

Police Civilian Review Panel

February 4, 2021

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:¹

Hansel Aguilar

Jimmy Bierman, Acting Vice-Chair

Hollye Doane, Panel Chair

Frank Gallagher

Doug Kay

Shirley Norman-Taylor

Rhonda VanLowe

Others Present:

Major Lay, FCPD

Anita McFadden, Interim Counsel

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel's February 4 meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Panel's business meeting was called to order at 7:00 p.m. and all Panel Members were present. Ms. Doane welcomed everyone to the Panel's February 4, 2021 meeting and noted a few housekeeping rules.

Motions to Conduct Electronic Meeting: Ms. Doane took roll call to verify a quorum of the Panel was present and to ensure each Panel Member's voice could be heard clearly. She asked each Panel Member to state their name and the location from which they were participating.

Mr. Aguilar was present and participated from the Southern District of Virginia.

Mr. Bierman was present and participated from McLean, Virginia.

Mr. Kay was present and participated from Fairfax, Virginia.

Ms. Norman-Taylor was present and participated from Lorton, Virginia.

Mr. Gallagher was present and participated from Burke, Virginia.

¹ Two Panel seats, formerly occupied by Mr. Cluck and Mr. Sriskandarajah, were vacant for this meeting.

Ms. Doane was present and participated from Oakton, Virginia.

Ms. VanLowe was present and participated from Reston, Virginia.

Ms. Doane moved that each member's voice may be adequately heard by each other member of this Panel. The motion was seconded by Mr. Bierman and it carried by unanimous vote.

Ms. Doane moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. She further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 179 133 4626 as noted in the Public Meeting Notice. Mr. Bierman seconded the motion and it carried by unanimous vote.

Ms. Doane moved that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Ms. Norman-Taylor seconded the motion and it carried by unanimous vote.

Approval of January 7 Meeting Summary: Mr. Gallagher moved approval of the Panel's January 7th meeting summary. The motion was seconded by Mr. Kay and it carried by unanimous vote.

Approval of Subcommittee Initial Review Report for CRP-20-37: Mr. Bierman described the incident subject of the complaint, which included the complainant being locked inside an Office Depot after closing. Officers responded and asked her if she had paid for the merchandise, which she was seen on security camera footage adding to her cart. She claimed to have an emailed receipt, but the store manager said the store did not send emailed receipts. The complainant then got into her car and appeared to be fleeing the scene. Officers extracted the complainant from the car and arrested her.

The complainant alleged that she was injured when five male officers had taken her down to the ground during the arrest and later sat on her preventing her from receiving treatment from the EMTs. Mr. Bierman stated that the allegations of force do not fall under Panel's authority to review but will be reviewed by the Independent Police Auditor (IPA).

Mr. Bierman outlined the allegations that were considered by the subcommittee: that the complainant was falsely arrested, that she should have been read Miranda warnings, that she should have been given a lawyer at the scene, that officers intimidated EMTs so they would not provide aid, and that the car seizure and towing were illegal. He said that some allegations did not rise to the level of serious misconduct or abuse of authority, including that she should have been driven home when she was released from the Adult Detention Center. He stated there were two allegations that could rise to the level of serious misconduct or abuse of authority: (1)

arresting her without probable cause and (2) the officers threatening the EMTs. There was no evidence to support these allegations and so they were determined to be wholly unfounded.

Mr. Aguilar stated that he did not think the judgment of probable cause should have been handled at the subcommittee level, but that the full Panel should have been able to review based on the allegations. He said that the Bylaws do not allow the subcommittee to make a determination that there is sufficient information. Mr. Bierman stated that the analysis used by the subcommittee was consistent with the process that subcommittees had been using for some time, but pointed out that in the Four-Year-Review the Panel had recommended that the Bylaws be changed to make it clearer that a subcommittee of the Panel has this authority.

Mr. Kay moved that the Panel accept the subcommittee's recommendations to not review CRP-20-37. The motion was seconded by Ms. Norman-Taylor, and it carried with a vote of six, with Mr. Aguilar voting Nay.

Approval of Review Report for CRP-20-19 and CRP-20-27: Mr. Kay and Ms. Norman-Taylor described their approach to developing the report. Panel members had no comments or edits to the body of the report. Mr. Bierman moved that the Panel adopt the Review Report for CRP-20-19 and CRP-20-27, not including the recommendations. Ms. Norman-Taylor seconded the motion and it carried unanimously.

The Panel discussed Recommendation 1 in the report: "The FCPD should create a policy requiring all district station interviews be recorded." Discussion ensued on the importance of recording interviews and the language used in the recommendation. Mr. Gallagher suggested editing the recommendation to include the language "absent extenuating circumstances." Ms. Doane noted that the FCPD does not have to follow the Panel's recommendations.

