1. Additional Requirements for Panel Review Meetings **CONTINUED**

- (e) The Panel shall not take testimony or receive evidence.
- (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard **at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons.** The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
- (g) At the request of the Panel, an **FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting** (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
- (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

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## Panel Review Meeting Procedures (O-2)

- The Chair will ask Panel Members, the FCPD representative, and the complainant to introduce themselves for the record and the Chair will outline the process for conducting the Panel Review Meeting, reminding those in attendance that:
  - the purpose of the Panel's review of the Investigation is to determine whether the Investigation is thorough, complete, accurate, objective and impartial.
  - the complainant will have 15 minutes to address the Panel to state his or her reasons for filing the Review Request and that Panel Members may ask questions regarding those reasons. On motion from a Panel Member, the Panel may consider an extension of the 15-minute time period.
  - Panel Members may ask the FCPD representative questions regarding the process of the Investigation and the conclusions reached in the Investigation.
  - Questions regarding officer discipline are personnel matters that must be discussed in closed session.
  - Panel Members may also request consultation with legal counsel during the Panel Review Meeting, which must also be discussed in closed session.
- If the complainant does not attend the Panel Review Meeting, or attends but chooses not to address the Panel, the Panel may complete the Investigation review process.
- If other witnesses attend the Panel Review Meeting, their contact information will be obtained and given to the FCPD for follow-up.

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## Full Review Process Considerations

- What is the basis for the 15-minute rule for complainants to address the Panel?
- Should the order of addressing the Panel be reversed? The Complainant goes first but doesn't know the basis for the IAB decision until the IAB representative describes it. Is there any rebuttal?

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## Panel Review Meeting Procedures (O-2) cont.

- If the FCPD notifies the Panel that certain information in the investigative file may reveal specific sensitive investigative techniques or contain information that is likely to jeopardize ongoing or future investigations, and such information is not contained in the complaint itself, the Panel will address FCPD concerns with the Panel's counsel in a closed meeting to resolve the issues.
- Review Report will not
  - contain identifying information for either the police officer(s), the complainant, or witnesses, confidential informants, victims, personal information including names, social security numbers, date of birth, driver's license numbers, agency issued identification numbers, student identification numbers, criminal or employment records, or residential addresses unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.
  - contain an officer's personnel record or specific officer discipline, other than what is specifically disclosed by the FCPD in a disposition letter or at a Panel meeting.
  - reveal information that jeopardizes the safety of an individual.
- The Chair will circulate the draft report for comment with the Agenda for the meeting during which the Panel Review Report will be discussed.
- The Panel will discuss the draft Panel Review Report. A separate vote will be taken on each proposed recommendation or comment to determine its inclusion in the final Panel Review Report.
- Staff, will send the final Panel Review Report to the Board of Supervisors, the Chief of the FCPD, and the Auditor, and will post the Panel Review Report on the Panel's website.

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## Confidentiality

- Do not disclose officer names
- Do not disclose personal details
- Do not directly disclose the officer's testimony in administrative proceedings
- Write reports without naming the Complainant

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### 2. Closed Sessions, and Confidential Matters During Panel Review Meetings.

(a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.

(b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.

(c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).

(d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.

(e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

(f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

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## Considerations

### Role in and Access to Disciplinary Records

- Release of officer names

### Ability to Refer to Facts and Information in the IAB Investigative File

- Upon referral from the County Attorney, the FCPD has confirmed that the administrative investigations and law enforcement officer personnel records exemptions in the Virginia FOIA are discretionary – not mandatory – exemptions. Current policy is that such information can be discretionary released if it no longer has any investigative value. [Confirm policy with FCPD]

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# Disposition of Review Requests

Timing and Panel Findings

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### G. Disposition of Review Requests.

#### 1. Timely Completion.

(a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.

(b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

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## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### G. Disposition of Review Requests. **CONTINUED**

#### 2. Panel Findings.

(a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:

- (i) **Concur with the findings and determination detailed in the Investigation Report;**
- (ii) **Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or**
- (iii) **Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.**

(b) If the Panel Finding is either (ii) or (iii) above, **the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.**

(c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.

(d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

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## Expanded Review Findings Options

### Four-Year Review Recommendation 7

7) The Panel's Options for its Review Findings should be expanded and modified. The Panel should be given five options:

- a. **The Panel can concur** with the findings of the FCPD and confirm that the conclusions of the Investigation Report are correct, and that the Investigation was sufficiently thorough, impartial, and objective **so as to allow for the conclusion made.**
- b. **The Panel can request additional investigation from the FCPD** and the FCPD **shall** within a reasonable time conduct further investigation and provide the Panel with a supplemental report that details the findings of the additional investigation.
- c. The Panel can exercise the opportunity to **conduct its own additional investigation**, including interviewing the Complainant and up to three key witnesses using its limited subpoena power.
- d. The Panel can inform the Board of Supervisors that in the opinion of the Panel, **the conclusions of the Investigation Report are incorrect** and/or that the investigation is insufficiently thorough, impartial, and objective. **so as to allow for an alternative conclusion.**
- e. The Panel can **inform the Board of Supervisors about how it would have resolved the investigation.**

### Four-Year Review, pg. 84

"The Panel has never been empowered to reverse a finding of a FCPD Investigation Report or to direct the FCPD to implement a policy recommendation. Additionally, the Panel lacks authority to comment on or make any recommendation regarding the discipline of officers."

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## Future Considerations: Investigative Authority

- Four Year Review Recommendation 6

6) The Panel should be given limited investigatory power including the ability to interview and subpoena the Complainant and up to three key witnesses upon the request of six Panel members. Without full professionalization of the Panel, it cannot be a fully investigatory body. But the Panel would be well-served by having some investigatory powers that allow it to take investigative action wholly independently from the IAB. One idea is to grant the Panel through the Executive Director the ability to conduct witness interviews (and by extension to grant the Panel some subpoena power) but limit the number of interviews that the Panel undertakes. Moreover, such interviews would be discretionary – if the Panel is confident that the Investigation Report as compiled meets its standards, it need not go forward with additional investigation. If the Panel is allowed to choose to conduct its own interview of the Complainant and up to three key witnesses free of IAB involvement, the Panel can demonstrate its independence to the community and to the Complainants themselves, many of whom are skeptical that a wholly police-driven investigation can truly be impartial and objective

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## Panel Recommendations

Recommendations Matrix and Recommendations on Use of Force

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#### ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

##### A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

##### B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

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## Recommendations Process

- Panel makes recommendations in its Review Reports.
  - Review Reports are shared with the Police Chief when sent to the BOS.
  - Review Reports are shared with the complainant.
- All recommendations (verbatim) are placed into the Recommendations matrix.
- The Panel asks the FCPD to respond and the FCPD can respond in its own words in the matrix.
- The Panel determines the status of adoption/implementation of each recommendation.
- The latest version of the matrix is published in its Annual Report, which is sent to the BOS and published on the website.

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## Review of Auditor's UOF Reports

- The nearly identical language in the Panel Action Item and Bylaws was the result of a decision made by the Independent Investigations and Oversight Subcommittee of the Ad Hoc Commission. After much input from citizens and the FCPD (including the officer organizations), it was agreed that the Auditor would review IAB's investigations of citizen complaints involving the use of force since the Auditor would be a trained criminal investigator more familiar with use of force incidents and laws and policies applicable to the FCPD's use of force.
- A major concern with that approach expressed by numerous IOI Subcommittee members was that the Panel (which was being established to represent the views and values of County residents) would not be involved at all with the review of UOF complaints and would have no opportunity to judge the conduct of the FCPD in terms of its use of force. Thus, it was agreed by all involved (including the FCPD and officer organizations) that the Auditor would periodically meet with the Panel and respond to questions concerning the Auditor's review of UOF investigations and that the Panel, based on those meetings, could make recommendations as to FCPD policy and practices that it believed necessary. The Board fully understood this structure and the ability of the Panel to meet with the Auditor and to make recommendations based on what it learned in those meetings. (The fact that the language in the Action Item differed to a degree from the Ad Hoc Commission's recommendation confirms the Board's understanding.)

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## Review of Auditor's UOF Reports

- The meetings of the Panel with the Auditor to hear about and consider the Auditor's UOF investigation reviews are a fundamental component of the structure recommended by the Ad Hoc Commission and adopted by the Board of Supervisors. The intent was that Panel members would read each of the Auditor's public reports and would be prepared to ask the Auditor any questions they may have as to the Auditor's report and the Auditor's findings and recommendations so that the Panel could make its own independent recommendations to the Board and the Chief as to UOF policy and practice changes the Panel believed warranted.
- Holding regular meetings with the Auditor would address some of the concerns that have been expressed by the public that the Panel is not involved in the review of UOF complaints and investigations. For example, if such meetings are held, the Panel could discuss the recent Gum Springs incident with the Auditor once his report is issued, have the Auditor describe his investigation and findings, and then consider any additional recommendations that the Panel may want to make. To be sure, such regular meetings would mean additional work for Panel members, but, if such meetings are not held, then a major part of the structure which was established will be unfulfilled. The hiring of an executive director could alleviate some of the concern about increased work.

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#### ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

##### A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

##### B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

##### C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

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#### ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

##### D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.

2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

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#### **ARTICLE IX. RECORDKEEPING; ANNUAL REPORT**

##### **A. Recordkeeping.**

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

##### **B. The Annual Report.**

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

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#### **ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY**

##### **A. Compliance with Law and County Policy.**

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

##### **B. Conflicts of Law and Policy.**

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

##### **C. Panel Immunity.**

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, et seq., and the provisions of Virginia Code § 15.2-1405.

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#### **ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS**

##### **A. The County Executive.**

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

##### **B. The Board of Supervisors.**

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

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#### **ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS**

##### **A. Effective Date of the Bylaws.**

The Bylaws shall become effective upon approval by the Board of Supervisors.

##### **B. Amendment of the Bylaws.**

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

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## DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

**Abuse of Authority** has the meaning assigned to the term in Article VI.B.

**Annual Report** means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

**Auditor** means the Fairfax County Independent Police Auditor.

**Board of Supervisors** means the Board of Supervisors of Fairfax County.

**Bylaws** means the Bylaws of the Fairfax County Police Civilian Review Panel

**Chief** means the FCPD Chief of Police.

**Complaint** means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

**Counsel** means the legal counsel that the Board of Supervisors designates to support the Panel.

**FCPD** means the Fairfax County Police Department.

**FCSO** means the Fairfax County Sheriff's Office.

**Initial Complaint** means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

**Initial Disposition Notice** means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

**Investigation(s)** means a FCPD internal administrative investigation.

**Investigation Report** means the completed written FCPD report setting forth the findings of the Investigation.

**Laws** means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

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## DEFINED TERMS

**Meeting(s)** has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

**Panel** means the Fairfax County Police Civilian Review Panel.

**Panel Findings** means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

**Panel Meeting** means a meeting of the Panel.

**Panel Meeting Notice** means the written notice stating the date, time, and location of a Panel Meeting.

**Panel Member(s)** means each of the persons that the Board of Supervisors appoints to the Panel.

**Panel Review Meeting** means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

**Panel Review Meeting Notice** means the Panel Meeting Notice for a Panel Review Meeting.

**Public Meeting(s)** means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

**Receipt of the Investigation Report** is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

**Review Request** means a person's request for the Panel to review an Investigation.

**Serious Misconduct** has the meaning assigned to the term in Article VI.B.

**VFOIA** means the Virginia Freedom of Information Act, as amended from time to time.

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## Panel Code of Ethics

- Dignity and Respect
- Personal integrity
- Commitment
- Community engagement
- Impartial oversight
- Transparency
- Confidentiality
- Professional Excellence
- Accountability and Self-Examination
- Courage
- Conflicts of Interest

# **BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL**

**Approved by the Board of Supervisors on July 11, 2017**

**Accepted by the Police Civilian Review Panel on August 3, 2017**

**Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, December 1, 2020, February 23, 2021, July 27, 2021, and July 19, 2022**

## **ARTICLE I. NAME<sup>1</sup>**

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

## **ARTICLE II. PURPOSE**

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

## **ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS**

- A. Composition and Qualifications.
  - 1. The Board of Supervisors shall appoint each Panel Member.
  - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
  - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

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<sup>1</sup> Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three-year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

## **ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES**

### **A. The Initial Chair and Vice-Chair.**

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

### **B. Succession; Annual Election of Officers; Vacancies.**

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1<sup>st</sup> of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

### **C. Duties of the Chair and Vice-Chair.**

1. The Chair shall:
  - (a) Preside over all Panel meetings at which the Chair is present;
  - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
  - (c) Serve as the Panel's official spokesperson;
  - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
  - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
  - (a) Preside over Panel meetings in the absence of the Chair; and
  - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
  - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

## **ARTICLE V. QUORUM, VOTING AND MEETINGS**

### **A. Quorum.**

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

### **B. Voting.**

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

### **C. Meetings.**

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
  - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
  - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
  - (a) places that are accessible to persons with disabilities,
  - (b) public buildings whenever practical; and
  - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
  - (a) the date, time, and location of each meeting;
  - (b) the Panel Members present and absent;
  - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
  - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### A. Scope of Panel Review Authority.

1. 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 Panel shall not review:
  - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
  - (b) any Complaint related to an incident that occurred before December 6, 2016;
  - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
  - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
  - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.



B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
  - (i) identifying information for the person filing the Complaint;
  - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
  - (iii) the specific police behavior of concern;
  - (iv) a description of the incident in which the behavior occurred; and
  - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

#### D. Initial Review and Disposition.

##### 1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:
  - (i) is timely filed; or
  - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

##### 2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees (“Initial Review Subcommittee”) comprised of Panel Members to conduct initial reviews of Review Requests filed by community members with the Panel.
- (b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).
- (c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.
- (d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

##### 3. Initial Review Subcommittee Process and Report to the Panel

- (a) The Subcommittee shall review a Complaint to determine whether:
  - (i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and
  - (ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.
- (b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.
- (c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee’s deliberations and recommendation at such time as the Panel considers the subject Complaint.
- (d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

#### 4. Initial Disposition Notice

- (a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

#### E. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
  - (a) suspend its review;
  - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
  - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
  - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

#### F. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
  - (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
  - (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
  - (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
  - (e) The Panel shall not take testimony or receive evidence.
  - (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
  - (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
  - (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
  - (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.
2. Closed Sessions, and Confidential Matters During Panel Review Meetings.
- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed

session is consistent with VFOIA.

- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.
- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

G. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
  - (i) Concur with the findings and determination detailed in the Investigation Report;
  - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
  - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

## **ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES**

### **A. Review of Law Enforcement Policies and Practices.**

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

### **B. Meetings with the Auditor.**

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

## **ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS**

### **A. Training.**

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

### **B. Confidentiality.**

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

### **C. Conflicts of Interest.**

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

**ARTICLE IX. RECORDKEEPING; ANNUAL REPORT**

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1<sup>st</sup> of each year.



**ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY;  
PANEL IMMUNITY**

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

**ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS**

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

**ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS**

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

## Exhibit A

### DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

**Abuse of Authority** has the meaning assigned to the term in Article VI.B.

**Annual Report** means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

**Auditor** means the Fairfax County Independent Police Auditor.

**Board of Supervisors** means the Board of Supervisors of Fairfax County.

**Bylaws** means the Bylaws of the Fairfax County Police Civilian Review Panel

**Chief** means the FCPD Chief of Police.

**Complaint** means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

**Counsel** means the legal counsel that the Board of Supervisors designates to support the Panel.

**FCPD** means the Fairfax County Police Department.

**FCSO** means the Fairfax County Sheriff's Office.

**Initial Complaint** means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

**Initial Disposition Notice** means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

**Investigation(s)** means a FCPD internal administrative investigation.

**Investigation Report** means the completed written FCPD report setting forth the findings of the Investigation.

**Laws** means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

**Meeting(s)** has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

**Panel** means the Fairfax County Police Civilian Review Panel.

**Panel Findings** means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

**Panel Meeting** means a meeting of the Panel.

**Panel Meeting Notice** means the written notice stating the date, time, and location of a Panel Meeting.

**Panel Member(s)** means each of the persons that the Board of Supervisors appoints to the Panel.

**Panel Review Meeting** means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

**Panel Review Meeting Notice** means the Panel Meeting Notice for a Panel Review Meeting.

**Public Meeting(s)** means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

**Receipt of the Investigation Report** is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

**Review Request** means a person's request for the Panel to review an Investigation.

**Serious Misconduct** has the meaning assigned to the term in Article VI.B.

**VFOIA** means the Virginia Freedom of Information Act, as amended from time to time.

**Panel Governance: Board of Supervisors Action and Consideration Items**

<b>Date</b>	<b>Board of Supervisors Item</b>	<b>Topic</b>	<b>Revisions Apply to:</b>
Dec. 6, 2016	Action Item 17	Establishment of the Panel	Authorizing Action Item
Feb. 28, 2017	Action Item 8	Panel Appointments and Terms	Dec. 6, 2016 Action Item
July 11, 2017	Consideration Item 1	Submission of Bylaws for approval	Bylaws
October 16, 2018	Consideration Item 1	Chair Appointment of Review Liaisons, Convening a Review Meeting, Hearing from a Complainant at a Review Meeting	Bylaws
Sep. 24, 2019	Action Item 17	Allow for greater transparency in reports; cannot review employee grievance	Dec. 6, 2016 Action Item
Nov. 19, 2019	Consideration Item 1	Removal of matters subject to County Personnel Regulations or General Orders from scope of authority; Clarification of limitations on disclosure of certain personnel records and portions of investigative case files; Explicit restrictions on disclosure of certain law enforcement records	Bylaws
Dec. 1, 2020	Action Item 9	Authorize Panel to participate in public meetings where public comment is received about law enforcement policies, practices, and procedures	Dec. 6, 2016 Action Item & Bylaws
Feb. 23, 2021	Consideration Item 2	Allow a Chair to serve more than one, one-year term, as long as such terms are not successive.	Bylaws
July 27, 2021	Action Item 14	Authorize appointment of Executive Director	Dec. 6, 2016 Action Item & Bylaws
July 19, 2022	Consideration Item 1	Codify a subcommittee review process for initial review of complaints	Bylaws

Board Agenda Item  
July 19, 2022

CONSIDERATION - 1

Approval of an Amendment to the Bylaws of the Police Civilian Review Panel to Codify a Subcommittee Review Process for Initial Review of Complaints

ISSUE:

Approval of an amendment to the bylaws for the Police Civilian Review Panel (Panel) to codify a subcommittee review process for initial review of complaints.

RECOMMENDATION:

Staff recommends approval of the requested amendment to the Panel's bylaws.

TIMING:

Board action is requested on July 19, 2022.

BACKGROUND:

The Board of Supervisors approved the establishment of the Panel on December 6, 2016. The Board established the Panel for the purposes of building and maintaining public trust between the Fairfax County Police Department, the Board, and the public, and to enhance police legitimacy.

The Panel prepared an Annual Report for 2021, published it on March 1, 2022, and discussed the report's findings at the Board's Public Safety Committee meeting on May 17, 2022. The Panel noted that it created a subcommittee process in 2019 to assist in processing a growing volume of complaints received each year. As the Panel further explained in its Report,

The purpose of the subcommittee process was not to short-change any complainants, but to allow the Panel to avoid unnecessary expenditures of resources where complaints simply fall outside of the jurisdiction of the Panel or wholly lack merit. Rather than having every single complaint reviewed in full by all members of the Panel, which involves at the moment each Panel member reviewing investigation files one-by-one at FCPD headquarters, a subcommittee of three Panel members reviews the files first to determine whether the allegations of the complaint rise to the level of 'serious misconduct' or 'abuse of authority' as defined by the Panel's Bylaws and considers whether, to put it bluntly, if there is any there.

Board Agenda Item  
July 19, 2022

See Attachment 2, page 5. In accordance with the recommendations of the Panel's Four-Year Review, in September 2021, the Panel codified in its bylaws this "summary judgment"-like process for disposing of wholly unfounded complaints. This process is codified in a new Article VI.D., as noted in the redlined version of the attached bylaws.

Under the new Article VI.D of the proposed bylaws and as detailed at the Board's Public Safety Meeting on May 17, 2022, if the three-member Subcommittee unanimously determines that a complaint is unfounded, then a member of the Subcommittee will provide a summary of its deliberations and recommendations to the full Panel when it takes up the complaint. The full Panel will ultimately vote to determine whether it accepts a particular Review Request or complaint. The Complainant will be given the opportunity to address the full Panel before any complaint is disposed of under this process.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Amendment to the Panel's Bylaws

Attachment 2: Fairfax County Police Civilian Review Panel Annual Report 2021

STAFF:

Thomas G. Arnold, Deputy County Executive

ASSIGNED COUNSEL:

Elizabeth D. Teare, County Attorney

## **BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL**

**Approved by the Board of Supervisors on July 11, 2017**

**Accepted by the Police Civilian Review Panel on August 3, 2017**

**Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, December 1, 2020, February 23, 2021, ~~and~~ July 27, 2021, and [DATE]**

### **ARTICLE I. NAME<sup>1</sup>**

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

### **ARTICLE II. PURPOSE**

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

### **ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS**

- A. Composition and Qualifications.
  - 1. The Board of Supervisors shall appoint each Panel Member.
  - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
  - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

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<sup>1</sup> Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.



civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three-year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

**ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES**

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1<sup>st</sup> of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
  - (a) Preside over all Panel meetings at which the Chair is present;
  - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
  - (c) Serve as the Panel's official spokesperson;
  - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
  - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
  - (a) Preside over Panel meetings in the absence of the Chair; and
  - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
  - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

## **ARTICLE V. QUORUM, VOTING AND MEETINGS**

### **A. Quorum.**

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

### **B. Voting.**

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

### **C. Meetings.**

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
  - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
  - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
  - (a) places that are accessible to persons with disabilities,
  - (b) public buildings whenever practical; and
  - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
  - (a) the date, time, and location of each meeting;
  - (b) the Panel Members present and absent;
  - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
  - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

**ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES****A. Scope of Panel Review Authority.**

1. 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 Panel shall not review:
  - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
  - (b) any Complaint related to an incident that occurred before December 6, 2016;
  - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
  - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
  - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
  - (i) identifying information for the person filing the Complaint;
  - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
  - (iii) the specific police behavior of concern;
  - (iv) a description of the incident in which the behavior occurred; and
  - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

## ~~2. Initial Disposition Notice.~~

- ~~(a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.~~
- ~~(b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.~~
- ~~(c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:~~
- ~~(i) is timely filed; or~~
  - ~~(ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.~~
- ~~(d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.~~
- ~~(e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.~~
- ~~(f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.~~

## D. Initial Review and Disposition.

### 1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:
- (i) is timely filed; or
  - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

### 2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees ("Initial Review Subcommittee") comprised of Panel Members to conduct initial reviews of Review Requests filed by

community members with the Panel.

- (b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).
- (c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.
- (d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

### 3. Initial Review Subcommittee Process and Report to the Panel

- (a) The Subcommittee shall review a Complaint to determine whether:
  - (i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and
  - (ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.
- (b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.
- (c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.
- (d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

### 4. Initial Disposition Notice

- (a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.



D.E. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
  - (a) suspend its review;
  - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
  - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
  - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E.F. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.

- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
  - (e) The Panel shall not take testimony or receive evidence.
  - (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
  - (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
  - (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
  - (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.
2. Closed Sessions, and Confidential Matters During Panel Review Meetings.
- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
  - (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
  - (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
  - (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims,

or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.

- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F.G. Disposition of Review Requests.

1. Timely Completion.
  - (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
  - (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.
2. Panel Findings.
  - (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
    - (i) Concur with the findings and determination detailed in the Investigation Report;
    - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
    - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
  - (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
  - (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
  - (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

**ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES**

A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

**ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS**

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

**ARTICLE IX. RECORDKEEPING; ANNUAL REPORT**

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1<sup>st</sup> of each year.

**ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY**

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

**ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS**

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

**ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS**

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.



