



Fairfax County
Police Civilian Review Panel
Annual Report 2018

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2018



A Fairfax County, VA Publication

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SECTION I: 2018 ACTIVITIES¹

Initial Complaints and Investigation Review Requests

The Panel's year² was productive. Continuing to build on its experiential foundation, the Panel received and processed 31 complaints³ (25 Initial Complaints; 6 investigation Review Requests), an increase of 28 Complaints from 2017. The surge in complaints submitted is no doubt due, in part, to the Panel's community outreach efforts to educate our community on the Panel's mission and processes. The Panel presented to 16 community and civic groups during the year.⁴

Operating Processes

The Panel also expanded its policy foundation with the approval of operating procedures⁵ that:

- establish a process to ensure consistent treatment of all submitted complaints and requests for investigation reviews;
- provide future Panel Members with a roadmap for Panel operations;
- create correspondence templates; and
- document the administrative tasks performed by the Independent Police Auditor Staff.

In addition, the Panel proposed to the Board of Supervisors three Bylaw Amendments (approved on October 16, 2018)⁶ to clarify certain aspects of the Panel process. Most notable, the change to Section VI.E.1(a) makes clear that the Panel must perform an investigation review if the Panel determines that there is an allegation of abuse of authority or serious misconduct by a Fairfax County Police Department (FCPD) officer stated within the four corners of the complaint. Further, the amendments clarify that a complainant's appearance is not required for the Panel to conduct a Review Meeting. That said, there is no change to the Panel's

¹ See Appendix A for an overview of the Panel's mission and history.

² March 2018 to February 2019

³ See Appendix B for a summary table of the complaints and review requests received.

⁴ See Appendix C for a list of the community and civic organization presentations

⁵ See Appendix D for the Panel's current Operating Procedures.

⁶ See Appendix E for the Bylaws of the Fairfax County Police Civilian Review Panel

obligation to provide complainants with notice of the Review Meeting, and, if the complainant elects to address the Panel, the complainant will have the opportunity to do so.

Public Forum

The Mount Vernon Governmental Center was the site of the Panel’s sole public forum for the year. The December 10, 2018⁷ public forum was well attended by county residents. Both Supervisor Dan Storck and Chief Edwin Roessler attended as well. While public participants raised several salient questions during the forum, two themes surfaced that are also aligned with concerns Panel Members expressed during our meetings and deliberations: (i) FCPD accountability (the obligation of the FCPD to communicate to complainants and the public the results of its investigations), and (ii) transparency (the specific, detailed information shared with the public through FCPD communications to complainants and through Panel Reports). Addressing these two concerns with some urgency is incumbent upon the Board of Supervisors, the FCPD, and the Panel, if the Panel is to succeed in its mission to build public trust and confidence in the FCPD through an investigation review process that bolsters FCPD accountability.

SECTION II: ISSUES FOR BOARD OF SUPERVISORS CONSIDERATION

Accountability and Transparency

Concerns about transparency are not new. Discussions around the issue date back to the Ad Hoc Police Practices Commission. Having discussed the transparency issue during its meetings and received several public comments regarding the same, the Panel’s view is that more information about the results of the FCPD investigations of complaints must be shared with complainants. Two areas noted for improvement are: (i) the FCPD letter sent to the complainant upon completion of an investigation (the “Disposition Letter”) and (ii) the Panel’s Review Report, which is issued (and made public) after completion of a Review Meeting.

⁷ See Appendix F for the Summary of the Panel’s 2018 Public Forum

i. The FCPD Disposition Letters

The Disposition Letters must contain sufficient, specific detail to provide the complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings. The Panel finds that, while the Disposition Letters have stated the outcome of the investigations in broad general terms, too many Disposition Letters issued since the Panel's inception do not provide complainants with details about the investigation or the reasons for the FCPD's conclusions. Chief Roessler pledged during the pendency of the Commission that Disposition Letters would be more than just boilerplate responses, yet the Panel has not seen consistent and appreciable movement towards change.

The Panel recommends that all Disposition Letters contain, at a minimum, the following:

- a description of investigation undertaken;
- key factual findings and supporting evidence;
- a summary of relevant evidence and witness statements;
- a statement of reasons for FCPD conclusions;
- Virginia Code and FCPD General Orders that were considered in the investigation and whether violations were found; and
- whether disciplinary action was taken or not (without disclosing actual discipline imposed).

We believe that a more detailed and transparent response will: (i) provide the complainant with a positive understanding of the FCPD efforts to address the complainant's concerns and (ii) build greater community trust through greater transparency.

ii. Panel Review Reports

A corollary issue to concerns regarding the content of Disposition Letters, is the detail provided in the Panel Review Report. The Panel has heard concerns from the public that the content of the Panel's Review Report is limited, and we would like to address

the concern by including more details about the FCPD investigation in the Report. That said, the Panel has some apprehension that the language of the Board of Supervisor Action Item 17, dated December 6, 2016 (p. 278), limits the Panel's ability to include salient facts in public reports. The relevant section provides: "each Panel Member who is provided the opportunity to review [an Investigation Report] shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public." One possible interpretation of the language is to characterize the entire Investigation Report as a "personnel record." This interpretation of the Action Item (i) would unduly limit the Panel's ability to discuss or refer to information from the FCPD investigation file at a Review Meeting or in a Panel Report, and (ii) seems contrary to the objective of more transparency with respect to FCPD actions. Further, this restrictive interpretation would inhibit the Panel's ability to achieve its purpose "to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public." The Panel proposes that the following principles apply to the content of Panel Review Reports:

- Information cited in Disposition Letters, disclosed by the FCPD in Panel Review Meetings and information in the investigation file, other than Personnel Record Information, may be included in Panel Reports.
- "Personnel Record information" is defined as specific officer discipline (excluding the fact of a violation of a FCPD General Order or policy, law, or rule) and certain statements of police officers taken (as required under the provisions of *Garrity v. New Jersey*), unless officer consent is secured.
- Names, addresses, and other identifying information of complainants, officers, and witnesses will not be included in Panel Reports (a practice consistent with that of the Independent Police Auditor).

Panel Comments and Recommendations⁸

The Panel offered comments and recommendations to the FCPD during the year through Panel Review Reports that reflect a combination of observations offered by complainants and reflections by Panel Members after Review Meetings. However, there is no process in place for Panel comments and recommendations to be reviewed, considered, and, where appropriate implemented. If the Panel's review process is to have a meaningful impact for the community, the Panel's comments and recommendations must be given serious consideration as part of the investigation review process.

Request for Action

The Panel leadership met with the Panel's FCPD Liaisons and the Commander of the Internal Affairs Bureau (on January 7, 2019) to discuss the issues outlined in this Section II. The Panel's leadership hoped to address concerns through continuing discussions with FCPD as a working group. However, FCPD expressed its preference that the Panel's concerns be taken directly to the Board of Supervisors. As a result, through the submission of this report, the Panel requests that the Board of Supervisors establish a process to address and resolve the concerns outlined in this Section II and future recommendations offered by the Panel. As a start, the Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same. The Panel is committed to an investigation review process that fosters transparency to the public and accountability from the FCPD. A process for vetting concerns that surface through investigation reviews, public comments, and public forums is imperative for the Panel's effective discharge of its mission.

⁸ See Appendix G for Panel Review Reports published during the year, which includes Panel comments and recommendations.

SECTION III: WITH APPRECIATION

Our sincere thanks to Jean Senseman, Kathleen Davis-Siudut, Randy Sayles, and Steve Descano for their service and invaluable contributions to the Panel. We welcomed four new Panel Members during the year to complete the terms of our colleagues:

- Anna Northcutt
- Robert Cluck
- Col. Gregory Gadson
- Shirley Norman-Taylor

We are grateful for their willingness to serve and for the continued service of Panel Members appointed as part of the inaugural Panel.⁹ A heartfelt thank you also goes to the Independent Police Auditor and Staff for their continued support.

The Panel also acknowledges the complainants for their courage in coming forward to participate in the Panel's complaint and investigation review processes and entrusting their concerns to the Panel. We look forward to continuing the Panel's work in the coming year.

⁹ See Appendix H for Panel Member Biographies

Establishment and Mission of the Police Civilian Review Panel

The Fairfax County Police Civilian Review Panel (“Panel”) was established by the Board of Supervisors on December 6, 2016, in response to recommendations from the Ad Hoc Police Practices Review Commission.¹ The nine-member Panel’s mission is to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (“Department” or “FCPD”) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigations. The Panel is appointed by, and reports directly to, the Board of Supervisors. The Panel is governed both by the Bylaws approved by the Board of Supervisors and a Code of Ethics adopted by the Panel.²

The Panel generally meets the first Thursday of each month at the Fairfax County Government Center. Panel meeting dates and locations are announced on the County’s Public Meetings Calendar (<https://www.fairfaxcounty.gov/Calendar/ShowCalendar.aspx>).

¹ The December 6, 2016 Action Item and February 28, 2017 clarifications can be found in the February 28, 2017 Final Board Package (pp. 268-279) from the County’s website: <https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting%20materials/board/2017/feb28-final-board-package.pdf>

² Capitalized terms in this Report have the meaning set forth in the Defined Terms attached to the Bylaws, unless the context indicates otherwise.

2018 Panel Complaint Summary Table

CRP Case Number	Date Received	Complaint Type	Incident Type	Status
N/A	1/12/2018	Initial Complaint	Alleges that excessive force was involved, falsely arrested, assaulted and abused while in handcuffs. Alleges procedural violations prevalent, abuses of authority as well as misconduct by FCPD officers.	Incident occurred before December 6, 2016.
CRP-18-01	1/24/2018	Initial Complaint	Complaint against a School Resource Officer alleging the officer as being "defiant and disrespectful", "rude and intimidating."	Complainant did not request a review.
CRP-18-02	2/5/2018	Request for Review	Alleges false arrest for being "drunk in public" and claims that he was "abused throughout the entire scenario."	Panel voted to concur with FCPD findings on 4-5-2018. Report published on 10-4-2018.
N/A	4/24/2018	Initial Complaint	Alleges false arrest when at police department to press charges against aggressor.	Incident occurred before December 6, 2016.
N/A	4/27/2018	Initial Complaint	Claims that FCPD failed to investigate drowning of client. Complaint submitted by counsel of Mr.F.	Incident occurred before December 6, 2016.
CRP-18-03	5/11/2018	Initial Complaint	Alleges that excessive force was involved, falsely arrested, assaulted and abused while in handcuffs. Alleges procedural violations prevalent, abuses of authority as well as misconduct by FCPD officers.	Complainant did not request a review.
CRP-18-04	5/11/2018	Initial Complaint	Claims he has as not been able to retrieve seized property back from the FCPD.	Complainant did not request a review.
CRP-18-05	6/4/2018	Initial Complaint	Alleges that an officer made false reports regarding a motorcycle accident and refuses to correct the reports.	Complainant requested a review (see CRP-18-12)
CRP-18-06	6/13/2018	Initial Complaint	Alleges that FCPD has not addressed the loitering of minors (in possession of a knife) at the entrance of his condominium building after multiple calls.	Complainant did not request a review.
CRP-18-07	6/19/2018	Initial Complaint	Alleges that FCPD did not allow her to make a criminal assault report against a former roommate.	Complainant did not request a review.
CRP-18-08	6/20/2018	Initial Complaint	Alleges an officer failed to file a report after having a direct contact with an individual who is stalking her.	Complainant did not request a review.
CRP-18-09	7/2/2018	Initial Complaint	Alleges harassment by the Police Department, which started in November of 2017.	Complainant did not request a review.
CRP-18-10	7/6/2018	Initial Complaint	Alleges the officer was following and harassing him, that the officer did not have enough probable cause to search the vehicle he was driving, and the officer searching him multiple times was excessive.	Complainant did not request a review.
CRP-18-11	7/13/2018	Initial Complaint	Alleges an officer has turned the rest of the department against her. Alleges "aggressive, rude, nasty" behavior. Alleges that officers have declined to take her reports. Alleges she is being intimidated, bullied, and harrassed. Alleges that she is receiving differential treatment and is being discriminated against due to her race.	Complainant did not request a review.

