



CITY OF PORTLAND, OREGON



Bureau of Police

Ted Wheeler, Mayor
Jami Resch, Chief of Police

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Directives 215.00, Member Performance Evaluations; 220.40, Lawsuits and Claims; and 344.05, Bias-Based Policing/Profiling Prohibited Executive Summary

Introduction

In accordance with the 2012 Department of Justice (DOJ) Settlement Agreement, the Portland Police Bureau is required to conduct an initial six-month and subsequent 12-month reviews of DOJ-identified directives after they have been DOJ-approved and implemented by the Bureau. The Bureau enacted Directives 215.00, Member Performance Evaluations; 220.40, Lawsuits and Claims; and 344.05, Bias-Based Policing/Profiling Prohibited, shortly after receiving DOJ approval in early 2018, and initiated the six-month review process in the fall of that year. Because the Bureau works closely with the DOJ and the Compliance Officer and Community Liaison (COCL) during the review of DOJ directives, scheduling conflicts often extend the review cycle and impact implementation. After operationalizing the policies for six months, the Bureau determined that Directives 215.00, Member Performance Evaluations; and 344.05, Bias-Based Policing/Profiling Prohibited, required minimal revisions; whereas, Directive 220.40, Lawsuits and Claims, warranted a more comprehensive update to clarify legal requirements pertaining to service processing.

Public Comments

The Bureau received very limited feedback on all of the aforementioned directives over the course of both review periods. Commenters submitted few actionable recommendations on Directive 215.00, Member Performance Evaluations, and expressed some concern about procedural requirements and the use of terms in Directives 220.40, Lawsuits and Claims; and 344.05, Bias-Based Policing/Profiling Prohibited.

Directive 220.40, Lawsuits and Claims

During the first universal review and public comment period, the Bureau received a comment from a community group, in which they expressed concern about the notification procedures for a sworn member who has been individually named in a lawsuit. In its active policy, the Bureau currently requires a member who has been served to notify their supervisor as soon as practicable. In the revised policy, members are now required to notify the City Attorney's Office (CAO) within 24 hours of receipt of service. As highlighted by the community group, this practice ensures accountability and is consistent with other notification procedures included in the policy.

Directive 344.05, Bias-Based Policing/Profiling Prohibited

A community group called on the Bureau to include "housing status" in the list of legally protected classes, indicating that state law extends protections for individuals experiencing houselessness. While the Bureau is committed to serving and respecting the rights of all individuals, regardless of their

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legally-appointed protection status, it is also critical that the Bureau accurately conveys to its members the legal standards and requirements in this context. State law does not include a protection based on one's housing status; rather, it prohibits discrimination based on certain factors in employment and housing (ORS 659). The Bureau's prescribed practice, prohibiting the discrimination, disparate treatment, and profiling of certain groups not entitled to federal- and state-defined legal protections, effectively extends similar treatment to those excluded groups. The commenter's reference to legal protections for housing status in this context is inapplicable, nevertheless the Bureau believes that its practice is consistent with the spirit of the community group's recommendation.

We thank every individual who took the time to provide feedback on these directives. All comments received during both review periods are attached at the end of this document. We have removed all personal information to protect the privacy of commenters.

The Bureau's Revised Policies

The Bureau reviewed all of the policies in conjunction with the DOJ and COCL, and as a result of that collaboration, largely kept Directives 215.00, Member Performance Evaluations; and 344.05, Bias-Based Policing/Profiling Prohibited, intact, as the neither the Bureau nor the DOJ or COCL identified any substantive issues that arose during the initial period of implementation. Many of the revisions were minor in nature, merely clarifying the intent of certain policies and procedures. Specifically, the Bureau made a few minimal changes to Directive 215.00 to better reflect operational realities and to distinguish certain administrative standards between sworn and non-sworn staff. The only area of concern in Directive 344.05, as identified by the DOJ and COCL, pertained to language the Bureau used when describing protected classes. Protected classes are legally-defined groups. In its active policy, the Bureau sought to expand upon the notion of these classes by identifying other groups that members should treat fairly and impartially.. Recognizing the need for the Bureau to clearly articulate what individuals are legally entitled to certain protections, while also acknowledging the intent and sentiment behind the Bureau's original language, the DOJ encouraged the Bureau to revise the language in its policy section to more accurately reflect legal realities. The reworked language preserves the Bureau's commitment to serving all individuals in an impartial manner, while appropriately acknowledging relevant legal distinctions.

The Bureau worked closely with its partners in the CAO to revise Directive 220.40, Lawsuits and Claims, to ensure the updated directive more clearly conveys the rules for process service, as there are different requirements depending on who is named as the defendant. The revised directive also provides more comprehensive instruction for members who have contact with an individual attempting service.

The Bureau believes that the revised directives provide more clarity and enhanced guidance to its members; however, any suggestions to further improve these policies are welcome during the next review.

These directives will become effective on April 16, 2020.

Published on 3/17/20

215.00, Member Performance Evaluations

Refer:

- DIR 315.30 Satisfactory Performance
- DIR 345.00, Employee Information System (EIS)
- DIR 1501.00, Field Training Program
- Performance Evaluation Forms (Intranet)
- BHR Administrative Rule 3.08, Probationary Period
- BHR Administrative Rule 9.02, Performance Management

Definitions:

- Performance Evaluation: A formal assessment conducted between a supervisor and their direct report employee on an annual basis or other specified time period.

Policy:

1. The Portland Police Bureau recognizes the importance of open, meaningful dialogue between members and their supervisor regarding work performance and career development. The performance evaluation is designed to be a professional development tool used by supervisors to identify a member's areas of strengths and areas in need of improvement for a particular period of time.

Procedure:

1. Non-sworn and non-represented sworn members (i.e., those at the rank of Captain and above) shall have yearly performance evaluations conducted by their supervisor in accordance with Bureau of Human Resources Administrative Rule (HRAR) 9.02, Performance Management.
 - 1.1. In addition to the performance standards established in HRAR 9.02, Performance Management, non-represented sworn members shall also be evaluated on the following criteria:
 - 1.1.1. The timely and thorough review of After Action reports, to include modifying findings as appropriate;
 - 1.1.2. The consistency with which they ensure that all subordinate supervisors in the chain of command are held accountable for inadequate After Action reports and analysis, and receive appropriate corrective action, when necessary;
 - 1.1.3. The timely review of Employee Information System (EIS) records for employees under their supervision and new to their command, and timely entries into EIS when required;
 - 1.1.4. The timely and thorough completion of administrative investigation findings; and
 - 1.1.5. The promotion and coordination of community outreach efforts.
2. Performance Evaluation During Probationary Status
 - 2.1. Non-represented non-sworn members shall be given at least one formal performance evaluation during their probationary period in accordance with HRAR 3.08, Probationary Period.

- 2.2. District Council of Trade Unions (DCTU) represented members shall be given a minimum of three written evaluations during their probationary period, as defined in the DCTU labor contract.
- 2.3. Sworn members at the rank of officer in a probationary status during their first 18 months of employment shall have their performance evaluated in accordance with Directive 1501.00, Field Training Program.
 - 2.3.1. After completing probation, officers shall have yearly performance evaluations conducted as described below, beginning with the anniversary month of their Bureau of Human Resources (BHR) to class date.
- 2.4. Sworn members in a probationary status following promotion shall have evaluations conducted by their supervisors on a bi-monthly basis.
 - 2.4.1. Supervisory probation evaluation forms shall be provided by the Personnel Division and shall be completed and returned to the Personnel Division in a timely fashion.
3. Non-Probationary Sworn Member Evaluations.
 - 3.1. Supervisor Responsibilities.
 - 3.1.1. Schedule an annual performance evaluation on the anniversary of their BHR to class date with each sworn member under their direct supervision.
 - 3.1.2. Complete a Performance Evaluation Form (located on the Intranet) for each scheduled review using the rating factors described within the form.
 - 3.1.2.1. The key rating factors include, but are not limited to, administrative, supervisory, and service functions.
 - 3.1.3. Forward the completed form to a second supervisor of the same rank for review, comment, and signature (if the evaluated employee works in a unit with more than one supervisor).
 - 3.1.4. Conduct the formal evaluation with the member. The formal evaluation should include the supervisor's observations and should include a discussion of each category of the performance evaluation. Topics for discussion during the review may include:
 - Recognizing and commending the member's performance strengths;
 - Identifying areas needing improvement;
 - Providing guidance on correcting areas of concern; and
 - Acknowledging individual accomplishments during the review period.
 - 3.1.4.1. The member being evaluated may provide comments in the designated sections of the evaluation form or attach a written response with additional comments as a supplemental document.
 - 3.1.4.2. If a member transfers to another division in the middle of a review period, the new supervisor will consult with the member's previous supervisor and review the member's previous performance evaluation for information regarding work performance and review employee's EIS performance discussion tracker (PDT) and record that review in the PDT. See DIR 345.00, Employee Information System (EIS).

- 3.1.5. As a component of the performance evaluation, supervisors shall review members' training records at least semi-annually to ensure members have completed necessary training.
 - 3.1.6. Send the original evaluation form with any written response submitted by the member through channels to the Responsibility Unit (RU) Manager or their designee following the evaluation meeting with the member.
 - 3.1.6.1. After review by the chain of command, the RU Manager or designee shall forward an electronic copy of the completed performance evaluation and any written response submitted by the member to the Personnel Division in a non-editable format, e.g., PDF, for inclusion in the employee's personnel file (201 file) and the BHR employee file.
 - 3.1.7. Complete each performance evaluation by the last day of the month in which a member's annual anniversary occurs.
4. RU Manager or Designee Responsibilities.
 - 4.1. Ensure performance evaluations are completed in accordance with this directive.
 - 4.2. Retain one printed copy in the member's Field 201 file at the RU.
5. Authorized and restricted uses of non-probationary member performance evaluations.
 - 5.1. Performance evaluations are not a disciplinary tool and shall not serve as the basis for discipline, discharge, or demotion.
 - 5.2. For Portland Police Association (PPA) and Portland Police Commanding Officers Association (PPCOA) members, these evaluations will not impact a member's contractual pay increases. For non-represented sworn members and non-sworn members, these evaluations will be considered in determining an annual merit pay increase in accordance with HRAR 9.02, Performance Management.
 - 5.3. For PPA members, performance evaluations may be used as a basis to promote where all other promotional criteria between multiple candidates are basically equal.
 - 5.4. For PPCOA members, performance evaluations may be used as part of a full evaluation of a member's work history for purposes of promotion or specialty assignment.
6. Public Records Requests.
 - 6.1. The Bureau considers performance evaluations generally to be exempt from public disclosure. The Bureau will not release performance evaluations unless required to do so by law.

