

Police Civilian Review Panel

June 20, 2019

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:

Hansel Aguilar

Jimmy Bierman

Bob Cluck

Hollye Doane, Panel Vice-Chair

Doug Kay, Panel Chair

Shirley Norman-Taylor

Anna Northcutt

Rhonda VanLowe

Panel Members Absent:

Colonel Gregory Gadson

Others Present:

Gentry Anderson, OIPA

Julia Judkins, Counsel

Colonel Edwin Roessler Jr., Chief of FCPD

Second Lieutenant Ryan Low, FCPD

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

The Panel's business meeting was called to order at 6:58 p.m.

Meeting Summary Approval: Ms. Doane moved approval of the Meeting Summary from the Panel's May 30th meeting. Ms. VanLowe seconded the motion and it carried by a vote of eight, with Colonel Gadson being absent.

Review of CRP-19-04: Mr. Kay provided a summary of the complaint and asked if the complainant was present. The complainant was not present.

Fairfax County Police Department (FCPD) Representative Statement: Chief Roessler noted that the complaint posed a conflict with the Panel's timeline as outlined in the Panel's Bylaws and asked for an explanation as to why good cause was granted. Mr. Kay reviewed the timeline of events related to the complaint and explained that the criminal prosecution associated with the complaint concluded at the end of August 2018 and the initial complaint was submitted to the Panel in the beginning of September 2018. The Panel would have had to defer the complaint if it was submitted while pending litigation existed; this was the basis for the Panel finding good cause. Chief Roessler asked if anyone from the FCPD was consulted related to the Panel's determination of good cause and Mr. Kay replied in the negative. Second Lieutenant Low provided a summary of the incident which was the subject of the complaint and the FCPD investigation. The Office of the Commonwealth's Attorney and the Office of the County Attorney provided independent reviews and opinions of the incident and determined that the tactics used by the FCPD within the law and that entrapment did not occur. The FCPD's investigation found that the officer who used offensive language was found in violation of the FCPD General Orders. Second Lieutenant Low referenced an updated FCPD policy which will ensure that all known parties will be informed of vehicle seizures.

FCPD Representative Questioning: Mr. Kay opened the floor for Panel Members to ask Chief Roessler and Second Lieutenant Low questions regarding the investigation.

Ms. Doane: You mentioned that two policy recommendations were made. The first is that FCPD would determine within 90-days if there is a lien on the vehicle and whether the amount of the lien would make it cost prohibited for the forfeiture to continue. The second is that the FCPD would notify the registered owner of the vehicle that the vehicle will be released to the lien holder. Have the recommendations been implemented? Second Lieutenant Low replied that the policies were immediately implemented to avoid similar circumstances in the future. *Chief Roessler said he would follow up with the Panel to provide the updated SOP.*

Ms. Doane: The United States Supreme Court ruled in *Timbs vs. Indiana* that the 8th Amendment excessive fines clause is incorporated into the 14th Amendment, however, the Court did not define excessive fines. Are you aware of any policy changes within the FCPD or County in response to this ruling on the forfeiture of vehicles? Chief Roessler replied that the FCPD coordinated with the Office of the Commonwealth Attorney and the Office of the County Attorney for the interpretation of that ruling. The FCPD is responsible for making the arrest and seizure while the court process is responsible for trying the case.

Mr. Kay: Within 90-days, a judgment is made whether to move forward with the forfeiture of the vehicle. In making that determination, is the decision ultimately made by the Commonwealth's Attorney in consultation with the FCPD? Chief Roessler replied that the FCPD presents the case to the Commonwealth's Attorney and they would make the decision.

Mr. Kay: Was the decision to release the vehicle back to the lien holder made by the Commonwealth's Attorney? Lt. Low replied that it was a joint decision after finding out if it was a financially feasible option to purchase the vehicle. In this case since there was a lien on the vehicle, the lienholder was given the right of first refusal.