2018 Panel Complaint Summary Table

CRP-18-12	8/21/2018	Request for Review	Requesting a Review of Initial Complaint he filed with the Panel in June 2018.	Panel voted to concur with the findings and determination of the FCPD on 11-1-18. Review Report published on 1-9-19.
CRP-18-13	9/10/2018	Initial Complaint	Alleges improper investigative techniques, violation of forfeiture procedures, and abusive language	FCPD Investigation Complete
CRP-18-14	9/24/2018	Initial Complaint	Alleges a lack of trust with the detective assigned to the case.	Complainant Withdrew Complaint
CRP-18-15	9/24/2018	Initial Complaint	Alleges misrepresentation of Hispanics in FCPD data reporting. Issue Based Reporting.	Anonymous complaint forwarded to FCPD as an inquiry.
CRP-18-16	9/27/2018	Initial Complaint	Alleges racial profiling.	Complainant Withdrew Complaint
CRP-18-17	9/29/2018	Initial Complaint	Alleges harassment, racial profiling, illegal search.	FCPD Investigation Complete
CRP-18-18	9/30/2018	Initial Complaint	Alleges issues filing police reports after filing a police report alleging misconduct, discrimination against complainant occupation, harassment, hostile behavior.	Forwarded to FCPD for Investigation. Complainant could not be reached by Staff or FCPD.
CRP-18-19	10/11/2018	Request for Review	Alleges coercion, threats, and violation of constitutional rights.	Unable to Review due to Pending Litigation. Complainant was instructed to notify the Panel when litigation is concluded.
CRP-18-20	10/19/2018	Initial Complaint	Alleges racial profiling and false police report.	Complainant Withdrew Complaint
CRP-18-21	10/29/2018	Initial Complaint	Alleges harrasment.	FCPD Investigation Complete
CRP-18-22	11/7/2918	Initial Complaint	Alleges negligence related to officer statements and the filing of a National Missing Persons Report.	FCPD Investigation Complete
CRP-18-23	11/9/2018	Initial Complaint	Alleges misconduct, abuse of power, and unethical practices.	Complaint did not involve a current or former FCPD employee.
CRP-18-24	11/13/2018	Initial Complaint	Alleges misconduct, unlawful arrest, illegal search.	Incident occurred before December 6, 2016.
CRP-18-25	11/15/2018	Request for Review	Alleges negligence related to animal welfare checks by Animal Control Officers.	Complainant Withdrew Complaint
CRP-18-26	11/26/2018	Request for Review	Initial complaint alleged bias during a traffic stop. Complainant is Requesting a Review because complainant did not receive a report that detailed results of the investigations but instead a short letter. Complainant also believes that the investigation was not independently conducted. Alleges racial Profiling.	Panel voted to concur with the findings and determination of the FCPD on 1-3-19. Review Report is currently being drafted.
CRP-18-27	12/10/2018	Request for Review	Requesting a Review of alleged illegal stop (Panel) and physical assault (Auditor) by FCPD officers on a victim	Panel Recommends additional Investigation by FCPD.
CRP-18-28	12/17/2018	Initial Complaint	Requesting the Panel work with the Chief of FCPD to examine policies and procedures that allow for the high number of criminal arrests in the County that are dismissed or determined Nolle Prosequi	Forwarded to FCPD for Investigation

Community and Civic Organization Presentations

- ❖ ADAMS Center
- ❖ ADAMS Center Leadership Team
- ❖ Autism Society NOVA
- ❖ Centreville Labor Resource
- ❖ Cornerstones
- ❖ Criminal Justice Advisory Board
- ❖ Fair Oaks Citizen Advisory Committee
- ❖ Fairfax County Federation of Citizens Association Public Safety Program
- ❖ Faith Communities in Action
- ❖ International Visitor Leadership Program – Ukrainian Delegation
- ❖ McLean Citizen Advisory Committee
- ❖ McLean Citizens Association Public Safety Program
- ❖ Mount Vernon Citizen Advisory Committee
- ❖ Mount Vernon Council of Citizens Association
- ❖ Unitarian Universalist Association
- ❖ West Springfield Citizens Advisory Committee


Other community outreach efforts include:

- ❖ 2018 Public Forum
- ❖ Chanel 16 produced video
- ❖ Reston Impact video interview



Fairfax County Police Civilian Review Panel Procedures & Foundational Documents

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: A-1	Subject: Administrative Support Provided by the Office of the Independent Police Auditor Staff
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: This document serves as a guideline for the Auditor’s Staff charged with providing administrative support to the Panel.

Complaint Intake and Processing Support

- Staff will receive Complaints on behalf of the Panel during County business hours Monday – Friday. Complaints may be received in person, via the secured Complaint Form drop box (located outside of the Auditor Office), and by email, phone, or U.S. Mail. Staff will check the Complaint Form drop box for incoming complaints.
- Staff will maintain all records regarding a Complaint on the County’s shared drive. Complaint files will include: written Complaints submitted by complainants, formal Panel correspondence with the complainant (i.e., emails from the Panel’s email address or letters on Panel letterhead), copies of FCPD correspondence to the complainant shared with the Panel, and related Panel Review Reports.
- In addition, Staff will maintain printed copies of complaint files in the Auditor’s Office for reference by Staff or Panel Members.
- The Complaints Master Log spreadsheet (Attachment 1) will be updated with the Complaint information. The Complaints Master Log spreadsheet will continually be updated while the Complaint is processing until it has been closed. Complainant and officer identifying information (if included) will be redacted from the Master Log spreadsheet at the expiration of the retention period per OIPA Procedural Memorandum 03 on Records Management. The Complaints Master Log spreadsheet containing complainant or officer identifying information will be used for internal Panel purposes only.
- Staff will assist the Panel Chair in determining whether Complaints are: Initial Complaints or Requests for Review, timely filed, and/or the subject of pending civil, criminal, or administrative litigation.
- At the direction of the Panel Chair, Staff will prepare correspondence to be sent to complainants.¹ This correspondence will be sent (once authorized by the Panel Chair) to the complainant hardcopy via U.S. Mail and electronically via email (when available).

¹ Specific correspondence types are described in greater detail in Police Civilian Review Panel Procedural Memoranda entitled, *Intake and Processing of Initial Complaints* and *Intake and Processing of Review Requests*.

- At the direction of the Panel Chair, Staff will prepare correspondence to be sent to County officials on behalf of the Panel, to include the transmission of Panel reports.
- At the direction of the Panel Chair, Staff may call and/or email complainants to provide information regarding the Panel's processes, and/or to gather additional information from complainants. Staff may record information from complainants to convey to the Panel but will not discuss substantive issues with complainants on behalf of the Panel. Substantive questions or concerns from complainants will be referred to the Panel Chair to address.

Meetings Support

- Staff will prepare and post public meeting notices within the timeframe required by the Virginia Freedom of Information Act for all Panel Meetings, including meetings of subcommittees.
- Staff will provide the required notice to County officials before Panel Review Meetings.
- Staff will be responsible for reserving meeting rooms to include closed session rooms.
- In coordination with the Panel Chair, Staff will create, copy, and collate documents that will be disseminated during Panel Meetings.
- Staff will attend Panel Meetings and compose a summary of each meeting.
- Staff will provide logistical support for the Panel during Panel Meetings.
- Staff will coordinate with County staff to have Panel Meetings audio recorded.
- When necessary, Staff will coordinate for translation services to be provided at ~~the~~ Panel Meetings.

Panel Website

- Staff, in consultation with the Panel Chair, will maintain the Panel website, to include posting reports and other content as determined by the Panel and in compliance with the County's web content Procedural Memorandum No. 13-04 and Department of Information Technology policies and guidelines.

Outreach Support

- Staff, at the direction of the Panel Chair, will reach out to community organizations, houses of worship, non-profits, or other groups within the County to make an initial outreach effort introducing the Panel. Staff will document and track the Panel's community outreach effort.
- Staff will provide logistical support during outreach events for the Panel, as needed.
- Staff may attend County sponsored outreach events and act as a liaison to link the Panel to other County agencies.
- Staff may attend other outreach events when there is a clear need for administrative or logistical support, as agreed by the Panel Chair and the Auditor.


Other Support

- Staff will perform other administrative duties as cited in the Procedures and Foundational Documents manual and as agreed upon by the Panel Chair, Staff, and the Auditor.

Summary of Headings found on Complaints Master Log

The bulleted list below outlines the column headings that are found on the Complaints Master Log. This information is tracked for each complaint received.

- Complaint Number
- Date Complaint Received
- Complainant First Name
- Complainant Last Name
- Description: Incident Description Provided or Reasons for Review Request
- How was Complaint Received?
- Completed a Complaint Form?
- Initial Complaint or Request for Review?
- Actions Taken Log
- CRP Complaint Number
- Complainant Email Address
- Phone Number
- Address
- City, State, Zip Code
- Age
- Gender
- Race/Ethnicity/National Origin
- Witness Information
- Officer Information
- Incident Date
- Incident Time
- Incident Location
- Records Purge Date based on Procedural Memorandum 03 Records Retention

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: A-2	Subject: Panel Meeting Agenda Items
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

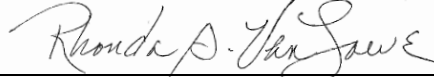
Purpose: To outline guidelines for establishing the monthly Panel Meeting Agenda that allows for (i) input from Panel Members and (ii) timely notice to the public.

Agenda Items

- Panel Member may, at any time before a meeting agenda is circulated, contact the Chair to propose topics for the next meeting agenda.
- The Chair will send a draft Panel Meeting Agenda to the Panel Members at least 10 days before the scheduled meeting date.
- Panel Members may propose changes to the draft Meeting Agenda not later than seven days before the scheduled meeting date.
- Any documents that support an agenda item must be sent to the Chair for distribution to the Panel Members at least seven days before the scheduled meeting date to allow for ample time for review and consideration.
- If a Panel Policy or Procedure is proposed for consideration the Chair may require a review from Panel Counsel to ensure compliance with the Bylaws.