History:

- Originating Directive Date: 10/30/14
- Last Revision Signed: 3/16/20
 - Effective Date: 4/15/20
- Next Review Date: 4/15/21

215.00, Member Performance Evaluations

Refer:

- DIR 315.30 Satisfactory Performance
- DIR 345.00, Employee Information System (EIS)
- DIR 1501.00, Field Training Program
- Performance Evaluation Forms (Intranet)
- [BHR Administrative Rule 3.08, Probationary Period](#)
- BHR Administrative Rule 9.02, Performance Management

Definitions:

- Performance Evaluation: A formal assessment conducted between a supervisor and their direct report employee on an annual basis- [or other specified time period.](#)

Policy:

1. The Portland Police Bureau recognizes the importance of open, meaningful dialogue between members and their supervisor regarding work performance and career development. The performance evaluation is designed to be a professional development tool used by supervisors to identify a member's areas of strengths and areas in need of improvement for a particular period of time.

Procedure:

1. Non-sworn and non-represented sworn members (i.e., those at the rank of Captain and above) shall have yearly performance evaluations conducted by their supervisor in accordance with Bureau of Human Resources Administrative Rule (HRAR) 9.02, Performance Management.
 - 1.1. In addition to the performance standards established in HRAR 9.02, Performance Management, non-represented sworn members shall also be evaluated on the following criteria:
 - 1.1.1. The timely and thorough review of After Action reports, to include modifying findings as appropriate;
 - 1.1.2. The consistency with which they ensure that all subordinate supervisors in the chain of command are held accountable for inadequate After Action reports and analysis, and receive appropriate corrective action, when necessary;
 - 1.1.3. The timely review of Employee Information System (EIS) records for employees under their supervision and new to their command, and timely entries into EIS when required;
 - 1.1.4. The timely and thorough completion of administrative investigation findings; and
 - 1.1.5. The promotion and coordination of community outreach efforts.

2. Members Performance Evaluation During Probationary Status

- 2.1. Non-represented non-sworn members shall be given at least one formal performance evaluation during their probationary period in accordance with HRAR 3.08, Probationary Period.

2.2. District Council of Trade Unions (DCTU) represented members shall be given a minimum of three written evaluations during their probationary period, as defined in the DCTU labor contract.

~~1.2.2.3.~~ Sworn members at the rank of officer in a probationary status during their first 18 months of employment shall have their performance evaluated in accordance with Directive 1501.00, Field Training Program.

~~1.2.1.2.3.1.~~ After completing probation, officers shall have yearly performance evaluations conducted as described below, beginning with the anniversary month of their ~~date of hire.~~Bureau of Human Resources (BHR) to class date.

~~1.3.2.4.~~ Members~~Sworn members~~ in a probationary status following promotion shall have evaluations conducted by their supervisors on a bi-monthly basis.

~~1.3.1.2.4.1.~~ Supervisory probation evaluation forms shall be provided by the Personnel Division and shall be completed and returned to the Personnel Division in a timely fashion.

2.3. Non-Probationary Sworn Member Evaluations.

2.1.3.1. Supervisor Responsibilities.

2.1.1.3.1.1. Schedule an annual performance evaluation on the anniversary of their BHR to class date with each sworn member under their direct supervision.

2.1.2.3.1.2. Complete a Performance Evaluation Form (located on the Intranet) for each scheduled review using the rating factors described within the form.

2.1.2.1.3.1.2.1. The key rating factors include, but are not limited to, administrative, supervisory, and service functions.

2.1.3.3.1.3. Forward the completed form to a second supervisor of the same rank for review, comment, and signature (if the evaluated employee works in a unit with more than one supervisor).

2.1.4.3.1.4. Conduct the formal evaluation with the member. The formal evaluation should include the supervisor's observations and should include a discussion of each category of the performance evaluation. Topics for discussion during the review may include:

- Recognizing and commending the member's performance strengths;
- Identifying areas needing improvement;
- Providing guidance on correcting areas of concern; and
- Acknowledging individual accomplishments during the review period.

2.1.4.1.3.1.4.1. The member being evaluated may provide comments in the designated sections of the evaluation form or attach a written response with additional comments as a supplemental document.

2.1.4.2.3.1.4.2. If a member transfers to another division in the middle of a review period, the new supervisor will consult with the member's previous supervisor and review the member's previous performance evaluation for information regarding work performance and review employee's EIS performance ~~tracker.~~discussion tracker (PDT) and record that review in the PDT. See DIR 345.00, Employee Information System (EIS).

2.1.5.3.1.5. As a component of the performance evaluation, supervisors shall review members' training records at least semi-annually to ensure members have completed necessary training.

2.1.6.3.1.6. Send the original evaluation form with any written response submitted by the member through channels to the Responsibility Unit (RU) Manager or their designee following the evaluation meeting with the member.

2.1.6.1.3.1.6.1. ~~The supervisor will also~~ After review by the chain of command, the RU Manager or designee shall forward an electronic copy of the completed performance evaluation and any written response submitted by the member to the Personnel Division in a non-editable format, e.g., PDF, for inclusion in the employee's personnel file (201 file) and the Bureau of Human Resources BHR employee file.

2.1.7.3.1.7. Complete each performance evaluation by the last day of the month in which a member's annual anniversary occurs.

3.4. RU Manager or Designee Responsibilities.

3.1.4.1. Ensure performance evaluations are completed in accordance with this directive.

3.2.4.2. Retain one printed copy in the member's Field 201 file at the RU.

4.5. Authorized and restricted uses of non-probationary member performance evaluations.

4.1.5.1. Performance evaluations are not a disciplinary tool and shall not serve as the basis for discipline, discharge, or demotion.

4.2.5.2. For Portland Police Association (PPA) and Portland Police Commanding Officers Association (PPCOA) members, these evaluations will not impact a member's contractual pay increases. For non-represented sworn members and non-sworn members, these evaluations will be considered in determining an annual merit pay increase in accordance with Bureau of Human Resources Administrative Rule HRAR 9.02, Performance Management.

4.3.5.3. For PPA members, performance evaluations may be used as a basis to promote where all other promotional criteria between multiple candidates are basically equal.

4.4.5.4. For PPCOA members, performance evaluations may be used as part of a full evaluation of a member's work history for purposes of promotion or specialty assignment.

5.6. Public Records Requests.

5.1.6.1. The Bureau considers performance evaluations generally to be exempt from public disclosure. The Bureau will not release performance evaluations unless required to do so by law.

History:

- Originating Directive Date: 10/30/14
- Last Revision Signed:

- Effective Date:
- Next Review Date:

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, September 04, 2018 10:42:25 AM
Last Modified: Tuesday, September 04, 2018 10:44:18 AM
Time Spent: 00:01:52

Page 1

Q1 Please provide feedback for this directive

Sections 1.1.1 through 1.1.5 should be in an SOP and not in a publicly available directive. These are part of the duties of non-represented sworn members and can change as needed. Much easier to change SOP's vs. directives.

Q2 Contact Information (optional)

Respondent skipped this question

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, September 15, 2018 4:42:07 PM
Last Modified: Saturday, September 15, 2018 4:43:04 PM
Time Spent: 00:00:57

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON PROFILING, ACCOUNTABILITY, AND OTHER DIRECTIVES SEPTEMBER 2018

To Chief Outlaw, Capt. Bell, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Below are Portland Copwatch's comments on the Directives posted for review in September . We are very concerned that the PPB released SEVENTEEN Directives for review on the Saturday of Labor Day weekend, expecting meaningful feedback by September 16. Because we have made comments on all of these Directives in the past, this task was somewhat easier for us but still requires checking to see what changes were made in between comment periods. We continue to encourage the Bureau to post comments as they arrive so commenters might be able to build off others' ideas (de-identified is fine with us, though we are fine being identified). We point out that until recently, comments on Body Cameras were posted on the Bureau's website for everyone to read.

We make a few comments about the possible findings on misconduct allegations, below. We are glad that the Bureau moved away from trying to cut down the four possible findings to two, but continue to believe that the same findings should apply to deadly force cases. They should not just be "In Policy/Out of Policy," as there could be room for an "Insufficient Evidence" (aka "Not Sustained") finding in those cases. We did not see any reference to applying this concept to deadly force cases in the Bureau's published Directives memos, rather, Directive 336.00 still only includes the two findings previously being used.

In publishing the finalized 330 series in February, the Bureau claimed they clarified that the "Discipline Coordinator" is the same person as the "Review Board Coordinator." The Discipline Coordinator's role and position at the Professional Standards Division (PSD) is not made clear in Directive 335.00, though there is a brief mention in Section 2.1.1.1 that the person is in PSD. The term "Review Board Coordinator" is still used in Directive 336.00. So it seems no clarification actually happened.

Similarly, in previous comments we noted: "A general point of confusion is that many Directives refer to the Professional Standards Division and/or Captain, while others refer to the Internal Affairs Captain. Our understanding of the structure is that IA is part of PSD and there is a ranking member over all of PSD, not just IA. We hope the Bureau can clarify this point." The two terms are still used interchangeably among the Directives.

We also continue to believe that the review periods should be at least 30 days on both ends of the rewriting process so there is time for organizations who only meet monthly to weigh in. As we noted, this might include the BHU Advisory Committee, though they seem to have special dispensation to make comments and receive feedback above and beyond all other groups, as well as the Training Advisory Council, Citizen Review Committee, and if it ever begins meeting, the Portland Committee on Community Engaged Policing.