Mr. Bierman: When you discussed the facts of the incident, you mentioned that the ads are designed to find people who are involved in the sale of narcotics. It seems that the complainant wanted to procure drugs in order to engage in a sexual encounter, and not for purposes of distributing them. The Chief replied that the statement was beyond the scope and boundaries of the Panel's review authority and the case was tried in court.

Ms. VanLowe expressed her concerns with the Panel commenting on the application of the law and reminded the Panel that it is their mission to evaluate the accuracy, completeness, thoroughness, objectivity, and impartiality of the FCPD investigation. Panel discussion ensued related to the legal analysis of the complaint.

Mr. Bierman: How does the FCPD determine whether a person who responds to a Craigslist advertisement is motivated more so by the distribution of drugs rather than the sexual encounter? The Chief responded that the question was about police tactics rather than the investigation and declined to respond.

Mr. Aguilar: Was there a record of the officer's discipline within the FCPD Investigation file? Panel Members replied that they saw the officer's discipline record within the FCPD Investigation file.

Mr. Kay: The complainant raised an issue regarding the takeover of his email account and alleged that some of the emails on the account were missing. Second Lieutenant Low clarified that the complainant's email account was never "taken over," but that the Complainant gave information to the detective to allow him to use the email account.

Mr. Kay: Is there a policy or procedure in place to ensure that emails are secured and retained? Second Lieutenant Low replied that all communications are considered evidence and will be retained.

Review Deliberations: Mr. Kay directed Panel Members to the three types of findings from which Panel Members can choose to vote when reviewing a FCPD Investigation, which are found in the Panel's Bylaws. He invited the Panel to discuss whether the FCPD Investigation was accurate, complete, thorough, objective, and impartial. Panel Members discussed the Panel's scope as it relates to their review authority. Ms. Doane expressed her concern with the language the officer used with the complainant. She said that the language used by the officer in this incident was appalling. The word used to describe the complainant debases one's human dignity and worth and is often used as a playful jab. The word causes hurt because people with disabilities are special and valued. The FCPD should be role models in the community and the word should never be spoken by an officer.

Review Findings: Mr. Bierman moved to concur with the findings and determinations detailed in the FCPD Investigation Report. Ms. VanLowe and Ms. Northcutt jointly seconded the motion and it carried by a vote of eight, with Colonel Gadson being absent.

Review Report for CRP-18-27: Mr. Kay reminded the Panel that a draft Review Report was circulated to the Panel and asked if Panel Members had any edits or comments to be considered. Mr. Aguilar recommended that in Section II of the report, the Panel should specify whether the statements comes from the point of view of the officer or the complainant. He asked that the phrase "According to the officer," be inserted prior to facts provided by the officer's point of view and the change was accepted.

Mr. Kay referenced the proposed comment to be included in the review report. There was no objection from Panel Members and the comment will be included.

The Panel discussed the inclusion of the complainant's social media information in the FCPD's supplemental report and the potential chilling effect it could have on the community trust with the Panel and the FCPD. Mr. Aguilar asked if the Panel would consider including a recommendation in their Review Report regarding the inclusion of the complainant's social media information in the FCPD's supplemental report, which was provided in response to the Panel's request for additional investigation. Mr. Kay agreed. Ms. Judkins suggested that the Panel include a statement in the Review Report that the information was publicly sourced by the FCPD. The Panel accepted the inclusion of the following language as a recommendation to the report: "The Panel expressed concern that the inclusion of the social media information about the complainant was inappropriate, unnecessary, and may have a chilling effect on future complainants." The recommendation will be "wordsmithed" by Ms. Doane prior to the report being finalized and approved.

Mr. Kay asked Mr. Aguilar to circulate his updated dissent to the Panel for review. The Panel will vote on the final review report at the June 22nd training.