Exhibit A

**DEFINED TERMS**

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

***Abuse of Authority*** has the meaning assigned to the term in Article VI.B.

***Annual Report*** means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

***Auditor*** means the Fairfax County Independent Police Auditor.

***Board of Supervisors*** means the Board of Supervisors of Fairfax County.

***Bylaws*** means the Bylaws of the Fairfax County Police Civilian Review Panel

***Chief*** means the FCPD Chief of Police.

***Complaint*** means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

***Counsel*** means the legal counsel that the Board of Supervisors designates to support the Panel.

***FCPD*** means the Fairfax County Police Department.

***FCSO*** means the Fairfax County Sheriff's Office.

***Initial Complaint*** means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

***Initial Disposition Notice*** means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

***Investigation(s)*** means a FCPD internal administrative investigation.

***Investigation Report*** means the completed written FCPD report setting forth the findings of the Investigation.

***Laws*** means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

**Meeting(s)** has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

**Panel** means the Fairfax County Police Civilian Review Panel.

**Panel Findings** means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

**Panel Meeting** means a meeting of the Panel.

**Panel Meeting Notice** means the written notice stating the date, time, and location of a Panel Meeting.

**Panel Member(s)** means each of the persons that the Board of Supervisors appoints to the Panel.

**Panel Review Meeting** means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

**Panel Review Meeting Notice** means the Panel Meeting Notice for a Panel Review Meeting.

**Public Meeting(s)** means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

**Receipt of the Investigation Report** is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

**Review Request** means a person's request for the Panel to review an Investigation.

**Serious Misconduct** has the meaning assigned to the term in Article VI.B.

**VFOIA** means the Virginia Freedom of Information Act, as amended from time to time.



# Fairfax County Police Civilian Review Panel Annual Report 2021

**Building Community Trust Through Accountability**

# Fairfax County Police Civilian Review Panel: Annual Report 2021



A Fairfax County, VA Publication

Publication Date: February 28, 2022

## PANEL MEMBERS

James Bierman, McLean (Chair)  
Cheri Belkowitz, Fairfax Station  
Todd Cranford, Fairfax  
Janell Wolfe, Fairfax  
Frank Gallagher, Burke  
Bryon Garner, Alexandria  
Dirck Hargraves, Kingstowne  
Shirley Norman-Taylor, Lorton  
William Ware, Alexandria

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To request this information in an alternate format, call 703-324-3459, TTY 711.

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## INTRODUCTION

The fifth year of the Fairfax Police Civilian Review Panel (Panel) was one marked by change and transition. In May 2021, Kevin Davis took over as Chief of the Fairfax County Police Department, the County's first new police chief in eight years. In August of 2021, the Fairfax County Board of Supervisors approved funding for the Panel's first Executive Director, who will be of great assistance to the Panel. Over the course of the year, six new members joined the Panel, and at the conclusion of this term, only one member will remain from the Panel's previous 2020-2021 term.<sup>1</sup>

Furthermore, throughout the year, the Panel took important steps to systematize and streamline its processes without sacrificing respect for and attention to complainants. These included clarifying the subcommittee process, adopting new rules surrounding complainant comments at meetings, and implementing new communication templates for interactions with complainants. The Panel did its best to implement recommendations from the prior year's Four-Year Review into practice. While it was a year of change and transition, the Panel never strayed from its mission to "to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors and the Fairfax County Police Department (FCPD)."

Unfortunately, the year did not prove wholly transitional with respect to the many challenges facing our community due to the COVID-19 pandemic. The Panel, like the country, did its best to weather the storm but had fits and starts with respect to in-person meetings due to the rise of new variants and changing public health circumstances. These challenges only further confirmed the Panel's longstanding position that it would be tremendously beneficial to allow for review of investigation files electronically.

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<sup>1</sup> Bob Cluck and Sris Sriskandarajah left the Panel before the end of the 2020-2021 term. Holly Doane, Rhonda Van Lowe, and Hansel Aguilar left the Panel at the conclusion of the 2020-2021 term. Doug Kay left the Panel in August of 2021. Frank Gallagher and Shirley Norman-Taylor will be leaving the Panel at the conclusion of the 2021-2022 term. During the 2021-2022 term, Dirck Hargraves, Cheri Belkowitz, Todd Cranford, William Ware, Bryon Garner, and Janell Wolfe joined the Panel. Jimmy Bierman was reappointed to the Panel at the end of the 2021-2022 term.

Finally, the Panel’s everyday work taking complaints and reviewing investigations never slowed. Over the course of the year, the Panel received 14 Initial Complaints and 14 Requests for Review. See Appendix A: Complaints and Requests for Review Received by the Panel, 2017-2021. The Panel met 14 times as a full Panel, conducted 9 additional subcommittee meetings, and hosted a public forum. In the end, the Panel handled 13 complaints to conclusion,<sup>2</sup> producing two full review reports<sup>3</sup>. The Panel continued its ongoing dialogue with the FCPD and the Internal Affairs Bureau (IAB), and continued to see strong work in IAB investigations.

What follows is a general summary of the Panel’s year along with additional recommendations for the Panel and the FCPD going forward. The Panel is pleased with the progress that the year has brought, but remains dedicated to improvement and evolution going forward.

## **WORKING WITH NEW POLICE CHIEF KEVIN DAVIS**

On May 3, 2021, Kevin Davis took the reins as Chief of the Fairfax County Police Department. The Panel sought to establish a strong working relationship with Chief Davis, while still maintaining and confirming its independence. On May 26, 2021, the Panel held a public forum attended by nearly 100 people with Chief Davis allowing members of the Panel and the Community to address concerns about Chief Davis’s past experiences and to discuss and look toward the future of the FCPD. Chief Davis affirmed his support for civilian oversight bodies and committed to ensuring that the Panel can continue its work independently and without interference. At that Forum, Chief Davis also provided his assurance that he would find ways to work with whatever iteration of the Panel continued in the future and would not block reforms to the Panel including the creation of an Executive Director position.

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<sup>2</sup> Note, not all investigations into Initial Complaints have yet been completed and several completed investigations into Initial Complaints to the Panel have not resulted in requests for Panel review. See Appendix B: Status of FCPD Investigations into Initial Complaints Received in 2021. Further, two Complaints handled to completion were initiated before this term, and the number of Complaints handled to completion includes several Complaints that were determined to be time-barred.

<sup>3</sup> The Review Reports from CRP-20-20 and CRP-20-21, and from CRP-20-24 are provided as Appendix C and D respectively.

On June 9, 2021, Chief Davis invited the Chair of the Panel, Jimmy Bierman, to address the Administrative Staff meeting of the FCPD, which included all Deputy Chiefs, Majors, and high level civilian staff of the FCPD. This was the first time in the Panel's history that such a meeting, including a dialogue between Chair Bierman and high-ranking officers, had ever taken place.

At the request of the Panel, Chief Davis attended the Panel's November 16, 2021, meeting along with trainer Scott Meadows to discuss the FCPD's implicit bias training. Chief Davis and Mr. Meadows took questions from Panel members and the public during that meeting.

On a practical level, although Chief Davis has not implemented a plan to allow for Panel members to review investigation files electronically, *see Recommendations supra*, but at Chief Davis's direction, the IAB has expanded hours that investigation files are available, allowing Panel members to conduct their reviews outside of normal working hours, which has been an important improvement.

The Panel is pleased to report that it believes that its current working relationship is strong (and it would say so if it did not). However, the year was not without its challenges and it is important to move past the limitations of this past year. While the Panel intended to fully continue its quarterly meeting practices and host additional public forums, the Panel's intended schedule was interrupted by Delta, Omicron, and constraints on the time of its all-volunteer members. Further, while the Panel intended to hold additional meetings with the rank-and-file of the FCPD and take part in additional trainings, the Panel did not achieve its goals beyond taking the opportunity to address and answer questions from a class of Criminal Justice Academy recruits in June of 2021. The Panel hopes and believes that it can and will improve upon these shortcomings in the upcoming year with the arrival of the Panel's first Executive Director.



## THE EXECUTIVE DIRECTOR POSITION

The Panel's appreciation of the Board of Supervisors' decision to provide the Panel with funding for and authorize the creation of an Executive Director position cannot be overstated. Nor can the influence that an Executive Director will have in professionalizing and improving the Panel's work and impact going forward. The advocacy efforts of Panel leadership did not fall on deaf ears before the Board of Supervisors and the Panel is grateful for the opportunities it had to work with the Board.

The Panel would be remiss not to recognize that it has benefited from excellent administrative support in the past from the Office of the Independent Police Auditor and specifically from Management Analyst Rachele Ramirez, who has been doing double-duty supporting both the OIPA and the Panel. Simply put, without Ms. Ramirez, the Panel would not have been able to function at a high-level—or perhaps at any level—during the past year.

The Panel's workload and the limitations of an all-volunteer enterprise were highlighted during this year of transition, especially with significant turnover in the Panel's membership. An Executive Director will provide additional stability for the Panel and will be able to greatly expand upon the Panel's necessary outreach efforts. Many duties that have in the past fallen largely to the Chair, a volunteer, especially in a time of turnover, will now be professionalized. The new Executive Director will be empowered to organize more public outreach events, to set up more opportunities for the Panel to interface with the rank-and-file of the FCPD, and to liaise with Chief Davis and leaders of the Internal Affairs Bureau (IAB) on a more regular basis. The Panel is well aware that many members of the community are not even aware of its existence and that many members of the rank-and-file of the FCPD are uninformed as to the practices and procedures of the Panel, and insofar as that is the case, the Panel's mission falters. A dedicated, full-time Executive Director who can develop and execute a comprehensive outreach strategy will offer the Panel a tremendous opportunity to enhance its

ability to improve trust between the community and the FCPD, which will benefit community members and FCPD officers alike.<sup>4</sup>

The Board of Supervisors appointed the Panel's first Executive Director, Steven Richardson, on February 22, 2022. The Panel thanks the County's Human Resources leaders and the Board of Supervisors for being invited to play a role in the selection process, with two Panel members sitting on the interview committee. The Panel looks forward to what is to come.

## REFORM OF THE SUBCOMMITTEE PROCESS

In 2019, the Panel created a subcommittee process to help handle the growing number of complaints being received by the Panel. The purpose of the subcommittee process was not to short-change any complainants, but to allow the Panel to avoid unnecessary expenditures of resources where complaints simply fall outside of the jurisdiction of the Panel or wholly lack merit. Rather than having every single complaint reviewed in full by all members of the Panel, which involves at the moment each Panel member reviewing investigation files one-by-one at FCPD headquarters, a subcommittee of three Panel members reviews the files first to determine whether the allegations of the complaint rise to the level of "serious misconduct" or "abuse of authority" as defined by the Panel's Bylaws and considers whether, to put it bluntly, is there is any there there.

The Panel's Four-Year Review recommended that the Panel "codify in its bylaws a 'summary judgment'-like process for disposing of wholly unfounded complaints at the Subcommittee level." The Panel did so in September of 2021.<sup>5</sup> Vice Chair Dirck Hargraves and

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<sup>4</sup> Appendix E details the Panel's outreach efforts this term. There are areas for improvement in the Panel's outreach strategy in the coming year, especially given the circumstances of this past year. Turnover on the Panel led in part to perhaps more outreach responsibilities falling squarely on the Chair than in past years, while the Chair was also focused on advocating for structural change, including the creation of the Executive Director position, and implementing recommendations from the Panel's Four-Year Review. If anything, though, this only reinforces and highlights past recommendations and the need for an Executive Director: the Panel's workload is no longer an all-volunteer proposition.

<sup>5</sup> With this report, the Panel is sharing these proposed Bylaw changes in hopes that the changes will be wholly adopted by the Board of Supervisors. The Panel will formally submit the proposed Bylaws changes and the necessary action item to the Board at a later date.

Panel Member Todd Cranford drafted new language to clarify past practices. Specifically, the Panel decided to add to its Bylaws a provision detailing the following in a new Article VI.D.<sup>6</sup>:

- (a) The Subcommittee shall review a Complaint to determine whether:
  - (i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and
  - (ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.
- (b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.
- (c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.
- (d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

See Appendix F (Proposed Bylaw Changes on Subcommittee Process). While in truth this addition does not represent a radical departure from past practice, the Panel now has a clear command and method for handling complaints at the Subcommittee level.

Perhaps most importantly, in adopting the Bylaws change, the Panel retained two critical checks on any potential for a lack of uniformity among subcommittee outcomes. First, the Panel decided that in order for a Subcommittee to recommend that the full Panel not review an investigation, the Subcommittee must be unanimous in its decision. Second, the Panel made sure to retain power for the full Panel to reject any such Subcommittee recommendation. Indeed, in practice, every full Panel meeting considering a Subcommittee's

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<sup>6</sup> The new proposed Bylaws language, if approved by the Board, will replace Article VI.C.2.

recommendation includes an opportunity to question the Subcommittee members and probe the question of whether or not a full Panel review is necessary.

Following the adoption of the Bylaws change, the Panel took an additional step to protect the interests of complainants. Subcommittee meetings have never offered an opportunity for the complainant to address the Subcommittee. Rather, Complainants were only customarily invited to address the full Panel at a Review Meeting, which only occurred if the subcommittee recommended to the Panel that it undertake a full review. The Panel decided that, despite the fact that every investigation reviewed includes a full interview of the Complainant by the IAB, this created a potentially problematic situation where a Complainant would not be able to have their voice heard by the entire Panel before the Panel dispensed with their complaint. Therefore, the Panel adopted a new practice whereby a Complainant is entitled to and invited to address the full Panel in the event of a Subcommittee recommendation that the Panel not undertake a full review.

The Panel believes that the Subcommittee process has been working well, but acknowledges that at the moment, a majority of complaints are not being reviewed by the full Panel. The Panel has no reason, however, to believe that the outcomes would be any different with the benefit of full Panel reviews. Indeed, the Panel procedure requires the Subcommittee to consider whether a full Panel review might turn out differently, and the Subcommittee always explains its recommendation to the full Panel. Rather, the Subcommittee process has allowed the Panel to handle wholly unfounded complaints in a more expeditious manner. For instance, in 2021 the Panel avoided conducting a full review of a complaint where in-store cameras and body-cameras demonstrated that the Complainant's arrest for shoplifting had been wholly justified and was effectuated in an appropriate manner; a complaint where body-camera footage demonstrated that police officers had responded to a 9-11 call by-the-book; and a complaint where extensive records and investigation by multiple detectives and victims' services agents wholly contradicted a Complainant's account.

## IMPROVING PANEL COMMUNICATIONS WITH COMPLAINANTS

The Panel does not possess unlimited jurisdiction. For instance, under the terms of the Panel's Action Item and Bylaws, the Panel may not review any complaints concerning allegations of conduct occurring before December 6, 2016. Further, for a complaint to fall within the Panel's purview, it generally must be brought either directly to the FCPD or as an Initial Complaint to the Panel within one year of the incident. (Notably, the IAB does not operate with such a time bar and will and frequently does review complaints made beyond the one-year limitation.) And for the Panel to accept a Review Request, it generally must be made within 60 days of the issuance of the FCPD's disposition letter providing the outcome of the investigation.

The one-year and 60-day time bars are not absolute, however. If a Complainant is able to show "good cause" as to why the deadline was missed, the Panel can decide to accept a complaint for review. In one particular case from this past year where the Panel found good cause, the Complainant had not requested review within 60 days of the FCPD's disposition letter resolving the investigation into the complaint. But the Complainant explained that he had never received the letter and it was confirmed that the disposition letter had been sent to an old address for the Complainant. Upon receiving a copy of the disposition letter, the Complainant promptly requested a review and the Panel ultimately decided good cause demonstrated reason for the otherwise unacceptable delay.

This, however, has been the exception. In 2019, the Panel adopted a policy whereby the Chair would respond to out-of-time filings by asking the Complainant if there was "good cause" to waive the time limitation. Understandably, this had frequently not resulted in a satisfying outcome for either party because the somewhat amorphous legalese of "good cause" did not do enough to inform Complainants of the kind of information they were to provide. Rather, what typically happened was that Complainants would respond simply by reiterating the allegations of the Complainant and would provide no justification for delay.

Thus, the Panel adopted a new template for the typical “good cause” letter where the letter explains in more simple and direct detail what could constitute “good cause.”

Specifically, now the letter explains “good cause” as follows:

Your request for review is late. Panel rules say that you must make your request less than 60 days after the police department completes its investigation. The Panel must now decide if there is good cause for your late request. Good cause means that you have a good reason for being late. If you believe you have a good reason for the late request, please provide your reasons in writing. You must submit the reasons why you believe there is good cause to review your request . . .

The Panel hopes that this change will allow the Panel to receive adequate information in the future to allow it to make good cause determinations.

## **ISSUES FOR CONSIDERATION, RECOMMENDATIONS, AND COMMENTS**

One of the stated purposes of the Panel in its Bylaws is to “make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.” In 2019, the Panel released the first version of its Recommendations Matrix, in which the Panel makes recommendations to the FCPD and the FCPD has the opportunity to respond to such recommendations. The latest version of that Recommendations Matrix, including the FCPD’s response, and the Panel’s counter-responses where necessary, is attached as Appendix G. The Panel notes that at the time of its last Annual Report, the FCPD had not yet responded to some of the Panel’s recommendations. It has since done so and, as reflected in the Matrix, the Panel and the FCPD have come to agreement on a number of reforms. For instance, following a Panel review in which the Panel learned that the FCPD did not have an always-record policy with respect to station interviews, the FCPD has updated its practices to include a rule that all interviews are to be recorded as practicably possible.

In February of 2021, in publishing a Four-Year Review report, the Panel also provided recommendations directly to the Board of Supervisors regarding the Panel, many of which have

been implemented either by Board or the Panel itself. Further, the Panel has been given the opportunity to discuss such recommendations with the Board and where the Board has not yet implemented certain recommendations, *i.e.*, a request for limited investigatory power, changes to the Panel's conclusion options, they have nevertheless remained open for further consideration down the line, especially in light of the development of the Panel now that an Executive Director is being hired. The Panel hereby reaffirms those specific recommendations to the extent they are still operable. The Specific Recommendations from the Four-Year Review are attached as Appendix H.

The Panel further wishes to provide the following issues for consideration, recommendations, and comments:

#### **Inappropriate 9-1-1 Calls and Their Aftermath**

Two complaints reviewed this term concerned police procedures when responding to 9-11 calls. In both instances, it was clear that the 9-1-1 call had been erroneously placed, possibly deliberately.

In the first instance, described in Review Report CRP-20-20 and CRP-20-21, attached as Appendix C, a man purporting to be a downstairs neighbor provided the address of a second-floor apartment in two separate 9-1-1 calls claiming to be hearing a loud domestic disturbance—a shouting match—at roughly 4:00am in the morning. The Complainants were two sisters who were awoken at 4:00 am by police officers banging on their front door who complained of the officers' conduct and communication during the service call, especially where it was clear that no such domestic disturbance was, in fact, occurring at the residence. The Panel, after requesting additional investigation of the complaint, ultimately concurred with the findings of the investigation that cleared the officers of misconduct under the circumstances, which included the officers' positioning on a narrow, second floor landing at the apartment's front door, but made recommendations regarding the importance of clarifying service call procedures in the future and recommendations regarding correspondence with complainants. The Panel was surprised to learn in that instance, however, that there had been no follow up with the individual whose two 9-1-1 calls were either outright fabrications or a

curious case of mistaken location. The Panel was informed that such follow up normally does not occur due to privacy concerns and a desire to avoid any potential deterrence to making 9-1-1 calls. The Panel understands these concerns, but where the situation is as clear cut as it was here, the Panel believes it would be in the interest of all parties involved to get to the bottom of what happened and why, especially if it was the case of intentional “swatting,” a term that literally describes trying to generate a false alarm that leads to a SWAT team being wrongfully dispatched to an inappropriate location.

A second complaint involved a more egregious, more clearcut example wholly in line with the term. There, the 9-1-1 call actually referenced fired shots and a SWAT team was dispatched to the scene. Very fortunately for the Complainant, the situation was handled competently and by-the-book as was caught on body-worn cameras. While the Subcommittee reviewing the complaint expressed sympathy for the Complainant’s plight and conceded that the experience of having a full swat team show up at one’s house in the middle of the night was traumatic and problematic, the Subcommittee nevertheless did not recommend review by the full Panel where the investigation benefited from extensive video and audio confirming that police were responding to what sounded like a serious threat—gunshots during a likely domestic disturbance—followed General Orders, and diffused the situation as expeditiously as possible. Still, the Panel was concerned that such a situation could have had a very different and very tragic outcome.

There, the Panel was told that the FCPD *does* investigate such serious incidents, and the potential criminal nature of such calls that are essentially akin to filing a false police report. But that begs the question whether certain investigatory steps can or should be taken in the event of the former scenario, which still resulted in terrified residents and police officers in a potentially precarious situation. While the Panel is aware that certain rules concerning 9-1-1 procedures are set at the Commonwealth-wide level, it is our hope that the FCPD and the County can work together to make sure that procedures and laws are in place such that the frequency of such dangerous incidents is greatly minimized.



## **Electronic Access to Investigation Files**

The Panel still does not have electronic access to the FCPD investigation files that it reviews. The Panel is fully cognizant of the importance of confidentiality in reviewing administrative investigations and takes its work very seriously. The Panel understands that one way to protect such confidentiality is to keep such files centrally located and limit access. But the Panel simply does not believe these concerns override the importance of Panel access to such documents and the very real efficiency losses under the current review regime.

With six new members joining the Panel in the past term, a consistent surprise from new members was that we do not have electronic file access and that, in order to review investigation files per our mandate, Panel members need to go to FCPD Headquarters and take turns reviewing a paper file book and audio and video on CDs. This is a significant burden on volunteers with other jobs. Indeed, in the past year, two Panel members started new jobs, making conducting in-person file reviews during work hours even more difficult.

As already mentioned, this year the IAB started opening up after normal business hours, which was extremely helpful. However, for the sake of Panel members *and* the IAB, the Panel believes that it should be granted access to such files electronically and Panel members should be able to review such files on their own time. To the credit of the officers in the IAB, no one has ever complained about or failed to accommodate Panel member requests for review (though, notably, only one Panel member can review at a time). But when, for instance, a Panel member's schedule dictated that he review an investigation file the Wednesday evening before Thanksgiving, it seems like all parties could have benefited from electronic file review. In addition, at one point during this past year a combination of snow days and illness prevented a full file review and led to multiple subcommittee delays that could have been avoided by electronic file review. The Panel respectfully requests again that it be granted the ability to review files electronically.

## **Training**

The Panel's training regimen was again impacted by the COVID-19 pandemic, and the Panel is aware that it needs to remedy the situation. The Panel has continued to rely on

extensive training recordings from 2019 provided by the National Association of Civilian Oversight of Law Enforcement (NACOLE) and the FCPD, but is well in need of a refresh. In December, 2021 incoming Chair Dirck Hargraves, Independent Police Auditor Richard Schott, and Ms. Ramirez were able to attend the annual NACOLE conference, which provided ideas about further training and Panel development. The Panel fully intends to task its new Executive Director with working with the FCPD to organize training for the full Panel, especially given the Panel's recent turnover.

## **WITH APPRECIATION**

The Panel offers thanks to the Fairfax County Board of Supervisors for its continued commitment to meaningful civilian oversight. In particular, the Panel thanks Chairman Jeff McKay and Supervisor Rodney Lusk, Chair of the Public Safety Committee, for their work in securing funding for, and approval of, an Executive Director. The Panel further thanks Supervisor Penny Gross for her role in leading the hiring search for the Executive Director.

The Panel offers thanks to Shirley Norman-Taylor, Frank Gallagher, and Doug Kay for their service to the Panel that came to an end in 2022. Mr. Kay was an inaugural member of the Panel, a past Chair, and a member of the Ad Hoc Police Practices Commission that led to the creation of the Panel. The Panel thanks him for his many years of service to the County and dedication to the work of civilian oversight. Ms. Norman-Taylor and Mr. Gallagher both joined the Panel in 2019 and are leaving after productive and meaningful terms. The Panel thanks them both for the perspectives that they brought to the Panel and their commitment to the work. Further, the Panel thanks them for their ongoing mentorship and assistance to members of the Panel who joined this term: Dirck Hargraves, Cheri Belkowitz, Todd Cranston, William Ware, Janelle Wolf, and Bryon Garner.

The Panel thanks Anita McFadden, who served as Counsel to the Panel from July, 2020 to November, 2021 before she moved to the West Coast. Ms. McFadden offered consistent, reliable advice and assistance to the Panel that has been missed.<sup>7</sup>

The Panel also wishes to thank those who have led the IAB during this past term. The Panel is very appreciative of the efforts of Major Dean Lay, Captain Alan Hanson, Captain Camille Stewart, Captain Dana Robinson, Major Todd Billeb, Lieutenant Eric Ivancic, Lieutenant Derek Gray, and Second Lieutenant Timothy Forrest, all of whom have played prominent and important roles at the IAB in this past term, and all of whom have worked with the Panel. The Panel recognizes the hard work of the IAB and the seriousness with which it approaches its work.

The Panel wishes to thank Chief Davis and his team for their work with the Panel throughout the year, and wishes to thank Major Darrell Nichols for joining the Panel for an informative presentation on the FCPD's implicit bias training.

