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# Police Civilian Review Panel

## Meeting Agenda

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Location: Fairfax County Government Center  
12000 Government Center Pkwy Fairfax, VA 22035  
Room 9/10

Date: September 7, 2023

Time: 7:00 pm

Website: [www.fairfaxcounty.gov/policecivilianreviewpanel/](http://www.fairfaxcounty.gov/policecivilianreviewpanel/)

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### Agenda details:

#### I. Call to Order

#### II. Agenda Items

- a. Approval of Agenda
- b. Approval of June 1, 2023 Draft Meeting Summary
- c. Approval of July 6, 2023 Draft Meeting Summary
- d. Approval of August 3, 2023 Draft Meeting Summary
- e. Subcommittee Report on CRP-23-07
- f. Subcommittee Report on CRP-23-08
- g. FOIA Update from Counsel (Gloss v. Wheeler)
- h. County's Police Reform Matrix Work Group Recommendations Update from former Chair Dirck Hargraves

#### III. New Business

#### IV. Adjournment

Panel Meeting Schedule:

- October 5, 2023, at 7:00 p.m.

- November 2, 2023, at 7:00 p.m.
- December 7, 2023, at 7:00 p.m.

Police Civilian Review Panel

June 1, 2023

Temple Rodef Shalom

2100 Westmoreland Street Falls Church, VA 22043

Meeting Summary

Panel Members Present:

Cheri Belkowitz, Vice-Chair  
Todd Cranford, Chair  
Michael Lau  
Fazia Deen  
Dirck Hargraves  
Celeste Peterson  
William Ware  
Janell Wolfe

Others Present:

Madison Gibbs, Counsel  
Sanjida Lisa, PCRP  
Steven Richardson, PCRP  
Rachelle Ramirez, OIPA  
Richard Schott, OIPA  
2nd Lt. Matthew Lane, Internal Affairs Bureau  
Community members

Chairman Cranford called the Police Civilian Review Panel's (PCR) business meeting to order at 7:12 p.m. and after taking attendance noted the presence of a quorum. He welcomed everyone to the Panel's June 1, 2023, meeting and thanked Temple Rodef Shalom and Rabbi Stein for hosting the Panel's meeting. Rabbi Stein welcomed the Panel and shared a few remarks about the temple, the community they serve and the types of events they hold. Chairman Cranford then shared that the Panel would be going into a Closed Session during the Panel meeting.

Approval of Agenda: Ms. Belkowitz moved approval of the meeting agenda. Mr. Hargraves seconded the motion, and it carried unanimously.

Approval of May 4 2023, Draft Meeting Summary: Mr. Hargraves asked if the hotline and resource numbers were added to the website. Ms. Lisa and Ms. Wolfe both confirmed that they were. Ms. Belkowitz recommended adding that the Panel spoke about having another meeting at the WISH center at a later date and providing translation for the Spanish speaking community under New Business. Mr. Hargraves moved approval of the Panel's May 4, 2023, meeting summary as amended. Ms. Wolfe seconded the motion, and it carried. Mr. Ware abstained.

Approval of May 10, 2023 Draft Subcommittee Meeting Summary and Initial Review Report: Mr. Ware presented the case the subcommittee had reviewed, CRP-23-04, and shared the details of the complaint and information regarding the details of the incident and the allegations made by the Complainant. Mr. Lau provided further description of the complaint and his perspective when reviewing the file. Mr. Hargraves confirmed that the complainant is not able to file a complaint until any and all civil, criminal

and administrative proceedings are completed. Mr. Hargraves asked whether the complainant had been present at the subcommittee meeting. Mr. Cranford explained that the complainant was unable to attend the first meeting, which then got rescheduled. The complainant was also unable to attend the second scheduled meeting, and the Panel moved forward with the subcommittee meeting.

Mr. Cranford allowed the complainant of CRP-23-04 to present his complaint, the allegations made and address the Panel. The complainant presented the circumstances around the traffic incident and deferred to his wife to present a powerpoint presentation explaining the details further and why she thought certain statistical data from the Fairfax County Police Department (FCPD) were misrepresented. Ms. Gibbs reminded the complainant that this was not a court of law and the Panel does not operate in a legal setting, but would be able to request further investigation by the Internal Affairs Bureau (IAB) on the discretion of the Chair. Ms. Wolfe asked the complainant whether they had pled guilty to the traffic citation and was notified that the Complainant had paid the fine.

Mr. Lau confirmed that he did not recommend that the complaint be forwarded for review by the full Panel and confirmed that he felt the investigation conducted by IAB was complete, thorough, accurate, impartial and objective. Mr. Ware wanted to confirm if the Panel By-Laws stated that the subcommittee's role was to determine whether the IAB's investigative file was thorough, complete, accurate, objective and impartial. Ms. Gibbs provided the section where the role of the subcommittee was outlined. Mr. Cranford confirmed that while that is not the primary role, he did not believe that the subcommittee could determine whether there was basis for the allegations without determining for thoroughness, objectivity, impartiality, accuracy and completeness.

Ms. Belkowitz asked whether there was a discrepancy in the statistics and data in the IAB file for the responding officer. Mr. Ware expressed that he was unsure as to why the Complainant was described as a Caucasian male with blue eyes when the Complainant has brown eyes and is of Hispanic descent.

Mr. Hargraves asked how an officer could make that kind of mistake and 2<sup>nd</sup> Lt. Matt Lane confirmed that there is no default race selection in the FCPD RMS system the officer fills out. Mr. Hargraves asked 2<sup>nd</sup> Lt. Lane how the scrubbing of data works and was notified that gets done by a different bureau. Ms. Deen wanted to know whether the responding officer is asked to input data regarding race at the start of an incident or after the fact. Mr. Lau confirmed that the officer usually inputs the information after the fact.

Ms. Wolfe moved approval of the subcommittee's recommendation to not forward the complaint for review by the full Panel. Mr. Ware seconded the motion and it carried unanimously.

Closed Session: Mr. Hargraves motioned to recess into a closed session. Mr. Ware seconded and the motion carried unanimously.

The Panel was in closed session from 8:22 p.m. to 9:25 p.m.

Ms. Wolfe motioned to re-enter the Panel in a public meeting, Mr. Ware seconded the motion and it carried unanimously.

PCRP Business: Mr. Hargraves wanted to ask FCPD what the process was of responding officers to input data and how discrepancies might occur. Mr. Cranford seconded that inquiry.

Executive Director's Report: Mr. Richardson presented his Executive Director's report. Mr. Richardson provided that he had attended the Constitutional Policing's Constitutional Policing Conference, along with the Independent Police Auditor and neighboring oversight practitioners from Alexandria and Arlington counties. Mr. Richardson shared the topics that were discussed at the conference and included that there were three handouts among the meeting materials at this evening's meeting that had more information.

Mr. Richardson shared that the Panel had been invited to hold an upcoming Panel meeting with 2<sup>nd</sup> Story and that the County's Office of Public Affairs was working with the PCRCP staff on a new Spanish language brochure. Mr. Richardson also shared that Channel 16 would be developing a Spanish language public service announcement to augment Panel outreach and a draft script would be forthcoming.

Mr. Richardson provided that in honor of Juneteenth, the Panel and staff would be supporting youths being recognized at the Resiliency Awards and upcoming Juneteenth events around the County. Mr. Richardson encouraged all Panel members to attend.

Mr. Richardson provided that a mandatory training plan had been produced in collaboration with the Office of the Independent Police Auditor and various County partners and a timetable for implementation would be forthcoming.

Ms. Peterson wanted to know if the Panel had any social media presence. Mr. Richardson provided that the Panel was not given the approval to create one yet. Mr. Cranford suggested that the office follow up and see if other similarly sized panels have access to social media platforms. Ms. Wolfe wanted to know the purpose of the training and how it would get implemented, which Mr. Richardson expanded on.

Ms. Deen left the meeting at 9:36 p.m.

Adjournment: Mr. Ware motioned to adjourn, Ms. Peterson seconded and it carried unanimously. The meeting adjourned at 9:37 p.m.

Police Civilian Review Panel

July 6, 2023

Cathy Hudgins Community Center

12125 Pinecrest Road Reston, VA 20191

Meeting Summary

Panel Members Present:

Cheri Belkowitz, Vice Chair  
Bryon Garner  
Celeste Peterson  
Dirck Hargraves  
William Ware  
Janell Wolfe

Others Present:

Madison Gibbs, Counsel  
Sanjida Lisa, PCR  
Steven Richardson, PCR  
Rachelle Ramirez, OIPA  
Lt. Todd Sweeney, Internal Affairs Bureau  
Community members

Vice Chair Belkowitz called the Police Civilian Review Panel's (PCR) business meeting to order at 7:05 p.m. and after taking attendance noted the presence of a quorum. She welcomed everyone to the Panel's July 6, 2023, meeting and thanked the Cathy Hudgins Community Center for hosting the Panel's meeting. Ms. Warren from the center gave a brief introduction of the types of events the center hosts and the community they serve.

Approval of Agenda: Mr. Hargraves moved approval of the meeting agenda. Ms. Wolfe seconded the motion. Ms. Belkowitz mentioned wanting to amend the agenda to include Ms. Warren's introduction. The agenda was approved as amended unanimously.

Approval of June 12, 2023, Draft Meeting Summary: Mr. Hargraves moved approval of the Panel's July 20, 2023, meeting summary. Mr. Garner seconded the motion, and it carried unanimously.

Mr. Ware arrived at 7:08 p.m.

Approval of June 20, 2023, Draft Meeting Summary: Mr. Hargraves moved approval of the Panel's July 12, 2023, meeting summary. Mr. Garner seconded the motion. The motion carried with Mr. Ware abstaining.

Initial Review of CRP-23-09: Ms. Wolfe provided a summary of the events that the Complainant alleged in her complaint. Ms. Belkowitz read from the initial review checklist and confirmed that the criteria were not met. Ms. Belkowitz gave the Complainant five minutes to address the Panel.

The Complainant presented her complaint and the details around the incident behind her allegations. The Complainant wanted to know if the subcommittee had reviewed all the documents she had included in her complaint. Ms. Belkowitz confirmed that she and her fellow subcommittee members had

reviewed the complaint and it did not change her decision to not forward her complaint for review by the full Panel.

Ms. Wolfe motioned to approve the Initial Review Report. Mr. Ware seconded the motion and it carried unanimously.

Approval of June 27, 2023, Draft Meeting Summary: Mr. Garner moved approval of the Panel's June 27, 2023, meeting summary. Ms. Wolfe seconded the motion, and it carried unanimously.

Initial Review of CRP-23-06: Mr. Hargraves provided a summary of the events alleged by the Complainant. Mr. Hargraves read from the initial review checklist and confirmed that the criteria, while some were alleged, were not met. Ms. Belkowitz gave the Complainant five minutes to address the Panel.

The Complainant presented to the Panel that he was not yet ready to address the Panel and requested more time at another Panel meeting to explain his case. Mr. Hargraves explained what the Panel reviews after the completion of the Internal Affairs Bureau (IAB) investigation. The Complainant again requested that he be given more time to address the Panel and requested an opportunity to write a letter to the Panel for consideration. Mr. Hargraves and Ms. Belkowitz agreed to let Mr. Wu submit his additional complaint summary to the Panel.

Mr. Garner motioned to approve the Initial Review Report. Mr. Ware seconded the motion and it carried unanimously.

Discussion and Approval of the 2022 Annual Report: Mr. Hargraves motioned to suspend Robert's Rules to not read aloud the entirety of the report. Ms. Wolfe seconded the motion and it carried unanimously. Ms. Wolfe wanted to request the addition of the Ad Hoc board's report. There was also discussion on adding the 2022 Use of Force training summary.

Ms. Wolfe motioned to approve the draft as amended. Mr. Hargraves seconded the motion and it carried unanimously.

Executive Director's Report: Mr. Richardson presented his Executive Director's report. Mr. Richardson provided that a quarterly meeting was held with the Fairfax County Police Department's Chief at the Public Safety headquarters building, along with the Office of the Independent Police Auditor and the Deputy County Executive, Tom Arnold. Mr. Richardson provided that the Neighborhood and Community Services office had asked the PCRCP office to participate in the 2<sup>nd</sup> Annual Interfaith Resiliency Conference Civic Engagement Panel in September with more information to come. Mr. Richardson announced that a Spanish language PSA had been produced by the County's Channel 16 and an video of an English language PSA would be produced with Management Analyst Sanjida Lisa. Mr. Richardson provided that the Panel had been given a copy of the proposed mandatory training for their review and that he would be meeting with the Deputy County Executive for Public Safety, Tom Arnold, to seek his input and assistance in moving forward the training.

New Business: Ms. Wolfe mentioned the Recommendations Matrix and wanted to make sure they would be added to the August agenda for review.

Mr. Hargraves mentioned that the Ad Hoc Matrix working group had made recommendations that had been shared with the Board of Supervisors and he would providing to the Panel a brief presentation of the recommendations at an upcoming Panel meeting.

Ms. Ramirez provided a brief overview of the Virginia Oversight Committee (VACOLE) and provided there were no updates.

Ms. Peterson wanted to know how the locations of the Panel meetings were determined and if Panel members could make suggestions on locations based on the regions they represent. Mr. Richardson provided that meeting locations were determined based on the County's vulnerability study and that Panel members were welcome to provide suggestions for meeting locations.

Adjournment: Mr. Hargraves motioned to adjourn the meeting. Mr. Garner seconded the motion and it carried unanimously. Meeting adjourned at 8:16 p.m.



Police Civilian Review Panel  
August 3, 2023  
Woodrow Wilson Library  
6101 Knollwood Dr. Falls Church, VA 22041  
Meeting Summary

Panel Members Present:

Cheri Belkowitz, Vice Chair  
Todd Cranford, Chair  
Fazia Deen  
Michael Lau  
William Ware  
Janell Wolfe

Others Present:

Madison Gibbs, Counsel  
Sanjida Lisa, PCRP  
Rachelle Ramirez, OIPA  
Richard Schott, OIPA  
Lt. Matt Lane, Internal Affairs Bureau  
Community members

Chair Cranford called the Police Civilian Review Panel's (PCR) business meeting to order at 7:12 p.m., and after taking attendance, noted the presence of a quorum. He welcomed everyone to the Panel's August 3, 2023, meeting and provided a brief overview of what the Panel does. Mr. Cranford thanked Second Story for collaborating with PCR for the Panel's meeting and asked Ms. Soraya Borja from Second Story to give a brief introduction. Ms. Borja provided information on the different types of events and services Second Story provides to the community in Falls Church.

Approval of Agenda: Ms. Wolfe moved approval of the meeting agenda. Mr. Ware seconded the motion and it carried unanimously.