Initial Review for CRP-19-07: Mr. Aguilar provided a summary of the complaint and allegations. The subcommittee agreed that under current Panel procedures, the complaint could be reviewed by the

Panel. However, the subcommittee discussed a summary review process that would allow for the disposal of review requests which lack merit or where the incident subject of the complaint has been resolved. Mr. Bierman moved that the Panel adopt the Initial Review Report for CRP-19-07 that was developed by the Subcommittee. The motion was seconded by Ms. Northcutt and carried by a vote of eight, with Colonel Gadson being absent.

The Panel then discussed the implementation of a summary judgement procedure. Mr. Aguilar expressed his concern about the Panel's future workload if a summary judgement procedure is not adopted and he emphasized that Panel Members should trust each other to make these types of decisions at the subcommittee level. Ms. Judkins suggested that the Panel propose an amendment to the Board of Supervisor's Action Item which established the Panel. Ms. Doane noted that if a summary judgement procedure is adopted by the Panel, it must include clear standards and guidelines.

Mr. Kay suggested the Panel form a two-member subcommittee to explore whether the Panel should adopt a summary judgement procedure and whether discretion to undertake a review can be exercised by the subcommittee or the Panel as a whole. Mr. Cluck and Mr. Bierman volunteered to form the two-member subcommittee.

Panel Discussion on CRP-19-15: Mr. Kay provided a summary of the complaint's timeline to the Panel and announced that the review request was untimely filed by ten months from the date of the FCPD Disposition letter when only 60-days is permitted by the Panel's Bylaws. Mr. Kay asked the Panel whether the complainant should have the opportunity to provide reasons for good cause for the delay in the submission of the review request or if it should be rejected.

Ms. VanLowe asked if the FCPD Disposition Letter included notice that the Panel must receive review requests within 60-days of the date of the letter. Mr. Kay replied that the FCPD's letter did not mention the 60-day deadline. *Mr. Kay is to bring this up at the next quarterly meeting.*

Mr. Aguilar suggested that going forward in every case where timeliness is an issue, the Panel send a letter to the complainant reminding them of the timeline related to the submission of review requests as outlined in the Panel's Bylaws and ask them to provide reasons for good cause for the Panel to consider. Mr. Kay will send a such a letter to the complainant in this case. If the complainant responds to the Panel's request for good cause, the complaint will be on the July meeting agenda to determine if the reasons given amount to good cause.

Report on 2nd Quarterly Meeting: Mr. Kay met with Ms. Doane, Ms. Judkins, OIPA staff, Major Owens, the Chief of Staff of the Chairman of the Board of Supervisors, the Chief of Staff of the Chairman of the Public Safety Committee, and a representative of the Office of the County Attorney at the second Quarterly Meeting. The FCPD provided responses to Panel recommendations and comments. One recommendation currently under consideration is the circulation of officer discipline department wide so that officers are aware of offenses and the consequences.

They discussed the Panel's desire to show in car video footage at Panel Meetings and the FCPD responded that the footage could be released on a case by case basis. In addition, FCPD Disposition letters, the use of statistics in the FCPD Investigation file, and the FCPD's inclusion of complainant information in a supplemental investigation report were also discussed.

Ms. VanLowe asked if a decision was made regarding the amount of information the Panel can include from the FCPD Investigation File in Panel Review Reports. Ms. Doane said she was an advocate for the Panel to publish reports similar in detail to the reports that the Independent Police Auditor publishes. Mr. Kay explained that he submitted language to revise the Board of Supervisors Action Item which established the Panel to address this issue.

New Business: Mr. Aguilar announced that June 20th is World Refugee Day and that many refugees flee from police violence and unrest. He commended his fellow Panelists for their dedication and hard work.

Mr. Bierman asked if it would be possible to review FCPD investigation files outside of the hours of 8:00 a.m. to 5:00 p.m. Mr. Kay announced he advocated for online file reviews and the FCPD responded that this option would not be available. He reminded the Panel that the FCPD has made weekend and evening hours available for Panel Members to review files if one-week notice is provided.

Next Meeting: The Panel's next business meeting is Thursday, July 11, 2019, at 7:00 p.m. in the Government Center, Conference Room 232.

The meeting was adjourned at 9:02 p.m.