Finally, the Panel thanks Independent Police Auditor Richard Schott and Management Analyst Rachelle Ramirez for their ongoing support of the Panel, and Dre'Ana Whitfield, who joined the OIPA as a temporary Administrative Assistant in late 2021. The Panel's work parallels Mr. Schott's and he has always showed a willingness to assist the Panel. And really, last but not least, the Panel thanks Ms. Ramirez, who has provided immeasurable support to the Panel throughout the year and who, no doubt, is looking forward to the arrival of the Panel's first Executive Director.

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<sup>7</sup> The Panel hopes to hire new counsel in the coming term.

## APPENDICES

Appendix A: Complaints and Requests for Review Received by the Panel, 2017-2021

Appendix B: Status of FCPD Investigations into Initial Complaints Received in 2021

Appendix C: Review Report CRP-20-20 and CRP-20-21

Appendix D: Review Report CRP-20-24

Appendix E: Panel Outreach in 2021

Appendix F: Proposed Bylaws Changes on Subcommittee Process

Appendix G: Panel Recommendation Matrix

Appendix H: Specific Recommendations from the Panel's Four-Year Review

Appendix I: Police Civilian Review Panel Member Biographies

## APPENDIX A: Complaints and Requests for Review Received by the Panel, 2017 - 2021

	2017	2018 <sup>&amp;</sup>	2019	2020	2021 <sup>&amp;</sup>	All Years
Number of All Complaints filed against the FCPD (Panel Authority)	2	31	29	35	28	125
Number of Initial Complaints brought to the Panel	1	24	20	21	14	80
Number of Initial Complaints filed with the Panel but for which there is no ultimate review request	1	18	14	10	2	45
Number of Initial Complaints that are later requested to be reviewed by the Panel	0	2	5	11	8	26
Number of Initial Complaints in process (investigation ongoing as of 12/31/2021)	0	0	0	0	4	4
Number of Review Requests Brought to the Panel	1	7	9	14	14	45
Number of Review Requests Accepted for Full Panel Review	1	4	5	5	0	15
Number of Review Requests Reviewed by a Subcommittee	0	1	8	9	9	27
Number of Review Requests Rejected by the Panel (No full Panel Review)	0	2	4	9	11 <sup>^</sup>	26
Number of Review Requests in process (as of 12/31/2021)	0	0	0	0	4	4
Number of FCPD Investigations still pending (as of 12/31/2021)	0	0	0	0	3	3
<b>Allegations<sup>#</sup></b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>All Years</b>
Bias - race/ethnicity		7	6	4	6	23
Bias - other discrimination		2	1			3
False arrest/Malicious prosecution	1	4	3	4	2	14
FCPD communication issue		1	1	4		6
Harassment		6	3	4	2	15
Hostile/threatening manner		4	2	3	2	11
Illegal search		3	1	1	1	6
Illegal stop		1				1
Failed to Investigate or Incomplete investigation			1		4	5
Law/FCPD policy violation	1	5	6	9	7	28
Misconduct		4				4
Negligence		6	4			10
Officer did not identify				1	1	2
Officer had unprofessional manner		1	1	9		11
Officer was untruthful		2	4	5		11
Other		3	4	1	2	10
Use of Force		2	1	3		6
<b>Grand Total</b>	<b>2</b>	<b>51</b>	<b>38</b>	<b>48</b>	<b>27</b>	<b>166</b>

Notes:

& In 2021, 1 Review Request was unclear so no action was taken. In 2018, 3 Initial Complaints and 1 Review Request were withdrawn.

<sup>^</sup> In 2021, 3 Review Requests were denied due to late submission.

<sup>#</sup> There may be multiple allegations associated with a single complaint.

## APPENDIX B: Status of FCPD Investigations into Initial Complaints Received in 2021

CRP Case Number	Date Forwarded to FCPD	Date Findings Due	Number of Extensions	Date Findings Received	Number of Days Past Due #
CRP-21-01	1/25/2021	3/26/2021	0	3/2/2021	On time
CRP-21-03	1/28/2021	3/29/2021	1	4/29/2021	31
CRP-21-07	4/15/2021	6/14/2021	1	6/29/2021	15
CRP-21-08	4/19/2021	6/18/2021	1	6/25/2021	7
CRP-21-09	5/4/2021	7/3/2021	0	6/8/2021	On time
CRP-21-12	7/8/2021	9/6/2021	0	8/12/2021	On time
CRP-21-16	8/6/2021	10/5/2021	0	10/5/2021	On time
CRP-21-18	8/19/2021	10/18/2021	1	11/12/2021	25
CRP-21-19	8/20/2021	10/19/2021	0	10/4/2021	On time
CRP-21-23	11/15/2021	1/14/2022	1	1/26/2022	12
CRP-21-25	11/12/2021	1/11/2022	0	12/30/2021	On time
CRP-21-26	12/6/2021	2/4/2022	0	2/1/2022	On time
CRP-21-27	12/22/2021	2/20/2022	^	^	^
CRP-21-28	12/22/2021	2/20/2022	0	1/4/2022	On time

^ Outstanding as of February 4, 2022

When past due, average days overdue is 18 days, down from 85 in 2020.



## 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 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 violate 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 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.
2. 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 properly trained in implementing a revised general order.
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



## County of Fairfax, Virginia

### MEMORANDUM

**DATE:** 6/3/2021

**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-20-24

#### I. Introduction

The Panel held a Review Meeting on May 6, 2021, to review the Investigation resulting from a complaint of Racial Profiling and excessive Use of Force submitted concurrently to the Panel and the Independent Police Auditor on May 7, 2020. The Community Member (hereinafter referred to as the “Complainant”) had just received the results from a completed FCPD investigation in an April 28, 2020, Disposition Letter into his allegations of excessive Use of Force.<sup>1</sup> The FCPD conducted an investigation into the Racial Bias allegation and issued a second letter to the Complainant on August 19, 2020, and he requested a review by the Panel on August 24, 2020. The Panel reviewed the investigation into the Racial Profiling allegation.<sup>2</sup>

After reviewing the Investigation file, speaking with members of FCPD along with the Investigating Officers, and speaking with the Complainant, the Panel members (PCRCP) voted unanimously that the Investigation was complete, thorough, accurate, objective, and impartial, and concurred with the findings of the FCPD.

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<sup>1</sup> The Police Civilian Review Panel (PCRCP) does not have jurisdiction to review the Use of Force allegation. This allegation falls within the purview of the Fairfax County Independent Police Auditor, Richard Schott, who did review and provide a report on the results of his finding on this allegation.

<sup>2</sup> After the Panel conducted its initial review of the request (during a subcommittee meeting on September 14, 2020, and a Panel meeting on September 24, 2020), the FCPD notified the Panel that it was reopening the investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021. The FCPD notified the Complainant of the additional findings in third Disposition Letter dated April 1, 2021.

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## II. Background Facts

The following facts are central to the Complainant's allegation that he was the subject of racial profiling:

On October 25, 2019, the Complainant, an immigrant of African descent, with his girlfriend in the vehicle, was driving behind an unmarked vehicle driven by a Black FCPD Officer (hereinafter "the Subject Officer") eastbound on Lee Hwy near the Fair Oaks Mall. It was approximately 6:15 a.m., and it is undisputed that the Complainant flashed his headlights at the vehicle because the Complainant said the vehicle was drifting in the lane. After overtaking the unmarked vehicle by passing on right, the Subject Officer clocked the Complainant on radar traveling at a speed of 73 mile per hour in a 45 mile per hour speed zone.

The Subject Officer initiated a traffic stop, approached the vehicle, identified himself as a FCPD Officer and informed the Complainant of the reason for the stop. The Subject Officer asked and was provided Complainant's driver's license and vehicle registration. The Complainant was ultimately issued three traffic citations via Summonses for Reckless Driving, Aggressive Driving, and Failure to Dim Headlights. The Subject Officer requested the Complainant sign the Summonses, which were not admissions of guilt, rather an acknowledgment of notice of the future court date.

The Complainant refused to sign the Summonses and was told by the Subject Officer that his failure to sign would result in his arrest pursuant to Virginia law. The Complainant acknowledged knowing he would be arrested for refusing to sign the Summonses after which he informed the Subject Officer that he would not answer any questions and took out his phone to record the interaction.

The Subject Officer asked the Complainant three times to sign to avoid an arrest, but he was ultimately arrested and taken to the Magistrate for his failure to sign.

## III. Procedural Background and Investigative Findings

The Complainant, upon his release by the Magistrate, later that morning, contacted the FCPD to make a complaint about the Subject Officer and his treatment while being placed in the back of the police cruiser for transport to the Fairfax County Adult Detention Center. In his initial complaint, the Complainant alleged excessive Use of Force, which was investigated by the FCPD, and a disposition letter was sent to the Complainant on April 28, 2020. The Panel was not involved as the matter was solely within the purview of the Fairfax County Independent Police Auditor, and therefore, the content of that Disposition Letter will not be addressed.

The Complainant upon receiving the Disposition Letter from the FCPD, requested a review by both the Independent Police Auditor and the Police Civilian Review Panel. In his request for the review, the Complainant in addition to the allegation of excessive Use of Force included for the first time the allegation of Racial Profiling.

The FCPD did not initially investigate the racial profiling claim because it was not included in the original complaint. Thereafter, the FCPD notified the PCRCP that it was reopening the investigation to investigate the claim of Racial Profiling.

On August 19, 2020, the FCPD informed “the Complainant” that it had “completed its investigation into the allegations of your complaint, dated October 25, 2019.” The Disposition Letter indicated that the IAB had conducted a “comprehensive examination of the facts and circumstances surrounding the incident and the actions taken by [the Subject Officer] which occurred on October 25, 2019.”

The letter outlines the following:

Your initial complaint alleged that [the Subject Officer] ‘choked’ you when he fastened your seatbelt while in the police vehicle before the prisoner transport to the Fairfax County Adult Detention Center. . . . Upon receiving a letter from the Chief of Police, you later alleged that [the Subject Officer] was racially bias toward you. . . . The Internal Affairs Bureau completed an additional examination of the facts and circumstances surrounding the incident to include the bias allegation.” During the investigation, we interviewed you, the officers, who responded to the incident in question and identifiable witnesses to the incident.” We examined all the relevant evidence, including In-Car Video recordings, statements, and documents.

The investigation revealed the following facts: [The Subject Officer] stopped you for speeding and aggressive driving. Due to the traffic stop being during the hours of darkness, [the Subject Officer] was not able to determine your race, gender, place of birth, or actual identity prior to the stop. After your refusal to sign the traffic summonses, you were arrested, searched, and asked to take a seat in the police cruiser.

The letters contain additional information related to the Use of Force allegation, and therefore, not relevant to the racial profiling portion. However, the Chief of Police ultimately, informed the Complainant, “based on my review of the facts discovered during the investigation and a recommendation from the Commander of the Patrol Bureau, I have concluded that evidence does not support your allegations. . . . [The Subject Officer’s] actions were lawful and in compliance with FCPD Regulations.”

The Complainant was further advised that he could seek a review of the investigation from the Police Civilian Review Panel. The Complainant did make a formal request for review by the Panel on August 24, 2020.

It should be noted that the Complainant videoed his encounter and during the investigation was asked by the IAB Investigator, on at least two occasions, to provide a copy of the video to assist in the investigation. The Complainant initially said he would provide a copy. Upon being asked again for a copy he said he could not find the video and was therefore, not able to provide a copy to the Investigator.



A subcommittee of the Panel met on September 14, 2020, to discuss the request for a review of CRP 20-24. On the date of the meeting, each Panel members had reviewed the Investigation File. After discussions, each agreed that the allegations entailed abuse of authority and serious misconduct. In particular, the allegation of Racial Profiling would be in violation of FCPD General Order 201.13.<sup>3</sup> Also, the request was timely filed, and therefore, the Panel had jurisdiction to review the investigation. The full nine-member Panel met on September 24, 2020, and the subcommittee recommended the Panel review the Investigation.

#### IV. Panel Meeting and Finding

The Complainant was present for the Panel Review on May 6, 2021.<sup>4</sup> Also, both IAB Investigators were present along with other members of the FCPD. Major Lay was the primary spokesperson for the IAB who introduced 2<sup>nd</sup> Lt. Spooner to present the Investigation.

The Complainant was given an opportunity to share with the Panel his version of the events and why he filed the complaint. In his recitation to the Panel, the Complainant said he was driving to work and saw an unmarked Chevy Impala driving in the middle lane, but on the white line. He said he shared with his girlfriend that was a cop car. He said he flashed his lights to alert the driver, passed the vehicle and after passing he saw the police car lights flashing. The Complainant said he didn't know why he was being stopped but thought perhaps he has a break light out. He said he asked why he was being stopped and the Subject Officer told him he was going 73 miles per hour in a 45 mile per hour zone, and was therefore, driving reckless. He said he was given a citation to sign, but he refused. He said the Subject Officer appeared angry by his facial expression, so he began filming the encounter and handed the phone to his girlfriend. He said the Subject Officer asked him to step out of the vehicle, but while doing so the Subject Officer asked his girlfriend her name. The Complainant told the girlfriend she didn't have to give any information because she was a passenger.

The Complainant began to discuss the Use of Force allegations and was reminded by Acting Chair Bierman that the Panel could only review the allegations of racial profiling. The Complainant said he was driving alongside four or five other cars and believed he was singled out because he flashed his lights.

The Complainant was responsive to the questions asked by the various Panel members. Most Panel questions centered around race and the belief on the part of the Complainant that race played a role in his stop. He answered in the affirmative on most questions relating to his belief that he was stopped because of his race. However, he did acknowledge that if a white driver had flashed his lights and passed on the right, at the same rate of speed, that person would have been stopped as well.

The Complainant was asked by one Panel member if his driving speed could have been the reason for the stop. His response was that he passed the officer, so they were not going the same speed. Also, he said he would not drive recklessly when he knew it was a police officer.

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<sup>3</sup> FCPD 201.13 Human Relations subsection (A) Community Contacts.

<sup>4</sup> The review by the Panel was delayed due to the FCPD reopening its investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021.

He was also asked about the Subject Officer ability to know his race based on it being dark when the stop occurred.

The Complainant was asked to explain how hierarchical bias manifested itself in this incident since he accused the Subject Officer of that offense. “The Complainant” said that just because someone is African American does not mean they cannot be biased against another African American, and he asserted that such biases were often present with immigrants of African descent, like the Complainant. He further asserted that African Americans often get stopped for minor offenses.

Acting Chair Bierman thanked the Complainant for bringing the matter to the Panel.

Acting Chair Bierman then introduced FCPD’s Major Lay who introduced 2<sup>nd</sup> LT. Spooner who conducted both the initial Use of Force and later the Racial Profiling investigation.

2<sup>nd</sup> LT. Spooner provided a summary of the facts of the case, the investigation and the finding. Each Panel member reviewed the investigation and so his summary will not be detailed here. However, one update given by 2<sup>nd</sup> LT. Spooner to the Panel was the fact that police cruisers assigned to the Fair Oaks Station Traffic Enforcement Team did not have ICV in the rear of the cruisers. However, this situation necessitated that that team be equipped and since this incident the police cruisers for the Traffic Enforcement Team now have ICV in the rear.

The Panel had the opportunity to ask questions of 2<sup>nd</sup> LT. Spooner. One question dealt with the appropriate action to take when a community member observes a police cruiser allegedly drifting over the line. 2<sup>nd</sup> LT. Spooner said that would depend on the circumstances, but if approaching at a high rate of speed the community member would need to slow down as a defensive tactic. Another question dealt with cars traveling behind a police cruiser at the same rate of speed whether officers can pinpoint one car with radar. 2<sup>nd</sup> LT. Spooner said that in this case, the Subject Officer was able to single out the vehicle because of the high rate of speed it was traveling when he looked in his rearview mirror.

A Panel member asked about the requirement that motorists sign summonses and whether it was State law or a county policy. 2<sup>nd</sup> LT. Spooner pointed to Virginia Code 46.2-940.

Another Panel member commented on this case being a good example of why it is beneficial to video. Major Lay agreed and said that body-worn cameras are now fully implemented in the FCPD, so that is in addition to having ICV.

A Panel member had questions about the training procedures for officers and whether there was an inconsistency in what the training says should occur and what happened in this case. In particular, the Panel member referred to an academy training slide, included with the investigation, that talks about differences in the placement of an arrestee in a vehicle with a cage as opposed to the placement without a cage. 2<sup>nd</sup> LT. Spooner said he would check and get back with the Panel.

A Panel member asked about the stop and arrest history of the Subject Officer that was included in the file by race. He wanted to know how the FDPC categorized the Subject Officer’s

arrest patterns. 2<sup>nd</sup> LT. Spooner said that there was a higher percentage when looking at the arrest patterns, but he noted that the Subject Officer was a traffic officer, so many of his arrests came with traffic stops, such as refusing to sign summonses, driving on suspended licenses and driving without licenses, in a manner where the Subject Officer lacked discretion to avoid an arrest. In fact, the officer's citation statistics were consistent with the Department, though the arrest statistics showed a disparity.

Act Chair Bierman thanked the FCPD representatives for their participation.

The Panel heard from the "Complainant" and from FCPD. Based on each Panel members review of the file, statements and responses from both Complainant and FCPD, the Panel made the following finding:

The Panel voted unanimously that the Investigation was accurate, complete, thorough, objective, and impartial after open deliberation. Specifically, the Panel found no evidence suggesting that racial profiling occurred where the Complainant's undisputed and documented actions – flashing his lights and passing a police officer while speeding in the early morning hours in the dark – would have resulted in the Complainant being pulled over regardless of his race. Further, the Panel found that the IAB had followed all available lines of inquiry, including interviewing all pertinent witnesses (including the Complainant's girlfriend), viewing all available video evidence, and conducting a thorough analysis of the Subject Officer's arrest and citation statistics to determine whether there was any evidence of a history of bias.

An audio recording of the May 6, 2021, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-may-6-2021>

On June 3, 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-subcommittee-meeting-june-3-2021>

**CC:** Complainant

## APPENDIX E: Panel Outreach in 2021

### Faith and Community Organizations and Events

- ❖ Communities of Trust
- ❖ McLean Citizen's Association
- ❖ National Night Out (Kingstowne)

### Public Forums

- ❖ Panel Public Forum with New FCPD Chief
- ❖ Public Safety Forum Panel on Criminal Justice Reform, hosted by Fairfax County Federation of Citizens Associations

### Fairfax County Police Department

- ❖ FCPD Admin Staff Meeting
- ❖ FCPD Recruit Class

### Other Outreach

- ❖ Inside Scoop (Fairfax Public Access Channel 10)
- ❖ Richmond (VA) Review Board
- ❖ Virginia Beach City Council

## APPENDIX F: Proposed Bylaws Changes on Subcommittee Process

### BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, December 1, 2020, February 23, 2021, ~~and~~ July 27, 2021, and [DATE]

#### ARTICLE I. NAME<sup>1</sup>

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

#### ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

#### ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
  1. The Board of Supervisors shall appoint each Panel Member.
  2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
  3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

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<sup>1</sup> Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three-year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

**ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES**

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1<sup>st</sup> of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
  - (a) Preside over all Panel meetings at which the Chair is present;
  - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
  - (c) Serve as the Panel's official spokesperson;
  - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
  - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
  - (a) Preside over Panel meetings in the absence of the Chair; and
  - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
  - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

## **ARTICLE V. QUORUM, VOTING AND MEETINGS**

### **A. Quorum.**

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

### **B. Voting.**

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

### **C. Meetings.**

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.



4. Panel Meeting Notices shall be:
  - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
  - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
  - (a) places that are accessible to persons with disabilities,
  - (b) public buildings whenever practical; and
  - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
  - (a) the date, time, and location of each meeting;
  - (b) the Panel Members present and absent;
  - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
  - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

## ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

### A. Scope of Panel Review Authority.

1. 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 Panel shall not review:
  - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
  - (b) any Complaint related to an incident that occurred before December 6, 2016;
  - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
  - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
  - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
  - (i) identifying information for the person filing the Complaint;
  - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
  - (iii) the specific police behavior of concern;
  - (iv) a description of the incident in which the behavior occurred; and
  - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

~~2. Initial Disposition Notice.~~

- ~~(a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.~~
- ~~(b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.~~
- ~~(c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
  - ~~(i) is timely filed; or~~
  - ~~(ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.~~~~
- ~~(d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.~~
- ~~(e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.~~
- ~~(f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.~~

D. Initial Review and Disposition.

1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:
  - (i) is timely filed; or
  - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees ("Initial Review Subcommittee") comprised of Panel Members to conduct initial reviews of Review Requests filed by

community members with the Panel.

(b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).

(c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.

(d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

### 3. Initial Review Subcommittee Process and Report to the Panel

(a) The Subcommittee shall review a Complaint to determine whether:

(i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and

(ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.

(b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.

(c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.

(d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

### 4. Initial Disposition Notice

(a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.

(b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.

(c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.

(d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D.E. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
  - (a) suspend its review;
  - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
  - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
  - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E.F. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.

- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
  - (e) The Panel shall not take testimony or receive evidence.
  - (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
  - (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
  - (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
  - (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.
2. Closed Sessions, and Confidential Matters During Panel Review Meetings.
- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
  - (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
  - (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
  - (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims,

or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.

- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

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- (f) If information subject to the Panel’s review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney’s Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F.G. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
  - (i) Concur with the findings and determination detailed in the Investigation Report;
  - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
  - (iii) Advise the Board of Supervisors that, in the Panel’s judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel’s final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

**ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES**

A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

**ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS**

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

**ARTICLE IX. RECORDKEEPING; ANNUAL REPORT**

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1<sup>st</sup> of each year.

**ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY**

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

**ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS**

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

**ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS**

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

**DEFINED TERMS**

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

**Abuse of Authority** has the meaning assigned to the term in Article VI.B.

**Annual Report** means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

**Auditor** means the Fairfax County Independent Police Auditor.

**Board of Supervisors** means the Board of Supervisors of Fairfax County.

**Bylaws** means the Bylaws of the Fairfax County Police Civilian Review Panel

**Chief** means the FCPD Chief of Police.

**Complaint** means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

**Counsel** means the legal counsel that the Board of Supervisors designates to support the Panel.

**FCPD** means the Fairfax County Police Department.

**FCSO** means the Fairfax County Sheriff's Office.

**Initial Complaint** means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

**Initial Disposition Notice** means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

**Investigation(s)** means a FCPD internal administrative investigation.

**Investigation Report** means the completed written FCPD report setting forth the findings of the Investigation.

**Laws** means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

**Meeting(s)** has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

**Panel** means the Fairfax County Police Civilian Review Panel.

**Panel Findings** means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

**Panel Meeting** means a meeting of the Panel.

**Panel Meeting Notice** means the written notice stating the date, time, and location of a Panel Meeting.

**Panel Member(s)** means each of the persons that the Board of Supervisors appoints to the Panel.

**Panel Review Meeting** means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

**Panel Review Meeting Notice** means the Panel Meeting Notice for a Panel Review Meeting.

**Public Meeting(s)** means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

**Receipt of the Investigation Report** is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

**Review Request** means a person's request for the Panel to review an Investigation.

**Serious Misconduct** has the meaning assigned to the term in Article VI.B.

**VFOIA** means the Virginia Freedom of Information Act, as amended from time to time.

## APPENDIX G: Panel Recommendations Matrix

Updated 2/28/2022

<u>Report</u>	<u>Panel Recommendation</u>	<u>FCPD Action</u>	<u>Status (as determined by the Panel)</u>
<a href="#">CRP-20-20 and CRP-20-21</a> (Published May 10, 2021)	The FCPD should consider how officers 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.	FCPD has taken this recommendation under consideration and will research best practices to ensure General Order 520.3 (Hostage/Barricaded Persons) reflects these suggestions in future revisions.	Under Review by FCPD
<a href="#">CRP-20-20 and CRP-20-21</a> (Published May 10, 2021)	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 properly trained in implementing a revised general order.	Current version of 601.4 Section IV, Subsection C, states officers <i>“shall identify themselves as police officers, explain the reason for their presence, and request entry into the home.”</i> Officers are also expected to use proper discretion when circumstances indicate or suggest there are potential weapons involved in an event, or a potential subject could be looking to ambush an officer arriving at a domestic event, as domestic events constitute highly unpredictable and dangerous events for responding officers.  All officers are required to acknowledge General Order revisions via Power DMS. Supervisors are required to ensure officers under their guise are up to date on new policies and procedures and schedule squad	Implemented by FCPD  Panel requests that the FCPD consider adding the explanatory sentence highlighted to the next version of the General Order.



		training initiatives as necessary to ensure compliance.	
<a href="#">CRP-20-20 and CRP-20-21</a> (Published May 10, 2021)	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.	Complaints in all formats are accepted by the FCPD and proper acknowledgment is provided at the time of receipt that the complaint will be investigated and followed-up on. Investigating supervisors are expected to inform complainants that their cases will be investigated thoroughly and as expeditiously as possible depending upon the nature and complexity of the specific allegation(s). Once an investigation has concluded, supervisors are expected to notify complainants as such and note the case is under a review and action process at the command level. Disposition letters are sent once the investigation has resolved, with a thorough recitation of the facts and circumstances of the allegation, as well as a recitation of FCPD investigative findings. These letters also include contact information for appeals to both CRP and the Office of the Independent Police Auditor. Any inquiry regarding case status during the investigative process from a complainant is required to be responded to in a timely manner.	FCPD explanation is not wholly responsive  Panel recognizes the FCPD's efforts to improve the disposition letters but requests the FCPD to consider specific circumstances when letters can be followed up with an alternative method of communication, like a phone call to complainants.

