

Police Civilian Review Panel

December 17, 2019

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:

Hansel Aguilar

Jimmy Bierman

Bob Cluck

Hollye Doane, Panel Vice-Chair

Frank Gallagher

Doug Kay, Panel Chair

Shirley Norman-Taylor

Panel Members Absent:

Sris Sriskandarajah

Rhonda VanLowe

Others Present:

Gentry Anderson, OIPA

Julia Judkins, Counsel

Major Owens, FCPD

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

Complainant

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

Training Summary Approval: Mr. Kay asked if the training administered by the Fairfax County Police Department (FCPD) to the Panel and staff of the Office of the Independent Police Auditor (OIPA) was audio recorded. Ms. Anderson replied affirmatively and noted that the audio recording is posted on the Panel's website. Mr. Bierman moved approval of the Meeting Summary from the Panel's November 16th training. Mr. Cluck and Ms. Norman-Taylor jointly seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Meeting Summary Approval: Ms. Doane moved approval of the summary from the Panel's November 19th meeting. Mr. Gallagher seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Review Meeting for CRP-19-11: Mr. Kay provided a summary of the allegations made in the complaint and the timeline of events, and he outlined the Panel's Review Meeting procedures. Mr. Gallagher asked if the Panel has a statute of limitations on hearing certain complaints. Mr. Kay replied that the Panel's Bylaws define the limitations. One of the limitations is that the Panel cannot undertake a review of Initial Complaints submitted to the Panel more than one year after the incident. In this case, the complaint was filed with the FCPD exactly one year after the incident rather than to the Panel. The complainant filed a Review Request with the Panel within 60-days of the date of the FCPD's disposition

letter. Therefore, the Panel is acting in accordance with its Bylaws and can conduct a review of the Review Request.

FCPD Statement

Major Owens provided a summary of the FCPD's investigation into the complaint. He noted that the year time lapse from the date of the incident to when the complaint was filed negatively impacted the investigation as the FCPD wants to immediately conduct witness interviews and review available security camera footage. The investigation revealed that the officer's actions were in compliance with FCPD policy.

Complainant Statement

The complainant was present and identified himself. Mr. Kay thanked the complainant for attending and offered him the opportunity to state the reasons why he requested a review. The complainant stated that he felt the investigation ignored the allegations made in his complaint and that he was confused by the results of the investigation.

Complainant Questioning

Ms. Norman Taylor: Did you receive a letter from the FCPD detailing the investigation and its results? The complainant replied affirmatively but he stated that he still did not agree with the outcome.

Ms. Doane: How old were the children who were left unattended in the motel room? The complainant replied that one child was seven months old and the other was three years old.

Ms. Doane: You allege that there was time period of forty-five minutes where the children were left unattended. Is there any way to verify this? The complainant replied that he was outside with the police when the incident started, and his friend (who was watching the children) was called down to answer questions. He recalled that it took back up officers forty-five minutes to arrive on scene.

Mr. Aguilar: Please explain the part of the incident where the officer closed the car door on your leg. The complainant replied that while he was sitting inside the vehicle, he told the officer his children were left unattended and he needed to get them. He asked if he was under arrest and the officer replied that he was not under arrest. He claimed the officer ignored his concern about the children, so he began to open the car door and step out. When he opened the door, the officer asked for the complainant to remain in the vehicle and there was a scuffle back and forth with the door which hit the complainant's leg and the officer's knee.

Mr. Aguilar: Did you get back into the car? The complainant answered affirmatively.

Ms. Norman-Taylor: Did the officer previously ask you to stay in the vehicle? The complainant replied that the officer did not ask him to remain in the vehicle.

Mr. Gallagher asked the complainant about a firearm and drugs being found in the car as detailed in the police report. The complainant claimed that a firearm and drugs were not found in the vehicle.

Mr. Aguilar: Earlier, you stated you did not agree with the outcome of the investigation. In your opinion, is there anything the FCPD could have investigated further? Much of the complainant's response was

inaudible but he was concerned that the officer was in the dark behind the building before approaching the complainant.