Although the Bureau has been putting out "redline" versions of the Directives when they are up for their second round of public comments, the final versions-- which frequently are significantly different from what was posted in round two-- do not indicate where changes were made, making comments on the policies extremely difficult when they come back up again as all of these have.

Directive 215.00 Feedback

The Bureau did make some changes-- some of which are substantive-- based on PCW's comments, as noted below, although in once case the change reversed a policy PCW supported.

We continue to believe the Bureau should add letters to section headings (Definitions, Policy, Procedure) so that there are not multiple sections with the same numbers, and to enumerate the Definitions. Our comments below refer to the Procedure Section unless otherwise noted.

DIRECTIVE 215.00 PERFORMANCE EVALUATIONS (previous comments September 2017)

In September 2017, Performance Evaluations were downgraded from semi-annual to annual reviews. The Bureau's memo with the final release version says the change doesn't affect the Bureau's ability to review its members. While other City employees are only evaluated annually, PCW noted that "no other job has the level of contact with community members as police officers, who often put their hands on, use force against, and sometimes arrest people." That said, the Bureau did insert a new Section (4.1.5) based on PCW's comment that the DOJ Agreement calls for review of an officer's training history semi-annually (paragraph 81). As for our comment that at least one DOJ threshold for examining use of force is based on a six month window (paragraph 118), the Bureau says that regular reviews of the Employee Information System should catch such irregularities. However, anyone who reads the Compliance Officer/Community Liaison's reports knows that the EIS is not being used as envisioned, so that is not much of a reassurance.

In several previous comments we noted that the Evaluations being barred for use as a disciplinary tool (previous Policy Section 2) makes no sense since officers with multiple complaints sustained against them (or one serious complaint) should be demoted or fired. The Directive explicitly says the evaluation will "not serve as the basis for discipline, discharge or demotion" (Section 6.1). The Bureau's memo says this is in line with the restrictions in the Portland Police Association contract-- yet another way in which the City sold out the public for \$9 million and gave nothing back except for a rocky end to the "48-hour rule."

The Bureau also in its memo reaffirms its right to protect the evaluations from public record requests except as required by law (Section 7). We note again here: "information that is in the public interest including sustained misconduct allegations needs to be released. The people who repair Portland's street lights do not have the same kinds of interactions with the public as the police do. Thus their misconduct may be shielded from the public eye without the same potential consequences as officers who are found guilty of serious or repeat misconduct." The Directive should alert officers that such information might be released in the public interest.

CONCLUSION

Once again we thank the Bureau for seeking for community input, and to the extent that some of our comments have been addressed, for taking our advice seriously. We repeat here our deep concern about publishing so many important policies at one time, during a holiday season. We continue our struggle to see a Bureau free from corruption, brutality and racism, which is the basis for our participating in this process. As noted before, while we don't always agree with the Bureau's reasons for rejecting certain recommendations, it is helpful to be receiving them.

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, January 02, 2019 12:06:24 PM
Last Modified: Wednesday, January 02, 2019 12:07:54 PM
Time Spent: 00:01:30
IP Address: 74.120.152.120

Page 1

Q1 Please provide feedback for this directive

DCTU contract, Article 1.1.1 requires a minimum of 3 evaluations for a probationary employee

"During their probationary period employees will be given a minimum of three written evaluations with a copy to the employee and the Union at approximately one month, mid-term, and one month prior to the end of probation."

Q2 Contact Information (optional)

Name

Email Address

Phone Number

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, February 09, 2019 3:35:51 PM
Last Modified: Saturday, February 09, 2019 3:37:04 PM
Time Spent: 00:01:13
IP Address: 97.120.206.243

Page 1

Q1 Please provide feedback for this directive

COMMENTS ON PROFILING, CONDUCT, AND OTHER DIRECTIVES FEBRUARY 2019

To Chief Outlaw, Capt. Bell, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Below are Portland Copwatch's comments on the Directives posted for review in January . We appreciate that the Bureau extended the timeline on the seven policies posted in early January, as proper notification did not go out for over two weeks. We continue to encourage the Bureau to post incoming comments in real time so that community members and officers might be able to build off others' ideas. As noted previously, we do not mind being identified but understand if others want to remain anonymous. A good idea is a good idea regardless of where it comes from.

While the Accountability Directives are not under review, we strongly urge the Bureau to revisit the 2010 Stakeholder report which included the recommendation to add Communication issues, Training issues, Equipment issues and other Policy-related issues as possible findings for incoming complaints. That would be a great way to address the issue raised by the Compliance Officer's Q4 report that officers feel singled out for Supervisory Investigations since they followed policy but the person lodging the complaint didn't like the policy, for instance.

We would still like to see the review periods last for at least 30 days before the Bureau posts a new draft and after. It is fairly clear, for instance, that the Portland Committee on Community Engaged Policing will not be able to quickly move to review a policy within such a short timeline as they only meet once a month and have fairly full agendas. This is also true for other advisory bodies as we have noted in the past.

While the policies under review do not have a large number of proposed changes, numerous problems we have identified in the past have not been addressed. On the other hand, there are a few changes that are reflective of comments we made which we note below. We commented on all of the seven policies below in September 2018. Once again, we are not offering any comments on Directive 630.31 on Stolen Vehicles.

We still urge the Bureau to add letters to section headings (Definitions, Policy, Procedure) to avoid the problem that there are multiple sections with the same numbers, and to add numbers to each of the Definitions. Our comments below refer to the Procedure Section unless otherwise noted.

DIRECTIVE 215.00 PERFORMANCE EVALUATIONS

Although PCW is still concerned that promised semi-annual evaluations were cut back to annual ones in 2017, the Bureau is now

Directive 215.00 Feedback

proposing to add to the definition of "Performance Evaluation" that such reviews can be made annually or over an "other specified time period." This change is appreciated.

Section 4.1.6 (formerly 5.1.6), which was previously added to reflect the DOJ Settlement Agreement's requirement for semi-annual reviews of officers' training histories, still does not address the review of officers' use of force that should happen every six months per the Agreement. PCW still does not agree that the Employee Information System will catch such irregularities, as the Compliance Officer/Community Liaison's reports indicate the EIS still is not performing as well as it should to catch potentially problematic officers.

We also continue to note that the Evaluations are barred from use as a disciplinary tool, even though officers with multiple complaints sustained against them (or one serious complaint) should be demoted or fired. The PPB explains the Directive's rule that an Evaluation will "not serve as the basis for discipline, discharge or demotion" (Section 5.1, formerly 6.1) is guided by the Portland Police Association contract. When that is the case, Directives should say "except as prohibited by collective bargaining agreements," so that if the contract changes a reasonable policy can go into effect right away.

We also wrote about the importance for some information from the evaluations to be made public when it serves the public interest. We asked that Section 6 (formerly Section 7) alert officers that some information might be released in such situations, rather than the blanket statement that the Bureau will protect the Evaluations as permitted by law. As we have written a few times now, "information that is in the public interest including sustained misconduct allegations needs to be released. The people who repair Portland's street lights do not have the same kinds of interactions with the public as the police do. Thus their misconduct may be shielded from the public eye without the same potential consequences as officers who are found guilty of serious or repeat misconduct."

CONCLUSION

As we have before, we extend our thanks to the Bureau for seeking for community input, and for being at least minimally responsive by making changes and/or explaining areas of disagreement. We look forward one day to being able to declare that the Bureau is free from corruption, brutality and racism.

With regard to the failed notifications from the "third party vendor," we have suggested that Staff put themselves on the alert list and check the outgoing emails to be sure the correct information was included. This will avoid having to re-post Directives in the future.

Thank you again for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

220.40, Lawsuits and Claims

Refer:

- ORS § 30.265 Scope of Liability of Public Body, Officers, Employees and Agents
- Directive 310.20 Discrimination, Harassment, and Retaliation Prohibited

Definitions:

- Legal documents: For purposes of this policy, legal documents refer to all documents notifying a member that the member, the Bureau, or the City are defendants or potential defendants in a civil lawsuit or tort claim. Legal documents will not include subpoenas or public records requests, which are handled under a separate directive.

Policy:

1. This directive establishes the procedure for Bureau members who become involved in a lawsuit against the member where they were acting within the course of their employment or duties.
2. Generally, a person may file a lawsuit against the City of Portland (“City”) and/or an individual member of the Bureau alleging claims related to actions a member took within the scope of a member’s employment or duties. Legal documents related to lawsuits can be served by a hired process server, a member of a Sheriff’s Department, or any other competent adult aside from the person suing (Plaintiff).
3. Rules for service of legal documents are different depending on the identity of the party being sued (Defendant). This directive guides Bureau member interactions with a process server or other person attempting service and sets forth the responsibilities of those members who are named as Defendants or potential Defendants.
4. For purposes of this policy and due to the fact that members do not have an “office” for purposes of office service, members must be personally served when they are individually named in litigation relating to actions within the scope of the members’ employment or duties. The Court Coordinator is not authorized to accept personal service of lawsuits for individually named members.