<p><a href="#">CRP-20-19 and CRP-20-27</a> (Published February 9, 2021)</p>	<p>The FCPD should create a policy requiring all district station interviews be recorded.</p>	<p>FCPD General Order 501.2 covers Investigative Responsibilities but makes no reference to recording of interviews. Since the last revision (04-01-13), all district station interview rooms have been equipped with audio/video technology. In-progress revisions to this General Order will note that all investigating officers/detectives ensure interviews are recorded unless unusual/unforeseen circumstances (ex: technology failures, interviews in outdoor environments) exist. Also, it should be noted that officers equipped with body-worn cameras are required to activate them during any rendering of police service unless unusual circumstances exist (ex: hospital, schools, bathrooms) or whenever interviewing victims of sexual assault for their privacy concerns.</p>	<p>Implemented by FCPD</p>
<p><a href="#">CRP-20-19 and CRP-20-27</a> (Published February 9, 2021)</p>	<p>The FCPD should ensure that all FCPD Officers are informed of its policy 501.2 Investigative Responsibilities.</p>	<p>All officers are required to acknowledge via PowerDMS signature any revisions to Department policy, to include General Orders, SOPs, and Department-wide Command Staff Memorandums. These signatures are audited and any officer failing to acknowledge is notified via their direct supervisor. As</p>	<p>Implemented by FCPD</p>

		mentioned above, General Order 501.2 is under revision and once completed will necessitate officer acknowledgement.	
<a href="#">CRP-20-19 and CRP-20-27</a> (Published February 9, 2021)	The FCPD should encourage the Fairfax County Sheriff to record and preserve video taken from inside the Fairfax County Adult Detention Center.	As the FCSO constitutes a separate agency run via an elected official (Sheriff Stacey Kincaid), it would be inappropriate for FCPD to make best practices recommendations to her agency. CRP recommendations on FCSO policies and practices should be made directly to the FCSO by the Panel.	Not Implemented by FCPD.  The Panel understands that the Sheriff is an elected official, but given the degree to which the FCPD does ultimately interact with and work with the Sherriff's office, we think such encouragement is entirely appropriate.
<a href="#">CRP-19-29</a> (Published October 23, 2020)	"The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer's public social media profiles; (2) interviewing coworkers in the officer's unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints.	<ol style="list-style-type: none"> <li>1) All Internal Affairs investigations receive an open-source social media inquiry as of April 1, 2020.</li> <li>2) General Order 301, Internal Investigations, states that witnesses shall be interviewed if they would assist in an investigation. Regulation 201.3, Obedience to Laws, Regulations, and Training, as it pertains to Regulation 201.5, Reporting Violation, states any employee shall immediately report any</li> </ol>	<ol style="list-style-type: none"> <li>1) Implemented by FCPD.</li> <li>2) Not Implemented by FCPD. Presently being reviewed by the FCPD following the January 26, 2021 decision by the Board of Supervisors in CRP-29-19 directing the FCPD to take further action,</li> </ol>

	<p>Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer's actions under each of the criteria listed above."</p>	<p>violation, including bias-based policing.</p> <p>3) Arrests and traffic statistics are publicly shared on the FCPD website. IAB is in the process of procuring a Management Analyst to perform quantitative and qualitative analysis of public safety data.</p> <p>4) To ensure qualitative analysis, consistency and thoroughness, the administrative due process includes several levels of review up to the Chief of Police in each administrative investigation. These levels of review include prior consideration of sustained allegations against the subject employee, and appropriate action to be taken for further sustained violations of patterns of conduct. Use of criterion of "circumstances and claims of the current</p>	<p>including conducting interviews with the officer's co-workers.</p> <p>3) Pending further analysis by the FCPD. Data analysis conducted for investigations must include quantitative and qualitative analysis of community contacts and stops by officers, as well an analysis of publicly shared data on arrests and traffic statistics.</p> <p>4) FCPD explanation is responsive.</p>
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		complaint to any prior complaints” is subjectively vague and non-definitive as it pertains to whether or not an officer engaged in either unlawful or procedurally violative conduct.	
<a href="#">CRP-19-29</a> (Published October 23, 2020)	“All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer’s community contacts, stops, searches and arrests should be broken down by the race and ethnicity of community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention.”	General Order 603.4, Police Community Member Contacts, and General Order 601, Arrest Procedures, requires specific documentation regarding all community member contacts, including voluntary contacts. FCPD is currently in the process of upgrading agency record management systems which will further enhance tracking.	Pending upgrade to FCPD’s data management system.
<a href="#">CRP-19-29</a> (Published October 23, 2020)	“Data analysis of an officer’s community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district	For all bias allegations, the Internal Affairs Bureau conducts an 18-month examination of the officer’s arrests and citations. This data is compared	Pending upgrade to FCPD’s data management system.

	<p>station where the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.”</p>	<p>to pertinent station demographics. The demographics of each district station and the County are publicly available in the IAB annual report.</p> <p>FCPD is assessing capabilities of reviewing officer field contacts and searches in future RMS programs. Currently searches of these descriptions are limited to technological limitations inherent in I/LEADS RMS. With implementation of a new RMS in the future, the hope is that tracking of contacts and searches, the two recommended data points, will be more feasible, changing policy on how the Department tracks field contacts and searches.</p>	
<p><a href="#">CRP-19-29</a> (Published October 23, 2020)</p>	<p>“For the purposes of investigations into allegations of bias or profiling, data analysis of the officer’s community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has worked in different districts within the county, the review and analysis of the officer’s community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period.”</p>	<p>Bias investigations include an 18-month statistical analysis of the officer’s arrests and citations, comparing them with other officers at the same station. Historic database software is only capable of tracking certain data. System replacement and procurement will permit advances to add tracking fields and information categories.</p>	<p>Pending upgrade to FCPD’s data management system.</p>

<p><a href="#">CRP-19-29</a> (Published October 23, 2020)</p>	<p>“Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer’s community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group.”</p>	<p>Since November 2012, per policy, the FCPD has utilized an Early Identification System.</p> <p>Monitored incidents include <b>administrative investigations</b> (including cruiser crashes), initial inquiries, forced entries, de-arrests, off-duty traffic citations, off-duty civil and criminal court actions, use of force, and pursuits. Community contacts, stops, searches, and/or arrests are non-dispositive of whether or not an officer has potentially engaged in bias-based policing which FCPD has an absolute prohibition against its employees engaging in. These actions are based upon legally defined standards of probable cause and reasonable suspicion, regardless of race or ethnicity. Where these legally defined standards are non-existent, searches, stops, and arrests would be improper and ultimately unlawful. Where a complaint is made that any officer engaged in disproportionate policing, that complaint would automatically initiate an administrative investigation, which would account as stated above as a qualifying EIS event. This also includes supervisor audits and reviews of officer BWC and ICV</p>	<p>FCPD explanation is responsive.</p>
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		footage to ensure stops, arrest, and searches are within FCPD policy.	
<a href="#">CRP-19-29</a> (Published October 23, 2020)	“The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing.”	<p>In addition to mandatory County and/or agency training on bias, the Fairfax County Police Department is currently engaging an outside independent expert to train implicit bias, the understanding of implicit bias; procedural justice; “<i>trust building</i>,” and detecting and addressing institutional and structural racism.</p> <p>Independent subject matter experts on bias have lectured to Command Staff.</p> <p>Bias and culture-based training has been offered to employees through academy and other venture partnerships.</p>	Training implemented. Further explanation is required as to the examination of all law enforcement policies and practices.
<a href="#">CRP-19-29</a> (Published October 23, 2020)	“Officers should receive implicit bias training on an annual basis.”	The FCPD Equity Team and its Ambassadors will receive specialized independent bias-based training. This education will provide a unique, cutting-edge platform for organizations to build a foundational capacity to address or discuss equity gaps, race, equality, cultures, and unity. The independent expert will also train-the-trainer for annual	Implemented by FCPD.



		refresher courses on implicit bias, procedural justice, and <i>trust building</i> .	
<a href="#">2019 Annual Report</a> (Published February 28, 2020)	“Where the evidence gathered during an Investigation into a Complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer’s conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer’s social media accounts and/or interviewing witnesses.”	This recommendation is counter intuitive. Where there is no “race-neutral explanation,” to explain officer conduct, then by default the conduct would fall within the purview of bias-based or discriminatory conduct and appropriate action would be taken swiftly by the Department. Where conduct falls within these parameters, all available investigatory measures will be taken to ascertain the root of why the action took place. The Fairfax County Police Department Internal Affairs Bureau conducts investigations into all complaints involving any allegation of perceived bias. Bias-based complaints will include obtaining all available evidence; such as, but not limited to, witness statements, videos, publicly available social media, statistics, reports, etc. Consistent with all investigations completed by the police department; any available evidence is thoroughly examined for appropriate response and lawful action.	FCPD explanation is responsive.  The Panel’s recommendation is that the FCPD proactively continue to investigate to find corroborating evidence, if the available evidence does not offer a “race-neutral explanation” (including times when there simply is no explanation) for the conduct of the officer. The Panel recommends (see recommendation in CRP-19-29) that the FCPD develop objective criteria and processes to evaluate allegations of bias or profiling separate from its normal investigation processes.
<a href="#">CRP-19-11</a> (Published			Implemented by FCPD.

<p>January 15, 2020)</p>	<p>“With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.”</p>	<p><u>General Order 301</u>, Internal Investigations, states that witnesses shall be interviewed if they would assist in an investigation of a complaint or incident. Commanders were reminded of this policy in a March 2020 Command Staff meeting. Furthermore, Bureau Commanders are responsible for ensuring all investigative tasks have been properly completed as an additional quality control and review oversight protocol.</p>	
<p><a href="#">CRP-19-11</a> (Published January 15, 2020)</p>	<p>“FCPD civilian ride-a-long individuals should be tracked and recorded in all instances. A police ride-a-long individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.”</p>	<p><u>General Order 430.3</u> sets policy and procedure for each Ride-Along to include maintenance of the application and required documentation for every Ride-Along. Commanders were reminded of this importance during a Command Staff meeting in March 2020.</p>	<p>Implemented by FCPD.</p>
<p><a href="#">CRP-19-11</a> (Published January 15, 2020)</p>	<p>“The FCPD should implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.”</p>	<p>FCPD policy requires officers to “<i>preserve the sanctity of life</i>” and, as community caretakers, officers must attend to the needs of any person who is unable to care for themselves as expeditiously as possible. <u>Regulation 201.6, Preservation of Peace and Protection of Life and Property</u>, states:</p>	<p>Implemented by FCPD.</p>

		<p><i>“It shall be the duty of each sworn officer of the Department to:</i></p> <ul style="list-style-type: none"> <li>• <i>Preserve the public peace;</i></li> <li>• <i>Protect life and property; and</i></li> <li>• <i>Enforce and uphold the laws of the Commonwealth of Virginia and the ordinances of the County of Fairfax.”</i></li> </ul> <p>This policy requires officers to attend to children, and any other person who is left alone and unable to care for themselves, under their oath as a sworn officer to protect life. Furthermore, officers are provided guidance from <u>the Fairfax County Family Services Child Supervision Guidelines</u> regarding unattended minors and children.</p>	
<p><a href="#">CRP-18-27</a> (Published July 12, 2019)</p>	<p>“[T]he Panel recommends that in the future the Department refrain from publicly releasing [investigatory information pertaining to the Complainant’s social media accounts], because it “discourages individuals from filing future complaints,</p>	<p>Respectfully disagree. Open source information is by definition, available publicly to all individuals and entities. Where an individual posts publicly available information of relevance to an investigation, the Department will</p>	<p>Implemented by FCPD, as the Panel understands the response to be to the Panel’s prior belief that</p>

	and it undermines community trust in the Panel.” If the FCPD believes such information is relevant to the investigation, “that information should be included only in the Department’s investigative file.”	examine this content for relevancy as it pertains to either a criminal or administrative investigation. The Department does not publicly release the findings of administrative investigations, except in the rarest of occasions where, due to public request, the Department would be compelled to disclose whether an accused officer was found in violation of Department policy. The Department does not publicly post administrative investigatory information in any event, and that information is kept confidential within the Department unless subjected to court-ordered discovery or in accordance with the Code of Virginia. All of the information was obtained via public websites from a Google search. The information that was released was already publicly available on the internet.	this was “not implemented” because in fact the FCPD will not be publicly releasing social media information of complaints.
<a href="#">2018 Annual Report</a> (Published March 21, 2019)	FCPD disposition letters to the complainant upon conclusion of FCPD investigations, “must contain sufficient, specific detail to provide complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.”	The FCPD co-produced a disposition letter with members of the community. Commanders who author these letters were then trained on the new form in September. Since that time, the new form has been in use.	New format for more explanatory disposition letters has been adopted by the FCPD and is being implemented.

<p><a href="#">2018 Annual Report</a> (Published March 21, 2019)</p>	<p>“Action Item 17, dated December 6, 2016 (p. 278), limits the Panel’s ability to include salient facts in public reports. This restriction inhibits “the Panel’s ability to achieve its purpose ‘to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public.”</p>	<p>During Quarterly Meetings, FCPD representatives coordinated with the CRP in preparation of the proposed Action Item that was adopted by the Board of Supervisors on September 24, 2019, giving the Panel the authority to disclose facts of the investigation in the Panel’s Review Reports, with certain restrictions.</p>	<p>Action Item adopted by the Board of Supervisors on September 24, 2019, gives the Panel authority to disclose facts of the investigation in Review Reports with certain limited restrictions.</p>
<p><a href="#">2018 Annual Report</a> (Published March 21, 2019)</p>	<p>“The Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of the Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same.</p>	<p>The FCPD supports the quarterly meetings and the sharing of information regarding Panel comments and recommendations. These meetings began in June 2019 and are continuing to occur with FCPD staff present for each of them.</p>	<p>Implemented by FCPD</p>
<p><a href="#">CRP-18-26</a> (Published March 8, 2019)</p>	<p>“During FCPD administrative investigations, where statistical evidence is used, [the Panel] recommends the Crime Analyst Unit (CAU) be consulted in the gathering, preparation and reporting of the statistical data.”</p>	<p>The compilation of statistical evidence is the responsibility of the Analyst assigned to the Internal Affairs Bureau.</p>	<p>Implemented by FCPD</p>

<p><a href="#">CRP-18-26</a> (Published March 8, 2019)</p>	<p>“The FCPD should make BWC and In-Car Video (ICV) footage available for viewing at Panel Review Meetings as requested by the Panel.”</p>	<p>Requests for the Panel to view video and audio footage will be approved on a case-by-case basis.</p>	<p>FCPD explanation noted. The Chief has committed to review any Panel request for footage and determine whether to release of requested footage on a case-by-case basis.</p>
<p><a href="#">CRP-18-26</a> (Published March 8, 2019)</p>	<p>“The Panel recommends that the FCPD ensures that individuals involved in incidents with FCPD officers which are subject to a complaint be provided with an opportunity to review the video footage of the incidents.”</p>	<p>It has been the policy of the Police Department to allow complainants to view video footage consistent with <u>Body Worn Camera Pilot Program SOP 18-506, Section VII, Paragraph B</u> and <u>General Order 430.8, In Car Video Program Procedures, Section IV, Paragraph C-5.</u></p>	<p>Implemented by FCPD</p>
<p><a href="#">CRP-18-12</a> (Published <u>January 9, 2019</u>)</p>	<p>“The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name.”</p>	<p>In keeping with our commitment to transparency, the FCPD annually publishes an <u>Internal Affairs Bureau Statistical Report</u>, which is made available both within and outside of the Department. IAB is currently researching best practices. Once a template is developed, it will be discussed with the County Attorney for legal review. These reports are posted quarterly, and identify rank of the accused</p>	<p>Under Review by FCPD.</p>

		officer, allegation, disciplinary measures implemented, and disposition.	
<a href="#"><u>CRP-18-12</u></a> <a href="#"><u>(Published January 9, 2019)</u></a>	“The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.” (Officer’s demeanor was not explicitly discussed in the Investigation Report, even though it had been an issue in the Complaint).”	Complaints received by the FCPD are thoroughly investigated. As stated in your report, Major Reed assured the Civilian Review Panel (CRP) members that investigators take a holistic approach to ensure that all aspects of a complaint are addressed. Upon completion, all investigations are subject to a multi-layer review. This investigative review may be conducted by Station Commanders, Bureau Commanders, Deputy Chiefs, and the Chief of Police to ensure accuracy and thoroughness.	FCPD explanation noted.
<a href="#"><u>CRP-18-12</u></a> <a href="#"><u>(Published January 9, 2019)</u></a>	“The Panel recommends that the FCPD develop an efficient methodology to reintegrate some level of supervision over the submission of [FR300P accident report] forms [by FCPD officers].” The Panel concluded that the consequences for errors could be problematic, as certain insurance claims were initially denied based on erroneous information in the initial FR300P.”	Under the Traffic Records Electronic Data System ( <u>TREDS</u> ) system, which is a VA State Program, when an officer submits an FR300P, a layered approval process begins. The first layer is the TREDS system itself, which provides a real-time review to ensure all required fields are populated. After the TREDS system review, the report is submitted for internal review by the FCPD Central Records Division. The Central	The Panel accepts explanation of FCPD regarding supervision under TREDS System.

		Records Division has received specialized training on TREDIS and have the delegated authority to accept or reject accident reports if they are not in compliance. In addition, the Central Records Staff distributes error reports to supervisory staff to ensure quality control and accountability.	
<a href="#"><u>CRP-17-10</u></a> (Published <u>March 26, 2018</u> )	"[T]he Complainant indicated in her statement to the Panel that, other than the Notification, she had not received any further explanation from the FCPD. The Panel recommends that the FCPD contact the complainant and offer her whatever additional explanation that is legally permissible and appropriate under the circumstances."	Letter signed by Station Commander was sent to the complainant indicating the officer's violation was addressed and how to seek additional recourse. Internal Affairs Bureau (IAB) personnel also had a phone conversation with the complainant to address their concerns.	Implemented by FCPD



## APPENDIX H: Specific Recommendations from the Panel's Four-Year Review

### SPECIFIC RECOMMENDATIONS

- 1) **The Panel should be empowered to hire a full-time Executive Director (ED) with some investigatory experience.** The Panel needs a full-time, dedicated staff member to handle administrative aspects of the Panel and assist the Panel in its reviews, Review Reports, and Annual Reports. The ED ideally should be an individual with some investigatory experience. The ED should also have access to the Investigation Reports and be authorized to draft Review Reports and other reports. The ED should also help organize and assist the Panel in its public outreach opportunities. Like the Independent Police Auditor, the ED should report directly to the Board of Supervisors and supervise administrative staff that assists the Panel.
- 2) **The Panel's Executive Director should be authorized to monitor FCPD investigations of racial bias or profiling from the onset of the investigation, whether or not an initial complaint has been filed with the Panel.** During such monitoring, the ED may observe interviews and have access to evidence. The ED may suggest that the FCPD conduct additional interviews or further inquiries and data analysis during the investigation. Such monitoring would be consistent with that afforded by the Board of Supervisors to the IPA.
- 3) **The Panel should be given electronic access to redacted Investigation Reports.** A new policy should be adopted by the Board of Supervisors, in consultation with the County Attorney and the FCPD, that allows Panel Members to have electronic access to redacted Investigation Reports. The Panel is cognizant that the Chief of Police is the custodian of FCPD records, and that he has rejected similar Panel requests in the past. However, there is no legal impediment barring the Chief from heeding the Panel's reasonable request. Panel Members simply must be able to conveniently review investigative files outside of normal business hours and outside of a police station. A compromise proposal would be to allow the FCPD to redact all personnel information on records provided electronically and require Panel Members to appear in person at police headquarters to review unredacted versions. Panel Members would still be under the obligation not to disclose privileged information. Providing electronic access ensures: (1) greater accessibility and participation of community members who may not have the resources to volunteer on a Board and travel regularly to the FCPD headquarters and (2) ensures the safety of all parties involved by reducing in person encounters during a pandemic and post-pandemic environment.
- 4) **The Panel should codify in its bylaws a "summary judgment"-like process for disposing of wholly unfounded complaints at the Subcommittee level.** At a minimum, the Bylaws should reflect that the Subcommittee must find the Complaint to be objectively qualified for review. Toward that end, the Panel should formally adopt a four-step process for initial reviews of complaints, and this process must be explicitly stated in amendments to the Bylaws. First, the Subcommittee should determine whether the allegations of the complaint constitute allegations of a serious misconduct or an abuse of authority. Second, if yes, the Subcommittee should determine whether the Investigation Report reveals *any* observable substantiation of the allegations of serious misconduct or an abuse of authority in the complaint. This should be an exacting standard and a sufficiently high bar to avoid the early disposition of not wholly unfounded complaints. Further, this should apply only to the allegations that meet the threshold of serious misconduct or an abuse of authority. If there is *any* observable substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should recommend that the full Panel take up review. Third,

if the Subcommittee finds no substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should consider whether there is *any* reason to believe that the Investigation Report is not complete, thorough, accurate, objective, and impartial. Finally, the Subcommittee should present its findings to the entire Panel for a vote as to whether the Panel should review the Complaint. Thus, there is always a failsafe in that the Panel must make the ultimate determination whether or not to undertake a review.<sup>1</sup>

- 5) **The Panel should be authorized, at its discretion, to conduct a review of a completed FCPD investigation of an initial complaint concerning racial bias or profiling without first receiving a Request for Review from the Complainant.** Complaints concerning racial bias seemingly are of particular importance to county residents and thus should all be treated as ripe for independent oversight.
- 6) **The Panel should be given limited investigatory power including the ability to interview and subpoena the Complainant and up to three key witnesses upon the request of six Panel members.** Without full professionalization of the Panel, it cannot be a fully investigatory body. But the Panel would be well-served by having some investigatory powers that allow it to take investigative action wholly independently from the IAB. One idea is to grant the Panel through the Executive Director the ability to conduct witness interviews (and by extension to grant the Panel some subpoena power) but limit the number of interviews that the Panel undertakes. Moreover, such interviews would be discretionary – if the Panel is confident that the Investigation Report as compiled meets its standards, it need not go forward with additional investigation. If the Panel is allowed to choose to conduct its own interview of the Complainant and up to three key witnesses free of IAB involvement, the Panel can demonstrate its independence to the community and to the Complainants themselves, many of whom are skeptical that a wholly police-driven investigation can truly be impartial and objective
- 7) **The Panel’s Options for its Review Findings should be expanded and modified.** The Panel should be given five options:
  - a. The Panel can concur with the findings of the FCPD and confirm that the conclusions of the Investigation Report are correct, and that the Investigation was sufficiently thorough, impartial, and objective so as to allow for the conclusion made.
  - b. The Panel can request additional investigation from the FCPD and the FCPD shall within a reasonable time conduct further investigation and provide the Panel with a supplemental report that details the findings of the additional investigation.
  - c. The Panel can exercise the opportunity to conduct its own additional investigation, including interviewing the Complainant and up to three key witnesses using its limited subpoena power.
  - d. The Panel can inform the Board of Supervisors that in the opinion of the Panel, the conclusions of the Investigation Report are incorrect and/or that the investigation is insufficiently thorough, impartial, and objective. so as to allow for an alternative conclusion.

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<sup>1</sup> Alternatively, the Board of Supervisors could revisit the Action Item and provide the authority to individual Panelists on a rotating basis to make summary determinations (based on an established criteria). This would allow the Panel as a whole to ensure timeliness in its disposition of complaints.