Review of FCPD Responses to Panel Recommendations Matrix: Mr. Cranford moved to the review of the Fairfax County Police Department (FCPD) responses to the Panel's Recommendations Matrix. Mr. Cranford read aloud the first recommendation and the corresponding FCPD response. Mr. Ware wanted to know what the "reconstitution" term was referring to and where the best practices were saved for the Panel to refer back to. Ms. Belkowitz expressed her concern of FCPD not guaranteeing their response within 30 days. Mr. Cranford suggested that PCR staff would monitor whether FCPD complied with the 30-day response timeline and follow up with the Panel Chair if there were any delays. Mr. Cranford moved to accept FCPD's response to this recommendation. Ms. Wolfe seconded the motion and it carried, with Ms. Belkowitz abstaining.

Mr. Cranford read aloud the second recommendation and the corresponding FCPD response. Mr. Lau recommended that FCPD should have ongoing training instead of having an annual training day. Ms. Deen agreed. Ms. Belkowitz asked Mr. Lau if he would be satisfied with the addition of "at least annually" instead of "established ongoing training." Mr. Lau confirmed that he did not think a set number of hours needed to be identified, but the implication of training more than once a year would

be sufficient. Mr. Cranford moved that the Panel accept the FCPD's response with the additional recommendation of adding "at least annually." Ms. Wolfe seconded the motion and it carried unanimously.

Mr. Cranford read aloud the third recommendation and the corresponding FCPD response. Mr. Belkowitz confirmed that the language described what FCPD is advised to do. Ms. Wolfe expressed an issue with the language used, specifically the word "encouraged." Ms. Wolfe made a motion to ask the FCPD to amend their response, adding "working knowledge and be encouraged to directly consult the criminal code." Ms. Belkowitz seconded the motion. Mr. Lau recommended changing the word from "encourage" to "requires." Ms. Belkowitz provided that the officer from a previous case, CRP-22-06, had an administrative investigation conducted for their misinformation. Mr. Lau opined that if the officer was admonished, that implies that FCPD already has requirements in place that would lead to an officer being reprimanded when necessary. Mr. Lau proposed adding a separate sentence of "officers are encouraged to consult the criminal code." Ms. Wolfe did not believe that the additional sentence should be added, and felt adding the word "and" would suffice. A vote was taken and the motion carried, with Mr. Lau abstaining.

Mr. Cranford read aloud the fourth recommendation and the corresponding FCPD response. Mr. Lau suggested that the FCPD officers should provide specific code section and case laws to the community members they interact with, for clarification purposes. Mr. Ware did not think the FCPD's response wholly addressed the Panel's fourth recommendation. Ms. Wolfe agreed and then suggested that the response be sent back to FCPD for reevaluation. Mr. Ware moved to make a recommendation that the FCPD revisit Recommendation #4 and consider amending the language to "officers should directly consult the criminal code in advance of follow-up interactions." The motion carried, with Ms. Belkowitz opposing.

Mr. Cranford read aloud the fifth recommendation and the corresponding FCPD response. Ms. Belkowitz motioned to accept the FCPD response to the recommendation. Ms. Wolfe seconded the motion. Ms. Belkowitz pointed out that the wording "whenever appropriate" was subjective and she wanted more specific parameters to be defined. Ms. Wolfe understood why the language was worded the way it was. A vote was taken and the motion carried, with Mr. Lau abstaining.

Mr. Cranford read aloud the sixth recommendation and the corresponding FCPD response. Ms. Belkowitz accepted the response but acknowledged that FCPD had rejected the recommendation. Ms. Deen wanted to know how FCPD defined "timely manner," but accepted the response as it was written. Mr. Cranford moved to accept FCPD's response to this recommendation. Mr. Ware seconded the motion and it carried unanimously.

Mr. Cranford read aloud the seventh recommendation and the corresponding FCPD response. Mr. Lau expressed his concern with "concepts of implicit bias" and wants the FCPD to have practical impact. Ms. Belkowitz pointed out that the language of practical impact and application was included in the response and Mr. Cranford agreed. Ms. Belkowitz motioned to accept the FCPD's response to this recommendation. Ms. Wolfe seconded the motion and it carried unanimously.

Mr. Cranford read aloud the eighth recommendation and the corresponding FCPD response. Ms. Belkowitz did not think the response addressed the Panel's eighth recommendation. Mr. Lau expressed an issue with the wording "when applicable" and included that blanket statistics would be helpful for

Panel members. Mr. Cranford agreed with both Ms. Belkowitz and Mr. Lau and recommended that Panel staff do their assessment and review the nature of the case in advance of Panel members reviewing the case file. Ms. Belkowitz recommended adding “when germane and when requested by PCRCP” in order to address the original recommendation. Mr. Lau suggested that all statistics should be provided and the Panel can decide what was and was not “germane” to the case file. Ms. Wolfe expressed that she trusted the FCPD to provide the pertinent information. Mr. Ware added that if the data provided was incomplete, the Panel could always make a request for additional information. Ms. Belkowitz motioned to request that FCPD add language that says “Internal Affairs will continue to provide applicable statistics when germane to the case investigation and when a statistically significant amount of data is available or when requested by the Police Civilian Review Panel.” Mr. Ware seconded the motion. The motion carried, with Mr. Cranford opposing.

OIPA Update: Mr. Schott provided an update on three incident reports he published since March 2023, which was his last report to the Panel. Mr. Schott provided that the FCPD responded to a domestic incident call on January 4, 2022, which led to an officer-involved shooting. The second case involved FCPD officers pointing their firearms at a juvenile who had brandished a weapon at an IHOP restaurant. The third incident involved a complaint of an alleged assault committed by an FCPD officer, which was determined to be unfounded.

Mr. Schott provided that he was closely monitoring the FCPD investigation into two incidents. The first incident involved the April, 2023 officer-involved shooting that occurred after a car pursuit on Interstate 95 that began in Fairfax County and ended in Prince William County. The second incident was the officer-involved shooting that occurred on May 11, 2023 in a Citgo parking lot in Alexandria.

New Business: Mr. Cranford announced the resignation of Executive Director Steven Richardson on August 1, 2023. Mr. Cranford provided that the Fairfax County Board of Supervisors was in the process of hiring a new Executive Director. In the interim, the Office of the Independent Police Auditor and PCRCP’s Management Analyst would handle Panel affairs and office matters.

Mr. Cranford then entertained questions from the community members present.

Adjournment: Mr. Cranford motioned to adjourn the meeting. Mr. Ware seconded the motion and it carried unanimously. The meeting adjourned at 9:15 p.m.

Police Civilian Review Panel

August 24, 2023

Fairfax County Government Center, Conference Room 232

Subcommittee Meeting Summary (CRP-23-07)

Panel Members Present:

Bryon Garner, Subcommittee Chair

Cheri Belkowitz

Michael Lau

Others Present:

Sanjida Lisa, PCRCP

Rachelle Ramirez, OIPA

Richard Schott, OIPA

2<sup>nd</sup> Lt. Doug Lingenfelter, Internal Affairs Bureau

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

## Request for Review – Basic Information

**CRP Complaint Number:** CRP-23-07

**Subcommittee Meeting Date:** August 24, 2023

### Subcommittee Members:

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

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

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

## Purpose

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

## Findings

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

The subject matter of this investigation concerns allegations by the Complainant of slander, defamation, abuse of power and misconduct, a FCPD officer acting as a licensed psychologist, HIPAA law violation, and intent to harm. The complainant alleged that FCPD officer falsified a police report.

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



## Recommendation

The Subcommittee recommends that the Panel **not undertake** a review of CRP-23-04 because the complaint **does not meet** the scope of review criteria set forth in its Bylaws.

## Panel Bylaws Abuse of Authority and Serious Misconduct Checklist

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

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

Police Civilian Review Panel

August 31, 2023

Fairfax County Government Center, Conference Room 232

Subcommittee Meeting Summary (CRP-23-08)

Panel Members Present:

Dirck Hargraves, Subcommittee Chair

Fazia Deen

Janell Wolfe

Others Present:

Sanjida Lisa, PCRCP

Rachelle Ramirez, OIPA

Richard Schott, OIPA

2nd Lt. Matthew Lane, Internal Affairs Bureau

The Panel's business meeting was called to order at 6:19 p.m. Mr. Hargraves welcomed everyone to the Panel's June 20, 2023 Subcommittee meeting. Everyone who was present in Conference Room 7 stated their name and their position.

Motions to Subcommittee Meeting: Mr. Hargraves provided a brief overview of the purpose of the subcommittee to review a complaint and determine whether to recommend to the full Panel for review. Ms. Wolfe provided a brief summary of the events that led to the complaint and the reason for the request for a review by the Panel. Ms. Deen agreed and provided additional information from her perspective and review of the investigative file.

Mr. Hargraves also provided his observations from his review of the investigative file and the body worn camera footage.

Initial Review of CRP-23-08: Mr. Hargraves read aloud the first criterion on the Panel Bylaws Abuse of Authority and Serious Misconduct Checklist. Panel members agreed the first criterion was not alleged and was not met.

Mr. Hargraves read aloud the second criterion on the checklist. Panel members agreed that while alleged, the evidence did not meet the criteria.

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

Mr. Hargraves read aloud the fourth criterion on the checklist. Panel members agreed the fourth criterion was not applicable.

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

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

Mr. Hargraves concluded that the complaint did not fall within the Panel's purview of jurisdiction for a review due to the allegations not fitting the criteria on the checklist. Ms. Deen moved that the Subcommittee Panel not recommend that the full Panel undertake this matter. Ms. Wolfe seconded and it carried unanimously.

Meeting adjourned at 6:45 p.m.

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

DRAFT

# Fairfax County Police Civilian Review Panel

## Subcommittee Initial Review Report

### Request for Review – Basic Information

**CRP Complaint Number:** CRP-23-08

**Subcommittee Meeting Date:** August 31, 2023

#### Subcommittee Members:

- Dirck Hargraves, Subcommittee Chair (Panel Member)
- Fazia Deen, Subcommittee Member
- Janell Wolfe, Subcommittee Member

**Complaint Submission Date:** Review Request received on 4/20/2023. Other Key Dates: Complaint to FCPD: 5/16/2022; FCPD Disposition letter: 3/13/2023

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

### Purpose

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

### Findings

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

The subject matter of this investigation concerns allegations by the Complainant that her Disposition Letter from the Fairfax County Police Department (FCPD) was factually incorrect and that the FCPD response to her 4/30/2022 call for service was handled poorly.

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

## Recommendation

The Subcommittee recommends that the Panel **not undertake** a review of CRP-23-08 because the complaint **does not meet** the scope of review criteria set forth in its Bylaws.

## Panel Bylaws Abuse of Authority and Serious Misconduct Checklist

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

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

PRESENT: All the Justices

B. ALAN GLOSS, ET AL.

v. Record No. 210779

ANN B. WHEELER, ET AL.

OPINION BY  
JUSTICE WESLEY G. RUSSELL, JR.  
MAY 18, 2023

FROM THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY  
Dennis J. Smith, Judge Designate

B. Alan Gloss and Carol Fox (“plaintiffs”), residents of Prince William County, filed a “Petition for Mandamus and Injunction” in the Circuit Court of Prince William County alleging that Ann B. Wheeler, Andrea O. Bailey, Kenny Boddye, Victor S. Angry, and Margaret Angela Franklin (“defendants”), five members of the Prince William County Board of Supervisors, knowingly and willfully violated the Virginia Freedom of Information Act (“VFOIA”) by attending a meeting as defined by VFOIA without complying with statutory requirements. At the trial of this matter, the circuit court granted the defendants’ motion to strike made at the conclusion of plaintiffs’ evidence, concluding that the gathering at issue did not constitute a meeting under VFOIA. On appeal, plaintiffs contend the circuit court erred by doing so. For the reasons that follow, we conclude that the circuit court erred in granting the motion to strike. Accordingly, we reverse the judgment of the circuit court and remand the matter for further proceedings consistent with this opinion.

## I. BACKGROUND<sup>1</sup>

On May 25, 2020, George Floyd was killed while in the custody of police officers in Minneapolis, Minnesota. Over the next few days, video showing Floyd's arrest, detention, and ultimate death spread, spawning nationwide protests about the conduct of the officers involved, Floyd's death, and larger social issues generally.

One such protest occurred in Prince William County on May 30, 2020. The case underlying this appeal stems from the events of that night and the acts and omissions of certain Prince William County officials in the aftermath of those events. Resolution of the appeal requires an understanding of the powers, duties, and responsibilities of the Prince William County Board of Supervisors ("Board"), the events of May 30, 2020, and the actions taken by public officials afterwards.

### A. Powers, duties, and responsibilities of the Board

Prince William County utilizes the county executive form of government. *See* Code § 15.2-500 *et seq.* Accordingly, all "powers of the county as a body politic and corporate [are] vested in [the] [B]oard[.]" Code § 15.2-502(A). At all times relevant, the Board had eight members.<sup>2</sup>

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<sup>1</sup> "When reviewing a trial court's decision to grant a motion to strike the plaintiff's evidence, we view the evidence presented at trial in the light most favorable to the plaintiff and accord the plaintiff the benefit of any inferences that may be fairly drawn from the evidence." *Curtis v. Highfill*, 298 Va. 499, 502-03 (2020). Furthermore, "the non-moving party 'must be given the benefit of all substantial conflict in the evidence, and all fair inferences that may be drawn therefrom.'" *Dill v. Kroger Ltd. P'ship I*, 300 Va. 99, 109 (2021) (quoting *Egan v. Butler*, 290 Va. 62, 73 (2015)). Accordingly, we recite the facts consistent with this view of the evidence, omitting reference to evidence that conflicts with such a view.

<sup>2</sup> The members of the Board were the defendants along with Supervisors Pete Candland, Jeanine Lawson, and Yesli Vega. Supervisors Candland, Lawson, and Vega were not given notice of the gathering that is at issue in this case and none of them were in attendance.

The Board is “the policy-determining body of the county and . . . vested with all rights and powers conferred on boards of supervisors by general law[.]” Code § 15.2-504. These powers include the power to investigate county officers by “inquir[ing] into the official conduct of any office or officer under its control,” Code § 15.2-506, and “provid[ing] for the performance of all the governmental functions of the county” by “provid[ing] for and set[ting] up all necessary departments of government[.]” Code § 15.2-507.

To assist it in the exercise of these and other powers it possesses, the Board is required to “appoint a county executive[.]” Code § 15.2-509. Such county executive is “not . . . appointed for a definite tenure,” but rather, serves “at the pleasure of the [B]oard.” Code § 15.2-510. Among other duties, the county executive is “responsible to the [B]oard for the proper administration of the affairs of the county which the [B]oard has authority to control[.]” Code § 15.2-516, and is part of the process by which the Board adopts a budget for the county and its various departments. Code § 15.2-539.