Procedure:

1. Lawsuits Against the City of Portland or the Bureau.
 - 1.1. Where the City is a named defendant but no individual member is named:
 - 1.1.1. If a process server or other person attempts to serve a member with any complaint, summons or any other legal documents where the City is the only listed defendant, the member shall not accept the service and shall refer the process server or other person to the City Attorney’s Office (CAO). The member shall notify a supervisor regarding the attempted service as soon as practical, but no later than 24 hours after the attempted service. The member may also notify the CAO of the attempted service.
 - 1.2. Where the Bureau is named as a defendant but no individual member is named:

- 1.2.1. The following Bureau members are authorized to accept service when service is made on the Bureau as the named defendant:
 - 1.2.1.1. Precinct front desk staff;
 - 1.2.1.2. Central Precinct administrative support staff;
 - 1.2.1.3. Professional Standards Division (PSD) Lieutenant; or
 - 1.2.1.4. Administrative staff in the Chief's office.
 - 1.2.2. The designated member shall accept service and immediately contact the CAO's Office Administrator to notify them of the service and provide the following information: date of service and method of service (personal service, mail, etc.). The member served shall forward to the CAO any requested documents.
2. Lawsuits Against Individual Bureau Members.
- 2.1. Responsibilities of members when they are an individually named defendant and are served with legal documents.
 - 2.1.1. This directive pertains only to legal documents that relate to actions the member took during the scope of their employment or duties. Any legal documents in any case unrelated to a member's employment shall be handled at the discretion of the member.
 - 2.1.2. Members shall accept service of legal documents presented or delivered to them while on duty in cases where they are individually named as a defendant if it is related to actions the member took during the scope of their employment or duties.
 - 2.1.3. The member served with legal documents or upon whom service of process has been attempted shall contact the CAO Office Administrator within 24 hours of receipt of service or the attempted service with the following information: name, Oregon Department of Public Safety Standards and Training (DPSST) identification number, date of service, and method of service (personal service, mail, etc.) or method of attempted service.
 - 2.1.3.1. The member shall forward all of the original documents served upon them to the CAO Office Administrator within 72 hours of initial contact. The member may retain a copy for their personal records.
 - 2.1.4. The member served with legal documents shall contact City Risk Management Division (CRMD) within 24 hours of receipt.
 - 2.1.4.1. If requested, the member shall forward to CRMD copies of any legal documents they request.
 - 2.1.4.2. The served member shall submit a written request (email is acceptable) to CRMD for defense and indemnification as soon as practicable, copying the PSD Claims Analyst.
3. Supervisor Responsibilities.
- 3.1. If a member is in the field when a process server seeks to serve the member, the supervisor shall call in that member out of the field to accept service, if call load and staffing allow. If the member is unable to return to the Bureau facility at that time, the supervisor shall inform the server of the next date and time the member is expected to be at the facility.

- 3.2. No supervisor or any other PPB member can accept service on behalf of another individually named defendant-member.
4. Member Claims Against the City for Property Loss.
 - 4.1. Members filing claims against the City for any loss, damage, or destruction of personal property shall submit appropriate documentation to the CRMD.
5. Members Who Receive Claims Against the City for Property Loss.
 - 5.1. Members who receive claims from individuals who are alleging a claim against the City for any loss, damage, or destruction of personal property or other claim shall immediately forward the documentation to the CRMD.
6. Obligations Regarding Communications about Lawsuits and Claims.
 - 6.1. When discussing any complaint, claim, tort claims notice, summons, or any other legal document with any process server, complainant, plaintiff, or member of the public, members shall not:
 - 6.1.1. Inform a person that the City will award compensation for injury or loss.
 - 6.1.2. Discuss the facts of any case or state an opinion on potential liability.
 - 6.2. When police action results in damage to privately owned property, members shall write a police report and supervisors shall ensure the report goes CRMD.
 - 6.3. When a member becomes aware of any significant potential for a claim or lawsuit, and a police report would not otherwise be required, they shall write a report and include the known details of the incident, the names of all involved officers and other witnesses. The member shall forward a copy of the report to the CRMD.

History:

- Originating Directive Date: 09/06/01
- Last Revision Signed: 03/16/20
 - Effective Date: 04/15/20
- Next Review Date: 04/15/21

220.40, Lawsuits and Claims

Refer:

- ORS § 30.265 Scope of Liability of Public Body, Officers, Employees and Agents
- Directive 310.20 Discrimination, Harassment, and Retaliation Prohibited

Definitions:

- Legal documents: For purposes of this policy, legal documents refer to all documents notifying a member that the member, the Bureau, or the City are defendants or potential defendants in a civil lawsuit or tort claim. Legal documents will not include subpoenas or public records requests, which are handled under a separate directive.

Policy:

1. This directive establishes the procedure for Bureau members who become involved in a lawsuit ~~or civil suit~~ against the member ~~or where they were acting within the City~~ course of Portland (“City”) regarding the exercise of police powers or related in any way to the member’s employment ~~with the City~~ or duties.
2. Generally, a person may file a lawsuit against the City of Portland (“City”) and/or an individual member of the Bureau alleging claims related to actions a member took within the scope of a member’s employment or duties. Legal documents related to lawsuits can be served by a hired process server, a member of a Sheriff’s Department, or any other competent adult aside from the person suing (Plaintiff).
3. Rules for service of legal documents are different depending on the identity of the party being sued (Defendant). This directive guides Bureau member interactions with a process server or other person attempting service and sets forth the responsibilities of those members who are named as Defendants or potential Defendants.
4. For purposes of this policy and due to the fact that members do not have an “office” for purposes of office service, members must be personally served when they are individually named in litigation relating to actions within the scope of the members’ employment or duties. The Court Coordinator is not authorized to accept personal service of lawsuits for individually named members.

Procedure:

1. Lawsuits ~~and Claims against~~ Against the City of Portland or the Bureau.
 - 1.1. Where the City is a named defendant but no individual member is named:
 - 1.1.1. If a process server or other person attempts to serve ~~the City or the Bureau a~~ member with any complaint, ~~claim, tort claims notice,~~ summons, or any other ~~document (“legal documents”)~~ through a member, where the City is the member only listed defendant, the member shall not accept the service and shall refer the process server or other person to the City Attorney’s Office (CAO). The member shall notify a supervisor regarding the attempted service as soon as practical, but no later than 24 hours after the attempted service. The member may also notify the CAO of the attempted service.

- 1.2. Where the Bureau is named as a defendant but no individual member is named:
- 1.2.1. The following Bureau members are authorized to accept service when service is made on the Bureau as the named defendant:
 - 1.2.1.1. Precinct front desk staff;
 - 1.2.1.2. Central Precinct administrative support staff;
 - 1.2.1.3. Professional Standards Division (PSD) Lieutenant; or
 - 1.2.1.4. Administrative staff in the Chief's office.
 - 1.2.2. The designated member shall accept service and immediately contact the CAO's Office Administrator to notify them of the service and provide the following information: date of service and method of service (personal service, mail, etc.). The member served shall forward to the CAO any requested documents.

2. Lawsuits Against Individual Bureau Members.

- ~~1.2.2.1.~~ Responsibilities of Members If Served with Legal Documents. ~~members when they are an individually named defendant and are served with legal documents.~~
- 2.1.1. This directive pertains only to legal documents that relate to actions the member took during the scope of their employment or duties. Any legal documents in any case unrelated to a member's employment shall be handled at the discretion of the member.
 - 2.1.2. Members ~~who are personally~~ shall accept service of legal documents presented or delivered to them while on duty in cases where they are individually named as a defendant if it is related to actions the member took during the scope of their employment or duties.
 - ~~1.2.1.2.1.3.~~ 2.1.3. The member served with legal documents shall inform their immediate supervisor as soon as practicable or upon whom service of process has been attempted shall contact the CAO Office Administrator within 24 hours of receipt of service or the attempted service with the following information: name, Oregon Department of Public Safety Standards and Training (DPSST) identification number, date of service, and method of service (personal service, mail, etc.) or method of attempted service.
 - ~~1.2.1.1.2.1.3.1.~~ 2.1.3.1. Members ~~The member~~ shall deliver forward all of the original copies of legal documents to their immediate supervisor as soon as practicable and documents served upon them to the CAO Office Administrator within 72 hours of initial contact. The member may retain a copy for their personal records.
- ~~1.1. Members will not be called in from patrol or operations in the field to receive service of civil summons and civil complaints.~~
- 2.1.4. Nothing in this directive requires a ~~The member to accept service of~~ served with legal documents while on duty or while at a Bureau facility that shall contact City Risk Management Division (CRMD) within 24 hours of receipt.
 - 2.1.4.1. If requested, the member reasonably believes shall forward to CRMD copies of any legal documents they request.

~~1.2.1.2.2.1.4.2.~~ The served member shall submit a written request (email is unrelated to police duties or employment acceptable) to CRMD for defense and indemnification as soon as practicable, copying the PSD Claims Analyst.

~~2.3.~~ Supervisor Responsibilities.

~~2.1.~~ Upon notification that If a member under their direct supervision has received is in the field when a process server seeks to serve the member, the supervisor shall call in that member out of the field to accept service of a legal document regarding the exercise of police powers or related in any way to the member's employment with the City, they shall notify the CAO as soon as practicable.

~~2.3.~~ Provide the original documents, if call load and staffing allow. If the member is unable to return to the CAO within 72 hours.

~~2.5.~~ Upon notification Bureau facility at that a member under their direct supervision has received service of a legal document regarding the exercise of police powers or related in any way to the member's employment with the City, they shall notify the Professional Standards Division (PSD) as soon as practicable.

~~2.7.~~ Ensure the member provided timely notice and documentation as described in Section 2.

~~2.9.3.1.~~ If requested by the process server or other person serving processtime, the supervisor shall inform ~~that~~the server of the next date and time the member is expected to be at the facility.

~~3.2.~~ FilingNo supervisor or any other PPB member can accept service on behalf of another individually named defendant-member.

~~3.4.~~ Member Claims ~~against~~Against the City for Property Loss.

~~3.1.4.1.~~ Members filing claims against the City for any loss, damage, or destruction of personal property shall submit appropriate documentation to the ~~City Risk Management Division (CRMD).~~CRMD.

~~5.~~ Members Who Receive Claims Against the City for Property Loss.

~~5.1.~~ Members who receive claims from individuals who are alleging a claim against the City for any loss, damage, or destruction of personal property or other claim shall immediately forward the documentation to the CRMD.

~~4.6.~~ Obligations Regarding Communications about Lawsuits and Claims.

~~4.1.6.1.~~ When discussing any complaint, claim, tort claims notice, summons, or any other legal document with any process server, complainant, plaintiff, or member of the public, members shall not:

~~4.1.1.6.1.1.~~ Inform a person that the City will award compensation for injury or loss.

~~4.1.2.6.1.2.~~ Discuss the facts of any case or ~~opine~~state an opinion on potential liability.

6.2. When police action results in damage to privately owned property, members shall write a police report and supervisors shall ensure the report goes CRMD.