- e. The Panel can inform the Board of Supervisors about how it would have resolved the investigation.
- 8) **The Panel should consider specific definitions for the terms “correct,” “thorough,” “impartial,” and “objective” that are well defined and understood in the same manner by all members of the Panel.** The specific definitions could be added to the Panel’s Bylaws upon approval by the Board of Supervisors.
- 9) **The Panel should invite rank-and-file FCPD officers to a forum (or to multiple forums) where FCPD officers can ask Panel Members questions and make comments.** The Panel should commit to increasing its interactions with the FCPD rank-and-file and should make itself available for meetings with officers present to ask questions and make comments at least once a year.
- 10) **The Panel should commit to twice-a-year public forums (or more) where members of the public can ask Panel Members questions and make comments.** The Panel should commit to increasing its community outreach opportunities and conducting at least two public forums each year. The Panel should make an effort to have at least one of these public forums covered by the press.
- 11) **The Panel should have an annual training session conducted by the FCPD in which the Panel learns about FCPD policies and procedures.** The content of the training should be developed in consultation with the FCPD.

## APPENDIX I: Police Civilian Review Panel Member Biographies

### **Cheri Belkowitz, Fairfax Station**

Ms. Belkowitz is an education attorney who practices throughout Virginia and in Washington, D.C. She is a zealous advocate for children with disabilities and their families in all school-related matters. She represents families in special education law matters arising under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Ms. Belkowitz is active in the special needs community, and she served four terms as Chair of the Fairfax County Public Schools Advisory Committee for Students with Disabilities. She also served as a member of the Fairfax Equity Stakeholders Committee and as a Director on the Board of The Arc of Northern Virginia. Ms. Belkowitz also currently serves as a Board Member of the Fairfax Special Education PTA (SEPTA). She was invited by the Secretary of the Air Force as a civic leader to participate in the National Security Forum at Air War College at Maxwell Air Force Base in Montgomery, Alabama, to share perspectives with senior military officers on strategic leadership, national security, and global security. Among other recognitions, Ms. Belkowitz received the JCC of Northern Virginia Finkelstein Award for her service, leadership, and program development in the special needs community and the SEPTA “Community Champion Award” in 2020 for her exceptional commitment to the special needs community in the public schools. She graduated *cum laude* from Brandeis University, and she earned her Juris Doctor, *magna cum laude*, from Syracuse University College of Law. She served as Notes and Comments Editor of *The Syracuse Law Review* and was a member of the Justinian Honorary Law Society.

### **James Bierman, McLean (Chair)**

Mr. Bierman is a resident of McLean, where he grew up, and is an Attorney Advisor in the Office of the General Counsel at the Department of Homeland Security, where he works on administrative law issues across the Department. Before joining the Federal government, Mr. Bierman was a litigator who represented clients in complex litigation such as antitrust, securities, pharmaceutical defense, false advertising, trade secrets, copyright infringement, trademark infringement, commercial paper, and domestic matters in federal and state courts across the country as well as before federal administrative agencies. Mr. Bierman also maintained a large pro bono practice in which he has represented undocumented immigrants in wage disputes against predatory employers, disabled individuals in Social Security benefit matters, and criminal defendants in state court at both the trial and appellate levels. Further, he advised nonprofits and community organizations in disputes with state and local governments. Before entering private practice, Mr. Bierman served as a law clerk to the Honorable Beverly B. Martin of the U.S. Court of Appeals for the Eleventh Circuit.

**Todd L. Cranford, Fairfax**

Mr. Cranford, a 15-year Fairfax County resident, is Board Counsel to the Public Company Accounting Oversight Board. Previously, he was the Head of Government Affairs & External Relations for the Financial Accounting Foundation. Mr. Cranford has broad experience in both the public and private sectors, including serving in the enforcement division of the U.S. Securities and Exchange Commission, on Capitol Hill with the House Financial Services Committee, and with the international law firm Patton Boggs LLP. Mr. Cranford is committed to giving back to his community. In addition to service on the Panel, he serves on the boards of the National Domestic Violence Hotline and The Commonwealth Institute for Fiscal Analysis. He is also a member of the 2020 class of Leadership Fairfax and 100 Black Men of Greater Washington, D.C.

**Frank Gallagher, Burke**

Mr. Gallagher is a U.S. Army veteran and a retired FBI Agent with over 32 years of service. He first moved to Fairfax County in 1977 and was transferred out of the area several times. During his time in the FBI, Mr. Gallagher served as the Deputy Assistant Director of the Criminal Division, Special Agent in Charge of a Field Office and as the Chief Inspector for the FBI. He has lived continuously in Fairfax County for the past 21 years. After his retirement from the FBI, Mr. Gallagher worked for a major global management and information technology consulting firm for 11 years. Subsequent to that he served for two years as the Chairman of the DC Chapter of the Society of Former Special Agents of the FBI. He is a graduate of FBI's National Executive Institute (NEI) and was on the Board of Directors of the NEI Associates for five years. Previously, he was a member of the International Association of Chiefs of Police and served on the Narcotics and Dangerous Drugs Committee. Also, he was on the Board of Directors for the National Center for Missing and Exploited Children. Until recently, he served for six years as the Braddock District representative on the Fairfax County Criminal Justice Advisory Board.

**Bryon Garner, Alexandria**

Mr. Garner recently served as Lee District representative on the Fairfax County Redistricting Advisory Committee and member of the City of Alexandria Commission on HIV/AIDS. From 2012-2015, he served on the City of San Diego Community Review Board on Police Practices, which investigated citizen claims against the San Diego Police Department. A nine-year veteran of the U.S. Navy, Mr. Garner earned his Master of Liberal Arts from Johns Hopkins University and is currently a PhD candidate in Interdisciplinary Studies with a Major in Humanities and a certificate in Philosophy and Ethics at Union Institute & University. With over 20 years of government service, Mr. Garner is currently employed by the Department of State.

**Dirck A. Hargraves, Esq., Kingstowne (Vice Chair)**

Mr. Hargraves has over 25 years of legal, regulatory and legislative experience and is the founder and principal of a public affairs and strategic communications firm that specializes in creating winning public policy campaigns. Mr. Hargraves has a long-held belief in the rule of law and passion for social justice. At the time, he was the youngest president of a local NAACP

Branch, where he sought transparency regarding the use of lethal force after an unarmed drug suspect was fatally shot by the police while fleeing a bust. A Citizen's Police Academy was formed shortly thereafter with NAACP input so that civilians were given a clearer understanding of how police determine when to use lethal force. Mr. Hargraves, also served as legislative counsel to US Representative Sheila Jackson Lee, where he supported the congresswoman on the House Judiciary Committee and at field hearings, including listening to the testimony of African American and Latino law enforcement at the World Trade Center in the aftermath of the Abner Louima police brutality scandal. That field hearing informed Members as they debated the National Police Training Commission Act of 1999, which presciently defined the seemingly intractable challenge of policing when Act found that:

Respect for law and order is the cornerstone of a free society. The rule of law is predicated upon the consent of people who believe the laws are administered fairly, thus commanding respect and confidence. Unjust or discriminatory administration of law by excessive force tends only to create distrust and contempt for the law and law enforcement agencies.

#### **Shirley Norman-Taylor, Lorton**

Ms. Norman-Taylor has resided in Fairfax County for the past 21 years. She is licensed to practice as an attorney in Virginia and Washington D.C. The focus of her practice includes Domestic Relations and Criminal and Traffic Defense, however, her greatest joy comes from representing children who are in the Abuse and Neglect system as their Guardian ad litem (GAL). Ms. Norman-Taylor also serves on the Fairfax County School Board's Minority Student Achievement Oversight Committee (MSAOC). Ms. Norman-Taylor is a former military officer and served as a Commander during Operations Desert Shield/Desert Storm.

#### **William Ware, Alexandria**

Mr. Ware is a native Virginian and 20-year resident of Fairfax County. His career includes service across several federal community corrections organizations where he has been laser-focused on reentry and supporting positive outcomes for returning citizens. Mr. Ware started his career as a Community Supervision Officer with the Court Services and Offender Supervision Agency (Washington, DC probation and parole). He transitioned to the Army Clemency and Parole Board serving as a Case Analyst and Hearing Examiner for court-martialed soldiers and, in 2019, Mr. Ware was selected as Deputy Chair for the Air Force Clemency and Parole Board. In that capacity, he presided over clemency and parole hearings for court-martialed Airmen and managed operations for the Air Force clemency and parole program. Mr. Ware joined the Probation and Pretrial Services Office at the Administrative Office of the U.S. Courts in 2021 and assumed responsibility for the reentry and Second Chance Act portfolio for the federal probation system. Beyond his federal experience, Mr. Ware has served in volunteer capacities on the Alexandria Sheriff's Office Advisory Board, Alexandria Reentry Council, and Fairfax County Communities of Trust. He holds a BA in Criminal Justice and MS in Criminology.

**Janell Wolfe, Fairfax**


Ms. Wolfe has resided in Fairfax County for over 30 years. She obtained her J.D. degree from the Antioch School of Law in Washington, D.C. A member of the Virginia, District of Columbia and Supreme Court of the United States bars, Ms. Wolfe was a criminal defense attorney with a solo practice in Arlington, Virginia. She was appointed as a Commissioner in Chancery for the 17th Judicial District of Virginia and served on the Board of Directors for Northern Virginia Legal Services.

Ms. Wolfe has served as a magistrate for Fairfax County. Currently she represents respondents in mental health hearings for Arlington County and is on the Committee of Admissions for the District of Columbia bar.


Ms. Wolfe was selected as a docent in 2010 for the Supreme Court of the United States. She presents lectures in the courtroom of the Supreme Court to visitors and conducts educational tours for guests at the request of the Justices. She also volunteers at the Fairfax County Animal Shelter.







**Final Report on Fairfax County Police Reform**  
**Ad Hoc Police Practices Review Commission**  
**Implementation Group**  
Fairfax County, Virginia  
October 10, 2018



- The FCPD UOF Technical Review Committee, which includes civilian representation, is reconstituted to review selective use of force events, to include the decision to employ UOF, use of de-escalation and alternatives, compliance with law and regulations, as well as administrative, training, supervisory and tactical issues.

**Under Review**

- FCPD and the CWA are still evaluating whether drug and steroid testing should be required for police officers involved in incidents that result in death or serious injury. The tests should be conducted as soon as possible after the incident but not longer than the time after the incident that drugs or steroids can be detected.

**Not Implemented**

- Because of privacy concerns, the County will not, on a blanket basis, release disciplinary action information regarding a violation of the UOF policy in a police officer-involved shooting.
- Out of operational concern, the County will not mandate that all detectives and plainclothes officers carry an ECW in their vehicles when on duty.
- The term "excited delirium" has been cleared by the County’s medical officer as a medically and physiologically descriptive term and therefore continues to be maintained in the Use of Force General Order 540.
- Testing officers involved in serious use of force incidents for drugs and steroids will not be mandatory.
- A legal advisor position within FCPD will not be established.
- Finally, the Board of Supervisors will not review the Police Chief’s determination in lethal UOF cases and go on record with approval or disapproval of the action.

**INDEPENDENT OVERSIGHT AND INVESTIGATIONS**

The Commission found that civilian oversight promotes public trust and confidence in FCPD, particularly when the use of force by a Fairfax County police officer leads to death or serious injury or with regard to complaints regarding “abuse of authority” or “serious misconduct.”

Table 5 reflects that the County adopted the key set of the independent oversight and investigations recommendations, but also rejected a few of them.

Table 5. Independent Oversight and Investigations Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
42	22	14	0	1	5

### **Implemented**

- The County approved and implemented Commission recommendations to establish an Independent Police Auditor and a Civilian Review Panel.
- The Board established the position of Independent Police Auditor on September 20, 2016. After an extensive search process, the Board appointed the Auditor in April 2017.
- The Civilian Review Panel was established by the Board on December 6, 2016. The nine members of the Panel were appointed by the Board on February 28, 2017, after a selection process which provided all interested persons and organizations with the opportunity to nominate individuals for the Panel. The Panel drafted bylaws which were approved by the Board, with modifications, on July 11, 2017, and accepted by the Panel on August 3, 2017.
- The Commission assumed that FCPD would formally respond to recommendations from the Auditor and Civilian Review Panel. We understand that FCPD does not believe it has an obligation to do so.
- The Auditor and Panel both have websites with links to complaint forms for use by the public.

### **Under Review**

- The recommendation that the CWA's Office be funded to hire two independent investigators to support criminal investigations within the scope of the Independent Police Auditor has not yet been acted upon. These positions will not receive Board consideration unless requested by the CWA.

### **Not Implemented**

- The Board did not appoint the Auditor to a fixed term of 2 to 5 years. Virginia Code requires that appointments to positions such as that of the Auditor be at will, *i.e.*, the appointment can be terminated with or without cause.
- Further, it is not clear under the Virginia Code whether the Board has the discretion to delegate authority to non-police personnel to conduct criminal investigations. The Auditor will, however, have full access to completed criminal investigations conducted by the Major Crimes Bureau (MCB) for the CWA's Office. The Auditor will also monitor and review IAB investigations within its scope and can request that FCPD provide additional information and materials as may be needed to ensure the thorough completion of administrative investigations.
- Because of similar concerns regarding delegation of authority, the Civilian Review Panel will not investigate complaints, but will instead hold public meetings (rather than public hearings) to review FCPD investigations and will not accept evidence or receive testimony at those public meetings held to review an investigation. The complainant can appear at such meetings to state the reasons for the request for review and can answer the Panel's questions, and representatives of FCPD will appear to review and answer questions about their investigation. The FCPD will conduct any further investigation that the Panel deems necessary.
- Finally, the Board did not approve the Commission's recommendation that an Ad Hoc Police Practices Review Commission be established every five years.

# AD HOC POLICE PRACTICES REVIEW COMMISSION



October 8, 2015

## Final Report

### **Michael Hershman, Chairman**

#### **Subcommittees:**

Merni Fitzgerald – Communications

Shirley Ginwright – Recruitment, Diversity and Vetting

Jack Johnson – Independent Oversight and Investigations

Phillip Niedzielski-Eichner – Use of Force

Del. Marcus Simon – Mental Health and CIT

## INDEPENDENT OVERSIGHT AND INVESTIGATIONS

### Executive Summary

The Independent Oversight and Investigations Subcommittee was chaired by Jack Johnson, who leads the national security practice at PriceWaterhouseCoopers. Its members included current and former law enforcement officers and officials, attorneys, a journalist, advocates for civilian oversight of police, a former Commonwealth's Attorney, and concerned citizens with and without personal experience with police. The subcommittee received presentations from the Commonwealth's Attorney, the Fairfax County Attorney's Office, and multiple command level staff of FCPD including Chief Edwin Roessler. Additionally, the subcommittee undertook a thorough data collection and review, including analysis of civilian oversight boards around the country.

“[For the purpose of] building and maintaining public trust in FCPD and its officers in a period of general loss of public confidence in many institutions, our Subcommittee also recommends the creation of an Office of Independent Police Auditor, and a Civilian Review Panel, appointed by the Board of Supervisors. The Independent Police Auditor would report directly to the Board of Supervisors and would provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings. The Civilian Review Panel would respond to community concerns or complaints about alleged incidents of abuse of authority by FCPD.” – *Independent Oversight and Investigations Subcommittee Report*

The subcommittee delivered 24 recommendations, which are which are provided in full in the next section and in Appendix E. On **investigations**, the subcommittee recommends: no changes to criminal investigations; funding of two additional investigators for the Commonwealth's Attorney's Office; IAB should conduct its investigation concurrently with criminal investigation; questioning of involved officers should commence as soon as reasonable as allowed under the Virginia Law Enforcement Officers Procedural Guarantee Act; and officers shall await direction from investigators prior to speaking to those involved. The **prosecution** shall remain with the Commonwealth's Attorney unless he/she determines it should be handled by a counterpart jurisdiction's Commonwealth's Attorney. The Board of Supervisors should request timely reports from Commonwealth's Attorney when no charges are filed. On **independent review**, an Office of Independent Police Auditor and a Civilian Review Panel shall be established. The authority and duties of the Auditor and the Panel are described above.

#### Members:

##### Jack Johnson, Chair

- Nick Beltrante
- Jeff Stewart
- Sean Corcoran
- Bob Horan
- Amy Dillard
- John Lovaas
- Adrian Steel
- John Wallace
- Sal Culosi

- Michael Kwon
- Mary Kimm
- Robert Sarvis\*
- Bob Callahan\*
- Marc Harrold\*
- David Stover\*
- James K. Stewart\*
- Sara-Ann Determan\*
- George Becerra\*
- Ben Getto\*

\* *Non-commissioner Members*

## Independent Oversight and Investigations

### *Investigations*

- 1) Criminal investigations of Fairfax County law enforcement officers involved in shootings, in-custody deaths, and any use of force incident in which an individual is killed or seriously injured as defined in General Order 540.1 (“Death or Serious Injury Cases” or “Cases”) should continue to be conducted by the Major Crimes Division (“MCD”) of the FCPD. An exception to this policy would occur when the Chief of Police, in consultation with the Commonwealth’s Attorney, determines that the criminal investigation of a particular incident should be conducted by criminal investigators from another Northern Virginia jurisdiction police department or from the Virginia State Police, by agreement with that jurisdiction or with the State Police.
- 2) Funds should be appropriated to the Commonwealth’s Attorney’s office to allow for the fulltime employment of two (2) independent experienced criminal investigators who will report to and be used at the discretion of the Commonwealth’s Attorney in connection with criminal investigations of Death or Serious Injury Cases and other investigations within the scope of the responsibilities of the Independent Police Auditor.
  - a) Such investigators shall participate in MCD criminal investigations of Cases as the Commonwealth’s Attorney may direct and may be used in connection with other criminal investigations, time permitting.
  - b) The Independent Police Auditor shall monitor MCD criminal investigations of Cases and other criminal investigations within the scope of the responsibilities of the Independent Police Auditor.
- 3) FCPD Internal Affairs Bureau (“IAB”) investigations should be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.
- 4) The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be “questioned at a reasonable time and place” shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth’s Attorney in consultation with the Chief of the FCPD.
- 5) All FCPD officers shall be required to abstain from speaking (i) to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation within the scope of the responsibilities of the Independent Police Auditor, or (ii) to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

### *Prosecution*

- 6) The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a Death or Serious Injury Case, or other case within the scope of the responsibilities of the Independent Police Auditor, should continue to be handled by the Commonwealth’s Attorney for Fairfax County unless the Commonwealth’s Attorney determines that the prosecution, including the decision to charge, should be handled by the Commonwealth’s Attorney of another Virginia jurisdiction by agreement with that jurisdiction.
- 7) The Commonwealth’s Attorney should be requested to issue timely and comprehensive public reports in any case involving Death or Serious Injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth’s Attorney, and the basis for the conclusions reached by the Commonwealth’s Attorney.

### *Office of the Independent Auditor*

- 8) The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor (“Auditor”).
  - a) The Auditor shall be appointed by and report directly to the Board of Supervisors.
  - b) The Auditor shall have experience in, inter alia, public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Independent

- Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County.
- c) The Auditor shall review (i) all investigations of Death or Serious Injury Cases conducted by the IAB; and (ii) all UOF investigations by IAB which are the subject of a public complaint made to the FCPD or the Auditor.
  - d) The Auditor shall have full access to the MCD criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files.
  - e) The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality.
  - f) The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause.
- 9) The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities.
    - a) The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments.
  - 10) If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation.
  - 11) Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file.
  - 12) The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner.
  - 13) An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a Death or Serious Injury Case, the use of force, or the death of an individual with the FCPD for investigation.
    - a) The citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, which will report on the disposition of the complaint within 30 days.
  - 14) If the Auditor disagrees with the results or conclusions of an IAB investigation, the Auditor shall advise the FCPD Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.
  - 15) The Auditor shall make public recommendations to the FCPD Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.
  - 16) The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.
  - 17) Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.

*Civilian Review Panel*

- 18) Fairfax County shall establish a Civilian Review Panel ("Panel") to review civilian complaints concerning alleged FCPD misconduct.
- Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
  - The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
  - Factors to be considered in appointing Panel members include, inter alia, community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).
  - The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.
- 19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.
- "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, inter alia, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
  - The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.
  - Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.
- 20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.
- The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.
  - Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.
- 21) The Panel review of the investigation shall be completed and a public report issued within sixty (60) days of the filing of a request for review.
- If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
- 22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.



**Ad Hoc Police Practices Review Commission**

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23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.

*Follow Up*

24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every five (5) years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.



# INDEPENDENT OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

Final Report and Recommendations

Jack Johnson, Chair  
October 8, 2015

## Executive Summary

The Fairfax County Board of Supervisors established an Ad Hoc Police Practices Review Commission on March 3, 2015. Commission Chairman Michael Hershman established five subcommittees to complete the Commission's work in the limited time before delivering a report to the Board of Supervisors by October 20, 2015.

The Independent Oversight and Investigations Subcommittee, chaired by Jack Johnson, is one of the five Commission subcommittees, with the others being Communications; Mental Health and Crisis Intervention Training; Recruitment, Diversity and Vetting; and Use of Force.

The Commission is charged with recommending changes, consistent with Virginia law, that the Commission believes would help Fairfax County achieve its goal of maintaining a safe community, enhancing a culture of public trust, and ensuring our policies provide for the fair and timely resolution of police-involved incidents.

The **Scope of Work** for the Independent Oversight and Investigations Subcommittee, set in June, 2015, is as follows:

- I. Review current Fairfax County policies and practices on investigation of police involved shootings and use of deadly force, as well as critical incident response situations, including review of FCPD Internal Affairs Division policies and practices.
  - A. Policy on commencement of Internal Affairs investigation only after criminal process has ended.
  - B. Policy on not interviewing officers involved in a shooting until two days after the event.
  - C. Policy on FCPD responses to citizen complaints regarding use of force and allegations of misconduct.
  - D. Should there be a study of the community's attitudes toward the police force, perhaps with the help of George Mason University personnel (assuming no such study exists). If such a study exists, the results should be provided to this Subcommittee.
- II. Review of "best practices" for investigations of serious police-involved use of force and critical incident response situations to ensure transparency and accountability, including:
  - A. Review of "best practices" by police departments that are similar in size and demographics, and to the extent possible that can be determined, have a similar number of police involved shootings/use of deadly force.
  - B. Models different from current Fairfax County practice and procedures.
    1. Independent auditor with citizen/public involvement.
    2. Retention by the prosecutors of an independent investigator.
  - C. The use of an independent special prosecutor and/or investigative body in other jurisdictions and when such a prosecutor and/or investigator is used.
  - D. Review by the Fairfax County Board of Supervisors of police involved shootings and use of deadly force.
- III. Review of citizen oversight boards in other jurisdictions of similar size and demographics to evaluate whether such a board should be established in Fairfax County, including:
  - A. Should this review board be comprised of police officers and citizens to timely review all officer involved shootings and other serious incidents to identify and address as needed any administrative, supervisory, training, tactical or policy issues?
  - B. What conduct should such a board investigate (e.g., allegations of police abuse, misconduct, negligence, etc.)?

- C. What investigative powers should such a board have (e.g., subpoena power, ability to interview individuals involved and witnesses)?
- D. To which authority should such a board report (e.g., the Chief of Police and/or the Board of Supervisors)?
- E. What weight (binding or advisory) should such a board's findings and recommendations have (e.g., recommendations as to discipline, and changes to policy and practice changes)?
- F. What would the estimated annual costs be of such a board that would conduct these independent reviews and investigations?

IV. Based on the review of existing FCPD policies and practices and a review of the policies and practices of other jurisdictions and the cited publications and other resources, develop proposed recommendations for changes and/or next steps to the Board of Supervisors for consideration by the Commission.

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The full Independent Oversight and Investigations Subcommittee met nine times, while several working groups held additional meetings. All meetings were open to the public, and public comments and statements were allowed. Minutes and other documents from Subcommittee meetings and research are available at the Independent Oversight and Investigations Subcommittee webpage <http://www.fairfaxcounty.gov/policecommission/subcommittees/independent-oversight-investigations.htm>

Presentations by Commonwealth's Attorney Ray Morrogh, Deputy County Attorney Peter Andreoli and Chief of Police Edwin Roessler informed our research. Other presentations before the Subcommittee included Major Crimes Division Detective Chris Flanagan and Internal Affairs Bureau Commander, Major Michael Kline, as well as other IAB officials.

Individual members of the Subcommittee and three working groups engaged in extensive research about best practices and models of investigations and oversight around the nation. A list of resources consulted appears in Appendix A.

## Members

### Jack Johnson, Chair

Mr. Johnson is a Partner with the firm of PricewaterhouseCoopers, LLP (PwC) in the U.S. Public Sector Practice and leads the National Security Practice, which includes all elements of the US Department of Defense, NATO and other related entities. He is a nationally and internationally recognized expert with over 35 years experience in the areas of investigations, law enforcement, security and risk management and intelligence related matters. Mr. Johnson previously had served in a series of positions of increasing responsibility within the US Government, culminating in his appointment as a Deputy Assistant Director with the United States Secret Service, and as the first Chief Security Officer for the newly formed Department of Homeland Security.