Public Notice of the Agenda

- The Panel Meeting Agenda will be published at least three (3) days before a scheduled meeting date

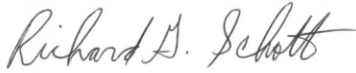
Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: A-3	Subject: Participation in Meetings due to Personal Matter; Certain Disabilities; Distance from Meeting
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: This policy allows Panel Members to participate in Panel Meetings through electron communications within the terms and limits outlined below.

Requirements for Remote Participation

- A member of the Civilian Review Panel (“the Panel”) may participate in a meeting governed by the provisions of Virginia Code §§ 2.2-3700 *et. seq.*, the Virginia Freedom of Information Act (“VFIA”), through electronic communication means from a remote location that is not open to the public only as follows:
 - If, on or before the day of the meeting, a member of the Panel holding the meeting notifies the chair of the Panel that such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter, and the Panel holding the meeting records in its minutes the specific nature of the personal matter and the remote location from the which the member participated; and,
 1. A quorum of the Panel is physically assembled at the primary or central meeting location; and
 2. The Panel makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.
 3. If a member’s participation from a remote location is disapproved because such participation would violate this policy such disapproval shall be recorded in the minutes with specificity.
 4. This policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.
 5. Such participation by the member shall be limited each calendar year to two meetings:

- If a member of the Panel notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the Panel records this fact and the remote location from which the member participated in its minutes.

Office of the Independent Police Auditor Procedural Memorandum	
No: 03	Subject: Records Management
Approval Date: December 1, 2018	Review Date: December 1, 2020
Signed by Richard Schott, Independent Police Auditor	

Purpose: This policy establishes the general responsibilities of staff in the Office of the Independent Police Auditor (OIPA) and members of the Police Civilian Review Panel (Panel) in regards to retaining and disposing of records in compliance with the Virginia Public Records Act (Code of Virginia § 42.1-76 et seq.). The OIPA oversees the management of records by Panel Members to ensure that both entities are coordinated and uniform in the retention and disposition of records.

Agency Records Officer

The Management Analyst II will serve as the agency records officer for OIPA and will be responsible for the development, implementation, and ongoing coordination of the OIPA’s records management program. Responsibilities include:

- Serving as the liaison with the Archives and Records Management Branch, DIT.
- Maintaining a working knowledge of applicable local, State, and Federal Statutes and/or regulations affecting records management practices.
- Developing procedures to implement OIPA’s records management program and establishing records retention and disposition schedules for the office.
- Serving as the point of contact for Panel Members regarding records management and providing them with guidance (in consultation with Panel counsel) to ensure compliance with established procedures.
- Providing training and resources as necessary to OIPA staff and Panel Members.
- Ensuring that archival and permanent records are properly identified and maintained.
- Supporting OIPA staff and Panel Members in their individual responsibilities to retain temporary records according to their retention schedules and to dispose of non-records.
- Directing OIPA staff and Panel Members to review their files and emails on a semi-annual basis and certifying that records have been destroyed according to established OIPA procedures.

Definition of Records and Non-Records

- A “Public Record” is any recorded information that documents a transaction or activity by or with any public official if it is produced, collected, received or retained in connection with the transaction of public business (Code of Virginia § 42.1-77). Records

include, but are not limited to, notes, letters, documents, printouts, audio recordings, videos, emails, and texts.¹

- A material or email will be considered a record when it is related to one’s responsibilities as a public official and explains/justifies/documents an action or decision. An email will be treated as a record (and retained accordingly) when it does one of the following:
 - Corresponds with staff, complainants, vendors, or the general public about official business (may include incoming messages)
 - Involves negotiations on behalf of department or locality
 - Approves or authorizes actions or expenditures
 - Signifies policy changes or developments
 - States official opinions relating to a public official’s position
 - Creates precedents, such as messages issuing instructions or advice
- Correspondence that is of a routine administrative nature shall be considered a record and will be retained only as long as it is administratively useful. Correspondence will be considered routine when it is part of a regular/established procedure or typical sequence of actions (e.g., building an agenda, scheduling meetings).
- Materials (and emails) that do not meet the criteria will be considered non-records and will not be retained (e.g., informational emails that do not require a response, general announcements, reference materials or copies of materials retained by someone else, draft material related to documents that have since been finalized).

Records Retention and Disposition Schedules

- Records retention and disposition schedules for OIPA and Panel were developed in accordance with the Library of Virginia General Schedule No. GS-19 for County and Municipal Governments.
- A summary table of the OIPA and Panel Retention Schedules is provided below. A more detailed document, *Retention Schedules for the Office of the Independent Police Auditor and the Police Civilian Review Panel*, will be maintained by the OIPA which outlines for each record type: agency retention period, agency disposition process, and related Library of Virginia Record Series information

Summary of OIPA/Panel Retention Schedules	
Record Type	Retention Period
OIPA Policies/Procedures	permanent (approved versions)
Panel Bylaws	permanent (approved versions)

¹ See also the definition of “public record” in the Virginia Freedom of Information Act, Va. Code Ann. §§ 2.2-3700 through 2.2-3714 (FOIA).

Panel Adopted Policies/Procedures	permanent (current versions)
OIPA/Panel Annual Reports	permanent
OIPA Incident Review and Other Public Reports	permanent
Panel Review Reports	permanent
Panel Meeting Agendas, Summaries and Audio Files	permanent
Complaint Forms/Emailed Complaints	1 year from close of complaint (redacted versions saved for as long as administratively/historically useful)
OIPA/Panel Official Correspondence with Complainants	1 year from close of complaint (redacted versions saved for as long as administratively/historically useful)
Internal Correspondence concerning a Complaint (to Panel Members or OIPA staff)	1 year from close of complaint
Correspondence to FCPD concerning a Complaint	1 year from close of complaint
Copies of FCPD Official Correspondence to Complainants	Redacted version kept with complaint file
Internal Correspondence not concerning a Complaint (to Panel Members or OIPA staff)	2 years after the end of the calendar year
Internal Correspondence not concerning a Complaint (from IPA only)	3 years after the end of the calendar year
OIPA/Panel Non-Routine Official Correspondence with External Stakeholders (e.g., BOS, FCPD, media)	3 years after the end of the calendar year
Draft Documents/Reports	until the subsequent draft or the final document is completed
Routine/Administrative Documents/Correspondence	none, as long as administratively useful
OIPA Master Complaint/Review Spreadsheets	none, as long as administratively useful (PII redaction 1 year from close of complaint)
Spreadsheets to track processes (e.g., outreach)	none, as long as administratively useful
Reports/Status Updates for Internal Use	none, as long as administratively useful
Informal Guidelines, Instructions etc. (not approved procedures)	none, as long as administratively useful
Presentation materials (with new substantive content)	1 year and then for as long as administratively useful
Routine voicemails/telephone messages	none
Substantive Voicemails from Complainants left with OIPA	1 year from close of complaint

Substantive Voicemails from Complainants left with Panel Members	none
FOIA Requests	3 years after responses are provided
RM-3 Forms approved	3 years after the end of the calendar year

- OIPA will serve as the custodian for all permanent records, including those of the Panel. All OIPA reports, Panel reports, Panel Bylaws, and Panel meeting materials will be maintained on the website as well as on the S: Drive. OIPA Procedures and Procedures adopted by the Panel will be maintained on the S: Drive.
- OIPA will serve as the custodian for all records related to the complaint file (complaints, official correspondence sent to complainants) and will redact personally identifiable information (PII) (i.e., name, phone, email, address, date of birth) of the complainant and involved officer(s)/staff at the expiration of the retention period. Redacted versions of documents in the complaint file will be retained for as long as deemed administratively useful, or for statistical or historical purposes.
- OIPA staff and Panel Members will be individually responsible for retaining temporary records (i.e., individual correspondence, draft documents) of which they are the custodian per the retention schedules noted above.
- OIPA staff should store temporary records on Outlook, H: Drive, or S: Drive.
- Panel Members should store temporary records in a designated folder in their email accounts until County Outlook accounts are provided. Temporary records may be stored on Panel Member’s personal computers in a folder designated solely for Panel business.

Disposition of Records and Non-Records

- Documents and emails that are considered non-records will be purged on a regular basis (i.e., every 30 days).
- Records that are considered routine administrative will be deleted as soon as they are no longer administratively useful.
- Records that are considered draft materials will be deleted once the subsequent draft or the final document is completed.
- All other temporary records will be deleted according to their retention period on a semi-annual basis (January and July), at the prompting of the OIPA records officer.
- The OIPA records officer will provide reminders to OIPA staff and Panel Members to review their documents and emails and ensure that non-records have been deleted. Reminders will include specific instructions on the type of records that have reached the end of their retention period and can be deleted.
- The destruction of records by OIPA staff and Panel Members will be documented by the submission of Certificates of Records Destruction (Form RM-3) to the Archives and Records Management Branch, DIT.

Succession Planning


- Official records of public officials are the property of Fairfax County and must be returned at the expiration of a term of office or immediately following a resignation.
- Departing OIPA staff will be asked to clean out their Outlook accounts, transfer any records on their Outlook and H Drive to a designated OIPA staff person, and inform OIPA staff of the location of certain records on the S: Drive.
- Exiting Panel Members will be instructed by OIPA prior to the end of their term, or upon notice of their resignation, to send all records to OIPA for retention and to delete all records in their possession after transmission to OIPA.

Collection and Handling of Personally Identifying Information (PII)

- Complaints with PII will be stored electronically only on the S: Drive that is accessible by the Independent Police Auditor and his two staff persons.
- Hard copy versions of Complaints will be stored in the OIPA office, which is locked at all times when OIPA staff are not physically present.
- After the retention period expires (1 year from the close of the complaint), complaint forms will be redacted of any PII of the complainant (name, phone, email, address, DOB) and involved officer(s)/staff. Non-redacted complaint forms will be disposed of (electronic and hardcopy) and replaced with redacted versions for future reference. PII stored in spreadsheets to track complaints will also be redacted at the end of the retention period.

Definitions

- **Close of complaint:** The complaint will be considered closed when:
 - OIPA publishes the final incident report and provides notice to complainant that the report is complete, or when
 - the Panel publishes a final review report and sends the notice of completion to the Complainant (request for review) occurs or on the date of the Panel's last correspondence with the Complainant following the FCPD letter (initial complaint).
- **Complaint file:** Documentation related to the processing of a complaint, including the original (or redacted) complaint, official OIPA or Panel correspondence with the Complainant, copies of FCPD correspondence shared with the OIPA/Panel.
- **Personally identifiable information or PII:** Information that "describes, locates or indexes anything about an individual... or... affords a basis for inferring personal characteristics." The following information will be treated as PII by OIPA and the Panel and redacted per this procedure: name, phone, email, address, and date of birth.

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: O-1	Subject: Intake and Processing of Initial Complaints
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: To provide procedures for filing Complaints and processing Initial Complaints submitted to the Panel in a timely, responsive, and consistent manner.