4.2.6.3. When a member becomes aware of any significant potential for a claim or lawsuit, and a police report would not otherwise be required, they shall write a report and include the known details of the incident, the names of all involved officers and other witnesses. The member shall forward a copy of the report to the CRMD.

#1

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Directive 220.40 Feedback

Q1 Please provide feedback for this directive

COMMENTS ON PROFILING, ACCOUNTABILITY, AND OTHER DIRECTIVES SEPTEMBER 2018

To Chief Outlaw, Capt. Bell, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Below are Portland Copwatch's comments on the Directives posted for review in September . We are very concerned that the PPB released SEVENTEEN Directives for review on the Saturday of Labor Day weekend, expecting meaningful feedback by September 16. Because we have made comments on all of these Directives in the past, this task was somewhat easier for us but still requires checking to see what changes were made in between comment periods. We continue to encourage the Bureau to post comments as they arrive so commenters might be able to build off others' ideas (de-identified is fine with us, though we are fine being identified). We point out that until recently, comments on Body Cameras were posted on the Bureau's website for everyone to read.

We make a few comments about the possible findings on misconduct allegations, below. We are glad that the Bureau moved away from trying to cut down the four possible findings to two, but continue to believe that the same findings should apply to deadly force cases. They should not just be "In Policy/Out of Policy," as there could be room for an "Insufficient Evidence" (aka "Not Sustained") finding in those cases. We did not see any reference to applying this concept to deadly force cases in the Bureau's published Directives memos, rather, Directive 336.00 still only includes the two findings previously being used.

In publishing the finalized 330 series in February, the Bureau claimed they clarified that the "Discipline Coordinator" is the same person as the "Review Board Coordinator." The Discipline Coordinator's role and position at the Professional Standards Division (PSD) is not made clear in Directive 335.00, though there is a brief mention in Section 2.1.1.1 that the person is in PSD. The term "Review Board Coordinator" is still used in Directive 336.00. So it seems no clarification actually happened.

Similarly, in previous comments we noted: "A general point of confusion is that many Directives refer to the Professional Standards Division and/or Captain, while others refer to the Internal Affairs Captain. Our understanding of the structure is that IA is part of PSD and there is a ranking member over all of PSD, not just IA. We hope the Bureau can clarify this point." The two terms are still used interchangeably among the Directives.

We also continue to believe that the review periods should be at least 30 days on both ends of the rewriting process so there is time for organizations who only meet monthly to weigh in. As we noted, this might include the BHU Advisory Committee, though they seem to have special dispensation to make comments and receive feedback above and beyond all other groups, as well as the Training Advisory Council, Citizen Review Committee, and if it ever begins meeting, the Portland Committee on Community Engaged Policing.

Although the Bureau has been putting out "redline" versions of the Directives when they are up for their second round of public comments, the final versions-- which frequently are significantly different from what was posted in round two-- do not indicate where changes were made, making comments on the policies extremely difficult when they come back up again as all of these have.

The Bureau did make some changes-- some of which are substantive-- based on PCW's comments, as noted below, although in once case the change reversed a policy PCW supported.

We continue to believe the Bureau should add letters to section headings (Definitions, Policy, Procedure) so that there are not multiple sections with the same numbers, and to enumerate the Definitions. Our comments below refer to the Procedure Section unless otherwise noted.

DIRECTIVE 220.40 LAWSUITS AND CLAIMS (previous comments made September 2017)

This Directive was entirely rewritten without the draft being put forward to the community for review. The Bureau's memo on its release

Directive 220.40 Feedback

This Directive was entirely rewritten without the draft being put forward to the community for review. The Bureau's memo on its release states that the previous version did not reflect current practices.

The memo also describes our organization as "one community member" who raised concerns about the policy failing to prohibit officers from discouraging or retaliating against civilians who file or threaten to file lawsuits. The Bureau says those actions are covered in Directive 310.20 on retaliation; there is no reason not to cross-reference those guidelines here.

We suggested that a now-deleted section which ordered officers to tell the complainant to contact the City about filing a claim (previous Section 4.1) should suggest contacting an attorney prior to filing such a claim. Instead, the requirement has now been cut.

The revised Directive no longer requires officers to accept notice of a lawsuit if the lawsuit is (a) directed at the City / PPB and not the officer individually (Section 1), or (b) if it is not related to police business (Section 2.4).

We previously wondered why the Bureau did not re-insert a previous requirement that officers cooperate with the City Attorney, Police Legal Advisor and Risk Management in defense against the lawsuit (Section 1.5.2 from the pre-2014 version). This could mean officers are free to admit fault and work to settle the complaint directly with the plaintiff. We doubt that's what the City has in mind when they removed that provision.

The new version says officers have to inform their Supervisors within 24 hours if the suit is directed against the City / PPB (Section 1.1) but only "as soon as practicable" if it is against them individually (Section 2.2). This seems odd since it's possible the City will have received the broader suit themselves but not necessarily one targeting the individual officer.

CONCLUSION

Once again we thank the Bureau for seeking for community input, and to the extent that some of our comments have been addressed, for taking our advice seriously. We repeat here our deep concern about publishing so many important policies at one time, during a holiday season. We continue our struggle to see a Bureau free from corruption, brutality and racism, which is the basis for our participating in this process. As noted before, while we don't always agree with the Bureau's reasons for rejecting certain recommendations, it is helpful to be receiving them.

Thank you for your time
--dan handelman
--Portland Copwatch

Q2 Contact Information (optional)

Name	Portland Copwatch
Email Address	copwatch@portlandcopwatch.org

#1

COMPLETE

Collector: Web Link 1 (Web Link)
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Q1 Please provide feedback for this directive

COMMENTS ON IMMIGRANT CONTACT, LAWSUITS AND SEXUAL ASSAULT DIRECTIVES, MAY 2019

To Chief Outlaw, Capt. Parman, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Portland Committee for Community Engaged Policing, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Below are comments from Portland Copwatch (PCW) on the three Directives posted mid-May for comment (<https://www.portlandoregon.gov/police/73677>). Of the extensive comments we sent in last August on Directive 810.10, now titled in part "Bureau Contact with Members of Immigrant Communities," only one led to meaningful change. It seems as if the comments submitted collectively by the ACLU, Innovation Law Lab and Causa* had a much higher success rate. We last commented on the Lawsuits Directive (220.40) in September, and, frustratingly, on the Sexual Assault Directive (640.20) in May 2015, but the Bureau's proposed changes were never made so now we're making most of the same comments again.

We've said many times before and repeat here that the Bureau should change the structure of the Directives so that the definitions sections have numbers like all the other sections, and each section has a letter or other designation so there are not multiple sections marked "1." We also continue to believe the Bureau should give a longer time period for comments for those groups, particularly city-run advisory groups, who only meet once a month (or once every two months, like the Training Advisory Council) have time to weigh in.

The references below are to Procedure Sections unless otherwise noted.

DIRECTIVE 220.40 LAWSUITS AND CLAIMS

This Directive has been rewritten extensively and seems to better separate out when an officer is or is not named in a filed lawsuit (or tort claim). We previously were concerned about the Directive not requiring officers to accept notice on behalf of the City, but the new version spells out the process for such cases.

Even though the Bureau thinks it is not necessary to insert a line item prohibiting officers from discouraging or retaliating against civilians who file or threaten to file lawsuits, we still think at the very least the "Refer" section should point to Directive 310.20 on Retaliation.

On that note, the Definition of "Legal Documents" says that subpoenas and public records requests are covered under "a separate Directive" but that Directive is not named.

We learned something in reading the new Policy Section 2 which says that any adult can serve legal documents related to a lawsuit except the Plaintiff, per Oregon law.

New Section 1.2.2 improves on previous Section 3.2 by requiring officers to contact the City Attorney "immediately" if they are named in a lawsuit rather than their supervisor doing so within 72 hours. Previously the officer was to refer to their supervisor "as soon as practicable," so this should speed up the timeline considerably, something we commented on in the previous iteration.

Directive 220.40 Feedback

Section 2.1.1 now states that it is up to the officer to decide whether to accept a summons not related to their job while they are on duty, as opposed to the old Directive which just said they were not required to accept such a summons.

It's not clear whether there is a reason the Plaintiff's name is not one of the items an officer has to refer to the City Attorney's office (here, within 24 hours) in Section 2.1.3.

We continue to think that if a community member tells an officer they want to sue, the officer should suggest contacting an attorney prior to filing such a claim. An old version required officers to tell them to contact the City, now the Directive is silent on what happens if a person who perceives harm directly talks to the offending officer.

We continue to wonder why the Bureau has not re-inserted a previous requirement that officers cooperate with the City Attorney, Police Legal Advisor and Risk Management in defense against the lawsuit (Section 1.5.2 from the pre-2014 version). This could mean officers are free to admit fault and work to settle the complaint directly with the plaintiff. We doubt that's what the City has in mind when they removed that provision.

CONCLUSION

As always, we appreciate the opportunity to make comments on Bureau policy. We do wish more of our concerns would be addressed even though we are not a professional organization made up of practicing attorneys. We also hope that the example of the Training Advisory Council needing to consider the Directive on Field Training after the deadline passed will lead to the Bureau giving longer timelines to respond.

--dan handelman
--Portland Copwatch

* Note: we had to obtain an original copy of the three groups' comments since the Bureau's version attached to the new draft confusingly includes "redline" inserts and deletions without markings.