The county executive is charged with assisting the Board in selecting county officers and employees, but the ultimate authority over such matters resides with the Board. Specifically, Code § 15.2-512 provides that “[t]he [B]oard shall appoint, upon the recommendation of the county executive, all officers and employees in the administrative service of the county[.]” “Any officer or employee of the county appointed pursuant to § 15.2-512 may be suspended or removed from office or employment . . . by the [B]oard[.]” Code § 15.2-513.

Although it may create additional departments, the Board is required by statute to create certain, specified departments, including a “[d]epartment of law enforcement.” Code §§ 15.2-507 & 15.2-518(3). “The department of law enforcement shall consist of such police as may be appointed pursuant to § 15.2-512, and police officers appointed by the [B]oard, pursuant



to such section, including the chief of the department.” Code § 15.2-528. Although, as with all county departments, the department of law enforcement ultimately is subject to Board control, “[t]he county executive shall have supervision and control of the county police force.” *Id.* Like all other department heads, the head of the department of law enforcement “shall be entitled to present [his or her] views on matters relating to [the] department[.]” to the Board. Code § 15.2-512.

#### B. Events of Saturday, May 30, 2020

On May 30, 2020, a protest related to George Floyd’s killing took place in Prince William County. The protest, which began peacefully, turned violent. An unlawful assembly was declared around 8:00 p.m.; however, the protestors did not disband, and the group continued to grow. The situation escalated with acts of vandalism and violence, and eventually the events were characterized by county officials as “riots.” The riots were not county-wide and primarily occurred in the Manassas and Gainesville sections of the county, areas represented on the Board by Supervisors Candland and Lawson.

The riots were significant enough that, shortly after 10:00 p.m., police officials sent an email to all members of the Board to provide some information regarding the events. In that email, each member of the Board was informed that, at that time, police were “still attempting to regain order” and that portions of “Sudley Rd remain[ed] closed” because of the ongoing riots. The Board members also were informed that “[a]n alert” had been sent to residents of the affected areas and that the police department would continue to post updates on its social media platforms. Eventually, the Virginia State Police dispersed the riot, allegedly using chemical agents to control the crowd.

Because the initial demonstrations were, in part, about the police misconduct related to George Floyd and policing generally, and the fact the riots that developed in the county had caused conflict between protestors and police, tensions were high. County officials, including police, Board members, and the county executive, as well as community leaders all recognized the potential for further problems and a need to address that possibility. As a result, multiple gatherings were scheduled for the next day to collect information about the riots, the police response to those riots, and the steps to be taken going forward by various county officials and others.

Three such gatherings are central to this appeal. At 12:30 p.m., Board-chairman Wheeler met with police officials to discuss the situation. At 1:00 that afternoon, five members of the Board attended a gathering arranged by police officials and members of the police Citizens' Advisory Board that also was attended by more than sixty members of the community. Finally, at 4:00 that afternoon, all eight members of the Board attended a properly noticed, emergency public meeting of the Board. Given the compressed time frame, communication about and the scheduling of some of these gatherings was occurring while another of the gatherings was ongoing. As a result, the timeline for each involves some degree of overlap. For clarity's sake, we address each of the three gatherings separately below.

### C. Sunday, May 31, 2020 gatherings

#### 1. Chairman Wheeler meets with police officials

Shortly after midnight on May 31, 2020, Chairman Wheeler had sufficient information about the May 30, 2020 riots and the potential for further problems to believe she needed to take some action. At 12:06 a.m., Chairman Wheeler sent a text message to the county executive requesting to meet with police officials. At trial, she testified that she sought to meet with police

to learn “what happened that evening that was going on with the demonstrations in Manassas” and agreed that that information and any responses to it were “*part of the county’s business*[.]” (Emphasis added.)

The county executive responded by text at 8:40 a.m. that he had arranged for Chairman Wheeler to meet with police at 12:30 at the Central District police station. In that text message, the county executive also informed Chairman Wheeler that Police “Chief Barnard has also scheduled a 1:00 meeting with a few community leaders which I believe you should be at.” Chairman Wheeler responded to the text, writing “Yes[,] that would [be] fine. I would like to talk before hand with a few quick questions.”

Chairman Wheeler met with the chief of police and the deputy chief of police at 12:30 that afternoon. She confirmed with police officials that chemical agents had been used to disperse the riots. She expressed her opinion to the police officials that “we could do better and that the Virginia State Police the night before, you know, seemed a little aggressive.” At the conclusion of her discussions with police officials, Chairman Wheeler walked directly to the 1:00 gathering.

## 2. 1:00 p.m. gathering

While Chairman Wheeler was attempting to set up her meeting with police officials, others were busy organizing another gathering to discuss the riots. Specifically, Prince William County Police Chief Barry Barnard “coordinated and orchestrated” a gathering at police headquarters to be held on May 31, 2020, at 1:00 p.m. Chief Barnard, Deputy Chief Jarad Phelps, and Reverend Cozy Bailey,<sup>3</sup> who then served as Chair of the police department’s Citizens’ Advisory Board and also as the head of the local NAACP Chapter, were involved in

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<sup>3</sup> Reverend Bailey is the husband of Supervisor Bailey, one of the defendants.

organizing the gathering. Given the county executive's text message to Chairman Wheeler at 8:40 a.m. on May 31, 2020, the time and place of the meeting were known to the organizers and others as early as 8:40 that morning.

Although there was conflicting testimony at trial, multiple members of the Board adopted the characterization of the 1:00 gathering as a police Citizens' Advisory Board meeting. Prior to trial, Deputy Chief Phelps characterized it in a Board meeting as a Citizens' Advisory Board meeting. Furthermore, in a statement made at a June 2, 2020 formal meeting of the Board that was introduced in evidence, Supervisor Bailey identified the gathering as a Citizen's Advisory Board meeting. The two police chiefs and Reverend Bailey ran the meeting. Thus, viewed in the light most favorable to the plaintiffs, the meeting was a meeting of Prince William County's police Citizens' Advisory Board. Accordingly, we will refer to it as the "CAB meeting."

Invitations to the CAB meeting were extended by members of the police staff and by word of mouth from various participants, including members of the Board who were aware of the CAB meeting.<sup>4</sup> Approximately sixty people attended the CAB meeting. Along with police and "community leaders," attendees included the five defendant members of the Board: Chairman Wheeler and Supervisors Angry, Bailey, Boddye, and Franklin.

Despite attending and being aware of the meeting, the defendants did not invite the remaining three members of the Board to the CAB meeting. Similarly, police officials did not invite the three other members of the Board to the CAB meeting. Eventually, Deputy Chief

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<sup>4</sup> Supervisor Bailey testified that she made Supervisor Franklin aware of the CAB meeting. Despite Supervisor Bailey's testimony that she only learned of the CAB meeting on the morning of May 31, 2020, Supervisor Franklin testified that Supervisor Bailey informed her about the CAB meeting on May 30, 2020. Supervisor Franklin testified that she, in turn, informed Supervisor Boddye of the CAB meeting.

Phelps offered a public apology at a formal Board meeting for the failure to invite at least Supervisor Lawson to the CAB meeting.

When Chairman Wheeler arrived at the CAB meeting, she “felt [she] should sit near the front, because [she] was the chair of the county.” She moved the chair in which she chose to sit, “pull[ing] it in front of the front row[.]” She testified that she attended the meeting and sat where she sat because she was there to “represent the [B]oard.” During the course of the meeting, the meeting organizers identified her to the audience as Board Chairman and gave her an opportunity to address the audience as a result. She did so.

The CAB meeting began with a presentation from police officials regarding the events of the previous night. The riots, the use of force by police, the use of chemical agents to quell the riots, and the property damage that was caused all were discussed. The discussion also included an explanation of “how the Virginia State Police were called in [and] about how it was turned over to the Virginia State Police.”

Some of the defendants participated in the discussions. Of particular note, according to Supervisor Franklin, Supervisor Boddye made a specific request of the police chief to include certain items in an after-action report.<sup>5</sup> After making the request, Supervisor Boddye inquired of the police chief when the report would be available.

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<sup>5</sup> Defendants, pointing to Supervisor Boddye’s testimony, argue that he never made such a request. Because Supervisor Franklin’s testimony that such a request was made is more favorable to plaintiffs, the circuit court was required to credit her testimony and reject Supervisor Boddye’s testimony on this point in deciding the motion to strike. Similarly, we are required to credit Supervisor Franklin’s testimony regarding this issue in resolving this appeal. *Dill*, 300 Va. at 109.

The CAB meeting lasted for several hours. While the CAB meeting was in progress, the Board members in attendance had to leave the CAB meeting so that they could attend the emergency Board meeting that had been scheduled and formally noticed for 4:00 that afternoon.

3. Emergency meeting of the Board of Supervisors at 4:00 p.m.

Before the CAB meeting started, Supervisor Vega sent an email addressed to the county executive and Chairman Wheeler requesting an emergency meeting of the Board due to “the events that transpired last night, and the ones potentially to follow[.]” All of the members of the Board as well as the county attorney were copied on the email, which was sent at 12:08 p.m. In the email, Supervisor Vega stated that it was “imperative that all board members are kept informed so that we can help restore peace and order.”

Within five minutes of Supervisor Vega’s email, Supervisor Candland responded by email. In his email, which he sent to all Board members, the county executive, and the county attorney, Supervisor Candland “second[ed]” Supervisor Vega’s request for an emergency meeting and noted that he had been hearing “rumors” of further disturbances to come, had been receiving calls from concerned constituents, and stated his position that it was “critical [that] we hear an update on how these events will be handled.”

Less than ten minutes later, at 12:21 p.m., Supervisor Lawson sent an email to all the members of the Board, the county executive, and the county attorney. In her email, she “concur[red]” in the request for an emergency meeting of the Board and stated that she had “several property owners on edge[.]”

At 12:30 p.m., Supervisor Bailey responded regarding the request for an emergency meeting by sending an email to all of the Board members, the county executive, and the county attorney. In the email, she enthusiastically endorsed the need for an emergency meeting of the

Board, writing that such a meeting was “necessary!” She opined that “[t]here needs to be an emergency meeting and press conference collective with ‘all’ board members for the community held immediately.” She continued by opining that “[o]ur procrastination is not serving.” She ended her email by stating that she would “be in a community meeting with the NAACP starting at 1pm[,]” and thus, would be “available to meet at 3 or 4pm.”

From the evidence, it is clear that the “NAACP meeting” referenced in Supervisor Bailey’s email was the 1:00 CAB meeting referenced above. Despite having invited at least one other Board member to the CAB meeting, Supervisor Bailey did not use the email to invite Supervisors Candland, Lawson, or Vega to what Supervisor Bailey has characterized as a CAB meeting. She did not inform them that county employees would be present at the meeting and did not, at any point before the 4:00 meeting of the Board, inform them that more than three members of the Board attended the CAB meeting.

At 1:08 p.m., while attending the CAB meeting, Chairman Wheeler responded with an email to the members of the Board, the county executive, and the county attorney regarding the request for an emergency meeting. She indicated that she presently was “in a meeting with police and community leaders” but had “instructed” the county executive “to arrange a board meeting for 4 pm if possible.” She noted that she was “consulting the county attorney with regard to notice” requirements of VFOIA for such a meeting, but believed those requirements could be met “because of [the] emergency conditions[.]”

From the evidence, it is clear that the “meeting with police and community leaders” referenced in Chairman Wheeler’s email was the 1:00 CAB meeting referenced above, and thus, was the same meeting that Supervisor Bailey had referenced in her 12:30 p.m. email to the group. Chairman Wheeler did not indicate that the meeting she referenced was the same meeting

as the one referenced by Supervisor Bailey or that five members of the Board were present at the meeting.

Three minutes later, at 1:11 p.m., Supervisor Bailey responded to Chairman Wheeler's email. The email was sent to all of the members of the Board, the county executive, and the county attorney. The email thanked Chairman Wheeler for her leadership; but again, it did not inform the recipients that Supervisor Bailey, Chairman Wheeler, and three other members of the Board were, at that time, in the CAB meeting. It also did not suggest that the "meeting with police and community leaders" referenced in Chairman Wheeler's email was the same meeting that Supervisor Bailey had referenced in her 12:30 p.m. email to the group.

The county executive responded with an email to the members of the Board, the county attorney, and other county staff at 1:24 p.m. He indicated that an emergency Board meeting would take place "at 4:00 PM in the [B]oard chambers in the McCoart Bldg." and instructed county staff to take certain steps. Apparently recognizing that VFOIA's requirements applied to the meeting, he instructed county staff to review the "rules of procedure and schedule an emergency meeting[.]" He indicated that there was a "need to advertise this meeting as soon as possible." Furthermore, regarding the Board meeting, he informed the recipients of the email that "the topic of discussion will be, and can only be, the demonstrations that are occurring in PWC in response to the events in MN and what we can do to allow, and help ensure, the demonstrations occur safely and peacefully." He concluded the email by inquiring of the county attorney if he had "missed anything with regard to scheduling the emergency meeting."

At 1:49 p.m., Supervisor Candland sent an email to thank Chairman Wheeler for setting up the meeting. In the email, which was sent to the members of the Board, the county executive, and the county attorney, Supervisor Candland expressed his appreciation for Chairman



Wheeler's efforts, thanking her for "listening to us in supporting Supervisor Vega's call for an emergency meeting." He concluded by noting that he would "[s]ee you at 4:00pm."

County staff emailed formal notice of the emergency Board meeting to members of the Board at 2:54 p.m. In addition to identifying the time and place of the meeting, the notice indicated that the meeting agenda was limited to "[d]iscussion of the demonstrations occurring in Prince William County in response to events in Minnesota and what measures can be taken to ensure that demonstrations occur safely and peacefully."

The members of the Board convened for the 4:00 meeting. Consistent with the agenda provided for in the notice, issues related to the riots, the use of force by police, the use of chemical agents to quell the riots, and the property damage that was caused were discussed. Multiple members of the Board who attended both the CAB meeting and the emergency Board meeting confirmed that the same topics were discussed at the two meetings. Supervisor Bailey testified that the police chief gave the same presentation at the 4:00 Board meeting that had been given at the 1:00 CAB meeting.

In addition to covering these topics, the 4:00 Board meeting involved a discussion of the 1:00 CAB meeting and why three members of the Board had not been given notice of or otherwise invited to the CAB meeting. There also was discussion of whether, given the presence and involvement of a majority of the Board, the CAB meeting had been held in violation of VFOIA's open meeting requirements.

#### D. Proceedings in the circuit court and the ruling on the motion to strike

Echoing the VFOIA concerns raised at the 4:00 emergency meeting of the Board, plaintiffs filed suit, alleging that the CAB meeting violated the open meeting requirements of VFOIA. Among other things, plaintiffs sought a finding that defendants had "knowingly and

willfully” violated VFOIA, a mandate and injunction requiring defendants to comply with VFOIA going forward, and recovery of the plaintiffs’ costs and attorney fees.

