Civilian Review Boards
What we heard

• The community wants the CRB to have access to police department records and the power to command officers to appear before the board
• The community wants the board to have some authority in police discipline
• The community wants the board to be able to make new policy or change existing CPD Policy
• The community wants its work to be transparent and open to the public
Topics we will cover

• Legal Framework for CRBs and how they are set up
• Charlottesville’s local government and where CRBs fit in
• Examples of what CRBs can do
Legal Framework for CRBs

• CRBs are typically enacted by city ordinance, but can be enacted by resolution
• CRBs typically consist of volunteers who are not employed by the city government, but serve at the pleasure of the governing body
• The current board is tasked by resolution to draft the official bylaws of the board and to seek input from the community at large through public hearings or forums
• The current resolution can be amended by a City Council vote
How CRBs are set up

• Typically consist of panels of community members of varying size
• Can include a chairperson, voted for by the members
• Members are typically appointed in a staggered structure, alternating years of appointment
  • E.g. 2 members for the first year, 2 other members for the first two years, and 3 other members for the first three years, with subsequent appointees serving three year terms
Dillon Rule

• The Dillon Rule limits local and municipal governments’ authority to enact legislation

• A Local government has the authority to act when:
  • The power is expressly stated in the City Charter
  • The power is necessarily or fairly implied to be granted by the general assembly
  • The power is essential to the purpose of the city

This means, any powers or authority the city is to grant the Review Board through the bylaws must be supported by current Virginia state law
Manager-Council Style Government

• The City Council is the governing body of the City of Charlottesville
• The City Manager is appointed by the City Council, and serves at their pleasure, to handle the day-to-day administration of city business
• The City Manager has “full executive and administrative authority” over all departments of city government including the police department – subject to general control by the council - Charlottesville City Charter §5(f)
Confidentiality and Subpoena Power

• CRBs often require confidentiality agreements
  • Under VA law personnel records – which include police officer files - are exempt from mandatory disclosure under the Freedom of Information Act unless the individual officer waives the exemption
  • The CRB can still access personnel records if members agree to not make the information within public

• CRBs typically do not have subpoena power
  • Though subpoena power for investigations has been given to City Council by the General Assembly (Code of Virginia §15.2-1409), the CRB is not an agency of the Council and typically does not have the same authority
Examples of what CRBs can do

• Investigation Process
• Accessing Documents
• Police Discipline
• Make Policy Recommendations
• Promote Public Accessibility and create a public record
Investigation Process

• CRBs generally do not conduct independent investigations of complaints, but will review internal police investigations on appeal.
  • Examples:
    • Virginia Beach Investigative Review Panel, Knoxville Police Advisory & Review Committee, Albany Citizens’ Police Review Board

• The appeal process generally looks something like this:
  • The boards will first decide if the appeal is appropriate for them to review
    • Note: I have not seen a description of what is “appropriate"
  • If they decide to review the complaint, the board will determine if the police investigation was satisfactory.
  • If they find it is not satisfactory, they can request additional documents and conduct an investigation and/or hearing.
Accessing Documents

**What documents CRBs can access:**

Civilian Review Boards in similar jurisdictions generally can access criminal investigations, personnel information, and internal affairs reports for their investigations and hearings.

**Examples:**

- Virginia Beach – Internal Affairs Office file including personnel records, all recordings/statements made in the course of the investigation
- Charlotte – can use criminal information and personnel matters for hearings (but not public)
- Fairfax County – hearings do not admit formal evidence, but they can ask for a supplemental report from the Police Department, which can include the internal investigation report and personnel records.
Accessing Documents: Mechanics

• What is subpoena power?
  • The ability to order or compel the production of documents and witnesses.
  • This is useful for reviewing internal police department investigations and reports, looking into citizen complaints, conducting hearings, and making policy recommendations.

• CRBs in Dillon Rule jurisdictions do not have subpoena power. In Charlottesville, the city is unable to delegate that power to the board.