Q2 Contact Information (optional)

Name	Portland Copwatch
Email Address	copwatch@portlandcopwatch.org

344.05, Bias-Based Policing/Profiling Prohibited

Refer:

- ORS § 166.155, Intimidation in the Second Degree
- ORS § 166.165, Intimidation in the First Degree
- Oregon House Bill 2002, (2015).
- Oregon House Bill 2355
- Citywide Equity Goals and Strategies
- City of Portland Resolution No. 37277, Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City For All
- DIR 310.00, Professional Conduct and Courtesy
- DIR 310.20, Discrimination, Harassment, and Retaliation Prohibited
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 640.80, Mandatory Bias/Prejudice Crime Reporting
- DIR 810.10, Immigration Enforcement and Diplomatic Immunity
- DIR 1500.00, Training

Definitions:

- **Bias-Based Policing:** The differential treatment of any person or any group of persons and/or any discriminatory practices by the Bureau or its members that are motivated by prejudicial judgments of the individual on the basis of their membership in classes protected by law or Bureau policy.
- **Equity:** The process of creating policies and procedures to promote the fair and unbiased treatment of all individuals and to remove differences in treatment of Bureau members and community members based on membership in classes protected by law or Bureau policy.
- **Law Enforcement Contacts Policy and Data Review Committee:** A statewide, governor-appointed committee that is charged with the duties of assisting Oregon law enforcement agencies with stop data collection and analysis efforts, improving community relations, training efforts, and policy recommendations that pertain to ensuring equity in Oregon law enforcement.
- **Probable Cause:** A substantial objective basis for believing that, more likely than not, an offense has been committed and a person to be arrested has committed it.
- **Profiling:** Where a Bureau member targets an individual belonging to a class protected by law or Bureau policy when conducting stops or detentions unless the Bureau member is acting on suspect description or information related to an identified or suspected violation of a provision of law.
- **Reasonable Suspicion:** An objective test measured at the time and place the member acts and based on the totality of the circumstances, which requires a member to point to specific, articulable facts giving rise to a reasonable inference that a subject has engaged or is engaging in criminal activity.

- Stop: Temporary restraint of a person's liberty by a sworn member who is lawfully present in any place.

Policy:

1. The Bureau is dedicated to offering courteous and professional service delivery and providing equal protection, a fundamental right under the Constitution, to all members of the community. The Bureau endeavors to create an organizational culture that promotes nondiscriminatory and inclusionary practices, and its members shall strive to enforce laws and policies in an impartial and equitable manner.
2. Bureau members are committed to respecting and preserving the constitutional rights of all individuals. Members are prohibited from taking or refraining to take any police action motivated by bias or prejudice and should, when appropriate, strive to engage community members in a positive manner. Furthermore, members shall not profile or discriminate against any individual who is a member of a legally protected class. Legally protected classes, as defined by federal or state statute, as well as case law, include an individual's race, color, national origin, citizenship, ethnicity, religion, sex, pregnancy, sexual orientation, gender identity, age, actual or perceived mental or physical disability, language (spoken or signed), marital or familial status, veteran status or any other protected status under law.
3. The Bureau is committed to policing in the most impartial manner possible. Therefore, regardless of protected status, members shall not profile or discriminate against any individual solely based on their membership in the following groups: housing status, socioeconomic status, immigration or refugee status, or political ideology or affiliation.
4. Public trust and confidence are the cornerstones of community policing. The Bureau recognizes that engaging in police acts that are rooted in bias is contrary to the values of the Bureau and erodes that trust and confidence, delegitimizes the Bureau, and ultimately undermines community policing efforts.
5. Members shall adhere to established legal, ethical, and best practice standards. The Bureau shall provide introductory and ongoing training to all sworn members that emphasizes developing an understanding of racial, ethnic, national, religious, cultural, and other differences and fosters the professional growth and continued development of members. Training of this nature is reinforced and incorporated throughout several disciplines and is intended to equip members with the necessary tools and techniques to police effectively, lawfully, and without bias, while also treating community members with dignity and respect.
6. The Bureau recognizes the reality of implicit bias, the scope of its potential influence on human behavior and, as it pertains to policing, how it can affect interactions and relationships between the Bureau and Portland's diverse communities. Therefore, the Bureau is committed to offering resources and instruction that help members identify and acknowledge their own subconscious perceptions or associated stereotypes about or attitudes towards people about which they may not be aware. In an effort to both minimize discriminatory

practices and strengthen its relationship with the communities it serves, the Bureau will continue to work with members on an individual and collective basis to address how implicit biases may directly impact their work.

Procedure:

1. Bias-Based Policing and/or Profiling.
 - 1.1. Members shall police justly and impartially. Members shall not engage in bias-based policing or profiling.
 - 1.2. Members who engage in, condone, or fail to report bias-based policing or profiling shall be subject to discipline, up to and including termination.
 - 1.2.1. Pursuant to Directive 310.00, Professional Conduct and Courtesy, members have a duty to report misconduct, including bias-based policing and/or profiling practices.
 - 1.2.2. Any supervisor who is informed that a member has engaged in profiling or bias-based policing, receives a complaint alleging such, or otherwise becomes aware of such action and fails to act or report the member's behavior shall be subject to disciplinary action.
2. Permitted Use of Physical Traits and/or Individual Characteristics when Establishing Reasonable Suspicion or Probable Cause.
 - 2.1. When executing a stop, detention, search, seizure of property, an arrest or any other police action, the member's action shall be based on a standard of reasonable suspicion or probable cause. Members must be able to articulate and document specific facts and circumstances that establish reasonable suspicion or probable cause.
 - 2.2. Members are permitted to consider status characteristics that are protected by law or Bureau policy when acting on a suspect description or information related to an identified or suspected violation of a provision of law.
 - 2.2.1. Members shall only use the listed classification information in combination with other relevant and specific identifying traits or factors (e.g., description of clothing, height, etc.) when searching for a specific individual or group. In these circumstances, status characteristics that are protected by law or Bureau policy should not be the sole factor cited/identified.
 - 2.3. For a bias crime, as defined in ORS §166.155 and 165.165, a member may consider an individual's class status that is otherwise protected by law or Bureau policy to the extent they are formulating reasonable suspicion or probable cause to investigate or arrest.
 - 2.3.1. When investigating or charging under one of these statutes, members shall document the protected class status considered and the reason for doing so to establish reasonable suspicion or probable cause.
 - 2.4. When initiating consensual encounters that do not amount to legal detentions or when seeking consent to search, members shall not rely solely on status characteristics that are protected by law or Bureau policy.

- 2.4.1. Members are permitted to engage in voluntary and non-coercive conversations with community members for the purpose of building relationships, seeking or providing assistance, or exchanging information.
 - 2.4.2. It is not the intent of this policy to impede legitimate community engagement based on a community's protected status.
3. Complaint Intake and Processing.
 - 3.1. Internal Affairs (IA) and the Independent Police Review (IPR) shall accept and process all complaints alleging profiling and bias-based policing, whether from a known, anonymous, or third-party complainant or from the Law Enforcement Contacts Policy and Data Review Committee, in accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing.
4. Communication with the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.1. The IPR Director is the City of Portland's responsible point of contact with the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.2. The IPR Director or designee will submit copies of all City-received profiling complaints to the Law Enforcement Contacts Policy and Data Review Committee and will intake any Committee-received profiling complaints from the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.3. The IPR Director or designee will notify the Law Enforcement Contacts Policy and Data Review Committee of disposition of the complaint.
 - 4.3.1. The Law Enforcement Contacts Policy and Data Review Committee may collect and disseminate data regarding profiling and bias-based policing for statistical purposes, but is required to keep personally identifying information confidential.
 - 4.4. The IA Captain or designee shall ensure that the appropriate profiling complaint data is provided to the Law Enforcement Contacts Policy and Data Review Committee as described above.

History:

- Originating Directive Date: 08/01/05
- Last Revision Signed: 03/16/20
 - Effective Date: 4/15/20
- Next Review Date: 4/15/21

344.05, Bias-Based Policing/Profiling Prohibited

Refer:

- ORS § 166.155, Intimidation in the Second Degree
- ORS § 166.165, Intimidation in the First Degree
- Oregon House Bill 2002, (2015).
- Oregon House Bill 2355
- Citywide Equity Goals and Strategies
- City of Portland Resolution No. 37277, Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City For All
- DIR 310.00, Professional Conduct and Courtesy
- DIR 310.20, Discrimination, Harassment, and Retaliation Prohibited
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 640.80, Mandatory Bias/Prejudice Crime Reporting
- DIR 810.10, Immigration Enforcement and Diplomatic Immunity
- DIR 1500.00, Training

Definitions:

- **Bias-Based Policing:** The differential treatment of any person or any group of persons and/or any discriminatory practices by the Bureau or its members that are motivated by prejudicial judgments of the individual on the basis of their membership in classes protected by law or Bureau policy.
- **Equity:** The process of creating policies and procedures to promote the fair and unbiased treatment of all individuals and to remove differences in treatment of Bureau members and community members based on membership in classes protected by law or Bureau policy.
- **Law Enforcement Contacts Policy and Data Review Committee:** A statewide, governor-appointed committee that is charged with the duties of assisting Oregon law enforcement agencies with stop data collection and analysis efforts, improving community relations, training efforts, and policy recommendations that pertain to ensuring equity in Oregon law enforcement.
- **Probable Cause:** A substantial objective basis for believing that, more likely than not, an offense has been committed and a person to be arrested has committed it.
- **Profiling:** Where a Bureau member targets an individual belonging to a class protected by law or Bureau policy when conducting stops or detentions unless the Bureau member is acting on suspect description or information related to an identified or suspected violation of a provision of law.
- **Reasonable Suspicion:** An objective test measured at the time and place the member acts and based on the totality of the circumstances, which requires a member to point to specific, articulable facts giving rise to a reasonable inference that a subject has engaged or is engaging in criminal activity.

- Stop: Temporary restraint of a person's liberty by a sworn member who is lawfully present in any place.

