



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.