Mr. Aguilar: Do you believe that the investigation included a review of security cameras in the area? The complainant replied that he did not think that security camera footage was reviewed during the investigation.

FCPD Questioning

Mr. Bierman: Can you provide us with additional information on the CAD (Computer Aided Dispatch)? Major Owens replied that the CAD system is the computer found in the police car which details the event history and time stamps events when officers mark "on scene."

Mr. Bierman: According to the CAD, what is the time stamp of when the event started and when back up was called? Major Owens replied that the event started at 6:34 p.m. and the backup officer arrived on scene 7.5 minutes later.

Mr. Cluck: What guidance do officers receive on the use of discretion? Major Owens replied that guidance is not given to officers on when to issue warnings versus tickets. He said that officers must consider the totality of circumstances when making decisions on scene.

Complainant Questioning

Mr. Gallagher: Did you leave the vehicle parked in the handicap parking spot because you did not have a driver license and did not want to get a ticket for not having a license? The complainant replied affirmatively and noted he just payed off all his tickets and did not want to receive another ticket. Mr. Gallagher noted that the complainant was evading the officer.

FCPD Questioning

Ms. Doane: Can you state the FCPD policy or relevant law related to children left unattended due to the detention of supervising adults? Major Owens replied he could not recite the policy from memory.

Ms. Doane: Did the investigation find that leaving young children unattended for fifteen minutes was not problematic? Major Owens replied that when officers know that there are children unattended on scene, they are attended to as soon as possible. In this situation, one officer was on the scene with four individuals in an unsecure environment with the odor of narcotics present. When back up arrived, officers immediately attended to the children.

Ms. Doane noted that the time that elapsed from when the officer found out there were children left unattended and when a backup officer checked on the children is unclear. Major Owens stated that the year delay in the submission of the complaint affected the investigation; however, the CAD records indicate that from the time the incident started, it took 7.5 minutes for the next officer to arrive on scene.

Ms. Doane: Do you know if the officer on scene told the backup officer that there may be children left unattended? Major Owens replied that when backup officers arrived on scene, the officers immediately attended to the children and had them in the lobby of the building.

Ms. Doane: Did the officer go up to the room to get the children? Major Owens replied affirmatively.

Ms. Doane: How did they get into the room to get the children? Major Owens replied that he is unsure how officers gained entrance into the room and does not want to make speculations.

Complainant Questioning

Ms. Doane: Why do you think your friend who was tasked with watching the children left the children unattended? The complainant replied that his friend left the children to speak with the officer and that the children were asleep.

Ms. Norman-Taylor: Did you or the officer request your friend to leave the children to speak with the officer? The complainant replied that he had asked his friend to leave the children to speak with the officer.

FCPD Questioning

Mr. Bierman: Can you please explain how the CAD's time stamping function works? Major Owens replied that officers mark out when they exit their vehicle by using their computer or radioing the message to dispatchers.

Mr. Aguilar: What is the retention period for in-car video footage? Major Owens replied that he believes in car video records are to be retained for one year per Virginia state law.

Mr. Aguilar: Did the subject officer have in-car video footage of the incident? Major Owens replied that the one-year time lapse creates an issue because the retention period established by Virginia law calls for these records to be purged after one year.

Mr. Aguilar: Did the investigation look into whether the in car video camera was installed in the vehicle and working that evening? Major Owens replied that due to the limitations by the retention period, the FCPD would not be able to indicate if a video ever existed.

Mr. Aguilar: In this incident, would the outstanding criminal issue related to the firearm found in the vehicle require the in-car video footage to be retained longer than one year? Major Owens again replied that due to the retention period established by Virginia law, the video was purged one year after the date of the incident.

