

## MEMORANDUM

RE: NEUTRAL EVALUATION REPORT

TO: CHARLOTTESVILLE POLICE CIVILIAN OVERSIGHT BOARD

FROM: JEFF FOGEL

DATED: NOVEMBER 3, 2022

---

This memo is submitted by the complainant in response to the Neutral Evaluation Report prepared by Hansel Aguilar, the Executive Director of the Police Civilian Oversight Board and the response of the Charlottesville Police Department.

### **Report:**

Mr. Aguilar's report makes some important points. His recommendations for the CPD, the city manager's office and the city council, though weak, are well worth considering.

However there were several points at which he deviated from his own proscription to consider "whether the CPD thoroughly, completely, accurately, objectively, and impartially investigated" the allegations of the complainant and not to "reinvestigate the interaction." For example, his finding that there was probable cause to arrest C.G. for drunk in public under the state statute speaks to a conclusion, not an inquiry into the investigation. As the Report points out, CPD failed to even consider their own directive regarding the treatment of seemingly intoxicated individuals. The finding of probable cause regarding the criminal charge that the officer in question was assaulted by C.G. also deviated from focusing on the investigation. The latter is particularly disturbing because it relies on evidence that was never provided to the complainant. There is no way to refute secret evidence.

Despite concluding that the CPD investigation did not "thoroughly, completely, and accurately investigated the allegations at hand," Mr. Aguilar was overly generous in "awarding" points to the department. For example, even though the CPD investigation failed to consider the most relevant directive (dealing with intoxicated persons), and failed to respond to the concern raised by the complainant about disparate treatment of the homeless on the Downtown Mall, the department received 2-3 points (out of 4) on these issues.

### **Police Department:**

CPD rejected nearly all of the recommendations of the evaluator and often without a logical, or even any, explanation. It even rejected such simple common sense suggestions such as to require IA to develop an investigative plan before commencing an investigation. More seriously is the response to the recommendation that the CPD "consider revisiting" how much information is made available to the complainant. Without disclosure of the evidence upon which the CPD relies, there is no opportunity for the complainant to know or challenge the accuracy of IA determinations or for the public to have confidence in the IA process. This should be an issue for the PCOB as well since no hearing can be fair with the use of secret evidence. The only response of the department is that they have a practice of not allowing disclosure. No explanation was given why the complainant

could not see the camera video that he requested. In fact, there was no reason for CPD not to provide the complainant with all of the evidence that IA relied on except for its culture of secrecy.

CPD complains that some of the comments cited were not authorized to be released to the public. In particular, a statement from the arresting officer: “But once we start getting calls from citizens about it, that’s kind of when it starts to become a problem, but I still will try to get them at least out of the public’s view so they can have a chance to, to get sober or you know, just not be on the mall.” Why is this statement subject to secrecy? Because it acknowledges that he makes an effort, when he gets calls, to “get them out of the public view . . . [and] just not on the mall.” This is significant evidence that the arrest was for not leaving the mall, not because C.G. was a danger to himself or others.

CPD also rejects the suggestion that there is bias towards the homeless (or perceived homeless) on the Downtown Mall. There is a history of such bias reaching back many years (including a judicial determination to that effect) and CPD needs to acknowledge that truth.

### **Conclusion:**

This “incident” should never have happened. CPD has failed to justify the arrest for drunk in public according to its own standards. Absent a clear danger to himself or others, C.G. should never have been arrested and the ensuing struggle would not have occurred. In the end, C.G. was fined \$25 but spent several weeks in jail awaiting disposition of his case.

The refusal of the CPD to at least reexamine some of its practices as outlined in the Report is disturbing. More disturbing is the likelihood that the city manager and the city council will not be following up on the recommendations. This will seriously undermine the notion that there is true oversight or that the PCOB can and will affect the practices of the CPD. The credibility of the PCOB is already low and ignoring the recommendations of its highly qualified executive director makes it unlikely that citizens will see the PCOB as a remedy for police misconduct.