The trial was held on October 7, 2020. In their case, plaintiffs called all five of the Board members who attended the CAB meeting. In addition to testimony, the parties introduced documentary evidence, including text messages and emails related to the various meetings. Finally, plaintiffs introduced portions of video recordings of the 4:00 emergency Board meeting and a subsequent meeting of the Board where the May 31, 2020 meetings were discussed.

At the conclusion of plaintiffs’ evidence, defendants moved to strike. Their primary contention was that the CAB meeting did not fall within VFOIA’s definition of “meeting,” and therefore, VFOIA did not apply to the CAB meeting.

Agreeing with defendants, the circuit court granted the motion to strike from the bench. Prior to the circuit court entering an order memorializing its ruling, plaintiffs filed a motion for reconsideration. The circuit court held a hearing on the motion on January 8, 2021. On May 18, 2021, the circuit court entered an order memorializing its granting of the motion to strike and denying the motion for reconsideration. In that order, the circuit court noted that its ruling was based “on the [c]ourt’s finding that the evidence presented was insufficient as a matter of law to establish that the [CAB] meeting . . . was a meeting subject to the provisions of the Virginia Freedom of Information Act as alleged[.]” As a result, the circuit court concluded that defendants were “not liable for any alleged violations of [VFOIA] as pleaded or argued[.]” and thus, were entitled to judgment. Asserting that the circuit court erred in granting the motion to strike, plaintiffs petitioned to this Court, and we granted review.

## II. ANALYSIS

### A. Standard of review

In granting a motion to strike, a “circuit court must not judge the weight or credibility of evidence[.]” *Dill v. Kroger Ltd. P’ship I*, 300 Va. 99, 109 (2021). Rather, a circuit court must “accept as true all the evidence favorable to the plaintiff” and grant to the plaintiff “any reasonable inference” that may be drawn from such a view of the evidence. *Austin v. Shoney’s, Inc.*, 254 Va. 134, 138 (1997). A circuit court may grant a motion to strike at the conclusion of a plaintiff’s evidence “only where ‘it is conclusively apparent that plaintiff has proven no cause of action[.]’” *Int’l Paper Co. v. Cnty. of Isle of Wight*, 299 Va. 150, 170 (2020) (quoting *Brown v. Koulizakis*, 229 Va. 524, 531 (1985)). Accordingly, “[w]hen reviewing a trial court’s decision to grant a motion to strike the plaintiff’s evidence, we view the evidence presented at trial in the light most favorable to the plaintiff and accord the plaintiff the benefit of any inferences that may be fairly drawn from the evidence.” *Curtis v. Highfill*, 298 Va. 499, 502-03 (2020). To the extent our review of the circuit court’s judgment requires us to engage in statutory interpretation, it presents questions of law subject to de novo review. *Transparent GMU v. George Mason Univ.*, 298 Va. 222, 237 (2019).

### B. Purpose and construction of VFOIA

Currently codified at Code § 2.2-3700 *et seq.*,<sup>6</sup> “VFOIA has existed, in one form or another, since 1968.” *Am. Tradition Inst. v. Rector & Visitors of Univ. of Virginia*, 287 Va. 330, 339 (2014). In adopting VFOIA, the General Assembly included an express statement of the purpose of the statutory scheme. Specifically, the General Assembly adopted VFOIA to

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<sup>6</sup> Plaintiffs initiated their suit in 2020. The General Assembly amended Code § 2.2-3700 *et seq.* in 2022. See 2022 Acts chs. 325, 597 (Reg. Sess.). These amendments have no bearing on this case.

“ensure[] the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted.” Code § 2.2-3700(B). VFOIA guarantees such access because “[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.” *Id.* Absent proper invocation of a statutory exception, “every meeting shall be open to the public” and “[a]ll public records and meetings shall be presumed open[.]” *Id.*

To help effectuate these purposes, the General Assembly adopted a special rule of construction for interpreting VFOIA. Specifically, VFOIA “shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government” and “[a]ny exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.” *Id.* We previously have recognized that this VFOIA-specific rule of construction “puts the interpretative thumb on the scale in favor of” open government.

*Fitzgerald v. Loudoun Cnty. Sheriff’s Off.*, 289 Va. 499, 505 (2015).

### C. Meetings of public bodies under VFOIA

To further its purpose, VFOIA requires that “[a]ll meetings of public bodies shall be open[.]” Code § 2.2-3707(A), raising the questions of what constitutes both a “public body” and a “meeting.” VFOIA’s definitions section provides the answers.

Code § 2.2-3701 defines “public body” to encompass, among other things, “governing bodies of counties[.]” making such governing bodies subject to the open meeting provisions of VFOIA. In turn, VFOIA defines “meeting” to include

work sessions . . . as a body or entity, or as an informal assemblage of (i) as many as three 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.

*Id.* Having defined “meeting” in broad terms, VFOIA then creates exceptions to that definition.

Specifically,

[n]either the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (b) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a “meeting” subject to the provisions of this chapter.

*Id.*

If a gathering falls within VFOIA’s definition of a “meeting[,]” it is then subject to the open meeting requirements of Code § 2.2-3707. Among other things, the statute requires that public meetings be publicly noticed, Code § 2.2-3707(C)-(D), that any public body having a meeting provide the public with the agenda and related materials, Code § 2.2-3707(F), and that written minutes of the meeting be taken. Code § 2.2-3707(H).

Here and in the proceedings below, plaintiffs contend that the CAB meeting was a “meeting” of a “public body” as those terms are defined in Code § 2.2-3701 and that the open meeting requirements set forth in Code § 2.2-3707 applied. Defendants did not and do not contest that the Board constitutes a “public body” within the meaning of VFOIA or that the CAB meeting did not comply with the open meeting requirements of Code § 2.2-3707. Rather,

defendants contend that the evidence was insufficient to allow a rational factfinder to conclude that the CAB meeting was a “meeting” as defined in Code § 2.2-3701.

#### D. CAB meeting as a meeting under VFOIA

As noted above, there is no dispute that the Board is a public body as defined in VFOIA and that both it and its members are subject to the open meeting requirements of VFOIA. Furthermore, it is undisputed that more than three members of the Board attended the CAB meeting, that the CAB meeting also was attended by community leaders and county employees, and that the events of May 30, 2020, and the county’s response to those events were what was intended to be and what was, in fact, discussed at the CAB meeting. As such, unless the CAB meeting falls within one of the two exceptions contained in the definition of “meeting” found in Code § 2.2-3701, it was a meeting for the purpose of VFOIA’s open meeting provisions. Viewing the evidence in the light most favorable to plaintiffs, the CAB meeting falls within neither exception.

##### 1. Discussion of public business

The first exception to VFOIA’s definition of meeting appears in subpart (a) of the definition of meeting, which provides that “[n]either the gathering of employees of a public body” nor the “gathering or attendance of two or more members of a public body” shall be considered a “meeting” if “no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, *and* such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body[.]” Code § 2.2-3701 (emphasis added). Accordingly, if the purpose of the CAB meeting was the discussion of public business *or* if the meeting were called or prearranged with the purpose of a discussion of public business of the Board, it does not fit within the exception. *See*

*Commonwealth v. Miller*, 273 Va. 540, 550 (2007) (recognizing the general rule that when statutory conditions are stated in the conjunctive each condition so stated must be met to satisfy the statutory requirement).

To appreciate the scope of the exception requires an understanding of the meaning of “public business” as the phrase is used in Code § 2.2-3701. Because VFOIA does not include a definition of the phrase “public business,” we seek to apply its “plain and ordinary meaning” and are “guided by the context in which [the . . . phrase] is used.” *Protestant Episcopal Church v. Truro Church*, 280 Va. 6, 21 (2010) (internal quotation marks and citations omitted). Given the requirement that all VFOIA exceptions be construed narrowly, Code § 2.2-3700, and VFOIA’s heavy “interpretative thumb on the scale in favor of” open and transparent government, *Fitzgerald*, 289 Va. at 505, we must give the phrase “public business” a broad reading.<sup>7</sup>

Although we must interpret “public business” broadly, we agree with the defendants that the fact that a topic or topics generate significant public *interest* does not compel the conclusion that the topic or topics constitute public *business*. Of course, it often will be the case that topics of intense public interest also will represent topics of public business.

For a topic to constitute the “business” of a public body, it must relate to a subject that falls within the purview of that public body. Thus, a topic or topics may constitute “public

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<sup>7</sup> Because VFOIA applies to government officials and bodies, the parties largely do not dispute the meaning of the modifier “public.” It limits the scope of VFOIA’s requirements to governmental matters as opposed to the purely personal or private affairs of the individuals who serve in government. This general agreement on the meaning of “public” does not extend to the meaning of “business” for the purpose of Code § 2.2-3701.

business” for one public body, such as a board of supervisors, but not constitute the “public business” of another, such as a county’s industrial development authority.<sup>8</sup>

Furthermore, for a topic to constitute public business it must not just be something that conceptually could at some point come before a public body, but rather, the topic must be something that is either before the public body or is likely to come before the body in the foreseeable future. *Beck v. Shelton*, 267 Va. 482, 494 (2004). In *Beck*, we affirmed a circuit court’s conclusion that a protest related to traffic controls at a particular street corner “was a citizen-organized ‘informational forum’ and that no part of the purpose of the gathering or attendance was the discussion or transaction of any public business” because “[t]he undisputed evidence at trial was that City Council *did not have any business pending before it on the issue of traffic controls, nor was it likely to have such matters come before it in the future.*” *Id.*

(emphasis added). Embracing this language and reasoning from *Beck*, today we make clear that a topic is “public business” for the purpose of Code § 2.2-3701 if it is either “pending before” the public body at the time or it is “likely to . . . come before it in the future.” *Beck*, 267 Va. at 494.

Recognizing that such a definition of “public business” logically follows from a “literal reading” of the language we used in *Beck*, the defendants requested at oral argument in this Court that we revisit that language and conclude that, for a matter to constitute “public business,” it must appear on the public body’s formal agenda. (Oral Argument Recording at 27:28-27:58). To adopt the defendants’ construction—that a topic cannot be public business until it appears on a formal Board agenda—would gut the open meeting provisions of VFOIA. It would allow portions of or full boards of supervisors to meet, discuss, and decide county business in secrecy

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<sup>8</sup> Given that the Board possesses all “powers of the county as a body politic and corporate[,]” Code § 15.2-502(A), and is “the policy-determining body of the county[,]” Code § 15.2-504, all county business is Board business.



by waiting until after their private discussions and decisions to place an item on a formal agenda. Such a result cannot be reconciled with either the language or purpose of VFOIA, and we reject such a construction of the statute. Accordingly, “public business” in Code § 2.2-3701 means business that is on a public body’s agenda or is likely to come before the public body in the foreseeable future.

Contrary to the repeated assertions of the dissent, such a definition of “public business” is neither new nor unprecedented. The language we utilize comes directly from our opinion in *Beck*. Although the dissent may disagree with our reading of the import of that language, because it is based on a quotation from a prior case, it simply is factually inaccurate to say this definition of “public business” is “new.”

Furthermore, our reading of the language from *Beck* is neither strained nor idiosyncratic. Even the defendant Board members conceded at oral argument in this Court that the definition the dissent criticizes as unprecedented logically follows from a “literal reading” of the language from *Beck*. (Oral Argument Recording at 27:28-27:58). Although we are not bound by such a concession, it certainly suggests that there is nothing overly aggressive or idiosyncratic about our reading of the language.

Even absent the language from *Beck*, however, we think it clear under the express terms of VFOIA that the business of a local, legislative body encompasses the contemplation of topics that come before it or soon will. It matters not whether the topics are raised by a member of the body, another governmental employee, or a member of the community. As a deliberative body, part of the legislative body’s business at every formal meeting is to hear from the community and

employees and consider those concerns.<sup>9</sup> Thus, the *consideration* of topics that are on the Board’s agenda or soon will be *is* the business of the legislative body.

Our dissenting colleagues suggest that consideration is not enough and that some further “action” or “activity” by a legislative body is necessary to transform the contemplation of issues before it into “public business.” The dissent, however, does not suggest what that action or activity might be. Critically, VFOIA makes clear that the action or activity cannot involve voting on the topic because the definition of meeting makes clear that “work sessions” of the body and an “informal assemblage” of members of the body—neither of which would permit votes on issues or any other formal Board action—are meetings under VFOIA and thus outside the exception. Code § 2.2-3701. Lest there be any doubt that voting is not necessary for there to have been a discussion of public business, the definition of meeting further provides that it applies “whether or not votes are cast[.]”<sup>10</sup> *Id.* As to what action or activity beyond

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<sup>9</sup> Certainly, such listening and consideration is “an activity engaged in” by local legislative bodies in the normal course and is considered a part of its usual “role” and “function.” According to the definition relied upon by the dissent, slip op. at 33, n.1, and the dictionary upon which the dissent relies, *see* Webster’s Third New International Dictionary 302 (1993), this meets the literal definition of “business.”

<sup>10</sup> That VFOIA can apply to gatherings at which the public body does not engage in the “action” or “activity” of voting is well established and will come as no surprise to practitioners. For example, the *Handbook of Virginia Local Government Law* provides that “[w]ork sessions, ‘retreats’ and other informal gatherings of the public body at which public business is discussed are meetings covered by [VFOIA] just as certainly as more formal assemblies, *regardless of whether a formal agenda will be followed or votes taken.*” Roger C. Wiley, *The Freedom of Information and Government Data Collection and Dissemination Practices Acts*, in *Handbook of Virginia Local Government Law* § 23-2.02(c), at 23-8 (April Wimberley ed., 2023 ed.) (emphasis added) (citing Code §§ 2.2-3701, -3707; Ops. Va. Att’y Gen. 1981-82 at 442, 1977-78 at 484-85, 1974-75 at 579).

contemplation but less than voting the dissent contends is needed to transform the discussion and contemplation of the topic to public business, we are left to guess.<sup>11</sup>

Utilizing the proper definition of “public business” and viewing the evidence in the light most favorable to the plaintiffs, “part of the purpose[.]” Code § 2.2-3701, of the CAB meeting was the discussion of public business of the Board, and such public business was, in fact, discussed at that gathering.<sup>12</sup> It is undisputed that the purpose of the CAB meeting was to

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<sup>11</sup> Ultimately, the error in the dissent’s overly cramped definition of the discussion of public business becomes clear when one recognizes what it would allow. Although disclaiming that its view would do so, the dissent’s interpretation, carried to its logical conclusion, would allow a group of lobbyists, the heads of political parties, or groups of campaign contributors to hold a private meeting with a majority of a local legislative board. In that private meeting, the lobbyists, political officials, and donors could detail for the assembled board members their positions and expectations of the board regarding any and all topics that, while not yet on the board’s agenda, are sure to appear on it in the next month. This would permit the interested parties to address all manner of *topics*, including the locality’s budget, policing issues, tax rates, land use permits, and anything and everything else that properly could come before the board but had yet to appear on the agenda. So long as the board members took no action and engaged in no further activity at the private meeting, the dissent’s construction of the statute would place the gathering beyond the reach of VFOIA. This cannot be so because such private meetings are exactly the type of back-room, secretive dealing that VFOIA was enacted to prevent. Such a result simply cannot be squared with VFOIA’s admonitions that “affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government[.]” that VFOIA be “liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government[.]” and that “[a]ny exemption from public access to records or meetings . . . be narrowly construed[.]” Code § 2.2-3700. To the contrary, the dissent’s interpretation would allow the discussion of public business exception to swallow the rule.