### George Becerra\*

Mr. Becerra is a current 16-year federal employee and a Fairfax County resident since 1984. He has been an Economic Statistician and Operations Research Analyst for the Dept. of the Army (Dept. of Defense - Pentagon) and Dept. of Homeland Security (Immigration and Customs Enforcement - Headquarters). He is a Citizen Police Academy 2006 graduate and alumni member. Also a member of several civic and community organizations.

### Bob Callahan\*

Mr. Callahan retired from the Fairfax County Police Department in August, 2006 after 29 years of service. His assignments included supervisory and management positions in criminal investigations and internal affairs. Following his retirement from the FCPD, Mr. Callahan has held positions in public sector performance management and employee relations.

### Sean Corcoran

Mr. Sean Corcoran is a member of the Fairfax County Police Department. He is a Detective in the Major Crimes Division. He also serves as the President of the Fairfax Coalition of Police Local 5000, International Union of Police Associations.

### Sal Culosi

Mr. Culosi is a retired civil servant who was a member of the Senior Executive Service in the Department of Defense and has accrued over 45 years of experience as a Defense manager and analyst. His son, Salvatore J. Culosi, was an optometrist who was killed in 2006 by a FCPD SWAT team in the process of executing a document search, related to gambling, using an aggressive vehicle takedown process, which was reserved for high risk situations but was nonetheless employed even after FCPD SWAT official risk assessment judged him to be low risk.

### Sara-Ann Determan\*

Ms. Determan is a retired lawyer; Fairfax County resident for 46 years; former President D. C. Bar; former chair of DC Area ACLU, Lawyers' Committee for Civil Rights and Urban Affairs, Washington Area Ronald McDonald House, Lake Barcroft Association, and Lake Barcroft Watershed Improvement District; American Bar Association activist; founding member National Partnership for Women and Families; member and former trustee, Unitarian Universalist Church of Arlington.

### Amy Dillard

J. Amy Dillard is an Associate Professor of Law at the University of Baltimore School of Law where she teaches criminal law and constitutional criminal procedure. She is an active member of the Virginia Bar who had a first career as Deputy Public Defender for the City of Alexandria, Virginia. Professor Dillard

recently served, at the invitation of the Police Commissioner, on an Independent Review Panel, which assessed the facts surrounding a death-in-custody of a suspect and subsequent investigation by the Baltimore City Police Department.

**Ben Getto\***

Mr. Getto is a Senior Associate in Booz Allen Hamilton's federal energy consulting business. A former federal employee at the Treasury and Energy Departments, Mr. Getto most recently served as Deputy Chief of Staff to the Secretary of Energy with a portfolio that included agency-wide programmatic, policy and communications oversight.

**Marc Harrold\***

**Robert Horan, Jr.**

Robert F. Horan, Jr. served more than 40 years as the Commonwealth's Attorney of the County of Fairfax and the City of Fairfax. He was appointed in 1967 and was re-elected every four years until retiring in September 2007. He is an avid trial lawyer and prosecuted jury trials every year he was in office.

**Mary Kimm**

Ms. Kimm is Editor and Publisher of the Connection Newspapers, a chain of 15 weekly newspapers including 12 hyper-local editions in Fairfax County, where she has worked since 1989. Ms. Kimm's editorials have been cited in local efforts to end homelessness and increase government transparency. She also serves on the Governing Board of the Fairfax County Office to Prevent and End Homelessness.

**Michael Kwon**

Mr. Kwon has been living in Fairfax County since 1977 and has served in numerous community service organizations including United Way, Mason District Council of Civic Associations, and Fairfax County Human Rights Commission, as well as being active in the Korean-American community where he currently serves as the chairman of the Korean American Society of Virginia. For his community service, he was honored as the 2003 Citizen of the Year by the Annandale Chamber of Commerce and 2011 Lord Fairfax by the Board of Supervisors. For his work in Korean unification issues, he received a presidential commendation from the president of the Republic of Korea.

**John Lovaas**

John Lovaas is a retired U.S. AID Senior Foreign Service Officer and a former Assistant to the Publisher of the Connection Newspapers. He and his wife Fran Lovaas have lived in Reston since his retirement and now reside at Lake Anne. He is active in the Reston community, having served as President of the Reston Citizens Association, the Alliance for a Better Community and the Washington Plaza Cluster Association; and as a member of the boards of the Reston Association and the Reston Community Center. He has worked in Reston community television as the Host and Producer of Reston Impact, a public affairs program, since 2001. Also, he authors a biweekly column and occasional OpEds in metro area community newspapers. In 1998, Mr. Lovaas founded the Reston Farmers Market, sponsored by the Fairfax County Park Authority and now co-managed by himself and Mrs. Lovaas.

**Robert Sarvis\***

Mr. Sarvis is an attorney, businessman, politician and software developer. While attending law school, he was the co-founder and editor-in-chief of the NYU Journal of Law & Liberty; he also clerked for Judge E. Grady Jolly on the U.S. Court of Appeals for the Fifth Circuit. In addition, he has been a

software developer, being named by Google as a Grand Prize Winner for their Android Development challenge.

Adrian L. Steel, Jr.

Mr. Steel is a partner with the law firm Mayer Brown LLP. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters. Mr. Steel recently served as a member of a commission led by Judge Webster which reviewed the FBI's actions in connection with the 2009 shootings by Major Nidal Hasan at Fort Hood, Texas.

Jeff Stewart\*

Mr. Stewart is Chief Executive Officer of WeatherTite Inc. and has been a Fairfax County resident for over 30 years. He witnessed the shooting death of his close friend John Geer by a Fairfax County police officer on Aug. 29, 2013.

David Stover\*

A career United States Park Police (USPP) Officer, David Stover retired as Deputy Chief in 2008. During his 35 years on the force, Mr. Stover served in several USPP law enforcement capacities and administrative positions, including Major in charge of the Office of Professional Responsibility (OPR), a position that oversaw the Internal Affairs Unit and Audits and Evaluations. In the OPR, Mr. Stover was charged with reviewing officer as well as civilian misconduct and issuing appropriate discipline. In cases that met the threshold for removal from the force he made recommendations to the Chief.

John Wallace

Detective John A. Wallace began his career with the Fairfax County Police Department in 1986 and has worked in patrol, Organized Crime and Narcotics, DEA Task Force, Sex Crimes, Cold Case and Homicide. Detective Wallace received a Bachelor of Applied Science in Human Resource Management and Leadership from University of Richmond in 2008. Detective Wallace has been the President of the Fairfax County Police Association for the past three years. The mission of the Fairfax County Police Association is one of a benevolent organization.

\* Subcommittee members who are not also members of the full Commission.

## Introduction

The Ad Hoc Commission was formed in response to growing concerns about the lack of accountability and transparency of law enforcement in Fairfax County. By reviewing police practices and policies and taking action now, such as those being recommended here and by other subcommittees, our community can improve an already solid police force and build a framework to recognize and address future challenges.

Independent investigation, oversight and civilian participation in reviewing police use of force, officer involved shootings and citizen complaints can play a vital role in maintaining Fairfax County Police Department's reputation as being one of the very best law enforcement organizations in the nation.

The work of the Independent Oversight and Investigations Subcommittee benefitted from a growing body of experience, including the Police Executive Research Forum (PERF) Review of the Fairfax County Police Department's use of force policies, the President's Task Force on 21st Century Policing and the work of the National Association for Civilian Oversight of Law Enforcement (NACOLE). We researched oversight models in use around the country and their experiences to date. We consulted with a member of the NACOLE Board of Directors, who was also a guest speaker before the Ad Hoc Commission.

Our recommendations for the Fairfax County model focus on three areas: 1) strengthening the independent investigative capacity available to the Commonwealth's Attorney in cases of officer involved shootings, in-custody deaths, or cases involving death or serious injury; 2) establishing an Independent Police Auditor to review investigations of officer involved shootings, in-custody deaths and death or serious injury cases conducted by the Internal Affairs Bureau of the FCPD and use of force investigations by IAB; and, 3) establishing a Civilian Review Panel to respond to community concerns or complaints about alleged incidents of abuse of authority by the FCPD.

*"Strong, independent oversight builds legitimacy and trust through increased transparency and accountability to the public. There is growing recognition of oversight's important role in today's professional policing. The President's Task Force on 21st Century Policing recommends establishing civilian oversight to strengthen trust with the community."*

*"Oversight is a process, and like policing, it is complex. There are more than 200 oversight entities across the United States. No two are exactly alike. There are civilian review boards, monitors, police auditors, and inspectors general, among other models. Citizen review is not an advocate for the community or for the police. This impartiality allows oversight to bring stakeholders together to work collaboratively and proactively to help make policing more effective and responsive to the community."*

*"By fostering accountability through independent investigations or auditing of police misconduct complaints, oversight can also identify needed changes in police practices and training, and provide a meaningful voice or forum for the public. Effective oversight leads to more effective policing. An investment in oversight is an investment in the police."*

**Source: National Association for Civilian Oversight of Law Enforcement**

This approach to oversight will provide for public confidence in investigations of use of force incidents that result in serious injury or death, including officer involved shootings through the Independent Police Auditor, as well as a powerful mechanism to address community concerns through increased citizen involvement.



This Subcommittee did not begin its review and deliberations with a preconceived belief in the need for independent oversight, but rather through research, presentations and discussion, concluded that the best model for Fairfax County includes retaining the current investigative structure but with added checks and balances in accordance with national best practices to provide for public trust.

All of the Subcommittee's recommendations are made unanimously. Early in the process, the Subcommittee determined that, if any recommendation were not unanimous, we would forward both majority and minority recommendations. However, we were able to reach full consensus on the recommendations contained here.

We also recommend that the charter for the Independent Oversight and Investigations Subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to follow up on open issues that may remain going forward and to support and assist implementation of any of the recommendations for which IOI Subcommittee participation would be beneficial.

# **FINDINGS AND RECOMMENDATIONS**

## **Part 1: Investigations and Prosecution**

It is of critical importance to building and maintaining public trust and confidence in a community's police department that the criminal and administrative investigations of officer involved shootings (OIS's) and other police use of force incidents in which an individual is fatally or seriously injured are perceived to be, and are in fact, thorough, accurate, objective and impartial. In most jurisdictions, as in Fairfax County, these investigations are conducted by members of the police department in which the officer involved in the shooting is a member. In Fairfax County, the Major Crimes Division (MCD) of the FCPD Criminal Investigation Bureau (CIB) conducts the criminal investigations of OIS's involving FCPD officers while the FCPD Internal Affairs Bureau (IAB) conducts the corresponding administrative investigations.

The Commonwealth's Attorney for Fairfax County makes the decision to charge in an OIS based on the FCPD investigations and oversees any prosecution that may arise. Both the FCPD and the Commonwealth's Attorney indicate that they will recuse themselves if there is a conflict of interest and will refer the OIS investigation and prosecution to the police department and Commonwealth's Attorney in a neighboring jurisdiction.

After considering the information obtained and reviewing practices in other jurisdictions, we recommend that the current investigative and prosecutorial practices should continue.

Given this recommendation, the Subcommittee considered models of independent auditors and civilian review boards that will be discussed in subsequent sections. We also call for the addition of two independent experienced investigators to the staff of the Commonwealth's Attorney's office to provide an independent view of OIS's or serious use of force, and ensure that the MCD investigation addresses any questions or leads identified by the Commonwealth's Attorney.

Some question whether investigators who are members of the same police department as the officer being investigated can objectively and fairly investigate "one of their own." Those expressing such concerns do not generally question the integrity or professionalism of the investigators. Rather, they see a potential inherent subjective bias that may color the outcome of a given investigation. In like fashion, others question whether a prosecutor who has a close and often long term relationship with a police department and who works on a daily basis with the department can objectively and fairly make a determination to bring criminal charges against an officer who is involved in a shooting which has led to the death of or serious injury to an individual. In reality, across the nation at other major law enforcement agencies up to and including the US Department of Justice, the investigations are in fact conducted internally and in many instances are successfully prosecuted by organizations that have long standing relationships with those law enforcement organizations.

Some jurisdictions have addressed these concerns by arranging for the criminal investigations of OIS's involving their police officers to be conducted by investigators from a neighboring jurisdiction on either an ad hoc or permanent basis. Others have considered the establishment of a regional task force of criminal investigators which would investigate OIS's, with the task force investigator(s) from the involved police department recused. Similar arrangements between prosecutors have been proposed or adopted to provide for the decision to charge and the prosecution of OIS's to be undertaken by a prosecutor from a neighboring jurisdiction.

Our Subcommittee considered these various alternatives. We heard directly from FCPD Major Crimes Division and Internal Affairs Bureau concerning their investigations of OIS's. Commonwealth's Attorney for Fairfax County Raymond Morrogh, spoke to us concerning prosecution of OIS's. We also reviewed a limited number of documents from past investigations of OIS's (including the 2013 John Geer fatal shooting) conducted by Major Crimes Division and spoke with individuals familiar with those investigations. After considering the information obtained and reviewing practices in other jurisdictions (such as the recently reported investigation and prosecution agreements between Montgomery and Howard Counties in Maryland), we determined that the current investigative practices should continue. Mr. Morrogh indicated that he has never had any dissatisfaction about the criminal investigations conducted by MCD and noted that any questions or requests for further investigation have been promptly resolved. In addition, Fairfax County's criminal investigative resources are among the best, if not the best in Virginia, and the MCD investigators are very experienced. As for the prosecutions, Mr. Morrogh expressed his view that, absent a conflict of interest, the Commonwealth's Attorney should make the decision to charge and prosecute OIS's that occur in Fairfax County since that is the duty which the Commonwealth's Attorney is elected and legislatively mandated to perform. Both Mr. Morrogh and his predecessor, Mr. Robert Horan, cited instances where they had charged and successfully prosecuted Fairfax County Police officers for a variety of criminal incidents over the years. During those internal police investigations and subsequent prosecutions, Messrs. Morrogh and Horan advised that the performance of the Fairfax County Police Department and Internal Affairs Bureau was complete, thorough and above reproach.

While we have recommended that the current investigative and prosecutorial practices continue, we have included in our recommendations language which proposes that the Chief of Police and the Commonwealth's Attorney affirmatively consider whether in each OIS the criminal investigation and/or the decision to charge and prosecute should be conducted by criminal investigators and/or the Commonwealth's Attorney of a neighboring jurisdiction, respectively. By doing so, a measure of protection against the concerns raised relating to actual or perceived bias will become part of the process in each OIS.

In addition to recommending that the FCPD and the Commonwealth's Attorney affirmatively consider the referral of each OIS, we are recommending that two independent experienced investigators be added to the staff of the Commonwealth's Attorney's office. These investigators would report to, and be used at the discretion of, the Commonwealth's Attorney in connection with criminal investigations of OIS's. By participating in OIS investigations, the two Commonwealth's Attorney investigators will provide an independent view of the OIS and help to ensure that the MCD investigation is timely, comprehensive, and addresses any issues that the Commonwealth's Attorney believes need to be resolved.

We also addressed several procedural aspects of OIS investigations as directed by the Subcommittee charter. First, a concern was raised that IAB investigations are not initiated until the MCD criminal investigation is completed and a decision to charge made by the Commonwealth's Attorney. We learned that IAB effectively conducts a parallel investigation alongside the MCD investigations. IAB is, however, limited in its ability to interview the officer(s) involved by the U.S. Supreme Court decision in *Garrity v. New Jersey* in order to protect the officer's Constitutional rights. IAB cannot therefore take a compelled interview of the officer until the criminal process is complete. Given those considerations, we have recommended that an IAB OIS investigation be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.

Second, we heard that the MCD interviews of the officer(s) involved in an OIS were being delayed by an informal “waiting period” of up to 48 hours. The purpose for any such delay was reported to us to be that experience and certain studies indicate that more complete and accurate information is obtained if interviews are delayed until after a person who is involved in or witnesses an event such as an OIS has had one or two sleep cycles. In recognition of that input, but with concerns about the perception of differing treatment of police officers and civilians involved in an OIS (including the subject), we recommend that the right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be “questioned at a reasonable time and place” should continue to be preserved. However, the questioning should commence as soon as reasonably possible, under all of the relevant facts and circumstances, as determined by the Commonwealth’s Attorney in consultation with the Chief of the FCPD without a specified waiting period.

Third, given that there may be a delay in the questioning of the officer(s) involved in or witnessing an OIS, and to ensure the integrity of the investigation, we have recommended that the current FCPD practice of issuing what is called a “confidentiality order” be formally adopted. Such an order requires all involved officers to abstain from speaking to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation, and to abstain from speaking to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

Finally, in order to provide the public with an understanding of the investigative process, the time-lines of the investigation, and the basis for the Commonwealth’s Attorney’s decision, we have recommended that the Commonwealth’s Attorney issue timely and comprehensive public reports on the criminal investigations of OIS’s when no criminal charges are filed. We recommend that the reports describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth’s Attorney, and the basis for the conclusions reached by the Commonwealth’s Attorney. Mr. Morrogh’s September 2015 report on his conclusion that no crime was committed in the in-custody death of inmate Natasha McKenna is an example of such a report. We learned that the Commonwealth’s Attorney for the City of Alexandria issues such reports. We believe that similar reports by the Fairfax County Commonwealth’s Attorney on future OIS’s would greatly enhance the public’s understanding of, and confidence and trust in, the investigative and prosecutorial processes and the resulting decisions.

## **Recommendations: Investigations**

1. Criminal investigations of Fairfax County law enforcement officers involved in shootings, in-custody deaths, and any use of force incident in which an individual is killed or seriously injured as defined in General Order 540.1 (“Death or Serious Injury Cases” or “Cases”) should continue to be conducted by the Major Crimes Division (“MCD”) of the FCPD. An exception to this policy would occur when the Chief of Police, in consultation with the Commonwealth’s Attorney, determines that the criminal investigation of a particular incident should be conducted by criminal investigators from another Northern Virginia jurisdiction police department or from the Virginia State Police, by agreement with that jurisdiction or with the State Police.
2. Funds should be appropriated to the Commonwealth’s Attorney’s office to allow for the fulltime employment of two (2) independent experienced criminal investigators who will report to and be used at the discretion of the Commonwealth’s Attorney in connection with criminal investigations of Death or Serious Injury Cases and other investigations within the scope of the responsibilities of the Independent Police Auditor.

- a. Such investigators shall participate in MCD criminal investigations of Cases as the Commonwealth's Attorney may direct and may be used in connection with other criminal investigations, time permitting.
  - b. The Independent Police Auditor shall monitor MCD criminal investigations of Cases and other criminal investigations within the scope of the responsibilities of the Independent Police Auditor.
3. FCPD Internal Affairs Bureau ("IAB") investigations should be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.
4. The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of the FCPD.
5. All FCPD officers shall be required to abstain from speaking (i) to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation within the scope of the responsibilities of the Independent Police Auditor, or (ii) to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

### **Recommendations: Prosecution**

6. The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a Death or Serious Injury Case, or other case within the scope of the responsibilities of the Independent Auditor, should continue to be handled by the Commonwealth's Attorney for Fairfax County unless the Commonwealth's Attorney determines that the prosecution, including the decision to charge, should be handled by the Commonwealth's Attorney of another Virginia jurisdiction by agreement with that jurisdiction.
7. The Commonwealth's Attorney should be requested to issue timely and comprehensive public reports in any case involving Death or Serious Injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney.

## Part 2: Independent Review

In addition to the recommendations outlined above, and for the same reasons of building and maintaining public trust in FCPD and its officers in a period of general loss of public confidence in many institutions, our Subcommittee also recommends the creation of an Office of Independent Police Auditor and a Civilian Review Panel, appointed by the Board of Supervisors.

The Independent Auditor would report directly to the Board of Supervisors and would provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings.. The Civilian Review Panel would respond to community concerns or complaints about alleged incidents of abuse of authority by FCPD.

While the Subcommittee finds no evidence that there are serious or widespread issues of FCPD personnel abusing their authority in use of force incidents, we did hear from individuals who felt that their complaints about abuse of authority were not taken seriously. "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community," according to the President's Task Force on 21st Century Policing (May 2005 [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf)). "Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

While the Subcommittee has set forth proposed time periods for the issuance of reports on a case, it is not the intention of the Subcommittee to unnecessarily prolong investigations and review. Accordingly, it would be appropriate to study and coordinate the timing of review and reports by the Office of the Independent Police Auditor and by the Civilian Review Panel during implementation. This research should include review of policies and practices on coordination of investigation, review and discipline in other jurisdictions that have implemented independent review, and could be an appropriate task under the recommended extended charter of this Subcommittee.

### Office of Independent Police Auditor

We believe that the Auditor's involvement in and review of IAB's investigations, together with mandatory public reporting, will ensure that the investigations are thorough, accurate, objective and impartial, and that the public can have confidence in the results of IAB's investigations. In order to ensure that the Auditor can fully fulfill his/her responsibilities, we have recommended that the Auditor should have full access to both the MCD criminal investigative files as well as the complete IAB files.

We also recommend that the Auditor have the authority to interview any Fairfax County employee (including FCPD personnel) and receive any documents or other materials in the possession of the FCPD or other Fairfax County offices and departments in carrying out his/her responsibilities. Based on our interviews with National Association for Civilian Oversight of Law Enforcement representatives, this authority is critical to the effective functioning of an independent police auditor.

To ensure the independence of the Auditor, in both perception and reality, we recommend that the person selected shall have relevant experience but shall not have been a Fairfax County employee. The Auditor's office should be both administratively and physically apart from the office of the FCPD.

We recommend that the Auditor will have the following primary functions:

- Participate in and monitor all IAB investigations of Fairfax County law enforcement officer involved shootings, in-custody deaths, and use of force cases in which an individual is killed or seriously injured; to seek further IAB investigation or to perform such further investigation if the Auditor determines that the IAB investigation was deficient; to issue a public report with respect to each reviewed investigation; and to consult with the FCPD Chief of Police concerning any disagreement with the IAB results or conclusions and, if no agreement between the Chief and the Auditor is reached after such consultation, report such disagreement to the Chairman of the Board of Supervisors. The Chief of the FCPD should issue a public statement that sets forth the bases for the Chief's decisions (which are final) in all cases as to which the Auditor disagrees.
- Review quarterly FCPD reports on the disposition of complaints of other cases of alleged police misconduct to ensure proper and timely FCPD responses.
- Make public recommendations concerning revisions of FCPD policies, training and practices based on the Auditor's reviews.
- Make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and, if established, at the request of the Civilian Review Panel, to meet with the Panel for further review of the Auditor's report and work.
- In order to address concerns that our Subcommittee heard expressed, we recommend that an individual may file a complaint of serious law enforcement use of force for investigation with either the FCPD or the Auditor. In that event the complaint is filed with the Auditor, it would immediately be forwarded to the FCPD for investigation.

## **Recommendations: Office of Independent Police Auditor**

8. The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor ("Auditor").
  - a. The Auditor shall be appointed by and report directly to the Board of Supervisors.
  - b. The Auditor shall have experience in, *inter alia*, public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Independent Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County.
  - c. The Auditor shall review (i) all investigations of Death or Serious Injury Cases conducted by the IAB; and (ii) all UOF investigations by IAB which are the subject of a public complaint made to the FCPD or the Auditor.
  - d. The Auditor shall have full access to the MCD criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files.
  - e. The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality.
  - f. The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause.
9. The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities.

- a. The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments.
10. If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation.
11. Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file.
12. The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner.
13. An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a Death or Serious Injury Case, the use of force, or the death of an individual with the FCPD for investigation.
  - a. The citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, who will report on the disposition of the complaint within 30 days.
14. If the Auditor disagrees with the results or conclusions of the IAB in Death or Serious Injury Cases, the Auditor shall advise the FCPD Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.
15. The Auditor shall make public recommendations to the FCPD Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.
16. The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.
17. Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.



## Civilian Review Panel

With the recommendation for an Independent Auditor to review and assess FCPD investigations into OIS and use of force incidents that involve serious injury or death, this Subcommittee recommends the establishment of a Civilian Review Panel to respond to community concerns or complaints about alleged FCPD incidents of abuse of authority.

While some feel that the superior quality of our police department is fair argument against the need for civilian oversight, police departments and certainly one of the finest departments in the nation should welcome the scrutiny of their practices and procedures by the public they serve and protect. The recommendations related to creation of a Civilian Review Panel by this Subcommittee are intended not as an intrusion but as an opportunity to provide additional transparency and visibility, while building police and community relations.

