



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods, and diverse communities of Fairfax County

Colonel
Edwin C. Roessler Jr.
Chief of Police

VIA ELECTRONIC TRANSMISSION

February 20, 2015

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Chairman Grassley:

Thank you for your letter of February 10, 2015. As you requested, below I have set forth my answers to each of the enumerated questions posed in your letter.

1. According to FCPD's General Order 301, "[IA] [i]nvestigations should be completed within 60 days of receipt, unless circumstances develop which necessitate additional time to ensure a thorough investigation." FCPD IA's investigation of the Geer shooting has been ongoing since September 2014:

- a. What is the status of this investigation?
- b. Why is it taking so long?
- c. Has IA conducted interviews or obtained facts not already covered by CIB in its Incident Report? If not, what "circumstances [have] developed which necessitate additional time to ensure a thorough investigation."

- 1a. The internal affairs investigation is ongoing.

The Fairfax County Police Department has adopted procedures to ensure the complete examination of all facts and circumstances relevant to any complaints against any of its employees or complaints about the policies, procedures, or practices of the Department. Under General Order 301, an administrative investigation, also called an internal affairs investigation, is conducted into "any alleged or suspected acts of employee misconduct, notice of a civil claim filed against the Department or against a member as a result of actions taken in his official capacity, violations of Department rules or regulations and expressions of dissatisfaction with policy, procedure or

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practice.”¹ This is “[a] non-criminal investigation conducted for the purpose of documenting the conduct, action(s) or performance of an employee(s) and to determine whether such conduct, action(s) or performance is in compliance with departmental policy or orders.”²

The Internal Affairs Bureau (IAB) is separate from the Criminal Investigations Bureau (CIB) which is responsible for conducting criminal investigations.³ CIB is responsible for the investigation of major offenses which require a degree of specialization or a centralized investigative approach.⁴ The Commonwealth’s Attorney, who is a constitutional officer of the Commonwealth of Virginia and is not an employee of Fairfax County or subject to the control of the County’s Board of Supervisors,⁵ uses CIB investigations in determining whether any laws were violated and prosecution is warranted. IAB investigations, on the other hand, are used to determine whether the Department’s internal orders, policies, and procedures were violated, and whether any employee discipline or changes in departmental policies or practices are warranted.⁶

An IAB file is opened in every case where an employee is the subject of a CIB investigation.⁷ During the course of an IAB investigation, “employees do not have the right to refuse to answer any questions concerning their performance of duty or their adherence to departmental rules and regulations,” nor do they have a right to have counsel present, as they would in a criminal investigation.⁸ A statement obtained in the administrative investigation is considered a compelled statement which cannot be used against the employee in a criminal prosecution.⁹ Accordingly, an employee whose conduct is the subject of a criminal investigation generally will “not be subjected to administrative questioning or the production of a compelled statement in connection with any administrative investigation until the criminal investigation has been reviewed by the Commonwealth’s Attorney’s Office.”¹⁰ As a practical matter, the IAB does not begin its investigative work until after a prosecutorial decision has

¹ Fairfax County Police General Orders, General Order 301, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>, at 1.

² *Id.*

³ Fairfax County Police General Orders, General Order 100, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/040113organization100.pdf>, at 4, 6.

⁴ *Id.* at 6.

⁵ Va. Const., art. VII, sec. 4; see Office of the Commonwealth’s Attorney, www.fairfaxcounty.gov/dmb/FY2015/Adopted/volume1/82.pdf.

⁶ Fairfax County Police General Orders, General Order 100, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/040113organization100.pdf>, at 4.

⁷ Fairfax County Police General Orders, General Order 301, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>, at 26.

⁸ *Id.* at 18.

⁹ *Id.* at 16, 18; *Garrity v. New Jersey*, 385 U.S. 493, 496-97 (1967).

¹⁰ Fairfax County Police General Orders, General Order 301, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>, at 27.

been made to avoid any risk of a claim that the criminal prosecution was tainted by the misuse of compelled statements.¹¹

In accordance with General Orders 301 and 540.1,¹² an IAB file was opened immediately following the Geer incident, but IAB deferred its investigation in anticipation of a prosecutorial decision.¹³ Investigators from IAB did sit in on some of the CIB interviews and were made privy to the CIB's investigation.¹⁴ When the Department received Ms. Harrington's lawsuit in September 2014, a prosecutorial decision still had not been made with regard to the deadly-force incident involving John Geer.¹⁵ In light of Ms. Harrington's claims, IAB moved forward with the administrative investigation.¹⁶ IAB's factual investigation of Ms. Harrington's allegations is nearly complete, but Ms. Harrington's attorneys have advised the Circuit Court that they will amend her lawsuit on March 6, and these new allegations could well necessitate additional investigation. Once complete, IAB's investigative findings will be subject to the reviews and appeal processes set forth in General Orders 301 and 310.2.¹⁷

1b. While General Order 301 recommends that administrative investigations be completed within 60 days, the subjects of such investigations will range from the routine, such as an incident involving damage to a police cruiser, which ordinarily can be completed quickly, to the highly unusual and complex, such as an officer-involved shooting, which will often take far longer.¹⁸ Also, the CIB investigative file in the Geer incident is many thousands of pages,¹⁹ and the IAB investigators are processing this information as part of their own investigation.

1c. As explained in my answer to Question 1a above, IAB investigations have a different purpose and focus than CIB investigations. The IAB investigators have conducted additional interviews as part of their administrative investigation into the Geer incident. Although the witnesses whom the IAB investigators have

¹¹ *Maura Harrington v. Col. Edwin C. Roessler, Jr.*, Civil No. 2014-11477, Col. Roessler's Brief in Opposition to Motion to Compel at 5 n.4 (Cir. Ct. Fairfax Cnty., filed Dec. 12, 2014).