<sup>12</sup> In advancing their argument that items must appear on a formal agenda for there to be a discussion of public business, defendants conceded at oral argument that if the 1:00 gathering had been (1) jointly called by the Citizen Advisory Board and the chief of police, (2) to provide for discussion of police use of force, property damage, riots, and use of chemical agents, and (3) that, during the 1:00 gathering, at least one Board member requested that the police include specific information in the after-action report, the gathering “could” be considered a “public meeting where public business was discussed” if the items previously had been placed on a formal Board agenda. In rejecting the “formal agenda” argument advanced by defendants, we note that, when the record is viewed in the light most favorable to plaintiffs, each of the circumstances detailed above existed relative to the CAB meeting.

discuss the events of May 30, 2020, and the police response to those events. Issues related to the riots, the use of force by police, the use of chemical agents to quell the riots, and the property damage that was caused were all discussed. One of the first responsibilities of any government is to protect the lives, safety, and property of its citizens. As such, it is hard to imagine any scenario in which the Board would not soon address a night of protest and unrest that eventually led to riots that caused significant safety concerns and property damage. Without question, the subsequent police response, an after-action report about that response, and how police should respond in the future were matters of public business that were all but certain to come before the Board.

After all, the county's response to the events and any steps it decided to take going forward are matters of county policy. As such, the ultimate decisions in these matters belonged to the Board as "the policy-determining body of the county[.]" Code § 15.2-504, possessing all "powers of the county as a body politic and corporate[.]" Code § 15.2-502(A). The information discussed would be part and parcel of any official county response, and the review of the performance of police officials falls within the Board's power and responsibility to "inquire into the official conduct of any office or officer under its control[.]" Code § 15.2-506. Such inquiry into the performance of the police during the events of May 30, 2020, is a necessary component of the Board's oversight of the department of law enforcement, which includes the power to hire and fire police officers or other county officials responsible for how the department carries out its function. *See* Code §§ 15.2-510, 15.2-512, 15.2-513, & 15.2-528. Certainly, a review of the events of that night and any policy changes by the county in response would have an effect on the police department's budget, which defendants acknowledged at trial is subject to Board "control." *See also* Code § 15.2-539.

Additionally, and again viewing the evidence in the light most favorable to the plaintiffs, there was evidence adduced to suggest not only that public business of the Board was discussed at the CAB meeting, but that business of the Board may have been transacted. According to Supervisor Franklin, Supervisor Boddye made a specific request of the police chief to include certain items in an after-action report. After making the request, Supervisor Boddye inquired of the police chief when the report would be available. Crediting Supervisor Franklin's testimony, coupled with the fact that a majority of the Board was present when Supervisor Boddye made the request, a reasonable factfinder could conclude that public business of the Board was not only discussed, but may have actually been transacted at the CAB meeting.

That the evidence properly viewed more than amply supports the conclusion that the 1:00 meeting was intended to and did involve the discussion of public business finds further support in the fact that the exact same topics were discussed at the properly noticed emergency Board meeting that occurred at 4:00 that very afternoon. Supervisors Bailey, Boddye, Angry, and Franklin each testified that the topics that were discussed at the 1:00 CAB meeting were discussed at the 4:00 Board meeting. Thus, evidence establishes not only that the topics discussed at the CAB meeting were likely to come before the Board in the future, but they actually came before the Board that very afternoon.<sup>13</sup>

Furthermore, although we reiterate our holding that topics being discussed need not be on a formal Board agenda to constitute a discussion of "public business," we note that the topics being discussed at the CAB meeting were on a formal Board agenda *while they were being*

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<sup>13</sup> The defendants concede that the topics discussed were "public business" when discussed at the 4:00 meeting. Given this concession, absent the defendants' proposed "agenda" requirement, it is difficult to envision a scenario in which the discussion of the same topics at the CAB meeting do not constitute a discussion of public business of the Board.

*discussed in the CAB meeting.* At 1:24 p.m., while the CAB meeting was in progress, the county executive identified the agenda for the 4:00 Board meeting, informing Board members that “the topic of discussion will be, and can only be, the demonstrations that are occurring in PWC in response to the events in MN and what we can do to allow, and help ensure, the demonstrations occur safely and peacefully.” Further, at 2:54 p.m., while the CAB meeting still was ongoing and the topics still were being discussed, the formal notice for the 4:00 Board meeting was issued and identified the meeting agenda as “[d]iscussion of the demonstrations occurring in Prince William County in response to events in Minnesota and what measures can be taken to ensure that demonstrations occur safely and peacefully.” Thus, at least a portion of the discussion of the topics in the CAB meeting occurred *after* the topics had already been placed on a formal agenda for the Board.

From the evidence, a rational factfinder could conclude that the CAB meeting was called to discuss issues related to the riots and the police response to those riots and that such discussions occurred as planned. Thus, there was more than sufficient evidence to support the conclusion that the CAB meeting fell outside the first exception to the definition of a meeting in Code § 2.2-3701. Accordingly, the circuit court erred in granting the motion to strike on that basis.

## 2. Public forum

In criticizing the definition of “public business” described above, the dissent, on multiple occasions, uses some form of the phrases “informational gathering” or “informational meeting.” Such references are notable in that not only do these phrases not appear in the text of the “public business” exception to the definition of meeting found in Code § 2.2-3701, they do not appear anywhere in VFOIA. The closest analog in VFOIA to either of these otherwise absent phrases is

found in the second exception to VFOIA's definition of meeting that appears in subpart (b) of the definition. That subpart provides that "[n]either the gathering of employees of a public body" nor the "gathering or attendance of two or more members of a public body" shall be considered a "meeting" if the gathering is

*at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting[.]*

Code § 2.2-3701 (emphasis added).

Defendants do not contend that the CAB meeting was a "candidate appearance" or a "debate[.]" Asserting the purpose of the gathering was to inform the electorate, they argue that every rational factfinder would be required to conclude that the CAB meeting falls within the "public forum" exception to the definition of meeting in Code § 2.2-3701.<sup>14</sup> We disagree.

The "public forum" exception to the definition of "meeting" in Code § 2.2-3701 is designed to further the laudable purposes of VFOIA, not inhibit them. The ultimate purpose of VFOIA is to require government transparency for the purpose of allowing an informed citizenry. *See* Code § 2.2-3700 ("This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth."). VFOIA is not intended to and does not prevent government officials, even in groups of three or more, from attending a gathering "the purpose of which is to inform the electorate[.]" Such

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<sup>14</sup> Presumably, if the CAB meeting constitutes a "public forum . . . the purpose of which [wa]s to inform the electorate[.]" Code § 2.2-3701, it would fall within the meaning of the phrases "informational gathering" and "informational meeting" as those phrases are used by the dissent. Thus, the dissent's concerns in this regard would be more appropriate in a discussion of the subpart (b) exception rather than in a discussion of the meaning of "public business" in subpart (a).

forums permissibly may be convened by community groups, federal officials, or even government officials who are subject to VFOIA, such as members of a board of supervisors. A purely informational meeting, that does not involve “discussions relating to the transaction of public business,” Code § 2.2-3701, does not constitute a meeting under VFOIA.<sup>15</sup>

As with all VFOIA exceptions to the general rule of open government, the “public forum” exception to the definition of meeting is a narrow one. Even a gathering whose motivating purpose “is to inform the electorate[.]” Code § 2.2-3701, falls outside of the exception if its purpose expands in such a way that allows for the “transact[ion of] public business or” for “discussions relating to the transaction of public business[.]” *Id.* Once that line is crossed, the gathering is a meeting under VFOIA and all of the open meeting requirements apply.

It can be difficult in the abstract to provide clear benchmarks for determining when a gathering has been called and held for the sole purpose of informing the electorate and when it has, either at its inception or over time, evolved to advance an impermissible purpose such as a discussion relating to the transaction of public business. Such determinations are inherently factual. Although some circumstances will be obvious, others will turn on fine factual distinctions involving what was said, by whom, and in what context. As a result, we are unable to provide bright lines to guide courts in making this determination—save one.

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<sup>15</sup> The “public forum” exception does allow for a discussion of “the performance of” the subject officials “in the conduct of public business[.]” Code § 2.2-3701. That is, a discussion of the *past* performance of public business is permissible, but a discussion of a covered official’s acts related to transactions of public business that may occur in the future is not. No evidence was adduced to suggest that the CAB meeting involved a discussion of defendants’ past performance as members of the Board. Accordingly, this portion of the exception does not apply in this case.



That bright line is VFOIA's expressly stated presumption in favor of open government. Every provision of VFOIA, including the "public forum" exception in Code § 2.2-3701, "shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government" and "[a]ny exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law." Code § 2.2-3700(B). Accordingly, courts making this determination must "put[] the interpretative thumb on the scale in favor of" open government. *Fitzgerald*, 289 Va. at 505. Thus, in truly doubtful cases, the "public forum" exception does not apply, and the gathering is a meeting subject to Code § 2.2-3707.

Applying the statutory language and this standard to the instant case, the circuit court erred in granting the motion to strike. As noted above, the evidence adduced by plaintiffs provided more than a sufficient basis for a rational factfinder to conclude that the CAB meeting involved a discussion relating to the transaction of public business. Furthermore, crediting Supervisor Franklin's testimony, it went further than mere discussion, as a Board member made a specific request to the police chief regarding the police chief's performance of his duties and made further inquiry as to when those duties would be completed.

Viewing the evidence in the light most favorable to plaintiffs, the CAB meeting fell outside the second exception to the definition of a meeting in Code § 2.2-3701. Accordingly, the circuit court erred in granting the motion to strike.

### III. CONCLUSION

In enacting VFOIA, the General Assembly evinced a strong preference for open government. Absent proper invocation of a statutory exception, VFOIA requires "every meeting

. . . be open to the public” and that “[a]ll public records and meetings shall be presumed open[.]” Code § 2.2-3700(B). To ensure that this policy preference is respected, the General Assembly has instructed courts that VFOIA “shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government” and that “[a]ny exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.” *Id.* This instruction “puts the interpretative thumb on the scale in favor of” open government, *Fitzgerald*, 289 Va. at 505, and requires that courts resolving disputes under VFOIA favor open government in close cases.

Viewing the record in this case through such a lens and in the light most favorable to plaintiffs, we conclude that the evidence adduced at trial was sufficient to allow a rational factfinder to conclude that the CAB meeting was a meeting subject to the requirements of VFOIA. Thus, the circuit court erred in granting the motion to strike. Accordingly, we reverse the judgment of the circuit court and remand the matter for further proceedings consistent with this opinion.

*Reversed and remanded.*

CHIEF JUSTICE GOODWYN, with whom JUSTICE POWELL joins, dissenting, in part.

The definition of public business announced by the majority in its opinion, which asserts that certain topics are public business, is unsupported by the plain meaning of the phrase “public business,” the context in which the phrase is used in the Virginia Freedom of Information Act (VFOIA), and this Court’s precedent regarding what constitutes public business. This broadened definition of public business will make gatherings for the purpose of purely informational discussions between government officials and citizens subject to the notice requirements of VFOIA, despite language in VFOIA clearly intended to exempt such discussions from its requirements. Therefore, I dissent regarding the majority’s new definition of “public business” and regarding the majority’s analysis which incorporates that definition. “Public business” should be defined consistently with its plain meaning and the context in which it is used in VFOIA.

## I. BACKGROUND

### A. Purpose of VFOIA

The General Assembly adopted VFOIA to “ensure[] the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted.” Code § 2.2-3700(B). Under VFOIA, “[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.” *Id.* The purpose of VFOIA is to provide citizens access to meetings where business is being conducted and actions are being taken or proposed by certain governmental bodies.

As an additional aspect of open government, VFOIA requires that it be construed to allow free discussion between government officials and citizens regarding matters of public interest. Such opportunities for information sharing are so important to open government in Virginia that interpreting VFOIA so as not to discourage such gatherings is specifically stated as a requirement of VFOIA. *See* Code § 2.2-3700 (“This chapter shall not be construed to discourage free discussion by government officials or employees of public matters with the citizens of the Commonwealth.”).

Our Court has stated:

The public policy of the Commonwealth “ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted.” Code § 2.2-3700(B). But FOIA “shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.” *Id.* Obviously, the balance between these values must be considered on a case-by-case basis according [to] the facts presented.

*Beck v. Shelton*, 267 Va. 482, 493 (2004).

#### B. Discussion of Public Matters

The VFOIA requirement, regarding encouragement of discussions of public matters, is effectuated through exceptions to the definition of the term “meeting” under VFOIA. The exceptions allow informational gatherings to be exempted from VFOIA meeting requirements. *See* Code § 2.2-3701. As noted by the majority, “[t]he first exception to VFOIA’s definition of meeting appears in subpart (a) of the definition of ‘meeting’ (hereinafter ‘subpart (a)’), which provides that ‘[n]either the gathering of employees of a public body’ nor the ‘gathering or attendance of two or more members of a public body’ shall be considered a ‘meeting’ if ‘no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, *and* such gathering or attendance was not called or prearranged with any purpose of

discussing or transacting any business of the public body[.]’ Code § 2.2-3701 (emphasis added).” Thus, a discussion of public matters between citizens and government officials or employees, which may be referred to as an “informational gathering,” is not a “meeting” as defined by VFOIA and therefore is not subject to the notice and other requirements of VFOIA. However, if the discussion of public business is the purpose of the gathering, it becomes a meeting, and VFOIA applies.

The scope of the exception in subpart (a) is dependent upon the meaning of “public business” as the phrase is used in Code § 2.2-3701. The scope of exception (a) can be manipulated by changing the definition of public business from that intended by the General Assembly. VFOIA seeks to prevent deviation from the intended definition by its directive which states that “[t]his chapter shall not be construed to discourage free discussion by government officials or employees of public matters with the citizens of the Commonwealth. Code § 2.2-3700.

The majority’s new definition of public business states that a *topic* is “public business” for purposes of Code § 2.2-3701 if it is either “pending before” the public body at the time or is “likely to . . . come before it in the future.” (Slip Op. pp. 19-20). Any information discussed regarding any aspect of the topic by anyone is considered to be the discussion of public business, regardless of the involvement of members of the governing body in the discussion or the type of business pending regarding the topic. The new definition of what constitutes public business expressed by the majority is therefore unique and unprecedented in its extreme broadness.