The review of the various resource materials which the Subcommittee undertook established that some form civilian review is a national best practice. The list of the largest police departments in the country which Christian Klossner of National Association for Civilian Oversight of Law Enforcement (NACOLE) prepared for us showed that all but a handful have some sort of independent review, with many of those involving civilian review.

Civilian Review Panels offer a method of public involvement in accountability that is external to the department. This independence from the agency or the sworn chain of command that it seeks to hold accountable allows it to address a wide range of concerns without any actual or perceived bias, and to ensure that policing is responsive to the needs of the community.

The experiences from other communities with civilian oversight have shown that strong, independent oversight builds legitimacy and public trust through increased police transparency and accountability to the public served. Oversight provides a meaningful voice or forum for the public and forms a crucial bridge between the public and the police. Increased transparency, trust, and communication between the police and the public can lead to greater community cooperation in achieving the ultimate goal of decreased crime and increased public safety.

This Subcommittee recommends establishing a Civilian Review Panel to review FCPD's investigations of alleged FCPD misconduct. The Panel would not review the cases of serious use of force that are referred to the Independent Auditor. The Board of Supervisors would appoint seven panel members to three year terms, with the ability to serve two consecutive terms. We recommend that the Panel be authorized to retain a criminal investigative consultant.

Our recommendations allow for any individual to file a complaint with the Panel requesting a review of the FCPD investigation of an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The panel would not review incidents being reviewed by the Independent Auditor. The Panel will define "Abuse of authority" and "serious misconduct" and may include the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, ethnicity, gender, sexual orientation or other bases; the reckless endangerment of a detainee or person in custody; and violations of Fairfax County or FCPD policies or procedures.

The Panel will issue a public report at the end of its review of each FCPD investigation. The Panel would meet with the Auditor periodically at the Panel's request concerning the findings and conclusions of the Auditor as to serious use of force cases so that the Panel can provide its views to the Board of Supervisors and the Chief of Police as to policy and practices changes that may be warranted. The

Panel could also hold periodic public forums around the county to gather information and suggestions about the FCPD, public perceptions and recommendations for policy and procedure, involving other police advisory committees and members of the Board of Supervisors as appropriate.

## **Recommendations: Civilian Review Panel**

18. Fairfax County shall establish a Civilian Review Panel (“Panel”) to review civilian complaints concerning alleged FCPD misconduct.
  - a. Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
  - b. The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel’s responsibilities.
  - c. Factors to be considered in appointing Panel members include, *inter alia*, community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).
  - d. The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.
19. An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged “abuse of authority” or “serious misconduct” by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.
  - a. “Abuse of authority” and “serious misconduct” shall be defined by the Panel and may include, *inter alia*, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, ethnicity, gender, sexual orientation or other bases; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
  - b. The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.
  - c. Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.
20. Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.
  - a. The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the panel.
  - b. Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not

taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

21. The Panel review of the investigation shall be completed and a public report issued within sixty (60) days of the filing of a request for review.
  - a. If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
22. The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.
23. The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.

## Follow Up

24. Fairfax County should establish an Ad Hoc Police Practices Review Commission every five (5) years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.

## Appendix

Citizen Review of Police: Approaches and Implementation (Finn, Peter; March 2001, *U.S. Department of Justice, Office of Justice Programs, National Institute of Justice*)  
<https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>

Models of Civilian Oversight in the United States: Similarities, Differences, Expectations and Resources (Quinn, Sue; National Association for Civilian Oversight of Law Enforcement)  
<https://nacole.org/resources/models-of-civilian-oversight-in-the-united-states-similarities-differences-expectations-and-resources/>

Review of National Police Oversight Models for the Eugene Police Commission (February 2005; Police Assessment Resource Center) <http://nacole.org/wp-content/uploads/Review-of-National-Police-Oversight-Models-Feb.-2005.pdf>

### Examples of Civilian Oversight

#### Virginia Beach

- Investigation Review Panel (IRP) <http://www.vbgov.com/government/departments/human-resources/pages/investigation-review-panel.aspx>
- Policy <http://www.vbgov.com/government/departments/human-resources/IRP/IRP%20Policy%202012%20rev.pdf>
- Resolution Establishing IRP <http://www.vbgov.com/government/departments/human-resources/IRP/1991%20Resolution.pdf>

#### Washington, DC

- Office of Police Complaints <http://policecomplaints.dc.gov/>
- Regulations [http://policecomplaints.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/occr\\_regulations.pdf](http://policecomplaints.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/occr_regulations.pdf)

#### Prince George's County, MD

- Citizen Complaint Oversight Panel <http://www.princegeorgescountymd.gov/sites/ExecutiveBranch/About/BoardsCommissions/Pages/Citizen-Complaint-Oversight-Panel.aspx>
- 2013 Annual Report [http://www.princegeorgescountymd.gov/sites/ExecutiveBranch/About/BoardsCommissions/Documents/CCOP/EB\\_Annual\\_Report\\_FY13.pdf](http://www.princegeorgescountymd.gov/sites/ExecutiveBranch/About/BoardsCommissions/Documents/CCOP/EB_Annual_Report_FY13.pdf)

#### Charlotte-Mecklenberg County, NC

<http://charmeck.org/city/charlotte/CRC/PCR/Pages/PoliceComplaintReview.aspx>

[San Diego County, CA http://www.sandiego.gov/citizensreviewboard/about/index.shtml](http://www.sandiego.gov/citizensreviewboard/about/index.shtml)

Fairfax County Police Department. *General Order 301 – Internal Investigations*. Fairfax County Police Department, 1 Jan. 2013. Web. <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>

National Association for Civilian Oversight of Law Enforcement. *Letter to Nicholas Beltrante, Executive Director, Virginia Citizens Coalition for Police Accountability*. 27 May 2015. Web. <http://www.fairfaxcounty.gov/policecommission/materials/nacole-oversight.pdf>

Survey Samples:

Fairfax County Police Department. *Community Relations Survey*. 4 Sept. 2014. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/draft-of-community-police-sept8-2014.pdf>

Lum, Cynthia, Linda Merola, Julie Willis, Breannae Cave. *License Plate Reader Technology: Impact Evaluation and Community Assessment*. Center for Evidence-Based Crime Policy, George Mason University. Sept. 2010. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/lpr-final-report-submitted-to-spawar.pdf>

Fairfax County Police Department. *Community Survey*. April 2009. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/community-survey-april-2009.pdf>

Fairfax County Police Department. *Sully Station Chantilly Mews Surveys*. 2004. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sully-station-chantilly-mews-2004-survey.pdf> 2005. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sully-station-chantilly-mews-2005-survey.pdf>

Fairfax County Police Department. *Sully Station Sunset Knolls Surveys*. 2005. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sully-station-sunset-knolls-2005-survey.pdf> 2006. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sully-station-sunset-knolls-2006-survey.pdf>

Fairfax County Police Department. *Standard Operating Procedure 04-010 – Wellness Program*. 1 April 2007. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sop-04-010-wellness-program.pdf>

Fairfax County Police Department. *General Order 331 – Restricted Duty*. 1 April 2013. Web.  
<http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/040113restrictedduty331.pdf>

Fairfax County Police Department. *General Order 430.4 – Incident Support Services*. 1 April 2014. Web.  
<http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/4304061015.pdf>

Fairfax County Police Department. *Organizational chart on Incident Support Services*, n.d. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/iss-chart-2.pdf>

Fairfax County Police Department. *Additional chart on Incident Support Services*, n.d. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/iss-chart-i.pdf>

Fairfax County. *Special Psychological Services Group Contract*. 14 March 2012. Web  
[http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/special\\_psychological\\_services\\_group\\_contract.pdf](http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/special_psychological_services_group_contract.pdf)

Independent Oversight and Investigations Subcommittee  
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October 8, 2015

Fairfax County Police Department. *Applicant and Fitness for Duty Examinations*, n.d. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/applicant-and-fitness-for-duty-examinations.pdf>

Fairfax County Police Department. *Employee Assistance Program Memorandum*, 1 June 2014. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/county-eap-memo.pdf>

Fairfax County Police Department. *Brief Overview of Support Groups*, n.d. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/employee-support-groups.pdf>

Fairfax County. *Medical Status Form*. Jan. 2014. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/medical-status-report.pdf>

Fairfax County Police Department. *Family Resource Manual*. 27 August 2008. Web.  
[http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/family\\_resource\\_manual.pdf](http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/family_resource_manual.pdf)

Hill, Andy (Capt.), Lt. Justin Palenscar. *Internal Affairs Bureau Presentation*. Fairfax County Police Department, n.d. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/internal-affairs-briefing-june16.pdf>

International Association of Chiefs of Police. *Critical Incident Stress Management: Paper*. July 2011. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/critical-incident-stress-paper.pdf>

International Association of Chiefs of Police. *Critical Incident Stress Management: Model Policy*. July 2011. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/critical-incident-stress-policy.pdf>

International Association of Chiefs of Police. *Officer-Involved Shootings, In-Custody Deaths, and Serious Uses of Force: Paper*. May 2012. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/officer-involved-shooting-paper.pdf>

International Association of Chiefs of Police. *Officer-Involved Shootings, In-Custody Deaths, and Serious Uses of Force: Model Policy*. May 2012. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/officer-involved-shooting-policy.pdf>

AELE. *Administrative Investigations of Police Shootings and Other Critical Incidents: Officer Statements and Use of Force Reports*. June 2008. Web (two parts).  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/admin-investigations-part1.pdf>; <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/admin-investigations-part2.pdf>

National Association for Civilian Oversight of Law Enforcement. *Briefing on Police Practices and Use of Force*. 19 June 2015. Web.  
<http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/nacole-police-practices-use-of-force.pdf>

Independent Oversight and Investigations Subcommittee  
Final Report  
October 8, 2015

Attard, Barbara, Kathryn Olson. *Overview of Civilian Oversight of Law Enforcement in the U.S.*, National Association for Civilian Oversight of Law Enforcement. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/oversight-us-law-enforcement.pdf>

Fairfax County Police Department. *Notice of Administrative Investigation for Sworn Employees*. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/sworn-notice.pdf>

Fairfax County Police Department. *Notice of Administrative Investigation for Non-Sworn Employees*. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/non-sworn-admin-notice.pdf>

Fairfax County Police Department. *Notice of Order of Confidentiality*. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/confidentiality-order.pdf>

Fairfax County Police Department. *Confidentiality Order Rescission*. N.d. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/confidentiality-order-rescission.pdf>

Fairfax County Police Department. *General Order 001: Ethics and Integrity*. 3 Oct. 2013. Web. <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/001.pdf>

Sengel, S. Randolph *Report of Investigation: Police Involved Shooting of Taft Sellers*. Alexandria Commonwealth's Attorney 18 Feb. 2013. Web. <http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/alexandria-sellers-report.pdf>

## APPENDIX H: Specific Recommendations from the Panel's Four-Year Review

### SPECIFIC RECOMMENDATIONS

- 1) The Panel should be empowered to hire a full-time Executive Director (ED) with some investigatory experience.** The Panel needs a full-time, dedicated staff member to handle administrative aspects of the Panel and assist the Panel in its reviews, Review Reports, and Annual Reports. The ED ideally should be an individual with some investigatory experience. The ED should also have access to the Investigation Reports and be authorized to draft Review Reports and other reports. The ED should also help organize and assist the Panel in its public outreach opportunities. Like the Independent Police Auditor, the ED should report directly to the Board of Supervisors and supervise administrative staff that assists the Panel.
- 2) The Panel's Executive Director should be authorized to monitor FCPD investigations of racial bias or profiling from the onset of the investigation, whether or not an initial complaint has been filed with the Panel.** During such monitoring, the ED may observe interviews and have access to evidence. The ED may suggest that the FCPD conduct additional interviews or further inquiries and data analysis during the investigation. Such monitoring would be consistent with that afforded by the Board of Supervisors to the IPA.
- 3) The Panel should be given electronic access to redacted Investigation Reports.** A new policy should be adopted by the Board of Supervisors, in consultation with the County Attorney and the FCPD, that allows Panel Members to have electronic access to redacted Investigation Reports. The Panel is cognizant that the Chief of Police is the custodian of FCPD records, and that he has rejected similar Panel requests in the past. However, there is no legal impediment barring the Chief from heeding the Panel's reasonable request. Panel Members simply must be able to conveniently review investigative files outside of normal business hours and outside of a police station. A compromise proposal would be to allow the FCPD to redact all personnel information on records provided electronically and require Panel Members to appear in person at police headquarters to review unredacted versions. Panel Members would still be under the obligation not to disclose privileged information. Providing electronic access ensures: (1) greater accessibility and participation of community members who may not have the resources to volunteer on a Board and travel regularly to the FCPD headquarters and (2) ensures the safety of all parties involved by reducing in person encounters during a pandemic and post-pandemic environment.
- 4) The Panel should codify in its bylaws a "summary judgment"-like process for disposing of wholly unfounded complaints at the Subcommittee level.** At a minimum, the Bylaws should reflect that the Subcommittee must find the Complaint to be objectively qualified for review. Toward that end, the Panel should formally adopt a four-step process for initial reviews of complaints, and this process must be explicitly stated in amendments to the Bylaws. First, the Subcommittee should determine whether the allegations of the complaint constitute allegations of a serious misconduct or an abuse of authority. Second, if yes, the Subcommittee should determine whether the Investigation Report reveals *any* observable substantiation of the allegations of serious misconduct or an abuse of authority in the complaint. This should be an exacting standard and a sufficiently high bar to avoid the early disposition of not wholly unfounded complaints. Further, this should apply only to the allegations that meet the threshold of serious misconduct or an abuse of authority. If there is *any* observable substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should recommend that the full Panel take up review. Third,



if the Subcommittee finds no substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should consider whether there is *any* reason to believe that the Investigation Report is not complete, thorough, accurate, objective, and impartial. Finally, the Subcommittee should present its findings to the entire Panel for a vote as to whether the Panel should review the Complaint. Thus, there is always a failsafe in that the Panel must make the ultimate determination whether or not to undertake a review.<sup>1</sup>

- 5) **The Panel should be authorized, at its discretion, to conduct a review of a completed FCPD investigation of an initial complaint concerning racial bias or profiling without first receiving a Request for Review from the Complainant.** Complaints concerning racial bias seemingly are of particular importance to county residents and thus should all be treated as ripe for independent oversight.
- 6) **The Panel should be given limited investigatory power including the ability to interview and subpoena the Complainant and up to three key witnesses upon the request of six Panel members.** Without full professionalization of the Panel, it cannot be a fully investigatory body. But the Panel would be well-served by having some investigatory powers that allow it to take investigative action wholly independently from the IAB. One idea is to grant the Panel through the Executive Director the ability to conduct witness interviews (and by extension to grant the Panel some subpoena power) but limit the number of interviews that the Panel undertakes. Moreover, such interviews would be discretionary – if the Panel is confident that the Investigation Report as compiled meets its standards, it need not go forward with additional investigation. If the Panel is allowed to choose to conduct its own interview of the Complainant and up to three key witnesses free of IAB involvement, the Panel can demonstrate its independence to the community and to the Complainants themselves, many of whom are skeptical that a wholly police-driven investigation can truly be impartial and objective
- 7) **The Panel’s Options for its Review Findings should be expanded and modified.** The Panel should be given five options:
  - a. The Panel can concur with the findings of the FCPD and confirm that the conclusions of the Investigation Report are correct, and that the Investigation was sufficiently thorough, impartial, and objective so as to allow for the conclusion made.
  - b. The Panel can request additional investigation from the FCPD and the FCPD shall within a reasonable time conduct further investigation and provide the Panel with a supplemental report that details the findings of the additional investigation.
  - c. The Panel can exercise the opportunity to conduct its own additional investigation, including interviewing the Complainant and up to three key witnesses using its limited subpoena power.
  - d. The Panel can inform the Board of Supervisors that in the opinion of the Panel, the conclusions of the Investigation Report are incorrect and/or that the investigation is insufficiently thorough, impartial, and objective. so as to allow for an alternative conclusion.

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<sup>1</sup> Alternatively, the Board of Supervisors could revisit the Action Item and provide the authority to individual Panelists on a rotating basis to make summary determinations (based on an established criteria). This would allow the Panel as a whole to ensure timeliness in its disposition of complaints.

- e. The Panel can inform the Board of Supervisors about how it would have resolved the investigation.
- 8) **The Panel should consider specific definitions for the terms “correct,” “thorough,” “impartial,” and “objective” that are well defined and understood in the same manner by all members of the Panel.** The specific definitions could be added to the Panel’s Bylaws upon approval by the Board of Supervisors.
- 9) **The Panel should invite rank-and-file FCPD officers to a forum (or to multiple forums) where FCPD officers can ask Panel Members questions and make comments.** The Panel should commit to increasing its interactions with the FCPD rank-and-file and should make itself available for meetings with officers present to ask questions and make comments at least once a year.
- 10) **The Panel should commit to twice-a-year public forums (or more) where members of the public can ask Panel Members questions and make comments.** The Panel should commit to increasing its community outreach opportunities and conducting at least two public forums each year. The Panel should make an effort to have at least one of these public forums covered by the press.
- 11) **The Panel should have an annual training session conducted by the FCPD in which the Panel learns about FCPD policies and procedures.** The content of the training should be developed in consultation with the FCPD.



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**Building Community Trust Through Accountability**

appeared, in concert with the Auditor, in various videos to introduce the Panel and the Auditor to the public. Videos included an interview on the show “Connecting with Supervisor Hudgins” and a public service announcement YouTube video.

## Public Forums

The Panel conducted public forums to raise awareness about the Panel and the Auditor and the services they provide on November 16, 2017, in Annandale and December 12, 2017, in Reston. Both forums were advertised through the County’s website, social media (e.g., Facebook and Twitter), and through local media. Board Chairman Sharon Bulova attended the Annandale forum and expressed her support for the work of the Panel and indicated her view that the Panel will promote transparency and openness in community policing. Supervisor Catherine Hudgins attended the Reston forum and noted that the process put in place by the Board is an important opportunity for County residents to have greater oversight of the FCPD. At both forums, members of the public were offered an opportunity to provide comments or ask questions about matters within the Auditor’s and Panel’s scopes. Among the questions asked were:

- Whether the Auditor or Panel have authority to entertain complaints pertaining to the Sheriff’s Office or ICE?
- Whether the Auditor or Panel can recommend a change to the discipline imposed by the FCPD?
- How, given the racial and ethnic makeup of the Panel, minorities can be assured that the Panel will be sensitive to the concerns of minority populations in the County?
- Why do the Auditor and Panel not have the power to investigate alleged FCPD misconduct?
- Why are there two oversight bodies?
- Do you have to be involved in an incident to submit a complaint?
- How can citizens be assured that the FCPD is forthcoming with all evidence it collected or received and the Department’s findings?
- How many attorneys sit on the Panel?
- How did the Board of Supervisors select the Panel members?
- Can the Panel make policy recommendations to the FCPD?

- What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?
- What is being done to advertise the Auditor's and Panel's services to different groups within the community, particularly minorities?
- Do you only look at individual cases? My organization would like to see a systematic review of the FCPD's use of force cases, including the apparent racial disparities.
- Are all complaints received by the Auditor and Panel available to the public for viewing?

In addition to the questions above, a concern was expressed that FCPD officers (who are usually white and not from the community) routinely harass young people of color, as well as individuals at the homeless shelters in the Mason District. A forum participant indicated that he has witnessed police officers targeting low income neighborhoods (e.g., apartment buildings in Bailey's Crossroads), conducting searches of individuals without getting proper consent due to the individuals' inability to understand English, driving around in unmarked vehicles and in plain clothes (no badge visible), and switching cars often, making it difficult for citizens to identify the officer and make a complaint. The forum participant also wanted to know why no one (especially a young person) from the "east side" of the County (i.e., Alexandria/Route 1, Mount Vernon, Bailey's Crossroads) is on the Panel.

The Panel provided responses to these questions and comments. The responses are reflected in the Summaries of the two forums which are attached as Appendices D and E and are on the Panel's website.

### **Meeting with Auditor**

As provided in the Action Item and Bylaws, the Panel met with the Auditor concerning his findings and conclusions as to the use of force investigations he has monitored and reviewed so that the Panel can provide its views to the Board of Supervisors and the Chief of Police as to changes in policies and practices that may be warranted. The Auditor summarized his findings and conclusions with respect to the two incident reports he has released (Herndon Officer Involved Shooting ("OIS") – January 2017, and Electronic Control Weapon Use – April 2017) and the IPA's 2017 Annual report. The Auditor's use of force recommendations included that: (1) additional numbers of "less-lethal" options in the form of Kinetic Energy Impact Systems and

**The Fairfax County Police Civilian Review Panel**

**Public Forum on November 16, 2017**

**Heritage Human Services Center, Annandale**

**Meeting Summary**

Panel Members present:

Hansel Aguilar

Kathleen Davis-Siudut

Steve Descano

Hollye Doane

Doug Kay

Randy Sayles

Jean Senseman

Adrian Steel, Panel Chairman

Others present:

Sharon Bulova, Chairman, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Member absent:

Rhonda Van Lowe, Vice Chair

The forum began at 7:05 p.m.

Panel Chairman Adrian Steel and Board of Supervisors Chairman Sharon Bulova welcomed attendees to the Panel's first Public Forum. Chairman Bulova provided some framing remarks on the Ad Hoc Police Practices Review Commission and the subsequent establishment of the Fairfax County Police Civilian Review Panel and the Office of the Independent Police Auditor.

Panel Chairman Steel reviewed the agenda.

Each Panel Member present introduced him or herself, and shared information on related expertise and experiences and what brought them to the panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Panel Chairman Steel provided an overview of the Civilian Review Panel including: how they were formed, how panel members were selected, terms of service, the panel's purpose, and work conducted to date. The Panel has reviewed best practices in police oversight and developed Bylaws and a Code of Ethics (available at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>). The Panel's purpose is to provide an independent process for commencing an initial complaint against the Fairfax County Police Department (FCPD). The panel will review completed investigations of public complaints of abuse of authority or serious misconduct by a FCPD officer when requested. Definitions of "abuse of authority" and "serious misconduct" were provided.

Next, Independent Police Auditor Richard Schott provided an overview of the purpose and scope of the Office of the Independent Police Auditor. The Auditor is responsible for monitoring and reviewing Internal Affairs investigations of: police officer involved shootings; in-custody deaths; and use of force

cases that result in death or serious injury. The Auditor also reviews any other use of force cases in which a public complaint is received.

Panel members Kathleen Davis-Siudut and Doug Kay reviewed the complaint filing process. Written complaints or requests for review can be submitted to the Panel via the Auditor's office in person, by mail, or online (email). Complaints are shared with the FCPD, which conducts the investigation and sends findings to the complainant and the Panel/Auditor. The Panel will conduct public meetings to review investigations, during which it may hear from the complainant and an FCPD representative. Some limitations were noted, including that neither the Auditor nor the Panel has investigative authority but may only review completed investigations by the FCPD. They do not have jurisdiction over the Sheriff's Office or federal law enforcement (i.e., ICE). Also, they cannot review complaints related to incidents that occurred before December 6, 2016 and, absent a finding of good cause, must abide by established time limits for the submission of an initial complaint or a request for review.

The meeting was then opened up for audience questions about the Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The forum adjourned at 8:50 p.m.

**Questions and Answers**

1. To the majority of residents, the Fairfax County Police Department (FCPD) and the Sheriff's Department are considered law enforcement officials. Does the Panel or the Auditor have authority to take complaints about the Sheriff's Department?

No. The Sheriff's Department does not fall under the authority of the Board of Supervisors due to the fact that the Sheriff is an elected Constitutional Officer. The Sheriff's Department has its own internal process for investigating complaints. Complaints against the Sheriff's Department do not fall within the scope of the Civilian Review Panel or the Independent Police Auditor, which only have authority to respond to complaints against the FCPD.

2. How much business/how many complaints do you expect to receive?

At this time, we cannot estimate the volume of complaints that the Panel and Auditor will receive. The purpose of the public forums is to inform county residents about the work of the Panel and the Auditor and provide information on how to submit a complaint or request for review. Regardless of the number of complaints received, it is our intention to provide another layer of transparency of FCPD practices, as well as an intake venue in which no citizen is afraid to come forward and submit a complaint.

3. Where will your meetings be held?

The Panel will generally meet the first Thursday of each month. They will meet more often as needed based on the volume of investigations under review. Meeting locations are expected to vary to encourage citizen participation throughout the county. Panel meeting dates and locations will be announced on the County's Public Meetings Calendar

(<https://www.fairfaxcounty.gov/calendar/ShowCalendar.aspx>). The next meeting of the Panel is December 7<sup>th</sup> at 7:00 p.m. in the Government Center.