Policy:

1. The Bureau is dedicated to offering courteous and professional service delivery and providing equal protection, a fundamental right under the Constitution, to all members of the community. The Bureau endeavors to create an organizational culture that promotes nondiscriminatory and inclusionary practices, and its members shall strive to enforce laws and policies in an impartial and equitable manner.
2. Bureau members are committed to respecting and preserving the constitutional rights of all individuals. Members are prohibited from taking or refraining to take any police action motivated by bias or prejudice and should, when appropriate, strive to engage community members in a positive manner. Furthermore, members shall not profile or discriminate against any individual who is a member of a legally protected class. Legally protected classes, as defined by federal or state statute, as well as case law, include an individual's race, color, national origin, citizenship, ethnicity, religion, sex, pregnancy, sexual orientation, gender identity, age, actual or perceived mental or physical disability, language (spoken or signed), marital or familial status, veteran status or any other protected status under law.
3. ~~While other classes of persons are not legally protected in that there is no basis in case law or statute requiring that they be treated in a non-discriminatory manner, the~~ The Bureau is committed to policing in the most impartial manner possible. Therefore, ~~the Bureau regardless of protected status, members shall also prohibit the profiling or any disparate treatment of not profile or discriminate against~~ any individual solely based on their membership in the following ~~classes~~ groups: housing status, ~~lawful source of income, economic~~ socioeconomic status, ~~immigrant~~ immigration or refugee status, or political ideology or affiliation.
4. Public trust and confidence are the cornerstones of community policing. The Bureau recognizes that engaging in police acts that are rooted in bias is contrary to the values of the Bureau and erodes that trust and confidence, delegitimizes the Bureau, and ultimately undermines community policing efforts.
5. Members shall adhere to established legal, ethical, and best practice standards. The Bureau shall provide introductory and ongoing training to all sworn members that emphasizes developing an understanding of racial, ethnic, national, religious, cultural, and other differences and fosters the professional growth and continued development of members. Training of this nature is reinforced and incorporated throughout several disciplines and is intended to equip members with the necessary tools and techniques to police effectively, lawfully, and without bias, while also treating community members with dignity and respect.
6. The Bureau recognizes the reality of implicit bias, the scope of its potential influence on human behavior and, as it pertains to policing, how it can affect interactions and relationships

between the Bureau and Portland's diverse communities. Therefore, the Bureau is committed to offering resources and instruction that help members identify and acknowledge their own subconscious perceptions or associated stereotypes about or attitudes towards people about which they may not be aware. In an effort to both minimize discriminatory practices and strengthen its relationship with the communities it serves, the Bureau will continue to work with members on an individual and collective basis to address how implicit biases may directly impact their work.

Procedure:

1. Bias-Based Policing and/or Profiling.
 - 1.1. Members shall police justly and impartially. Members shall not engage in bias-based policing or profiling.
 - 1.2. Members who engage in, condone, or fail to report bias-based policing or profiling shall be subject to discipline, up to and including termination.
 - 1.2.1. Pursuant to Directive 310.00, Professional Conduct and Courtesy, members have a duty to report misconduct, including bias-based policing and/or profiling practices.
 - 1.2.2. Any supervisor who is informed that a member has engaged in profiling or bias-based policing, receives a complaint alleging such, or otherwise becomes aware of such action and fails to act or report the member's behavior shall be subject to disciplinary action.
2. Permitted Use of Physical Traits and/or Individual Characteristics when Establishing Reasonable Suspicion or Probable Cause.
 - 2.1. When executing a stop, detention, search, seizure of property, an arrest or any other police action, the member's action shall be based on a standard of reasonable suspicion or probable cause. Members must be able to articulate and document specific facts and circumstances that establish reasonable suspicion or probable cause.
 - 2.2. Members are permitted to consider status characteristics that are protected by law or Bureau policy when acting on a suspect description or information related to an identified or suspected violation of a provision of law.
 - 2.2.1. Members shall only use the listed classification information in combination with other relevant and specific identifying traits or factors (e.g., description of clothing, height, etc.) when searching for a specific individual or group. In these circumstances, status characteristics that are protected by law or Bureau policy should not be the sole factor cited/identified.
 - 2.3. For a bias crime, as defined in ORS §166.155 and 165.165, a member may consider an individual's class status that is otherwise protected by law or Bureau policy to the extent they are formulating reasonable suspicion or probable cause to investigate or arrest.
 - 2.3.1. When investigating or charging under one of these statutes, members shall document the protected class status considered and the reason for doing so to establish reasonable suspicion or probable cause.

- 2.4. When initiating consensual encounters that do not amount to legal detentions or when seeking consent to search, members shall not rely solely on status characteristics that are protected by law or Bureau policy.
 - 2.4.1. Members are permitted to engage in voluntary and non-coercive conversations with community members for the purpose of building relationships, seeking or providing assistance, or exchanging information.
 - 2.4.2. It is not the intent of this policy to impede legitimate community engagement based on a community's protected status.
3. Complaint Intake and Processing.
 - 3.1. Internal Affairs (IA) and the Independent Police Review (IPR) shall accept and process all complaints alleging profiling and bias-based policing, whether from a known, anonymous, or third-party complainant or from the Law Enforcement Contacts Policy and Data Review Committee, in accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing.
4. Communication with the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.1. The IPR Director is the City of Portland's responsible point of contact with the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.2. The IPR Director or designee will submit copies of all City-received profiling complaints to the Law Enforcement Contacts Policy and Data Review Committee and will intake any Committee-received profiling complaints from the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.3. The IPR Director or designee will notify the Law Enforcement Contacts Policy and Data Review Committee of disposition of the complaint.
 - 4.3.1. The Law Enforcement Contacts Policy and Data Review Committee may collect and disseminate data regarding profiling and bias-based policing for statistical purposes, but is required to keep personally identifying information confidential.
 - 4.4. The IA Captain or designee shall ensure that the appropriate profiling complaint data is provided to the Law Enforcement Contacts Policy and Data Review Committee as described above.

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Collector: Web Link 1 (Web Link)
Started: Thursday, September 06, 2018 1:51:09 PM
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Q1 Please provide feedback for this directive

344.05, Bias-Based Policing/Profiling Prohibited

Q2 Contact Information (optional)

Name

Email Address

#2

COMPLETE

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Q1 Please provide feedback for this directive

COMMENTS ON PROFILING, ACCOUNTABILITY, AND OTHER DIRECTIVES SEPTEMBER 2018

To Chief Outlaw, Capt. Bell, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Below are Portland Copwatch's comments on the Directives posted for review in September . We are very concerned that the PPB released SEVENTEEN Directives for review on the Saturday of Labor Day weekend, expecting meaningful feedback by September 16. Because we have made comments on all of these Directives in the past, this task was somewhat easier for us but still requires checking to see what changes were made in between comment periods. We continue to encourage the Bureau to post comments as they arrive so commenters might be able to build off others' ideas (de-identified is fine with us, though we are fine being identified). We point out that until recently, comments on Body Cameras were posted on the Bureau's website for everyone to read.

We make a few comments about the possible findings on misconduct allegations, below. We are glad that the Bureau moved away from trying to cut down the four possible findings to two, but continue to believe that the same findings should apply to deadly force cases. They should not just be "In Policy/Out of Policy," as there could be room for an "Insufficient Evidence" (aka "Not Sustained") finding in those cases. We did not see any reference to applying this concept to deadly force cases in the Bureau's published Directives memos, rather, Directive 336.00 still only includes the two findings previously being used.

In publishing the finalized 330 series in February, the Bureau claimed they clarified that the "Discipline Coordinator" is the same person as the "Review Board Coordinator." The Discipline Coordinator's role and position at the Professional Standards Division (PSD) is not made clear in Directive 335.00, though there is a brief mention in Section 2.1.1.1 that the person is in PSD. The term "Review Board Coordinator" is still used in Directive 336.00. So it seems no clarification actually happened.

Similarly, in previous comments we noted: "A general point of confusion is that many Directives refer to the Professional Standards Division and/or Captain, while others refer to the Internal Affairs Captain. Our understanding of the structure is that IA is part of PSD and there is a ranking member over all of PSD, not just IA. We hope the Bureau can clarify this point." The two terms are still used interchangeably among the Directives.

We also continue to believe that the review periods should be at least 30 days on both ends of the rewriting process so there is time for organizations who only meet monthly to weigh in. As we noted, this might include the BHU Advisory Committee, though they seem to have special dispensation to make comments and receive feedback above and beyond all other groups, as well as the Training Advisory Council, Citizen Review Committee, and if it ever begins meeting, the Portland Committee on Community Engaged Policing.

Although the Bureau has been putting out "redline" versions of the Directives when they are up for their second round of public comments, the final versions-- which frequently are significantly different from what was posted in round two-- do not indicate where changes were made, making comments on the policies extremely difficult when they come back up again as all of these have.

The Bureau did make some changes-- some of which are substantive-- based on PCW's comments, as noted below, although in once case the change reversed a policy PCW supported.

We continue to believe the Bureau should add letters to section headings (Definitions, Policy, Procedure) so that there are not multiple sections with the same numbers, and to enumerate the Definitions. Our comments below refer to the Procedure Section unless otherwise noted.

344.05 BIAS-BASED POLICING/ PROFILING PROHIBITED (previous comments made September 2017)

A number of changes were made to this Directive following the Second Universal Review in September 2017 not the least of which

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A number of changes were made to this Directive following the Second Universal Review in September 2017, not the least of which was a very poor rewriting of the definition of profiling. The last version the community had for comment talked about profiling as "a form of bias-based policing wherein a law enforcement officer targets an individual for suspicion of violation of a provision of law based solely [on their race or other characteristics]." The current definition ignores that a Bureau member's stop is based on the person's visible protected class status characteristics. If the existing definition is to remain, it should include the following new phrases (as we have inserted *in between asterisks.*

Profiling: Where a Bureau member targets an individual belonging to a class protected by law or Bureau policy *based on the identifiable traits of that class* when conducting stops or detentions unless the Bureau member is acting on *such traits as one part of a broader* suspect description or information related to an identified or suspected violation of a provision of law.

To break down how that works:

"Black man, stopped him" with no reasonable suspicion is profiling.

"Suspect is a black man and so is this guy" is also profiling.

"Suspect is a middle aged black man in a red baseball hat and orange pants, so is this guy" that is not profiling.

We noted in September 2017 that the Bureau made strides toward improving the Directive by removing the word "solely" from the definition of "bias-based policing." We also reminded the Bureau that as a local entity, Portland can define "profiling" more narrowly than the state. We note that Section 2.2.1 says not to use protected traits as the "sole factor cited/identified" when looking for a suspect. We continue to suggest the Bureau use the language that was put into 810.10 on immigration enforcement, which prohibits action based "solely or primarily upon a person or group's actual or perceived national origin or immigration status." In other words, adding the words "or primary" after "sole" is an acceptable solution. Similarly we encourage that the word "solely" also be removed from (or further clarified in) Section 2.4 which guides consensual stops.

