

Police Civilian Review Panel

November 1, 2018

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:

Hansel Aguilar (Remote Participation)

Bob Cluck

Steve Descano

Hollye Doane (Arrived at 7:03)

Doug Kay, Panel Vice-Chair

Anna Northcutt

Adrian Steel

Rhonda VanLowe, Panel Chair

Others Present:

Max Allen

Elizabeth Allen

Gentry Anderson

Julia Judkins

Major Gervais Reed

Richard Schott, Independent Police Auditor

The Panel's business meeting was called to order at 7:00 p.m.

Remote Participation by a Panel Member: Ms. VanLowe announced that Mr. Aguilar would be participating telephonically. She asked Mr. Aguilar to state, for the record, his reason for remote participation. Mr. Aguilar stated that his reason for remote participation was transportation difficulties.

Meeting Summary Approval: Mr. Descano moved approval of the Meeting Summary from the Panel's October 4th meeting. Mr. Steel seconded the motion, and it carried by unanimous vote.

Overview of the Review Process: Ms. VanLowe discussed the purpose of the Panel's Review Meeting. She stated that all Panel Members have reviewed the completed Fairfax County Police Department (FCPD) Investigation into Mr. Allen's complaint. She explained that the Panel is unable to conduct further investigation, and that discussion of officer discipline must be discussed in closed session.

Complainant Statement: The complainant, Mr. Max Allen, stated that the reason he submitted a Request for Review to the Panel was due to inconsistencies in the police report, specifically the color of the involved vehicle and who helped him out of the roadway after the collision.¹ Mr. Allen would like the report corrected. The complainant's wife, Ms. Elizabeth Allen, felt that she could not get help from officers during the aftermath of the collision.

¹ Note that all statements, questions, and responses are paraphrased in this summary. A partial audio recording of the meeting is available on the Civilian Review Panel's website at: <https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>. Due to an operational error, the audio recording captured the meeting starting at approximately 7:23 p.m.

Complainant Questioning: Next, each Panel Member was given the opportunity to ask the complainant questions regarding his complaint.

Mr. Kay: Do you recall being asked about the color and description of the involved vehicle by an officer of the FCPD? Were you in the hospital when you were asked these questions? Mr. Allen said he was asked about the description of the involved vehicle and that he was at the hospital when he was asked.

Mr. Descano: Were all witnesses to the incident investigated by FCPD? Ms. Allen said that all contact information for the witnesses were provided to the officer.

Ms. Doane: Was there paint of the involved vehicle left on your motorcycle after the collision? Mr. Allen replied that there was no paint of the involved vehicle on his motorcycle. Ms. Doane noted that the Allens contacted the FCPD multiple times. Ms. Doane asked the specific date of when they asked the officer to make changes to the report. Ms. Allen said she requested that changes be made to the report on June 2nd. Discussion ensued regarding dates the Allens had contact with the FCPD.

Mr. Steel: Have you seen a revised report? If so, does the report accurately reflect the color of the involved vehicle and who helped you out of the roadway? Mr. Allen said he did see a revised report but neither have changed. Mr. Steel asked if the FCPD has been able to track down the involved driver. Mr. Allen replied he did not know.

Mr. Aguilar: Is the allegation in your complaint that the police report was inaccurate or that the officer had a poor demeanor and treated your request carelessly? Ms. Allen replied the complaint her husband submitted is mostly about the report but that the officer did not seem to genuinely want to help correct the report.

Ms. VanLowe: Have you resolved these issues with your insurance company? Ms. Allen replied that it was taken care of and that they had to obtain a lawyer.

FCPD Representative Statement: Major Reed stated that the FCPD acknowledged errors were made and that they would like to make corrections to the best of their ability. He also thanked Mr. and Ms. Allen for attending. Major Reed gave a summary of the incident involving Mr. Allen's collision and how the complaint was investigated by the FCPD Internal Affairs Bureau (IAB). He noted that the involved officer made errors, was held accountable, and corrective actions were taken to prevent future errors.

FCPD Representative Questioning: Next, each Panel member was given the opportunity to ask Major Reed questions regarding the Investigation into the complaint under review.

Mr. Steel: What is the status of the recommended training? Is the training department wide or localized at the station? Major Reed replied that the Commander of the station prescribed remedial training to all officers at the district station. Major Reed also explained that the vehicle crash report was formerly a paper form but is now a web-based form that is sent directly to the State Department of Motor Vehicles.

Mr. Kay: Are officers within the department aware of reprimands to learn from the mistakes of their fellow patrol officers? Major Reed stated that officer reprimands are not globally publicized within the Department, but that it could be shared by word of mouth.

Ms. Doane expressed concern that the commander's report suggested that had Mr. Allen's insurance company contacted the officer with questions, the officer could have clarified what she may not have

documented in the report accurately. Ms. Doane stated that the burden of proof as to whether a police accident report is accurate should not be on an outside third party, but on the FCPD. Ms. Doane asked why the initial investigator did not inquire about and review nearby surveillance video, nor interview both witnesses in the initial report, but instead leave these to the Commander to complete in his review. Major Reed said that he will seek answers to these questions.