Filing a Complaint

- Persons may submit a Complaint to the Panel on the Complaint Form (Attachment 1, updated periodically) or in another written format (email, letter, etc.). A Complaint form is available electronically on the Panel’s webpage, in hard copy in the Auditor’s Office, and at other County locations (where brochures are displayed).
- A complainant may file a Complaint by:
 - Sending the Complaint Form or other written correspondence to the Panel:
 - via U.S. Mail to the Panel or Auditor at 12000 Government Center Parkway, Suite 233A, Fairfax, VA 22035.
 - via email to the Panel or Auditor at: PoliceCivilianReviewPanel@fairfaxcounty.gov or IPAPoliceAuditor@fairfaxcounty.gov.
 - Calling the Office of the Independent Police Auditor. Staff can direct the complainant to complete a Complaint form or, if preferred by the complainant, Staff will fill out a Complaint Form on his or her behalf. Complainants will be given the opportunity to review the accuracy of the Complaint form before it is forwarded to the Panel.
 - Delivering the Complaint Form or other written correspondence in person to the Auditor’s office or placing in the secured Complaint Form drop box outside of the office.

Initial Complaints

- The Panel Chair, in consultation with Staff, will determine whether:
 - a Complaint is an Initial Complaint or a Request for Review,

- the matter described in the Complaint is the subject of pending civil, criminal, or administrative litigation, and
- whether the incident occurred after December 6, 2016 and is otherwise timely filed.
- Staff, in consultation with the Panel Chair, will prepare correspondence acknowledging the Panel's receipt of the Initial Complaint, using the attached template:
 - Confirmation of Receipt – Initial Complaint (No Pending Litigation) (Attachment 2)
 - Confirmation of Receipt – Initial Complaint (Pending Litigation) (Attachment 3)
- The Panel Chair will forward Complaints to the FCPD Liaison.
- Once an Initial Complaint is forwarded to the FCPD Liaison, the FCPD will have 60 days to conduct its investigation (unless the time period is extended upon request of FCPD to the Panel) and send its findings to the complainant and to the Panel.
- If the FCPD requests a time extension for the Investigation of the complaint, Staff, in consultation with the Panel Chair, will draft and send a letter to the complainant notifying the complainant of the time extension and the FCPD's expected date of completion of the Investigation, using the attached template:
 - Notification of Investigation Extension Request by FCPD (Attachment 4)
- Upon receiving the findings letter from the FCPD, Staff, in consultation with the Panel Chair, will draft and send a letter to the complainant that explains the process for requesting a review of the Investigation, using the appropriate template as follows:
 - FCPD Investigation Complete – Instructions to Request a Review (Attachment 5)

Other Actions

- The Panel Chair will appoint two Review Liaisons to perform the duties outlined in Fairfax County Police Civilian Review Panel Procedural Memorandum: Duties of Review Liaisons.
- The Panel Chair, with assistance from Staff, will send Complaints to Panel Members for their information.

- The Panel Chair may consult with the Fairfax County Community Services Board with respect to the processing of Complaints.

Requests for Review

- Requests for review will be processed in accordance with Fairfax County Police Civilian Review Panel Procedural Memorandum: Review Requests.



Fairfax County Police Civilian Review Panel Complaint Form

SUBMISSION OPTIONS	
Hand Deliver or Mail to:	Office of the Independent Police Auditor 12000 Government Center Parkway, Suite 233A Fairfax, VA 22035
Call:	703-324-3459, TTY 711
Email:	PoliceCivilianReviewPanel@fairfaxcounty.gov

This form and information on the complaint process may be accessed at www.fairfaxcounty.gov/policecivilianreviewpanel. Brochures with complaint forms in English, Korean, Spanish, and Vietnamese are also available.

CONTACT INFORMATION		
<i>The identity of a juvenile or a victim of sexual assault will remain confidential consistent with the Board Agenda Item dated February 28, 2017, ACTION-17 at p. 275, and to the extent allowed under the Virginia Freedom of Information Act, Virginia Code Sections 2.2-3700, et seq.</i>		
Name:		
Telephone Number:	Email:	
Address:		
City:	State & Zip Code:	
Were you a participant in the incident?	YES	NO
Were you a witness to the incident?	YES	NO
Are you submitting this form on behalf of someone else?	<i>If yes, please provide his or her contact information.</i>	
YES NO		
If yes, does the person know you are filing this complaint?		
YES NO		

DEMOGRAPHIC INFORMATION		
Gender:	Age:	Race/Ethnicity:

Who Were the Fairfax County Police Department (FCPD) OFFICER(s) Involved?
Describe the officer(s). <i>Provide any known information about the FCPD officer(s)/employee(s) involved in the misconduct. Helpful information includes: Name, Badge Number, Police District, Physical Description (Age, Race, Gender, Height, Weight, Hair/Eye Color, Clothing), Vehicle Number/Description (Color, Make, Model). Attach additional information if necessary.</i>

Did Anyone Witness/See What Happened?
Who? <i>Provide contact information (name, phone, email, address) for witnesses to the misconduct, if known. Indicate if the witness(es) are aware that you are submitting this complaint. Attach additional information if necessary.</i>

For questions or more information, contact us at 703-324-3459, TTY 711 or visit:
www.fairfaxcounty.gov/policecivilianreviewpanel/

What Happened?

*Provide the incident date, time, location, and details. If the misconduct occurred on multiple days, times, or locations, list each to your best recollection. Attach additional information if necessary. **If you want the Panel to review a completed FCPD Investigation, please state the reasons for your request.***

Incident Date:	Incident Time:
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Incident Location:


Incident Details:

Is the incident described above the subject of a court proceeding? <i>If yes, please attach a description of the proceedings.</i>	YES	NO
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Has the FCPD been asked to investigate this incident in the past? <i>If yes, please attach any correspondence you received from the FCPD.</i> <i>If the incident described above has not been investigated by the FCPD, the Panel must send the complaint to the FCPD for investigation. The FCPD may contact you as a part of the investigation process.</i>	YES	NO
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By signing this form, I certify that the statements made herein, and on any attached documentation, are true and complete to the best of my knowledge, information, and belief.

Signature:	Date:
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Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: O-2	Subject: Intake and Processing of Review Requests
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: To provide procedures for filing and processing Review Requests submitted to the Fairfax County Police Civilian Review Panel (the “Panel”) in a timely, responsive, and consistent manner.

Filing a Review Request

- A complainant can file a Review Request with the Panel the same way they can file an Initial Complaint (see page one of Panel Procedure: Intake and Processing of Initial Complaints).
- A complainant must include in the Review Request a statement describing the reason(s) for the Review Request.
- Upon receipt of a Review Request:
 - Staff, in consultation with the Chair, will determine whether the Review Request is timely filed (within 60 days of the date of the FCPD Disposition Letter), unless the Panel determines that there is good cause to extend the filing deadline.
 - Staff, in consultation with the Chair, will determine whether the matter described in the Review Request is the subject of pending civil, criminal, or administrative litigation.
 - The Chair will forward the Review Request to the FCPD (for informational purposes only) and request a copy of the FCPD Disposition Letter if not attached to the Review Request.
 - Staff, in consultation with the Chair, will draft and send a letter to the complainant acknowledging receipt of the Review Request and delineating next steps, using the attached template:
 - Confirmation of Receipt – Request for Review (No Pending Litigation) (Attachment 1)

- Confirmation of Receipt – Request for Review (Pending Litigation) (Attachment 2)

Initial Review

- The Initial Review Committee will conduct the Initial Review.
- The Review Liaisons for the Complaint, together with the Chair or Vice Chair (as determined by the Chair), will form the subcommittee to conduct the Initial Review (the “Initial Review Subcommittee”).
- The Chair will coordinate with the FCPD Liaison dates and times for the Initial Review Subcommittee to review the Investigation File.
- The Chair will schedule the meeting date for the Initial Review Meeting and set the agenda.
- After the review of the Investigation File, the Subcommittee will meet to (i) determine whether the Panel has the authority to review the Investigation, and (ii) complete the Initial Review Report Template (Attachment 3). If the Initial Review Subcommittee determines that the Panel does not have authority to review the Investigation, the Initial Review Report will note the Subcommittee’s reasoning.
- After the Initial Review meeting, Staff, in consultation with the Chair, will draft and send the Initial Disposition Notice to the complainant notifying the complainant of the Panel’s determination of authority to undertake a review of the subject Investigation. If the Initial Review Subcommittee concludes that the Panel has authority to review, the letter will also notify the complainant of the date and time of the Panel Review Meeting, a description of the review process, the deadline for completing the review, and the complainant’s right to attend the Panel Review Meeting and options to address the Panel, using the attached templates:
 - Determination of Panel Authority and Review Meeting Notification (Attachment 4)
 - Determination of Panel Authority – Review Meeting Notification – Optional Attendance (Attachment 5)
 - Determination of Panel Authority – No Authority to Review (Attachment 6)
- Staff, in consultation with the Chair, will draft and send the Initial Disposition Notice to the complainant within 30 days of receipt of the Investigation Report.

- If the Initial Review Subcommittee concludes that the Panel has review authority the Initial Review Subcommittee will also (i) set the date for the Panel Review Meeting and (ii) determine whether the FCPD should be asked to appear at the Panel Review Meeting.
- The Chair will (i) notify Panel Members of the results of the Initial Review Meeting and request that all Panel Members review the Investigation file, (ii) coordinate with the FCPD Liaisons to (a) determine times when the Investigation file will be made available to the remaining Panel Members for review and (b) request the FCPD, through the FCPD Liaisons, to appear at the Panel Review Meeting, if necessary.

Panel Review Meetings

- The Staff, in consultation with the Chair, will prepare and post the Panel Review Meeting Notice in accordance with Article VI.E.1 of the Bylaws.
- Staff will send an official email notification of the date of the Review Meeting to the Panel, the Panel's Counsel, the County Attorney, the FCPD Liaisons, and the major in command at the FCPD Internal Affairs Bureau at least fourteen days in advance of the Review Meeting, as required by Article IV.E.1.c of the Panel's Bylaws.
- The Chair will preside over Panel Review Meetings in accordance with Article VI.E.1 of the Bylaws.
- When opening a Panel Review Meeting, the Chair will ask Panel Members, the FCPD representative, and the complainant to introduce themselves for the record and the Chair will outline the process for conducting the Panel Review Meeting, reminding those in attendance that:
 - the purpose of the Panel's review of the Investigation is to determine whether the Investigation is thorough, complete, accurate, objective and impartial.
 - the complainant will have 15 minutes to address the Panel to state his or her reasons for filing the Review Request and that Panel Members may ask questions regarding those reasons. On motion from a Panel Member, the Panel may consider an extension of the 15-minute time period.

- Panel Members may ask the FCPD representative questions regarding the process of the Investigation and the conclusions reached in the Investigation.
- questions regarding officer discipline are personnel matters that must be discussed in closed session.
- Panel Members may also request consultation with legal counsel during the Panel Review Meeting, which must also be discussed in closed session.
- If the complainant does not attend the Panel Review Meeting, or attends but chooses not to address the Panel, the Panel may complete the Investigation review process.
- If other witnesses attend the Panel Review Meeting, their contact information will be obtained and given to the FCPD for follow-up.