• However, there are options for the Board to access documents and get city employees to testify as witnesses.
  • Existing eg: Cville HRC expressly authorized to request City Attorney to apply to circuit court for a subpoena for anyone refusing to comply with an investigation
Accessing Documents

- Examples of CRBs exercising quasi-subpoena power:
  - Albany, NY – Common Council
    - If the Board is not satisfied with the Mayor’s or Police Chief’s investigation of a complaint about excessive use of force or civil rights, the Board can ask the Common Council (like a City Council) to subpoena witnesses and produce documents for the Board’s investigation.
  - Virginia Beach IRP – City Manager
    - The panel can invite witnesses to appear at hearings.
    - The city manager can require the attendance of any employee that the panel requests to appear for a hearing and can require the production of documents.
  - Knoxville, TN – Executive Director
    - The Executive Director of the CRB is a city employee with investigative experience. The Executive Director conducts investigations and reviews internal audit files and reports to the committee. The Executive Director can subpoena witnesses as part of the investigation.
    - The CRB reviews the Executive Director’s investigations and can ask the Executive Director to investigate matters further.
Accessing Documents

• Confidentiality Agreements
  • CRB members must sign confidentiality agreements to access personal records, internal reports, and other sensitive documents that cannot be made public. They can be used in the process of conducting an investigation or reviewing an internal police investigation.
Police Discipline Options

• The Police Chief and/or the City Manager are in charge of police discipline

• Many boards have no power over police discipline
  • Knoxville, TN; Urbana, IL; Portland, ME

• Some boards send findings to the City Manager after reviewing internal investigations
  • Virginia Beach, VA – If the board finds that the findings of an internal investigation were not supported. The City Manager then can take action “as he deems appropriate”
Police Discipline Options

• Strongest model: Send findings to the City Manager and/or police department and require them to look at findings
  • Charlotte, NC
    • If the CRB finds there was a serious mistake with a PD disciplinary decision, they can advise the Chief of Police and City Manager.
    • At that point, the Chief of Police has to review the board’s determination before he takes action. He must notify the citizen review board of his decision regarding disciplinary action.
Influencing CPD Policy

• The Chief of Police is responsible for making and setting police department policy.
• CRBs can make policy recommendations to the police department and those recommendations can be public.
Policy Recommendations

Ways boards generally make policy recommendations:
• While investigating complaints
  • Charlotte, NC - Even if the board reviews a police investigation and finds no error in existing policy, they can make policy recommendations based on the issues raised by those complaints
• Annual Reports
  • What type of information do they contain?
    • Suggested changes to PD policies
    • Summaries of complaints and how they were resolved
    • Analysis of trends and patterns of investigations
  • Who receives these?
    • Varies on the CRB, but they are publically available.
Policy Recommendations & Public Accessibility

• Public Forums and Meetings
  • Fairfax County – the Panel can conduct public meetings to assist them in making recommendations on policy changes to the police department
Policy Recommendations

• What happens after boards make recommendations?
  • Some boards may not know what the police department does with the recommendations
  • Other boards have a more transparent process in their bylaws. In Durham, the process looks like this:
    • The City Manager is required to review the Board’s recommendations and take action he deems appropriate
    • The City Manager then advises the Police Chief of the action and has to notify the board with 7 days
  • CRB policy recommendations create a public record
    • One way of doing this – Durham has a chart that shows every recommendation made by the board, what the response was, what action was taken, and the current status
Public Accessibility: Hearings

• Hearings
  • Open Model: Virginia Beach & Fairfax County
    • Open to the public, but need to close for private deliberations to discuss personnel matters and other information that cannot be public.
    • Virginia Beach keeps a public written report showing their findings and their meeting minutes are public records.
  • Closed Model: Charlotte
    • Written findings are public records, but hearings themselves are closed to the public
Public Accessibility: Creating a Public Record

• Meeting Minutes
  • What they include:
    • Summaries of complaints, a review of police investigations and their resolutions, and if any policy recommendations were made
  • What they don’t include:
    • Personnel records, specifics of internal police investigations

• Annual Reports
  • What they include:
    • Descriptions of investigations, policy recommendations to the PD, and the status of those recommendations