Mr. Aguilar: According to the FCPD General Orders it is permissible for a cross-gender search to be conducted but it should be avoided if possible. Was there a request for a female officer to report to the scene to conduct the search of the involved female subject? Major Owens replied he did not know if that occurred but the officer who attended to the children was a female officer. He cannot speak to what was discussed at the scene and again noted the one-year time lapse from the time the incident occurred to when the complaint was submitted.

Mr. Aguilar: Is there any reason why the decision to conduct the search without a female officer was not explored more during the investigation? Major Owens replied that he is unable to answer the question.

Mr. Aguilar: Does the FCPD receive complaints related to cross gender searches often? Major Owens replied that it is not a common complaint.

Mr. Aguilar: How does the FCPD classify the event involving the car door? Major Owens replied that during the Panel's November 19th meeting, the Panel and Independent Police Auditor discussed and

agreed that the allegation of assault was not a use of force because it did not fall within the definition within the FCPD General Orders. The event was an inadvertent striking involving the car door and not a use of force incident.

Mr. Aguilar: The officer appeared to give commands to the complainant to remain in the vehicle. The complainant appeared to not listen to the command and was concerned about the children who were left unattended. It appeared that a part of the complainant's body was outside of the vehicle and that the officer used the door as an instrument to force the complainant to stay in vehicle. Major Owens replied that the investigation did not reveal that the officer used the door to inflict pain on the complainant for compliance.

Mr. Aguilar: Did the investigator ask the subject officer if he saw the complainant's leg outside of the car? Major Owens replied that he did not know if that question was asked.

Mr. Bierman: According to the investigative file, an individual was sitting in the passenger seat of the car, but it does not seem that he was interviewed. Why? Major Owens replied that the individual did not file any complaints related to the incident. He did not know the decision-making process related to witness interviews because the investigation was conducted at the district station level.

Mr. Bierman: According to the investigative file, a woman who was on a ride-along with an officer who responded to the scene was described. Was she questioned about this incident? Major Owens replied he could not answer the question.

Mr. Aguilar: I am concerned that there are different levels of quality when investigations are conducted at the station level versus those conducted by the Internal Affairs Bureau (IAB). Major Owens replied that FCPD policy requires IAB to investigate any complaint containing an allegation of biased based policing and that is why the investigation was reopened.

Mr. Aguilar: Is there a mechanism for complaints that contain racial bias allegations to be routed to IAB for investigation? Major Owens replied that any complaints containing bias allegations at the station level are routed to IAB. He reminded the Panel that he became the commander of IAB in May 2019, after the complaint was received.

Mr. Aguilar: Can there be a department-wide reminder for this to not happen again? Major Owens replied that IAB spoke with the district stations to follow up and ensure it does not occur again.

Panel Deliberations: Mr. Kay directed Panel Members to the three types of findings outlined in the Panel's Bylaws on which Panel Members can vote when reviewing an 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. The Panel then openly deliberated.

Panel Findings: Mr. Bierman moved to concur with the findings and determinations detailed in the FCPD Investigation Report. The motion was seconded by Ms. Doane and carried by a vote of six, with Mr. Aguilar voting "Nay," and Mr. Sriskandarajah and Ms. VanLowe being absent. *Mr. Bierman will draft the Review Report.*

Panel Members requested that the report contain a comment that the FCPD track all future ride-alongs and that the FCPD explain in the investigative file why known witnesses were not investigated. Mr. Aguilar added his concern about the cross-gender search and asked that the report include a reminder

that officers ask for a back up officer of the same gender as the subject to conduct a search when possible. *Mr. Aguilar will write draft language and send it to Mr. Bierman for inclusion in the report.* Ms. Doane noted that she would like a sentence included in the report noting her concern about the children being left unattended.

Mr. Kay thanked the complainant for attending the meeting and Major Owens for participating on behalf of the FCPD.