Panel Findings

- At the discretion of the Chair, Panel Members may continue the Panel Review Meeting with a discussion of their findings from the review. If not, discussion of Panel review findings can be deferred to the next Panel Meeting.
- Opening the deliberations, the Chair will restate the Panel Findings options for Panel Members, as outlined in Article VI.F.2.a of the Panel's Bylaws. The Panel may:
 - Concur with the findings detailed in the Investigation Report.
 - Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief of the FCPD.
 - Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- A majority of the appointed Panel Members must vote to concur with the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.

- Panel Members who do not agree with the majority may offer a written dissent that explains his or her rationale for dissenting. The dissent will be included in the Panel's review report.
- Panel Members may offer policy recommendations or other comments that the Panel will consider for inclusion in the Panel's Review Report.
- After the Panel votes on the Panel Findings, Staff, in consultation with the Chair, will draft and send correspondence informing the complainant of the Panel's Findings and the next steps in the process, using the attached template:
 - Notification of Panel Vote (Attachment 7).

The Panel Review Report

- The assigned Review Liaisons for a Review Request will draft the Panel Review Report using the Panel Review Report Template (Attachment 8).
- The Panel Review Report will not contain identifying information for either the police officer(s), the complainant, or witnesses.
- Discussion of the results of the FCPD investigation will be limited to information provided in the FCPD disposition letter. Details from the FCPD Internal Affairs investigative/personnel file must not be included in the Panel Review Report.
- The Chair will circulate the draft report for comment with the Agenda for the meeting during which the Panel Review Report will be discussed.
- The Review Liaisons will present the draft Panel Review Report at the Panel Meeting.
- The Panel will discuss the draft Panel Review Report. A separate vote will be taken on each proposed recommendation or comment to determine its inclusion in the final Panel Review Report.
- Based on the discussion and vote, the Review Liaisons will finalize the Panel Review Report.

- Staff, in consultation with the Chair, will send the final Panel Review Report to the Board of Supervisors, the Chief of the FCPD, and the Auditor, and will post the Panel Review Report on the Panel’s website.
- Staff, in consultation with the Chair, will draft and send correspondence, along with the final Panel Review Report, to the complainant, using the attached template:
 - Notification of Panel Report (Attachment 9).

Fairfax County Police Civilian Review Panel Initial Review Report

Request for Review – Basic Information	
Complainant:	CRP Complaint Number: CRP-#-#
Subcommittee Members: <ul style="list-style-type: none"> Panel Member Name, Review Liaison Panel Member Name, Review Liaison Chair or Vice-Chair Name, Chair/Vice-Chair 	
Complaint Submission Date:	

This report is subject to Federal and Virginia Freedom of Information Acts. Panel members will maintain to the greatest extent possible under the law and in accordance with the Bylaws all sensitive and confidential information not intended for a public release.

Purpose
<p>The Initial Review Report outlines the Review Liaisons’ (a) determination on Panel authority to review an investigation based on complaint details and in accordance with the Bylaws and (b) recommendations on whether to accept or decline to review a submitted Request for Review.</p>

Findings
<p>Use this section to identify the key facts and factors supporting the recommendation.</p>

Recommendation
<p>Use this section to report if the Panel has authority to review the Investigation.</p>

Panel Bylaws Abuse of Authority and Serious Misconduct Checklist		
Criteria Met?	Abuse of Authority and/or Serious Misconduct	Complainant Details*
Yes/No	Use of abusive racial, ethnic or sexual language or gestures.	
Yes/No	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	

Yes/No	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	
Yes/No	Reckless endangerment of detainee or person in custody.	
Yes/No	Violation of laws or ordinances.	
Yes/No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.	

***Confidential and sensitive information shall not be disclosed in this document. Contact the Chair or Panel Legal Counsel for questions and/or additional information.**



County of Fairfax, Virginia

MEMORANDUM

DATE: _/_/_

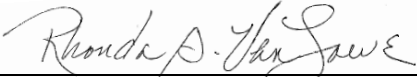
TO: Fairfax County Board of Supervisors
 Col. Edwin C. Roessler, Jr., Chief of Police
 Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of **Complainant**

- I. Introduction
- II. Review Request
- III. Procedural Background
- IV. Panel Meeting
- V. Comments

CC: **Complainant**

Fairfax County Police Civilian Review Panel Procedural Memorandum	
No: O-3	Subject: Duties of Panel Review Liaisons
Approval Date: December 6, 2018	Review Date: December 2020
Signed by Rhonda S. VanLowe, Chair	

Purpose: To provide guidelines for executing the responsibilities of Review Liaisons.

Requirements

- All Panel members will serve as Review Liaisons (on a rotating basis and when appointed to do so by the Chair) to ensure that all Complaints are handled in a timely manner in accordance with the Panel’s Bylaws.
- Once appointed, the Review Liaisons will manage the disposition of the Complaints for the Panel. Disposition commences from the date the Panel receives the Initial Complaint or Review Request and ends after the complaint process is concluded.
- If a Review Liaison is unable to fulfill the responsibilities on an appointed Investigations, they will immediately notify the Chair to identify an alternate Panel member.

Review Liaisons Responsibilities

- **Initial Complaints**
 - For Initial Complaints, the Review Liaisons will:
 - Coordinate the follow-up with the FCPD Liaison to ensure timely completion of the investigation.
 - Confirm with the FCPD Liaisons that the FCPD is investigating the full scope and all issues raised in the Complaint.
 - Report to the Chair the FCPD investigation outcome or any significant challenges that arise during the FCPD investigation period.
 - If the Complainant submits a Review Request after FCPD notifies the Complainant of the investigation outcome/disposition, the Review Liaisons assigned to the Initial Complaint will remain as the Review Liaisons for the review process, unless otherwise agreed.
- **Request for Review**

- For Request for Reviews, the Review Liaisons will:
 - Review the completed FCPD Investigation File.
 - Serve as members of the subcommittee to perform the Initial Review.
 - Consult with the Panel's legal counsel to seek advice on whether the alleged conduct is within the Panel's review authority.
 - Coordinate with the FCPD Liaison to discuss possible FCPD policies and/or procedures that the Panel will need to consider in its review.
 - If the Panel reviews the Investigation, the Review Liaisons will:
 - Prepare the Panel report based on the Panel's findings. (Note: If an appointed Review Liaison voted with the Panel minority, he/she may request the Chair to appoint another Panel member to prepare the report based on the majority Panel findings.)
 - Present the draft Panel Review Report to the Panel for consideration.
 - Make modifications to the draft Panel Review Report based on Panel deliberations.
 - Coordinate with the Chair and Staff to send the final Review Report to the Complainant, the Board of Supervisors, the Chief of Police, and the Auditor.
- In addition, the Review Liaisons may:
 - Speak to the FCPD Panel Liaison to clarify material uncertainty in the record and/or discuss possible FCPD policies or procedures that the Panel may need to consider in its review.
 - Speak to the complainant to clarify material uncertainty in the record.

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies and practices as they pertain to case reviews to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
 - 1. The Board of Supervisors shall appoint each Panel Member.
 - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel’s responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
 - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

¹ Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three-year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and
 - (f) Delegate any of these duties to other Panel Members.

2. The Vice-Chair shall:
 - (a) Preside over Panel meetings in the absence of the Chair; and
 - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
3. Panel Committees.
 - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

1. The Panel shall meet as often as necessary to conduct Panel business.
2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of “abuse of authority” or “serious misconduct” by a FCPD officer, and (2) a Review Request is filed. The Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) 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
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

2. Initial Disposition Notice.

- (a) The Panel shall conduct an 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.

- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel

shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
- (e) The Panel shall not take testimony or receive evidence.
- (f) 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.
- (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
- (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
- (i) Translation services will be provided for a complainant or other person that needs

translation assistance to present to the Panel or respond to questions from Panel Members.

2. Closed Sessions, and Confidential Matters During Panel Review Meetings.

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that the file and case record is a personnel record that shall not be disclosed to anyone or copied.
- (e) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:

- (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
 - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
 - (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
 - (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

- 1. Based on the Panel's review of Investigations, the Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed.
- 2. The Panel may conduct Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Chief and the Board of Supervisors.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation

and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair’s designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel’s written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member’s duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND THE AUDITOR; BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.

Fairfax County Police Civilian Review Panel

Public Forum on December 10, 2018

Mount Vernon Governmental Center

Meeting Summary

Panel Members Present:

Hansel Aguilar
 Hollye Doane
 Col. Greg Gadson
 Anna Northcutt
 Adrian Steel
 Rhonda VanLowe, Chair

Others Present:

Dan Storck, Mount Vernon District, Board of Supervisors
 Richard Schott, Independent Police Auditor

Panel Members Absent:

Bob Cluck
 Doug Kay

The Public Forum began at 7:03 p.m.

Ms. VanLowe and Supervisor Storck welcomed attendees to the Fairfax County Police Civilian Review Panel's (Panel) Public Forum. Supervisor Storck provided framing remarks on the establishment of the Panel and the Office of the Independent Police Auditor and noted that civilian oversight is something the community cares deeply about.

Ms. VanLowe reviewed the agenda. She thanked Supervisor Storck, Chief Roessler, Captain Owens, and Major Reed, and audience members for attending. She explained that the purpose of the public forum is to introduce the Panel and engage with the public. The Panel received twenty-three complaints and three requests for review in 2018 and has participated in many outreach events to meet with different organizations and members of the community.

Each Panel Member present introduced themselves and shared information on their background, experiences, and expertise that led them to join the Panel. Richard Schott, the Independent Police Auditor, also introduced himself and provided background on his career.

Mr. Steel provided information on the history and the establishment of the Panel, and the Panel's scope of authority. He noted that Fairfax County is one of the few places in the country to have a hybrid system of oversight, with a Civilian Review Panel and an Independent Police Auditor. The Panel reviews completed Fairfax County Police Department (FCPD) investigations into allegations of serious misconduct or abuse of authority. While the Panel is unable to gather evidence, the Panel allows complainants to appear before the Panel to state their reasons for requesting a review. The Panel may also ask an FCPD representative to attend the meeting and to review and answer questions about the investigation and may, if it deems it warranted, require the FCPD to conduct additional investigation.

Ms. Doane reviewed the Panel's complaint filing process. Complaints can be submitted to the Panel via email to the Panel, or in person, mail, or phone call to the Auditor's office. Complainants can request the help of staff when filling out a Complaint Form and staff will assist. The Panel reviews completed FCPD investigations to ensure accuracy, completeness, thoroughness, objectivity, and impartiality. Complaints received by the Panel that have not been previously investigated are shared with the FCPD. Once the FCPD has completed its investigation, the complainant may request a review of the investigation by the Panel if they are unsatisfied. The Panel conducts its review of complaints in public meetings and may hear from the complainant and an FCPD representative. The Panel then issues a public report on its findings. In addition, the Panel can make policy recommendations related to complaints they receive. It was noted that all Panel Meetings are open to the public. Audio recordings and summaries of the meetings are available on the Panel's webpage.