By interpreting the definition of public business to include the discussion of any information concerning any aspect of a topic which is likely to come before the governing body, the majority eliminates the application of the subpart (a) exception to any gathering discussing

the demonstrations which occurred in Prince William County, regardless of what was actually discussed by anyone at the gathering or the purpose of the gathering. This is contrary to prior precedent.

## II. DEFINITION OF PUBLIC BUSINESS

### A. Plain Meaning and Context

VFOIA does not include a definition for “public business.” Because VFOIA does not include a definition of the phrase “public business,” we seek to apply its “plain and ordinary meaning” and are “guided by the context in which [the . . . phrase] is used” in determining the General Assembly’s intended meaning of the phrase. *Protestant Episcopal Church v. Truro Church*, 280 Va. 6, 21 (2010) (internal quotation marks and citations omitted).

“Public business” has long been a term of art used to describe the government’s role or responsibility in carrying out its duties. Public business is activity undertaken or contemplated to be undertaken by a public entity; as the term is used in VFOIA, public business is *contemplated* and *conducted* by a public body on behalf of the people it represents.<sup>1</sup> It is not the information considered by the governmental body (the topic) that is the public business of the governing body, rather it is any activity contemplated or conducted by the governmental body that is the public business of the body and subject to the requirements of VFOIA. Stated differently, if a governing body has pending business before it on the topic of a demonstration which occurred in its county, the demonstration (the topic) is being discussed, but it is the action(s) the board contemplates or takes regarding the demonstration that constitutes the public business of the board. The demonstration is not the public business of the governmental body; it is a matter of

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<sup>1</sup> “Business” is defined as “an activity engaged in as normal, logical, or inevitable and usu. extending over a considerable period of time: role, function.” Webster’s Third New International Dictionary 302 (1993).

public concern that all the citizens of the county have an interest in. Information concerning the demonstration should be allowed to be freely discussed and exchanged with the public, whereas contemplated public action of the board regarding the demonstration would be public business and discussion of that public business would be subject to the requirements of VFOIA.

The language of VFOIA underscores the distinction between matters of public interest and the conducting of the business of the people by a governing body. Consistent with that distinction, subparts (a) and (b) of the definition of meeting in VFOIA exempt informational gatherings—referred to in the VFOIA statute as “free discussions of public matters”—from the notice requirements of VFOIA. *See supra* at 32; Code §§ 2.2-3700 and 3701. Under subpart (a), such gatherings are subject to the requirements of VFOIA if any part of the *purpose* of the gathering is to discuss or transact contemplated public action of the governing body; VFOIA applies in such instances because the public should have access to meetings where business is being conducted or contemplated by the governmental body.

By defining “public business” as a topic, disconnected from the purpose for which the topic is being discussed or by whom, and the context in which it is being discussed, the majority’s definition of “public business” sweeps too broadly in the context of Code § 2.2-3701. Expanding the scope of the definition of “public business” beyond its plain meaning to include practically all topics of public interest eliminates the subpart (a) exception for informational discussions between citizens and government officials regarding most public matters. It makes the inquiry regarding the purpose of the meeting, designed and previously used to distinguish discussions of public matters from discussions of public business of the governing body, irrelevant.

The majority's new definition is therefore an extremely significant change in the scope of VFOIA which will reduce the openness of government by discouraging the free exchange of information between government employees and citizens, through subjecting such gatherings, which would not be public business under the plain meaning of that term, to VFOIA notice requirements.<sup>2</sup> *See* Code § 2.2-3700. For example, under this new definition which makes a topic public business, a police briefing for victims to explain facts and answer questions concerning an ongoing crisis would be a violation of VFOIA, if three or more members of the governing board were present and no VFOIA notice had been sent, although the purpose of the gathering had nothing to do with the governing board exercising its deliberative authority.

Neither the plain meaning nor the context in which "public business" is used in VFOIA provide any authority for the majority's assertion that a "topic" of public interest constitutes "public business" for purposes of Code § 2.2-3701, merely because the topic may in some way be the subject of some business either "pending before" or "likely to . . . come before" the public body in the future.

#### B. Judicial Precedent

The majority's new definition of public business is contrary to prior decisions of this Court. In our prior cases regarding the application of VFOIA to a gathering of citizens, the party or parties alleging a violation of VFOIA, as in this case, claimed that there was a discussion of public business at a gathering which took the purportedly offending gathering outside of the exemption which is now stated in subpart (a) of the definition of meeting. *See Beck*, 267 Va. at

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<sup>2</sup> The statute requires that public meetings be publicly noticed, Code § 2.2-3707(C)-(D), that any public body having a meeting provide the public with the agenda and related materials, Code § 2.2-3707(F), and that written minutes of the meeting be taken, Code § 2.2-3707(H), among other things.



486; *Nageotte v. Board of Supervisors*, 223 Va. 259, 268 (1982). In each case, the trial court, as in this case, appropriately did a factual inquiry regarding the purpose of the meeting to determine whether any part of the purpose of the gathering was the discussion of public business. *Beck*, 267 Va. at 493; *Nageotte*, 223 Va. at 269. In other words, the trial court judges realized that they were required to determine whether the gathering had been called and held for the purpose of acquiring or providing information or whether a purpose of the gathering was to discuss or transact public business, which would take the gathering outside of the VFOIA exception.

In *Nageotte*, the members of a Board of Supervisors attended a gathering to acquire information concerning a matter pending before the Board. The complainants asserted that the gathering violated VFOIA, but the Board claimed that the gathering was only for the purpose of acquiring information, that the Board did not arrange the gathering for the purpose of discussing or conducting business about the pending matter, and that the gathering was therefore exempt from the notice requirements of VFOIA. *Nageotte*, 223 Va. at 268. The trial court concluded that the purpose of the gathering was to obtain information regarding the matter pending before the Board and not for the Board to conduct business and that the gathering was therefore not a meeting subject to VFOIA.<sup>3</sup> On appeal, this Court upheld the trial court's determination. *Id.*

*Beck*, cited by the majority in its opinion, is a case in which approximately 20 residents concerned about the lack of a stop sign and other related traffic safety issues invited two city employees and three city council members to meet with them at an intersection to discuss the traffic issues. *Beck*, 267 Va. at 492-93. As recounted in the opinion, at trial the trial court judge found that the meeting was

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<sup>3</sup> The statute involved in *Nageotte* was not Code § 2.2-3701 but a prior statute with similar language.

scheduled as a consequence of citizen inquiry; that the meeting's purpose, in essence, was an information forum in reference to traffic issues in a given neighborhood or on a specific street; that the three members of Council who appeared did not, according to the testimony which is uncontradicted, . . . discuss anything with each other as a group of three or otherwise.

*Id.* at 493.

It was not questioned that the traffic issues fell within the purview of the city council as the governing body of the city. However, the trial court ruled that the meeting was for informational purposes only and was not for the purposes of discussing public business. *Id.* On appeal, our Court noted that the evidence presented at trial and the competing requirements of VFOIA had to be considered on a case-by-case basis, in determining the purpose of the gathering, using the language in what is now subparts (a) and (b) of the definition of "meeting" as guidance.<sup>4</sup> *Id.* The Court concluded its discussion in that case by ruling that:

The trial court was not plainly wrong or without evidence to support its judgment that the Charlotte Street gathering was a citizen-organized "informational forum" and that no part of the purpose of the gathering or attendance was the discussion or transaction of any public business. The undisputed evidence at trial was that City Council did not have any business pending before it on the issue of traffic controls, nor was it likely to have such matters come before it in the future.

*Id.* at 493-94.

Realizing that determinations regarding the purpose of a gathering are inherently factual and depend on the circumstances and distinctions involving what was said, by whom and in what context, in both prior cases, as in this one, the trial court heard evidence concerning facts such as who arranged the gathering, whether information was sought or given, whether the matter was pending before the governing body, whether the members of the governing body who attended sat together, whether they discussed anything with each other as a group or otherwise, etc., to

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<sup>4</sup> The statute considered in *Beck* was an earlier version of Code § 2.2-3701, but the relevant statutory language is the same as in the current version of Code § 2.2-3701.

determine whether discussion of public business was a purpose of the gathering. Such analysis would have been unnecessary under subpart (a) if the new definition of public business declared by the majority had been acknowledged and applied in those cases. It was not.

In the present case, the majority's assertion that "a topic is 'public business' . . . if it is either 'pending before' the public body at that time or likely to . . . come before it in the future," (Slip Op. p. 19), is contrary to this Court's ruling in *Nageotte* and finds little support in *Beck*. As the majority's only authority for its claim that a "topic," rather than the activity of a governmental body, constitutes public business, the majority asserts that it "embraces [the] language and reasoning from *Beck*," then quotes and italicizes a single-sentence factual recitation from the *Beck* opinion which states: "[t]he undisputed evidence at trial was that City Council *did not have any business pending before it on the issue of traffic controls, nor was it likely to have such matters come before it in the future.*"

The quoted fact is not otherwise mentioned in the opinion's analysis. There is no stated reasoning concerning that sentence in the *Beck* opinion for the majority to embrace.<sup>5</sup> The extent of its relevance to the Court's ruling can only be speculated.

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<sup>5</sup> Further, rather than providing support for the majority's proposition that a topic can be "public business," the language in *Beck* quoted by the majority demonstrates that this Court's prior use of the plain language meaning of "business" is different from the majority's new definition. Clearly, "business," as that term is used in the sentence quoted from *Beck*, refers to activity that was to be undertaken by the governmental body in carrying out its function as a public body. That reference to business is consistent with the plain meaning of "business" as used in *Nageotte* and in the context of VFOIA. Obviously, identification of a "topic"—without more—is not indicative of whether or what business was to be conducted.

The sentence quoted from *Beck* provides little, if any, authority for the assertion that a topic of interest which is the subject of public business becomes public business, as that term is used in Code § 2.2-3701, when it is the subject of the Board's consideration.

Although its mention in the opinion indicates that it was a factor relevant in determining whether the purpose of the gathering was the discussion of public business, there is no language in *Beck* asserting that the lack of pending business before the governmental body was the sole factor considered in the Court's decision regarding the purpose of the gathering. In fact, the Court's actual reasoning indicates that numerous factors needed to be considered in determining the purpose of the particular gathering. In its analysis, the *Beck* court stated that determination of the purpose of a gathering needed to be "considered on a case-by-case basis according [to] the facts presented." *Id.* at 493.

Business of a local legislative body includes the Board's contemplation and action upon any matter that comes before it; whether a vote is taken is irrelevant. It does not matter whether the issue it considers was raised by a member of the body, a citizen, an employee, or otherwise. The governmental body's business at its formal meetings is to hear and consider the issues presented to it. The consideration of issues that are on the Board's agenda, or raised from the floor at the meeting or come before the body in some other way, are the business of the governing body. The topic of the issue considered is not.<sup>6</sup>

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<sup>6</sup> The majority believes that giving the words chosen by the General Assembly their usual and plain meaning "crimps" the statute and that applying the exemption in subpart (a) consistently with its plain language would allow private meetings that "would permit the interested parties to address all manner of topics, including the locality's budget, policing issues, tax rates, land use permits, and anything and everything else that properly could come before the board but had yet to appear on the agenda." (Slip. Op. p.22, n.10). It would not.

Those are exactly the types of gatherings that the General Assembly made subject to VFOIA, through the plain language it drafted. The majority's "uncrimping" of the General Assembly's legislation by its strained interpretation of public business is unnecessary.

To the extent the purpose of the discussion or gathering concerns Board action, pending or prospective, on any issue, it is a discussion of public business of the Board and subject to VFOIA. Likewise, private meetings prearranged for the purpose of discussing activity to be undertaken by the Board are subject to VFOIA requirements pursuant to the plain meaning of VFOIA's terms, no matter the topic. There is no logical or other support for the majority's claim

There is no precedent from this Court which supports the assertion that “a topic is ‘public business’ if it is either ‘pending before’ the public body or it is ‘likely to . . . come before it in the future.’” Numerous other jurisdictions which have considered similar propositions have rejected them. *See In re Kansas City Star Co.*, 73 F.3d 191, 195 (8th Cir. 1996) (interpreting Missouri’s open meeting law in deciding, as matter of law, that merely providing information or receiving viewpoints is not discussing public business); Cal. Gov’t Code § 54952.2(c)(2) (exempting gatherings open to the public involving a discussion of a matter of public interest so long as the board members do not discuss business amongst themselves); *Board of Cnty. Comm’rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo. 2004) (noting that broadening the concept of public business to encompass all matters of public concern would lead to absurd results by requiring notice be given anytime “members attend meetings on any public issue”); *Kansas City Star Co. v. Fulson*, 859 S.W.2d 934, 940 (Mo. Ct. App. 1933) (“Matters of public business are not synonymous with matters of public interest.”); *White v. King*, 60 N.E.3d 1234, 1239 (Ohio 2016) (defining “public business” as activity undertaken “within the purview of [a public body’s] duties, functions and jurisdiction”); *Wood v. Battle Ground Sch. Dist.*, 27 P.3d 1208, 1217 (Wash. Ct. App. 2001) (“[P]articipants must collectively intend to meet to transact the governing body’s official business.”).

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that “as long as board members took no action and engaged in no further activity in the private meeting the gathering would be beyond the reach of VFOIA.” *Id.*

The concept that business has to appear on the agenda of the governing body or be likely to appear on the agenda to be public business is not stated in VFOIA and is a concept derived from the majority’s interpretation of *Beck*, which, as noted in this dissent, would appear to be inconsistent with the plain language of VFOIA regarding the meaning of “public business” expressed in the statute and prior opinions of this Court. *See Nageotte*, 223 Va. at 268; *Beck*, 267 Va. at 493-94. (Slip Op. pp. 36-38).

To be clear, the proposition that is disputed, and not recognized by our Court in *Beck* or by the defendants, is the proposition that a topic can constitute the public business of a governing body, as the term “public business” is used in VFOIA.<sup>7</sup> The language in *Beck* does not state what constitutes public business, but the Court’s use of the term “business” in *Nageotte* and in *Beck* indicates that public business is not the topic discussed but rather the action or prospective action contemplated, considered, or undertaken by the governmental body. The relevance of the distinction is that the majority’s new definition of public business, by stating that topics are public business, includes practically all information concerning issues of public interest within the definition of public business. That broad definition of public business will short-circuit any inquiry regarding the purpose or circumstances of a gathering and undermine the exemption in subpart (a) by making any informational discussions, no matter the purpose, situation, or circumstances, discussions of public business subject to the restrictions of VFOIA.