Mr. Kay moved that the Panel adopt Recommendation 1. Ms. Norman-Taylor seconded the motion and it carried unanimously.

The Panel discussed Recommendation 2 in the report: "The FCPD should ensure that all FCPD Officers are informed of its policy regarding the use of Apps." Ms. Norman-Taylor said that there were a lot of officers that were unsure what to do with information that an officer used the app and whether use of the app was acceptable. She said the FCPD has stated that they briefed officers on the new policy. Mr. Bierman said he was satisfied that the FCPD made a policy change and agrees with a recommendation that this information be communicated widely to officers.

Mr. Kay suggested that the recommendation should be revised to read "The FCPD should ensure that all FCPD Officers are informed of its policy 501.2 Investigative Responsibilities." Mr. Gallagher made a motion to accept the amendment to Recommendation 2. The second was inaudible and it carried by unanimous vote.

Mr. Kay moved that the Panel adopt Recommendation 2 as amended. Ms. Norman-Taylor seconded the motion and it carried unanimously.

The Panel discussed Recommendation 3 in the report: "FCPD disposition letters to Complainants should uniformly meet the high standard that the FCPD now requires." Mr. Kay said the FCPD did a ton of work in this case, but it was not reflected in the FCPD disposition letter. Ms. Taylor stated that the Complainant said if he had known the results, he would not have filed the complaint with the Panel. Mr. Gallagher stated that he did not think the Panel should recommend something to the FCPD that they were already doing. Mr. Kay suggested that the statement be presented as a comment, rather than a recommendation.

Ms. Doane suggested that Recommendation 3 be moved to a Comment section after the Recommendations section. Mr. Kay moved that the Panel accept the amendment to Recommendation 3. Mr. Bierman seconded the motion and it carried unanimously.

Mr. Kay moved that the Panel accept Comment 1, which is now listed as Recommendation 3. Ms. Norman-Taylor seconded the motion and it carried unanimously.

The Panel discussed Recommendation 4 in the report: "The FCPD should encourage the Fairfax County Sheriff to record and preserve video taken from inside the Fairfax County Adult Detention Center." Ms. Doane said this recommendation will now be listed as Recommendation 3 in the report. Mr. Kay said that the individual claimed use of force in the sallyport of the ADC and that it would help the Independent Police Auditor in his review if there was video footage. Recordings like this would also help the Panel in the future.

Ms. VanLowe made a motion to adopt Recommendation 4, to be listed as Recommendation 3. Mr. Kay seconded the motion and it carried by unanimous vote.

Ms. Doane stated that the recommendations from this Review Report will be reflected in the next draft of the Annual Report.

Updates to the Panel's Recommendations Matrix: Ms. Doane led a discussion on the latest version of the Panel's Recommendations Matrix. She said that, after the Panel votes to approve the language in the matrix column "Status (as determined by the Panel)," it will be included in the 2020 Annual Report and posted to the website.

Ms. Doane explained that she drafted a status of "Implemented by FCPD" for part 1 of the first row in the Matrix. Mr. Bierman moved that the Panel adopt part 1 of the recommendation. The motion was seconded by Mr. Kay and it carried unanimously.

The drafted response to part 2 regarding interviewing witnesses was discussed. Ms. VanLowe stated that this issue is broader than just interviewing coworkers; it is about developing a process for investigation bias complaints. Mr. Kay moved that the Panel adopt part 2 of the recommendation as written. The motion was seconded by Mr. Bierman and it carried with a vote of six, with Mr. Gallagher voting Nay.

Ms. Doane reviewed the drafted response to the recommendation on data analysis when investigating allegations of bias. She stated that she thought it was not responsive as it should

have addressed data analysis in the investigation file. Mr. Kay moved that the Panel adopt part 3 of the recommendation as written. The motion was seconded by Mr. Bierman and it carried unanimously.

Ms. Doane reviewed the drafted response labeled part 4 and said she did not think the FCPD's response was adequate. She said the Panel should be able to see whether the investigation looked into other past complaints filed against a subject officer to compare it against the current complaint. Ms. Doane said the Panel cannot discuss privileged personnel record in an open meeting but should be made aware of it as part of their oversight responsibilities. Mr. Gallagher said that the FCPD already does this as part of their investigation but that we are just asking them to document it in the file. Mr. Kay moved that the Panel adopt part 4 of the recommendation as written. The motion was seconded by Mr. Gallagher and it carried unanimously.

Ms. Doane explained that she drafted a status of "Pending upgrade to FCPD's data management system" for the recommendation in the second row of the Matrix. She said the FCPD's response was that they are working on this recommendation. Mr. Gallagher moved that the Panel adopt the Status of the recommendation. The motion was seconded by Mr. Kay and it carried unanimously.