Mr. Schott explained the Auditor's role in oversight. The Auditor automatically reviews incidents involving an officer involved shooting, in custody death, and use of force that results in serious injury, even if a complaint is not filed. The Auditor also reviews uses of force that do not result in serious injury if a member of the community submits a complaint. The Auditor, like the Panel, does not have investigative authority. However, the Auditor has the ability to monitor investigations while they are ongoing. A public report of each review conducted is published on the Auditor's webpage and shared with the Board of Supervisors and the Chief of Police. The Panel periodically meets with the auditor to discuss his reports and is able to comment on policy changes to the Board and Chief of Police

Questions were taken from the audience regarding Panel and Auditor processes and comments on related issues. A summary of questions and responses is provided below.

The Public Forum adjourned at 9:07 p.m.

Questions and Answers

1. Could you describe the type and status of complaints received by the Panel?

The complaints received by the Panel vary by type of allegation and cover many different issues. In 2018, the Panel processed twenty-three Initial Complaints and held three reviews. Most complaints received by the Panel were initial complaints where the complainant did not request the Panel's review after the FCPD completed its investigation.

2. What is the difference between an Initial Complaint and a Request for Review? Was the procedure for a Review Request created by the Panel?

An Initial Complaint refers to a complaint that is submitted to the Panel but not previously investigated by the FCPD. In these cases, the Panel must forward the complaint to the FCPD for investigation. After the complainant receives a letter from the FCPD detailing the findings of the investigation, the complainant may choose to submit a Request for Review to the Panel if they are unsatisfied with the FCPD investigation. The Panel is only able to review completed FCPD investigations. The Request for Review process is outlined in the Board of Supervisors Action Item that established the Panel.

3. Is legal status of a complainant protected? If someone has an illegal status and was the victim of discrimination, what is their safety net?

If an individual is uncomfortable filling out the Complaint Form, a friend, relative, or witness can complete the form on their behalf. The FCPD's investigation includes interviewing involved individuals. If an individual does not want to participate in the investigation process with the FCPD, they will not be pressed to participate.

4. Does the FCPD have Spanish speaking investigators?

The FCPD General Orders states that language access is to be provided through an interpreter or the language line when there is a language barrier present.

5. The FCPD received 268 citizen complaints. Do you have the ability to review these complaints?

The Panel does not have the authority to automatically review every complaint received by the FCPD. A complainant must submit a review request to the Panel for the review process to commence. The letter that the FCPD sends to complainants with the findings of the investigation provides information about the Panel and the complainant's ability to request a review of the investigation by the Panel if the complainant is still unsatisfied.

6. Does the Sheriff have a similar oversight commission?

The Sheriff is an elected constitutional officer who is not under the authority of the county Board of Supervisors. The Final Report of the Ad Hoc Police Practices Review Commission Implementation Group included a recommendation for oversight of the Sheriff. These recommendations are to be reviewed by the Board of Supervisors in 2019.

7. I am constantly harassed by the FCPD and I film the police and their interactions with the public. Is there any way for the Panel to protect people like me and prioritize complaints?

The Panel processes complaints in a timely manner and is sensitive to being responsive to complainants. If you have a concern about retaliation, you may submit a complaint.

8. It seems that if a person is unsatisfied with the FCPD investigation but does not want exposure, there is no option for them. Do complainants have the option to submit a complaint to the Panel anonymously?

The Panel is a public body that conducts its business during public meetings. Also, in the event of a Virginia Freedom of Information Act request, the Panel is required to release information as required by law. However, the identities of minors and victims of sexual misconduct will not be released.

9. Can the Panel use aliases for complainants to maintain confidentiality?

The Panel is committed to not disclosing names of complainants when publishing public reports. Confidentiality is a challenging issue that the Panel is working through.

10. How can you identify trends from complaints if you only review the complaints that are processed through the Panel?

The Panel does not have the authority to review all complaints submitted to the FCPD. The Panel can only identify trends within the complaints that are processed by the Panel.

11. Does the Panel have a schedule for publishing reports to the Board of Supervisors?

The Panel prepares and publishes an annual report that is due March 31st of each year. It is delivered to the Board of Supervisors and available for public review on the Panel's webpage. In June 2018, we met with the Board at a Public Safety Committee Meeting to make a presentation on the 2017 Annual Report.

12. How can a complainant provide witness information to the Panel if the witness would like to remain anonymous and not have their information divulged?

Include the information that the witness has regarding the incident within your complaint without providing the witness name or contact information.

13. When someone sends an email to the Panel's email account, who sends back a reply?

Staff or the Panel Chair responds to emails that are sent to the Panel's email box.

14. Are the FCPD investigation files that Panel Members and the Auditor review redacted?

No, the investigation files are not redacted. The Panel and the Auditor review complete FCPD files and are also given the opportunity to review body worn camera and in car video footage if there is footage associated with the file.

15. Since both bodies report to the Board of Supervisors, is the FCPD still ultimately responsible for policing themselves?

Recommendations made by the Panel and the Auditor are sent to the Board of Supervisors and the Chief of Police and are shared in public meetings.

16. Why is the Panel unable to review incidents that involve use of force, in custody death, or officer involved shootings?

The Ad Hoc Police Practices Commission thought that the review of use of force, in custody death, and officer involved shootings should be conducted by an individual trained in investigations. Therefore, it is the responsibility of the Auditor to review these types of complaints. The Panel meets with the Auditor periodically to review his reports and may provide input on these topics to the Board of Supervisors.

17. What is the process to change the way the Panel is authorized to function?

The Board of Supervisors Action Item dictates the way that the Panel can operate. Concerned citizens may wish to provide their thoughts on this matter to the Board of Supervisors and other elected officials.

18. Why is the Auditor unable to conduct his own investigations?

Under Virginia Law, it is not clear that the Board of Supervisors is able to delegate investigative authority to other entities.

19. When can we receive a report on the racial disparity against African Americans in the county?

The Auditor's Report, titled "A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015", was published in July 2018. The report outlines the key findings from the review as well as policy implications and recommendations. It was sent to the Board of Supervisors and is posted on the Auditor's webpage for public review. The Auditor is currently reviewing the use of force data for 2016.

20. Is there a residency requirement for officers of the FCPD?

There is no requirement that recruits or officers of the FCPD live in the county. The FCPD seeks candidates from across the entire state of Virginia to increase the diversity of the force. It is a challenge to reflect the county's diversity within the department.

21. Can an officer of the FCPD be prosecuted because of the submission of a complaint to the Panel?

The Commonwealth Attorney's office would make the decision whether to prosecute an officer for criminal conduct. Discipline decisions are made by the Chief prior to the Panel's review of a completed FCPD investigation.

22. Why are complaints routed through the Auditor's office?

The Auditor's office is responsible for providing administrative support to the Panel, which is comprised of nine civilian volunteers. The Panel's email box is monitored by staff from the Auditor's office and all emails are forwarded to the Panel Chair and Vice-Chair for a response.

Comments from Audience

- The Review Request procedure seems to be a bureaucratic barrier. A complainant must share their personal information twice at a time when they are most likely feeling vulnerable. It takes a lot of courage for a complainant to come forward. This process seems to put people through a lot for very little. The Panel's review of complaint should be automatic after a complainant submits an Initial Complaint.
- There is little information found in the Panel's reports. It would be helpful to know the date the complaint was received, if extensions were requested by the FCPD, and the date the FCPD completed their investigation. More information should be included on the Panel website about complaints being reviewed. The commenter asked the reason for the lengthy delay before Panel reports are published.
- The Panel Meeting agendas are not informative. It would be helpful to include corresponding meeting materials for each agenda item online, like the Board of Supervisor's meeting agenda.
- It would be helpful to include what time, according to the meeting audio, each agenda item begins within the Panel Meeting summaries.
- The issues that the Ad Hoc Commission addressed are still concerns today and remedies need to be implemented. We urge you to take a firm position on policy matters in the 2018 Annual Report.
- It is concerning that an incident must occur more than once for a resolution to be offered. Everyone is aware of the Panel and Auditor's limitations. The word accountability should no longer be used because I am not seeing any accountability or responsibility from the FCPD.
- No one has addressed the great things the FCPD does for our community. They put their lives at risk every day to keep us safe.
- The Complaint Form needs to be simplified into layman's terms. The Panel is doing something wrong if it is receiving a fraction of the complaints that the FCPD receives.
- Consider holding future public forums at locations in the county that are not co-located with a Police Station, such as a library, community center, or school.
- While Public Safety Committee Meetings are public meetings, there is not an opportunity for public comment to engage with the Board.
- It is disturbing that the FCPD has not publicly reported the use of force statistics for 2017 or 2018.



County of Fairfax, Virginia

MEMORANDUM

DATE: 5/7/2018

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-02

I. Introduction

We are writing to inform you that the Fairfax County Police Civilian Review Panel (the “Panel”) has concurred with the findings and determination of the Fairfax County Police Department (“FCPD”) regarding the investigation of a complaint submitted by a complainant.¹

II. Review Request

On June 22, 2017, two FCPD officers responded to calls concerning a landlord-tenant civil dispute at two residences in Lorton. During their encounter with the complainant at his home, the officers observed him slurring his speech, smelling of alcohol and having watery eyes. The officers advised the complainant not to leave his house because doing so would expose him to arrest for a violation of Fairfax County Code Section 5-1-1 (which prohibits persons from being drunk in public). Thereafter, the complainant left his house and approached the vehicle of one of the officers. The officers observed the complainant as being unsteady as he walked, and he was arrested for being drunk in public. The Complainant filed a Complaint with the FCPD, claiming that he was falsely arrested and was not drunk. He stated that the arresting officer did not have sufficient time to observe him in order to make a determination that he was drunk. He said that he asked the officers to give him an alcohol breath test and that they refused.

III. Procedural Background

The complainant initially filed a Complaint with the FCPD on July 5, 2017. An investigation by the FCPD found that the arrest was in compliance with Regulation 2013, General Order 601. Mr. Loesch was informed of the finding on January 9, 2018, and on January 26, 2018, he was informed that he had the right to seek a review by the Panel. On February 7, 2018, the complainant asked for a Panel review of the police investigation of his Complaint.

Fairfax County Police Civilian Review Panel
12000 Government Center Parkway, Suite 233A
Fairfax, Virginia 22035
703-324-3459, TTY 711
www.fairfaxcounty.gov/policecivilianreviewpanel

IV. Panel Meeting

The Panel met on March 1, 2018, at a public meeting. Prior to the meeting, all members had reviewed the FCPD investigation file concerning the complainant's complaint. At the meeting, the Panel voted unanimously that (i) the complainant's allegation of false arrest falls within the Panel's scope of review authority, and (by a vote of 5 in favor, 2 opposing and 2 abstaining) that (ii) a separate Review Meeting with the complainant and the FCPD was not needed prior to a vote on a finding. On April 5, 2018, the Panel met at a public meeting and voted to concur with the findings and determinations detailed in the FCPD Investigation Report. On May 3, 2018, the Panel voted to approve publication of this report. Audio recordings and summaries of the Panel meetings may be reviewed here: <https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>

V. Comments

Several Panel members noted that the audio tapes of the interviews and the video of the police transport of the complainant after his arrest were helpful in their determinations.

In addition, a body-worn camera recording might have been useful in the matter to give a better view of the complainant's behavior during the arrest.