### C. VFOIA

The majority, in its interpretation of the meaning of public business, as the term is used in VFOIA, has failed to consider VFOIA’s “special rule of construction”<sup>8</sup> stating that VFOIA

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<sup>7</sup> The majority claims that “the defendant Board members conceded at oral argument in this Court that the definition the dissent criticizes as unprecedented logically follows from a ‘literal reading’ of the language from *Beck*.” (Slip. Op. p. 20). The record does not support that assertion. The unprecedented definition which is being criticized in this dissent is the assertion that certain topics constitute public business. The response perceived and cited by the majority as a concession (to the majority’s assertion that a topic can be public business regardless of the context in which it is discussed or by whom) was in response to a question regarding whether business that was likely to be on the agenda in the future could be public business, and the defendants replied: “That is a literal reading of *Beck* and I urge the Court to look at that case and that context when evaluating this case because that was a very different . . . that was a very different set of circumstances there.” That statement by defendant Board members is not a concession that a general topic can be considered to be public business.

<sup>8</sup> The majority refers to the other directives stated in the same paragraph of VFOIA as “special rules of construction for interpreting VFOIA,” adopted by the General Assembly “to help effectuate [the] purposes” of VFOIA.

“shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth,” Code § 2.2-3700, and the heavy thumb such directive should have placed on the scales against the interpretation the majority settled upon. (*See Slip Op.* p.15.) As a result, the majority, contrary to the plain language of VFOIA and court precedent, construes VFOIA in a manner that discourages the free discussion of information between government officials and citizens, in direct conflict with language in VFOIA. *See* Code § 2.2-3700; *Beck*, 268 Va. at 493.

The new definition of public business subjects informational gatherings, previously exempted by subpart (a), to the requirements of VFOIA, and eliminates consideration of the purpose of the gathering inquiry embedded in subpart (a), which is used to distinguish public matters from public business, for purposes of VFOIA coverage.

Subpart (a) was included in the statute to make sure that certain informational meetings between citizens and government officials were not curtailed by VFOIA. However, under the majority’s new definition, a purely and undeniably informational gathering between police and citizens, concerning the facts surrounding a crime and the police response to it, attended by board members, would be found to violate VFOIA, if the topic of the crime was pending or likely to be on the agenda at a future board meeting, even though the purpose of the gathering had nothing to do with the Board taking any action regarding the matter. That is contrary to how VFOIA was designed to operate pursuant to the plain language used by the General Assembly in drafting the statute. The new definition discourages citizen-organized informational gatherings by requiring the application of VFOIA notice requirements, even if the purpose of the meeting is purely informational.

Thus, the new definition construes VFOIA in a manner which is in clear defiance to a VFOIA directive to the contrary. The majority repeats the mantra that exceptions to VFOIA are to be construed narrowly and that VFOIA requires a heavy “interpretive thumb” on the scale in favor of open and transparent government as justification for its novel and broad definition of public business. However, neither the narrow construction of exceptions, nor the supposed “heavy thumb,” is sufficient to supplant first principles of statutory construction and interpretation. The mantra is not a talisman which allows the Court to ignore the plain language and the context of the words used by the General Assembly in VFOIA, nor is it justification for a strained interpretation of the plain language of a statute in a manner which will eliminate an exception that the General Assembly, in its wisdom, has included for the purpose of improving the openness of government.

Although, inexplicably not considered by the majority in its analysis, the General Assembly’s directive that the VFOIA “not be construed to discourage the free discussion . . . of public matters by government officials and employees with the citizens of the Commonwealth,” (“the third directive”) stands on equal footing with, and is not subordinate to, the directive that exceptions are to be construed narrowly, which the majority refers to in isolation and often. The two directives are in consecutive sentences of the same paragraph, and they must both be considered when they are relevant to interpreting the language of VFOIA.<sup>9</sup>

### III. CONCLUSION

The definition of public business announced by the majority asserts that certain topics of public interest are public business. Considering a topic to be the public business of a

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<sup>9</sup> The third directive appears to be a guardrail put in place by the General Assembly to protect the subparts (a) and (b) exceptions to the definition of meetings.



governmental body is contrary to the plain meaning and context in which the term “public business” is used in VFOIA. It is also inconsistent with and unsupported by prior precedent of this Court, and contrary to a special rule of construction required by the General Assembly. By broadening the definition of public business to include topics which are likely to be the subject of some unidentified public business, the majority unnecessarily narrows the application of the subpart (a) exception and creates VFOIA violations in situations where none would exist if the plain language definition of public business were applied.

Thus, I respectfully dissent to the majority’s definition of public business and its application and analysis associated with that definition.

# COMPARISON OF POLICE REFORM MATRIX WORKING GROUP RECOMMENDATIONS WITH FCPD REFORM INITIATIVES

Submitted to Supervisor Rodney Lusk by Members of the Police Reform Matrix Working Group  
June 29, 2023

The following chart is intended to serve as an aid to tracking progress on Fairfax County police reform endeavors post-issuance of the recommendations by the Police Reform Matrix Working Group (MWG). It lays out in the first column the specific recommendations made by the MWG in its [report](#) entitled “COMMUNITY RECOMMENDATIONS FOR MORE EQUITABLE POLICING IN FAIRFAX COUNTY, A PROPOSED ACTION PLAN” (May 12, 2023).

In the second column, we have included known FCPD initiatives that relate to the same topic, including those in a document we received from Chief Davis entitled “[FCPD POLICE REFORM INITIATIVES](#) (MAY 2021-PRESENT).” We appreciate and applaud that FCPD has addressed almost all topics in some way. For example, it has made excellent progress on co-response. For tracking purposes, however, we list only those initiatives that directly address the issue raised in the recommendation (e.g., expansion of the program in a specific way). We recognize that FCPD has adopted other useful practices that can improve policing.

Because FCPD recently engaged PERF to address Use of Force related issues, we have included the recommendations in their [report](#) as well.

Comparison of Police Reform Matrix Working Group Recommendations with FCPD Reform Initiatives

A. RETHINKING POLICING	
Working Group <a href="#">Recommendation</a> (starting p. 19)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p><b>1. Co-responder expansion.</b> Increase co-responder resources to eight teams to provide coverage for all eight District Stations in the County and expand the current coverage to 24hrs, 7 days a week by a set date (<i>e.g.</i>, by December 2024).</p>	
<p><b>2. Behavioral Health Care First.</b> Significantly expand use of a “behavioral health care first” approach for low level offenses in the Diversion First continuum (sometimes referenced as “Intercept 0”). Behavioral health personnel should have primary responsibility for the initial contact and transport for people who are intoxicated, mentally ill, disoriented or otherwise in a behavioral health crisis. Police backup should be available upon request.</p>	
<p><b>3. Staff.</b> Measurably increase the clinical and support staff and other resources such as treatment beds, with a goal of meeting community needs and reducing arrests for low-level offenses. Establish a timeline for implementation (<i>e.g.</i>, 5 years). Consideration should be given to contracting for the necessary staff on an interim basis.</p>	
<p><b>4. Regional Crisis Receiving Centers (CRC).</b> Expand services within Fairfax County to provide much needed resources for individuals experiencing behavioral health crises. (i) Establish additional regional adult CRC and Youth CRC geographically spaced in Fairfax Country. (ii) Expand the existing Chantilly CRC to add temporary stay (“23-hour”) beds and other services.</p>	
<p><b>5. Outreach.</b> Increase Community Services Board (CSB) public awareness and outreach efforts to the general population. Better ensure that individuals who need services are aware that they can get help, even if they lack health insurance or their insurance is inadequate.</p>	
<p><b>6. Further innovation.</b> Fairfax County and FCPD must continue their efforts to identify and be open to innovation in police practices, including other models of policing being tried in other communities, such as the <b>CAHOOTS</b> model in Eugene OR that informed the County’s co-responder initiative and <b>COMPASS</b>, an initiative implemented in Huntington, WV, designed to mitigate against police officer “compassion fatigue.”</p>	

Comparison of Police Reform Matrix Working Group Recommendations with FCPD Reform Initiatives

B. USE OF FORCE POLICY AND ACCOUNTABILITY	
Working Group <a href="#">Recommendation</a> (starting p. 21)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p><b>1. Follow Through on UoF CAC Recommendations.</b> The FCPD should either adopt the complete CAC recommendations as written or explain to the BOS and the public why a recommendation should be revised or not implemented with a deadline for response, e.g., July 1, 2023. A mechanism for co-production and BOS review of FCPD’s responses should be established. If the FPCD believes legally it is prohibited from adopting a recommendation, the BOS should ask the Office of the County Attorney to advise whether legislative action would be required to implement the change.</p> <p><b>NOTE:</b> Although some of CAC’s recommendations were included in the revision to <a href="#">General Order 540</a>, most do not appear to have been adopted in full. See <a href="#">A Roadmap to Compare UTSA and CAC Recommendations and FCPD Responses</a> (Submitted to the BOS by members of the Use of Force Community Advisory Committee, May 16, 2022). FCPD should provide an item-by-item explanation of its positions, much as it did for recommendations by the <i>Ad Hoc Police Practices Review Commission</i>.</p>	<ul style="list-style-type: none"> <li>• “Adopted approximately 80% of UTSA/CAC Use of Force and Department recommendations.” (See <b>NOTE</b>)</li> <li>• Equipment/tactics initiatives (bolawrap, less-lethal shotgun, removal of stop sticks)</li> </ul>
<p><b>2. Legal Clarification of “Necessary and Proportional” Legal Standard.</b> The standard should be consistent with the principles underlying the UTSA/CAC recommendation and with further explanation to make clear that force used must be proportional to the risk of harm to the officer or others; and events leading up to the force, including the nature and severity of the underlying crime or event, are to be taken into account. The standard should apply to both deadly and non-lethal force, modified as appropriate. If County staff believe the foregoing requires legislative action, the County should pursue legislative revision of this standard.</p>	<ul style="list-style-type: none"> <li>• FCPD response: “Current standards prescribed in the Code of Virginia, Supreme Court and 4th Circuit case law, and accreditation standards.”</li> <li>• FCPD-requested <a href="#">PERF report</a> (p.9) recommends use of necessary and proportional standard.</li> </ul>
<p><b>3. Clarification of Pointing a Gun and Any Other Threatened Weapon Use.</b> UTSA/CAC recommended that pointing a gun and any other threatened weapon use should be reportable as a use of force and included in the definition of force. Currently, pointing a gun is considered a separate reportable action, but not subject to a use of force investigation. [General Order 540.H]</p>	<ul style="list-style-type: none"> <li>• FCPD response: same as under #2.</li> </ul>

B. USE OF FORCE POLICY AND ACCOUNTABILITY	
Working Group <a href="#">Recommendation</a> (starting p. 21)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p><b>4. Assess and Strengthen Key Program Reforms Already Being Implemented</b></p> <p>i. Revise the <b>de-escalation</b> standards in GO 540 IV. E. to clarify that de-escalation be used to reduce both the need for and the level of force required and to emphasize that officers must use only the minimum amount of force reasonably needed to overcome resistance. Make companion changes to reporting and training.</p> <p>ii. Clarify levels of <b>civilian resistance</b> that can justify the use of force and link each to the corresponding force permitted (continuum of force).</p> <p>iii. Eliminate <b>threats of self-harm</b> from the definition of aggressive resistance. While force may be a legitimate option to prevent self-harm under some circumstances, threats of self-harm are not “aggressive resistance.”</p> <p>iv. Strengthen the <b>duty to intervene and report</b>, including stronger anti-retaliation protection and performance standards rewarding intervention and reporting.</p> <p>v. Set or improve standards for particularly fraught force practices such as <b>prone restraints, chokeholds, strip searches and ketamine</b>, and expressly prohibiting others such as <b>spit hoods</b>.</p>	
<p><b>5. Direct that a Foot Pursuit Policy be Established with Community Participation</b></p> <p>i. Adopt a foot pursuit policy subject to co-production with the community to ensure local concerns are addressed. Consideration should also be given to the inclusion of a bike pursuit policy.</p> <p>ii. Adopt in the short term (30-45 days) an interim foot pursuit policy developed in consultation with the community through the issuance of a Standard Operating Procedure (as was done for BWCs) that would limit foot pursuits, pending the development of a General Order after the receipt of the PERF report.</p>	<ul style="list-style-type: none"> <li>FCPD states it has a foot pursuit policy and data tracking form, citing <a href="#">Regulation 203.8</a>, on Prisoner Care and Custody (adopted March 14, 2023). <b>Further information requested.</b></li> </ul>

Comparison of Police Reform Matrix Working Group Recommendations with FCPD Reform Initiatives

<b>C. INDEPENDENT OVERSIGHT</b>	
Working Group <a href="#">Recommendation</a> (starting p. 24)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p><b>1. Implement Full Statutory Authority under VA Code § 9.1-601 per Plan.</b> <a href="#">Arlington</a>, <a href="#">Alexandria</a>, <a href="#">Richmond</a> and <a href="#">Virginia Beach</a> have passed ordinances providing expanded authority, as have many large urban jurisdictions nationally and the State of Maryland.</p> <p>i. The CRP and the IPA should be directed to develop coordinated plans, with community participation, for implementation of their respective new responsibilities for the BOS's approval by a date certain (e.g., July 1, 2024). Any differences between the plans will be presented to the BOS as part of the approval package.</p> <p>ii. Plans should include a delineation of circumstances in which the CRP and/or the IPA would monitor FCPD investigations or conduct independent ones; the CRP's role in use of force investigations and whether the IPA's automatic authority in use of force would extend beyond cases involving serious injury or death; and whether the CRP and/or the IPA should impose or recommend disciplinary actions. The plan should also include a preliminary estimate of resources needed.</p>	<ul style="list-style-type: none"> <li>Introduction of non-disciplinary corrective actions to facilitate officer counseling, coaching, remedial training, and other supportive action.</li> </ul>
<p><b>2. Immediate Authorization of Certain Authority.</b></p> <p>i. Clarify CRP's standard for review to include a determination whether FCPD's internal administrative decision and/or key findings are correct, and if not, recommend reversal to the FCPD or the BOS.</p> <p>ii. Provide for automatic CRP review of all FCPD administrative investigations involving allegations of bias or profiling.</p> <p>iii. Provide contemporaneous input to the IPA through the CRP Executive Director on the IPA's monitoring and review of use of force that results in serious injury or death and as to in-custody deaths.</p>	
<p><b>3. Independent Audit of FCPD Internal Administrative Investigation Systems/Processes.</b></p>	
<p><b>4. Independent Criminal Investigations of FCPD Officers.</b> Authorize the IPA to recommend to the Commonwealth's Attorney that criminal investigations of officer-involved shootings and in-custody deaths be handled by independent investigators.</p>	

Comparison of Police Reform Matrix Working Group Recommendations with FCPD Reform Initiatives