We made extensive comments about the previous section on the topic of such stops. This is what officers would call "mere conversation," though we know in Portland it might include asking for voluntary pat-downs. The language guiding "voluntary and non-coercive conversations with community members for the purpose of building relationships, providing assistance or exchanging information" (Section 2.4.1) does not prohibit officers from disparately stopping people based on their protected characteristics under the guise of "relationship building." Rather, Section 2.4.2 says that the policy is not meant to "impede legitimate community engagement based on a community's protected status." This language is upside-down from what needs to be in the Bias-Based Policing Directive. Like the language floated in 2017, this (a) doesn't prohibit officers from disproportionately stopping people to talk based on any of the protected characteristics (including race), (b) doesn't require officers to let the person know they are free to go, and (c) doesn't recognize that for many people, an armed uniformed officer asking to talk to them seems like a coercive action.

The language reflecting state law indicates the encounter has to be due to "suspected violation of a provision of law" (Section 2.2). The reality is, sometimes officers see a person and pull them over and later decide to explain the stop by relying on a traffic or equipment violation-- but sometimes no reason at all is given. Often the person is let go with no citation, warning or other paperwork. Thus the use of the term "any police action" as used in Policy Section 2 should apply to the definition of profiling, which only talks about "stops or detentions."

Furthermore, after our last set of comments identifying issues with groups protected from profiling, the Bureau re-wrote the list in Policy Sections 2 and 3. The term "gender identity" was appropriately added back in as protected by law, but housing status (which is part of state law) is still listed in the "other classes" under Section 3. The Bureau acted on PCW's recommendation separating "source of income" from "economic status" since, as we noted, "How someone makes money (whether it is returning recyclables or being the CEO of a corporation) is not the same as how much money they have or appear to have (rich vs. poor)." However, the Bureau added the word "lawful" before the words "source of income," which opens up a lot of problems, for example for sex workers and in the federal vs. state debate on the legality of marijuana. Officers should not discriminate against people for engaging in acts that are considered "unlawful," they should fairly and equitably enforce the law using discretion and compassion.

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A previous requirement (in pre-2017 Policy Section 5) told officers they had to take "immediate action to stop or prevent [bias based policing]" that they observe. This is somewhat watered down in the current Procedure Section 1.2, which just says "Members who engage in, condone, or fail to report bias-based policing or profiling shall be subject to discipline, up to and including termination." We're all for the sentiment of that sentence-- we just want to see "condone" be expanded to include the previous requirement to take action to stop such behavior. We support the continuation of explicit language saying supervisors who fail to act based on reports of bias shall be subject to discipline as well (Section 1.2.2).

The Bureau has removed old Section 6.1, which made a blanket exemption to disclosing "personal information" including the name of a complainant and employee, citing ORS 192.502. Instead the only mention of such information is in Section 4.3.1, wherein the entity taking complaints on a state level is "required to keep personally identifying information confidential."

CONCLUSION

Once again we thank the Bureau for seeking for community input, and to the extent that some of our comments have been addressed, for taking our advice seriously. We repeat here our deep concern about publishing so many important policies at one time, during a holiday season. We continue our struggle to see a Bureau free from corruption, brutality and racism, which is the basis for our participating in this process. As noted before, while we don't always agree with the Bureau's reasons for rejecting certain recommendations, it is helpful to be receiving them.

Thank you for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address

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Q1 Please provide feedback for this directive

COMMENTS ON PROFILING, CONDUCT, AND OTHER DIRECTIVES FEBRUARY 2019

To Chief Outlaw, Capt. Bell, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Independent Police Review, Citizen Review Committee and the Portland Police Bureau:

Below are Portland Copwatch's comments on the Directives posted for review in January . We appreciate that the Bureau extended the timeline on the seven policies posted in early January, as proper notification did not go out for over two weeks. We continue to encourage the Bureau to post incoming comments in real time so that community members and officers might be able to build off others' ideas. As noted previously, we do not mind being identified but understand if others want to remain anonymous. A good idea is a good idea regardless of where it comes from.

While the Accountability Directives are not under review, we strongly urge the Bureau to revisit the 2010 Stakeholder report which included the recommendation to add Communication issues, Training issues, Equipment issues and other Policy-related issues as possible findings for incoming complaints. That would be a great way to address the issue raised by the Compliance Officer's Q4 report that officers feel singled out for Supervisory Investigations since they followed policy but the person lodging the complaint didn't like the policy, for instance.

We would still like to see the review periods last for at least 30 days before the Bureau posts a new draft and after. It is fairly clear, for instance, that the Portland Committee on Community Engaged Policing will not be able to quickly move to review a policy within such a short timeline as they only meet once a month and have fairly full agendas. This is also true for other advisory bodies as we have noted in the past.

While the policies under review do not have a large number of proposed changes, numerous problems we have identified in the past have not been addressed. On the other hand, there are a few changes that are reflective of comments we made which we note below. We commented on all of the seven policies below in September 2018. Once again, we are not offering any comments on Directive 630.31 on Stolen Vehicles.

We still urge the Bureau to add letters to section headings (Definitions, Policy, Procedure) to avoid the problem that there are multiple sections with the same numbers, and to add numbers to each of the Definitions. Our comments below refer to the Procedure Section unless otherwise noted.

344.05 BIAS-BASED POLICING/ PROFILING PROHIBITED

We made extensive comments to this Directive, yet there is only one proposed change: to rephrase "immigrant or refugee status" to "immigration or refugee status" in Policy Section 3. This is very discouraging, especially in light of the recent case that led to a City Council hearing in which Sgt. Gregg Lewis was reinstated after being fired for violating this policy, though he then voluntarily resigned and took a large lump sum payment. Though this Directive does say officers can face discipline up to termination for violations (Section 1.2), the Discipline Guide does not reflect that statement. The Directive on the Discipline Guide was shared out for community comment, but not the Guide itself. Had that happened, perhaps Sgt. Lewis' termination would have stood-- though it appears the Police Review Board's recommendation was made in August 2017 while the Guide was updated in early 2018. In any case, it seems the strongest discipline available for violating discrimination policies is 120 hours off without pay, under "Category D."

In our previous comments, we noted that the current Directive's definition of profiling does not clearly talk about the way in which an officer's actions relate to a person's race or other protected characteristics. We proposed a rewrite with new text inserted *in between asterisks*:

Profiling: Where a Bureau member targets an individual belonging

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Profiling: Where a Bureau member targets an individual belonging to a class protected by law or Bureau policy *based on the identifiable traits of that class* when conducting stops or detentions unless the Bureau member is acting on *such traits as one part of a broader* suspect description or information related to an identified or suspected violation of a provision of law.

We noted that would accurately caution officers of at least three possible ways to use race to stop a civilian:

"I stopped a black man" with no reasonable suspicion is profiling.

"I'm looking for a suspect who is a black man and this guy is black" is also profiling.

"The suspect is a middle aged black man in a red baseball hat and orange pants, so is this guy" is not profiling.

We continue to be concerned that Section 2.2.1 says not to use protected traits as the "sole factor cited/identified" when looking for a suspect. The Bureau should use the term "sole or primary factor," reflecting the language in 810.10 on immigration enforcement. Similarly we again encourage the Bureau to remove or clarify the word "solely" in Section 2.4, which guides consensual stops.

We continue to have serious issues with the consensual stops Section, which guides what officers might call "mere conversation." In Portland, we know such "mere conversations" might include officers asking for people to voluntarily submit to a pat-down search. Section 2.4.1 indicates that conversations are encouraged "for the purpose of building relationships, providing assistance or exchanging information." Rather than prohibit officers from disparately stopping people based on their protected characteristics under the guise of "relationship building," Section 2.4.2 says the policy should not "impede legitimate community engagement based on a community's protected status." We previously wrote: "this language is upside-down from what needs to be in the Bias-Based Policing Directive. [The current language] (a) doesn't prohibit officers from disproportionately stopping people to talk based on any of the protected characteristics (including race), (b) doesn't require officers to let the person know they are free to go, and (c) doesn't recognize that for many people, an armed uniformed officer asking to talk to them seems like a coercive action."

Despite the caution that an officer's encounter with a person must be based on "suspected violation of a provision of law" (Section 2.2), sometimes officers see a person, then pull them over and later decide to explain the stop by relying on a traffic or equipment violation. Other times, no reason at all is given and the person is let go with no citation, warning or other paperwork. Thus the use of the term "any police action" as used in Policy Section 2 should apply to the definition of profiling, which only talks about "stops or detentions."

With regard to Sgt. Lewis, it is not clear whether his discipline was only based on his horrifying comments about shooting black people, but also his encouragement of disparate treatment for houseless people, as identified in state law and the Directive. However, we noted before that housing status-- which is part of state law-- is still listed in the "other classes" under Section 3, implying houselessness is not a class protected by law. We continue to encourage the Bureau to remove the word "lawful" from the order not to discriminate against a person based on their "source of income." We wrote: "[this] opens up a lot of problems, for example for sex workers and in the federal vs. state debate on the legality of marijuana. Officers should not discriminate against people for engaging in acts that are considered 'unlawful,' they should fairly and equitably enforce the law using discretion and compassion."

One other comment we previously made about Section 1.2 is that the prohibition on the act of "condon[ing]" bias based policing should make it clear that failing to stop such behavior is a violation of the policy as well.

CONCLUSION

As we have before, we extend our thanks to the Bureau for seeking for community input, and for being at least minimally responsive by making changes and/or explaining areas of disagreement. We look forward one day to being able to declare that the Bureau is free from corruption, brutality and racism.

With regard to the failed notifications from the "third party vendor," we have suggested that Staff put themselves on the alert list and

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check the outgoing emails to be sure the correct information was included. This will avoid having to re-post Directives in the future.

Thank you again for your time

--Portland Copwatch

Q2 Contact Information (optional)

Name

Portland Copwatch

Email Address