CC: Complainant

ⁱ Unless stated, capitalized terms shall have the same meaning stated in the Bylaws



County of Fairfax, Virginia

MEMORANDUM

DATE: 1/8/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-12

I. Introductionⁱ

The Panel held a Panel Review Meeting on November 1, 2018 to review the Investigation resulting from a complaint submitted to the Panel on June 4, 2018. After reviewing the Investigation file and hearing from the complainant (the “Complainant”) and his wife, the Panel voted to concur with the findings of the FCPD documented in the Investigation Report. All Panel Members attended the Panel Review Meeting.

II. Review Request

On March 15, 2018, FCPD officers responded to a report of a crash between a motorcycle and a car—Complainant was the driver of the motorcycle. The Complainant stated that he rear-ended a car that stopped suddenly in front of him on the roadway. Complainant suffered severe injuries in the accident. The driver of the rear-ended car left the scene of the accident and was never located. The request for Panel review stems from the FR300P accident report (FR300P) written by the responding officer (the “Officer”). Complainant complained that the FR300P was inaccurate and that the Officer refused to change the FR300P after Complainant and his wife made the Officer aware of certain inaccuracies.

Complainant complained that the following items were incorrect on the FR300P:

1. The make of the rear-ended car;
2. The identity, relative to their role in the crash, of the individuals who tended to the injured Complainant;
3. The extent of Complainant’s injuries;
4. The extent to which the driver of the rear-ended car (who was not at the scene to be interviewed by the officer) was under the influence of alcohol;
5. The presence or absence of a defect in the rear-ended car’s brake lights, which the Officer did not observe;

6. The determination of driver fault; and
7. The speed limit on the road.

Upon seeing the report, Complainant's wife requested that the Officer revise the FR300P to correct alleged inaccuracies. The Officer declined to do so. The Officer had made no changes to the FR300P at the time Complainant complained to FCPD about the inaccuracies in the FR300P, which he classified as lies.

III. Procedural Background of Review

Unsatisfied with the Officer's response, Complainant filed an Initial Complaint through the Panel. The Panel referred Complainant's complaint to the FCPD Internal Affairs Bureau for investigation and preparation of a report (the "Investigation Report"). The FCPD investigated the complaint and issued a notification of its findings to the Complainant on August 17, 2018 (the "Notification"). The Notification states, among other things, that "[the Officer's] actions were improper and in violation of Departmental regulations" and that "measures have been imposed to prevent a recurrence of this type of incident in the future." After completion of the Investigation, the Officer amended the FR300P correcting some, but not all, of the information disputed by Complainant.

On August 21, 2018, Complainant requested that the Panel review the Investigation Report. On October 4, 2018, the Panel voted that the Panel had authority to review the Investigation and issued an Initial Disposition Notice. This report of Panel Findings is issued as per the Bylaws following a Panel Review Meeting convened to review the Investigation Report.

IV. Panel Review Meeting

All Panel members reviewed the Investigation Report prior to participating in the Panel Review Meeting. The Complainant and his wife were present at the Panel Review Meeting and made statements and answered questions of the Panel. Maj. Gervais Reed appeared on behalf of the FCPD and answered questions from the Panel.

After hearing from the Complainant and his wife and Maj. Reed, the Panel deliberated and voted to concur with the findings and determinations of the Investigation Report. The vote, held on November 1, 2018, was six in favor, one opposed, and one abstention. On January 3, 2019, the Panel voted to approve publication of these Panel Findings. An audio recording and a summary of the Panel Review Meeting may be reviewed here:

<https://www.fairfaxcounty.gov/policecivilianreviewpanel/panel-meetings>

V. Additional Comments

- A. Panel Members expressed concern about the adequacy of training and would like to know what steps have been taken to ensure that all officers know how to complete FR300Ps and the steps to make corrections if needed.

- B. The Officer's demeanor in the face of the Complainant's entreaties for a revised FR300P is challenging. The Officer's seeming dismissal of the Complainant's pleas struck the Panel members as uncaring and unprofessional. There was some discussion between Panel members as to whether the Officer's demeanor warranted further investigation, as it was not explicitly discussed in the Investigation Report. However, Maj. Reed's assurance that the investigators took a holistic approach to the complaint, coupled with the fact that issues of the Officer's demeanor are inextricably tied to the officer's refusal to update the FR300P satisfied the Panel that the officer's demeanor was reviewed as part of the Investigation and that a separate investigation into the officer's demeanor was unwarranted.

VI. Recommendations

- A. The Panel Members expressed concern that there is currently no supervisory review of completed FR300Ps before they are submitted to the VA Department of Motor Vehicles. Maj. Reed informed the Panel that previously supervision of accident reporting was more robust. The Virginia State Police's creation of an electronic system for FR300Ps inhibited review of completed FR300Ps. The Panel recommends that the FCPD develop an efficient methodology to reintegrate some level of supervision over the submission of the forms. Complainant stated that the consequences for errors could be problematic as certain insurance claims were initially denied based on the erroneous information in the initial FR300P.
- B. The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report.
- C. The Panel Members recommend that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name. The benefit of publishing a discipline summary is that all officers, regardless of their home station, could learn from the mistakes of their peers across the County. Such a system is used successfully in the practice of law in Virginia and in other law enforcement agencies across the country.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

Panelist Aguilar Dissenting

I dissent from the judgment and opinion(s) pronounced by the majority of the Panel in this case for the below outlined reasons:

In his written declaration and subsequent verbal statements to the FCPD and the Panel, the complainant alleged, that he was subjected to: (1) improper police procedures (i.e. incomplete crash investigation and reporting) and (2) discourteous customer service. The former resulted in tangible injuries (via complications with his insurance company) and the latter resulted in the subject officer's misguided refusals for a review and revision of the report which brought the Department into disrepute. Upon receiving the disposition letter, the complainant requested a review of the investigation by the Panel. The Panel correctly agreed that it had jurisdiction to assess and review the matter.

However, as reflected in the verbal statements made during the deliberations of the case in the public review session and the written Panel conclusions, the Panel erred in concluding that the investigation was complete. Specifically, the Panel placed greater emphasis on the allegation concerning the improper crash investigation and the subsequent erroneous report than to the allegation concerning the demeanor of the officer. Paradoxically, the demeanor of the subject officer was noted to be below the expected standards of the Department in the majority's decision. Specifically, in the **Additional Comments**. section **B.** of the majority report it justifies the rationale in concluding the investigation was complete in stating:

“The Officer’s demeanor in the face of the Complainant’s entreaties for a revised FR300P is challenging. The Officer’s seeming dismissal of the Complainant’s pleas struck the Panel members as uncaring and unprofessional. There was some discussion between Panel members as to whether the Officer’s demeanor warranted further investigation, as it was not explicitly discussed in the Investigation Report. However, Maj. Reed’s assurance that the investigators took a holistic approach to the complaint, coupled with the fact that issues of the Officer’s demeanor are inextricably tied to the officer’s refusal to update the FR300P satisfied the Panel that the officer’s demeanor was reviewed as part of the Investigation and that a separate investigation into the officer’s demeanor was unwarranted.”

In addition to those written statements, some panelists also voiced their opinions on the matter to include the following verbal statements¹:

“...there was a part that seemed to go unaddressed and that was the officer’s demeanor”
[00:40:18]

“...there was an element of this that was potentially related to the demeanor of the officer, but I think the crux of the complaint was the form, the accuracy of the form...” **[00:41:49]**

¹ A transcript of the meeting is not available, however as it is practice of the Panel, a link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-nov-1-2018> . Time stamps of selected statements from the session are provided in brackets.

“...As far as the demeanor of the officer...I think, overall, the Fairfax County Police, in my limited experience, does a good job that way...” [00:48:40]

“You all voted on what we had authority to review and the things that we felt we had- I remember outlining what we had authority to review pertained to, not the demeanor but it pertained to the accuracy of the report...” [01:04:26]

“You could argue that he [the complainant] brought up a separate allegation tonight that we didn’t consider jurisdiction on, so we could actually vote to see whether we believed that rose to the level of serious misconduct...” [01:05:01]

The result of the majority’s decision was that an allegation of police misconduct made against a FCPD officer remains formally adjudicated. The Panel certainly had jurisdiction to review an allegation of this caliber. In **ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES**. Section B of the Bylaws, serious misconduct is, in part, described as conduct where officers act: *“in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.”* The inaccurate report was careless and so were the subsequent refusals to amend it. The comment that “it is what it is” was objectively rude and the subject officer did not deny saying it. The act could be viewed from the lens of at least three of the Department’s general orders:

201.7 STANDARDS OF CONDUCT

A) Unbecoming Conduct

Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Conduct unbecoming an employee shall include that which brings the Department into disrepute or reflects discredit upon the employee as a member of the Department, or that which impairs the operation or efficiency of the Department or employee.

201.13 HUMAN RELATIONS

A. Citizen Contacts

Employees shall conduct themselves professionally at all times when representing the Department. They shall use respectful, courteous forms of address to all persons...

202.1 LOITERING, SLEEPING, LOAFING ON DUTY

No employee shall loiter, sleep, or loaf on duty, or in any other manner shirk responsibilities in the performance of duty.

The fact that the allegation was not “explicitly discussed in the Investigation Report,” in my view invalidated the completeness of the investigation. Considering the totality of the circumstances surrounding the allegations and the investigation, I believe the only appropriate disposition in this matter was to render it incomplete. Having reached that conclusion, I believe that voting to concur

with the findings and determinations of the Investigation Report would have been a dereliction of my duty.

The Panel should not be concerned whether the Department's outcome of the investigation will remain the same if the Panel renders it incomplete after its review. The Panel must hold the internal investigations process of the Department to higher standards if it is to remain true to its stated mission *"to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigation."*

This is no trivial matter, but I pray and hope it is an isolated incident. If such approach remains the modus operandi of the Panel, I fear the Panel may be on the dangerous path towards irrelevancy. The Panel is still in its infancy and such hiccups are understandable, but it must remain vigilant for the sake and future of civilian oversight in our beloved county.

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County of Fairfax, Virginia

MEMORANDUM

DATE: 3/7/2019

TO: Fairfax County Board of Supervisors
Col. Edwin C. Roessler, Jr., Chief of Police
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings for Complaint CRP-18-26

I. Introductionⁱ

The Panel held a Panel Review Meeting on January 3, 2019 to review the Investigation resulting from a complaint submitted to the Panel for review on November 26, 2018. After reviewing the Investigation file, the Panel voted unanimously to concur with the findings of the FCPD documented in the Investigation Report. All Panel members attended the Panel Review Meeting.

II. Review Request

On or about August 25, 2018, at approximately 3:46 PM, the Complainant was stopped within the Fairfax County jurisdiction by a uniformed FCPD Officer (hereafter referred to as “Subject Officer”) in a marked cruiser for a window tint violation. The Complainant alleged the Subject Officer racially profiled him when stopping his vehicle. Specifically, the Complainant believed the Subject Officer’s reference that the Complainant could not be seen through the windows was more related to his dark complexion than the window tint. The Complainant further believed the Subject Officer’s inquiry of “Where are you headed?” was inappropriate and beyond the scope of the infraction at hand.

