

**Police Civilian Review Panel**

August 2, 2018

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members present:

Hansel Aguilar

Hollye Doane

Doug Kay, Panel Vice-Chair

Anna Northcutt

Randy Sayles

Adrian Steel

Rhonda VanLowe, Panel Chair

Panel Members absent:

Kathleen Davis-Siudut

Steve Descano

Others present:

Gentry Anderson

Julia Judkins, Counsel

Rachelle Ramirez

Richard Schott, Independent Police Auditor

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

Meeting Summary Approval: Mr. Steel moved to approve the meeting summary from the Panel's May 3 Meeting. Mr. Sayles seconded the motion, and it carried with a vote of seven, Ms. Davis-Siudut and Mr. Descano being absent.

Review of Complaint Status: Ms. VanLowe referenced a handout that summarizes the status of Complaints received by the Panel to date and noted an uptick in the number of Initial Complaints received by the Panel in the past two months. The FCPD completed its investigation into an Initial Complaint received by the Panel (identified as Mr. D) and the Complainant has been notified by the FCPD. A few Complaints recently received were difficult to decipher and there was a question regarding the Complainants' stability. Ms. VanLowe, along with Office of the Independent Police Auditor (OIPA) Staff, met with the Director of the Community Services Board (CSB) to see how the CSB could aid the Panel in providing effective services to Complainants. Ms. Anderson explained that the Mr. N complaint was closed due to the Complainant's satisfaction with the FCPD investigation into his Complaint. *Ms. Anderson will send the latest Complaint Status handout to Panel Members electronically.*

Review of the Disparity in FCPD Use of Force Incidents by Race in 2015: Independent Police Auditor, Richard Schott, presented to the Panel OIPA's latest report, *Review of the Disparity in FCPD Use of Force Incidents by Race in 2015*. He thanked Ms. Ramirez for her help in the process of developing the report. It was noted there were limitations to the data and that a qualitative approach was used rather than a quantitative analysis. After reviewing individual incidents, the OIPA was unable to discern a disparity in the level of force used on African Americans and Whites when considering the level of resistance or flight exhibited in individual incidents. It is incumbent to allow time for County initiatives, such as

implicit bias and de-escalation training and the establishment of the Panel, to play out and see how the new initiatives affect future data. The FCPD is soliciting research groups and academics to conduct a quantitative study of use of force data. Ms. Ramirez noted that the review only considers incidents when force was used, not when it could have been used. Mr. Sayles asked why the organizations noted in the report found the exact opposite conclusion when reviewing use of force data. Ms. Ramirez explained that the studies referenced in the report were quantitative empirical studies, where the researchers statistically controlled for different variables, such as arrest rates. Mr. Steel reminded the Panel that the Body Worn Camera (BWC) program ends on September 1<sup>st</sup> and that in the future, using BWC footage may be helpful. Mr. Aguilar said that it would be interesting to see how variables such as the officers' race, education level, and size differential effect an officer's use of force. He also suggested auditing BWC footage to identify potential use of force situations.

Proposed Bylaw Amendments: Mr. Kay explained that amendments to the bylaws need to be made so that Panel practices can be codified. He said that all proposed amendments were screened through the Panel's counsel.

1. The first proposed bylaw amendment adds language from Section VI.C.2(a). Discussion ensued on the proposed duties of Panel review liaisons. A question was raised regarding when Review Liaisons can review FCPD Investigations into Initial Complaints. Ms. VanLowe explained that in regards to one previous Complaint, there was a need for the Liaisons to review the incomplete investigative file to determine the status of Complaints, but that typically Panel Liaisons can review the investigative file at the invitation of FCPD after they send the letter to the Complainant notifying them that the FCPD Investigation is complete. The proposed bylaw amendment would allow the assignment of only one liaison to a Complaint should the volume of Complaints received by the Panel increase in the future. Mr. Kay moved to approve the proposed bylaw amendment that would add "The Chair may appoint, on a rotating basis, one or more Panel Members as review liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel." to the end of Section VI.C.2(a). Mr. Sayles seconded the motion and it carried by a vote of seven, Ms. Davis-Siudut and Mr. Descano being absent.

With the amendment, Section VI.C.2(a) states in its entirety: "The Panel Shall conduct and initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. **The Chair may appoint, on a rotating basis, one or more Panel Members as review liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.**"

2. The second proposed bylaw amendment modifies the language of Section VI.A.1(d). Ms. VanLowe explained that this proposed change clarifies the Panel's process. Mr. Steel moved to approve the proposed bylaw amendment that would strike "the date of the notice sent to the complainant by the FCPD informing the Complainant of the investigation's completion" and add "the date of the FCPD notice sent to the Complainant that informs the Complainant of the completion of the FCPD's investigation of the Complainant's Initial Complaint" to Section

VI.A.1(d). Mr. Kay seconded the motion and it carried with a vote of seven, Ms. Davis-Siudut and Mr. Descano being absent.