E. Police Officer Excellence	
Working Group <a href="#">Recommendation</a> (starting p. 26)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p>1. <b>Recruitment and Retention</b></p> <p>i. Ensure the FCPD is competitive in <b>salary</b> and benefits (access to fitness, educational reimbursement, developmental opportunities) in comparison to surrounding jurisdictions and in response to the increase in the cost of living, with particular attention to detective pay bands.</p> <p>ii. Require the FCPD to provide <b>summary reports of its recruiting activities and outcomes</b>, including the number of applicants, interviewees, and selectees, broken down by gender, race, ethnicity, and national origin, the extent to which the FCPD has been able to recruit qualified applicants, and a discussion of any challenges to recruiting high-quality applicants. [PRR38]</p>	<ul style="list-style-type: none"> <li>• Numerous recruitment initiatives; FCPD notes it recruited largest and most diverse recruit class in FCPD’s history in 2023</li> <li>• George Mason University studying application, recruitment, retention and careers of police officers. <b>Details requested.</b></li> </ul>
<p>2. <b>Officer Performance</b></p> <p>Require the FCPD to demonstrate a commitment to addressing areas of concern highlighted in this action plan by <b>prioritizing, incentivizing, and rewarding positive policing behaviors</b>, by, for example, modifying existing performance evaluations of both officers and supervisors to account for:</p> <ul style="list-style-type: none"> <li>i. demonstrated commitment to the <b>duty to intervene</b> (General Order 540);</li> <li>ii. <b>de-escalation</b> tactics and skill in the field and de-escalation as a first resort;</li> <li>iii. development of <b>community partnerships</b> and community engagement;</li> <li>iv. <b>crisis intervention</b> skills and training; and</li> <li>v. complaints against an officer.</li> </ul>	<ul style="list-style-type: none"> <li>• Creation of Performance Review Board. <b>Details requested.</b></li> <li>• NOTE: <b>Details of training also requested; see item G. 8.</b></li> </ul>
<p>3. <b>Officer Readiness</b></p> <p>i. <b>Compassion fatigue.</b> Study programs like the COMPASS Center in Huntington, West Virginia, which focus on preparing first responders for high-stress environments and critical incident responses. Engage and assist officers in developing skills, resiliency, self-care, training, and mental health resources for overcoming burnout and compassion fatigue,</p>	

Comparison of Police Reform Matrix Working Group Recommendations with FCPD Reform Initiatives

E. Police Officer Excellence	
Working Group <u>Recommendation</u>	Related <u>FCPD Initiative</u> / <u>PERF Report</u>
<p>ii. <b>Drug and steroid testing</b> should be conducted on all police officers involved in incidents that result in death or serious injury. This testing should take place as soon as possible after the incident, but within the time in which targeted substances are still traceable in the body.</p>	
<p>4. <b>Independent Assessments.</b> Obtain independent assessments of the following programs to determine their effectiveness and whether modifications should be made:</p> <p>i. <b>Incident Support Services</b> provided to officers under General Order 430.4 with a particular focus on assessing whether employee assistance and support services (e.g., Employee Assistance Program, Peer Support Team, psychologist, and chaplain services) adequately address the needs of officers involved in circumstances involving death or serious injury.</p> <p>ii. <b>Early Intervention System</b> to ensure demonstrated success in proactively identifying and treating officers at risk of using excessive force or other conduct that would subject them to discipline.</p> <p>iii. <b>Physical examination and wellness sessions</b>, which are required under General Order 201.13 on an annual, biennial, or triennial basis depending on officer age, with a particular focus on assessing whether the established timeframes are appropriate and whether these services adequately address officer needs.</p>	
<p>5. <b>Actionable Feedback</b></p> <p>i. Implement means for the BOS and the FCPD to obtain actionable <b>input from sworn officers</b> on a periodic basis to inform decision-making on topics such as those covered in a 2018 Fairfax County Police Department Officer Survey performed by George Mason University.</p> <p>ii. Provide a basis for dialogue between and among police officers, supervisors, and the command structure to <b>monitor operating culture</b> including attitudes about work, leadership, training, and equipment along with any <b>perceived barriers to officer performance</b> consistent with FCPD’s values and policies. <b>Summaries</b> that maintain the confidentiality of responses should also be <b>published</b>.</p>	



Comparison of Police Reform Matrix Working Group Recommendations with FCPD Reform Initiatives

F. Community Engagement and Participation	
Working Group <a href="#">Recommendation</a> (starting p. 29)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p><b>1. The Need.</b> Community members are “engaged” with the FCPD when they have a meaningful role in the deliberations, discussions, decision-making and/or implementation of projects or programs affecting them. The FCPD has over the years designed and implemented numerous programs and initiatives to engage with Fairfax County residents on policy and program matters; however, more can be done with intensity and authenticity to engage community members. Some community members feel that their voices are not heard, resulting in distrust of those tasked with keeping them safe, undermining community policing.</p>	<ul style="list-style-type: none"> <li>• Creation of staff positions: Community Engagement and Equity Bureau; LGBTQ+ Liaison; Muslim Liaison; Community Outreach Position</li> <li>• Creation of Community Policy Workgroup. <b>Details requested.</b></li> </ul>
<p><b>2. Comprehensive plan for community engagement.</b> Devise and implement a comprehensive and integrated plan for strengthening police officer relationships with the community they serve, including <b>adding evaluation criteria to performance reviews.</b></p>	
<p><b>3. Written protocol for engagement.</b> Establish a public protocol for regular community participation, including listening sessions and a <b>Community Advisory Group (CAG)</b>, on the role of police and FCPD practices, policies, and training. The CAG will <b>meet regularly</b> with County and FCPD leadership to discuss concerns and e the authority to <b>publish reports</b>. Membership should include advocates and members of affected communities, <b>appointed by the BOS.</b></p>	
<p><b>4. Conduct customer-service audits,</b> developed <b>with community input</b>, of traffic and all other routine stops by FCPD officers. Findings to be reviewed by CAG and published annually.</p>	<ul style="list-style-type: none"> <li>• GMU <a href="#">random sample survey</a>; <a href="#">post-service survey</a>; <a href="#">community sentiment survey</a> announced</li> </ul>
<p><b>5. Representation criteria; resolving disagreements.</b> Require that representation on FCPD policy co-production initiatives include representatives from affected communities and provide advance public disclosure of the representatives. A protocol for resolving disagreements between FCPD and the community representatives should be established.</p>	
<p><b>6. Training Input.</b> Community members with a <b>diverse representation</b> and lived experience should observe and provide feedback on FCPD training. A <b>public forum</b> should be held on FCPD training and internal oversight as it relates to the racial and other disparities in FCPD officer actions.</p>	

G. Transparency, Data Reporting, and Data Analysis	
Working Group <a href="#">Recommendation</a> (starting p. 31)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p><b>1. The Need.</b> The FCPD has made great strides in providing open data with dashboards for public dissemination. Public data, however, is often presented in a manner that overstates the proportion of White arrestees by including Latino individuals in that category, discourages year-over-year comparisons, lacks standardized formats, and rarely includes any measures of disproportionality. Finally, data on police pedestrian stops and searches is not made public. Body worn camera release has appeared slow from the perspective of the public and does not appear to be expressly reviewed to assess disparities in treatment. Information on other key topics of public concern, such as more detail on the nature and extent of training, is also not disclosed.</p>	<ul style="list-style-type: none"> <li>• Creation of Office of Data and Strategic Initiatives (ODASI).</li> <li>• FCPD Open Data Portal</li> </ul>
<p><b>2. Transparency of Demographic Data</b></p> <p><b>i. Open portal &amp; annual reports on all key actions.</b> Provide public access to demographic data through an online searchable database and annual reports for all key police actions, to include pedestrian and traffic stops, frisks, searches, citations and warnings, summons, custodial arrests, and uses of force.</p> <p><b>ii. Combined race/ethnicity format.</b> Standardize use of a combined race/ethnicity categories (Hispanic/Latino individuals of all races together) to better reflect proportionality, consistent with the practice of Virginia Community Policing Act and Fairfax demographic dashboards.</p> <p><b>iii. Minor arrests linked to behavioral issues.</b> Work with community members to identify minor offenses linked to behavioral and mental health issues and those with significant disparity in arrest rates for people of color. Monitor the reduction in arrest rates and disparity of identified offenses, noting year over year changes.</p>	

G. Transparency, Data Reporting, and Data Analysis	
Working Group <u>Recommendation</u>	Related <u>FCPD Initiative</u> / <u>PERF Report</u>
<p><b>3. Specific Use of Force Analysis</b></p> <p><b>i. Sequencing.</b> For each encounter involving the use of force, capture all interaction between the civilian(s) and officer(s) sequentially, in the order in which they occurred. This includes for each officer, preliminary interactions such as a consensual or investigatory stop, each force tactic or weapon used, each non-force tactic used by each officer (verbal warnings, de-escalation measures such as time, cover, and distance), each action taken by each civilian, and any efforts to intervene in excessive force.</p> <p><b>ii. Disparities over time.</b> Conduct annual or biannual follow-up analyses with enhanced use of force data to evaluate whether observed disparities diminish or change over time.</p> <p><b>iii. Escalation studies.</b> Analyze all police stops that evolve from a minor violation into a use of force; identify and flag police officers whose interactions reflect a pattern of escalation.</p> <p><b>iv. Specialized unit disparity.</b> Report annually demographic and disparity data on key police actions by each specialized police unit previously identified as being of potential concern. This should include stops, frisks, searches, consents (written and oral), arrests and uses of force.</p>	<ul style="list-style-type: none"> <li>• Mandatory reporting requirements and responses by supervisors to all scenes where force is used regardless of injury.</li> </ul>
<p><b>4. Multi-year Disparity Analysis on Major Topics</b></p> <p><b>i. Annual study.</b> Publish annually a multi-year disparity analysis of major police actions such as stops, arrests and use of force, developing benchmarks in consultation with community and experts.</p> <p><b>ii. Independent study of stops.</b> Contract for an independent study by expert researchers of disparity in police stops.</p>	<ul style="list-style-type: none"> <li>• National Policing Institute Traffic Stop Data study (2023). <b>Details requested.</b></li> </ul>
<p><b>5. Digital Data Access, Release, and Analysis</b></p> <p><b>i. BWC Release.</b> Modify BWC release policy to require release of all officer BWC footage <b>within 10 days</b> of any incident involving deadly or serious force (subject to consent by the victim or the victim’s family). The Chief of Police may, by public notice, extend the time for release up to a maximum of 30 days, but only to the extent that additional time is required for due process, e.g., to maintain the integrity of the investigation.</p>	

G. Transparency, Data Reporting, and Data Analysis	
Working Group <u>Recommendation</u>	Related <u>FCPD Initiative</u> / <u>PERF Report</u>
<p>ii. <b>Data Control Board.</b> Establish a Data Control Board made up of representatives from the FCPD, Commonwealth Attorney, and the public to oversee access to digital data collected.</p> <p>iii. <b>BWC Review for Disparities, etc.</b> Utilize body-worn camera footage to evaluate racial/ethnic disparities in treatment by the FCPD, force escalation or de-escalation, accuracy of characterization of the community member’s race and other factors relevant to equitable treatment.</p>	
<p><b>6. Access to a Summary of Officer Misconduct Complaints and Disposition</b></p> <p>i. Make accessible to the public, to the extent permissible, a database showing when officers are found to have violated FCPD policy or the law, committed official misconduct or resigned under investigation for these offenses.</p>	
<p><b>7. FOIA Reform to Promote Less Restricted Information Release</b></p> <p>i. Adopt a "<b>pre disposition to disclose</b>" approach with FCPD public records, with any exceptions strictly and narrowly construed.</p> <p>ii. Revise County and Department FOIA regulations to significantly <b>narrow the Chief's discretion to withhold officer personnel records and administrative investigative materials</b> (including investigative materials subject to IPA and/or CRP review) absent an adverse investigatory effect. The Department should develop a formal policy, through co-production with the community, on the release of such records and the definition of “adverse investigatory effect.”</p>	
<p><b>8. Key Training Programs and Schedules Publicly Available</b></p> <p>Include key training topics and schedules in <b>General Orders</b>, specifying which training is mandatory and which is recommended, to provide transparency to the community. <b>Identify proportion of officers who have received training</b>, and year-to-year variations in training requirements, in public documents that reference the standards in the General Orders.</p>	<ul style="list-style-type: none"> <li>• Department training initiatives described in <a href="#">June 26, 2023 press release</a>. <b>Further details requested</b></li> <li>• PERF p. 4: as of March, 2023, only about <b>1/3 of FCPD officers had completed ICAT</b> (crisis intervention) training.</li> </ul>

H. Specialized Police Units	
Working Group <a href="#">Recommendation</a> (starting p. 34)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p><b>1. Identify units of potential concern.</b> The recent shooting by officers of FCPD’s Tysons Urban Team (and the high-profile shooting of Tyre Nichols earlier in 2023 by a specialized unit of the Memphis police called the Scorpions) prompted MWG questions regarding the use and practices of specialized units and the belief their use in Fairfax should be better understood. FCPD maintains 34 specialized units. We should evaluate the roles and responsibilities of each specialized police unit. Identify, in consultation with impacted community member representatives, units of potential concern, including reason for formation, criteria used to target suspects, how officers are selected, trained, and rewarded for participation, and the ratio of supervisor (sergeant) to patrol officers compared to regular patrol units.</p>	
<p><b>2. Annual demographic reporting.</b> Report annually demographic and disparity data on key police actions by each specialized police unit, previously identified as being of potential concern. This report should include use of force for each identified unit, including with regard to stops, frisks, searches, consents (written and oral), and arrests</p>	
<p><b>3. Assess disparate treatment.</b> For each specialized unit identified as being of potential concern, assess, with community input, potential disparate treatment among diverse groups of residents. The assessment should include use of force for each identified unit and stops, frisks, searches, consents (written and oral), and arrests.</p>	
<p><b>4. SRO focus on serious violent offenses.</b> Limit role of School Resource Officer criminal investigations to serious violent offenses not appropriate for resolution through a school’s disciplinary procedures.</p>	

I. Monitoring and Evaluating Program Progress	
Working Group <a href="#">Recommendation</a> (starting p. 36)	Related <a href="#">FCPD Initiative</a> / <a href="#">PERF Report</a>
<p><b>1. The Need.</b> Evaluating the effectiveness of programs in meeting public objectives is an essential component of local government management. The basic questions are (a) is the program being implemented for better policing in Fairfax County accomplishing its intended purpose; (b) are the resources being put into the program being well used; and (c) what lessons are learned through the implementation to make the program better? The best and most useful program evaluation is data-driven, which is one of the key reasons this report gives such emphasis to collecting quality performance information.</p>	
<p><b>2. Annual Progress Report.</b> The County Executive should report annually to the BOS, a community working group, and the public assessing FCPD’s implementation of (i) the Ad Hoc Commission, the UTSA, and the CAC recommendations, (ii) changes in Virginia law, and (iii) policies and practices adopted by the FCPD in response to community recommendations (e.g., UOF and de-escalation, Diversion First, BWC, CIT, and the use of internal UOF and vehicle pursuit lessons-learned committees).</p>	