4. If the Auditor reviews an investigation and disagrees with the FCPD's decision in regards to disciplining an officer, does he have the authority to change the discipline imposed or charge an officer with a crime?

No. The Police Chief has the authority to impose or change disciplinary decisions and only the Commonwealth's Attorney has authority to bring criminal charges. The Auditor has authority to monitor investigations as they are ongoing. In this role, he meets regularly with the FCPD to provide input and recommendations regarding the thoroughness, accuracy, and impartiality of the investigation. The Auditor may request further investigation if he determines that the internal investigation was deficient or that the conclusions were not supported by the evidence. If the Auditor and the Chief of Police cannot resolve a disagreement, the issue will be reported to the Board of Supervisors.

5. Is there anything this panel can do to respond to complaints about the Sheriff's Department or ICE? Is there a legal impediment if the Sheriff wants this Panel to review? Why not invite the Sheriff's Department and ICE to attend these forums?

We are not aware of a legal impediment, however, as the Sheriff's Department is not under the authority of the Board of Supervisors, it is up to the Sheriff to determine that Department's process for oversight and internal review of complaints. The Panel has the authority to issue a public annual report in which it can identify the concerns expressed by residents. This may be an opportunity for those concerns to be shared with the Sheriff's Department.

6. A speaker noted that many individuals who would want to submit a complaint would likely be minorities. Given the racial and ethnic makeup of the Panel, how can the community be assured that the Panel will be sensitive to the concerns of minority populations in the county and help them to navigate the complaint process (which may be seen as complex and lengthy)?

The individuals on the Panel were chosen based on a variety of factors including expertise and experience relevant to the Panel's responsibilities, previous civic involvement, and diversity of membership. Panel members are currently conducting outreach to various community groups representing different racial and ethnic minorities to hear their concerns and explain the complaint and review process. In addition, they encourage community members to invite the Panel to meet with their groups individually to discuss their specific concerns about the FCPD or ask questions about the complaint and review process.



**The Fairfax County Police Civilian Review Panel**

**Public Forum on December 12, 2017**

**Reston Community Center**

**Meeting Summary**

Panel Members present:

Hansel Aguilar

Steve Descano

Hollye Doane

Doug Kay

Randy Sayles

Adrian Steel, Panel Chairman

Rhonda Van Lowe, Vice Chair

Others present:

Catherine Hudgins, Hunter Mill District, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Member absent:

Kathleen Davis-Siudut

Jean Senseman

The forum began at 7:07 p.m.

Panel Chairman Adrian Steel, Panel Member Randy Sayles, and Supervisor Hudgins welcomed attendees to the Panel's second Public Forum. Supervisor Hudgins provided some framing remarks on the establishment of the Fairfax County Police Civilian Review Panel and the Office of the Independent Police Auditor, and noted that the process put in place is an important opportunity for County residents to have greater oversight of the Fairfax County Police Department (FCPD).

Mr. Sayles reviewed the agenda.

Each Panel member introduced him or herself, and shared information on related expertise and experiences and what brought them to the Panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Mr. Sayles provided an overview of the Civilian Review Panel including: how they were formed, how Panel members were selected, terms of service, the Panel's purpose, and work conducted to date. The Panel has reviewed best practices in police oversight and developed Bylaws and a Code of Ethics (available at <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>). The Panel's purpose is to provide an independent process for commencing an initial complaint against the Fairfax County Police Department (FCPD). The Panel will review completed investigations of public complaints of abuse of authority or serious misconduct by a FCPD officer when requested. Definitions of "abuse of authority" and "serious misconduct" were provided. It was noted that the Panel does not investigate, but reviews investigations completed by the FCPD to ensure they are accurate, complete, thorough, objective, and impartial.

Next, Independent Police Auditor Richard Schott provided an overview of the purpose and scope of the Office of the Independent Police Auditor. The Auditor is responsible for monitoring and reviewing

Internal Affairs investigations of: police officer involved shootings; in-custody deaths, while under FCPD custody; and use of force cases that result in death or serious injury. The Auditor also reviews any other use of force cases in which a public complaint is received.

Panel members Steve Descano and Hansel Aguilar reviewed the complaint filing process. Written complaints or requests for review can be submitted to the Panel via the Auditor's office in person, by mail, or online (email). Complaints are forwarded to the FCPD, which conducts the investigation and sends findings to the complainant and the Panel/Auditor. The Panel will conduct public meetings to review investigations, during which it may hear from the complainant and an FCPD representative. The Panel will inform the Complainant and FCPD of its findings, issue a public report, and may also recommend policy changes to the FCPD based on the complaints received.

Some limitations of the Panel's authority were noted, including that neither the Auditor nor the Panel has investigative authority but may only review completed investigations by the FCPD. They do not have jurisdiction over the Fairfax County Sheriff's Office or federal law enforcement (i.e., ICE). Also, they cannot review complaints related to incidents that occurred before December 6, 2016 and, absent a finding of good cause, must abide by established time limits for the submission of an initial complaint or a request for review.

The meeting was then opened up for audience questions about the Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The forum adjourned at 9:02 p.m.

### **Questions and Answers**

1. Why doesn't the Auditor, nor the Panel, have the authority to investigate complaints against the FCPD?

There is no clear enabling legislation to permit the Panel to investigate. Therefore, both entities review investigations that are conducted by the FCPD. The Auditor has authority to review and monitor ongoing investigations. The Auditor and the Panel have the right to request further investigation by the FCPD if it finds the investigation deficient.

2. Why are there two oversight bodies – the Auditor and the Panel – rather than one?

The Ad Hoc Police Practices Review Commission noted a strong public interest in having citizen input and so it recommended that two entities be created: the Auditor to provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings; and the Civilian Review Panel to respond to community concerns or complaints about alleged incidents of FCPD abuse of authority and serious misconduct.

3. Do you have to be involved in the incident to submit a complaint?

No. Any individual, whether or not they were involved or witness to an incident, can submit a complaint.

4. How is the FCPD involved in the Auditor and Panel’s review processes? How can citizens be assured that the FCPD is forthcoming with all evidence received and findings?

Initial complaints submitted to the Auditor or Panel (i.e. those not previously submitted to the FCPD) are forwarded to the FCPD for investigation.

- If the case falls under the Auditor’s authority, the Auditor will monitor the ongoing investigation and provide input to the FCPD as the investigation is unfolding. (Note: The Auditor automatically monitors and reviews all officer involved shootings, uses of force resulting in death or serious injury, and deaths of individuals while in the custody of the FCPD, regardless of whether a complaint is received.) Concerns about the investigation being deficient or the need for further investigation will be brought forward to the Chief of Police. If the Auditor and the Chief of Police cannot resolve a disagreement, the issue will be reported to the Board of Supervisors and the Chief’s resolution will be shared in a public statement. The Auditor will also issue a public report on each incident monitored.
- If the case falls under the Panel’s authority, the Panel will receive notice of the FCPD’s findings (along with the Complainant) when the FCPD completes its investigation. The Complainant will be advised in that notice of their right to request a review by the Panel.

Citizens may request a review of a completed FCPD investigation.

- If the case falls under the Auditor’s authority, the Auditor will review the completed investigation and issue a public report with its findings. (Note: The Auditor automatically monitors and reviews all officer involved shootings, uses of force resulting in death or serious injury, and deaths of individuals while in the custody of the FCPD, regardless of whether a complaint is received.)
- If the case falls under the Panel’s authority, the FCPD makes the investigative file available for Panel members to review. An FCPD representative knowledgeable about the investigation will appear at the public meeting to review and answer questions about the investigation, including all findings of fact, evidence collected and received, witness statements, and action taken or not.
- If the Panel or Auditor is made aware that there is additional evidence or witnesses not previously considered in an investigation by the FCPD, they can forward that information to the FCPD as a part of their review and request that the FCPD conduct further investigation. The FCPD is required to conduct the requested investigation and to report back to the Panel.

5. Why can’t the Auditor and Panel take complaints about ICE?

Complaints against ICE do not fall within the scope of the Civilian Review Panel or the Independent Police Auditor, which only have authority to respond to complaints against the FCPD.

6. Can you tell me more about Chairman Steel's background? How many attorneys sit on the Panel?

Mr. Steel is a Senior Counsel with the law firm Mayer Brown LLP. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters. Currently, six Panel members are attorneys and three are not. Two Panel members have previous law enforcement experience.

7. How did the Board of Supervisors select individuals to serve on the Panel?

The Board of Supervisors announced the creation of the Panel and requested nominations from community organizations and self-nominations from interested individuals in December 2016. More than 140 resumes or letters of interest were reviewed. The individuals on the Panel were selected based on criteria including expertise and experience relevant to the Panel's responsibilities, previous civic involvement, and diversity of membership.

8. Can the Panel make policy recommendations to the FCPD?

The Panel has the authority to issue a public annual report in which it can identify concerns expressed by residents. If patterns emerge from the complaints received, the Panel can make policy recommendations and include them in their annual report.

9. What are the time limits for the Auditor or Panel to take a complaint, particularly for an ongoing incident?

Absent good cause, initial complaints must be made within one year of the incident, and the incident must not have occurred before December 6, 2016, for the Panel to review. Requests for review must be submitted by the complainant within 60 days of their receiving the FCPD's notice that an investigation is complete, absent good cause. For ongoing incidents, the Panel will consider the nearest date when determining whether a complaint falls within time constraints.

10. What are you doing to advertise the Auditor's and Panel's services to different groups within the community, particularly minorities?

We are in the process of translating our brochure and complaint form to three other languages (Korean, Spanish, and Vietnamese) for distribution across the county. We are seeking recommendations for venues where these brochures should be posted to ensure the greatest reach. (Recommendations from forum participants for posting brochures included: retail and restaurant locations (e.g., the Eden Center), schools, hospitals, community health centers, and churches.) The Panel is currently conducting outreach to various community groups representing different racial and ethnic minorities to hear their concerns and explain the complaint and review process. The Panel encourages community members to invite the Panel to meet with their groups individually to discuss their specific concerns about the FCPD or ask questions about the complaint and review process. Announcements and information on the

Auditor and Panel have been publicized in multiple places on the County's website, through social media, in Supervisors' newsletters, and other news sources, such as WTOP and the Fairfax County Connection (McLean, Reston, and Burke editions).

11. A concern was expressed that police officers (who are usually white and not from the community) routinely harass young people of color, as well as individuals at the homeless shelters, in the Mason District. A forum participant indicated that he has witnessed police officers targeting low income neighborhoods (e.g. apartment buildings in Bailey's Crossroads); conducting searches of individuals without getting proper consent due to the individuals' inability to understand English; driving around in unmarked vehicles and in plain clothes (no badge visible); and switching cars often, making it difficult for citizens to identify the officer and make a complaint.

The Panel encouraged citizens at the forum to file an official complaint (along with any documentation, video footage, etc.) so that the FCPD and the Panel can be made aware of these concerns. If someone does not want to make a complaint directly to the FCPD, they can submit it to the Auditor/Panel, who will facilitate the submission of an initial complaint. It was reiterated that anyone can file a complaint, including witnesses and individuals who want to file a complaint on behalf of someone else.

12. Do you only look at individual cases? My organization would like to see a systematic review of the FCPD's use of force cases.

The Auditor is currently reviewing the data regarding racial disparities in use of force cases from 2015 and 2016. Also, if the Panel were to receive numerous complaints about the inappropriate use of force based on race, they will also be able to identify racial disparity as a concern in their annual report and make public recommendations on FCPD policies and practices.

13. Are all complaints received by the Auditor and Panel available to the public for viewing?

Yes. The Panel's meetings, during which reviews will be conducted, are open to the public. Also, both the Auditor and the Panel will issue public annual reports summarizing complaints received.



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obligation to provide complainants with notice of the Review Meeting, and, if the complainant elects to address the Panel, the complainant will have the opportunity to do so.

## **Public Forum**

The Mount Vernon Governmental Center was the site of the Panel’s sole public forum for the year. The December 10, 2018<sup>7</sup> public forum was well attended by county residents. Both Supervisor Dan Storck and Chief Edwin Roessler attended as well. While public participants raised several salient questions during the forum, two themes surfaced that are also aligned with concerns Panel Members expressed during our meetings and deliberations: (i) FCPD accountability (the obligation of the FCPD to communicate to complainants and the public the results of its investigations), and (ii) transparency (the specific, detailed information shared with the public through FCPD communications to complainants and through Panel Reports). Addressing these two concerns with some urgency is incumbent upon the Board of Supervisors, the FCPD, and the Panel, if the Panel is to succeed in its mission to build public trust and confidence in the FCPD through an investigation review process that bolsters FCPD accountability.

## **SECTION II: ISSUES FOR BOARD OF SUPERVISORS CONSIDERATION**

### **Accountability and Transparency**

Concerns about transparency are not new. Discussions around the issue date back to the Ad Hoc Police Practices Commission. Having discussed the transparency issue during its meetings and received several public comments regarding the same, the Panel’s view is that more information about the results of the FCPD investigations of complaints must be shared with complainants. Two areas noted for improvement are: (i) the FCPD letter sent to the complainant upon completion of an investigation (the “Disposition Letter”) and (ii) the Panel’s Review Report, which is issued (and made public) after completion of a Review Meeting.

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<sup>7</sup> See Appendix F for the Summary of the Panel’s 2018 Public Forum

**Fairfax County Police Civilian Review Panel**

**Public Forum on December 10, 2018**

**Mount Vernon Governmental Center**

**Meeting Summary**

Panel Members Present:

Hansel Aguilar

Hollye Doane

Col. Greg Gadson

Anna Northcutt

Adrian Steel

Rhonda VanLowe, Chair

Others Present:

Dan Storck, Mount Vernon District, Board of Supervisors

Richard Schott, Independent Police Auditor

Panel Members Absent:

Bob Cluck

Doug Kay

The Public Forum began at 7:03 p.m.

Ms. VanLowe and Supervisor Storck welcomed attendees to the Fairfax County Police Civilian Review Panel's (Panel) Public Forum. Supervisor Storck provided framing remarks on the establishment of the Panel and the Office of the Independent Police Auditor and noted that civilian oversight is something the community cares deeply about.

Ms. VanLowe reviewed the agenda. She thanked Supervisor Storck, Chief Roessler, Captain Owens, and Major Reed, and audience members for attending. She explained that the purpose of the public forum is to introduce the Panel and engage with the public. The Panel received twenty-three complaints and three requests for review in 2018 and has participated in many outreach events to meet with different organizations and members of the community.

Each Panel Member present introduced themselves and shared information on their background, experiences, and expertise that led them to join the Panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Mr. Steel provided information on the history and the establishment of the Panel, and the Panel's scope of authority. He noted that Fairfax County is one of the few places in the country to have a hybrid system of oversight, with a Civilian Review Panel and an Independent Police Auditor. The Panel reviews completed Fairfax County Police Department (FCPD) investigations into allegations of serious misconduct or abuse of authority. While the Panel is unable to gather evidence, the Panel allows complainants to appear before the Panel to state their reasons for requesting a review. The Panel may also ask an FCPD representative to attend the meeting and to review and answer questions about the investigation and may, if it deems it warranted, require the FCPD to conduct additional investigation.



Ms. Doane reviewed the Panel's complaint filing process. Complaints can be submitted to the Panel via email to the Panel, or in person, mail, or phone call to the Auditor's office. Complainants can request the help of staff when filling out a Complaint Form and staff will assist. The Panel reviews completed FCPD investigations to ensure accuracy, completeness, thoroughness, objectivity, and impartiality. Complaints received by the Panel that have not been previously investigated are shared with the FCPD. Once the FCPD has completed its investigation, the complainant may request a review of the investigation by the Panel if they are unsatisfied. The Panel conducts its review of complaints in public meetings and may hear from the complainant and an FCPD representative. The Panel then issues a public report on its findings. In addition, the Panel can make policy recommendations related to complaints they receive. It was noted that all Panel Meetings are open to the public. Audio recordings and summaries of the meetings are available on the Panel's webpage.

Mr. Schott explained the Auditor's role in oversight. The Auditor automatically reviews incidents involving an officer involved shooting, in custody death, and use of force that results in serious injury, even if a complaint is not filed. The Auditor also reviews uses of force that do not result in serious injury if a member of the community submits a complaint. The Auditor, like the Panel, does not have investigative authority. However, the Auditor has the ability to monitor investigations while they are ongoing. A public report of each review conducted is published on the Auditor's webpage and shared with the Board of Supervisors and the Chief of Police. The Panel periodically meets with the auditor to discuss his reports and is able to comment on policy changes to the Board and Chief of Police

Questions were taken from the audience regarding Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The Public Forum adjourned at 9:07 p.m.

### **Questions and Answers**

1. Could you describe the type and status of complaints received by the Panel?

The complaints received by the Panel vary by type of allegation and cover many different issues. In 2018, the Panel processed twenty-three Initial Complaints and held three reviews. Most complaints received by the Panel were initial complaints where the complainant did not request the Panel's review after the FCPD completed its investigation.

2. What is the difference between an Initial Complaint and a Request for Review? Was the procedure for a Review Request created by the Panel?

An Initial Complaint refers to a complaint that is submitted to the Panel but not previously investigated by the FCPD. In these cases, the Panel must forward the complaint to the FCPD for investigation. After the complainant receives a letter from the FCPD detailing the findings of the investigation, the complainant may choose to submit a Request for Review to the Panel if they are unsatisfied with the FCPD investigation. The Panel is only able to review completed FCPD investigations. The Request for Review process is outlined in the Board of Supervisors Action Item that established the Panel.

3. Is legal status of a complainant protected? If someone has an illegal status and was the victim of discrimination, what is their safety net?

If an individual is uncomfortable filling out the Complaint Form, a friend, relative, or witness can complete the form on their behalf. The FCPD's investigation includes interviewing involved individuals. If an individual does not want to participate in the investigation process with the FCPD, they will not be pressed to participate.

4. Does the FCPD have Spanish speaking investigators?

The FCPD General Orders states that language access is to be provided through an interpreter or the language line when there is a language barrier present.

5. The FCPD received 268 citizen complaints. Do you have the ability to review these complaints?

The Panel does not have the authority to automatically review every complaint received by the FCPD. A complainant must submit a review request to the Panel for the review process to commence. The letter that the FCPD sends to complainants with the findings of the investigation provides information about the Panel and the complainant's ability to request a review of the investigation by the Panel if the complainant is still unsatisfied.

6. Does the Sheriff have a similar oversight commission?

The Sheriff is an elected constitutional officer who is not under the authority of the county Board of Supervisors. The Final Report of the Ad Hoc Police Practices Review Commission Implementation Group included a recommendation for oversight of the Sheriff. These recommendations are to be reviewed by the Board of Supervisors in 2019.

7. I am constantly harassed by the FCPD and I film the police and their interactions with the public. Is there any way for the Panel to protect people like me and prioritize complaints?

The Panel processes complaints in a timely manner and is sensitive to being responsive to complainants. If you have a concern about retaliation, you may submit a complaint.

8. It seems that if a person is unsatisfied with the FCPD investigation but does not want exposure, there is no option for them. Do complainants have the option to submit a complaint to the Panel anonymously?

The Panel is a public body that conducts its business during public meetings. Also, in the event of a Virginia Freedom of Information Act request, the Panel is required to release information as required by law. However, the identities of minors and victims of sexual misconduct will not be released.

9. Can the Panel use aliases for complainants to maintain confidentiality?

The Panel is committed to not disclosing names of complainants when publishing public reports. Confidentiality is a challenging issue that the Panel is working through.

10. How can you identify trends from complaints if you only review the complaints that are processed through the Panel?

The Panel does not have the authority to review all complaints submitted to the FCPD. The Panel can only identify trends within the complaints that are processed by the Panel.

11. Does the Panel have a schedule for publishing reports to the Board of Supervisors?

The Panel prepares and publishes an annual report that is due March 31<sup>st</sup> of each year. It is delivered to the Board of Supervisors and available for public review on the Panel's webpage. In June 2018, we met with the Board at a Public Safety Committee Meeting to make a presentation on the 2017 Annual Report.

12. How can a complainant provide witness information to the Panel if the witness would like to remain anonymous and not have their information divulged?

Include the information that the witness has regarding the incident within your complaint without providing the witness name or contact information.

13. When someone sends an email to the Panel's email account, who sends back a reply?

Staff or the Panel Chair responds to emails that are sent to the Panel's email box.

14. Are the FCPD investigation files that Panel Members and the Auditor review redacted?

No, the investigation files are not redacted. The Panel and the Auditor review complete FCPD files and are also given the opportunity to review body worn camera and in car video footage if there is footage associated with the file.

15. Since both bodies report to the Board of Supervisors, is the FCPD still ultimately responsible for policing themselves?

Recommendations made by the Panel and the Auditor are sent to the Board of Supervisors and the Chief of Police and are shared in public meetings.

16. Why is the Panel unable to review incidents that involve use of force, in custody death, or officer involved shootings?

The Ad Hoc Police Practices Commission thought that the review of use of force, in custody death, and officer involved shootings should be conducted by an individual trained in investigations. Therefore, it is the responsibility of the Auditor to review these types of complaints. The Panel meets with the Auditor periodically to review his reports and may provide input on these topics to the Board of Supervisors.

17. What is the process to change the way the Panel is authorized to function?

The Board of Supervisors Action Item dictates the way that the Panel can operate. Concerned citizens may wish to provide their thoughts on this matter to the Board of Supervisors and other elected officials.

18. Why is the Auditor unable to conduct his own investigations?

Under Virginia Law, it is not clear that the Board of Supervisors is able to delegate investigative authority to other entities.

19. When can we receive a report on the racial disparity against African Americans in the county?

The Auditor's Report, titled "A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015", was published in July 2018. The report outlines the key findings from the review as well as policy implications and recommendations. It was sent to the Board of Supervisors and is posted on the Auditor's webpage for public review. The Auditor is currently reviewing the use of force data for 2016.

20. Is there a residency requirement for officers of the FCPD?

There is no requirement that recruits or officers of the FCPD live in the county. The FCPD seeks candidates from across the entire state of Virginia to increase the diversity of the force. It is a challenge to reflect the county's diversity within the department.

21. Can an officer of the FCPD be prosecuted because of the submission of a complaint to the Panel?

The Commonwealth Attorney's office would make the decision whether to prosecute an officer for criminal conduct. Discipline decisions are made by the Chief prior to the Panel's review of a completed FCPD investigation.

22. Why are complaints routed through the Auditor's office?

The Auditor's office is responsible for providing administrative support to the Panel, which is comprised of nine civilian volunteers. The Panel's email box is monitored by staff from the Auditor's office and all emails are forwarded to the Panel Chair and Vice-Chair for a response.

### Comments from Audience

- The Review Request procedure seems to be a bureaucratic barrier. A complainant must share their personal information twice at a time when they are most likely feeling vulnerable. It takes a lot of courage for a complainant to come forward. This process seems to put people through a lot for very little. The Panel's review of complaint should be automatic after a complainant submits an Initial Complaint.
- There is little information found in the Panel's reports. It would be helpful to know the date the complaint was received, if extensions were requested by the FCPD, and the date the FCPD completed their investigation. More information should be included on the Panel website about complaints being reviewed. The commenter asked the reason for the lengthy delay before Panel reports are published.
- The Panel Meeting agendas are not informative. It would be helpful to include corresponding meeting materials for each agenda item online, like the Board of Supervisor's meeting agenda.
- It would be helpful to include what time, according to the meeting audio, each agenda item begins within the Panel Meeting summaries.
- The issues that the Ad Hoc Commission addressed are still concerns today and remedies need to be implemented. We urge you to take a firm position on policy matters in the 2018 Annual Report.
- It is concerning that an incident must occur more than once for a resolution to be offered. Everyone is aware of the Panel and Auditor's limitations. The word accountability should no longer be used because I am not seeing any accountability or responsibility from the FCPD.
- No one has addressed the great things the FCPD does for our community. They put their lives at risk every day to keep us safe.
- The Complaint Form needs to be simplified into layman's terms. The Panel is doing something wrong if it is receiving a fraction of the complaints that the FCPD receives.
- Consider holding future public forums at locations in the county that are not co-located with a Police Station, such as a library, community center, or school.
- While Public Safety Committee Meetings are public meetings, there is not an opportunity for public comment to engage with the Board.
- It is disturbing that the FCPD has not publicly reported the use of force statistics for 2017 or 2018.

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- Overview PPT on Public Meetings and Records (2018)
- County Best Practices for BACs (Feb. 2015)
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**Tab 8 Other Panel Documents**

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*\*Panel Procedures were originally approved by the Panel in Dec. 2018 and some procedures have been updated. Letter templates are subject to change.*