¹² Fairfax County Police General Orders, General Order 301, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>; General Order 540.1, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/5401.pdf>.

¹³ *Id.*

¹⁴ *Maura Harrington v. Col. Edwin C. Roessler, Jr.*, Civil No. 2014-11477, Col. Roessler's Brief in Opposition to Plaintiff's Renewed Motion to Compel Production of Factual Materials from the Current Internal Affairs Investigation File, at 1 n.2 (Cir. Ct. Fairfax Cnty., filed Feb. 2, 2015).

¹⁵ *Maura Harrington v. Col. Edwin C. Roessler, Jr.*, Civil No. 2014-11477, Col. Roessler's Brief in Opposition to Motion to Compel at 5 n.4 (Cir. Ct. Fairfax Cnty. filed Dec. 12, 2014).

¹⁶ *Id.*

¹⁷ Fairfax County Police General Orders, General Order 301, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>; General Order 310.2, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/3102.pdf>.

¹⁸ Fairfax County Police General Orders, General Order 301, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>, at 9, 17.

¹⁹ See <http://www.fairfaxcounty.gov/news/2015/geer-case-materials.htm>.

interviewed thus far were previously interviewed as part of the CIB investigation, the CIB investigation would not have covered whether the Department's internal orders, policies, and procedures were violated, or whether any employee discipline or changes in departmental policies or practices are warranted.

2. On what date did CIB complete its investigation of the Geer shooting?

CIB's investigation was substantially complete by the end of 2013,²⁰ but CIB has not closed its file on this matter. A CIB investigation remains open until a criminal prosecution has concluded or CIB is informed that the Commonwealth's Attorney has declined to prosecute. Neither circumstance has yet happened in this case.

3. Why did IA wait until September 2014 to launch its own investigation?

Please see my answers to Questions 1a and 1b, above.

4. A number of other FCPD officers other than Officer Torres witnessed the shooting in person. On what date did you first become aware that at least four of these officers provided accounts of the shooting that conflicted with that of Officer Torres?

I had a general awareness soon after the Geer incident that Officers Torres and Barnes had different accounts of Mr. Geer's actions in the moments before Officer Torres discharged his weapon. I was also aware that CIB was conducting a full investigation under the direction of the Commonwealth's Attorney, who is the chief law enforcement officer in Fairfax County, that an IAB file was also opened, and that IAB would proceed with its investigation once a prosecutorial decision had been made. Under General Order 301 (Internal Investigations) and 310.2 (Disciplinary Action and Appeals), I, as the Chief of Police, must review and approve any recommendations for serious discipline such as demotion, suspension, or dismissal.²¹ Because of this role, I do not insert myself into IAB or CIB investigations or attempt to prejudge their outcome before they are complete. I have not reviewed the interviews or other investigative materials pertaining to the Geer incident, and will not do so before the investigations are complete and come before me for review, as provided by the procedures prescribed in our General Orders.

²⁰ *Id.*; Letter from Raymond F. Morrogh, Commonwealth's Attorney, to Sen. Charles E. Grassley, dated December 19, 2014, at 2.

²¹ Fairfax County Police General Orders, General Order 301, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/301.pdf>; General Order 310.2, <http://www.fairfaxcounty.gov/police/inside-fcpd/pdf/3102.pdf>.

5. According to the Incident Report, on September 3, 2013, “[t]he Board of Supervisors was also requesting that they [be] briefed on the case.” Did FCPD ever brief the Fairfax County Board of Supervisors on this case? If so:

- a. When?**
- b. What information did each briefing disclose?**
- c. Did the briefs disclose the information referenced in Question 4?**

5a. I met with the Board of Supervisors and the County Attorney on September 10, 2013, regarding the Geer incident and the fact that the matter was under investigation. I subsequently participated in other sessions with the Board and members of the County Attorney’s Office in 2013 and 2014, all of which concerned the status of the investigations and/or Ms. Harrington’s lawsuit. Neither the CIB detectives nor the IAB investigators participated in any of these sessions. The Board was first provided a copy of the criminal investigative files in January 2015, shortly before those files were released to the lawyers for Ms. Harrington. Also in January 2015, the Board was briefed on the status of the investigations, the lawsuit by Ms. Harrington, and requests made by the lawyers for Ms. Harrington to defer the public release of the criminal investigative file and not to publicly release certain records from those files, which requests were all honored.

5b. Please see my answer to Question 5a above.


5c. Please see my answer to Question 5a above.

6. The February 6th ruling referenced above appears to have removed any legal grounds for withholding the subject IA files from the Commonwealth Attorney, who requested them in 2013.

- a. Will you now provide the Commonwealth Attorney with the IA files he requested in 2013? If not, why not?**
- b. Did FCPD provide these IA files to the Justice Department?**

6a. Well before the February 6, 2015, ruling, the County Attorney’s Office and the Commonwealth’s Attorney’s Office had agreed on a protocol for handling requests by the Commonwealth’s Attorney for an officer’s IAB files from the Department. On February 18, 2015, the Commonwealth’s Attorney, Raymond Morrogh, requested Officer Torres’s IAB files. The same day, the County Attorney’s Office agreed to deliver those materials to whomever Mr. Morrogh designated to receive them. Mr. Morrogh today identified the outside prosecutor, and the IAB materials are being delivered to him today.

6b. The Department of Justice has advised the Fairfax County Police Department not to discuss the ongoing federal investigation.²² I can confirm, however, that the Department of Justice has received everything it requested from the Fairfax County Police Department.

Sincerely,

Edwin C. Roessler Jr., Colonel
Chief of Police

²² Letter from Peter J. Kadzik, Assistant Attorney General, to Sen. Charles E. Grassley, dated November 21, 2014, at 2.