III. Procedural Background

The Complainant filed a complaint with the FCPD on or about August 27, 2018. The FCPD Internal Affairs Bureau (“IAB”) investigated the complaint and issued a notification of its findings to the Complainant on or about November 9, 2018. The FCPD investigation found that there was “no credible evidence to support” the Complainant’s allegation of bias.

Later that month, on or about November 26, 2018 the Complainant sent an email to the Office of Independent Police Auditor requesting a review the IAB investigation by the Panel. The Complainant expressed dissatisfaction with the lack of details as to the results of the IAB's investigation and shared his belief and perception that the assigned investigator demonstrated a lack of impartiality.

On December 17, 2018, a sub-committee of the Panel met to review the Review Request and determined the Panel had authority to review the Investigation since the subject matter of the Investigation alleged an abuse of authority and issued an Initial Disposition Notice.

IV. Panel Review Meeting

All Panel members reviewed the Investigation Report prior to participating in the Panel Review Meeting on January 3, 2019. The Complainant was not present at the Review Meeting nor was a representative on his behalf. The Complainant was contacted on several occasions, both via telephonically and via correspondence, and provided the date/time and location information on the meeting. Major Gervais Reed appeared on behalf of the FCPD. He reviewed the investigation conducted by IAB and answered questions from the Panel.

Based on Major Reed's presentation and responses and on the Panel's review of the Investigation file, the Panel determined as follows:

The IAB investigator interviewed the Complainant (by email) and the Subject Officer regarding the August 25, 2018 traffic stop. The Subject Officer's in-car video (ICV) and body worn camera (BWC) footage were also reviewed by the investigator, the investigation established that the Subject Officer was on patrol on August 25 when she observed a vehicle pass by her with dark tinted windows. Because she was unable to see the driver through the windows, she initiated a traffic stop on-the-basis of a possible violation of the Virginia law on the tinting of car windows. VA Code 46.2-1052. The Subject Officer explained to the Complainant the reason for the stop and tested the driver side and left rear passenger windows with a tint meter. The driver side window tested at 36% (i.e., 36% of light passed through), and the passenger window tested at 16%. The Virginia Code requires a minimum 50% transparency for a front seat window and a 35% transparency for a rear window. The meter was tested before and after the Subject Officer's shift and found to be working properly. She explained to the Complainant that she decided to issue a summons because of the violation of the Code standards, especially as to the rear window.

A review of the ICV and BWC footage indicates that the Subject Officer's conduct was proper and in compliance with all applicable FCPD policies, including FCPD's Bias Based Policing policy as set forth in Reg. 201.22 which requires traffic stops to be based on reasonable suspicion or probable cause and prohibits the consideration of race or ethnicity in making law enforcement decisions. The Subject Officer had probable cause that the Complainant's car windows violated the Virginia Code, and she acted

properly in stopping the car. In so doing, she was courteous and professional, explained the reason for her actions, and asked the Complainant if he had any questions. The ICV and BWC footage also reflected that the Complainant and the Subject Officer engaged in routine conversation as would be associated with any traffic stop with no profanity, harsh or derogatory language, and no racial slurs or other discriminatory remarks by either of them. The questions that the Subject Officer asked are common to traffic stops. The Subject Officer also advised the Complainant that, if he were to bring evidence that he had remediated the excessive tint to the court hearing, there was a good possibility that the charge would be dismissed.

With respect to the Complainant's concern that the Subject Officer stopped the Complainant's car and issued a summons on the basis of race, the ICV footage shows that she could not have seen through the windows of the Complainant's car as it passed by her and that she could not have determine the driver's race before initiating the stop due to the heavy tint. Both the ICV and BWC footage showed that there were no other cars in front of the Complainant's car when his car passed the Subject Officer's police vehicle. The footage further shows that the Subject Officer asked the Complainant to move his car to a side street to avoid blocking a street.

Based on the above, the Panel deliberated and voted unanimously to concur with the findings and determinations of the Investigation Report.

An audio recording of the January 3, 2019, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-jan-3-2019>.

On February 7, 2019, the Panel discussed the Finding Summary, an audio recording an may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-feb-7-2019>

V. Comments

- A. Panel members reviewed the video from both the BWC and ICV and agreed this footage provided impartial documentation of the alleged conduct in question and further remarked on the usefulness of such evidence for future cases of a similar nature.
- B. Some Panel members expressed concern about the FCPD's use of statistical evidence for determining racial disparities. Specifically, the FCPD used descriptive data and attempted to make correlations without taking into consideration the demographics of the District in comparison to the District's criminal statistics. Major Reed confirmed that the FCPD employs crime analysts and that IAB investigators do not receive specialized training on statistics.

VI. Recommendations

- A. The Panel recommends that the FCPD ensures that individuals involved in incidents with FCPD officers which are subject to a complaint be provided with an opportunity to review the video footage of the incidents. FCPD policy provides for such review. See BWC Standard Operating Procedure 18-506 and General Order 430.8.XI.B. The Panel believes that enabling complainants to view video and audio of incidents giving rise to complaints will enhance the FCPD's transparency and assist complainants in understanding the FCPD's conduct during the incidents.
- B. Panel members should be provided with the opportunity to review video and audio footage of all interviews conducted during FCPD administrative investigations.
- C. The FCPD should make BWC and ICV footage available for viewing at Panel Review Meetings as requested by the Panel.
- D. During FCPD administrative investigations, where statistical evidence is used, we recommend the Crime Analyst Unit be consulted in the gathering, preparation and reporting of the statistical data.

CC: Complainant

ⁱ Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

Fairfax County Police Civilian Review Panel Members Biographies

Hansel Aguilar, Fairfax

Mr. Aguilar, originally from Honduras, investigates allegations of police misconduct at the D.C. Office of Police Complaints. Mr. Aguilar is a former police officer for the George Mason University Police Department and previously worked as a case manager and internal investigator for Youth for Tomorrow. He has served with the Vinson Hall Retirement Community in McLean and with the Fairfax County Office for Women & Domestic and Sexual Violence Services. Mr. Aguilar is bilingual in Spanish and English and believes that oversight is an important tenet of maintaining justice and equality in a democratic society.

Robert Cluck, Reston

Mr. Cluck has resided in Fairfax County for 40 years. He was on the Fairfax County Ad Hoc Polices Practices Commission. He served in the US Army and worked for the federal government for over 30 years in finance and administration. Since retirement, he has been active with the National Alliance on Mental Illness (NAMI), including as a member and officer of the Board of the State level organization and as a volunteer in many capacities for the Northern Virginia affiliate. Over period of six years, he gave family member presentations to Fairfax and Arlington County police officers as part of their Crisis Intervention Team training. He is strongly committed to helping enhance public trust between the public and the Police Department.

Hollye Doane, Oakton

A Fairfax County resident for more than 30 years, Ms. Doane spent most of her career as an attorney in Washington D.C. representing an array of clients, including the National Down Syndrome Society and Down Syndrome Research and Treatment Foundation. Ms. Doane has been an advocate for the disability community for more than 20 years and understands the importance of building positive relationships between law enforcement officers and people with disabilities. Her experience as a journalist prior to attending law school gave her an appreciation for clear, timely and transparent communication between government officials and the community. After her retirement, Ms. Doane trained as a mediator and facilitator and currently serves as a lay pastoral minister in her church.

Colonel Gregory Gadson, Alexandria

Colonel Gadson served our nation in the United States Army for more than 26 years. He served in every major conflict of the past two decades and served in various assignments throughout the world. His service culminated as the Garrison Commander of Fort Belvoir, where he oversaw the daily operations of the post, a strategic sustaining base where more than 50,000 military personnel and employees provide logistical intelligence, medical and administrative

support, and command control for a mix of more than 140 commands and agencies for the Department of Defense. He is a passionate advocate for wounded warriors, veterans, and those with disabilities; on several occasions, testified before congress on issues related to these groups. Colonel Gadson continues to serve his nation as an entrepreneur and managing partner of Patriot Strategies, LLC, a government services company.

Shirley Norman-Taylor, Lorton

Ms. Norman-Taylor has resided in Fairfax County for the past 21 years. She is licensed to practice as an attorney in Virginia and Washington D.C. The focus of her practice includes Domestic Relations and Criminal and Traffic Defense, however, her greatest joy comes from representing children who are in the Abuse and Neglect system as their Guardian ad litem (GAL). Ms. Norman-Taylor also serves on the Fairfax County School Board's Minority Student Achievement Oversight Committee (MSAOC). Ms. Norman-Taylor is a former military officer and served as a Commander during Operations Desert Shield/Desert Storm.

Anna Northcutt, Reston

Mrs. Northcutt has lived in Reston over ten years and is involved in the issue of mental health and the resources available within our community to assist individuals and families. For the past several years, she facilitated a family support group for the families and friends of individuals with a mental illness and remains an active supporter of the National Alliance on Mental Illness, NAMI. Ms. Northcutt served in the US Army as a Captain in the Military Police Corps and as a Special Agent in the Federal Bureau of Investigation. She has a Master of Divinity degree and brings both law enforcement experience and the concerns of individuals who often have challenging encounters with law enforcement to the Panel.

Adrian L. Steel, Jr., McLean

Mr. Steel served on Fairfax County's Ad Hoc Police Practices Review Commission and has continued to work with the Board of Supervisors to implement the Commission's recommendations. Mr. Steel was appointed by the Board of Supervisors to serve as the first chair of the Police Civilian Review Panel. Mr. Steel has extensive knowledge and a strong commitment regarding 21st Century police policies and best practices, including civilian oversight. Mr. Steel currently works as a senior counsel at Mayer Brown LLP where he has practiced law for over 37 years, and previously served as a Special Assistant to FBI Director, William H. Webster, handling criminal and counterintelligence intelligence matters

Rhonda VanLowe, Reston (Chair)

Ms. VanLowe was appointed to the Governor's Taskforce for Improving Mental Health Services and Crisis Response and served on the Public Safety workgroup. She has devoted much of her community service work to serving those with unique physical, mental, emotional, intellectual

or cognitive backgrounds. Ms. VanLowe practiced law in law firm and corporate settings, served as Board Chair of The Northern Virginia Therapeutic Riding Program, Inc., and received the National Women of Color Special Recognition Award at the 2008 STEM Conference. Ms. VanLowe is a 36-year resident of Fairfax County and looks forward to working together with members of the Panel to develop procedures that will set the foundational tone and tenor for the work of the Panel.

Douglas Kay, Fairfax (Vice-Chair)

Mr. Kay is a trial lawyer who has handled civil litigation, criminal defense and personal injury cases for over 20 years. He currently focuses his practice on commercial litigation matters. As a criminal defense attorney, he has represented individuals charged with everything from simple traffic matters to the most serious felony offenses in state and federal courts. Mr. Kay previously served as a judge advocate in the U.S. Navy and Assistant Commonwealth's Attorney for Fairfax County. A lifelong Fairfax County resident, Mr. Kay attended Fairfax County Public Schools, coaches his son's youth basketball team, and served on Fairfax County's Ad Hoc Police Practices Review Commission. Mr. Kay was nominated to serve on the Civilian Review Panel by the South Fairfax Chamber of Commerce and the Fairfax Bar Association. Mr. Kay has served on the Panel since its inception.