With the amendment, Section VI.A.1(d) states in its entirety: “A Review Request filed more than sixty (60) days after **the date of the FCPD notice sent to the Complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint** (unless the Panel determines that there is good cause to extend the filing deadline); or”

3. The third proposed bylaw amendment modifies the language of Section VI.E.1(f). Ms. VanLowe said this specific change was intended to give the Panel discretion to have the Complainant appear before the Panel at a Review Meeting, similar to its discretion to request that the FCPD attend. Panel Members discussed a proposed process where review liaisons would contact the Complainant (in addition to the FCPD and Panel Counsel) to gather more information, or clarify the information provided in the Complaint, to determine the Panel’s authority to review. Discussion ensued to identify the language to codify the Panel’s discretion to review a Complaint without the Complainant present. Panel members debated whether the Panel has the right to invite, or not invite, a Complainant to appear before the Panel. Panel Members agreed to defer discussion of the language to be used in correspondence to Complainants notifying them of a Review Meeting and their opportunity to appear. Ms. VanLowe reminded the Panel that all bylaw amendments will ultimately be approved by the Board of Supervisors. Mr. Kay moved to insert the following phrase at the beginning of Section VI.E.1(f) “At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting,” Ms. Doane seconded the motion. Mr. Steel wanted to clarify that if the motion carries, the Panel is not discouraging complainants from appearing before the Panel. The motion carried by a vote of seven, Ms. Davis-Siudut and Mr. Descano being absent.

With the amendment, Section VI.E.1(f) states in its entirety: “**At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting,** the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.”

4. The fourth proposed bylaw amendment adds language from Section VI.E.1(a). Ms. Doane moved to amend Section VI.E.1(a) to include the following language “If the Panel determines it has authority to review Investigations under article VI.A.1, the Panel shall...” The motion was seconded by Mr. Steel. Ms. VanLowe proposed an amendment to the motion which would change “Investigations” to “an Investigation.” The amendment was accepted, and the motion carried by a vote of seven, Ms. Davis-Siudut and Mr. Descano being absent.

With the amendment, Section VI.E.1(a) states in its entirety: “**If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall** convene a Panel

Meeting to review an investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.”

Policy and Procedure: Ms. VanLowe deferred all discussion regarding the Liaison Policy and Complaint Intake Policy until the September meeting so that Panel members could review them further. *Panel members are to send comments on either policy to the Chair. Mr. Kay will send a proposed change to the Liaison Policy to Panel members for their consideration.*

Outreach: Ms. VanLowe reported that she, along with Mr. Descano and OIPA Staff, met with Supervisor Hudgins (Hunter Mill District) to talk about community engagement and outreach opportunities. She also mentioned that the Panel is in touch with Ms. Ramona Carroll, Interfaith Coordinator with the Department of Neighborhood and Community Services (NCS). Ms. VanLowe pointed out that the Panel was mentioned in the August edition of the NCS Interfaith Common Ground Newsletter. *Mr. Steel requested that the Panel devote time on its September meeting to discuss its outreach efforts and any community member feedback received. Ms. Doane notified the Panel that she planned to reach out to ARC of Northern Virginia in September and Ms. Northcutt expressed interest in joining her.*

VFOIA and Records Retention: Ms. VanLowe informed the Panel that there have been recent changes to the Virginia Freedom of Information Act (VFOIA) and that there is a current effort to develop procedures on records retention for OIPA and the Panel. Ms. Judkins stated that Panel members have a legal obligation to be familiar with all VFOIA requirements and suggested that the Panel hold two separate meetings each year to remind members about the VFOIA requirements. Ms. Judkins emphasized that Panel members should purge non-records so that it will be easier to search through emails when responding to future VFOIA requests. *Panel Members should store all emails to a dedicated folder until members are provided with County email addresses. Members should also store all documents related to the Panel's business in one folder on their computers.* VFOIA requests must be responded to within five business days or (12 days with approval of a 7-day extension), so Panel members will need to produce their emails and documents within a few days to allow OIPA to provide a coordinated response before the deadline.

Panel members were asked to review the documents provided, particularly, *Managing Email for Boards, Authorities, and Commissions*, and *Guidance on Records Retention*, and to reach out to Ms. Ramirez with any questions. Ms. Ramirez stated that the *Guidance* hand out proposes an overall process for records management, as well as guidance for determining what is a record (which should be retained) and what is not a record (which can be disposed). The suggested process is that Panel Members purge their emails of non-records and routine administrative emails on a regular basis, and that the OIPA will send reminders bi-annually (in January and July of each year) instructing Panel members on the records that can be disposed of because they reached the end of their retention period. Ms. VanLowe stated that the Panel's Record Retention Policy will need to mirror OIPA's policy since the Panel's administrative support is provided by the Auditor's office. Ms. VanLowe said that the Panel will devote more time to this topic at a future meeting.

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

The meeting adjourned at 9:14 p.m.