Ms. Doane referred to the third row of the matrix and reviewed the drafted response in the Status column that FCPD's explanation was not responsive. She said that the FCPD's response does not mention community contacts or stops. Mr. Kay moved that the Panel adopt the status as written in the third recommendation. The motion was seconded by Mr. Bierman and it carried unanimously.

Ms. Doane referred to the fourth row of the matrix and reviewed the drafted response in the Status column that the FCPD is upgrading its data management system. Mr. Kay moved that the Panel adopt the status as written in the fourth recommendation. The motion was seconded by Mr. Bierman and it carried unanimously.

Ms. Doane reviewed the drafted response to the fifth row of the matrix and said she did not think the FCPD's response was adequate. Their response is they have a policy on an Early Identification System and she was not sure if their policy would address the recommendation. She said that the next Panel Chair will have to get a fuller explanation. Mr. Gallagher asked if the Early Identification System is working to root out any bias. Ms. Doane said she is not sure that community contacts and stops are included in the analysis. Mr. Bierman moved that the Panel adopt the status as written in the fifth recommendation. The motion was seconded by Mr. Kay and it carried unanimously.

Ms. Doane reviewed the drafted response to the sixth row of the matrix which relates to the hiring of an independent expert on bias. Ms. VanLowe expressed that she was not in full agreement with the Status. She said the focus of hiring the expert is for training and not for the review of policies and practice. Ms. Doane said she would reword it to "Training implemented.

Further explanation is required as to the examination of all law enforcement policies and practices.” Mr. Kay moved that the Panel amend the matrix as described. The motion was seconded by Mr. Bierman and it carried with a vote of six, with Mr. Gallagher missing the vote due to a technical issue.

Ms. Doane reviewed the drafted response to the seventh row of the matrix which relates to the providing training to officers on implicit bias. Mr. Kay moved that the Panel adopt the status as written in the seventh recommendation. The motion was seconded by Mr. Bierman and it carried with a vote of six, with Mr. Gallagher missing the vote due to a technical issue.

Ms. Doane referenced the eighth recommendation that starts “Where the evidence gathered during an investigation...” which came from the 2019 Annual Report and another Panel Review Report. She said that it was not fully implemented in that it did not develop objective criteria to evaluate allegations of bias. Mr. Kay moved that the Panel adopt the status as written in the eighth recommendation. The motion was seconded by Ms. Norman-Taylor and it carried unanimously.

Ms. Doane referenced the ninth recommendation and that the FCPD referenced a General Order and that Commanders were reminded of the policy. She said the status was that it was implemented by FCPD. Mr. Kay moved that the Panel adopt the status in the ninth recommendation. The motion was seconded by Mr. Bierman and it carried unanimously.

Ms. Doane referenced the tenth recommendation regarding tracking ride-alongs and that the FCPD referenced a General Order and that Commanders were reminded of the policy. She said the status was that it was implemented by FCPD. Mr. Bierman moved that the Panel adopt the status in the tenth recommendation. The motion was seconded by Mr. Kay and it carried unanimously.

Ms. Doane referenced the last recommendation on page 18 regarding children left unattended by detained individuals. She summarized the FCPD’s response and said the status was that it was implemented by FCPD. Mr. Bierman moved that the Panel adopt the status in the eleventh recommendation. The second to the motion was inaudible and it carried unanimously.

Discussion of Draft 2020 Annual Report: Ms. Doane provided an overview of her approach to the Annual Report. She said that the Annual Report and the Four-Year Review will be sent to the Board of Supervisors at the same time. After changes to the matrix are incorporated, the report will be finalized, and the Panel will vote on it at the February 25th meeting. Panel members expressed their appreciation to Ms. Doane for her work on the Annual Report. Discussion ensued on whether to include information on the number of extensions requested by the FCPD, which are currently referenced in the Appendices. Ms. Doane stated that she will consider adding a footnote to the body of the report that addresses the extensions.

New Business: Ms. Doane initiated a discussion on the Panel’s next steps in identifying a Chair, since the Vice-Chair recently resigned. She referenced Article IV.B.1 and Article IV.B.5. Ms.

Doane said the Bylaws only specify that the Vice-Chair should succeed to the Chair at the end of the term. She said that she thinks the Panel should have a new election, as the Bylaws say this is allowed when a vacancy occurs. She proposed that the Panel select a new Chair sometime after the March 4th meeting, after new Panel members are appointed. Until then Mr. Bierman, the new Vice-Chair, will assume the duties of the Chair.

Ms. Doane stated that she believes the Board of Supervisors soon will be able to appoint five new panel members and that she had been assured that the Panel will have enough members for a quorum for its March meeting. She said that the Board is also discussing the Executive Director position for the Panel.

Adjournment: Ms. VanLowe moved to adjourn the meeting. Ms. Norman-Taylor seconded the motion and it carried unanimously.

The meeting adjourned at 8:55 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, February 25 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.