Publishing Panel Recommendations Matrix: Mr. Kay referenced the updated draft of the Panel Recommendations Matrix and noted that it was reviewed during the December 13th Quarterly Meeting. The document will be published to the Panel's website so that the public can view the Panel's recommendations and the FCPD's responses. Mr. Kay said the document will be posted to the Panel's website by December 25th and asked for Panel Members to submit any edits to him before that time. Ms. Doane moved that the Panel adopt the Panel Recommendations Matrix. Mr. Gallagher seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent. Mr. Gallagher noted his concerns regarding the Panel posting draft materials to the website.

December 13th Quarterly Meeting Debrief: Mr. Kay reported that FCPD extension requests, training, and the Recommendations Matrix were discussed at the last quarterly meeting. The Action Item does not give the Panel the authority to reject an extension request made by the FCPD. The Panel tracks extension requests and notifies the Board of Supervisors and the complainant when an extension is requested. Mr. Kay again thanked Major Owens and the FCPD for the November 16th training session and the group discussed conducting additional training in Fall 2020. Mr. Kay announced that the FCPD asked for clarity on the Panel recommendation from the review report CRP-18-12, which states: "The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name." The FCPD want to specify whether the document is to be an internal document within the FCPD or an external document to be published for the public to review. He reported that this recommendation is under consideration by the FCPD and they are consulting with other departments and the Office of the County Attorney.

Mr. Kay explained to the Panel that he had intended for the recommendation to be an internal document to be used as a tool for officers to understand what discipline is assigned to misconduct. Mr. Aguilar added that if the document was published to the public, it would boost transparency and public trust between the community and the FCPD. Mr. Kay concluded that if the recommendation is implemented, the Panel can comment on whether the document should be made public at a later point in time.

Closed Session: At 8:42 p.m., Mr. Kay moved that the Panel recess and go into closed session for discussion and consideration of matters for the purpose of consultation with legal counsel as enumerated in Virginia Code Section 2.2-3711(a)(8). Ms. Doane and Ms. Norman-Taylor jointly seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

At 8:51 p.m., Mr. Kay moved that the Civilian Review Panel certify that, to the best of each member's knowledge, only public business matters lawfully exempted from the open meeting requirement and only such public business matters as were identified in the Motion by which the closed session was convened were heard, discussed or considered by the Panel Members during the Closed Session. All

Panel Members certified the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Proposed Amendment to the Complaint Form: A draft complaint form and draft website language was circulated to the Panel and copies were made available to the public. Mr. Kay said that the purpose of the amendments to the form and the website language is to make clear to complainants that the Panel is required to forward all complaints to the FCPD upon receipt. Ms. Doane pointed out that the complaint form does not provide instructions for a complainant to submit their complaint anonymously. Mr. Bierman replied that the complaint form has always included a section for the complainant to insert their name and contact information; if a person provides contact information, the complaint can be processed. Ms. Doane asked if the OIPA staff is considering similarly updating the complaint form for the Independent Police Auditor to which OIPA staff answered in the affirmative. Ms. Doane moved that the complaint form and website language be updated to make clear that the Panel must forward complaints to the FCPD. Mr. Bierman and Mr. Gallagher jointly seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

New Business:

Mr. Kay announced that elections for the position of Panel Chair and Vice-Chair will occur at the Panel's meeting on January 9th. Ms. Doane noted that the Vice-Chair must be available to serve as chair the following year.

Mr. Kay, Mr. Cluck, and Ms. Norman Taylor are eligible for reappointment to the Panel for a term of three years in February 2020. Ms. Anderson reminded them to reach out to the incoming Chairman of the Board of Supervisors, Jeff McKay, to notify him of their interest in being reappointed.

Mr. Aguilar announced that he took a ride-along in the Fair Oaks district. He said the officer he was assigned to was very professional. He told the Panel about an incident they responded to involving a person experiencing a mental health crisis. Mr. Kay encouraged every Panel Member to take a ride-along.

Next Meeting: The Panel's next business meeting is Thursday, January 9th, 2020, at 7:00 p.m. in the Government Center, Conference Room 232.

The meeting was adjourned at 9:03 p.m.