Mr. Aguilar: Can the web-based form be reviewed by a supervisor before it is sent to the state? Major Reed replied that supervisor review of the report is not current FCPD policy. Mr. Aguilar asked what allegations were being investigated and whether an allegation related to officer demeanor was investigated. Major Reed said that the FCPD investigated any and all misconduct when conducting the investigation based on the statements of Mr. Allen.

Mr. Steel: Was the FCPD able to track down the driver of the involved vehicle? Major Reed replied that the driver of the involved vehicle has not been identified.

Mr. Cluck: What information was provided to the Allens regarding the completed investigation? Major Reed said that the Allens were provided with the revised police report and that additional dialogue between the FCPD and the complainant may have clarified other matters.

Ms. VanLowe: Has the report been corrected to address Mr. Allen's concerns? Major Reed answered that the concerns of Mr. Allen included the make and color of the vehicle, and if a review of surveillance video from a nearby government video was reviewed. He stated the make and color of the vehicle noted in the police report came from the 9-1-1 call and the two witnesses who provided the information to the supervisor on scene (captured on his body worn camera).

Mr. Kay: When contradictory statements from witnesses are given to an officer, is it the officer's job to take the most credible information? Major Reed replied in the affirmative.

Ms. Doane: When there is disputing information from witnesses, is there a way for the officer to report the conflicting information? Major Reed stated that it is discretionary.

Mr. Kay: Is there a narrative section on the report? Major Reed replied in the affirmative.

Ms. VanLowe: With the new web-based system, is the department aware of how often errors like these occur? Major Reed replied that he has not inquired about this.

Ms. VanLowe asked the Panel if they would like to proceed with deliberation. It was agreed that Panel would deliberate and vote on a recommendation.

Recess into Closed Session: At 7:57 p.m., Ms. VanLowe moved that the Panel recess and go into closed session for discussion and consideration of personnel matters enumerated in Virginia Code Section 2.2-3711(a)(1). Those matters involve confidential personnel information pertaining to the FCPD officer subject to the investigation being reviewed by the Panel. Mr. Kay and Mr. Steel jointly seconded the motion and it carried by unanimous vote.

Certification Regarding Items Discussed in Closed Session: The Panel returned to open session at 8:05 p.m. Ms. VanLowe moved that the Panel verify that, to the best of each member's knowledge, only Panel matters lawfully exempted from the open meeting requirement, and only such Panel business

matters as were identified in the motion by which the Closed Session was convened, were heard, discussed, or considered by the Panel during Closed Session. The motion carried by unanimous vote.

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. Ms. VanLowe asked each Panel Member to discuss their thoughts on whether the FCPD Investigation was accurate, complete, thorough, objective, and impartial.

Review Findings: After Panel Members discussed the FCPD Investigation, a vote was called to determine the conclusion of the Panel's findings in their review of the FCPD's Investigation into the complaint submitted by Mr. Allen. Mr. Kay moved that the Panel concur with the findings and determinations of the FCPD as detailed in their Investigation Report. Ms. Doane seconded the motion and it carried by a vote of six, Mr. Aguilar voting "Nay" and Mr. Steel abstaining. *Ms. VanLowe asked that Panel Member submit comments to be incorporated into the report to Mr. Kay and Mr. Descano, the assigned Review Liaisons, who are charged with drafting the final report. Ms. VanLowe asked that Mr. Kay and Mr. Descano circulate a final draft of the report among Panel Members for feedback before the December Panel Meeting.* Ms. VanLowe thanked Panel Members for their thoughtful discussion, and to Major Reed for participating and being available to answer questions.

Confidentiality Policy: Ms. VanLowe deferred discussion regarding the Confidentiality Policy until the December meeting.

Public Forum Update: Mr. Steel thanked Ms. Anderson for her efforts in planning and marketing the Panel's Public Forum. Mr. Steel announced that the Panel's Public Forum will take place on December 10 from 7:00 to 9:00 pm at the Mount Vernon Governmental Center. There will be a fifteen to twenty-minute presentation by the Panel, and then an opportunity to take questions from the audience. The Independent Police Auditor, Mr. Schott, will join the Panel during the Public Forum to present on the Auditor's responsibilities.

Outreach Update: Ms. Doane announced that she met with the Autism Society of Northern Virginia in October. She and Ms. VanLowe will be meeting with the Arc of Northern Virginia in January.

Panel Member Email Accounts: Ms. Northcutt asked for an update on Panel Members receiving county email accounts. Ms. Anderson replied that the Department of Information Technology (DIT) is still in the process of setting up the accounts and she will continue to follow up with DIT regarding this project.

Next Meeting: The Panel's next meeting is scheduled for Thursday, December 6, 2018, at 7:00 p.m. in the Government Center, Conference Room 232.

The meeting was adjourned at 9:04 p.m.